



Independent Board Member Designation

The latest revisions to the IRS Form 990 tax return requires all filing organizations to report the number of independent voting members on their governing body.

The IRS (and many donors) view an independent board as a key protection against abuse of nonprofits. An organization with an independent board is less likely to provide improper benefits to private individuals that control the organization. While not a strict legal requirement for exemption, a lack of an independent board could result in increased negative scrutiny from the IRS and donors.

The new Form 990 reporting requirement, combined with the increased scrutiny on the nonprofit sector, should spur a renewed focus on Board composition. Every tax exempt organization should determine whether a restructuring is necessary to align with current best practices related to director independence. The ultimate goal should be to adopt and maintain an independent board policy.

Who Is an Independent Director?

For many charitable, tax-exempt organizations, the concept of independent members on a governing board is not new. Whether a director is “independent” depends on the various relationships (*e.g.*, financial, familial, etc.) between the director and the organization. The board policy should describe the test to determine whether a governing board member is independent. In defining “independence,” the board should carefully consider the organization’s own unique circumstances balancing the goal of having independent directors free of real or perceived conflicts of interest with the organization against the realities of a potentially small pool of possible directors.

An independent director may have a conflict of interest with respect to a particular transaction yet retain his or her status as “independent” if said conflict does not disqualify the member from classification as independent under the organization’s independence definition. For example, a director who receives a small, market rate fee for an isolated consulting service may be considered an independent director.

As a guide to developing its definition of an independent director for purposes of its governance policies, a tax-exempt organization could look to one of the various definitions released by governmental and policy organizations in recent years.

IRS Form 990 Definition of Independence

For purposes of answering relevant questions on the Form 990, the instructions ([IRS.gov](https://www.irs.gov)) state that a director is considered independent only if the director satisfies all three of the following at all times during the organization’s relevant tax year:

1. The director was not compensated as an officer or other employee of the organization or of a related organization (unless a religious organization exception applies).



2. The director did not receive total compensation or other payments exceeding \$10,000 during the organization's tax year from the organization or from related organizations as an independent contractor, other than reimbursement of expenses under an accountable plan or reasonable compensation for services provided in the capacity as a director. For example, a person who receives reasonable expense reimbursements and reasonable compensation as a director of the organization does not cease to be independent merely because he or she also receives \$7,500 from the organization for other arrangements.
3. Neither the director, nor any family member of the director, was involved in a transaction with the organization (whether directly or indirectly through affiliation with another organization) that is required to be reported on Schedule L (Form 990 or 990-EZ) for the organization's tax year, or in a transaction with a related organization of a type and amount that would be reportable on Schedule L (Form 990 or 990-EZ) if required to be filed by the related organization.

I, _____ (voting board member's name) certify that I meet the "independent board member" designation requirements as defined above from the IRS guidelines of the 2016-2017 Form 990 filing for Furkids Animal Rescue & Shelters.

Board Member Signature

Sam Shelton, Founder and CEO