



Chapter 6

How Much Do Top Earners Get Paid and Salary Information

The expanded Form 990 contains much more compensation information than the old one. More employees are covered and their compensation is differentiated to a greater extent than in the past. This information is found at Part VII on pages 7 and 8 and Schedule J.

Here you find what top earners of the filer were paid. For high-paying filers the salaries of as many as seven or more staff members may be reported. These may include key employees, the five highest paid employees who earned \$100,000 or more and in some cases officers. For those filers who do not provide high salaries, the compensation of at least one key employee (the executive director) is likely to be listed.

Part VII also reports the names and titles and compensation of the filer's board members, officers and key employees. We have discussed board members at Chapter 3 and, as noted there, it is very rare that board members are paid. This chapter focuses mostly on employees.

The names of the individuals for whom data is supplied is reported at Line 1a of column A of Section A. Officers (who are staff members and are paid), key employees or the five highest compensated employees are likely to command the most interest. They are easily identified. (Officers are addressed immediately below.) If the individual is a key employee or one of the five highest paid employees, the box under column C under the subcolumn "Key employee" or the subcolumn "Highest compensated employee" will be checked.

As more fully explained in the Note on Terms at the end of this chapter there is some ambiguity about just who "officers" are. For many nonprofits the term officer is restricted to non-compensated board members (e.g., secretary). At some nonprofits the term refers to compensated staff members in top management positions. The Instructions seem to cover both situations. As you consider Part VII,

in most cases it will be fairly easy to tell whether someone who is marked as an officer¹ is a non-compensated board member or a compensated employee. A non-compensated board member will usually have the boxes under Director² and Officer checked and there will be no compensation reported under either column D or F.³ A compensated employee will usually only have the box under Officer checked and compensation will be reported under either column D or F. As this chapter focuses primarily on compensation paid to employees, it is only the latter type of officer (i.e., the compensated employee) we will be considering.

Thus, if the Form 990 has been filled out correctly, we can see a great deal of salary information about a good number of high earning employees will be reported. This information may be of considerable interest. A reader may, for example, want to learn what persons in top management positions are being paid in organizations similar to one she is interested in (e.g., one she works for or serves on the board of). Or a reader may draw some very preliminary conclusions about the quality of a filer's management from the level of salaries that are being paid. Or a reader may have ideas about how much is appropriate for a nonprofit group to pay top management officials and want to compare a filer's compensation arrangements with what she believes are appropriate levels of compensation. She may conclude that such payments by the filer are too high or too low by her standards. Finally, a reader may discover that the compensation reported as being paid to a particular employee is not what the reader believes the filer in fact paid the employee or that the compensation of an employee about whom the reader is concerned is omitted from the Form 990. These observations may raise questions in the reader's mind.

Line 2 of Section A on page 8 may also be of interest. It asks the filer to report the total number of individuals (including those listed in Line 1a) who received more than \$100,000 in reportable compensation

¹ The names and titles of each person listed in section A are reported at column A. Column C is broken down into several subcolumns (e.g., Individual trustee or director, Officer, Key employee, etc.) creating boxes to be checked if appropriate.

² The subcolumn covering directors is in fact headed "Individual trustee or director." The Note below explains how these terms are usually used to refer to the same position.

³ Column D shows the amount of reportable compensation the person received from the filer. The term "reportable compensation" is explained below. Roughly it can be considered take-home salary. Column F shows the amount of such compensation received from the filer as deferred compensation and non-taxable benefits. This is explained in more detail below.

from the filer. As suggested in Chapter 1, this number provides the reader with some idea of the size of the filer. It may also be of intrinsic interest to know how many employees get paid over \$100,000.

If anyone listed in Part VII, Section A makes more than \$150,000, more detailed information needs to be reported on such individuals at Schedule J. Schedule J is discussed below.

Some may be interested in learning of the comparative compensation levels paid to various staff members (e.g., top management salaries as compared to those employees working at lower salaries). The Form 990 does not provide any direct information on this subject, but a rough sense of such differences may be gathered by comparing the average salary of the filer's total staff to the average salary of the filer's officers and key employees.⁴ A three-step approach is suggested:

Step 1 - From Part VII, Section A you can determine the number of officers⁵ and key employees. (It is assumed that directors are not paid.) Line 5 of Part IX on page 10 reports the compensation of current officers and key employees. Thus, if the total number of officers and key employees is divided into the amount reported at Line 5, one can derive a rough idea of the average amount paid to officers and key employees.

Step 2 - Line 7 of Part IX reports the compensation of all other employees. Line 5 of Part I on page 1 reports the total number of employees. If the total number of officers and key employees (determined at Step 1) is subtracted from the total number of employees, you get the total number of non-officer, non-key employee employees. Thus, if this number is divided into the amount reported at Line 7, one can derive a rough idea of the average amount paid to non-officers and non-key employees.

⁴ The salary information considered in the three step approach suggested below consists of salary information reported at Part IX Lines 5-7 which shows the salaries paid to the employees in question during the filer's taxable year and not the salaries reported at Part VII which shows the salaries paid to the employees in question in the calendar year that ended during the filer's taxable year. See note 10 and accompanying text below.

⁵ For these purposes, we are assuming that officers are employees and are paid. We have explained above how these persons can be identified. (As suggested above, some filers might list their director officers as officers. They, of course, would not be considered in the computation.)

Step 3 - By comparing the amount derived in the first step to that derived in the second you can get a rough idea of comparative compensation levels.⁶

Finally, a reader of the Form 990 may be interested in knowing about any relatively large payments made to those who serve as independent contractors to the filer, such as professional fundraisers or lawyers. Line 1, Section B of Part VII (Independent Contractors) on page 8 requires the filer to list the five highest paid independent contractors (whether individuals or firms) who received over \$100,000 for the year. Line 2 reports the total number of independent contractors who received more than \$100,000 in compensation from the filer.

We turn now to the nature of the compensation received by officers, key employees and the five highest paid employees who earn over \$100,000.⁷ Part VII, Section A breaks down total compensation between reportable compensation listed at column D and other compensation listed at column F.⁸ "Reportable compensation" refers to compensation reported on an employee's W-2 and on an independent contractor's 1099-MISC.⁹ Since employees and individual independent contractors report their taxable income on a calendar year basis, the W-2s and 1099-MISCs issued on their behalf report compensation they receive during the calendar year in question. So the compensation reported at Part VII, Section A is for the calendar

⁶ We indicated above that this comparison will only provide a rough sense of the differences. For example, the filer's five highest paid employees who earn over \$100,000 will not be part of the officer or key employee class referred to in Step 1, although could well be considered top management. So their compensation may be included in Line 7 of Part IX causing the average amount paid to non-officers and non-key employees to be higher than would be the case if a more appropriate comparison was made between top management and employees working at lower salaries (which comparison might include these highest paid employees in Step 1 and not Step 2).

⁷ Compensation to directors is also listed, however, as noted above, in most cases directors do not get paid and 0 is to be entered by their names.

⁸ Column E lists reportable compensation from related organizations. See Expansion on Related Organizations for a discussion of related organizations.

⁹ As noted below in our discussion of Schedule J, reportable income, generally included on an employee's W-2, reports total wages including bonuses and noncash payments, elective deferrals to certain savings plans (e.g., 401(k) and 403(b) plans) and certain fringe benefits. 1099-MISC reports payments of \$600 or more which include fees for services performed for the filer as a non-employee. Directors are usually treated as independent contractors, so if they are paid, reportable income is what is reported on their 1099-MISC. As mentioned, most directors do not get paid so 0 is entered next to their names.

year ending with or within the filer's tax year.¹⁰ Column F "Other compensation" refers for the most part to certain kinds of deferred compensation (such as tax-deferred contributions by the filer to a retirement plan) and nontaxable fringe benefits (such as nontaxable health benefits or nontaxable housing provided by the filer).

As mentioned, if an individual listed at Part VII, Section A makes more than \$150,000, his or her compensation must also be reported at Schedule J where compensation is broken down in more detail.¹¹ The amount of reportable income reported at column D of Part VII, Section A is broken down in column B of Schedule J into three subcolumns. Subcolumn i lists the individual's base salary ("nondiscretionary payments to a person agreed upon in advance, contingent only on the payee's performance of agreed-upon services"¹²). Subcolumn ii lists bonuses and related incentive compensation. Subcolumn iii reports all other payments made to listed persons that are included in his W-2 or 1099-MISC such as elective deferrals to 401(k) or 403(b) plans or payments under a severance plan.

Schedule J Part II:

Schedule J (Form 990) 2010 Page 2
Part II Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees. Use duplicate copies if additional space is needed.
 For each individual whose compensation must be reported in Schedule J, report compensation from the organization on row (i) and from related organizations, described in the instructions, on row (ii). Do not list any individuals that are not listed on Form 990, Part VII.
Note. The sum of columns (B)(i)-(iii) must equal the applicable column (D) or column (E) amounts on Form 990, Part VII, line 1a.

(A) Name		(B) Breakdown of W-2 and/or 1099-MISC compensation			(C) Retirement and other deferred compensation	(D) Nontaxable benefits	(E) Total of columns (B)(i)-(D)	(F) Compensation reported in prior Form 990 or Form 990-EZ
		(i) Base compensation	(ii) Bonus & incentive compensation	(iii) Other reportable compensation				
1	(i)							
	(ii)							
	(i)							
	(ii)							

The amount reported at column F of Part VII, Section A on page 8 is broken down in Schedule J into columns C and D. Column C lists deferred compensation and column D nontaxable benefits. There are two basic kinds of deferred compensation plans: defined contribution plans and defined benefit plans. These plans can either be qualified or nonqualified. (These plans will be explained as we go along.) The most usual kinds of deferred contribution plans in the nonprofit world are 401(k) and 403(b) plans pursuant to which employees defer (or

¹⁰ For example, if the filer were on a taxable year that begins on July 1 and ends on June 30 (say, July 1, 2011 to June 30, 2012), Part VII, Section A would list the amounts reported on employees W-2s for the calendar year 2011.

¹¹ Line 4 of Part VII asks whether the total compensation (reportable and other compensation from the filer and related organizations) of any individual listed on Line 1a is greater than \$150,000 and instructs the filer who answers "Yes" for any such individual to complete Schedule J for him or her.

¹² The quote is from the Instructions.

contribute) some part of their salary they would otherwise receive into a retirement plan. These amounts are reported on the employee's W-2 and are included in the amount reported at column B iii. An employer might choose to also make contributions to the retirement fund.¹³ Pursuant to the plan, the employer could do so on a discretionary basis (e.g., making a contribution some years and not others) or on a mandatory basis (this alternative is becoming increasingly rare). The amounts contributed by the employer during the year are reported at column C. Defined benefit plans (as distinguished from defined contribution plans) require no employee or present employer contribution and are essentially promises to provide the employee retirement benefits upon his or her retirement. An increase in the actuarial value¹⁴ of a defined benefit plan is reported in column C.

As mentioned, these plans can either be qualified plans subject to the Employee Retirement Income Security Act of 1974 (ERISA) (meaning that all employees are in the plan and not just a few highly compensated employees) or non-qualified plans not subject to ERISA (meaning that only a few employees, usually highly compensated employees, are in the plan).

There is no way of knowing which kind of deferred plan is being reported by looking at the amount reported in column C for a listed employee, i.e., whether the amount refers to contributions by the employer pursuant to a defined contribution plan¹⁵ or an actuarial increase relating to a defined benefit plan. Or, whether the amounts reflect a qualified or unqualified plan. Perhaps if an amount is reported for only one of several listed employees, it is possible, but not certain, that it reflects an unqualified plan. Recently only a few organizations have established defined benefit plans, so if the filer is a relatively young organization, it would be a fair guess to conclude that the amount reported probably reflected contributions to a defined contribution plan. (You can find out when the filer was formed by looking at box L near the top of page 1 of the Form 990.)

¹³ The contribution might be based on some percent of the amount of the employee's base salary (e.g., 3% or 5%) or the employer might match what the employee contributed to the fund either fully or by some percent of the amount (e.g., 50%).

¹⁴ For example, if the benefit is based on the average salary for the last three years of employment and the employee received a significant raise during the year in question, the actuarial value of his future benefit would be increased.

¹⁵ And if a defined contribution plan, whether it is mandatory or discretionary.

If an amount is reported at column C it will show that the listed employee received some sort of deferred retirement benefit and this fact and the amount of the benefit reported might be of interest. Below we discuss nontaxable benefits and suggest that these benefits, while real benefits, are payments made primarily to advance the goals of the employer and only to incidentally benefit the employee. So, in assessing the level of an employee's compensation it might be best to primarily consider reportable compensation (subcolumns B i, B ii and B iii) and deferred compensation (column C).

Column D lists the value of nontaxable benefits provided to the listed person. These various benefits are excluded from taxation under specific sections of the Internal Revenue Code. Some of these "benefits" are provided to an employee by her employer with the principal purpose of benefiting the employer and to only incidentally benefit the employee. For example, if an employee lives rent free in a dorm at a college in circumstances where the employee has supervisory duties, the free rent will be a nontaxable benefit as the purpose of the arrangement was to primarily benefit the employer. Some of these "benefits" may have been made non-taxable for public policy reasons, e.g., the provision of health insurance or disability benefits. As column D only shows the amount of the nontaxable fringe benefits provided to an employee and not the nature of them, there is not much that you can infer from the amount being listed except that the employee received some incidental benefits in addition to the rest of his or her salary.

A Note on Terms

We mention above that Line 1a of Part VII at pages 7 and 8 of the Form 990 at section A requires the filer to provide compensation information on officers and key employees. Such information is also required of directors (board members). As noted since very few nonprofits pay their directors, in most cases 0 will be entered next to their names. The left-hand subcolumn of column C refers to individual trustees or directors. Frequently, these terms refer to the same function: some call such people in governance roles trustees, others call them directors. In the case of a charitable trust, the governors are almost always referred to as "trustees." Institutional trustees, the second subcolumn, typically refers to a bank or financial institution. In most cases, institutional trustees are for charitable trusts.

Section A Column C differentiates between *current* and *former* directors, officers and key employees. An individual is a former key employee, director or officer if the person was not a current key employee, director or officer, during the filer's tax year and if the filer should have reported him or her as a director, officer or key employee on one or all the filer's Forms 990 for the preceding five years, and the "individual received reportable compensation¹⁶ in the calendar year ending with or within the organization's current tax year in excess of the threshold amount (\$100,000 for former officers and key employees, \$10,000 for services in the capacity as director or trustee)." ¹⁷

The definition of the term "officer" is somewhat confusing. The Instructions begin by stating: "An 'officer' is a person elected or appointed to manage the organization's daily operations, such as a president, vice-president, secretary or treasurer." A few lines later it is said: "This definition encompasses 'officers of the board' and 'officers of the corporation.'" Since officers of the board almost never manage the daily operations of the corporations on whose board they serve, there may be an inconsistency. Note also that the terms "president, vice-president, secretary or treasurer" usually refer to non-compensated board positions. As will be noted immediately below, those top people who are appointed to manage the organization's daily operations are commonly given such titles as executive director and chief financial officer. At any rate, those top officials who manage the day-to-day operations of the filer should be listed as officers. The Instructions specifically note the term "officer" includes the top management official, that person who has "ultimate responsibility for implementing the decisions of the governing body [the board] or for supervising the management, administration, or operation of the

¹⁶ Reportable compensation refers generally to what is reported on the employee's W-2. This is explained further below. Because the information is taken off W-2s and all individuals are on the calendar year, the compensation tests are couched in terms of compensation received during the calendar year ending with or within the organization's tax year.

¹⁷ The quote is from the Instructions. In the past when the Form 990 captured only current officer, key employee and director compensation, it came to the attention of the IRS that by careful timing, compensation could be moved off the radar screen by waiting until the relevant individual retired. To help catch this abuse, the distinction between current and former employees was introduced into the expanded Form 990. We believe that the incidence of payments to former employees is very small. In what follows then the focus will be on current employees. However, if the reader spots that payments were made to former employees, further inquiry may be considered appropriate. More complicated rules apply to former employees who were among the five highest paid employees.

organization." This description covers those who are commonly called executive directors or chief executive officers. The Instructions also specifically note the term "officer" includes the top financial officer, that person "who has ultimate responsibility for managing the organization's finances." This description covers those who are commonly called chief financial officers. If an individual is an officer, the box in column C marked "Officer" next to his or her name will be checked.¹⁸

In addition to directors and officers, key employees are to be listed at section A of Part VII. Generally the term "key employee" is defined as those who are not officers (or directors) who make over \$150,000 a year and have significant management responsibilities.¹⁹ If an individual is a key employee, the box in column C marked "Key employee" next to his or her name will be checked.

One may notice that there might be considerable confusion on the question of whether a particular individual who has top management responsibilities over the daily operations of the filer should be characterized as an "officer" or a "key employee." In terms of assessing compensation information it is not clear that it matters much. If an individual is listed as an "Officer" (the "Officer" box in column C being checked) and s/he does not receive compensation

¹⁸ If a director is, for example, the president, vice-president, secretary or treasurer of the board, both the director and officer boxes of column C are likely to be checked. If an employee in a top management position is considered an officer by the filer, the officer box next to his name will be checked but not the director box. Also compensation for such person will usually be reported under column D or F or both.

¹⁹ More specifically a "key employee" is one who meets three tests. 1. *\$150,000 Test*: He or she is paid over \$150,000 a year in reportable compensation by the organization and all related organizations for the calendar year ending with or within the organization's tax year. 2. *Responsibility Test*: He or she (a) "has responsibilities, powers or influence over the organization as a whole that is similar to those of officers, directors or trustees; (b) manages a discrete segment or activity of the organization that represents 10% or more of the activities, assets, income or expenses of the organization, as compared to the organization as a whole; or (c) has or shares authority to control or determine 10% or more of the organization's capital expenditures, operating budget or compensation of employees." 3. *Top 20 Test*: He or she is one of the 20 employees (that satisfy the \$150,000 Test and Responsibility Test [i.e., 1 and 2]) with the highest reportable compensation from the organization and related organizations for the calendar year ending with or within the organization's tax year. If the organization has more than 20 individuals who meet the *\$150,000 Test* and *Responsibility Test*, [the filer is to] report as key employees only the 20 individuals that have the highest reportable compensation from the organization and related organizations." Reportable compensation is described above at footnote 1 and accompanying text. Related organizations are discussed in the Expansion on Related Organizations.

then it may be assumed that s/he is a director (and this would be confirmed if the director box was checked also). If s/he receives compensation – as shown by looking at columns D and F - then it may be assumed that s/he is a management employee (and this would be confirmed if the director box was not checked).

In addition to directors, officers and key employees, section A of Part VII requires that there be listed the filer's five highest compensated employees (other than directors, officers, or key employees) who received reportable compensation of more than \$100,000 from the filer or related organizations.²⁰ If an individual is such an employee of the filer, the box in column C marked "Highest compensated employee" next to his or her name will be checked.

²⁰ See above footnote and accompanying text for an explanation of reportable compensation and the Expansion on Related Organizations for an explanation of related organizations. As noted above in discussing key employees, if the filer has more than 20 individuals who meet the *\$150,000 Test* and the *Responsibility Test*, the filer is to report as key employees only the 20 individuals that have the highest reportable compensation from the organization and related organizations. The Instructions note "any others, up to five, might be reportable as current highest compensated employees, with over \$100,000 in reportable compensation."