



Form 990 Reference Index

For registered 501(c)(3) nonprofit organizations in Colorado

At the federal level, the Tax Exempt and Government Entities (TE/GE) division of the Internal Revenue Service (IRS) issued a major revision of the Form 990, Return of Organization Exempt from Income Tax, effective for 2008 tax year returns. Nearly all tax-exempt organizations are required to file a Form 990, 990-EZ, or 990-N (e-postcard) annually. This major revision was in direct response to the work of the Senate Finance Committee and the increased concern over good governance practices and compliance in the nonprofit sector.

In a speech to nonprofits and practitioners entitled, *Nonprofit Governance – The View from the IRS*, Sarah Hall Ingram, Commissioner, TE/GE, stated, “I believe that adherence to principles of good governance is entirely consistent with both your task to accomplish your charitable objectives, and ours, to see that the tax-exempt sector complies with the Code. Indeed, I think practicing good governance helps advance these goals. I see good governance, then, as a tool – something practical and useful.”

The revised Form 990 has resulted in significant reporting changes for nonprofits and represents the government’s increased interest in the correlation between good governance practices and compliance. For those reasons, Form 990 references, which reflect practices suggested by the IRS, have now been added to related practices throughout P&P. These references are indicated by the **990** icon directly following the text of the practice. Please note that practices indicated by the 990 symbol may not be required by law unless the term “must” is used.

The following is a listing of all of the practices in the second edition of P&P that reference the Form 990. Note that certain practices, such as [Chief Executive Performance Review and Compensation](#), are listed in multiple principle areas.

Visit www.ColoradoNonprofits.org/PandP for further resources.

Governance & Leadership

2. **Corporate (Board) Officers** ▶ *Unless otherwise provided in the bylaws, a Colorado nonprofit corporation must have a president (or chairperson), a secretary, and a treasurer, each of whom must be eighteen years of age or older (CRS § 7-128-301; 990).*

4. **Federal, State, and Local Laws** ▶ *A nonprofit organization must be knowledgeable and comply with all applicable federal laws and regulations, as well as applicable laws and regulations of the states and the local jurisdictions in which it is based or operates. If the organization conducts programs outside the United States, it must also abide by applicable international laws, regulations, and conventions.*

5. **Board Approval of Fiscal and Governance Policies** The board should review and approve new or revised fiscal and governance policies including a conflict of interest policy, whistleblower policy, document retention and destruction policy, gift acceptance policy and executive compensation policy (990).

6. **Board Review of Financial Information** The board should annually review and approve the organization's budget to ensure that expenditures are in alignment with the organization's mission. Dependent on the size of the nonprofit, the board or the appointed finance committee should review financial reports quarterly, at a minimum, and monthly if possible. If an audit is conducted, the board should review and approve the audit. All board members should have the opportunity to review and approve the Form 990 prior to submission (990), and should be aware of any state and local filings.

10. **Chief Executive Performance Review and Compensation** Annually, the board should conduct a performance review of the chief executive, including his/her compensation. The chief executive's performance should be assessed in light of organizational accomplishments, and the total compensation package should reflect industry standards and his/her performance.

Both Colorado law and federal income tax laws prohibit the payment of more than reasonable compensation (CRS § 7-133-102; IRC §§ 501(c)(3) and 4958; 990). To reduce its exposure to penalties relating to unreasonable compensation, the board of directors should consider the process outlined under § 53.4958-6 of the Treasury Regulations in order to position itself to create a rebuttable presumption that the compensation is reasonable by following each of these three steps:

- Independent approval: An independent governing body (or a committee acting on behalf of the governing body) approves the compensation arrangement. Usually this is a board of directors or a compensation committee of the board of directors.
- Comparables: The board or committee obtains and relies upon appropriate comparability data prior to approving the arrangement.
- Documentation: The board or committee adequately documents the basis for its determination concurrently with making that determination.

15. **Independence of Board Members** A substantial majority (at least two-thirds) of the board members of a public charity should be independent – that is, neither they themselves, nor anyone related to them (such as a spouse, sibling, parent or child), nor anyone they reside with, should:

- Be compensated by the organization as an employee or independent contractor;
- Have their compensation determined by individuals who are compensated by the organization; or
- Receive, directly or indirectly, material financial benefits from the organization, except as a member of the constituency served by the organization (990).

16. **Conflict of Interest Policy** Each board should have a conflict of interest policy that includes a disclosure form, which is signed by all board members annually, and procedures for managing conflicts of interest and handling situations in which public and private interests intersect. The policy should include an obligation of each board member to disclose all material facts and relationships and refrain from voting on any matter when there is a conflict of interest. A nonprofit should regularly and consistently monitor and enforce compliance with its conflict of interest policy (990).

Governance & Leadership *(continued)*

17. **Compensation of Board Members** ▶ Board members should receive no monetary compensation for their board duties other than reimbursement for board-related expenses. *If compensation is paid, it must be reasonable in amount (CRS § 7-133-102(b), 26 CFR § 53.4958-4(b)(1)(ii); 990).* Board member compensation may void applicability of federal and state statutes providing immunity for board members' personal liability.
22. **Documentation of Board Meetings** ▶ *Colorado nonprofit corporations must keep minutes of all meetings of its board of directors, along with a record of any actions taken by the board without a meeting, as permanent records of the corporation (CRS § 7-136-101; 990).* Minutes of board meetings and records of actions taken without a meeting should be recorded contemporaneously and should include the date, time, attendees, motions, and votes.
23. **Voting Procedures** ▶ *To satisfy the statutory default of a quorum, a majority of the directors must be present. A quorum must be present in order to vote on a motion. A nonprofit may authorize an alternate quorum in its bylaws as long as the authorized quorum consists of no fewer than one-third of the number of directors (CRS § 7-128-205).*
27. **Board Size** ▶ Colorado law allows nonprofit corporations to have as few as one director, and the number of directors must be stated in, or fixed in accordance with, the organization's bylaws (CRS § 7-128-103; 990). However, to allow for sufficient deliberation and diversity of perspectives, nonprofit boards should consist of no fewer than five individuals.

Transparency & Accountability

1. **Reporting Requirements** ▶ *A nonprofit must comply with all legally required reporting procedures (e.g., IRC § 6033; CRS § 6-16-101; 990).*
5. **Public Access to Information** A nonprofit organization should make information about its operations, including its governance, finances, programs, and activities, widely available to the community and on the organization's website (990). Full disclosure of executive compensation, including compensation received from related entities of the organization, must be disclosed on the organization's annual information return. *At a minimum, a nonprofit organization (unless specifically exempted) must make certain data available to the public, including:*
- *Annual Information Return (usually an IRS Form 990, 990-EZ, 990-N, or 990-PF) for the most recent three years (IRC § 6104);*
 - *Annual Tax Return (usually an IRS Form 990-T) for the most recent three years if the organization has unrelated business income (IRC § 6104); and*
 - *IRS Form 1023, Application for Recognition of Tax-Exempt Status, including any papers submitted in support of the Application and any letter or other document issued by the IRS with respect to the Application (IRC § 6104; 990).*
- A nonprofit may charge a reasonable fee for copying and postage expenses incurred by providing these documents.
12. **Document Retention and Destruction Policy** ▶ A nonprofit should have a written, mandatory document retention and destruction policy or schedule with guidelines for handling all types of documents, including electronic files and voicemail. The policy should also include backup procedures, archival procedures, and guidelines for regular checkups of the reliability of the system. *Documents involved in litigation or a government investigation must be retained (18 USC § 1519 – a.k.a. Sarbanes-Oxley; 990).*

Financial Management

4. **Compliance** ► *A nonprofit organization must comply with all financial reporting and tax laws, including withholding and payment of federal and state income taxes and Social Security payroll taxes.*
5. **Review of IRS Information Returns** *A nonprofit's chief executive officer, chief financial officer (or equivalent), board, and audit committee should thoroughly review and approve the IRS Form 990 and 990-T (if applicable) to ensure that the organization's filings are accurate, complete, and filed on time with the IRS (990).*
6. **Audits** *A nonprofit organization should have a qualified independent Certified Public Accountant audit or review of the financial statements annually or in a manner appropriate to the organization's size and scale of operations. In the process of the audit, the auditor should be given the opportunity to meet in executive session with the organization's board separately from management and staff. The independent financial audit or review should be reviewed and approved by the board of directors.*
7. **Audit Committee** *The board should designate an audit committee to hire the auditor, oversee and evaluate the audit process, meet with the auditor to review the audit's content, and present the audit to the full board for its review and approval. It is permissible to have a combined finance and audit committee. If possible, an audit committee should be independent of the finance committee because the auditors are effectively assessing the performance of the finance committee (990).*
9. **Open Communication** ► *A nonprofit organization must openly communicate the annual reporting information contained on its Form 990 to constituents and others who request such information (IRC § 6104; 990).* In addition, nonprofits should share, at least annually, an overview of data regarding sources of revenue, functional expenditures, and related outcomes.
11. **Whistleblower Policy** ► *A nonprofit organization should have a system in place that allows individuals to report financial and other misconduct, and must ensure that there is no consequence for doing so – commonly referred to as a "whistleblower policy" (18 USC § 1107 – a.k.a. Sarbanes-Oxley; 990).*
12. **Management of Funds** ► *A nonprofit organization must manage and invest funds prudently and in compliance with conditions attached to funding (CRS § 15-1-1103–1109; 990).* A nonprofit should adopt and periodically review a sound investment policy.
15. **Loans to Board Members and Key Personnel** ► *A nonprofit must not make any loans to board members or officers (CRS § 7-128-501).* It should also expressly prohibit loans to key personnel (990).
16. **Personal Use of Nonprofit Funds** ► *A nonprofit must not allow personal use of its funds or business credit cards because any such transaction may constitute private inurement or an excess benefit transaction under the intermediate sanctions rules (IRC § 501(c)(3) and 4958; CRS § 7-133-101; 990).*
17. **Credit Card Use** - *A nonprofit should establish and implement a policy that provides clear guidance on the appropriate use of business credit cards. The policy should also provide consequences for unsubstantiated expenses and personal use of credit cards. The policy should specify oversight procedures including board oversight of the chief executive officer's credit card expenditures (990).*
20. **Donor Restrictions** ► *A nonprofit must comply with specific conditions placed upon donations (CRS § 15-1-1103-1109; CRS § 6-16-111(1)(i)). Donated funds must be clearly categorized as unrestricted, temporarily restricted or permanently restricted in the organization's financial statements and communications in accordance with the donor or grantor wishes/stipulations (990).*
21. **Public Support Test** - *To be considered a public charity, an organization must generally receive financial support from a sufficiently broad base of donors to meet the public support test or the facts and circumstances test. ► A public charity that normally receives more than one-third of its total support from "public support" sources is generally considered a public charity. If the organization fails the public support test, it may still qualify under the facts and circumstances test (IRC § 170(b)(1)(A)(vi) and 509(a)(1)).*

Fundraising

1. **Federal, State, and Local Laws** ▶ *Nonprofits must comply with all federal, state, and local laws concerning fundraising practices.*

5. **Additional Registration Requirements** - A nonprofit should be aware of and comply with requirements for gaming, auctioneering, bingo, and raffles. ▶ *Organizations must contact the Colorado Secretary of State's Office and the Internal Revenue Service for further information or to seek approval for these activities well in advance (CCR § 1505-2(3.0); CRS § 6-16-110; 990).*

10. **Donor Restrictions** ▶ *A nonprofit must comply with specific conditions placed upon donations (CRS § 15-1-1103-1109; CRS § 6-16-111(1)(i)). Donated funds must be clearly categorized as unrestricted, temporarily restricted or permanently restricted in the organization's financial statements and communications in accordance with the donor or grantor wishes/stipulations (990).*

II. **Acknowledgement to Donors** - To enable a donor to receive a charitable deduction, ▶ *a nonprofit must provide contemporaneous written acknowledgement to the donor to substantiate contributions (IRC § 170(f)(17)). Note that special requirements are applicable for non-cash donations where the fair market value is over \$500 dependent on the type of donation. Acknowledgement of all charitable gifts to the organization is a best practice of donor stewardship.*

▶ *A nonprofit must provide a receipt for contributions in cash (including those paid by check or credit card) or property (in-kind or non-cash) where the fair market value is at least \$250 (IRC § 170(f)(8); 990).*

▶ *A nonprofit must send a written acknowledgment to donors who make a "quid pro quo" donation in excess of \$75 (i.e. a payment made partly as a contribution and partly for goods and/or services) (IRC § 6115(a); 990).*

In order to accurately reflect the value of a non-cash contribution, ▶ *a qualified appraisal must be used to substantiate a donation of property when the fair market value of contributed property is more than \$5,000 (26 CFR §1.170A-17(a),(b); 990).*

20. **Acceptance of Gifts** A nonprofit should adopt clear policies regarding the acceptance of gifts (cash or non-cash) to the organization (990). There should be an additional policy regarding acceptance of personal gifts from any constituent to staff members, board members, and volunteers.

Human Resources

1. **Federal, State, and Local Laws** ► A nonprofit organization must comply with all federal, state, and local employment laws when hiring and employing personnel.

5. **Conflict of Interest Policy** - A nonprofit organization should establish a clear conflict of interest policy that requires disclosure of relationships, nepotism, and interested-party transactions. The policy should include a disclosure form, which is signed annually by staff and volunteers with decision-making authority, and procedures for managing conflicts of interest and handling situations in which public and private interests intersect (990).

6. **Whistleblower Policy** - A nonprofit should implement a whistleblower policy with specific procedures for reporting violations of organizational policy or applicable laws ► and must ensure that those making such reports are protected from repercussions (18 USC § 1107 – a.k.a. Sarbanes-Oxley; 990).

7. **Staff Compensation** ► A nonprofit should endeavor to provide compensation in accordance with industry standards and market data in order to obtain qualified employees needed to fulfill the mission of the organization. Compensation should be based on performance and equitable given skills, experience level, and job status. Both Colorado law and federal income tax laws prohibit the payment of more than reasonable compensation (CRS § 7-133-102; IRC § 501(c)(3) and 4958; 990).

9. **Chief Executive Performance Review and Compensation** - Annually, the board should conduct a performance review of the chief executive, including his/her compensation. The chief executive's performance should be assessed in light of organizational accomplishments, and the total compensation package should reflect industry standards and his/her performance.

Both Colorado law and federal income tax laws prohibit the payment of more than reasonable compensation (CRS § 7-133-102; IRC §§ 501(c)(3) and 4958; 990). To reduce its exposure to penalties relating to unreasonable compensation, the board of directors should consider the process outlined under § 53.4958-6 of the Treasury Regulations in order to position itself to create a rebuttable presumption that the compensation is reasonable by following each of these three steps:

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- Comparables: The board or committee obtains and relies upon appropriate comparability data prior to approving the arrangement.
- Documentation: The board or committee adequately documents the basis for its determination concurrently with making that determination.

19. **Benefit Programs** - To the extent of its ability, a nonprofit should provide personnel with benefits including health, dental, and life insurance, as well as the opportunity to financially contribute to retirement plans (990).

Planning

1. **Mission Statement** - A nonprofit should have a clearly defined, written mission statement that accurately describes the overall aims and activities of the organization. The mission statement should be linked to the values of the organization and its vision for the future (990).

Advocacy, Public Policy & Civic Engagement

9. **Nonpartisan Activities** ► *A nonprofit engaged in promoting public participation in federal, state and local policy must ensure that the activities of the organization are educational in nature or within permissible lobbying limitations (IRC § 501(c)(3) and 501(h); 990).*
12. **Supporting/Opposing or Taking Positions on Policy** - *A nonprofit should participate in and support the formation and amendment of public policy consistent with the organization's mission. An organization may take appropriate public positions on relevant issues while developing coalitions and communicating with other organizations to inform the public about these issues. ► A nonprofit organization may support or oppose legislation subject to the lobbying limitations (IRC § 501(c)(3) and 501(h); 990).*
13. **Prohibition on Endorsing Candidates or Elected Officials** ► *A nonprofit must not make a contribution or expenditure in connection with a candidate, a political committee that supports or opposes a candidate, or a political party. A nonprofit must not engage in any activity that promotes or discourages a vote on behalf of any individual candidate. A nonprofit should be careful not to engage in activities that could be perceived as endorsements of candidates or political parties. A nonprofit must not support or oppose any elected official or candidate for public office (IRC § 501(c)(3); 990).*
14. **Distinction between Personal and Organizational Positions** - *A nonprofit organization should ensure that board and staff distinguish between personal opinion and organizational positions. This is especially important when publishing information online or in print. A nonprofit organization may be held accountable for statements made by a board or staff member (990).*
15. **Reporting of Lobbying Activities** ► *A nonprofit or person that engages in lobbying activities subject to state and federal reporting requirements must file accurate and timely reports of its lobbying activities with the IRS and with the Office of the Colorado Secretary of State (CRS § 24-6-303; 990).*
16. **Lobbying Limitations** ► *A nonprofit must not engage in more than insubstantial lobbying activities. A nonprofit must know and understand the tax law limits on the amount of permissible lobbying (IRC § 501(c)(3) and 501(h); 990). Organizations that engage in lobbying activities should be aware of the IRC 501(h) election.*
17. **Prohibition on the Use of Federal Funds for Lobbying** ► *Federally funded nonprofits that engage in lobbying activities must organize their legislative activity so that no federal funds are used for this purpose (OMB Circular A-122; 990).*

Information Technology

5. **Document Destruction Policy** ► *A nonprofit should have a written, mandatory document retention and destruction policy or schedule with guidelines for handling all types of documents, including electronic files and voicemail. The policy should also include backup procedures, archival procedures, and guidelines for regular checkups of the reliability of the system. Documents involved in litigation or a government investigation must be retained (18 USC § 1519 – a.k.a. Sarbanes-Oxley; 990).*

Strategic Alliances

9. **Affiliates or Chapters** - *Nonprofits that have local chapters, branches, or affiliates should have written policies and procedures governing the activities of those chapters, branches or affiliates to ensure their operations are consistent with the mission of the governing organization (990).*

Principles & Practices for Nonprofit Excellence in Colorado
Form 990 Reference Checklist