

New Form 1023: Preparation and Technical Matters

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Topics to be Covered

- Overview: Electronic Filing and New Form
- Selected Questions and Sub-Questions
- Technical matters
 - Attachments to Form 1023
 - Rev. Proc 2020-8 and Transition
 - Electronic Signatures on Form 1023
 - User Fees Electronically on Pay.gov
- Resources

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Overview of Electronic Filing

www.irs.gov/forms-pubs/about-form-1023



Filing on paper?

As of January 31, 2020, the IRS requires that Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, be completed and submitted through [Pay.gov](https://www.pay.gov). There is a 90-day grace period during which the IRS will continue to accept paper versions of Form 1023.

Current Revision

To submit Form 1023, you must:

1. Register for an account on [Pay.gov](https://www.pay.gov).
2. Enter "1023" in the search box and select Form 1023.
3. Complete the form.

[Instructions for Form 1023 \(Print Version \(PDF\)\)](#)

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Overview of New Form

- Length: basic form 18 pages (was 12)
- Question Completion Requirement
 - Pay.gov requirement
 - Can not proceed with next question until completed all questions on current page, including:
 - Entering required descriptions or explanations or completing required schedules
 - Example

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Lines to be Examined

- NTEE
- Compensation & Non-Fixed Compensation
- Purchase and Sale of Goods, Services or Assets
- Grants, Loans or Other Distributions to
 - Non-charitable organizations
 - Foreign Organizations
- Operations/Activities in Foreign Countries

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NTEE

- New form requires assigning National Taxonomy of Exempt Entities (NTEE) code that best describes applicant's activities
 - Part IV, Your Activities: line 2
 - List of codes provided in Appendix D to instructions (caution: see instructions TIP)



NTEE codes are also used for purposes other than identification of organizations described in section 501(c)(3). Therefore, all codes in the list don't necessarily correspond to a section 501(c)(3) purpose.

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Compensation

- Two locations
 - Part IV Your Activities
 - Line 4 – self-dealing with officers/directors/trustees
 - Part V, Compensation and Other Financial Arrangements
 - Lines 1a-g: IRC 4958 compliance
 - Line 2: Conflict of Interest Policy
 - Line 3: Non-Fixed Payments
 - Line 4: Purchase/sell goods/services/assets to officers/directors/trustees, or family or orgs. etc.

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Non-Fixed Compensation Part V: Line 3

- Do you or will you compensate any of your officers, directors, trustees, highest compensated employees, and highest compensated independent contractors through non-fixed payments, such as discretionary bonuses or revenue-based payments?
- If "Yes," describe all non-fixed compensation arrangements, including how the amounts are determined, who is eligible for such arrangements, whether you place a limitation on total compensation, and how you determine or will determine that you pay no more than reasonable compensation for services.

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Non-Fixed Compensation Part V: Line 3: Instructions

- Line 3. A fixed payment means a payment that is either a set dollar amount or fixed through a specific formula where the amount doesn't depend on discretion. For example, a salary of \$200,000 that is adjusted annually based on the increase in the Consumer Price Index is a fixed payment.
- A "non-fixed payment" means a payment that depends on discretion. For example, a bonus of up to \$100,000 that is based on an evaluation of performance by the governing board is a non-fixed payment because the governing body has discretion over whether the bonus is paid

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Non-Fixed Compensation EO Specialist Sample Questions

- <https://www.irs.gov/charities-non-profits/charitable-organizations/exempt-organization-sample-questions>
- EO Specialists may request additional information necessary to make a determination.

Non-Fixed Compensation

1. You provide (or will provide) compensation through non-fixed payments. Please provide the following information:
 - a. Describe the non-fixed payment compensation arrangements you use or intend to use.
 - b. Specify who is eligible for your non-fixed payment compensation arrangements. Explain how you determine the amount of non-fixed compensation and the process used to approve such arrangements.
 - c. Describe the limits you place on total compensation.
 - d. Provide other information regarding these compensation arrangements, including copies of any employment or compensation contracts or agreements.

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Purchase and Sale of Goods, Services or Assets Part V: Line 4

- 4 Do you or will you purchase or sell any goods, services, or assets from or to: (i) any of your officers, directors, or trustees; (ii) any family of any of your officers, directors, or trustees; (iii) any organizations in which any of your officers, directors, or trustees are also officers, directors, or trustees, or in which any individual officer, director, or trustee owns more than a 35% interest; (iv) your highest compensated employees; or (v) your highest compensated independent contractors? If "Yes," describe any such transactions that you made or intend to make, with whom you make or will make such transactions, how the terms are or will be negotiated at arm's length, and how you determine you pay no more than fair market value or you are paid at least fair market value.

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Part V: Line 4 Instructions

Line 4. Don't include purchases or sales of goods and services in your normal course of operations that are available to the general public under similar terms and conditions.

Answer "Yes," if any of your officers, directors, or trustees:

- Is an officer, director, or trustee of another organization (other than a section 501(c)(3) organization) that you will purchase or sell goods, services, or assets from or to; or
- Possesses more than 35% ownership interest in any organization that you will purchase or sell goods, services, or assets from or to.

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Part V: Line 4 Instructions (cont'd)

Arm's length. An arm's length standard exists where the parties have an adverse (or opposing) interest. For example, a seller wants to sell his goods at the highest possible price, while a buyer wants to buy at the lowest possible price. These are adverse interests.

In negotiating with a person, an adverse interest is assumed if that person is otherwise unrelated to you in the sense of not being in a position to exercise substantial influence over you or your affairs. If the person is in a position to exercise substantial influence over your affairs, then an arm's length standard requires additional precautions to eliminate the effect of the relationship.

Using a **conflict of interest policy**, information about comparable transactions between unrelated parties, and reliable methods for evaluating the transaction, are examples of precautions that would help make the negotiation process equivalent to one between unrelated persons.

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Part V: Line 4 Instructions (cont'd)

Fair market value. This is the price at which property or the right to use property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy, sell, or transfer property or the right to use property, and both having reasonable knowledge of relevant facts.

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EO Specialist Sample Questions

Purchase or Sale of Goods, Services, and Assets to or from Officers or Directors

[Instruction: Use *Option A* or *B* (or both) as applicable with the rest of the question listed here.]

Option A

[5A. You purchased (or will purchase) goods, services and assets from one or more of your officers or directors.]

Option B

[5B. You sold (or will sell) goods, services and assets to one or more of your officers or directors.]

Please provide the following information:

- a. Describe all purchases and sales you made (or intend to make) with officers and directors of your organization.
- b. Identify the parties with whom you made (or will make) such sales or purchases.
- c. Explain the process you use for negotiating and approving purchases and sales of goods, services, and assets with your officers and directors.
- d. Explain how you determine the price of the goods, services, or assets that you purchase from or sell to your officers and directors, and how you determine that all transactions are made at fair market value.
- e. Submit copies of all contracts and other written documents relating to purchases and sales of goods, services, and assets with officers and directors of your organization. If you made purchases or sales with officers or directors without executing a written document, provide copies of board of directors' minutes that authorized any such transaction.

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Grants, Loans or Other Distributions – (Rev. 12-2017)

- 13a Do you or will you make grants, loans, or other distributions to organization(s)? If "Yes," answer lines 13b through 13g. If "No," go to line 14a. Yes No
- b Describe how your grants, loans, or other distributions to organizations further your exempt purposes.
- c Do you have written contracts with each of these organizations? If "Yes," attach a copy of each contract. Yes No
- d Identify each recipient organization and any **relationship** between you and the recipient organization.
- e Describe the records you keep with respect to the grants, loans, or other distributions you make.
- f Describe your selection process, including whether you do any of the following.
- (i) Do you require an application form? If "Yes," attach a copy of the form. Yes No
- (ii) Do you require a grant proposal? If "Yes," describe whether the grant proposal specifies your responsibilities and those of the grantee, obligates the grantee to use the grant funds only for the purposes for which the grant was made, provides for periodic written reports concerning the use of grant funds, requires a final written report and an accounting of how grant funds were used, and acknowledges your authority to withhold and/or recover grant funds in case such funds are, or appear to be, misused. Yes No
- g Describe your procedures for oversight of distributions that assure you the resources are used to further your exempt purposes, including whether you require periodic and final reports on the use of resources.

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Grants, Loans or Other Distributions – (Paygovform)

- 9 Do you or will you make grants, loans, or other distributions to organizations? If "Yes," describe the type and purpose of the grants, loans, or distributions, how you select your recipients including submission requirements (such as grant proposals or application forms), and the criteria you use or will use to select recipients. Also describe how you ensure the grants, loans, and other distributions are or will be used for their intended purposes (including whether you require periodic or final reports on the use of funds and any procedures you have if you identify that funds are not being used for their intended purposes). Finally, describe the records you keep with respect to grants, loans, or other distributions you make and identify any recipient organizations and any relationships between you and the recipients. If "No," continue to Line 10.
- 9a Do you or will you make grants, loans, or other distributions to organizations that are not recognized by the IRS as tax exempt under section 501(c)(3)? If "Yes," name and/or describe the non-section 501(c)(3) organizations to whom you do or will make distributions and explain how these distributions further your exempt purposes.

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Grants, Loans or Other Distributions – Foreign Organizations (Rev.12-2017)

- 14a Do you or will you make grants, loans, or other distributions to foreign organizations? If "Yes," answer Yes No lines 14b through 14f. If "No," go to line 15.
- b Provide the name of each foreign organization, the country and regions within a country in which each foreign organization operates, and describe any relationship you have with each foreign organization.
- c Does any foreign organization listed in line 14b accept contributions earmarked for a specific country or specific organization? If "Yes," list all earmarked organizations or countries. Yes No
- d Do your contributors know that you have ultimate authority to use contributions made to you at your discretion for purposes consistent with your exempt purposes? If "Yes," describe how you relay this information to contributors. Yes No
- e Do you or will you make pre-grant inquiries about the recipient organization? If "Yes," describe these inquiries, including whether you inquire about the recipient's financial status, its tax-exempt status under the Internal Revenue Code, its ability to accomplish the purpose for which the resources are provided, and other relevant information. Yes No
- f Do you or will you use any additional procedures to ensure that your distributions to foreign organizations are used in furtherance of your exempt purposes? If "Yes," describe these procedures, including site visits by your employees or compliance checks by impartial experts, to verify that grant funds are being used appropriately. Yes No

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Grants, Loans or Other Distributions – Foreign Organizations (Paygovform)

- Number of questions requiring details increases from 6 to 8
 - 9b, 9c, 9d, 9e, 9f, 9g, 9h, 9i
- 4 new questions specifically regarding conducting activities in foreign countries
 - 10, 10a, 10b, 10c

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Grants, Loans or Other Distributions – Foreign Organizations (Paygovform)

- Compliance questions relating to Office of Foreign Assets Control (OFAC) of the Department of the Treasury
 - Agree to check the list when making grants, loans or other distributions
 - Agree to not engage in activities that violate economic sanctions administered by OFAC
 - If required, agree to acquire OFAC license and registration

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G, L or O. D. - Foreign Orgs.

9a Do you or will you make grants, loans, or other distributions to organizations that are not recognized by the IRS as tax exempt under section 501(c)(3)? If "Yes," name and/or describe the non-section 501(c)(3) organizations to whom you do or will make distributions and explain how these distributions further your exempt purposes. Yes No

9b Do you or will you make grants, loans, or other distributions to foreign organizations? If "Yes," name each foreign organization (if not already provided), the country and region within each country in which each foreign organization operates, any relationship you have with each foreign organization, and whether the foreign organization accepts contributions earmarked for a specific country or organization (if so, specify which countries or organizations). If "No," continue to Line 10. Yes No

9c Do your contributors know that you have ultimate authority to use contributions made to you at your discretion for purposes consistent with your exempt purposes? If "Yes," describe how you relay this information to contributors. Yes No

9d Do you or will you make pre-grant inquiries about the recipient organization? If "Yes," describe these inquiries, including whether you inquire about the recipient's financial status, its tax-exempt status under the Internal Revenue Code, its ability to accomplish the purpose for which the resources are provided, and other relevant information. Yes No

9e Do you or will you use any additional procedures to ensure that your distributions to foreign organizations are used in furtherance of your exempt purposes? If "Yes," describe these procedures, including periodic reporting requirements, auditing grantees, site visits by your employees or compliance checks by impartial experts, etc., to verify that grant funds are being used appropriately. Yes No

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9f Do you share board members or other key personnel with the recipient organization(s)? If "Yes," identify the relationships. Yes No

9g When you make grants, loans, or other distributions to foreign organizations, will you check the OFAC List of Specially Designated Nationals and Blocked Persons for names of individuals and entities with whom you are dealing to determine if they are included on the list? Describe any other practices you will engage in to ensure that foreign expenditures or grants are not diverted to support terrorism or other non-charitable activities. Yes No

9h Will you comply with all United States statutes, executive orders, and regulations that restrict or prohibit U.S. persons from engaging in transactions and dealings with designated countries, entities, or individuals, or otherwise engaging in activities in violation of economic sanctions administered by OFAC? Yes No

9i Will you acquire from OFAC the appropriate license and registration where necessary? Yes No

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Activities in Foreign Countries (Paygovform)

10 Do you or will you operate in a foreign country or countries? If "Yes," name each foreign country and region within each country in which you do or will operate and describe your operations in each one. If "No," continue to Line 11. Yes No

10a When you conduct activities in foreign countries, will you check the OFAC List of Specially Designated Nationals and Blocked Persons for names of individuals and entities with whom you are dealing to determine if they are included on the list? Describe any other practices you will engage in to ensure that foreign expenditures or grants are not diverted to support terrorism or other non-charitable activities. Yes No

10b Will you comply with all United States statutes, executive orders, and regulations that restrict or prohibit U.S. persons from engaging in transactions and dealings with designated countries, entities, or individuals, or otherwise engaging in activities in violation of economic sanctions administered by OFAC? Yes No

10c Will you acquire from OFAC the appropriate license and registration where necessary? Yes No

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International Activities EO Specialist Sample Questions

1. Your application indicates that you operate (or will operate) in a foreign country, but did not clearly describe the activity. Please provide the following:

- a. Identify the specific countries (and regions within the countries) in which you operate
- b. Describe your operations in each country.

2. Please answer the following in regard to Office of Foreign Assets Control (OFAC) compliance:

- a. When you conduct activities in foreign countries, will you check the OFAC List of Specially Designated Nationals and Blocked Persons for names of individuals and entities with whom you are dealing to determine if they are included on the list?
- b. What other practices will you engage in to ensure that foreign expenditures or grants are not diverted to support terrorism or other non-charitable activities?
- c. Will you comply with all United States statutes, executive orders, and regulations that restrict or prohibit U.S. persons from engaging in transactions and dealings with designated countries, entities, or individuals, or otherwise engaging in activities in violation of economic sanctions administered by OFAC?
- d. Will you acquire from OFAC the appropriate license and registration where necessary?

3. Please answer the following about grants you will make to organizations or individuals located in foreign countries:

- a. State the organizations to which you do (or will) distribute funds or goods, and if they have been recognized as tax-exempt by the IRS, state their exempt status.
- b. List any distributions (in funds or goods) you made to date, including the recipient, what and how much was disbursed, and how the distribution furthered your exempt purposes.
- c. Describe your process for reviewing and approving requests for funds or goods, including the pre-grant inquiries you conduct on potential grantees, and how you determine grant amounts.
- d. If you enter into a written grant agreement with grantees, submit representative copies of the grant agreements.
- e. If a grant recipient is eligible for repeated grants, explain whether they must reapply and continue to provide information regarding how funds or goods are used.
- f. Explain whether you accept donations earmarked for particular organizations or individuals.
- g. Specify how you will exercise control and responsibility over the use of any funds or goods granted to foreign organizations or individuals to ensure they are used properly (e.g., requiring grantees to submit periodic reports, or accountings, engaging accountants to audit grantees, sending representatives or agents for field investigations, etc.).
- h. Specify to what extent, if any, you share board members or other key personnel with recipient organizations.

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Attachments to Form 1023

- **Pay.gov accommodates only one pdf file**
 - Can not exceed 15 megabytes; approximately 250 pages
 - If pdf exceeds 15 MB, remove info to 15 MB; then contact IRS Customer Accounts 877-829-500 to learn how to submit removed items
- **Identification on attachment**
 - EIN on each page
 - Part and line number for information provided
- **First need to complete the Upload Checklist**
 - Must confirm each item on Upload Checklist
 - Then, continue to upload page

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Attachments to Form 1023

- **Documents should be in specified order**
 - Organizing documents
 - Amendments to organizing documents, if any
 - Bylaws, if adopted
 - Form 2848, if applicable
 - Form 8821 , if applicable
 - Supplemental responses (discussed next)
 - Expedite request, optional
 - Other information that should be considered by the IRS

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Attachments to Form 1023

- Identification on attachment
 - EIN on each page
 - Part and line number for information provided
- Supplemental responses
 - Where responses do not fit within the character limits of response boxes
 - Example: detailed activity description limited to 5,000 characters (roughly one page of text)
 - Responses to lines on Schedules

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Revenue Procedure 2020-8

- Effective January 31, 2020:
 - Form 1023 must be submitted electronically
 - Applicants must submit User Fees on pay.gov
- IRS to accept paper Form 1023 (Rev. 12-2017) for 90 days during transition period
 - Ends April 31, 2020
 - Extension of transition period?

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Revenue Procedure 2020-8

- Effective January 31, 2020: New location for submission
 - Old location: Cincinnati Submission Processing Center (CSPC)
 - New location: Cincinnati Accounts Management Campus Support (Campus Support)
- Campus Support is responsible for processing user fees submitted with EO determination requests

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Electronic Signatures

- Prior practice
 - Draft of Form 1023 to client
 - Client return original signature
 - Client include check for user fee
 - Attorney submission of paper application to IRS

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Electronic Signatures

- Alternatives to sign electronically by client:
 - In-person in law office
 - Screen share: e.g. Zoom, Team-Viewer
 - Clients' comfort with technology?
- See NEO Law Group blog discussion
 - <http://www.nonprofitlawblog.com/form-1023-electronic-filing-requirement/>

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Electronic Signatures Discussion Points

- Is an attorney authorized to sign Form 1023?
- Even if authorized and possible, what record should be maintained by attorney?
 - Copy of signed return?
- Compare with CA Franchise Tax Board
 - Accept scanned copy of signature page?

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Payment of User Fees

- Prior practice
 - Client submission of check to accompany paper Form 1023
 - Attorney pay and reimbursement from client
- Payment via pay.gov
 - Previously required for Form 1023-EZ
 - Now required for Form 1023
 - Request client advance payment of user fee?

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Electronic Signatures and Payment Another Alternative

- New practice
 - Attorney prepare draft of Form 1023
 - Attorney create pay.gov for client (further discussion below)
 - Client login to pay.gov to sign electronically then logout
 - Attorney login and continue with payment

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Payment of User Fees

- Payment via pay.gov
 - Caution: use of attorney's one pay.gov account for multiple clients – confidentiality concern
 - Possible solution:
 - creation of separate user name and separate password for each client
 - Client can login to make filing
 - Client can pay the user fee when login
 - Visible only to client and to attorney

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Resources

- Paygovform
- Instructions for Form 1023 (Rev. 01-2020)
- Overview of Form 1023-E-Filing
 - <https://www.stayexempt.irs.gov/se/files/downloads/Electronic%201023%20Overview%202020.pdf>

OVERVIEW OF FORM 1023-E-FILING

Slide 2 - Introduction

This overview is presented by the Tax Exempt & Government Entities division's Exempt Organizations office.

Slide 3 - Objectives

This document explains what is required to complete Form 1023 and how to submit the form electronically at www.Pay.gov. You'll learn what to expect when applying for tax-exempt status.

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Resources

- Video Tutorials

- <https://www.stayexempt.irs.gov/home/starting-out/applying-section-501c3-status>

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Educational Resources and Guidance for Exempt Organizations

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Exempt Organization Types

Feel free to use our publications, forms and other materials in your meetings or training.

Virtual training

[Future webinars and recorded events](#)

[Stay Exempt](#) mini-courses for 501(c)(3) organizations

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Starting Out

Applying for tax-exempt status? You've come to the right place. Below are a few IRS tools to get your organization moving in the right direction.



| Action | Course Title | Runtime |
|--------|--|---------|
| | Applying for Section 501(c)(3) Status Ensure that your organization is eligible for tax exemption before applying. This course discusses eligibility, the benefits of exemption, how to apply and filing requirements while waiting for a determination letter. Alternate PDF Version | 39:39 |
| | Overview of Form 1023 e-Filing The IRS requires that Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, be completed and submitted through Pay.gov. Alternate PDF Version | 30:00 |

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EO Specialist Sample Questions

– <https://www.irs.gov/charities-non-profits/charitable-organizations/exempt-organization-sample-questions>

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Tax Exemption

Apply for Tax-Exempt Status

How to apply for IRS recognition of tax-exempt status

Reinstate Tax-Exempt Status

What to do if your tax-exempt status is revoked

Annual Filing and Forms

990-series forms, requirements and tips to help you complete your [annual reporting and filing](#).

Tax-Exempt Organization Search

Use the [Tax-Exempt Organization Search](#) tool to find information on an organization's status.

Education

Educational Resources and Guidance

Find publications, forms and official guidance.

News

- [TE \(CF\) FY 2012 Accomplishments Letter \(PDF\)](#)
- [Use the new electronic Form 1023 to apply for tax-exempt status](#)
- [Filing and Payment Deadline Extended to July 15, 2020 - Form 990-T and Form 1041](#)
- [How to claim refund or credit of UBIT for Qualified Transportation Fringe Amounts \(parking tax\)](#)
- [Recent legislation requires tax-exempt organizations to e-file forms](#)
- [See past editions and subscribe to future editions of the EO Update \(a free e-newsletter\)](#)

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Once you have followed the steps [outlined on this page](#), you will need to determine what type of tax-exempt status you want.

Note: As of January 31, the IRS requires that Form 1023 applications for recognition of exemption be submitted electronically online at www.irs.gov. For more information, please refer to the [Form 1023 product page](#). The IRS will provide a 90-day grace period during which it will continue to accept paper versions of Form 1023 (Rev. 12-2017).

Charitable, Religious and Educational Organizations (501(c)(3))

- Form 1023-EZ
- Instructions for Form 1023-EZ (PDF)
- Form 1023
- Instructions for Form 1023 (PDF)

Social Welfare Organizations (501(c)(4) organizations)

- Form 9975 - Notice of Intent to Operate Under Section 501(c)(4)
- Form 1024-A (PDF)
- Instructions for Form 1024-A (PDF)

Other Nonprofit or Tax-Exempt Organizations (501(a))

- Form 1024 (PDF)
- Instructions for Form 1024 (PDF)

Additional information

- Exempt Organizations Form 1023-EZ Approvals
- Publication 4200, Applying for 501(c)(3) Status (PDF)
- Publication 557, Tax-Exempt Status for Your Organization (PDF)
- Group Exemptions (PDF)
- FAQs - Approvals for tax exemption
- FAQs - Form 1023
- Top ten tips to shorten the tax-exempt application process
- Sample application questions
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Practical Suggestions

- Become familiar with new form
- Create checklist of discussion points
- Discuss with client and follow up questions
- Prepare draft 1023 with schedules, responses and attachments
- Review with client and modify as appropriate

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Questions and Comments

- Questions?
- Comments?

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