CLEMENZA LAW GROUP

NEW YORK, NY · (212) 365-4875 · CLEMENZALAW.COM

THE PRIVATE BRIEF · NONPROFIT GOVERNANCE

Form 1023 for a Private Foundation: What the IRS Actually Asks

ANTHONY CLEMENZA · MANAGING PARTNER

September 2026

IN BRIEF

- Form 1023 is filed electronically with a $600 IRS user fee. The shorter 1023-EZ is closed to private operating foundations and open to an ordinary foundation only if it passes the IRS eligibility worksheet, which a foundation holding more than $250,000 in assets cannot.
- The parts that decide a foundation's application are Part III (the purpose and dissolution language in the founding document), Part IV (a specific description of what it will do), Part V (pay and dealings with insiders) and Part VII (saying plainly that it is a private foundation).
- A foundation that plans scholarships or other grants to individuals must describe its selection procedures on Schedule H and get them approved in advance. The IRS decides when and whether to recognize the foundation; it reports issuing 80 percent of Form 1023 determinations within 191 days.

The foundation exists. The certificate came back from the Department of State, the board met, the bank account is open. What stands between your family and a letter from the IRS recognizing the foundation as a tax-exempt charity is one long online application, Form 1023, and a set of instructions that runs to dozens of pages.

Most of the form is identification: names, addresses, dates. A handful of parts decide the case, and one schedule catches more family foundations than any other. Here is what the IRS is really asking in each, in the order you will meet them.

How it is filed, and what it costs

The IRS states that "Organizations must electronically file this form to apply for recognition of exemption from federal income tax under section 501(c)(3)." The user fee, currently $600, is paid through Pay.gov when you file, and you upload the organizing document (for a New York foundation, the certificate of incorporation) with any amendments and the bylaws.

There is a shorter form, the 1023-EZ, with a $275 fee. A private operating foundation, one that runs its own charitable programs, cannot use it at all. An ordinary grantmaking foundation can, but only if it answers no to every question on the IRS eligibility worksheet, including whether it holds total assets worth more than $250,000. A family foundation funded with a real endowment is past that line on day one, so the full Form 1023 is the usual path.

Part III: does your founding document say the right things

Part III is a test of the document, not of your intentions. The instructions say "Your organizing document must limit your purposes to those described in section 501(c)(3)," the part of the tax code that covers charities, and they offer sample language: the organization is "organized exclusively for charitable, religious, educational, and scientific purposes under section 501(c)(3)."

The document must also dedicate the foundation's assets to charitable purposes permanently, so that anything left on dissolution goes to charity. In certain states the IRS lets an organization rely on state law for that; we write the clause into the certificate so nobody has to argue about it. A foundation that plainly means to do charitable work can still stumble at Part III if its certificate says something broader, and the fix is an amendment filed with the state. That is why the language belongs in the original filing.

Part IV: what the foundation will actually do

Part IV asks you to "Describe completely and in detail your past, present, and planned activities." The instructions tell you not to repeat the purpose clause and not to speculate about future programs. For each activity they want to know what it is, who conducts it, where, what share of the foundation's time it takes, how it is funded, and how it furthers the foundation's charitable purposes.

For a grantmaking foundation the honest answer is short, and short is fine, as long as it is specific. "The foundation will support worthy causes" answers none of those questions. "The board will meet twice a year to make grants to public charities teaching adults to read in the five boroughs, funded by income on an initial gift of marketable securities" answers most of them.

The IRS's own example of speculation is telling: a scholarship program you are only contemplating, with no current plans, should not be described. Keep that in mind for Schedule H below.

Part V: money that flows to the people in charge

Part V asks about pay for officers, directors and trustees, and about arrangements between the foundation and organizations its directors run or own more than 35 percent of, including any "lease, contract, loan, or other agreement." The instructions define reasonable compensation as "the amount that would ordinarily be paid for like services by like organizations under like circumstance," and warn that excess pay can bring excise taxes and put the exemption at risk.

For a family foundation, this is where the federal self-dealing rules meet the application. Those rules tax many kinds of financial dealings between a private foundation and its insiders. Answering Part V well means knowing, before you file, whether the foundation will pay a family member, use space owned by the family company, or borrow from anyone.

Part V also asks about a conflict of interest policy. The IRS says adopting one "isn't required to obtain tax-exempt status." New York law is stricter: for a New York not-for-profit corporation, section 715-a of the Not-for-Profit Corporation Law says "the board shall adopt" a conflict of interest policy. A New York foundation should answer yes.

Part III is a test of the document, not of your intentions.

Part VII: say plainly that it is a private foundation

Part VII asks the foundation to choose its classification. The instructions list the exceptions (churches, schools, hospitals, organizations with broad financial support from the public, and a few others) and then say: "Unless you meet one of the exceptions above, you're a private foundation." They add that nonoperating private foundations "generally accomplish their exempt purpose by making grants."

A foundation funded by one family will not ordinarily meet a public support test, and the application should say so plainly, not reach for a classification the facts do not support.

Part VIII: the 27-month clock

The instructions provide that "if you file Form 1023 within 27 months after the end of the month in which you were legally formed, and we approve your application, the effective date of your exempt status will be your legal date of formation." File later and the effective date is generally the filing date, and you complete Schedule E.

The schedule that catches family foundations

Schedule H covers scholarships, fellowships, educational loans and other educational grants to individuals. Somewhere between the first and second board meetings, many families decide they would like to fund scholarships, and a private foundation cannot do that casually. The instructions warn that a private foundation is “subject to the rules under section 4945 and may incur an excise tax” if it makes these grants “without seeking advance approval of your grant-making procedures.”

A composite, not a client: a family foundation wants to fund a scholarship each year for a graduating senior from the founder’s hometown high school. Done casually, the donor and two of his children pick the winner over dinner and a check goes out.

Done properly, the foundation describes its procedures to the IRS and gets them approved before the first award. The instructions say distributions to individuals generally advance educational purposes when selection is made without racial preference, based on need or merit, and from a charitable class, meaning a group open-ended enough that the recipients are not picked in advance. A choice made over dinner, with no written procedure the IRS has approved, is exactly what that warning is about.

What the IRS says about timing

The IRS publishes a status page. As of this writing it reports, “We issue 80% of Form 1023 application determinations within 191 days,” and it says plainly that “many factors affect processing times, including the number of applications we receive and staffing levels.”

That is the only honest thing anyone can say about timing. Nobody controls the IRS calendar, and the IRS alone decides whether to recognize the foundation. What you can control is the quality of the filing: an application that answers the questions the IRS actually asks tends to draw fewer follow-up questions, and follow-up questions are where months go. The firm’s Foundation Launch engagement prepares the application together with the entity and governance documents and handles IRS correspondence through the determination letter; the scope and published fee are on the Foundation Launch page.

Where to start

Before anyone opens the form, write one page listing every financial arrangement the foundation expects with anyone in the family or any family company: pay, office space, loans, shared staff. Then decide, as a board, whether the foundation will ever make grants to individuals. Those two answers drive Part V and Schedule H, and they are much easier to settle at the kitchen table than in a reply to the IRS.

This is general information about Form 1023 for private foundations, not legal advice about your situation. IRS fees, forms and processing times change, so confirm current details before relying on them.

WRITTEN BY

Anthony Clemenza

MANAGING PARTNER

Anthony is the Managing Partner of Clemenza Law Group and serves as general counsel to a wide range of companies and philanthropic organizations. Nearly every essay here began as a real question from a real client: the contract that landed at 4 p.m., the board that meets on Thursday. He writes them the way he would answer you across the table, plainly and with care.