



# Legal Compliance: It's Not Weird Science!

California Charter Schools Conference  
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# What We Will Cover in This Program

## Key Corporate Documents

- Articles of Incorporation
- Bylaws
- Conflict of Interest Code and Policy
- EIN
- Timing—before charter submission?

## Federal and State Tax Exemptions

- What Is a Tax Exempt Organization?
- Applying for Tax Exemption
- Property Tax Exemption?
- Timing

## Maintaining Tax-Exempt and Corporate Status; Annual Filings

- Statement of Information
- Annual Tax Returns
- Form 700s

## Registry of Charitable Trusts

- What is it? Does your school need to be on here? School Exemption



# KEY CORPORATE DOCUMENTS





# Articles of Incorporation

The California Secretary of State requires:

- Name of the corporation
- Type of corporation
- Street address of corporation
  - No PO Boxes
  - Also the mailing address, if different from street address
- Name and street address of agent for service of process
  - No PO Boxes
  - Must be in California
- Corporate purposes
- What happens to assets upon dissolution?
  - New requirements for PERS





# Articles of Incorporation – 501(c)(3) Limitations

To qualify for tax exemption, the IRS and FTB also require the Articles of Incorporation to specify:

- Cannot operate for benefit of private interests
- Net earnings cannot inure to benefit a private shareholder or individual
- No participation / intervention in political campaigns for / against candidates for public office
- Substantial part of activities cannot be to:
  - Carry on propaganda
  - Attempt to influence legislation (lobbying)



# Example: Forming a Nonprofit 501(c)(3) Organization to Run a California Charter School

## II.

### PURPOSE

A. This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public and charitable purposes.

B. The specific purpose of this corporation is to oversee, manage, operate, advise, guide, direct, promote, support and hold charters or contracts for one or more public charter schools and other educational activities as may be approved by the corporation's board of directors from time to time.

# Example: Forming a Nonprofit 501(c)(3) Organization to Run a California Charter School

## V.

### TAX-EXEMPT STATUS

A. This corporation is organized and operated exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, as amended.

B. No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and this corporation shall not participate in, or intervene in, any political campaign (including publishing or distribution of statements) on behalf of any candidate for public office.

C. Notwithstanding any other provision of these Articles, this corporation shall not, except to an insubstantial degree, engage in any other activities that do not further the purposes of this corporation, and this corporation shall not carry on any other activities not permitted to be carried on (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as amended; or (ii) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code, as amended.

# Example: Forming a 501(c)(3) Organization to Run a California Charter School

## VI.

### IRREVOCABLE DEDICATION OF PROPERTY

A. The property of this corporation is irrevocably dedicated to charitable and educational purposes and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private person.

B. Upon the dissolution or winding up of this corporation, after paying or adequately providing for the corporation's debts and obligations, its remaining assets shall be distributed to a California public entity engaged in education and/or to a California nonprofit fund, foundation or corporation, or another supported organization (or organizations) which is organized and operated for charitable or educational purposes, and which has established its tax exempt status under Section 501(c)(3) of the Internal Revenue Code, as amended, and under Section 23701d of the California Revenue and Taxation Code, as amended.

# California Form:

## Articles of Incorporation for a Nonprofit Public Benefit Corporation with 501(c)(3) Required Language

ARTS-PB-501(c)(3)	Articles of Incorporation of a Nonprofit Public Benefit Corporation
<p>To form a <b>nonprofit public benefit corporation</b> in California, you can fill out this form or prepare your own document, and submit for filing along with:</p> <ul style="list-style-type: none"><li>- A <b>\$30</b> filing fee.</li><li>- A separate, non-refundable <b>\$15</b> service fee also must be included, if you <b>drop off</b> the completed form or document.</li></ul> <p><b>Important!</b> California nonprofit corporations are <b>not</b> automatically exempt from paying California franchise tax or income tax each year. <b>A separate application is required in order to obtain tax exempt status.</b> For more information, go to <a href="https://www.ftb.ca.gov/businesses/exempt_organizations">https://www.ftb.ca.gov/businesses/exempt_organizations</a> or call the California Franchise Tax Board at (916) 845-4171.</p> <p>Note: <i>Before submitting this form</i>, you should consult with a private attorney for advice about your specific business needs.</p>	
This Space For Office Use Only	
<b>For questions about this form, go to <a href="http://www.sos.ca.gov/business/be/filing-tips.htm">www.sos.ca.gov/business/be/filing-tips.htm</a></b>	
<b>Corporate Name</b> (List the proposed corporate name. Go to <a href="http://www.sos.ca.gov/business/be/name-availability.htm">www.sos.ca.gov/business/be/name-availability.htm</a> for general corporate name requirements and restrictions.)	
① The name of the corporation is _____	
<b>Corporate Purpose</b> (Item 2a: Check one or both boxes. Item 2b: The specific purpose of the corporation must be listed if you are organizing for "public" purposes, or if you intend to apply for tax-exempt status in California.)	
② a. This corporation is a nonprofit <b>Public Benefit Corporation</b> and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for: <input type="checkbox"/> <b>public</b> purposes. <input type="checkbox"/> <b>charitable</b> purposes.	
b. The specific purpose of this corporation is to _____	
<b>Service of Process</b> (List a California resident or an active <b>1505</b> corporation in California that agrees to be your initial agent to accept service of process in case your corporation is sued. You may list any adult who lives in California. You may <b>not</b> list your own corporation as the agent. <b>Do not</b> list an address if the agent is a 1505 corporation as the address for service of process is already on file.)	
③ a. _____	
<i>Agent's Name</i>	
b. _____	
<i>Agent's Street Address (if agent is not a corporation) - Do not list a P.O. Box</i>	
<i>City (no abbreviations)</i>	
<i>State</i> <b>CA</b> <i>Zip</i>	
<b>Corporate Addresses</b>	
④ a. _____	
<i>Initial Street Address of Corporation - Do not list a P.O. Box</i>	
<i>City (no abbreviations)</i>	
<i>State</i> <i>Zip</i>	
b. _____	
<i>Initial Mailing Address of Corporation, if different from 4a</i>	
<i>City (no abbreviations)</i>	
<i>State</i> <i>Zip</i>	
<b>Additional Statements</b> (The following statements are required to obtain tax exemption from the Internal Revenue Service or the California Franchise Tax Board under Internal Revenue Code section 501(c)(3). Note: Corporations seeking other types of tax exemptions should not use this form.)	
⑤ a. This corporation is organized and operated exclusively for the purposes set forth in <b>Article 2a</b> hereof within the meaning of Internal Revenue Code section 501(c)(3).	
b. No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and this corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office.	
c. The property of this corporation is irrevocably dedicated to the purposes in <b>Article 2a</b> hereof and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private person.	
d. Upon the dissolution or winding up of this corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of this corporation shall be distributed to a nonprofit fund, foundation or corporation which is organized and operated exclusively for <b>charitable, educational and/or religious</b> purposes and which has established its tax-exempt status under Internal Revenue Code section 501(c)(3).	
This form must be signed by each incorporator. If you need more space, attach extra pages that are 1-sided and on standard letter-sized paper (8 1/2" x 11"). All attachments are made part of these articles of incorporation.	
_____	
<i>Incorporator - Sign here</i>	
_____	
<i>Print your name here</i>	
<b>Make check/money order payable to: Secretary of State</b>	
Upon filing, we will return one (1) uncertified copy of your filed document for free, and will certify the copy upon request and payment of a \$5 certification fee.	
<b>By Mail</b>	
Secretary of State Business Entities, P.O. Box 944260 Sacramento, CA 94244-2600	
<b>Drop-Off</b>	
Secretary of State 1500 11th Street, 3rd Floor Sacramento, CA 95814	

# Filing Your Articles of Incorporation

## How to File

- U.S. Mail to the Sacramento office
- In person at the Sacramento or Los Angeles offices
- You can hire a private service to file in person for you

## Filing Fee

- \$30 by mail
- \$45 in person

## Processing

- Secretary of State will return a “filed” stamped copy in 1-2 weeks

*When does my corporation exist?*



# Amending Your Articles of Incorporation

*When would my school need to amend its Articles?*

## Legal requirements

- Must be approved by a majority vote of the board
  - At a meeting with quorum
  - If the corporation has a member or members, may also require member approval
- May only amend articles to contain provisions that could have lawfully been included in the original articles
  - E.g., cannot add non-charitable activities or remove limitations
  - Attorney General approval may be required to amend limitations on corporate assets held in charitable trust
- Must be submitted with an officer's certificate of amendment





# Bylaws

Purpose is to establish the procedures for governing and operating your corporation

*Why is it important to know what is in my bylaws?*

## Key provisions

- Membership
- Board of directors
  - Number and qualifications
  - Elections, vacancies, and removal of directors
- Meetings of the board of directors
  - Quorum
  - Compliance with Brown Act
  - Actions and voting



# Bylaws (cont.)

## Additional key provisions

- Committees
- Officers
  - Required – president, secretary and treasurer
  - Others – vice-president, chief executive officer, chief financial officer
  - Elections, vacancies, removals
- Corporate records and reports
  - All directors have access
  - Forms 990 for public inspection
- Insurance and indemnification rights
- Fiscal year
- Amendments



# Conflict of Interest Code

The Political Reform Act applies to charter schools

- PRA has 2 prongs:
  - (1) disclosing possible conflicts;
  - (2) avoiding conflicts (e.g. recusal).
- Your Conflict of Interest Code is a guide for your board members/ key employees for *how* to disclose possible conflicts.
- Board members/ key employees report financial interests using Form 700. But how do they know what types of interests to report on the Form 700?
- The Conflict of Interest Code describes what categories of interests should be reported
  - E.g., “Investments and business positions in business entities or income (including gifts, loans, and travel payments) from any source of the type that provides services, supplies, products, materials or equipment that the Corporation utilizes or currently plans to utilize, including school supplies, books, and furnishing.”





# Process for Adopting Conflict of Interest Code

- Board tentatively adopts the Code
- Must post 45-day notice of intent to adopt the Code
- Board then adopts the Code and considers any public comments
- Adopted Code must be sent out for review by code-reviewing body
  - County Board of Supervisors
    - Except for those in Los Angeles County—you have special rules!
  - Fair Political Practices Commission
- Adopted Code is then approved by code-reviewing body (County or FPPC)
- Should be reviewed; may need to be amended as positions change





# How Do You Use Your Conflict of Interest Code?

- When to file Form 700s?
  - Within 30 days of approval of Code
  - Within 30 days of assuming office (e.g. new board members)
  - Within 30 days of leaving office (e.g. departing board members)
- Form 700s filed annually thereafter
  - Due April 1, *but LA has special rules!*

*What is the difference between a Conflict of Interest Code and Conflict of Interest Policy? Do I need both?*



# TAX EXEMPTIONS





# Types of Organizations

Internal Revenue Code § 501(c) describes organizations that are exempt from federal income tax:

- Corporations, community chests, funds or foundations
- Organized and operated for religious, charitable, scientific, testing for public safety, literary or *educational* purposes

California covers all of the IRS 501(c)(3) requirements, limitations and classifications into one type of exemption:

"A *corporation*, community chest or trust, *organized and operated* exclusively for religious, charitable, scientific, testing for public safety, literary, or *educational purposes* ... no part of the net earnings of which inures to the *benefit of any private shareholder or individual*, no substantial part of the activities of which is *carrying on propaganda or otherwise attempting to influence legislation* ... and which does not participate in, or intervene in (including the publishing or distribution of statements), any *political campaign* on behalf of (or in opposition to) any *candidate for public office*."





# WHAT TYPE OF 501(C)(3) IS YOUR SCHOOL?





# The IRS Definition of a "School"

4 core requirements:

- Regular faculty
- Curriculum
- Regularly enrolled student body
- Facility where students receive formal instruction

*How should your school show the IRS you meet these factors?*

*This works for brick and mortar schools, but what about hybrid, independent/ home study, or online schools?*





# Review Questions: Charter School Operations

*Can a 501(c)(3) tax-exempt charter school help charter-friendly candidates into public office?*

No. This would be participating or intervening in a political campaign.

*Can a 501(c)(3) tax-exempt charter school support a proposed bill that would affect charter schools?*

Yes. But this support cannot favor or oppose a particular candidate or amount to a substantial part of its operations.



# APPLYING FOR YOUR TAX EXEMPTION





# What You Need to File: Get Your Documents Ready!

- Federal Employer Identification Number (EIN)
- Articles of Incorporation (file-stamped by the Secretary of State)
- Board of Directors
- Bylaws (with certificate of adoption)
- Conflict of Interest Policy (with certification/resolution of adoption)
- Documentation of Operations
  - Charter Petition (preferably approved or at least submitted)
  - Memorandum of Understanding if there is one
- Financial Projections (current tax year and the next 2-3 years)
- Agreements with Other Organizations (leases, vendors, etc.)



# IRS Applications

- Form 1023
- Form 1023 Interactive
- Form 1023-EZ

*Which form can your school use?*

A new interactive version of Form 1023 is available at <http://www.irs.gov/efile>. It includes prerequisite questions, auto-calculated fields, help buttons and links to relevant information.

<b>Form 1023</b> (Rev. December 2013) Department of the Treasury Internal Revenue Service	<b>Application for Recognition of Exemption</b> <b>Under Section 501(c)(3) of the Internal Revenue Code</b> <small>► (Use with the June 2006 revision of the Instructions for Form 1023 and the current Notice 1382)</small>	(00) OMB No. 1545-0056 <small>Note: If exempt status is approved, this application will be open for public inspection.</small>
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Use the instructions to complete this application and for a definition of all **bold** items. For additional help, call IRS Exempt Organizations Customer Account Services toll-free at 1-877-829-5500. Visit our website at [www.irs.gov](http://www.irs.gov) for forms and publications. If the required information and documents are not submitted with payment of the appropriate user fee, the application may be returned to you.

Attach additional sheets to this application if you need more space to answer fully. Put your name and EIN on each sheet and identify each answer by Part and line number. Complete Parts I - XI of Form 1023 and submit only those Schedules (A through H) that apply to you.

<b>Part I Identification of Applicant</b>	
<b>1</b> Full name of organization (exactly as it appears in your <b>organizing document</b> )	<b>2</b> c/o Name (if applicable)
<b>3</b> <b>Mailing address</b> (Number and street) (see instructions)	Room/Suite
City or town, state or country, and ZIP + 4	<b>4</b> Employer Identification Number (EIN)
<b>6</b> Primary contact (officer, director, trustee, or <b>authorized representative</b> ) a Name:	<b>5</b> Month the annual accounting period ends (01 - 12)
	b Phone:
	c Fax: (optional)
<b>7</b> Are you represented by an authorized representative, such as an attorney or accountant? If "Yes," provide the authorized representative's name, and the name and address of the authorized representative's firm. Include a completed Form 2848, <i>Power of Attorney and Declaration of Representative</i> , with your application if you would like us to communicate with your representative.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>8</b> Was a person who is not one of your officers, directors, trustees, employees, or an authorized representative listed in line 7, paid, or promised payment, to help plan, manage, or advise you about the structure or activities of your organization, or about your financial or tax matters? If "Yes," provide the person's name, the name and address of the person's firm, the amounts paid or promised to be paid, and describe that person's role.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>9a</b> Organization's website:	
<b>b</b> Organization's email: (optional)	
<b>10</b> Certain organizations are not required to file an information return (Form 990 or Form 990-EZ). If you are granted tax-exemption, are you claiming to be excused from filing Form 990 or Form 990-EZ? If "Yes," explain. See the instructions for a description of organizations not required to file Form 990 or Form 990-EZ.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>11</b> Date incorporated if a corporation, or formed, if other than a corporation. (MM/DD/YYYY) / /	
<b>12</b> Were you formed under the laws of a <b>foreign country</b> ? If "Yes," state the country.	<input type="checkbox"/> Yes <input type="checkbox"/> No

For Paperwork Reduction Act Notice, see page 24 of the instructions. Cat. No. 17133K **Form 1023** (Rev. 12-2013)

# FTB Applications

- Form 3500
- Form 3500A

*What form is your school required to use?*

Exemption Application			CALIFORNIA FORM <b>3500</b>
<b>Organization Information</b>			
California Secretary of State corporation or file number		FEIN	
Name of organization as shown in the organization's creating document		Web address	
Address (suite, room, or PMB no.)			
City		State	ZIP code
Phone number ( )	Second phone number ( )	Fax ( )	
<b>Representative Information</b>			
Name of Representative		Email address	
Address (suite, room, or PMB no.)			
City		State	ZIP code
Phone number ( )	Second phone number ( )	Fax ( )	
<b>General Questions</b>			
<b>Part I Organizational Structure</b>			
Check the box for the type of organization and provide the listed documents. If the listed documents are not provided, the organization's request for exemption will be delayed, or denied. Copies are acceptable.			
<input type="checkbox"/>	<b>California Corporation</b> – incorporated through the California Secretary of State (SOS). See General Information E, Incorporated Organizations. Provide the articles of incorporation, including any amendments stamped by the SOS, and the corporation's bylaws or other code of regulations.		
<input type="checkbox"/>	<b>Foreign Corporation</b> – See General Information F, Foreign Corporations. If the corporation <b>qualified</b> through the California SOS: Provide the Statement and Designation by Foreign Corporation, stamped articles of incorporation including all amendments from the state of incorporation, the corporations bylaws or other code of regulations, and the federal exemption determination letter. If the organization is <b>not qualified</b> through the California SOS: Provide a letter of good standing from the state of incorporation, the stamped articles of incorporation and all amendments from the state of incorporation, the corporation's bylaws or other code of regulations, and the federal exemption determination letter.		
<input type="checkbox"/>	<b>Unincorporated Association</b> – not incorporated through the California SOS. See General Information G, Unincorporated Associations. Provide the constitution, articles of association, bylaws or other code of regulations with specific language, and signed by the board of directors or other governing body.		
<input type="checkbox"/>	<b>Trust</b> – See General Information H, Trusts. Provide the trust instrument, any amendments and the trust's federal exemption determination letter.		
<input type="checkbox"/>	<b>Limited Liability Company</b> – See General Information I, Limited Liability Companies. If the LLC is registered in California: Provide the articles of organization (LLC-1), and any amendments stamped by the SOS, and the operating agreement. If the LLC is a foreign LLC registered in California: Provide the Application to Register a Foreign Limited Liability Company (Form LLC-5), letter of good standing from the state of incorporation, articles of organization from the state of incorporation including any amendments, and the operating agreement.		
<b>Be sure to include the \$25 application fee.</b> Using black or blue ink, make the check or money order payable to the "Franchise Tax Board." Do not send cash. Make all checks or money orders payable in U.S. dollars and drawn against a U.S. financial institution. Mail form FTB 3500 to: FRANCHISE TAX BOARD, PO BOX 942857, SACRAMENTO CA 94257-0501.			
Under penalties of perjury, I declare that I have examined this application, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.			
DATE		SIGNATURE OF OFFICER OR REPRESENTATIVE	TITLE
		7221143	FTB 3500 ct 2014 Side 1



# Deadline To File

IRS deadline is **27 months from incorporation**

- If timely filed, the exemption is retroactive to incorporation
- If not timely filed, the exemption is effective as of application date

The effective date of the exemption is important for:

- Taxation of revenue
- Tax-deductibility of charitable donations

FTB does not have a deadline, but an organization may be subject to corporate taxation while its application is pending

- Exemption cannot be effective before the IRS's effective date





# Application Review Process

It's getting faster!

- Charter school applications are reviewed very closely
- Follow-up requests for additional documents and information are part of the process
- IRS backlog has resulted in review process upward to 2 years!
- New IRS goal to issue determinations within 180 days
- FTB typically issues an exemption within 90 days





# Fast-Tracking the Application Review Process

The key: submit a fully completed application so that the IRS does not have to follow up:

- Provide all documents required for application
- Describe your activities to match your 501(c)(3) classification
  - Do you have the 4 requirements for a “school?”
  - What authorizations have you obtained to operate?
  - What are your sources of income?
  - Where in your Form 1023 should you describe this?
  - No copy-pasting from your Articles!
- Include the necessary financial data
- Have a director or officer sign the application
- Submit the correct user fee





# What To Do While the Application Is Pending

Operate like a tax exempt organization

- Continue your educational operations
  - Obtain charter approval
  - Operate the school
- Collect charitable donations
  - Tax deduction subject to exemption
- **File annual tax returns! (Forms 990)**



# REGISTRY OF CHARITABLE TRUSTS





# Registration

California nonprofit public benefit corporations and other charitable organizations that hold property for charitable purposes are required to register with the California Attorney General

- Initial registration within 30 days of incorporating
- Annual registration
- May be required to submit Form 990s

*However, these filing and reporting requirements do not apply to a charitable corporation organized and operated primarily as an educational institution.*



# KEEP ON TOP OF YOUR EXEMPTION AND CORPORATE STATUS!



# Statement of Information

The California Secretary of State requirements a Statement of Information:

- Within 90 days of incorporating
- Every 2 years from the date of incorporation

The Statement of Information includes:

- Corporation's address
- Names and addresses of corporation's officers
- Name and address of agent for service of process

The filing fee is \$20, and can be filed online.

*It's easy, but don't forget!*



# Your School Must File Annual Tax Returns

## Federal Tax Returns

- Form 990
  - Gross receipts of \$200,000 or more
  - Total assets of \$500,000 or more
- Form 990-EZ
  - Gross receipts under \$200,000
  - Total assets under \$500,000
- Form 990-N (e-Postcard)
  - Gross receipts normally \$50,000 or less

## California Tax Returns

- Form 100 (Corporate Return)
- Form 199 (Exempt Return)





# Failure to File Annual Returns

The IRS will revoke your tax exemption

- Occurs after failing to file returns for 3 consecutive years
- You must file even for years without income
- IRS will revoke exemption even before it is granted
- Must file another Form 1023 to reinstate exemption

California revokes your exemption and suspends your corporate status

- Can occur after failing to file a single return
- Must file corporate returns before tax exemption is granted
- Can reinstate corporate status by
  - Submitting Form 3500 (if not already filed) and waiting for exemption
  - Filing back tax returns (and paying taxes on any revenue earned)

***May also be a charter violation!***





## Questions: Tax Returns

*If your school had no income, is it exempt from filing tax returns?*

No, organizations with little or no income are no longer exempt from the requirement to file annual returns. They may be eligible to file the Form 990-N (e-Postcard).

*Can you file an exempt organization return in California while your school's exemption is pending?*

No, California requires that your school file a corporate return before its exemption is granted.





# What is Private Inurement?

*501(c)(3) cannot operate for the benefit of private interests, and the net earnings cannot inure to benefit of any private shareholder or individual*

*This means salaries must be reasonable and supported*

The IRS closely evaluates:

- Director and officer salaries
- Use of surplus funds (especially when used for bonuses)
- Family and business relationships among officers and directors
- Contracts with directors, officers or family and business relationships
  - CMOs and other vendors
  - Landlords and lessors
- Sale of charter school property and assets
- Scholarship and grant recipients





# How Can Your School Avoid Private Inurement? Comes Up When Setting Compensation

Officer (e.g., your Executive Director, CFO, etc.) compensation must be fair and reasonable, based on:

- Compensation paid by similar organizations (exempt and taxable) for equivalent positions in the same community or area
- Need for the officer's particular services
- Uniqueness of officer's background, education, training, experience and responsibilities
- Whether compensation was approved by an independent board
- Size and complexity of school's income, assets, number of employees
- Prior compensation
- Job performance
- Relationship to compensation of other employees
- Number of hours spent performing duties



# Questions?

Please contact:



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