

OTHER ITEMS TO NOTE

2018 OMB COMPLIANCE SUPPLEMENT RELEASED

The Office of Management and Budget (OMB) released the final [2018 OMB Compliance Supplement](#) (2018 Supplement) on May 18, 2018. The 2018 Supplement has been prepared in a different format from previous years. The format for the 2018 Supplement is to only include sections with significant updates and changes. Thus, the 2018 Supplement is smaller in size and has been referred to as a “skinny” supplement. Based on this, organizations must use both the 2018 Supplement and the 2017 OMB Compliance Supplement (2017 Supplement) together when determining the federal program objectives, procedures and compliance requirements that the Federal government expects to be considered as part of a single audit.

Key Changes to the 2018 Compliance Supplement

All organizations with federal funds should review Appendix V, List of Changes for the 2018 Compliance Supplement, for more information about the changes made and the specific programmatic changes for specific Catalog of Federal Domestic Assistance (CFDA) numbers.

A few highlighted changes are as follows:

Table of Contents of the 2018 Supplement is a critical roadmap for determining how to use the 2017 and 2018 Supplements together as it specifies where the 2017 Supplement is superseded and/or continues to be relevant.

Part 1, *Background, Purpose, and Applicability*, has been updated to reflect the effective date for the 2018 Supplement which is for audits of fiscal years beginning after June 30, 2017 and supersedes Part 1 of the 2017 Compliance Supplement. This section also states that the portions of the 2017 Supplement that were not superseded or deleted by the 2018 Supplement continue to be effective for audits of fiscal years beginning after June 30, 2017.

Part 2, *Matrix of Compliance Requirements*, is not included in the 2018 Supplement. Instead, for new or revised programs, auditors are instructed to use the individual program matrices included in Parts 4 and 5 of the 2018 Supplement. For programs that are not included in the 2018 Supplement, the organization will need to use the Part 2 matrix in the 2017 Supplement.

Part 3, *Compliance Requirements*, has not changed from the 2017 Compliance Supplement other than 3.2.I, “Procurement and Suspension and Debarment.” So, organizations should use the 2017 Supplement Part 3 (i.e., Parts 3.1 and 3.2), as appropriate for all other compliance requirement testing. The changes in section 3.2.I are mainly to address information on how the 2017 and 2018 National Defense Authorization Acts (NDAA) affect the simplified acquisition and/or micro-purchase thresholds that are to be used by auditees. The contents of 3.2.I should be read in conjunction with the new 2018 Appendix VII-A, *Other Audit Advisories – Hurricanes and NDAA Addendum*.

Part 4, *Agency Program Requirements*, only includes new programs and programs that were updated due to significant regulatory or other changes. For all other programs not included in the 2018 Supplement, organizations will continue to use the 2017 Supplement.

Part 5, *Clusters of Programs*, has been updated for regulatory and other updates to the Student Financial Assistance Cluster and Other Clusters has been updated to add a new cluster. Organizations will need to use Part 5 of the 2017 Supplement to refer to the “Introduction” section and for auditing the Research and Development Cluster.

Appendix VII-A, is an addendum to Appendix VII in the 2017 Supplement and contains guidance regarding reliefs being provided related to the effects of hurricanes Harvey, Irma and Maria. This appendix also provides additional guidance related to procurement including additional information related to the effect of the 2017 and 2018 NDAA's on the compliance requirements and testing of procurement.

Sections Not Included in the 2018 Supplement

The 2018 Supplement does not include sections that were not updated. Thus, organizations will need to utilize Part 6, *Internal Control*, Part 7, *Guidance for Auditing Programs Not Included in This Compliance Supplement*, and all other Appendices except Appendix V from the 2017 Supplement.

IRS GUIDANCE REMOVES OBSTACLE TO RESTRUCTURING TAX-EXEMPT ORGANIZATIONS

The Internal Revenue Service (IRS) has made it easier for many tax-exempt organizations to restructure. The IRS will now continue to recognize as exempt those organizations that:

- Change their state law legal structure from an unincorporated association to a corporation.
- Merely reincorporate in another state.
- Domesticated in a new state.
- Merge one corporation with or into another corporation.

Under the previous authority of Revenue Ruling 67-390, issued over 50 years ago, exempt organizations typically were not permitted to retain their Employer Identification Number (EIN) when they engaged in restructuring activities.

As a result, an entity described in IRC Section 501(c)(3) that chose to reorganize was required to file a final Form 990 under the old EIN, obtain a new EIN, file a new application for recognition of tax-exempt status under the new EIN, and then file new returns under the new EIN. This was in addition to changing the EIN on all accounts, which complicated matters for organizations with significant investments. While the IRS eased the rules over the last few decades to allow retention of the original EIN in many cases, the IRS was still requiring that these organizations submit new applications for recognition of tax-exempt status.

In Revenue Procedure 2018-15, the IRS has removed the exemption-related obstacles to many corporate restructurings and now simply requires that exempt organizations report these changes on their Form 990. As part of its efforts to remove or update guidance that creates an excessive burden on taxpayers, this change has allowed the IRS to check off a “near-term burden reduction” goal from its 2017-2018 Priority Guidance Plan.

There are limitations as to which situations the new rules will apply. The reorganized entity must carry out the same exempt purposes under the same paragraph of IRC Section 501(c) as the organization that engaged in the restructuring. Additionally, if the organization is an entity described in 501(c)(3), the new articles of incorporation must continue to meet the organizational test, including the dedication of assets for charitable purposes.

Most restructurings that involve non-corporate entities still face hurdles when it comes to exemption. The new guidance does not apply if the surviving organization is a disregarded entity, LLC, partnership or foreign business entity. It does not apply to tax-exempt trusts that decide to incorporate or to organizations that merge into LLCs or disregarded entities either.

There is a trap in the new procedure. If the surviving organization does obtain a new EIN, it will be required to submit a new exemption application (Form 1023 or Form 1024) even if the restructuring itself would have qualified and not required a new exemption application.