

Compliance Today – August 2019 Compliance, the IRS Form 990, and conflicts of interest

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I look at a lot of IRS 990s, since about 50,000 get filed with my office (the New York Attorney General Charities Bureau) each year. When we receive complaints or allegations of improper conduct, we look closely at the 990^[1],^[2] and the organization's audit.

Form 990 review

For most organizations, the initial message from an initial review of Part VI, Section B, of the Governance, Management, and Disclosure Section of the 990 is "Nothing to see here."

"Did the organization have a written conflict of interest policy (12a). If no, go to line 13."

The Line 13 express is a very lonely place; no one ever takes it.

So we move to the next. 12b: "Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts?" That "no" box also has few visitors, as does the next box, under 12c: "Did the organization regularly and consistently monitor and enforce compliance with the policy?" "If yes, describe in Schedule O how this is done."

The description in Schedule O often appears to come from a menu in the outside accountant's 990 processing program; it usually sounds something like this:

"The organization has a conflict of interest (COI) policy that addresses the consideration of potential conflicts of interest by the board of directors, committee members, key employees, and their relatives. As per the policy, such persons must make disclosure of any potential conflicts of interest and must abstain from voting on any action in which they have an interest. On an annual basis, all members are required to sign an annual conflict of interest form..."

Note that this statement does not, notwithstanding the requirements in 12(c), represent that the organization "regularly and consistently monitors and enforces compliance with the policy..." nor does it represent how monitoring and enforcement are done.

IRS Form 990 12(c) and Schedule O. False statements?

In my experience as a regulator, the "yes" box in 12c and the description in Schedule O are the most consistently false statements in healthcare organizations' 990 filings. From my conversations with compliance officers, relatively few manage the COI process at the director/key employee level or prepare the responses to the 990 governance questions. And in many organizations, the compliance officer is not even given the chance to review the governance statements in the IRS 990 before it is filed. It is prepared by the auditor shortly before the due date, and dated and signed by a senior executive and by an outside accountant.

As a compliance officer, you may be grateful for the fact that obtaining and reviewing COI forms from the VIPs on the board and C-suite managers is not part of your responsibility. In many organizations, it is the job of the secretary to the board or the general counsel. And we know that everyone hates filling out disclosure forms. (I know I get grumpy about finding my records, asking my spouse for her documents, pulling the information together, and updating the report to reflect what has changed since the previous year).

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