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## Final regulations issued for revised Form 990 reporting

The Treasury Department has issued final regulations for implementing the redesigned Form 990, *Return of Organization Exempt From Income Tax*. The redesigned Form 990 was first released for tax years beginning in 2008 (returns filed in 2009) and is the first major redesign of the Form 990 in almost thirty years.

The final regulations do not differ very much from the proposed and temporary regulations released in 2008. They include the following provisions that are consistent with the reporting requirements of the redesigned Form 990:

- › The public support computation period has changed from four to five years. Previously, the computation period was the four years immediately before the current filing year; now public support is measured using a five-year computation period, including the current filing year.
- › The “advance ruling period” has been eliminated. An organization no longer needs to submit proof of its public support after these first five years of existence and receive confirmation from the IRS. Rather, the organization continues to report its public support information on its Form 990 each year, if it is required to file a return.
- › Public support must be reported using the organization’s overall method of accounting. Previously, when a section 501(c)(3) organization computed its public support, it was required to use the cash method of accounting to report the public support it received, even if the organization used the accrual method of accounting to keep its books and otherwise report on Form 990. The redesigned Form 990 implements consistent reporting throughout an organization’s Form 990 and financial records.
- › An organization that fails a public support test for two consecutive taxable years will be treated as a private foundation as of the beginning of the second year for certain purposes. It will be treated as a private foundation as of the beginning of the second year (i) for purposes of incurring the net investment income tax applicable to private foundations and (ii) for any termination tax that would apply if the organization dissolved. In addition, the organization must file a Form 990-PF for the second consecutive failed tax year. An organization will be treated as a private foundation for all purposes beginning the first day of the third consecutive taxable year.
- › Compensation must be reported on a calendar year basis. Compensation and other payments made to officers, directors, trustees, key employees, highly compensated employees, and independent contractors must be reported “during the calendar year ending within the organization’s annual accounting period”.

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Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

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- › [Provisions inadvertently deleted from the temporary and proposed regulations have been reinstated.](#) These provisions allow donors and grantors the ability to rely in certain instances on a written statement by the organization that a grant or contribution will not result in the loss of such organization's classification as a publicly supported organization.

The text accompanying the [final regulations](#) also provides background on the revised Form 990, summarizes the regulations, discusses comments received by the IRS, and explains why or why not these comments were reflected in the final regulations.

Our firm is happy to advise clients on calculating and reporting an organization's public support or completing the Form 990 in general.