



Chapter 3

Who are the Filer’s Board Members and How Does the Filer Govern Itself? Did the Filer Change in Any Significant Way During the Year?

Board Members & Governance

On pages 7 and 8 of the Form 990 core, Part VII (Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees and Independent Contractors) Section A (Officers, Directors, Trustees, Key Employees and Highest Compensated Employees), there is listed, along with a lot of other information which we will consider in Chapter 6, the names of each board member.

Form 990 (2010) Page 7

Part VII Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors

Check if Schedule O contains a response to any question in this Part VII

Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

1a Complete this table for all persons required to be listed. Report compensation for the calendar year ending with or within the organization’s tax year.

- List all of the organization’s **current** officers, directors, trustees (whether individuals or organizations), regardless of amount of compensation. Enter -0- in columns (D), (E), and (F) if no compensation was paid.
- List all of the organization’s **current** key employees, if any. See instructions for definition of “key employee.”
- List the organization’s five **current** highest compensated employees (other than an officer, director, trustee, or key employee) who received reportable compensation (Box 5 of Form W-2 and/or Box 7 of Form 1099-MISC) of more than \$100,000 from the organization and any related organizations.
- List all of the organization’s **former** officers, key employees, and highest compensated employees who received more than \$100,000 of reportable compensation from the organization and any related organizations.
- List all of the organization’s **former directors or trustees** that received, in the capacity as a former director or trustee of the organization, more than \$10,000 of reportable compensation from the organization and any related organizations.

List persons in the following order: individual trustees or directors; institutional trustees; officers; key employees; highest compensated employees; and former such persons.

Check this box if neither the organization nor any related organization compensated any current officer, director, or trustee.

(A) Name and Title	(B) Average hours per week (describe hours for related organizations in Schedule O)	(C) Position (check all that apply)						(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former			
(1)										
(2)										
(3)										
(4)										

One can identify a board member among the many individuals listed in Section A by looking at the first sub-column (Individual trustee or director) of column C. If there is a check next to the name of the individual listed (column A) that person is a board member. (Line 9 of Part VI of the Form 990 proper on page 6 requires for board members who cannot be reached at the filer's mailing address that their addresses be provided in Schedule O.) If the board member receives any compensation for her or his duties, the amounts are reported here. Of course, most board members do not receive compensation for their work as board members.

If the reader of a Form 990 knows something about some or all of a filer's board members, their identity can be significant information since the quality of an organization's board members may reflect on the organization itself. Even if the reader knows little about the board members, if it appears from their last names, for instance, that several or many board members are from the same family, this may be significant to a reader. For example, a group which is essentially directed by a single family may be of a different nature than one that has broad public representation. Finally, the number of people on the board of the filer may be of interest.

Part VI (Governance, Management, and Disclosure) on page 6 of the Form 990 proper elicits new information about governance, much of which may be of interest.¹ We will cover what seems of most interest.

Section A (Governing Body and Management) of Part VI on page 6:

Line 1a asks for the number of voting members of the governing body (i.e., the board). Usually, all board members are voting board members so the number will be the same as the number listed at Section A Part VII. If it is different, why it is different maybe something that the reader might like to find out about.

Line 1b asks for the number of voting members who are independent. Generally, independent board members are those who

¹Whether or not a filer has an audit committee is an important item of governance information that is not elicited at Part VI but is at Line 2c of Part XII on page 12. Among other things, an audit committee selects an independent auditor (accountant) to audit the filer's financial statements and meets with the auditor to review the audited financial statements to discuss the adequacy of the filer's internal control procedures.

are not paid as employees or independent contractors or those who have not engaged in self-interested transactions with the filer. Usually nearly all board members are independent. The reader might understandably see a red flag if the number of non-independent board members (Line 1a minus Line 1b) is high.

Line 2 asks whether any board member has a family or business relationship with any other board member or key employee. If the answer is "Yes," perhaps further inquiry may be appropriate. See Chapter 8.

Line 3 asks whether the filer delegated any of its management duties (duties usually performed by the board or key employees) to a management company or other person. If the answer is "Yes," perhaps further inquiry may be appropriate.

Lines 6 and 7 ask whether the filer has members and what their function is. We believe that most nonprofits are not membership groups, but many are. Members typically elect the board and it may well be considered that membership nonprofits are accountable to a broader group of persons than non-membership nonprofits where accountability rests solely with the board.

Line 8 asks in effect whether the board makes and keeps minutes of its meetings. If the answer is "No," the reader might understandably be given pause.

Section B (Policies) of Part VI asks about policies that the filer might or might not have, such as a conflict of interest policy or a whistleblower policy. Interestingly, Line 15 of Part B asks whether the process the filer used in determining the compensation for certain employees (e.g., the executive director and top management officials) included a review of comparability data and an approval by independent persons that was contemporaneously substantiated. This relates to the rebuttable procedure employed to better position an organization faced with a potential section 4958 excess benefit transaction claim. See Expansion on section 4958. If the filer answers Line 15 "Yes," it is directed to describe the process in Schedule O, including the identity of the persons whose compensation was determined by using the process.

Section C (Disclosure) of Part VI at Line 17 asks for a list of the states which require the filer to file a copy of the Form 990. It is usually the case that states require the Form 990 when nonprofits solicit

contributions in their state. So the answer to this question may provide some idea of how extensive the filer's fundraising efforts are. The Internal Revenue Code mandates that nonprofits make their Forms 990 and Form 1023 (which they used to apply for a section 501(c)(3) tax exemption) available to the public. Line 18 asks whether the filer satisfies this requirement by posting the documents on its website, another's website or whether it supplies them on request. This is useful information for the reader who wants to find out more about the filer. Line 19 directs the filer to describe in Schedule O whether it makes its governing documents (bylaws, etc.) conflict of interest statement and financial statements (whether or not audited) available to the public and if so, how. Again learning how to access these documents may provide useful information for the reader.

Significant Organizational Changes

Line 2, Part III on page 2 of the 990 (discussed at Chapter 2) asks whether the filer undertook any significant program services that were not listed on its previous Form 990, and Line 3 asks whether the filer ceased conducting any program services or made any significant changes in how it conducts any program services. If the answer to either of these questions is "Yes," the filer is directed to describe the changes in Schedule O. A significant change in a filer's activities will be of prime importance to most readers of the Form 990.

Line 31 of Part IV, page 4, asks whether the filer liquidated, terminated, dissolved or ceased any of its operations and if so directs the filer to complete Schedule N, Part I. Line 32 of Part IV asks whether the filer sold, exchanged, disposed of or transferred more than 25% of its assets and if so directs the filer to complete Schedule N. Either of these changes (liquidation or sales) might be of interest to the reader.

Line 4 of Section A, Part VI on page 6 asks whether the filer made any significant changes to its organizational documents since its prior Form 990 was filed. This would include amending a filer's certificate of incorporation to allow it to engage in a new activity or a change in the filer's bylaws (e.g., changing the number of board members or the quorum requirements). Again, modifications in how an organization governs itself, reflected in significant changes in its organizational documents, may signal an important change in the nature of the organization or perhaps some internal conflict that the reader of the filer's Form 990 may want to find out about.

Finally, Line 5 of Section A, Part VI asks whether the filer became aware during the year of any material diversion of its assets, even if such a diversion occurred in a previous year. Such a diversion would be a significant change that the reader may want to know more about. A diversion of assets "includes any unauthorized conversion or use of the organization's assets other than for the organization's authorized purposes, including but not limited to embezzlement or theft." If checked "Yes," the filer is to complete Schedule O.