

ROBINSON BRADSHAW & HINSON

MEMORANDUM

TO: Client

FROM: Dianne Chipps Bailey

DATE: August 11, 2008

RE: Preparing your organization for the new IRS Form 990

As you may know, the Internal Revenue Service (the “IRS”) has substantially revised the Form 990 for the 2008 tax year. The stated goals of the IRS in overhauling the Form 990 are “enhancing transparency, promoting tax compliance, and minimizing the burden on the filing organization.” An area of particular focus and scrutiny in the new Form 990 is nonprofit governance.

Attached is a checklist of various governance practices and policies that are addressed in the new Form 990. Keep in mind that information provided in the Form 990 is not only reviewed by the IRS, but also is subject to public disclosure. Potential donors, the media and other interested parties may request a copy of your organization’s Form 990 directly from you or easily access it on the Internet (see www.guidestar.org).

In general, organizations should be structured to avoid the “red boxes” in the attached checklist. There are exceptions, of course, so it may be necessary to analyze your organization’s particular situation to determine whether changes are appropriate. Also, it is important to remember that, although these governance standards are not legally required, the IRS believes that “good” governance correlates with tax law compliance. Accordingly, it is possible that organizations deviating from the IRS standards may be targeted for audit more frequently than organizations that are in compliance.

While your organization’s Form 990 for the 2008 tax year may not be due for several months, we recommend that you carefully assess your organization’s governance practices using this checklist and other tools as soon as possible. With planning, your organization may have time to adapt its governance policies and practices to conform to the new Form 990 standards before the end of the tax year.

Thank you for your attention to this important matter. Please do not hesitate to contact me at (704) 377-8323 or [dbailey@rbh.com](mailto:d Bailey@rbh.com) if we may be of assistance.

Best regards.

C-1088512v1

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Governance Compliance Checklist for the New IRS Form 990

Section A. Governing Body and Management

1.	Are any voting members of the governing board <i>not</i> independent? <ul style="list-style-type: none">Independent means that no staff members serve as voting members and that all voting members serve as uncompensated volunteers.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
2.	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?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
3.	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?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.	Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following:		
a.	the governing body?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
b.	each committee with authority to act on behalf of the governing body?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
5 a.	Does the organization have local chapters, branches, or affiliates?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
b.	If "Yes," does the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with those of the organization?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
6.	Was a copy of the Form 990 provided to the organization's governing body before it was filed? <ul style="list-style-type: none">State "Yes" only if a copy of the organization's final Form 990 (including required schedules), as ultimately filed with the IRS, was provided to each voting member of the organization's governing body, whether in paper or electronic form, before or after its filing with the IRS.	Yes <input type="checkbox"/>	No <input type="checkbox"/>

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- In the space below, describe the process, if any, by which any of the organization's officers directors, trustees, board committee members, or management reviewed the prepared Form 990, whether before it was filed with the IRS.

Section B. Policies

7 a.	Does the organization have a written conflict of interest policy?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
	<ul style="list-style-type: none"> • A conflict of interest policy: <ul style="list-style-type: none"> ○ Defines conflicts of interest as: <ul style="list-style-type: none"> ▪ A "conflict of interest" arises when a person in a position of authority over an organization, such as an officer, director, or manager, may benefit financially from a decision he or she could make in such capacity, including indirect benefits such as to family members or businesses with which the person is closely associated. ○ Identifies the classes of individuals within the organization covered by the policy ○ Facilitates advance disclosure of information that may help identify conflicts of interest ○ Specifies procedures to be followed in managing conflicts of interest <p><i>If "Yes":</i></p>		
	b. Are officers, directors or trustees, and key employees required to disclose annually interests that could give rise to conflicts?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
	c. Does the organization regularly and consistently monitor and enforce compliance with the policy?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
	If "Yes," describe below how this is done.		
8.	Does the organization have a written whistleblower policy?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
	<ul style="list-style-type: none"> • A whistleblower policy: <ul style="list-style-type: none"> ○ Encourages staff and volunteers to come forward with credible information related to illegal practices or violations of adopted policies of the organization; ○ Specifies that the organization will protect the disclosing individual from retaliation; and ○ Identifies those staff or board members or outside parties to whom such information can be reported. 		

9.	Does the organization have a written document retention and destruction policy?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
	<ul style="list-style-type: none"> • A document retention and destruction policy: <ul style="list-style-type: none"> ○ Identifies the record retention responsibilities of the staff, volunteers, board members, and outsiders for maintaining and documenting the storage and destruction of the organization's documents and records. 		
10.	Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision:		
	a. The organization's CEO, Executive Director, or top management official?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
	b. Other officers or key employees of the organization?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
11.	Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable for-profit entity during the year?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

Section C. Disclosure

12.	IRC Section 6104 requires an organization to make its Form 1023 (or 1024 if applicable), 990, and 990-T (501(c)(3)s only) available for public inspection. Indicate how you make these available. Check all that apply.		
	<input type="checkbox"/> Own website <input type="checkbox"/> Another's website <input type="checkbox"/> Upon request		
	<input checked="" type="checkbox"/> None of the above		
13.	Does the organization make its governing documents, conflict of interest policy, and financial statements available to the public?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>