From: mcphersonbruce@aol.com
To: *TE/GE-EO-F990-Revision;
Subject: Comments on the Draft Instructions for the Redesigned Form 990
Date: Monday, May 19, 2008 9:30:02 AM
Attachments: AllianceComments-DraftInstructions-RedesignedForm990.doc

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The Alliance for Advancing Nonprofit Health Care, representing all types of nonprofit health care providers and health plans, appreciates the opportunity to provide comments on the draft instructions for the redesigned Form 990.

Overall, we believe that the Internal Revenue Service (IRS) has done an excellent job in drafting these instructions, given the size and complexity of the revised Core Form and Schedules and the time constraints involved.

The Alliance has chosen to focus its analysis on the draft instructions for the revised Core Form and Schedules H, J and K, and our comments are attached.

We would be pleased to answer any questions you may have about our attached comments.

Thanks.

Bruce

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May 19, 2008

By Electronic Filing

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE: T: EO
1111 Constitution Avenue, NW
Washington, DC 20224

Subject: Comments on the Draft Instructions for the Redesigned Form 990

The Alliance for Advancing Nonprofit Health Care, representing all types of nonprofit health care providers and health plans, appreciates the opportunity to provide comments on the draft instructions for the redesigned Form 990.

Overall, we believe that the Internal Revenue Service (IRS) has done an excellent job in drafting these instructions, given the size and complexity of the revised Core Form and Schedules and the time constraints involved.

The Alliance has chosen to focus its analysis on the draft instructions for the revised Core Form and Schedules H, J and K, and our comments are as follows.

Core Form

In the Instruction Highlights for the Core Form, the IRS states that, with respect to a parent organization filing a group return, each subordinate organization must annually give a written authorization to the parent to include it in the group return. Since the parent has legal authority over its subordinates in such matters, this requirement is both unnecessary and inappropriate. Such a requirement would be analogous to prohibiting parents from claiming a child living at home as a dependent on their income tax return without the permission of the child for them to do so.

In the instructions for Part IV, as well as in the draft Glossary and instructions for Schedule H, the term “hospital” is defined to be an organization licensed or certified by the state as a hospital. In at least one state, New York, this is problematic because it appears to include in its definition of hospital not only general and specialty hospitals per se but also other types of facilities or institutions providing services by or under the

supervision of a physician, including "public health center, diagnostic center, treatment center, nursing home, outpatient department, outpatient lodge…". Consequently, we urge the IRS to provide a specific definition of the term "hospital" in the final instructions, such as:

- "A facility that provides hospital care is one that provides emergency and inpatient acute care whose length of stay is not limited by statute or rule", or
- "A facility that treats any physical or mental disability or condition on an inpatient acute care basis. Such facilities include those operated by non-medical organizations (e.g., colleges, prisons)".

In the instructions for Line 20 of Part VI, we recommend that the IRS provide a clarification that "the person who possesses the books and records" means the person who possesses either all, most or a significant portion of the books or records.

In the instructions for Part VII, which also applies to Schedule J, the IRS would require a 5-year look-back period in defining "former" officers, trustees, employees, etc) for purposes of compensation reporting. We believe that a 3-year look-back period should suffice and would be one way to ease somewhat the very considerable reporting burdens in this area.

Schedule H

Grant funds used for a particular community benefit program or activity that have been restricted for that purpose should be required to be deducted from the expenses incurred for that program so that the true subsidy provided by the hospital is reported.

We concur that a primary purpose test should be applied in deciding whether certain assessments and distributions of funds should be reported under the charity care or the Medicaid component of community benefit.

We also concur that information on foreign hospitals should not be required to be reported in Parts I through IV.

In Part III, we urge that hospitals be allowed to report Medicare costs that differ from what the Medicare program defines as allowable costs, if they believe that their definition is more accurate and if they explain in Schedule O how their definition differs and why. Also, these instructions should make it clear that Medicare revenues and costs should include those for Medicare Part B services where applicable.

The amount of bad debts reported should not be required to be the amount that is reported in a footnote in the organization's financial statement, as some hospitals may report bad debts elsewhere in their financial reports.

Schedule J

The instructions should indicate that deferred compensation does not need to be reported prior to vesting, as it has no real monetary value to the recipient up to that point.

Schedule K

We urge that reporting not be required on refundings of pre-2003 bond issues. It will be extremely difficult and costly to retrieve all of the information being required to be reported on older issues, and this exception will help to ease the burden for at least some nonprofit organizations using tax-exempt bond financing.

We fully appreciate the magnitude of the challenge you have undertaken, and we would be pleased to answer any questions you may have about the forgoing comments. You may contact me at 877-299-6497 or mcphersonbruce@aol.com.

Sincerely,

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May 15, 2008

By Electronic Filing

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

RE: COMMENTS ON DRAFT FORM 990, SCHEDULE H, AND SELECTED OTHER INSTRUCTIONS

On behalf of our nearly 5,000 member hospitals, health care systems, networks and other health care providers, and our 37,000 individual members, the American Hospital Association (AHA) appreciates the opportunity to submit comments on the draft instructions for Form 990, Schedule H for Hospitals, and selected other sections of the draft instructions.

We recognize the work that the Internal Revenue Service (IRS or Service) has put into the draft instructions, particularly those for Schedule H, and the Service's willingness to address questions from the hospital community. We particularly want to acknowledge the efforts of IRS officials who met with AHA and other associations representing tax-exempt hospitals to discuss the draft instructions, and who participated in a conference call with our members.

The instructions, like the form itself, need to be crafted to meet the Service's original goals. We encourage the Service to continue to improve the draft instructions with these goals in mind:

- **Enhancing transparency**
- **Promoting compliance**
- **Minimizing the burden** on filing organizations [which] means asking questions in a manner that makes it relatively easy to fill out the form, and that do not impose unwarranted additional recordkeeping or information gathering burdens to obtain and substantiate the reported information.

Our comments focus on Schedule H, but also raise issues with several aspects of the draft instructions for Form 990, Schedule J, Compensation Information, and Schedule K, Supplemental Information on Tax-Exempt Bonds.

SCHEDULE H

We very much appreciate the Service's efforts to minimize the considerable burden on hospitals associated with the new form and schedules, particularly Schedule H. As the Service is aware, many tax-exempt hospitals are small and many are financially strapped, which makes it particularly important that the Schedule H instructions be crafted with these organizations in mind. We believe that the Service has, in large measure, achieved that balance. However, there are some areas where the instructions need to be improved to further minimize burden and achieve greater clarity and consistency.

Who Must File

The draft instructions and highlights provide that an organization is not required or permitted to include foreign hospitals on Schedule H, except that foreign joint ventures and partnerships *must* be included in Part IV and information concerning foreign hospitals *may* be included in Part VI. Filers of Schedule H should be allowed to report data from foreign hospitals that are operated as an integral part of the filing organization.

Part I Charity Care and Certain Other Community Benefits

Many AHA members' corporate structures include multiple corporations, most of which provide some community benefit activities in addition to those conducted directly by the hospital. The draft instructions provide that Schedule H should aggregate information from disregarded entities and joint ventures, but does not provide a mechanism to capture activities from related corporations that operate within the hospital system or holding company structure. It is unclear from the draft instructions how organizations filing Schedule H should account for community benefit activities being provided by related foundations or tax-exempt organizations within a multi-entity health care system. AHA urges the IRS to clarify in the final instructions how such community benefit activities should be reported, since activity that would have been conducted by the hospital but for the corporate structure should be reportable activity. While Part VI permits an organization that is part of an affiliated health care system to describe the respective roles of the organization and its affiliates in promoting the health of the communities served, AHA does not believe this question adequately and appropriately addresses the issue presented.

To calculate amounts to be included in the charity care and other community benefit table, the draft instructions provide that organizations may use the worksheets provided with the instructions or other equivalent documentation that substantiates the information reported consistent with the methodology required in the worksheets. Many AHA member hospitals have developed or licensed software programs to capture information in connection with various state law community benefit reporting requirements. AHA urges the IRS to clarify in the instructions that such software created or purchased by health care organizations is considered "other equivalent documentation" whose use does not require an organization to duplicate effort by capturing equivalent information on the worksheets.

Grants

We commend the Service for its treatment of grants restricted for community benefit activities. That determination will encourage hospitals to seek such grants to support programs and services in their community that otherwise might not have been available.

The draft instructions do not require grants (whether restricted or not) that an organization receives and uses to provide community benefit to be counted as "Direct offsetting revenue" in computing "Net community benefit expense" on the charity care and other community benefit table. The draft instructions also provide that an organization may not report on Line 7(i) (Cash and in-kind contributions to community groups) any contributions that were funded in whole or in part by a restricted grant from a related organization. Moreover, the draft instructions provide that unrestricted grants or gifts to another organization that may, at the grantee organization's discretion, be used other than to provide community benefit may not be reported on Line 7(i). Thus, it appears that if an organization makes a grant to a related organization, including to a foundation or other tax-exempt organization that is not required to file Schedule H, the organization should include such grant in Line 7(i), as long as it is restricted to be used to provide community benefit and was not funded by a restricted grant in the first place. This could also include a grant that was subsequently used by the related organization to fund in whole or in part a grant to another organization. Although this position can be discerned from the draft instructions as written, AHA requests that the IRS clarify this point in the final instructions.

Reporting Benefits

We support the IRS' decision to remove bad debt expense from the total expense figure used in the denominator in Column (f) "Percent of total expense." The accounting principles adopted by the American Institute of Certified Public Accountants (AICPA) instruct hospitals to treat charges written off as bad debt as an addition to expenses rather than a deduction from revenue. Backing out bad debt expense from the total expense figure recognizes that charges for bad debt are not an "expense" in the true sense of the word, but rather a way of accounting for the absence of revenue in the income statement. Leaving bad debt expense in the total expense figure would artificially inflate the denominator. The IRS should clarify that hospitals that follow other standards, such as those of the Government Accounting Standards Board (GASB), will not need to make this adjustment.

Under Line 7, Column (c) instructions, we suggest adding the words "if desired" to the end of the first sentence to ensure hospitals understand that these worksheets are optional.

Under Line 7, Column (f) instructions, the appropriate accounting term is "bad debt expense" throughout.

Medicaid Provider Taxes

The Service specifically has requested comments on how filing organizations should report the cost of Medicaid and provider taxes (Worksheet 1, Line 4) and revenue from uncompensated care pools or programs, including Medicaid Disproportionate Share Hospital (DSH) funds (Worksheet 1, Line 6), as costs and revenues associated with charity care (Worksheet 1) or with Medicaid and other means tested government programs (Worksheet 3). We have solicited input from hospital members and state hospital associations and believe the primary purpose requirement makes sense. This approach recognizes the variation across states in how provider tax programs are structured and funds are used, but does not create the undue burden of having to allocate the payments across multiple patient types.

The wording in the instructions for Worksheet 1, Line 4, however, is confusing, and results in a narrower-than-intended interpretation of what hospitals should report. We suggest the following changes:

> Line 4*:* Enter the amount of Medicaid provider taxes paid by the organization, if payments received from an uncompensated care pool or Medicaid Disproportionate Share Hospital (DSH) program in the organization's home state are intended primarily to offset the cost of charity care. If such payments are primarily intended to offset the cost of Medicaid services, then report this amount in Worksheet 3, Line 4(A). "Medicaid provider taxes," sometimes termed a "fee" or "assessment," or "health care-related tax," means amounts paid or transferred by the organization to one or more states as a mechanism to generate federal Medicaid funds.

Note that we have suggested that the Service delete the last sentence because it does not add to the definition and creates the false impression that provider tax programs uniformly benefit individual providers.

On Worksheet 1, Line 4 and Worksheet 3, Line 4, delete the word "or."

Definition of Subsidized Services

Hospitals subsidize a range of services to meet the specific needs of their communities. These needs differ greatly based on demographic and geographic factors. For example, an inner-city hospital experiencing a high number of emergency department visits for uncontrolled asthma may establish a clinic offering free or reduced-fee services for children with asthma. A small rural hospital may need to subsidize physician on-call coverage to ensure the community has 24/7 access to emergency services.

The criteria that the IRS provides for "subsidized services" are clear and comprehensive and the examples cover a range of common service offerings. However, based on input from our hospital members on the unique circumstances that individual communities face, we believe it is inappropriate to exclude certain specific types of services provided that they meet the

criteria outlined. These include physician clinic services, skilled nursing services and ancillary services.

Hospital-subsidized physician clinics often provide a critical access point to care for low-income patients. The Center for Studying Health System Change has documented that the percentage of physicians providing charity care and serving Medicaid patients has been steadily declining over the past decade. Research also has documented the negative health effects associated with the inability to access physician care. Hospitals often sponsor physician clinics that offer free or reduced-fee physician care to fill this gap. Physician clinic services clearly provide a benefit to the community, and any subsidies required to operate these clinics should be reported.

Skilled nursing facilities (SNF) provide an important part of the continuum of care for patients who no longer require the intensity of service provided by a hospital but cannot be discharged safely to their homes. Small rural communities often do not have a large enough population to support a freestanding SNF, leaving patients either to remain in the hospital longer than necessary or be placed in a SNF that is far from their home and family. Other communities may not have sufficient capacity, especially to serve low-income populations. Hospitals frequently step in to meet this community need, but these services often generate a financial loss. When a SNF fills a documented community need, any subsidies required should be reported as a community benefit.

Hospitals are finding it increasingly difficult to ensure emergency access to specialty physician care. There is a shortage of neurosurgeons, orthopedic surgeons and other specialists willing and able to provide on-call coverage for hospital emergency departments. Anesthesiology (an "ancillary" service) also can be problematic. Providing emergency on-call services adds to the costs of medical liability coverage for physicians and often involves caring for patients who do not pay. More and more hospitals are paying for on-call coverage, guaranteeing payment for uninsured patients or otherwise supporting the costs of 24/7 physician coverage of their emergency departments and trauma units. When these costs meet the IRS criteria for subsidized services, they should be reported.

Part II Community Building Activities

Under Line 8 (Workforce development), the IRS should broaden the category to include other circumstances under which physician recruitment can be reported, such as the absence or shortage of a particular physician specialty. To that end, the IRS could amend the existing language to add after "underserved": "or in other circumstances where there is an identified community need for a particular type of physician(s)."

Part III Bad Debt, Medicare & Collection Practices

We urge the Service to incorporate language from the original "Highlights" document into the instructions themselves, explicitly recognizing, as the Service did in the previous document that this section permits:

- important and uniform reporting of bad debt expense information and an explanation of why certain portions of bad debt should be considered community benefit; and
- important information regarding Medicare revenues and costs, shortfalls or surpluses and an explanation of why certain portions should be treated as community benefit.

This addition will help preserve the IRS' frequently publicly stated view of the importance of collecting this information and the opportunity it presents for the hospital community.

Section A

AHA commends the IRS for clarifying in the draft instructions that hospitals are not required to adopt or rely on the Healthcare Financial Management Association's Statement No. 15. AHA also appreciates the IRS' assurances that a "no" response to the related question at Line 1 in Part III, Section A will not reflect poorly on an organization or otherwise be used to target an organization for an audit.

Line 4 requires an organization to provide the text of the footnote to the organization's financial statements that describes bad debt expense. The draft instructions further provide that footnotes related to "accounts receivable," "allowance for doubtful accounts," or similar designations may satisfy this reporting requirement. We understand that many health care organizations' financial statements do not contain footnotes relating to bad debt expense or any noted or similar designations. AHA suggests that the IRS include language in the draft instructions to this question to clarify that, if this is the case, organizations are not required to create footnotes in financial statements to satisfy this question.

Section B

Under Section B-Medicare, Line 8, the Service has failed to provide any guidance to hospitals about the type of explanation it would find useful in better understanding which portions of Medicare underpayments constitute community benefit. To that end, we recommend that the Service incorporate the following language, or something similar, into the instructions:

> An organization's rationale may have any reasonable basis, including the amount of the shortfall that might otherwise have been used to support the programs included in Parts I or II, an estimate of the income range of the organization's Medicare patients, an estimate of the number of Medicare patients also eligible for the Medicaid program (dual eligibles), or whether the organization reports the amount of Medicare shortfall to any state government authority identified in Part IV, Line 8, or any other government authority.

As the IRS is aware, this is an area in which hospitals have been provided little guidance in the past and in which guidance, like that suggested above, would be quite useful.

Under the introductory paragraph for Part III on page 9, we suggest that the IRS add the word "likely" after the word "who" in the first sentence to be consistent with the phrasing on the following page.

We urge the IRS to allow hospitals the same options for accounting for Medicare costs as are available for other parts of Schedule H. The current instructions are confusing and provide conflicting guidance. For example:

- By using the word "allowable cost" in Line 5, the IRS implies that hospitals should use Medicare cost reporting rules and accounting standards to calculate the Medicare shortfall. The inclusion of multiple choices on Line 8, however, implies that hospitals still have the ability to use the most accurate method available to them as they do elsewhere on Schedule H. The instructions provide no guidance on what those checkboxes mean.
- Line 5 of Part III says to "Enter total revenue received from Medicare (including DSH and IME)," and the instructions provide further guidance on what revenues to include or exclude. One item that is specifically *included* is Part B physician services. On the worksheet supporting Line 6, the IRS says to take Medicare allowable costs (from the Medicare Cost Report). The Medicare cost report does not account for the revenues and costs of Part B physician services because they are paid under a different payment system. Thus the IRS is including Part B physician services in revenues, but excluding them from costs.

Medicare cost report accounting is very different from Generally Accepted Accounting Principles (GAAP) standards and, as such, will be very different from what hospitals determine is the most accurate costing method to use elsewhere on Schedule H. The Medicare cost report is designed only to produce cost estimates for a specific subset of Medicare programs. It excludes parts of the Medicare program that may contribute to Medicare gains or losses for the hospital like Part B physician services, as mentioned above, and the revenues and costs associated with Medicare Advantage patients. Worksheet 3 specifically asks hospitals to include the revenues and costs associated with Medicaid managed care patients. The Kaiser Family Foundation's Web site contains a useful fact sheet on the Medicare Advantage program: http://www.kff.org/medicare/2052.cfm.

To be consistent with the calculations on other parts of the form and provide a full accounting with respect to Medicare, Section B should capture the costs and revenues associated with *all* Medicare services and patients using the most accurate approach available.

Part V Facility Information

In the draft instructions, the IRS has proposed to adopt a definition of "facility" that is too broad. Under this broad definition, large health care systems that operate numerous hospitals will be required to report every building, structure, clinic, etc. Such a reporting requirement will amount to dozens of pages of information being submitted to satisfy this question. Thus, for large complex health care systems, such a broad definition would require details that are

not meaningful to understanding the hospital. Consequently, AHA urges the IRS to adopt a definition of "facility" that is confined to "an entity that is licensed and/or certified as a hospital."

FORM 990 – KEY EMPLOYEE

Although the IRS has made many improvements to the Form 990 instructions, some concerns remain. Of immediate concern is the breadth of the definition of "key employee." We have consistently advocated for a much more focused definition that would reduce the burden of providing this information. Hospitals and hospital systems can be large and complex organizations, and the new definition does too little to mitigate the burden associated with this new reporting requirement. We note that even within our own organization, the revised definition could capture Human Resource executives who have virtually no "responsibilities, powers or influence over the organization … that is similar to those of officers, directors or trustees." The same would be true for hospitals.

We agree with the American Society of Association Executives (ASAE) that the definition of "key employee," even as revised by the draft instructions, remains too broad and sweeping and should be further refined. Both the percentage threshold (now 5 percent) and the control standard (management) need to be revised; a threshold well above 5 percent and a tighter control standard coupled with an upper limit on the number of employees to be reported – preferably limited to three – should replace the current definition. If experience with the new form ultimately suggests a more expansive definition, the Service should revise it at that time.

SCHEDULE J – DEFERRED COMPENSATION

The draft instructions to Schedule J require deferred compensation to be reported in the year earned, whether or not funded, vested or subject to substantial forfeiture, *and* in the year paid. Although final Schedule J includes column (F) for the reporting of amounts that were also reported in another year, AHA believes that this addition does not address the unfairness and misperception associated with reporting compensation that is not yet considered to be income to the recipient. Thus, AHA urges the IRS to require that amounts of unpaid, unvested deferred compensation be reported only in the year the compensation is paid to the recipient.

SCHEDULE K – SUPPLEMENTAL INFORMATION ON TAX-EXEMPT BONDS

The draft instructions to Schedule K require organizations to complete the Schedule for each outstanding tax-exempt bond that both had an outstanding principal amount in excess of $100,000 as of the last day of the tax year and was issued after December 31, 2002. The draft instructions further provide that refundings after December 31, 2002 of pre-2003 issues must be treated as post-2002 issues and reported on Schedule K. AHA urges the IRS to clarify in the instructions that such reporting does not include information on expenditure and investment of proceeds or uses of bond-financed facilities occurring prior to 2003.

We appreciate the opportunity to submit our comments, and we especially appreciate the IRS' efforts to reach out to the hospital community and better understand its concerns. We welcome the opportunity to help the IRS improve these instructions. If you have any further questions, please contact me at (202) 626-2336 or mhatton@aha.org.

Sincerely,

Melinda Reid Hatton
Senior Vice President and General Counsel

From: Jeannine James
To: *TE/GE-EO-F990-Revision;
Subject: Comments on Form 990 Revision
Date: Monday, May 05, 2008 10:10:37 AM

The American Research Company publishes statistical compensation data for non-profit association executives so they can comply with existing IRS guidelines for determining comparable pay. We have concerns regarding the compensation questions and instructions in the new Form 990.

First, the new Form asks for a list of key employees, regardless of compensation (Part VII, Section A, 1a), while the instructions ask for this information only if compensation exceeds $150,000.

Secondly, although the current Form 990 asks for compensation of the five highest paid employees who receive more than $50,000 (Schedule A, Part I, required for 501(c)(3) organizations), the new Form 990 asks for the five highest compensated employees with reportable compensation of more than $100,000. With this higher threshold in the new Form, we believe the following problems will be created: 1) less information will be provided, i.e., the highest paid employees in the $50,000 to $100,000 range will be eliminated entirely; and 2) average compensation figures obtained for the major staff positions (e.g., Deputy, V.P., Marketing, Finance, etc.) will increase substantially, and unnecessarily as the new Forms come on line.

From a statistical perspective, to obtain truly accurate comparable compensation averages for staff positions, the $50,000 threshold should be removed altogether. As a practical matter, however, this figure has been used for quite some time, and there are probably few senior staff who fall below the $50,000 threshold. This is not true, however, of the new threshold of $100,000.

For example, consider the current Form 990 of a 501(c)(3) organization with revenues of almost $5,000,000. The organization’s 2005 Form reports that the CEO was paid $96,000, the Chief Librarian $77,000, and the Finance Manager $62,000. In the new Form 990 this information would not be reported. And yet the leaders of an organization like this one need to determine if their senior executives’ pay is comparable to the compensation of others "in functionally comparable positions in similarly situated organizations" (IRS instructions for line 15, part VI). This organization, as well as all other non-profits, regardless of compensation levels, will be asked in the new Form 990 to indicate if comparability data were used in the process of determining compensation for the CEO and other key employees of the organization (Part VI, Section B, item 15). If

the information is eliminated from the Forms, how are organizations expected to obtain the required comparable data?

In order for organizations to continue to obtain accurate and relevant comparable data, either on their own or by using publications such as ours, it is essential to continue to capture all key employee compensation, as well as staff data for the highest paid employees, without imposing higher compensation thresholds.

We appreciate your review of our concerns, and hope these matters can be straightened out.

Thank you for the opportunity to comment.

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From: Ann Beltran [mailto:abeltran@NCNA.ORG]
Sent: Friday, May 16, 2008 2:19 PM
To: *TE/GE-EO-F990-Revision
Subject: NCNA comments on Form 990 Draft Instructions

May 16, 2008

The **National Council of Nonprofit Associations** (NCNA) is the network of 42 state and regional nonprofit associations serving over 20,000 members in 39 states and the District of Columbia. NCNA links local organizations to a national audience through state associations and helps small and midsize nonprofits manage and lead more effectively; collaborate and exchange solutions; engage in critical policy issues affecting the sector; and achieve greater impact in their communities. The nonprofits in our federation are typical of the majority of the nonprofit sector, in being of small to medium size, focused on their public benefit missions, and strapped for resources frequently when it comes to integrating substantial legal and accounting changes.

Our first comment is that NCNA appreciates the obvious effort the IRS has made throughout the past year to listen to and consider what individuals and organizations are saying regarding the annual reporting forms. The regulatory process for this redesign has been open, inviting, and demonstrated flexibility in considering remarks of many nonprofit organizations of all sizes and varieties.

NCNA was active in bringing our members, and in some cases their members, into the review process of the draft Form 990. We created a task force composed of well-informed members and held a series of webinars to capture information and reactions from those in the field. We then submitted extensive comments based upon the feedback we received from the field. Some of our suggested changes were in fact made on the revised form.

After the form was finalized we held a 3-part webinar series to inform the field about the changes. These webinars are now downloadable on our website, http://www.nonprofitcongress.org/?q=990webinars. More recent activities include written updates to our members http://www.ncna.org/_uploads/documents/live//Memo%20to%20Members%20990%20instructions.pdf to encourage their review and encouraging our members, in a variety of ways, to review the draft instructions

Despite our best efforts we have found that it has been difficult to get nonprofits in the field to give this review thorough consideration and we fear that their voices will not be adequately represented given the time constraints. When we have received feedback, we have heard that this will take “much more studying” and, for example, that “the entire issue of reporting compensation is tremendously confusing – so confusing that I’m not sure my comments are very helpful.” We have included at the end those few comments that we have directly received up to the date of this email.

The reality is that as important as the IRS timing is in finalizing these draft instructions for use for the 2008 FY, what is occupying the time of small to midsize nonprofits right now is their 2007 FY filings using the old forms. IRS may well find that comments and questions regarding the instructions will happen when nonprofits are actually filing the

revised form next year. With this in mind we ask that you consider reworking the instructions after the initial use when those in the field will have most of their questions.

This does put us all in a difficult situation since some information will require changes NOW in capturing data/information needed to fully complete the form next year. This will require extensive outreach to the field instructing them on capturing data in new ways in order that they have the needed information to file the form correctly. With this in mind we suggest we work in partnership with IRS to develop “easy-to-use guidelines” for nonprofit use as they report their 2008 financial data. This information will be widely shared with the field through our state association network. We suggest a partnership with IRS, NCNA and state association sponsored seminars or webinars to get the word out as widely as possible. We believe the most critical task at hand is ensuring nonprofits are capturing financial and other data NOW.

On a positive note many of the nonprofits that we represent will be filing the 990-EZ (according to estimates that Ron Schultz of the IRS made on one of our webinars) and as a result many will be looking more seriously at the changes to that form. We do hope there will be some opportunity for comment on the changes to the 990-EZ as nonprofits begin the filing process. We would be willing to capture information from the field as to the questions/concerns they have about filing the 990-EZ form.

We have no reason to doubt that IRS will continue to have an open and inviting process going forward. We look forward to the opportunities established by the Service for continuing to be in conversation with the sector about the final implementation of this impressive multi-year overhaul of the filing system.

Thank you for your consideration of this request.

Sincerely,

Audrey R. Alvardo | Executive Director
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Specific comments on the draft instructions received by the National Council of Nonprofit Associations, as of May 16, 2008:

- I think NCNA comments should really stress the issue of consistency between form, instructions and glossary, especially on the issue of reporting compensation. By the way, the new glossary is far, far better than the first draft, so I was encouraged by that progress.
- Glossary: I am not finding a definition of "independent auditor." This merits its own definition.
- Item G. Gross Receipts. The instructions for obtaining the amount to enter into this item are very confusing, if not inaccurate. Reinforcement that this item should be completed only at a later time might be helpful, and then the instructions for which number to enter could be greatly simplified by referring to net values, rather than sub-items of Part VIII.
- Part 1

  Line 6. This number could be more useful if organizations also estimated how many total hours of service were provided by their volunteers.

  Lines 8-19. If an organization filed Form 990-EZ for the prior year, will the "Prior Year" column be left blank?
- Part IV

  Line 15. The instructions seem to indicate that Line 15 operates independently to trigger filing of Schedule F, regardless of the response on Line 14. So, if the organization has only provided grants to overseas organizations of more than $5,000, then Schedule F must be completed, even though it maintains no offices, employees or agents overseas.

  Line 23. The instructions for which employees must be listed in Part VII that uses the $100,000 threshold, as opposed to which organizations must complete Schedule J, which is apparently based on a $150,000 threshold, is very confusing. Several examples might be helpful dealing with the issues of what triggers the reporting requirement on the Core Form, as opposed to what triggers Schedule J. This confusion is added to the issue of what must be included in compensation.

From: Gary Shapiro
To: *TE/GE-EO-F990-Revision;
Subject: New Form 990
Date: Saturday, May 17, 2008 10:29:31 AM

The Consumer Electronics Association (CEA) is a 501 c 6 trade association with some 2200 corporate members and 150 employees. We appreciate and support the Service's effort to update and clarify the tax forms for non-profit organizations. Indeed, we recognize the value to the public of such disclosures as you can see below in the commentary published several months ago in *Roll Call*.

The Draft Requires Compensation Disclosure of Too Many Employees and Should Be More Limited

In the draft instructions, a "key employee" whose compensation must be disclosed is an one who (1) has responsibilities, powers or influence over the organization as a whole that is similar to those of officers, directors, or trustees; (2) manages a discrete segment or activity of the organization that represents 5% or more of activities, assets, income, or expenses of the organization; or (3) has or shares authority to control or determine 5% or more of the organization's capital expenditures, operating budget, or compensation for employees…[Excludes any persons whose reportable compensation from the organization does not exceed $150,000]"

Our primary concern is with the five percent threshold We appreciate the Service's willingness to create a black and white test, but this number is so low as to encompass a large number of our employees as it includes anyone who has responsibility for managing or controlling "activities, assets, income, or expenses". These are four different areas – each area having a theoretical hundred percent number. (Although we are unsure how one quantifies a percentage of "activities"). More, many people managing activities, expenses, revenue, or assets, have people above them – who assumedly would also be covered under this definition.

This reading of the proposal is further broadened by the draft's apparent blending of "management" and "control". CEA runs a large trade show, so several CEA employees manage operational aspects with large revenue and expense. Our view is that "manage" does not equal "control." We have several employees managing big expense and revenue items (accountants manage This lack of clarity in the draft is confusing and problematic.

The threshold of $150,000 in compensation is an objective limiter and safe harbor, but given competition for talent and inflation – and as compensation is broadly defined to include much more than salary, we suggest this threshold be raised to at least $200,000 and have provisions for inflation adjustment.

The Service proposal now exceeds those required for employees of publicly traded companies. Employees in those cases have an opportunity to own equity in the company and may be willing to sacrifice their privacy for stock market gains. As this tool is unavailable to non-profits, money is always tight; the Service rules will be making it more difficult for non-profits to attract the most talented people

Consider Alternatives to Requiring Disclosure of an Individual's Compensation Publicly and by Name

Individual compensation is a private matter, and competent people are less likely to take positions if their compensation is subject to public disclosure.

We suggest you consider reporting in aggregate by number so individual names are not disclosed but overall compensation can be surmised. Anonymous disclosure, just by all salaries over a certain amount, or grouped, without revealing names or titles should meet IRS objectives without compromising privacy and without causing the type of management challenges that internal disclosure of compensation causes. Specifically, the compensation system many organizations rely on rewards experience and accomplishment based on performance based indicators and just as employees view their peers titles with internal comparisons and not always healthy results for organizations, so too will they do this with compensation. Anonymity in disclosure can avoid this result.

Consider That if Implemented as Proposed, Compensation Disclosures Will Raise Compensation for Non Profit Executives and Thus Costs for Associations

Disclosure of CEO compensation for publicly traded companies has raised overall CEO salaries. As required by Sarbanes Oxley compensation committees use comparable data. Few, if any, compensation committees wants to pay their CEO

below the median, so they pay at least at the median. Thus the median continuously drifts up and compensation for CEO follows. That is why CEO compensation has risen faster than worker compensation. Similarly, with non-profit CEO compensation. So further expanding reportable income will perversely raise non-profit executive salaries and thus costs and do little to further the non-profit mission.

This view is born out from the facts and a recent blog posting:

> In the case of for-profit CEOs, it turned out to be a big mistake. The SEC thought it abominable that CEO compensation had skyrocketed from 5 times the average salary of the firm to 10 times. Over mighty howls from executives, the SEC began requiring public disclosures of CEO compensation. Major backfire! Since disclosures, CEO salaries have jumped: 364 times the average worker according to a CNN report last summer. http://money.cnn.com/2007/08/28/news/economy/ceo_pay_workers/index.htm

Consider Treating Associations Different than Charities

By reporting compensation for several employees, even in excess of SEC requirements for publicly traded companies, trade associations will be at a hiring disadvantage compared to other employers.

We do ask you to reconsider the definition of "key employees," for the purposes of reporting compensation, as it may engulf numerous association employees and thus challenge non-profit associations to attract the best and brightest. Our economy and national competitiveness rely on the strength of professions and industries to come together with associations who can facilitate creative solutions to common problems. As Alexis de Tocqueville recognized 180 years ago, a core strength of our nation is our unique desire to come together in associations to solve problems.

We understand the Service and the public interest may provide several rationales for requiring compensation disclosure of exempt organization employees, especially of charities. Certain charities have abused the public trust, bordered on fraudulent, and been paid with funds taxpayers deducted from income. However, these

rationales do not apply to trade associations, Although dues and most other trade association payments are a business expense deduction for members, we are unaware of abuses similar to charities. More, the trade association Board environment has every incentive to require financial accountability and prudence.

Thus the rationale for a broad key employee definition remains unclear. The anti-inurement requirement does not appear applicable. Public disclosure and interest seems satisfied by simply requiring information on the top five people.

We ask the Service to consider modifying the regulations.

Respectfully submitted,

Gary Shapiro

President and CEO

Consumer Electronics Association

703 907 7610

It's Time for Think Tank Funding Disclosure

September 20, 2007
By Gary Shapiro,
Special to Roll Call

Congressional ethics reform, lobbying disclosure requirements and options backdating lawsuits all rely on a simple premise: Disclosure is healthy. Disclosure shines sunlight on self-dealing in politics, provides vital data to investors and allows consumers to make informed purchasing decisions.
As Congress returns from summer recess to debate these and other pending issues, it will be heavily influenced by the one segment in the Washington, D.C., food chain that thrives without disclosure and exercises enormous power by issuing research and opinions without telling who is paying for these points of view.

Think tanks are Washington mushrooms, sprouting quickly and freely

without any visible food source. They issue important-sounding opinions and research which vary in (nutritional) value but almost never indicate who really paid for those results. Some think tanks, like the Heritage Foundation, Cato Institute and Brookings Institution, have impeccable credentials, a broad contribution base and a real political philosophy, but others simply are fronts for lobbying groups paying for someone else to take their position.

The association I head, the Consumer Electronics Association, represents more than 2,100 technology companies. Our membership, our funding and our interests all are disclosed in many ways, including through studies we produce in-house, our tax returns, lobbying disclosures and our annual report. Our self-interest and revenue sources are visible and apparent. We are passionate about technology positively changing the world. But the fact is not all industries view the advance of technology as positive, and we daily fight industries that ask the government to restrict technology to preserve their old business models. That's fine and fair and part of the give-and-take of a free society. All trade associations lobby, run ads, testify and try their best to convince the government that the national and consumer interest matches their industry causes.

But increasingly, the policy battleground has shifted to think tanks. Taking on a think tank is like countering a sniper — it's hard to shoot back at what you can't identify. One think tank, the Institute for Policy Innovation, just issued a report claiming that the U.S. music industry is losing billions because of the advent of digital media. We would counter that digital technologies create economic opportunity for traditional content companies, and we have our own economic research proving that point. But we don't know against whom we are arguing. There is no way to find out who funds the IPI or the study from its Web site or tax returns. The study includes a disclaimer that "[n]othing written here should be construed as an attempt to influence the passage of any legislation before Congress." But some in Washington — including perhaps the backers of IPI — are pushing legislation to expand the role of the federal government as the police force for the content companies, and this study surely will be one of many "independent" sources cited for advancing the legislation.

It is not good for policy or objective analysis if lobbying groups can buy research and hide behind anonymity. If drug companies must disclose paid research and tobacco companies have been exhorted for secretly funding research, why do other interest groups get a free ride? If the major funding for think tanks were disclosed, policymakers, the media and the public would have context. They could evaluate the merits of the research and look for bias. It seems a fair trade for the tax-free status of the groups.

Even without any federal law governing disclosure, any journalist or legislator can and should insist on understanding the funding before running stories on or allowing into evidence think tank research.

Obviously, we are frustrated that our opponents may be buying influence, albeit legally. Our critics also would argue that we are not without sin, for we have contributed to pro-technology groups such as Public Knowledge and Cato and we have funded the Digital Freedom Campaign and supported the Home Recording Rights Coalition. But we will freely admit to these contributions, when many of our critics don't. We will never hide behind someone else's research we funded and not disclose it. It's not only about the law, it's about ethics.

It's time that the law, ethics and journalists marched in step on the issue of think tank funding.

Gary Shapiro is president and CEO of the Consumer Electronics Association.

From: Michael Hubbard
To: *TE/GE-EO-F990-Revision;
Subject: 990
Date: Wednesday, May 14, 2008 12:14:11 AM

Hello
What ever happened to easy, every year there is more and more to fill out.

From: Minton, Paul
To: *TE/GE-EO-F990-Revision;
Subject: Question
Date: Wednesday, May 14, 2008 5:03:02 PM

With regard to the revised Form 990 - what will the annual filing requirements be for a charitable trust?

Paul H. Minton, Esq.
Obermayer Rebmann Maxwell & Hippel LLP
One Mellon Center, Suite 5240
500 Grant Street
Pittsburgh, PA 15219
Direct (412) 288-2457
Fax (412) 566-1508

From: Putnam Barber
To: *TE/GE-EO-F990-Revision;
Subject: Comments and suggestions on the Draft Instructions
Date: Saturday, May 17, 2008 10:31:42 AM

Thank you for the opportunity to comment on the Draft Instructions for the revised Form 990 and related schedules.

Like many others, I welcome the many improvements in both the overall design and the many details of the Form and the instructions. The broad participation in this project from many points of view is resulting in a reporting system that will strengthen many parts of the work of nonprofit organizations and other exempt entities.

With best wishes,

Putnam Barber
732 17th Ave East
Seattle, WA 98112
206 250-2268

Naming of Schedules Whenever schedules are mentioned in the instructions, the name as well as the identifying letter should be given.

Income Reporting Thresholds The threshold for reporting compensation should be the same for key employees and for highest-paid employees, and set at $100,000 in both cases. Having different thresholds complicates the preparation of the form and limits the utility of aggregated data for comparing compensation and other management and analytical purposes.

Formatting When the instructions are prepared for publication online (i.e., on a webpage), the traditional three-column presentation should not be used. Reading a passage of any length in the three-column format (in a .pdf file) requires scrolling up and down on most computer displays. Rather, the text should be presented in a single column and designed so that if the size of the characters is changed, the length of the lines automatically adjusts as well to avoid the necessity of scrolling from side to side.

Terms contained in the Glossary should be indicated by a distinctive type face in the text of the instructions and in the Form and Schedules. The definitions should not be repeated in the text of the instructions. In the online version of the instructions, the defined terms should be set up as a link to the Glossary (or with a

"mouse-over" display of the related definition from the Glossary).
Core Form Highlights - Part VII, 4th major paragraph (Page 3 of 16)
Should the word here be "official" or "officer"?
Governance When the word "member" is used, the instructions should always be unambiguous as between a member of the governing body (commonly called a "board member") and a person who is designated as a member as a result of paying dues or in recognition of some other relationship with the organization.
Filing Instructions In spite of these general instructions, many of the detailed instructions say "if.., leave this line blank." It would be better to say "if.. enter 'n/a' or 'none'". It is much clearer to require an entry on every line (except, as noted, those that immediately follow a yes-no question where no further information is necessary).
The paragraph titled "Completing All Lines" (on page 15 of the Highlights) covers more than one subject in a way that may lead to confusion. In particular, the last sentence warning against attachments should be set forth separately and highlighted.
Volunteers There should be a single general instruction that reviews all the sections and lines of the Form 990 (including all Schedules) where information concerning volunteers is requested or required. Where differences exists in the method of identifying volunteers, or the valuation of their contributions to the organization, those differences should be highlighted and explained in this general instruction. As an example, see the instructions concerning donated services in the instructions for Core Form, Part III, line 4.
Core Form, Part III, Line 1 Either the form itself should state that line 1 is to be left blank if no mission statement exists (in order to re-assure filers that the general instruction against leaving lines blank does not apply) or (preferred) the instructions should require that organizations without mission statements enter the word "none" here.
Core Form, Part IV The instructions should indicate throughout the identifying letter and the name of Schedule related to each line.
Core Form, Part VI The parenthetical comment next to the Title of the Part should state that answers to all the questions in Part VI are required. As Jack Siegel suggests, some brief rationale might well be offered.
Generally in these instructions great care needs to be taken to distinguish between members of the governing body and members of the organization (i.e., the "membership" that is described in the instructions for Line 7). Further, an explanatory note should emphasize the difference between the kinds of "membership" that confer rights and/or duties on holders (e.g., the right to elect persons to

the governing body) and those that merely recognize that the person has made a contribution of a certain size or character to the organization.

Core Form, Part VI, Line 3 Is processing payroll and related transactions a "management function" that must be reported here? If not, the instructions should exclude such arrangements.

Tip following Lines 13 and 14 It may be misleading to make reference to the informal title of P.L. 107-204 as many people mistakenly believe that the Public Company Accounting Reform and Investor Protection Act of 2002 ("Sarbanes-Oxley") imposes broad responsibilities on tax-exempt organizations. Better to cite the specific sections of the US Code that are applicable here. The risk of confusion in this Tip is made greater by the final sentence, which refers to a requirement not contained in Sarbanes-Oxley.

Core Form, Part VII It would be helpful if the instructions repeated the directions about the order in which persons are to be listed in Line 1A which appear on the Form itself.

In general, there needs to be a sentence in the instructions that clarifies that this Part requests information about persons formerly associated with the organization only if there are current transactions with those persons that meet certain thresholds for materiality. As the instructions stand, there is a real chance that some filers will mistakenly conclude that information about persons with past associations must be reported in every subsequent year, indefinitely.

Core Form, Part VII, Tip at bottom of page 3 of Instructions The final paragraph of this Tip (which appears on page 4) should be re-written to present more clearly the structure of requirements and exceptions.

Core Form, Part VIII, Line 8 The italicized note about Schedule G does not make clear what "total" is at stake. The instructions do. The note might better read "See the Instructions to determine if Schedule G must be completed."

The instructions might well call attention to the fact that many states require that the gross receipts from fundraising events be reported - in other words, that in completing reports to such states the amount on the blank in line 8 of the form should be used, not the net amount entered column A next to line 8c.

Core Form, Part VIII, Column C Lobbying expenses should not be included in a paragraph about the management of investments. It might be good to provide an example of lobbying expenses that do "not directly relate to the organization's exempt purposes."

Core Form, Part VIII, Column D If it is true that amounts deducted from payments to participating organizations by the managers of

federated campaigns are fundraising expenses for the recipient, then that requirement should be mentioned in the instructions with an indication of which line of Part VIII should show the amount.

Core Form, Part VIII, Line 21 The use of the word "charity" in the instructions for this line on page 19 is unusual. Do not these instructions apply to exempt organizations generally?

Appendix B This discussion should include a reminder that organizations with less than $25,000 in gross receipts are required to file Form 990-N.

Appendix D This section should also describe the procedure for obtaining information filed on Forms 990-N.

Glossary Wherever a schedule is mentioned, the full name of the schedule (not just the identifying letter) should be given. When a specific line of a form or schedule is mentioned, the form or schedule needs to be identified. In general, when a term is defined in the Glossary, a reference to the Glossary should appear when the term is used elsewhere in the Instructions and the definition should not appear more than once.

Schedule A Public Support Test, Line 1 (page 17) The phrase "to the extent that" might be read to imply that the amounts received as membership fees are to allocated among several lines of the form. If that is not the intent, then the instructions need to specify how an organization should decide which line to use when membership fees are related to more than one of the several different kinds of organizational benefits mentioned here. In particular, membership in museums and similar organizations frequently includes some concessions with respect to admission charges for the organization (and sometimes other similar organizations under reciprocal agreements); in such cases, this instruction might appear to suggest reporting on line 2 part or all of the membership fees received.

From: Ron Larson
To: *TE/GE-EO-F990-Revision;
Subject: Schedule F instructions
Date: Tuesday, May 06, 2008 2:51:19 PM

To Internal Revenue Service
Re Draft instructions to 2008 Form 990

Clarification is needed in order to understand instructions and properly complete Schedule F Statement of Activities Outside the United States, Part I General Information, Question 3 Activities per Region, column (f) Total expenditures in region.

The instructions for item 3 (f) state not to include expenditures paid in the US or outside of the region even if they are allocable to the program in the region. All of our organization•s programs are located outside the United States, so understanding the instructions to Schedule F are critical.

1. Can all compensation paid to our employees that is declared to the IRS as wages on Forms W-2 be excluded from this calculation? The majority of our organization•s payroll is for US citizens performing services outside of the US.
2. Can all payroll taxes and employee benefits paid on behalf of our employees for services performed outside of the US be excluded from this calculation, as the taxes and benefits are paid to federal and state governments, or to US benefit providers.
3. Can employee expense reimbursements be excluded from the calculation if the expenses are reimbursed to US accounts?
4. Are the intentions of Schedule F to include only expenditures made in foreign locations by foreign offices of US-based organizations, or grants made to foreign organizations and individuals?
5. Tracking the program to which expenses are allocated can be accomplished by our accounting system because all expenses are charged to a program. Reporting on program service expenditures allocated to programs in specific countries and regions can be accomplished with reasonable accuracy.
6. Reporting on expenditures actually paid within a region will be very difficult or impossible without additional clarification. The majority of our organization•s expense reimbursements include items such as: a US citizen employed to work at a program in North Africa purchases plane tickets from a European airline•s web site to attend annual training meetings in

Thailand for continuing education purposes. The employee incurs expenses in Thailand while at the conference (conference fees, room and board). The organization reimburses the expenses to the US citizen•s checking account who settles all these expenses using an international credit card or local currency. Does the organization report the expenditures for the region where the organization pays the expense? (the employee•s US checking account), or the region where the employee•s program is based? (North Africa) or the region where the employee incurred the expense regardless of where the program is based? (Asia for the Thailand expenses, and Europe for the European airline expenditure). Without further clarification to Schedule F we cannot begin to track the required information.

7. Because definitive instructions to schedule F will not be published until sometime during the reporting period for organizations that report on fiscal years ending December 31, 2008, our organization probably is not recording all the information necessary to complete Schedule F. It is likely our organization will not be able to provide the information requested in Schedule F. We request that completion of Schedule F be •voluntary• for the 2008 reporting period. When clarification of the reporting requirements is provided, our organization can begin to track the required information.

From: wwcpa@bellsouth.net
To: *TE/GE-EO-F990-Revision;
cc: wwcpa@bellsouth.net;
Subject: comment on draft form 990
Date: Monday, May 05, 2008 3:18:19 PM

Re: 2008 draft 990, Part IV, question 12
Ladies and Gentlemen:
The new risk based Statements of Auditing Standards which are in effect for years ending in 2008 generally imply that audit clients are to have prepared financial statements prior to commencement of an audit. With large entities, this is of course the case. Those of us who work with small organizations generally do the financial statements for our clients. We are going to have to work with these smaller clients to educate them that financial statements are "theirs", not the CPA's. I urge you to consider re-wording question 12 as follows: "Did the organization prepare financial statements in accordance with GAAP which were audited by an independent CPA or public accounting firm." I believe this rewording would provide the information you are seeking while reinforcing the concept that the audit firm didn't "prepare" the financial statements.
Thank you.
Walda Wildman, CPA
Columbia, SC