Legal *counsel*

Nonprofit Boards Face Potential

Salary Disclosure

Are you complying with new Form 990 rules?

By Jill E. Korenek

Nonprofit organizations are facing new federal tax rules that could affect corporate executives' willingness to serve on charity boards. These new rules suggest that some board members may have to report their salaries in the nonprofit's tax return. Executive directors and officers were already required to disclose any outside income, but this is the first year the rule includes board members and others who volunteer their time.

> Determining whether "close connections" exist is subjective.

At the heart of the matter are several changes that have been made to Form 990. In what appears to be an effort to increase disclosure on compensation, private inurement, and potential conflicts of interest, additional questions and schedule requirements have been added.

Part V of the previous versions of Form 990 has now been broken into two parts (Part V-A and V-B) to separate current and former officers, directors, trustees, and key employees. Both sections disclose compensation, benefits paid, and taxable fringe benefits. A new question, question 75, involves board of directors' voting powers, relationships between board members and related organizations, compensation relationships between board members and other related organizations, and the existence of a conflict of interest policy. This new request for information goes beyond what was asked of board members in years past.

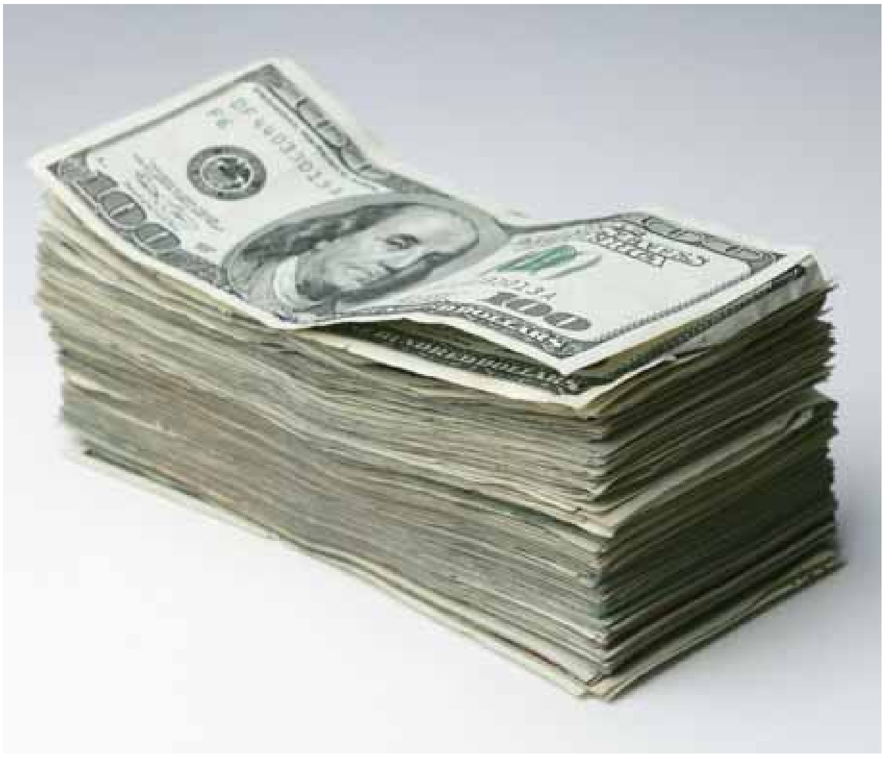
> Until the IRS addresses these issues, the new rules could have a chilling effect on board participation.

Line 91 in Form 990 has also been expanded to include two new questions regarding foreign banking and foreign operations. Other changes that have increased the number of pages of the Form 990, specifically on pages seven to eight, are essentially cosmetic.

Line 75b of Form 990 is also a new addition and asks you to disclose whether any officers, directors, trustees, key employees, highly compensated employees, or highest compensated independent contractors are related to each other through family or business relationships. The instructions for Form 990 don't explain what is considered a familial or business relationship, causing some confusion among respondents. A recent IRS FAQ attempts to give some guidance, but it is inconsistent with similar information required in Schedule A. The best way to handle any questions regarding this line item is to consult with a professional.

> There will likely be a variety of interpretations, making compliance inconsistent as well as difficult.

Line 75c of Form 990 asks you to disclose whether any officers, directors, trustees, key employees, compensated professionals, or independent contractors receive compensation from any other organizations. These include all organizations, both tax-exempt and taxable, that have "close connections" to your organization in



> Unfortunately, this confusion may discourage organizations from sharing resources when it makes economic sense to do so·

any of the following ways:

- common control
- common governance
- direct or indirect ownership
- control through budgetary approval
- coordination of operations as to facilities, programs, employees, or other activities
- common people "exercising substantial influence over all of the organizations."

The Line 75 questions, particularly Line 75 b and c, have already caused a great deal of controversy and confusion regarding interpretation. Additionally, there are redundancies between the information required for Line 75 and for Schedule A, Part III. Determining whether "close connections" exist is subjective. Thus, there will likely be a variety of interpretations by organizations and practitioners, making compliance inconsistent as well as difficult. Unfortunately, this confusion may discourage organizations from sharing resources when it makes economic sense to do so.

Many organizations are already concerned that the intrusive nature of the disclosure requirements may discourage current board members from continuing their charitable involvement and dissuade new board members from getting involved. As a remedy, the AICPA has asked the IRS to clarify and adjust the new sections to alleviate misunderstanding and noncompliance.

Until the IRS addresses these issues, the new rules could have a chilling effect on board participation. To alleviate any such concerns, take the time to understand the new rules and work with a professional consultant who can help make sure you're in compliance. ■

Jill E. Korenek, CPA, is a principal at JDS Professional Group, an Englewood, Colorado-based certified public accounting firm (jekorenek @jdscpagroup.com, www.jdscpa group.com) providing audit, tax, and consulting services to more than 200 nonprofit clients.