

The Board's (Almost Mandatory) Role in Form 990 Preparation

07.24.24 | Linda J. Rosenthal, JD



The IRS Form 990 – that’s required from many nonprofit organizations – is a twelve-page-with-multiple-schedules behemoth. Complex and comprehensive, it’s a daunting project that looms anew each year. See e.g., [2023 Form 990](#).

The annual deadline is the 15th day of the fifth month period after the close of an organization’s fiscal year. With relevant data available, there’s 5-1/2 months before the due date: time enough to involve the board of directors in a meaningful review and approval process.

Is such a sign-off by the organization’s governing body required or merely a suggested step?

Let’s put it this way: If the IRS (figuratively) comes calling, waving around a nonprofit’s coveted and valuable tax-exemption-approval document ... and then whispers that it might be a good idea for each and every director to review and sign-off on the annual information return about to be filed Well, then, ...you know what to do.

(Sinister “Godfather” reference aside), it’s important advice that will help the nonprofit to take full advantage of the many benefits of a well-written and thoughtfully presented Form 990. See [Telling the not-for-profit story through Form 990](#) (December 1, 2016) Maureen Butler, CPA, Ph.D., and Brian Butler, *Journal of Accountancy* [“Reporting requirement provides an opportunity to educate potential donors, grantors, and board members on the organization’s merits.”]

“IRS Form 990 is the most critical annual compliance filing for nonprofits. It’s like a window into your nonprofit ...” “Your Form 990 can be an important public relations tool to demonstrate that you have a well-run nonprofit.”

“Most nonprofit boards see reviewing Form 990 as a part of their fiduciary responsibility to the organizations they serve. Given this responsibility, legal and financial professionals who have the skills to understand the information reported in the return and flag compliance concerns can provide a great deal of value as nonprofit board members.” See [*Form 990 Review: What Nonprofit Boards Should Look For*](#) (July 13, 2023) Marc Berger, National Director, BDO Nonprofit Tax Services, bdo.com

Why Doesn't the IRS Make It Mandatory?

The *only* references in Form 990 to directors reviewing and/or signing off on the package are in Part VI, *Governance, Management, and Disclosure*, Section B (at p. 6):

- 11a: “Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form?”
- 11b: “Describe on Schedule O the process, if any, used by the organization to review this Form 990.”

There's nothing mandatory here.

The Internal Revenue Service knows you might be wondering about this, so they address it directly at [*Exempt Organizations Annual Reporting Requirements – Form 990, Part VI and Schedule L: Board Review of Return*](#), irs.gov., in a hypothetical question-and-answer format:

“Why do [...we...] ask whether the board reviewed Form 990 before it was filed?”

“Because the Internal Revenue Code and regulations do not require the governing board to review the Form 990, the IRS does not require an organization's board to do so.”

“However,” these federal tax regulators add, “we believe that there may be a correlation between board review of the Form 990 and the accuracy and effectiveness of the form in conveying the organization's mission, activities, accomplishments, finances, compensation and business relationships and transactions. Also, board review of Form 990 may reflect good governance; in particular, a board that is more proactive, informed and engaged in ensuring that the organization continues to be organized and operated exclusively for exempt purposes.”

References and Resources

Taking full advantage of this set of “fresh eyes” is widely accepted in the nonprofit sector as a [“best practice,”](#) even if the IRS does not make it a mandatory step for meeting the obligation of filing an accurate and comprehensive Form 990,” explains BDO's Marc Berger.

Note that 11a of the Form 990, Part VI, Section B: reads: “Has the organization provided a complete copy of this Form 990 *to all members* of its governing body before filing the form?” (emph. added). The agency wants each and every director or trustee to review the 990 before it is filed. (Indeed, *each board member individually* has a fiduciary duty to the organization that includes the “duty of care.”

For particular insight into how each director can and should approach this specific obligation, see particularly:

- [Form 990: top 10 areas of focus for board members, Flyer](#), 5 pp PDF; (January 5, 2022) bakertilly.com
- [Form 990 Review: What Nonprofit Boards Should Look For](#) (July 13, 2023) Marc Berger, National Director, BDO Nonprofit Tax Services, bdo.com [includes detailed point-by-point checklist]
- [What Should a Nonprofit Board Member Know About Form 990?](#) (April 12, 2019) Brandon Dickerson, Esq., businesslawtoday.com ["It is ... imperative for the Board and senior staff to understand and help frame the information presented in Form 990 well in advance of the due date for its filing."]

See also:

- [Nonprofit Boards and Form 990](#), boarddirector.co ["Have all members of your nonprofit's governing body been sent, in advance, a complete copy of your 990 Form before filing?"]
- [Everything Nonprofits Need to Know About Form 990 in 2021](#) (April 19, 2021) Lena Eisenstein, boardeffect.com
- [Making the Most of Your 990: A Red Flag Guide for Nonprofits](#) (February 14, 2017) Video with Chuck McLean, Senior Research Fellow, GuideStar, via *The Nonprofit Quarterly*
- [Nonprofit Board Members' Role in Reviewing Form 990](#) (October 6, 2021) Beth Strella, Horton Group, thehortongroup.com

Conclusion

"With the requirement to report [...the board's review's...] process directly on the tax form, the review has stepped to the forefront of the Board's fiduciary duties," according to the accountants at Carr, Riggs & Ingraham. See [Nonprofit Board Review of Form 990](#) (March 4, 2022). "More than just properly answering a question on a checklist, the Board's view of the nonprofit's operations reported in Form 990 provides insight into how well the organization's mission is being accomplished. And ultimately, that is one of the Board's most important responsibilities."

– Linda J. Rosenthal, J.D., FPLG Information & Research Director