

# Putting Your Best Foot Forward: What Does Your Form 990 Say About Your Organization?

## Non-Profit and Associations Forum ACC National Capital Region

September 24, 2019

**DIARA M. HOLMES**

**MARCUS S. OWENS**

Partners, Loeb & Loeb LLP

**SHARON W. NOKES**

Director, Legal Affairs and Associate General Counsel  
The Pew Charitable Trusts

**PRESTON J. QUESENBERRY**

Managing Director, Exempt Organizations  
KPMG Washington National Tax

**JESSE RABEN**

General Counsel, The Common Application  
Moderator



© 2019 LOEB & LOEB LLP

# Welcome

- **Introductions**
- **Form 990: A Brief History**
- **Government Use of Form 990**
- **Who Else is Reading and Using Your 990?  
Perspectives—Media, Donors/Funders, Charity Watchdogs**
- **Putting Your Best Foot Forward:  
A Closer Look at Key Questions and Schedules**
- **Technical Points**
- **Practical Tips and Some Final Questions to Consider Before Filing**
- **Questions?**

# Form 990: A Brief History

- 1942: First Form 990 required for 1941 tax year
- 1950: UBIT and Form 990-T; Form 990 becomes publicly available (from IRS)
- 1969: Foundation Excise Taxes and Form 990-PF
- 1987: EOs required to disclose 990/990-PF
- 2008: Form 990 extensively revised
- 2006: Form 990-T subject to public disclosure

# Government Use of Form 990

- Majority of states require state filing of Form 990
- Factor in enforcement by state AG, other state regulators
- Form 990 informs IRS enforcement
- IRS using data analytics to mesh Form 990 data, social media info
- Civil/Criminal enforcement: US v. Driscoll

# Who Else is Reading Your 990? Media Perspective

- Nonprofit sector media often report on executive compensation and other hot button issues. (Example: Chronicle of Higher Education's periodic "highest paid university presidents" survey)
- Mainstream media headlines focus on self-dealing, related party transactions, political campaign intervention, financial mismanagement or governance/board controversy. Sometimes, government investigations follow. (Recent examples: NRA, Trump Foundation)
- Investigative reporting often starts with thoughtful study of the data and information provided by organizations on Forms 990/990-PF.
- Example: Washington Post Oct 2013 analysis of "significant diversions of assets" (thefts, fraud) as reported by over 1,000 charities in the DC area. Compiled a "diversions database" with support from Guidestar.

# Donors and Funders Care

- Individual donors don't necessarily review Form 990s. However, sophisticated donors and their counsel, absolutely do.
- Close review of recent Form 990s is part of every grantmaking foundation or funder's standard "due diligence" review.
- Needless to say, donors are influenced by media reports.
- Some look to "watchdog" organizations to provide a seal of approval, or 4-star rating.
  - Example: Charity Navigator rates charities by evaluating Financial Health and Accountability & Transparency. "Our ratings show donors how efficiently a charity will use their support, how well it has sustained its programs and services over time, and their level of commitment to accountability and transparency."

# Putting Your Best Foot Forward

- Part III - Statement of Program Service Accomplishments
- Part IV—Checklist of Required Schedules – A bridge to the detailed schedules
- Part VI—Governance, Management and Disclosure (e.g., significant diversions of assets)
- Part VII —Compensation of ODTKEs

## Focus on Key Schedules:

- J – Compensation
- L – Transactions with Interested Persons
- R – Related Organizations
- O – Explanations. An Invitation to Tell the Story.

# Statement of Program Service Accomplishments

Form 990 (2018)

Page **2**

## **Part III** Statement of Program Service Accomplishments

Check if Schedule O contains a response or note to any line in this Part III ☐

**1** Briefly describe the organization's mission:

**2** Did the organization undertake any significant program services during the year which were not listed on the prior Form 990 or 990-EZ? ☐ Yes ☐ No

If "Yes," describe these new services on Schedule O.

**3** Did the organization cease conducting, or make significant changes in how it conducts, any program services? ☐ Yes ☐ No

If "Yes," describe these changes on Schedule O.

**4** Describe the organization's program service accomplishments for each of its three largest program services, as measured by expenses. Section 501(c)(3) and 501(c)(4) organizations are required to report the amount of grants and allocations to others, the total expenses, and revenue, if any, for each program service reported.

**4a** (Code: ) (Expenses \$ including grants of \$ ) (Revenue \$ )



# Part IV – Checklist of Required Schedules

23	Did the organization answer "Yes" to Part VII, Section A, line 3, 4, or 5 about compensation of the organization's current and former officers, directors, trustees, key employees, and highest compensated employees? <i>If "Yes," complete Schedule J</i> . . . . .	23	<input type="checkbox"/>	<input type="checkbox"/>
24a	Did the organization have a tax-exempt bond issue with an outstanding principal amount of more than \$100,000 as of the last day of the year, that was issued after December 31, 2002? <i>If "Yes," answer lines 24b through 24d and complete Schedule K. If "No," go to line 25a</i> . . . . .	24a	<input type="checkbox"/>	<input type="checkbox"/>
b	Did the organization invest any proceeds of tax-exempt bonds beyond a temporary period exception? . . . . .	24b	<input type="checkbox"/>	<input type="checkbox"/>
c	Did the organization maintain an escrow account other than a refunding escrow at any time during the year to defease any tax-exempt bonds? . . . . .	24c	<input type="checkbox"/>	<input type="checkbox"/>
d	Did the organization act as an "on behalf of" issuer for bonds outstanding at any time during the year? . . . . .	24d	<input type="checkbox"/>	<input type="checkbox"/>
25a	<b>Section 501(c)(3), 501(c)(4), and 501(c)(29) organizations.</b> Did the organization engage in an excess benefit transaction with a disqualified person during the year? <i>If "Yes," complete Schedule L, Part I</i> . . . . .	25a	<input type="checkbox"/>	<input type="checkbox"/>
b	Is the organization aware that it engaged in an excess benefit transaction with a disqualified person in a prior year, and that the transaction has not been reported on any of the organization's prior Forms 990 or 990-EZ? <i>If "Yes," complete Schedule L, Part I</i> . . . . .	25b	<input type="checkbox"/>	<input type="checkbox"/>
26	Did the organization report any amount on Part X, line 5, 6, or 22 for receivables from or payables to any current or former officers, directors, trustees, key employees, highest compensated employees, or disqualified persons? <i>If "Yes," complete Schedule L, Part II</i> . . . . .	26	<input type="checkbox"/>	<input type="checkbox"/>
27	Did the organization provide a grant or other assistance to an officer, director, trustee, key employee, substantial contributor or employee thereof, a grant selection committee member, or to a 35% controlled entity or family member of any of these persons? <i>If "Yes," complete Schedule L, Part III</i> . . . . .	27	<input type="checkbox"/>	<input type="checkbox"/>
28	Was the organization a party to a business transaction with one of the following parties (see Schedule L, Part IV instructions for applicable filing thresholds, conditions, and exceptions):			
a	A current or former officer, director, trustee, or key employee? <i>If "Yes," complete Schedule L, Part IV</i> . . . . .	28a	<input type="checkbox"/>	<input type="checkbox"/>
b	A family member of a current or former officer, director, trustee, or key employee? <i>If "Yes," complete Schedule L, Part IV</i> . . . . .	28b	<input type="checkbox"/>	<input type="checkbox"/>
c	An entity of which a current or former officer, director, trustee, or key employee (or a family member thereof) was an officer, director, trustee, or direct or indirect owner? <i>If "Yes," complete Schedule L, Part IV</i> . . . . .	28c	<input type="checkbox"/>	<input type="checkbox"/>
29	Did the organization receive more than \$25,000 in non-cash contributions? <i>If "Yes," complete Schedule M</i> . . . . .	29	<input type="checkbox"/>	<input type="checkbox"/>
30	Did the organization receive contributions of art, historical treasures, or other similar assets, or qualified conservation contributions? <i>If "Yes," complete Schedule M</i> . . . . .	30	<input type="checkbox"/>	<input type="checkbox"/>
31	Did the organization liquidate, terminate, or dissolve and cease operations? <i>If "Yes," complete Schedule N, Part I</i> . . . . .	31	<input type="checkbox"/>	<input type="checkbox"/>
32	Did the organization sell, exchange, dispose of, or transfer more than 25% of its net assets? <i>If "Yes," complete Schedule N, Part II</i> . . . . .	32	<input type="checkbox"/>	<input type="checkbox"/>
33	Did the organization own 100% of an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? <i>If "Yes," complete Schedule R, Part I</i> . . . . .	33	<input type="checkbox"/>	<input type="checkbox"/>
34	Was the organization related to any tax-exempt or taxable entity? <i>If "Yes," complete Schedule R, Part II, III,</i>			



# Part VI: Governance, Management, Disclosure

**Part VI** **Governance, Management, and Disclosure** For each "Yes" response to lines 2 through 7b below, and for a "No" response to line 8a, 8b, or 10b below, describe the circumstances, processes, or changes in Schedule O. See instructions. Check if Schedule O contains a response or note to any line in this Part VI ☐

## Section A. Governing Body and Management

		Yes	No
<b>1a</b> Enter the number of voting members of the governing body at the end of the tax year . . . . .	<b>1a</b> <input type="text"/>		
If there are material differences in voting rights among members of the governing body, or if the governing body delegated broad authority to an executive committee or similar committee, explain in Schedule O.			
<b>b</b> Enter the number of voting members included in line 1a, above, who are independent . . . . .	<b>1b</b> <input type="text"/>		
<b>2</b> Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee? . . . . .	<b>2</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>3</b> Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors, or trustees, or key employees to a management company or other person? . . . . .	<b>3</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>4</b> Did the organization make any significant changes to its governing documents since the prior Form 990 was filed? . . . . .	<b>4</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>5</b> Did the organization become aware during the year of a significant <b>diversion</b> of the organization's assets? . . . . .	<b>5</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>6</b> Did the organization have members or stockholders? . . . . .	<b>6</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>7a</b> Did the organization have members, stockholders, or other persons who had the power to elect or appoint one or more members of the governing body? . . . . .	<b>7a</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>b</b> Are any governance decisions of the organization reserved to (or subject to approval by) members, stockholders, or persons other than the governing body? . . . . .	<b>7b</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>8</b> Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following:			
<b>a</b> The governing body? . . . . .	<b>8a</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>b</b> Each committee with authority to act on behalf of the governing body? . . . . .	<b>8b</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>9</b> Is there any officer, director, trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? If "Yes," provide the names and addresses in Schedule O . . . . .	<b>9</b>	<input type="checkbox"/>	<input type="checkbox"/>

## Section B. Policies (This Section B requests information about policies not required by the Internal Revenue Code.)

# “Significant Diversion of Assets” – defined

## From the Instructions to Form 990:

Answer "Yes," if the organization became aware during the organization's tax year of a significant diversion of its assets, whether or not the diversion occurred during the year.

If "Yes," explain the nature of the diversion, dollar amounts and/or other property involved, corrective actions taken to address the matter, and pertinent circumstances on Schedule O (Form 990 or 990-EZ), although the person or persons who diverted the assets should not be identified by name.

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. Report diversions by the organization's **officers, directors, trustees, employees, volunteers, independent contractors**, grantees (diverting grant funds), or any other person, even if not associated with the organization other than by the diversion. A diversion of assets does not include an authorized transfer of assets for **FMV** consideration, such as to a **joint venture** or for-profit subsidiary in exchange for an interest in the joint venture or subsidiary.

For this purpose, a diversion is considered significant if the gross value of all diversions (not taking into account restitution, insurance, or similar recoveries) discovered during the organization's tax year exceeds the lesser of (1) 5% of the organization's gross receipts for its tax year, (2) 5% of the organization's total assets as of the end of its tax year, or (3) \$250,000.

# Part VII: Compensation of ODTKE's

Form 990 (2018)

Page **7**

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

Check if Schedule O contains a response or note to any line 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 (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(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)										





# Schedule J: Compensation

<b>SCHEDULE J</b> <b>(Form 990)</b>  <small>Department of the Treasury Internal Revenue Service</small>	<b>Compensation Information</b> For certain Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees ▶ Complete if the organization answered "Yes" on Form 990, Part IV, line 23. ▶ Attach to Form 990. ▶ Go to <a href="http://www.irs.gov/Form990">www.irs.gov/Form990</a> for instructions and the latest information.	<small>CMB No. 1545-0047</small> <div style="font-size: 2em; font-weight: bold; margin: 5px 0;">2018</div> <div style="background-color: black; color: white; padding: 2px; font-weight: bold;">Open to Public Inspection</div>						
Name of the organization		Employer identification number						
<b>Part I Questions Regarding Compensation</b>								
		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 60%;"></th> <th style="width: 20%; text-align: center;">Yes</th> <th style="width: 20%; text-align: center;">No</th> </tr> </table>		Yes	No			
	Yes	No						
<b>1a</b> Check the appropriate box(es) if the organization provided any of the following to or for a person listed on Form 990, Part VII, Section A, line 1a. Complete Part III to provide any relevant information regarding these items.								
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> First-class or charter travel  <input type="checkbox"/> Travel for companions  <input type="checkbox"/> Tax indemnification and gross-up payments  <input type="checkbox"/> Discretionary spending account         </div> <div style="width: 45%;"> <input type="checkbox"/> Housing allowance or residence for personal use  <input type="checkbox"/> Payments for business use of personal residence  <input type="checkbox"/> Health or social club dues or initiation fees  <input type="checkbox"/> Personal services (such as maid, chauffeur, chef)         </div> </div>								
<b>b</b> If any of the boxes on line 1a are checked, did the organization follow a written policy regarding payment or reimbursement or provision of all of the expenses described above? If "No," complete Part III to explain.		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;"></td> <td style="width: 20%; text-align: center;">Yes</td> <td style="width: 20%; text-align: center;">No</td> </tr> <tr> <td style="text-align: right;"><b>1b</b></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>		Yes	No	<b>1b</b>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No						
<b>1b</b>	<input type="checkbox"/>	<input type="checkbox"/>						
<b>2</b> Did the organization require substantiation prior to reimbursing or allowing expenses incurred by all directors, trustees, and officers, including the CEO/Executive Director, regarding the items checked on line 1a?		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;"></td> <td style="width: 20%; text-align: center;">Yes</td> <td style="width: 20%; text-align: center;">No</td> </tr> <tr> <td style="text-align: right;"><b>2</b></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>		Yes	No	<b>2</b>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No						
<b>2</b>	<input type="checkbox"/>	<input type="checkbox"/>						
<b>3</b> Indicate which, if any, of the following the filing organization used to establish the compensation of the organization's CEO/Executive Director. Check all that apply. Do not check any boxes for methods used by a related organization to establish compensation of the CEO/Executive Director, but explain in Part III.								
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Compensation committee  <input type="checkbox"/> Independent compensation consultant  <input type="checkbox"/> Form 990 of other organizations         </div> <div style="width: 45%;"> <input type="checkbox"/> Written employment contract  <input type="checkbox"/> Compensation survey or study  <input type="checkbox"/> Approval by the board or compensation committee         </div> </div>								
<b>4</b> During the year, did any person listed on Form 990, Part VII, Section A, line 1a, with respect to the filing organization or a related organization:								
<b>a</b> Receive a severance payment or change-of-control payment?		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;"></td> <td style="width: 20%; text-align: center;">Yes</td> <td style="width: 20%; text-align: center;">No</td> </tr> <tr> <td style="text-align: right;"><b>4a</b></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>		Yes	No	<b>4a</b>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No						
<b>4a</b>	<input type="checkbox"/>	<input type="checkbox"/>						
<b>b</b> Participate in, or receive payment from, a supplemental nonqualified retirement plan?		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;"></td> <td style="width: 20%; text-align: center;">Yes</td> <td style="width: 20%; text-align: center;">No</td> </tr> <tr> <td style="text-align: right;"><b>4b</b></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>		Yes	No	<b>4b</b>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No						
<b>4b</b>	<input type="checkbox"/>	<input type="checkbox"/>						
<b>c</b> Participate in, or receive payment from, an equity-based compensation arrangement?		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;"></td> <td style="width: 20%; text-align: center;">Yes</td> <td style="width: 20%; text-align: center;">No</td> </tr> <tr> <td style="text-align: right;"><b>4c</b></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>		Yes	No	<b>4c</b>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No						
<b>4c</b>	<input type="checkbox"/>	<input type="checkbox"/>						
If "Yes" to any of lines 4a-c, list the persons and provide the applicable amounts for each item in Part III.								

# Schedule J: Compensation (cont.)

## SCHEDULE J (Form 990)

Department of the Treasury  
Internal Revenue Service  
Name of the organization

## Compensation Information

For certain Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

- ▶ Complete if the organization answered "Yes" on Form 990, Part IV, line 23.  
▶ Attach to Form 990.
- ▶ Go to [www.irs.gov/Form990](http://www.irs.gov/Form990) for instructions and the latest information.

CMB No. 1545-0047

**2018**

**Open to Public Inspection**

Name of the organization

Employer identification number

### Part I Questions Regarding Compensation

	Yes	No
<b>Only section 501(c)(3), 501(c)(4), and 501(c)(29) organizations must complete lines 5–9.</b>		
<b>5</b> For persons listed on Form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the revenues of:		
<b>a</b> The organization?	<input type="checkbox"/>	<input type="checkbox"/>
<b>b</b> Any related organization?	<input type="checkbox"/>	<input type="checkbox"/>
If "Yes" on line 5a or 5b, describe in Part III.		
<b>6</b> For persons listed on Form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the net earnings of:		
<b>a</b> The organization?	<input type="checkbox"/>	<input type="checkbox"/>
<b>b</b> Any related organization?	<input type="checkbox"/>	<input type="checkbox"/>
If "Yes" on line 6a or 6b, describe in Part III.		
<b>7</b> For persons listed on Form 990, Part VII, Section A, line 1a, did the organization provide any nonfixed payments not described on lines 5 and 6? If "Yes," describe in Part III.	<input type="checkbox"/>	<input type="checkbox"/>
<b>8</b> Were any amounts reported on Form 990, Part VII, paid or accrued pursuant to a contract that was subject to the initial contract exception described in Regulations section 53.4958-4(a)(3)? If "Yes," describe in Part III.	<input type="checkbox"/>	<input type="checkbox"/>
<b>9</b> If "Yes" on line 8, did the organization also follow the rebuttable presumption procedure described in Regulations section 53.4958-6(c)?	<input type="checkbox"/>	<input type="checkbox"/>

For Paperwork Reduction Act Notice, see the Instructions for Form 990.

Cat. No. 50053T

Schedule J (Form 990) 2018

# Schedule J: Compensation

Schedule J (Form 990) 2018

Page **2**

**Part II Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees.** Use duplicate copies if additional space is needed.

For each individual whose compensation must be reported on Schedule J, report compensation from the organization on row (i) and from related organizations, described in the instructions, on row (ii). Do not list any individuals that aren't listed on Form 990, Part VII.

**Note:** The sum of columns (B)(i)–(iii) for each listed individual must equal the total amount of Form 990, Part VII, Section A, line 1a, applicable column (D) and (E) amounts for that individual.

(A) Name and Title		(B) Breakdown of W-2 and/or 1099-MISC compensation			(C) Retirement and other deferred compensation	(D) Nontaxable benefits	(E) Total of columns (B)(i)–(D)	(F) Compensation in column (B) reported as deferred on prior Form 990
		(i) Base compensation	(ii) Bonus & incentive compensation	(iii) Other reportable compensation				
1	(i)							
	(ii)							
2	(i)							
	(ii)							
3	(i)							
	(ii)							
4	(i)							
	(ii)							
5	(i)							
	(ii)							
6	(i)							
	(ii)							
7	(i)							
	(ii)							
8	(i)							
	(ii)							
9	(i)							
	(ii)							
10	(i)							
	(ii)							



# Form 4720

- **What is it?** Return used to report and pay excise taxes...
  - ... arising from violations of Chapter 42, including acts of self-dealing, excess benefit transactions, excess lobbying expenditures, and failure to meet the CHNA requirements (for hospitals). For self-dealing/EBTs, must describe the violation and identify the DPs involved.
  - ... on excess remuneration and excess parachute payments to covered employees (IRC 4960)
- **Who files?**
  - PFs, PCs for excess lobbying or political expenditures (not EBTs)
  - DPs who owe tax under Chapter 42 (e.g., for EBTs/self-dealing)
- **Public disclosure?**

## Slide 17

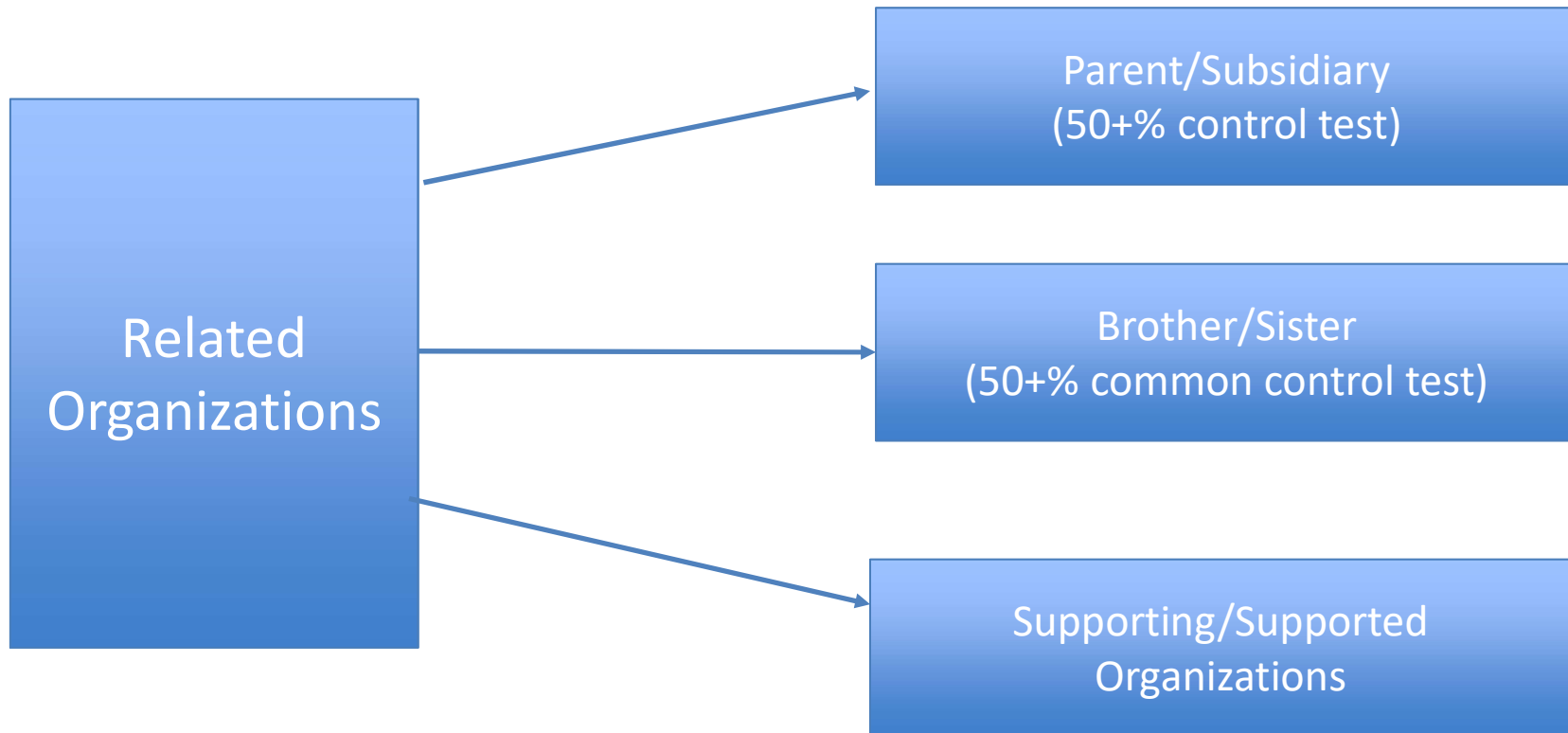
---

**SN1**

Is CHNA needed for this audience?

Sharon Nokes, 9/23/2019

# “Related” Organizations for Form 990 Reporting



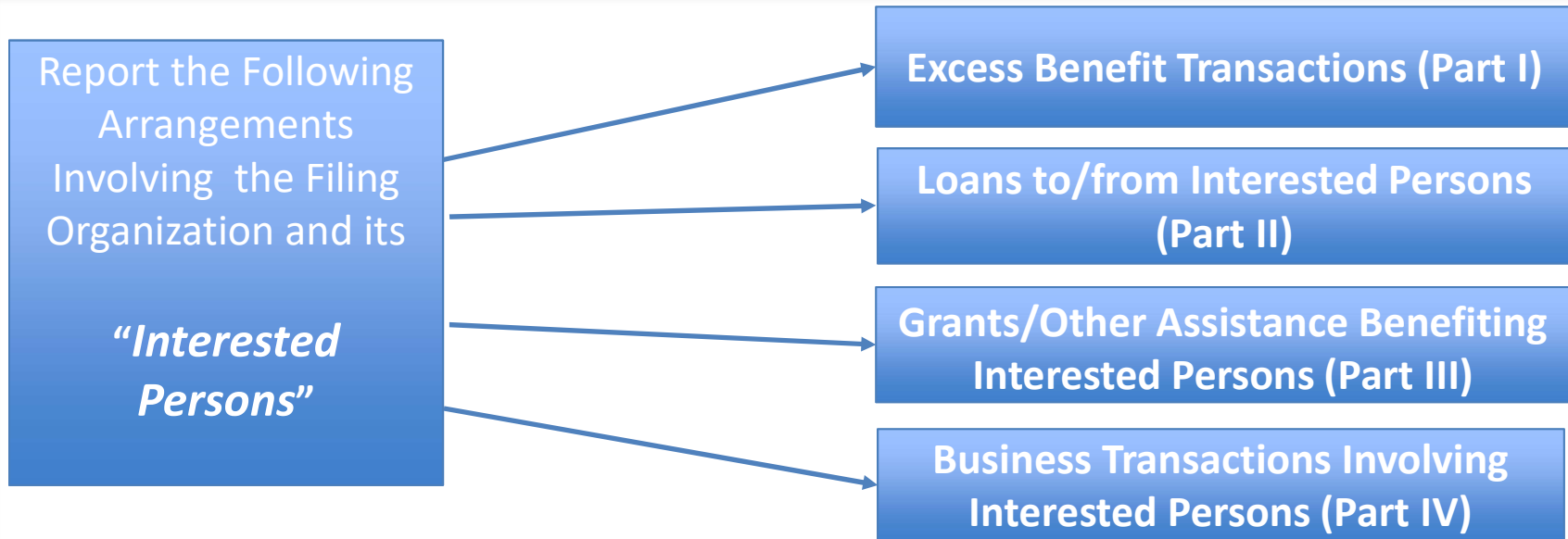
# Schedule R: Related Organizations

- **Must disclose the following information re: “related organizations” on Schedule R:**
  - Identity (name, address, EIN)
  - Nature of relationship (e.g., % ownership of a taxable sub)
  - Details regarding the ownership interest in for-profit subsidiaries
  - Controlled Entity status under IRC section 512(b)(13)
  - Certain transactions with related organizations + amount involved (e.g., licensing arrangements, grants, loans, shared facilities, shared employees)

# Compensation by Related Organizations

- Disclosed in detail on Part VII... and in greater detail on Schedule J.
- Includes “reportable” (W-2/1099) and “other” compensation.
- Even if your organization has a common paymaster arrangement, report compensation as if paid directly by each organization.

# “Interested Persons” for Form 990 Reporting



## ***An Organization's Interested Persons Include:***

SN2

- **Part I (EBTs):** Disqualified Persons (applies only to 501(c)(3)s and (c)(4)s)
- **Parts II-IV:**
  - i. Persons reported on Part VII as current/former ODTKEs
  - ii. Creator or founder of the organization
  - iii. Substantial contributor
  - iv. Member of grant selection committee (Part III only)
  - v. Family members of i-iv above
  - vi. 35%-controlled entities of i-v above

## Slide 21

---

**SN2**

Preston and Diara, please check me on this.

Sharon Nokes, 9/23/2019

# Business Transactions w/ Interested Persons

- Must report certain business transactions involving...
  - any entity (other than a (c)(3) or 501(c) of the same type as the filing organization) that is “more than 35% owned or controlled, directly or indirectly by one or more current or former officers, directors, trustees, or key employees (ODTKEs) listed on Part VII, or their family members”
  - any entity (other than a 501(c) or governmental unit/instrumentality) of which a current or former ODTKE listed on Part VII was serving at the time of the transaction as (a) an officer, director, trustee, or (b) partner/member/shareholder with a greater than 5% interest (including ownership by a family member)
  - any management company of which a former ODTKE within the last 5 tax years (even if not listed in Part VII) is a direct or indirect 35% owner, or an officer, director, or trustee



# Business Transactions w/ Interested Persons

- Business transactions include, but are not limited to the following (whether new or ongoing from a prior year):
  - Contracts of sale
  - Leases
  - Licenses
  - Resource-sharing agreements
  - Services arrangements (excluding any compensation reported on Part VII)
  - Joint ventures in which either the profits or capital interest of the organization and of the interested person each exceeds 10%
  
- “Business transactions” do not include loans, grants, EBTs reported elsewhere on Schedule L

# Business Transactions w/ Interested Persons

- Not required to report transactions below the greater of 1% of your organization's total revenue for the tax year, or \$10k, unless:
  - Total payments for all transactions exceed \$100k (in which case you report all transactions, regardless of amount – multiple payments under a single contract are treated as a single transaction)
  - The transaction was the payment of compensation to a family member of a current ODTKE (in which case you report any payment of reportable compensation during the tax year that exceeded \$10k)

# Schedule O

- Round off the rough edges of the questions. Minimize ambiguity
- Brag a little! About programs, process, oversight, etc. Tell the whole story
- Don't feel limited by the core Form

# Technical Points

---

- Statute of Limitations
- IRC Section 7805(b) Protection
- When/Whether to Amend Form 990

# Practical Tips For...

- Year-round tracking of reportable developments
- Information gathering...
- Pre-filing review....

# Some Final Qs to ask before filing

- Have we adequately explained any significant changes from prior years' Form 990s (gaps, shifts, new programs, new affiliates)?
- Is our reporting consistent with other government filings? (state filings, LDA (lobbying) filings, etc.)
- Is our 990 reporting consistent with our website and social media messaging?
- Are there any responses that beg further explanation? Anything that will make a splash (adverse or favorable)? If so, what is our Comms plan?

Q & A

# Questions ?