

2008 Form 990 Tips and FAQs Transactions with Interested Persons (Schedule L) November 2009

1. Do all Form 990 and Form 990-EZ filers need to file Schedule L?

No. Only Form 990 filers that answer “Yes” to any of the questions in [Form 990](#), Part IV, lines 25-28 must complete and file the applicable part(s) of [Schedule L](#). An organization that files [Form 990-EZ](#) must complete Schedule L, Part I if it answers “Yes” to Form 990-EZ, line 40b. It must complete Schedule L, Part II if it answers “Yes” to Form 990-EZ, line 38a. Form 990-EZ filers are not required to complete Schedule L, Parts III or IV.

2. What types of transactions are reportable on Schedule L?

The types of transactions reportable on [Schedule L](#) include excess benefit transactions (see Appendix G of [Form 990 instructions](#)); loans between the filing organization and interested persons; grants or other assistance to interested persons; and business transactions between the organization and an interested person. Transactions between the organization and such person’s family members or affiliated entities generally are included. Various thresholds and exceptions may determine whether a given transaction needs to be reported in one of these parts.

TIP: [Form 990](#), Part VI, line 1b asks for the number of independent voting members of the organization’s governing body. One criterion for *independence* is whether a governing body member, or a family member of that person, was involved in a transaction that is reportable on the organization’s Schedule L or that would be reportable on the Schedule L of a related organization. Thus, Form 990 filers should determine whether any of their governing board members were involved in a reportable Schedule L transaction before answering the independent board member question in Part VI, line 1b.

3. Why are there different definitions of “interested persons” in the different parts of Schedule L?

These different definitions of “interested persons” in [Schedule L](#) reflect different purposes and contexts for each question. For instance, Part I of Schedule L asks for reporting of excess benefit transactions as defined by Code section 4958 and its regulations. Accordingly, the “interested persons” who must be reported in Part I are *disqualified persons* as defined in Section 4958 and the regulations (and summarized in the [Form 990](#) Glossary). In contrast, Part III of Schedule L asks for reporting of grants or assistance benefiting a larger range of interested persons, including the organization’s current and former officers, directors, trustees, and key employees; family members thereof; grant selection committee members; substantial contributors and their employees; and 35% controlled entities of substantial contributors, grant selection committee members, and current or former officers, directors, trustees, and key employees. Parts II and IV have additional definitions of interested persons to

whom those parts apply. See the [Schedule L instructions](#) for more detailed definitions of “interested persons” for each of the four parts.

4. Does the definition of “business relationship” in the Form 990 Glossary and in the instructions to Part VI, line 2 (which include an “ordinary course of business” exception) apply for purposes of Part IV, line 28 and Schedule L, Part IV (business transactions involving interested persons)?

No. The instructions to Part IV, line 28, [Form 990](#) and [Schedule L](#), Part IV define a “business transaction” differently than how a “business relationship” is defined for purposes of Part VI, Question 2. Whereas *business relationships between an organization’s key personnel* (directors, trustees, officers, and key employees) are reported in Part VI, line 2, *business transactions between the organization and its interested persons* (including its current and former officers, directors, trustees, key employees; family members thereof; and certain entities owned or controlled, in part, by those officers, directors, trustees, and key employees) are reported in Schedule L, Part IV. Business relationships reported in Part VI and business transactions reported in Schedule L, Part IV are similar, as both include contracts of sale, lease, license, and performance of services. However, each involves different reporting thresholds and exceptions set forth in their respective instructions. For example, an organization that completes Schedule L, Part IV generally is not required to report transactions with an interested person for a dollar amount that did not exceed the greater of \$10,000 or 1% of the organization’s total revenue for the organization’s tax year, whereas the similar threshold for Part VI, line 2 is simply \$10,000. Further, the “ordinary course of business” exception to business relationship reporting in Part VI, line 2 does not apply to Schedule L, Part IV.

5. Should our board member’s purchase of tax-exempt bonds that we issued on the open market be reported as a loan in Schedule L, Part II?

No, a governing board member’s purchase of tax-exempt bonds from the filing organization does not need to be reported on Schedule L, Part II, so long as the board member purchases the bonds on the same terms as are offered to the general public.

6. One of our governing board members is the president of a bank in which our organization has an account. We earn interest on the deposits, and there are fees we pay to the bank throughout the year. Should this transaction be reported in Part II and/or Part IV of Schedule L?

The bank would be an interested person for which [Schedule L](#), Part II reporting may be required only if it is a “disqualified person” as described in Code section 4958(f)(1). The IRS is considering whether placing funds on deposit with a bank constitutes a “loan” for purposes of Part II, and welcomes any comments you may have on this matter. In the meantime, this transaction need not be reported as a loan on Part II for tax years 2008 and 2009.

The bank is an interested person for purposes of Part IV, because of the board member’s status as an officer of the bank. Accordingly, the organization would need to

report on Part IV any payments of fees and interest between the filing organization and the bank during the tax year if such payments with respect to the account exceeded the lesser of (1) \$100,000, or (2) the greater of \$10,000 or 1% of the organization's total revenue for its tax year. The IRS is considering whether deposits into and withdrawals from a bank account constitute "payments" or "business transactions" for purposes of Part IV, and welcomes any comments you may have on this matter. In the meantime, deposits and withdrawals need not be counted as payments or reported as business transactions on Part IV for tax years 2008 and 2009.

7. Must our organization, a primary school, report in Schedule L, Part III the name of one of our officer's family members to whom we granted a scholarship?

No. Grants or assistance provided to an interested person as a member of the class that the organization intends to benefit in furtherance of its exempt purposes generally do not need to be reported in Part III, [Schedule L](#), if such grants or assistance are provided on similar terms as are provided to other members of the class. However, grants for travel, study, or other similar purposes to interested persons do need to be reported in Part III.

Recognizing privacy issues, the type of reporting required in Part III for colleges, universities, and primary and secondary schools is limited. The school is not required to identify individuals to whom it provided such assistance. Instead, these organizations must, in Part III, group each type of financial assistance (e.g., need-based scholarships, merit scholarships, discounted tuition) provided to interested persons in separate lines. For each line, the school should report in column (c) the type of assistance and aggregate dollar amount of that assistance, unless such reporting would constitute an unauthorized disclosure of student education records under the Family Educational Rights and Privacy Act (FERPA). Columns (a) and (b) should be left blank for these lines.

8. We compensate our chief financial officer \$110,000 and the CFO's spouse (an employee) \$20,000. Must we report one or both of these transactions in Schedule L, Part IV?

The compensation to the CFO's spouse must be reported in [Schedule L](#), Part IV, assuming that it is not reported in [Form 990](#), Part VII or Schedule L, Part I, because (1) the spouse is a family member of an officer, and therefore an "interested person" for purposes of Part IV; and (2) the compensation to the spouse exceeds \$10,000. The organization does not need to report its compensation to the CFO in Schedule L, Part IV, though it does need to report that compensation in Part VII of the core Form 990.

9. We don't have enough room on Schedule L to include all of the information requested, such as a description of business transactions (Part IV) or the purpose of a loan (Part II). Must we limit our response to the space provided on Schedule L?

No. A response to a [Schedule L](#) question that does not fit in the space provided on Schedule L should be placed on [Schedule O](#).

10. How hard do we need to look for the information requested in Parts III and IV of Schedule L regarding assistance to interested persons and business transactions with interested persons? What if we are unable to obtain and report all of that information?

The organization need not engage in more than a reasonable effort to obtain the necessary information to answer these questions. An example of a reasonable effort would be for the Form 990, [Schedule L](#) preparer, or an officer eligible to sign the [Form 990](#), to distribute a questionnaire annually to each of its current or former officers, directors, trustees, and key employees, and each of its grant selection committee members, asking for the information that needs to be reported in Parts III and IV. The questionnaire could include the name, title, date, and signature of the person reporting information. The organization may rely on information it obtains in response to such a questionnaire in answering the questions in Parts III and IV.