

**From PLI's Course Handbook**  
*The New Form 990 and Final Instructions —*  
*Key Topics for 2008 Returns*  
**#19795**



BEIJING BRUSSELS CHICAGO DALLAS FRANKFURT GENEVA HONG KONG LONDON LOS ANGELES NEW YORK SAN FRANCISCO SHANGHAI SINGAPORE SYDNEY TOKYO WASHINGTON, D.C.



## **The New Form 990 & Final Instructions—Key Topics for 2008 Returns**

**PLI One-Hour Briefing**

**September 24, 2008**

Michael A. Clark  
Sidley Austin LLP  
Chicago, IL  
312-853-2173  
[mclark@sidley.com](mailto:mclark@sidley.com)

---

# The New Form 990: Background

---

- The Status Quo
  - Form 990 used by all exempt organizations except private foundations and smaller organizations
  - Two special schedules, A and B, relate primarily to certain 501(c)(3) organizations
  - Form has not been revised in 25 years
- Why was change needed?
  - Current “one size fits all” had been modified piece-meal and often was not organized in a logical fashion for filing organizations or readers

---

# The New Form 990: Background

---

- Three goals
  - Enhance transparency to provide IRS and the public with a realistic picture of the organization
  - Promote compliance
  - Minimize administrative burden on filing organizations
  
- Process for Redesign
  - Draft Form released for Comment June 2007
  - Comment period through 9/14/07
  - Revised form released December 2007
  - Instructions released for Comment April 2008

---

# The New Form 990: Background

---

- Comment period through June 1, 2008
- Final draft instructions released August 19, 2008 with related form [<http://www.irs.gov/charities/article/0,,id=181089,00.html>]
- 3 Background papers
  - Summary of Form 990 Redesign Process
  - Changes to April Draft Instructions
  - Form 990, Moving From Old to New

---

# The New Form 990: Background

---

- Application of New Form
  - New form must be used by organizations with calendar years ending in December 2008.
  - Fiscal year filers use the new form for years ending in 2009
  - 990-EZ expanded for transition period
    - 2008 – Use 990 EZ if gross receipts less than \$1.0 million and assets less than \$2.5 million
    - 2009 – Use 990-EZ if gross receipts less than \$500,000 and total assets less than \$1,250,000
    - 2010 – Use 990-EZ if gross receipts less than \$200,000 and total assets less than \$500,000
  - Most organizations with less than \$25,000 gross receipts must file form 990-N (e-postcard)

---

# New Form Design

---

- Core Form
- Schedules Depending Upon Activities
  - Schedule A: Public Charity Status and Public Support
  - Schedule B: Schedule of Contributors
  - Schedule C: Political Campaign and Lobbying Activities
  - Schedule D: Supplemental Financial Statements
  - Schedule E: Schools
  - Schedule F: Statement of Activities Outside the U.S.
  - Schedule G: Supplemental Information Regarding Fundraising Activities
  - Schedule H: Hospitals

---

# New Form Design

---

- Schedule I: Supplemental Information on Grants and Other Assistance to Organizations, Governments and Individuals in the U.S.
- Schedule J: Supplemental Compensation Information
- Schedule K: Supplemental Information on Tax Exempt Bonds
- Schedule L: Transactions With Interested Persons
- Schedule M: Non-Cash Contributions
- Schedule O: Supplemental Information to Form 990
- Schedule N: Liquidation, Termination, Dissolution or Significant Disposition of Assets
- Schedule R: Related Organizations
- No P or Q yet



---

# Highlights of the New Core Form

---

- Mission or most significant activities highlighted on pages 1 and 2
  - Short statement of mission or most significant activities required on page 1, Part I, question 1
  - Brief statement of mission required on page 2, Part II, question 1
  - Three largest program service activities, including expenses, grants, and related revenue, reported on Part II, question 4
  
- Snapshot of Key Statistics on Page 1
  - Voting members of governing body and independent members
  - Total employees

---

# Highlights of the New Core Form

---

- Total volunteers
- Total UBTI
- Summary financial data for current and prior years:
  - contributions;
  - program service revenue;
  - investment income;
  - grants paid;
  - member benefits;
  - fundraising expenses;
  - total compensation and benefits; and
  - total assets, liabilities and fund balances
- Entity-by-entity filing; consolidation not permitted

---

## Highlights of the New Core Form

---

- Pages 3-5 – Triggers for filing of other schedules and questions about specific areas of compliance
  
- Governance questions (Part VI, page 6)
  - Number of voting and independent directors
  - Directors are “independent” if they meet the following three tests:
    - Not compensated as officer or employee of organization, or related organizations
    - Not compensated in excess of \$10,000 as an independent contractor for the organization or a related organization
    - Not involved individually, or through a family member, in a transaction reported on Schedule L
  - Reasonable efforts to determine independence are sufficient
  - Any family or business relationship among officers, directors, trustees and key employees

---

## Highlights of the New Core Form

---

- Business relationships include
  - Employment by entity for which another director, officer, trustee, or key employee is a 35% owner, trustee, director, officer, or key employee
  - Two persons are each directors, officers, trustees, or greater than 10% owners in the same business or investment entity
  - The two persons, or the firms with which they are associated as officers, directors, trustees, or key employees, have more than \$10,000 of business transactions with each other, except transactions in the ordinary course of business on the same terms generally offered to the public

---

## Highlights of the New Core Form

---

- Privileged relationships need not be disclosed
  - Attorney-client
  - Medical professional-patient
  - clergy-religious activity participant
- Reasonable efforts to identify business relationships are sufficient
- Delegation to a management company or other person
- Significant changes to governing documents

---

## Highlights of the New Core Form

---

- “Material diversion” of entity’s assets
- Does the organization have members, and do members elect the governing body or approve decisions of the governing body
- Contemporaneous documentation of all board and committee meetings
- Does the organization have chapters, branches, or offices, and does the organization have written policies governing the activities of each affiliate to make certain that they are consistent with the organization’s operations?
- Was form 990 provided to board before it was filed? Explain in Schedule O the process used to review the organization’s form 990

---

## Highlights of the New Core Form

---

- Written conflict of interest policy with annual interest disclosure by officers, directors, trustees and key employees? Explain in Schedule O regular monitoring and enforcement of compliance with policy
- Written whistleblower policy?
- Written document retention/destruction policy?
- Did compensation policy for CEO, Executive Director, or other top management official, and other officers or key employees, include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the decision? Explain on Schedule O.

---

## Highlights of the New Core Form

---

- Explain in Schedule O how governing documents, conflicts policy, forms 990 and 990-T, and financial statements made available to public
- Did the organization participate in joint ventures, and does it have a policy to assure that the arrangement complies with federal tax law and safeguards the organization's exemption?



---

# Highlights of the New Core Form

---

- Compensation (Page 7)
  - List name, title, hours worked and calendar year W-2/1099 pay and “other compensation” from this and related organizations for:
    - Persons serving at any time during the taxable year as officers, voting directors, and trustees,
    - Current key employees (up to 20) paid over \$150,000. Key employees are employees who have responsibilities similar to officers, directors, or trustees; who manage discrete segments of the organization accounting for more than 10% of assets, income, expenses, or activities of the organization; or who have or share authority to control or determine 10% or more of the organization’s expenditures, operating budget, or employee compensation.
    - Five highest paid other employees over \$100,000,
    - Former officers, key employees and five highest paid employees who received over \$100,000 during the year, and
    - Former directors or trustees paid over \$10,000 in such capacity
    - Table for reporting five highest paid independent contractors receiving more than \$100,000 from this entity

---

# Highlights of the New Core Form

---

- Financial Statements

- Reorganized and clarified – Program service revenue now subdivided rather than reported as a lump sum
- Columns for reporting total revenue, related or exempt function revenue, unrelated business income, and revenue excluded from unrelated business income by one of the special provisions in sections 512, 513, or 514, are incorporated into the statement of revenue, rather than included in a separate schedule
- Contributions are categorized in more detail, including providing space for a breakdown of membership dues treated as contributions and otherwise
- A separate line is provided for royalty income

---

## Highlights of the New Core Form

---

- Expenses – functional expense reporting not required except for 501(c)(3) and (c)(4)
- Compensation to “disqualified persons” under section 4958 must be reported on a separate line if they are not current officers, directors or key employees
- Specific lines are now provided for expenses paid to service providers for lobbying, management services, and investment management
- Specific lines are now provided for advertising, information technology, royalties, and insurance
- Does the organization have a committee responsible for oversight of its annual audit, review, or compilation of its financial statements and selection of an independent accountant?

---

# Schedule Highlights

---

- Key New schedules

- Schedule A – Public Charity Status and Public Support (replacing the existing advance ruling forms and applying a uniform 5-year public support test)
- Schedule C – Political Campaign and Lobbying Activities (expanding and refining the existing form disclosures)
- Schedule D – Supplemental Financial Statements (expanded reporting of donor advised funds, conservation easements, museum collections, endowments, escrows/custodial accounts, and FIN 48)
- Schedule F – Statement of Activities Outside of the United States (reporting of offices, employees, or agents outside of the United States or grantmaking, fundraising, business, or program service activities outside of the United States in excess of \$10,000)

---

## Schedule Highlights

---

- Schedule H – Hospitals (only facility information required for 2008)
- Schedule J – Compensation Information (clarifies reporting)
- Schedule K – Supplemental Information on Tax Exempt Bonds (expanded reporting of tax-exempt bonds; for 2008, only a listing of outstanding bond issues is required)
- Schedule L – Transactions with Interested Persons (expanded and clarified reporting of related-party transactions)
- Schedule M – Non-Cash Contributions (expanded reporting)
- Schedule N – Liquidation, Termination, Dissolution or Significant Disposition of Assets (expanded reporting of asset dispositions)
- Schedule O – Supplemental Information (explanations)
- Schedule R – Related Organizations and Unrelated Partnerships (reorganized and expanded reporting of entity relationships)

---

# Schedule Highlights

---

- Schedule A – Public Charity Status
  - Must specify type of public charity status (as before)
  - Compliance with the public support test
    - Organization computes public support under its regular accounting method; the cash method is no longer required
    - Separate schedules are provided for the section 170(b)(1)(A)(vi) and section 509(a)(2) public support tests
    - Support computed over a 5-year period for all organizations
    - Support calculations on the form include the current year, although organizations will still qualify as publicly supported if they met the public support test for either the five-year period including the current year or the five-year period ending with the immediately preceding year

---

# Schedule Highlights

---

- An explanation will be required if the organization claims to meet the 10% facts and circumstances test
  - Under recently issued regulations, no separate filings will be required to demonstrate satisfaction of the public support test at the end of the five-year period for newly created organization. Rather than filing a form 8734, organizations may use the form 990
- Section 509(a)(3)
- Specify Type I, II, or III
  - Describe supported organization

---

## Schedule Highlights

---

- Schedule C – added two new parts for non 501(c)(3) organizations that engage in political activity and reorganized other questions found elsewhere on the prior year’s form
  - Part 1-A. Describe direct and indirect campaign activity, political expenditures and volunteer hours. Volunteer hours estimated by “any reasonable method.”
  - Part 1-C – Report direct expenditures for political purposes, and organizational expenditures from internal funds. Also report contributions collected and promptly remitted to PACs
  - Part III now provides a separate schedule for 501(c)(4), (5), or (6) organization to calculate and report dues nondeductible by members and the proxy tax



---

## Schedule Highlights

---

- Schedule D – Supplemental Balance Sheet Reporting
  - Donor Advised Funds detail
  - Conservation easement reporting
  - Description of accounting for art, historical treasures, and similar assets
  - Description of trust, custodial, or other accounts held by the organization (irrespective of whether included on the balance sheet) for the benefit of other organizations or individuals
  - Reporting of endowment funds (including “true” endowment and other forms of endowment), including additions thereto and expenditures
  - Reporting of land, buildings, leasehold improvements, and equipment, both held for investment and for program use. Individual asset detail is not required

---

# Schedule Highlights

---

- Detailed reporting of “other securities,” “program related investments,” and “other assets” is required only if each of these categories accounted for more than 5% of total assets shown on the balance sheet
- FIN 48 footnote must be included
- Reconciliation to audited financial statements required

---

## Schedule Highlights

---

- Schedule F – Activities Outside of U.S.
  - Grantmaking organizations, such as 501(c)(3) affiliates, must maintain records to substantiate the amount of foreign grants or assistance, grantee eligibility, and selection criteria. A description of procedures for monitoring the use of grant funds outside the U.S. will also be required.
  - Organizations generally have to report activities outside the U.S., including program services, or maintaining offices, employees, or agents for conducting such activities. A volunteer is not an agent for purposes of determining if the organization has a foreign office. Passive investment activities also count.
  - Foreign organizations need not report payments to their own branch offices, accounts, or employees outside of the U.S.

---

# Schedule Highlights

---

- Reporting is on a regional basis. The regions are as follows:
  - Central America and the Caribbean
  - East Asia and the Pacific
  - Europe (including Iceland and Greenland)
  - Middle East and North Africa
  - North America (including Canada and Mexico, but not the U.S.)
  - Russia and Newly Independent States
  - South America
  - South Asia
  - Sub-Saharan Africa
- In addition, for grants, separate schedules are required for organizations that receive more than \$5,000, and individuals that receive more than \$5,000.

---

# Schedule Highlights

---

- Schedule H – Hospitals
  - Most of Schedule H is optional for 2008. Schedule H requires hospitals to disclose detail regarding their community benefit activities, including the following:
    - charity care at cost,
    - unreimbursed Medicaid expenses,
    - unreimbursed costs from other government programs,
    - community health improvement activities,
    - health professional education costs,
    - subsidized health services,
    - research, and
    - contributions to other community groups.

---

## Schedule Highlights

---

- Detailed worksheets are provided for computing the above information
- Community Building Activities
- Bad Debt, Medicare, and Collection Practices
- Management Companies and Joint Ventures
- For 2008, “hospitals” must complete Part V, Facility Information.
- An organization is a “hospital” for purposes of Schedule H if it is licensed, registered, or similarly recognized by a state as such.
- A “facility” which must be listed on Schedule H includes any facility which is required to be licensed, registered, or similarly recognized as a health care provider under state law.

---

# Schedule Highlights

---

- Schedule J: Compensation
  - Report compensation data for certain individuals. Reporting is required only for the following:
    - Former officers, directors, and key employees receiving more than \$100,000 from the organization and related organizations, or more than \$10,000 for services solely as a former officer or director
    - Current (at any time during the taxable year) officers, directors, key employees, and five highest compensated employees if the total exceeds \$150,000.
  - The information reported is more detailed than reported on the Core Form, dividing compensation into various elements, including:

---

## Schedule Highlights

---

- Base compensation on W-2/1099
- Bonus and incentive compensation on W-2/1099
- Other pay on W-2/1099
- Deferred compensation (reported as services are rendered), including contributions to defined contribution pension plans and increases in actuarial value for defined benefit plans
- Non-taxable benefits (other than fringe benefits excluded under section 132 and certain other benefits) such as employer provided housing, educational assistance, health insurance, life insurance, disability, and long-term care insurance
- Total, including nontaxable benefits
- Compensation reported on Forms 990 for prior years



---

# Schedule Highlights

---

- Check-box reporting – any instance of:
  - First-class or charter travel
  - Travel for companions
  - Tax indemnification and gross-up payments
  - Discretionary spending accounts
  - Housing allowance or residence for personal use
  - Payment for business use of personal residence
  - Health or social club dues or initiation fees
  - Personal services (e.g., maid, chauffeur, chef)
  - Failure to require substantiation of the above

---

# Schedule Highlights

---

- Check box questions for methods used to establish compensation
  - Committee
  - Approval by the board or compensation committee
  - Independent consultants
  - Other organization 990s
  - Written employment contract
  - Compensation survey or study

---

# Schedule Highlights

---

- Questions leading to narrative explanations:
  - Failure to follow reimbursement policies
  - Providing severance pay or change in control payments
  - SERPs
  - Equity based compensation arrangements
  - 501(c)(3) and (4) entities must report additional amounts

---

## Schedule Highlights

---

- Schedule L: Transactions with Interested Persons
  - Describe “details” of each loan (outstanding at year-end) to or from current/former officer, director, trustee, key employee, five most highly compensated other employees, or other disqualified persons
  - Describe excess benefit transactions for 501(c)(3) or (4) organizations – name of disqualified person involved, transaction and whether corrected

---

# Schedule Highlights

---

- Describe grants or assistance benefiting the following:
  - current or former officers, directors, trustees, key employees required to be listed in the compensation schedule of the Core Form;
  - substantial contributors (defined for this purpose as persons contributing at least \$5,000 and required to be listed by name on Schedule B);
  - members of grant selection committee;
  - family members of the above;
  - 35% controlled entities; and
  - certain employees.

---

## Schedule Highlights

---

- Reasonable efforts. If an organization annually distributes a questionnaire to the current and former officers, directors, trustees, and key employees, and grant selection committee members, soliciting information about grants which should be disclosed on Schedule L, it need not report any information which is not disclosed as a result of such reasonable efforts. The questionnaire need not be distributed to substantial contributors unless the substantial contributor advises the organization on grant recipients, or the grant program is intended primarily to benefit employees (or their children) of the substantial contributor.

---

# Schedule Highlights

---

- Describe business transactions with the following:
  - current or former officers, directors, trustees, or key employees;
  - entities 35% controlled by such persons and their family members;
  - family members of such persons; or
  - entities doing business with the organization in which such persons serve as an officer, director, trustee, key employee, or 5% partner or member.
- Interested person transaction reporting exceptions. No reporting for transactions that do not exceed the greater of \$10,000 or 1% of the filing organization's total revenues per tax year, unless (1) transactions between the parties exceeded \$100,000 during the year, or (2) the transaction was the payment of compensation to a family member of a current officer, director, trustee, or key employee in excess of \$10,000.
- Reasonable effort exception similar to the exception for grants.

---

# Schedule Highlights

---

- Schedule M: Non-Cash Contributions
  - Prior form 990 did not request significant detail about non-cash contributions
  - New form requires detail regarding various forms of contribution of potential audit interest, such as contributions of
    - art,
    - books,
    - clothing and household articles,
    - cars,
    - boats,
    - intellectual property,
    - securities,
    - real estate,



---

# Schedule Highlights

---

- collectibles,
  - inventory, and
  - other items.
- Schedule M also requires disclosure of the number of forms 8283 the organization received.
  - Gift acceptance policy requiring review of “non-standard” contributions is suggested.

---

## Schedule Highlights

---

- Schedule N: Liquidation, Termination, Dissolution, or Significant Disposition of Assets
  - Prior form 990 required disclosure of major events relating to the dissolution of the organization, or a substantial contraction in its size. However, “substantial contractions” did not include sales for fair market value. Thus, for example, an organization operating a hospital could sell its facility to a for-profit entity, but would not be subject to any special reporting if it received fair market value for the sale.
  - Reporting now required for disposition of more than 25% of the organization’s net assets in one year.
  - Changes in composition of the organization’s publicly traded securities in its investment portfolio, decreases in value due to market fluctuations, and asset sales made in the ordinary course of business need not be reported.

---

# Schedule Highlights

---

- Schedule R: Related Organizations and Unrelated Partnerships
  - List every disregarded entity (single member LLC)
  - List all related exempt entities
  - Disclose each related entity taxed as a partnership
  - Disclose all related entities taxed as corporations or trusts (ignore exempt pension plans)
  - Indicate if there have been transactions with a related entity, and describe such transactions
    - certain income items;
    - gifts;
    - grants;
    - capital contributions;
    - loans;

---

# Schedule Highlights

---

- asset sales/purchases;
  - leases of facilities or equipment;
  - performance of services;
  - sharing of facilities, equipment, mailing lists, assets or employees;
  - reimbursements; or
  - other transfers of cash or property
- Provide information for unrelated partnership entities through which the organization conducted more than 5% of its activities (measured by total assets or gross revenue)
- Identifying information
  - Activity
  - UBTI
  - Allocation/asset information
  - Whether all partners are 501(c)(3) organizations

---

## Top Ten To Do List

---

- Consider adopting policies to permit an affirmative response to governance and management questions
  - Contemporaneous documentation of board and committee meetings
  - Conflict of interest policy
  - Whistleblower policy
  - Document retention/destruction policy
  - Joint venture policy
  - Audit committee policy
- Revisit policies governing chapters, branches, and offices to confirm that they follow organization policy
- Consider procedure to provide form 990 to the organization's Board of Directors in advance of filing and develop Schedule O explanation

---

## Top Ten To Do List

---

- Develop explanation for enforcement of conflicts policy for Schedule O
- Revisit procedures for assuring reasonableness of officer and key employee compensation, and develop explanation for Schedule O
- Develop policy for making governing documents, conflicts policy, form 990 and 990-T, and financial statements available to the public
- Make sure that all compensation information is collected for persons to be reported, including the expanded list of key employees, and make sure information regarding nontaxable benefits is collected.

---

## Top Ten To Do List

---

- Determine whether to eliminate benefits calling for special check-box reporting
  - First class or charter travel
  - Companion travel
  - Tax indemnification or gross-up
  - Discretionary spending accounts
  - Housing allowance or residence for personal use
  - Payment for business use of personal residence
  - Health or social club dues or initiation fees
  - Maids, chefs, drivers, etc.
  - Non-accountable reimbursement for any of the above

---

## Top Ten To Do List

---

- Develop explanations for, or eliminate, compensation practices calling for special explanations
  - Failure to follow reimbursement plan rules
  - Severance pay or change of control payments
  - SERPs
  - Equity based compensation
- Plan for collection of new information that may not have been required before or that may not have been adequately reported
  - Business relationships among officers, directors, trustees, key employees, and the organization
  - Volunteers involved in political activity



---

# Top Ten To Do List

---

- Activities outside of the United States
- Schedules for grants outside of U.S.
- Grants or assistance to current officers, directors, trustees, substantial contributors, key employees, and family members
- Collect related entity information
  - Disregarded entities
  - Related entities – by type of taxation
  - Transactions with related entities
- Develop explanation of mission and program services for pages 1 and 2