

Compliance Today – April 2022 Form 990: Disclosures do matter

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In 2008, the Internal Revenue Service (IRS) significantly increased the complexity of filing requirements for exempt organizations with the redesign of the Form 990, “Return of Organization Exempt From Income Tax.”^[1] The redesign helped the IRS track the financial data, as well as operational and financial information, for tax-exempt organizations. This data has allowed the IRS to develop compliance initiatives and data analytics to facilitate examinations and monitor compliance with tax laws. In essence, what is disclosed on Form 990 does matter, and it can increase risk for your organization.



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To determine the risks for disclosures on Form 990, one needs to understand the underlying issues that will give rise to those increased risks. It comes down to the risk of noncompliance with tax law or the noncompliance that the IRS identifies. There are resources publicly available to help organizations identify those IRS risk areas. These resources include the annual IRS program letter and compliance program.

The IRS program letter lists the tax exempt and government entities priorities for 2022.^[2] The IRS will focus on compliance activities, and the agency will collaborate with other divisions that focus on “syndicated conservation easements, abusive charitable remainder trusts, ESOPs [employee stock ownership plans], COVID-related employer credits” and abusive tax schemes. The IRS will also support examinations that involve high-income taxpayers who have private foundations and retirement plans. The IRS also plans to improve operational efficiencies to streamline its enforcement-related procedures. As part of IRS compliance enforcement efforts, data analytics will be used to facilitate the detection of emerging issues and provide automated digital communications.

The compliance program,^[3] as of October 2021, includes six components:

- Compliance Strategies
- Data-Driven Approaches
- Referrals, Claims and Other Casework
- Compliance Contacts
- Determinations
- Voluntary Compliance and Other Technical Programs

The execution of the compliance program analyzes data to support the identification and evaluation of

compliance issues. The disclosures found on Form 990 and other tax compliance documents are part of this data analysis. Compliance strategies may offer clues about the risk areas throughout Form 990.

The compliance strategy for worker classification involves independent contractor treatment for individuals who should be classified as employees. Employers who have misclassified employees do not pay or report the correct amount of Federal Insurance Contributions Act and other federal income taxes. The IRS investigates this misclassification through examinations.

Form 990 has various disclosure areas related to the following:^[4]

- Number of W-2s issued (Part V, line 2a)
- Number of 1099s issued (Part V, line 1a)
- Compensation information (Part VII and Schedule J)
- Payments to independent contractors (Part VII)

Information in these sections may be cross-checked as part of the compliance procedure or to identify the risk for noncompliance.

Similarly, the IRS may be concerned about employers that issue Forms W-2 and 1099 to the same payee, which results in a misclassification of wages. This assumes that the IRS has the ability to match W-2s and 1099s by Social Security number. This strategy is implanted through an examination of Form 941, "Employer's Quarterly Federal Tax Return," but may also be used during the examination of other types of returns, such as the Form 990.

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