From: Bjork, David
To: *TE/GE-EO-F990-Revision;
Subject: Clarification of Schedule J, Question 3
Date: Monday, April 21, 2008 8:01:10 AM

Please clarify question 3 on schedule J. Many health systems and other organizations have multiple subsidiaries. The parent organization often controls compensation for senior-most executives of the subsidiaries and other key employees who may be disqualified individuals. It is not the subsidiary board or compensation committee that establishes compensation for the CEO/Executive Director, but the parent board or its compensation committee.

If the parent board or its compensation committee reviews and approves compensation for the CEO/Executive Director, but the subsidiary files a separate 990, how should the subsidiary answer question 3?

David A. Bjork, Ph.D.
Senior Vice President
Senior Advisor
****My e-mail address has changed. Please update your address book accordingly.****

INTEGRATED HEALTHCARE STRATEGIES

225 South 6th Street
Suite 1200
Minneapolis, MN 55402
612-339-0919 main, ext. 21-058 VoIP
612-337-1058 direct
612-339-2569 fax
david.bjork@ihstrategies.com
www.IHStrategies.com

Exclusive to Healthcare. Dedicated to People.

From: Rob Falk
To: *TE/GE-EO-F990-Revision;
Subject: Comment on Draft 990 Instructions.
Date: Thursday, May 01, 2008 2:42:00 PM

Dear Sir or Madame:

The Human Rights Campaign ("HRC") is a 501(c)(4) organization that has obtained tax-exempt status from the Internal Revenue Service. HRC is fully aware that contributions to HRC are not deductible and informs donors that any contributions to HRC are not tax deductible.

In this context, we are seeking a modification of the draft instructions to the new IRS form 990. The draft instructions for Form 990, Part VIII, Line 1g would require a 501(c)(4) organization to report the value of non-cash contributions. HRC conducts a number of fundraising events around the country which include "silent auctions". HRC supporters donate items to be sold at these silent auctions, and HRC frequently has no information regarding the value of these items. Most of these silent auctions are organized by volunteers rather than paid staff. It would be burdensome on the volunteer infrastructure to determine the value of many items, which may include, by way of example, artwork, furniture, or autographed pictures or sports objects.

Given 1) that these items are acquired without cost, 2) that the donors do not receive tax deductions for their contributions (and are informed that the donations are not deductible), and 3) the structure of the IRS form will provide the IRS with information regarding the net proceeds of fundraising events, we do not believe that reporting information regarding the value of non-cash contributions that are not tax-deductible advances the IRS' interest in transparency and public accountability. On the other hand, requiring that the information be reported does significantly increase the administrative burden for a 501(c)(4) organization and may necessitate additional expenditures, possibly even appraisals. We understand that the IRS's interest in information on non-cash contributions to 501(c)(3) organizations may be different.

In this context, we would suggest making this line 1g applicable only to those organizations for which the donor may receive a tax deduction for the contribution.

Robert Falk
General Counsel
Human Rights Campaign
And Human Rights Campaign Foundation

1640 Rhode Island Ave NW
Washington, DC 20036
202-216-1526
202-423-2851 (fax)

From: Kelly McCarthy
To: *TE/GE-EO-F990-Revision;
Subject: Comment on Form 990
Date: Wednesday, April 23, 2008 9:54:57 AM

For Foundation filed 990s, it would be much easier if the grant listing was always in one place—preferably the last page of the form.

Kelly McCarthy
Associate Director for Foundations and Corporate Relations
Prep for Prep
328 West 71st Street
New York, NY 10023
(212) 579-1390, ext. 154

From: Robert Agle
To: *TE/GE-EO-F990-Revision;
Subject: Form 990 Rules Comment
Date: Tuesday, April 22, 2008 11:57:14 AM

I was a government bureaucrat for over 20 years. I am sympathetic to the needs of government for certain kinds of information to develop effective policies. This requirement for exempt not-for-profit organizations to file an annual report stating that it is not required to file a report is oxymoronic at best. I belong to two organizations which are in that category and have served as treasurer for both.

This is a stupid rule. The IRS needs to focus more on all the fraud and manipulation that is perpetrated by big corporations and fat cats than the little organizations that are struggling to exist on the margins of economic activity. Government needs to do more to encourage the start-up and growth of businesses and organizations that start small, not burden them down with paperwork and meaningless bureaucratic exercises, those who don't have the wherewithal to protect themselves in the political arena.

Robert L. Agle, Jr.

Flint, MI

From:	Jack B. Siegel
To:	*TE/GE-EO-F990-Revision;
Subject:	Jack B. Siegel"s Comments Regarding the Proposed Instructions to the Form 990
Date:	Monday, April 28, 2008 3:35:23 PM
Attachments:	Jack B Siegel_Comments_Form 990 Instructions_April 28_2008.pdf

---

Ladies and Gentlemen:

Attached are my comments regarding the proposed instructions to the Form 990. Good luck in completing the project.

Jack B. Siegel
Charity Governance Consulting LLC
Tele: 773-325-2124
Chicago, Illinois
Web Site and Online Journal: http://www.charitygovernance.com

Author: A Desktop Guide for Nonprofit Directors, Officers, and Advisors: Avoiding Trouble While Doing Good (Wiley 2006)
Nonprofit Training and Consulting
Focus: Governance, Legal, Financial, Tax, and Regulatory Matters

Jack B. Siegel
Charity Governance Consulting LLC
3400 North Lake Shore Drive
Chicago, Illinois 60657
Tele: 773-325-2124
E-mail: jbsiegel@charitygovernance.com
Web Site: http://www.charitygovernance.com

VIA E-MAIL TRANSMISSION

April 28, 2008

Lois G. Lerner
Director of the Exempt Organizations Division of the IRS

Ronald J. Schultz
Senior Technical Advisory to the Commissioner of TE/GE

Catherine E. Livingston
Deputy Associate Chief Counsel (Exempt Organizations)

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

Dear Ms. Lerner, Mr. Schultz, and Ms. Livingston:

I am providing my comments regarding the instructions to the Form 990 that were proposed on April 9, 2008. As I noted in prior comment letters, this is an important project. Anyone who reviews the proposed instructions will notice the significant thought and care that went into this phase of the project. The proposal is a dramatic improvement to the originally proposed June 2007 instructions. The Service is to commended for its efforts and its receptiveness to comments.

I offer the following suggestions and comments for your consideration:

I. **LENGTH**: I have little doubt but that the Service will take some good-natured ribbing about the length of the instructions. I also suspect it will receive some outright criticism on that score. In my view, the length is a virtue because it reflects an effort to answer likely questions about each of the many lines on the various forms and schedules. There also is an apparent attempt to curtail past reporting problems with more detailed instructions. The critical issue for the Service is managing this length through formatting choices. In Section III of this letter, I will make several formatting suggestions designed

to make the individual instructions more accessible.

II. **DELIVERABLES**: When the project is released in final form, the Service should add a Web page to the *Charities and Non-Profits* menu on the Service's Web site that is devoted exclusively to the forms—Form 990, Form 990-EZ, and Form N (e-post card). All forms and instructions should be listed on the same page with links. I found the use of a table to list the forms to be an excellent visual cue. Using single-spaced links makes locating specific schedules more difficult. The Service should consider the following approach:

Form 990	Core Form	Form and Instructions[1]
	Schedule A—Public Charity Status	Form and Instructions [Link]
Form 990—EZ		Form and Instructions [Link]
Form N		Form and Instructions [Link]

As for the Form 990, there should be three sets of downloads. One pdf document should include everything—all the forms and instructions—so that when practitioners want to print the forms and instructions, they can do so with one click and know they have everything. A second pdf should be an abbreviated package, which includes everything of general interest. It should exclude Schedules E, F, H, and K, and the related instructions. A third set of pdfs should be made available, with the third set comprised of individual pdfs for the Core Form and each of the schedules, together with the accompanying instructions. The instructions for the Core Form and each schedule should not be published as separate pdf documents because the instructions are an integral part of the Core Form and each schedule.

III. **HIGHLIGHTS**. The *Highlights* page at the start of each set of instructions is unnecessary. These summaries only serve to needlessly lengthen the instructions. They should be eliminated. They essentially duplicate what can be ascertained through a visual inspection of the form or schedule.

[1] I subsequently recommend that the forms and instructions for each schedule be packaged together rather than as separate documents. If the Service rejects that recommendation, I would add an additional column, placing the links to the schedules in one column and the links to the instructions in a second column.

IV. **FORMATTING**: As I noted in my July 29, 2007 letter, the success of the redesign project will depend on the quality of the instructions. Much of this letter will focus on substantive issues, but I believe format is equally important. To avoid frustrating users, the Service must make that information readily accessible. I offer the following suggestions:

A. **Reference to Glossary**. Every time a term that is defined in the Glossary is used, it should be highlighted in italics or bold-faced type.

B. **Page Numbering**. The instructions should be numbered using the following or an equivalent scheme: Core Form pages would be numbered CF-1 et. seq. Schedule pages would be numbered J-1, et. seq. Those numbers should be used in the header. The page footer should include page numbers, but just a sequence from 1 to the total number of pages in the packet.

C. **References to Parts**. In the proposed instructions, the Service refers to schedules and part numbers, but does not include names (e.g., in the case of Schedule J, "Compensation Information"). This is not helpful for someone leafing through the complete packet. Phrases rather than numbers or letters provide the reader with a much better sense of her position in the instructions.

D. **Headers**. A header and/or footer system should be adopted which includes the schedule name, the first new line number of the schedule that is addressed by the instructions page and the last line number addressed on that page (even if it continues to the next page). In the case of the Core Form, the references should be based on the parts. To illustrate, assume page *C-2* to the instructions continues the discussion of Part II-A Line 2f from page *C-1* and the last line discussed on this page is Part III-B Line 3, with the discussion of Line 3 continuing to page *C-3*.

Schedule C: Political and Campaign Lobbying Activities Page C-2 Part II-B, Line 1 to Part III-B, Line 3

E. **Index**. Considerable time should be devoted to developing an index. This should not be a last-minute part of the process.

F. **Glossary Definitions**. No matter how tempting, glossary definitions should not be repeated in the text of the instructions. Duplication adds needless length and creates the possibility of slight discrepancies in the

definitions. In the long run, the end users will appreciate consistency.

G. **Issue Date**. The cover page of the each instruction packet should contain an issue date.

V. **MAJOR ISSUE REQUIRING IMMEDIATE ATTENTION**: I discovered one Core Form question and instruction that will have unintended and undesirable consequences. The instructions to Core Form, Part VI, Line 10 (board review of the Form 990) highlight the fact that preparation of the Form 990 often is completed in close proximity to the filing deadline, meaning that the next regular meeting of the board may occur after the filing deadline. I strongly suspect that this will result in many organizations filing for extensions so that they can answer "Yes" to the question. That will delay the release of information to the public, making the information less timely.

I would suggest modifying the instructions so that the Form 990 in question is either the one for the current year or the one for the prior year. The question is clearly designed to encourage board review as a governance best practice. Because the question must be answered each year, it really doesn't matter if the response is one year in arrears. Moreover, by not "forcing" a review within what will often be an artificially short time frame, the resulting review may be a more thorough one.

VI. **CORE FORM—SUBSTANTIVE COMMENTS—GENERALLY**:

A. **Core Form—Highlights and General, Page 1—Overall, Short Years**. Taxpayers filing returns for short years ending in 2008 should be required to use the 2008 forms if they otherwise meet the filing thresholds. There is no point in delaying the inevitable. See also, page 10 of *Highlights and General*.

B. **Core Form—Highlights and General, Page 1—Part III**, **Program Service Accomplishments**. In the case of charity that allocates a portion of its fundraising expenses between program services and fundraising—Core Form, Part IX, Line 26—the charity should be required to describe the associated program services in detail. If the services are educational (e.g., providing information to help individuals detect early signs of cancer), the charity should be asked to provide in Schedule O any specific evidence demonstrating that the particular materials are effective.

C. **Core Form—Highlight and General, Page 2—Part VI, Governance**. At least one tax lawyer has raised the possibility that the Service might not have authority to ask these questions. In some cases I disagree with the specific questions the Service has asked regarding governance, but I believe the Service has the authority to ask questions regarding governance. These

questions are relevant for purposes of determining whether the *operational* test has been satisfied and whether there may have been a private or excess benefit. The Service should therefore clearly indicate that although the Code may not require an organization to have a conflicts-of-interest or whistleblower policy, the question focuses on what is fair game and must therefore be answered.

D. **Core Form—Highlights and General, Page 8—Organizations Not Required to File**. This is a very helpful summary. Place this in a box/table so that it is highlighted.

E. **Core Form—Highlights and General, Page 14—Penalties**. Add the following sentence at the end of the first paragraph:

> As another example, Part VII of the Core Form and Schedule J require compensation-related amounts to be provided for some individuals. This information must be provided even though the organization or individuals in question would prefer that it remain private.

In the past, a number of organizations have refused to provide compensation information because of strenuous objections based on privacy considerations. It should be clear that this information, when required, is not optional.

F. **Core Form—Highlights and General, Page 15—Recordkeeping**. It is not entirely clear whether the 3-year period is recommended or mandatory. The sentence begins "Usually." Clarify the statement and then point out that record retention schedules developed by many organizations often set a 6- or 7-year retention period for tax returns and supporting documentation. I don't think I have ever seen a schedule that has had a period shorter than 6 years for such items.

G. **Core Form—Heading, Part I and Part II, Page 4—Signature Block**. The last sentence should be clarified as follows:

> An employee of the organization who prepares the return is not considered to be a paid preparer.

Delete the second-to-last paragraph on Page 5, or move that language to Page 4 instead of using my suggested language. Whatever the choice, all

information pertaining the definition of a paid preparer should be kept together.

H. **Core Form—Parts III, Page 1—Line 1, Mission**. State that "mission" can be synonymous with "purposes," which is how articles of incorporation often refer to the concept. The instructions should point out that a mission statement should be reported if the articles of incorporation have a general purpose clause—"to engage in all activities that are consistent with the organization's status as a Section 501(c)(3) organization."

I. **Core Form—Part III, Page 2—Donated Services.** If the organization prepares GAAP financial statements, it should be required to list the value of volunteer services. This is an important number because in the case of federal grants, it can be taken into account for purposes of matching requirements and allocating overhead.

J. **Core Form—Part III, Page 2—Other Program Services**. Modify the following sentence as indicated:

> The detailed information required for the three largest program services need not be provided for these other program services, *but it can be if the organization believes that is desirable. The organization can provide financial information for these other programs on an aggregated or a program-by-program basis.*

K. **Core Form—Part IV, Page 3—Line 10, Endowments**. Add the following sentence before the last sentence.

> Quasi endowment is sometimes referred to as board-designated endowment.

Also, the reference to SFAS also should include a reference to SFAS 124.

L. **Core Form—Part IV, Page 3—Line 12, Audited Financial Statements**. Add the following sentence.

> An accountant's compilation or review is not considered to be an audit, and does not produce audited financial statements.

M. **Core Form—Part IV, Page 5—Line 30, Contributions of Art**. What is a contribution to the capital of the organization? More explanation would be helpful. Is this limited to membership organizations such as country clubs,

or can there also be capital contributions to Section 501(c)(3) organizations? Do these include contributions of the type contemplated by Code Section 118?

N. **Core Form—Part IV, Page 6—Line 37, Conduct of Substantial Activities**. An example showing how to apply the analysis when there are multiple partnerships and disregarded entities would be helpful.

O. **Core Form—Parts V, Page 1—Tip 2**. The Service should refer to the actual Web site address rather than www.irs.gov. The location of that page should not be changed until the instructions can be revised.

P. **Core Form—Parts V, Page 3—Personal Benefit Contract.** In the heading, add the following parenthetical after Personal Benefit Contract: (e.g., an insurance policy or an annuity).

VII. **CORE FORM—PART VI—GOVERNANCE**.

A. **Core Form—Part VI—Governance, Page 1—Governance, Management, and Disclosure**. The discussion should specifically refer to the *operational* test, the prohibitions against private inurement and private benefit, and the intermediate sanctions as the basis for these questions. The Service should be quite clear that although certain policies are not required as a condition of tax-exemption, the existence of such policies can be an indicator as to whether the organization is operated in furtherance of its exempt purpose, is in compliance with the intermediate sanctions, and does not confer private benefits on outsiders. Consequently, the existence of these policies is relevant to the selection of returns for audit. Some have suggested that the Service does not have the authority to ask these questions. A clear statement is therefore necessary to head off noncompliance.

B. **Core Form—Part VI—Governance, Line 1b—NYSE/SEC Definitions**. Did the Service take a look at Section 3.03A.02 of the New York Stock Exchange's Listed Company Manual? It has a well-developed definition for an independent director.

C. **Core Form—Part VI—Governance, Line 1b—Affirmative Determination**. The NYSE listing rules requires the board to make an affirmative determination with respect to the independence of each director before a director is considered independent. The Form 990 instructions should adopt that approach for each director with respect to the response to

Line 1b. Best guesses should not be sufficient.

D. **Core Form—Part VI—Governance, Page 1, Line 1b—Independent Voting Members**.

1. **Example**. Rewrite the example in Item 2 as follows:

> For example, a person who receives $1,000 for attending each quarterly board meeting and $1,000 in expense reimbursements as a director of the organization does not cease to be independent merely because he or she also receives payments of $7,500 from the organization for reasons unrelated to the person's position as a director, assuming all directors are entitled to similar amounts for attending board meetings and reasonable reimbursement of expenses.

2. **Examples**. Consider adding the adding the following two examples to Item 3:

> **Example 1**. B is a member of the organization's 15-member board of directors. She is also a partner in a law firm with 300 partners. Her law firm provides legal services to the organization, receiving $100,000 in fees during the last year. B is not an independent voting member of the organization's board because the $100,000 payment must be reported on Schedule L as an indirect business transaction.
>
> **Example 2**. The facts are the same as those in Example 1, but B is an associate attorney (an employee) rather than a partner and she has no ownership interest in the law firm. B is considered to be an independent member of the board, assuming there are no other facts or relationships that would cause B to lose her independence.

3. **Tighter Definition for Materiality**. Item 3 under Line 1b provides that any amount greater than $50,000 is per se material. This formulation of materiality is inadequate because each organization is left to determine whether $49,000 is material. Without a stated standard, each organization will apply its own

standard. The Service should adopt a rule similar to the one used for determining whether a diversion of assets is material. In other words, materiality would equal the lesser of $50,000 or some percent of net assets or gross revenues.

4. **Eliminate the Reference to Schedule L**. Mechanically, flipping back and forth between the Core Form instructions and the Schedule L instructions is cumbersome. This is a case where all the relationships that affect the determination of independence for purposes of Line 1b should be described in the same location.

5. **Define the Relationship between Schedule L and the $50,000 Per Se Materiality Rule**. If a relationship is outside the scope of Schedule L (as modified in this part of the instructions), is it automatically outside the scope of the $50,000 per se materiality rule, or can a transaction that exceeds $50,000 somehow result in lack of independence despite not being described in Schedule L? The instruction should better define the relationship between Schedule L and the $50,000 per se rule.

6. **The $50,000 Per Se Materiality Rule and the Aggregation Rule Under Schedule L**. Does the $50,000 per se materiality rule come into play as a backstop to the liberal aggregation rule that applies to transactions that must be disclosed in Part IV of Schedule L?

   Example 1: B is a member of the organization's 15-member board of directors. B is also a partner in a law firm with 300 partners (with a 1/300th interest in the firm's profits and capital). The organization regularly calls a tax associate in the firm to analyze whether certain transactions produce unrelated business income. This year, the organization called the associate on 8 distinct occasions to prepare memos. In each instance, the firm separately billed the organization $8,000.

   Under the Schedule L aggregation rule, the $80,000 in legal fees would not be subject to disclosure on Schedule L because each individual memo was written on a different occasion, meaning that aggregation is not required and each transaction is simply ignored. In

my view, the Schedule L aggregation rule should apply for purposes of Line 1b, meaning that the director, assuming no other transactions, would be considered independent. More importantly, the $50,000 per se materiality rule should be eliminated. See my subsequent comments regarding the aggregation rule, which I also believe should be eliminated.

7. **Eliminate Bank Loan Exception**. There should not be an exception to the Line 1b determination of independence for loans to the tax-exempt entity from a bank that has an officer, director, or key employee as a board member. It is inconceivable to me how this person can be considered independent, particularly if the tax-exempt entity defaults under the terms of the loan. Nobody who sits on both sides of a debtor-creditor relationship is independent.

   If the Service retains this exception, there is no reason why the exception should not be expanded to cover all transactions that are at fair market value or more favorable terms. For example, why should a loan be excepted, but not a sale by a retailer of inventory to the organization when the sale is at the retailer's cost? What is so unique or special about a lending transaction?

8. **Poverty Agencies**. On page 2 add the following example after the first example involving (c)(6) organizations.

   Example 2. Federal law requires that at least one-third of the board members of Section 501(c)(3) community action agencies receiving federally-funded grants be comprised of low-income individuals or their representatives. A board member of a community action agency who qualifies for and receives weatherization or low-income energy assistance payments because she qualifies for them is not deemed to lack independence solely because she receives such payments as a member of the eligible charitable class.

   The Service also should clarify whether having a child attend a Head Start program constitutes a benefit.

E. **Core Form—Part VI—Governance, Page 2—Line 2, Relationships**

Among Officers. This question, as written, is laudable, but not entirely practical. Many of the covered relationships will not be readily apparent to the filing entity even though it may suspect that there are such relationships. At a minimum, the instructions should limit the tax-exempt organization's efforts to ascertain the relationships to reasonable ones. Asking each board member to disclose relationships in an annual survey should be deemed reasonable.

1. **"Key Employee Definition—Set $100,000 as the Threshold**. The focus on employee compensation under the NYSE definition is on those who have received $100,000 or more of compensation during any twelve-month period over a three-year period. If $100,000 is a material amount for publicly-traded companies with billions of dollars in revenue, it is hard to justify the $150,000 threshold for key employees of tax-exempt entities.

2. **Core Form—Part VI—Governance, Page 2—Line 2, Relationships Among Officers—Exclusivity**. The Service uses the word "only" in the definition of family relationships, but does not limit the relationships described by business relationships with "only." Are both definitions intended to be exclusive?

3. **Core Form—Part VI—Governance, Page 2—Line 2, Relationships Among Officers—Definition of Family**. Should domestic partners or members of household be included in the definition of family relationships? Possibly the Service should rely on the definition of immediate family set out in an SEC regulation interpreting Section 404(a) of Sarbanes-Oxley. See 71 Federal Register 53158 (Sept. 8, 2006), *available at* http://www.sec.gov/rules/final/2006/33-8732afr.pdf.

4. **Core Form—Part VI—Governance, Page 2—Line 2, $5,000 Materiality Threshold Should be Much Higher**. The $5,000 materiality threshold in Item 2 of the definition of reportable business relationships is much too low. Rule 303A.02(b)(v) of the New York Stock Exchange's Listing Manual sets a materiality threshold at the greater of $1 million or 2% of the other entity's gross revenues. The $5,000 threshold picks up too many consumer transactions that the associated officer, director, or key employee may know nothing about.

F. **Core Form—Part VI—Governance, Page 2—Line 2, Relationships**

Among Officers, etc—Examples. There should be a comprehensive example that illustrates how the definition for reportable business relationships operates. Here are several examples which clarify how the rules operate, or raise questions about whether special exceptions are warranted:

1. **Example 1—35% Interest**. B and C are members of the organization's 15-member board of directors. B is also a partner in a law firm with 300 partners (with a $1/300^{th}$ interest in the firm's profits and capital). Her law firm provides legal services to C, receiving $100,000 in fees during the last year. The relationship need not be disclosed because B does not hold a greater than 35% interest in the law firm's profits or capital.

   Should the definition of "key employee" and "officer" be modified to specifically exclude a partner?

2. **Example 2—Definition of an Officer**. The facts are the same as in Example 1, but B is the managing partner of the law firm. As a partner, B is not a key employee. Does the Service consider B to be an officer of the law firm? The definition of officer seems to contemplate organizations other than corporations as having officers. Is a partner ever considered to be an officer of a partnership?

3. **Example 3—Definition of an Officer**. The facts are the same as Example1, but B is the head of the law firm's tax department, one of ten departments. Is B an officer?

4. **Example 4—Interlocking Boards**. B and C are members of the organization's 70-member board of directors. Both are CEO's of publicly-traded corporations. Both serve on each other's boards. This relationship is a reportable business relationship even if the organization has an executive committee.

5. **Example 5—Interlocking Boards**. B and C are members of the organization's 70-member board of directors. Both are the CEO's and principal shareholders of closely-held corporations. Both serve on each other's boards. This relationship is a reportable business relationship.

This example demonstrates just how difficult it may be for the organization to detect reportable business relationships, making it clear why there should be a limitation on how much effort an organization must undertake to detect such relationships.

6. **Example 6—Personal Business Relationships**. B and C are members of the organization's 15-member board of directors. B is a prominent divorce attorney, who operates as a sole practitioner. He only handles divorces. C is considering divorcing her husband and seeks B's counsel. During the course of the year, C pays B $20,000 for advice, but no legal filings have been made. Under the definition of reportable business relationships, this relationship must be disclosed because one board member has paid more than $5,000 for services to another one.

   Is this appropriate given the personal and/or still confidential nature of the relationship? Even listing the relationship with just the "Business Relationship" description reveals too much information regarding what is sensitive personal information. The Service should create an exception for this sort of confidential relationship.

7. **Example 7—Confidential Relationships**. B and C are members of the organization's 15-member board of directors. B is the head of a large investment bank that specializes in "going private" transactions. C is the CEO of a publicly-traded corporation that is considering going private. This year, C's employer has paid B's firm $1 million for advice. Were word to leak that C's employer had retained B's firm, it could result in a significant adverse consequences. Under the definition for reportable business relationships, this relationship is subject to disclosure.

   Even listing the relationship with just the "Business Relationship" description reveals too much information regarding what is a sensitive relationship. The Service should create an exception for this sort of confidential relationship.

8. **Example 8—Friends**. B and C, both in their 60s, are members of the organization's 15-member board of directors. They have been life-long friends, rooming together in prep school, standing up at each other's weddings, vacationing together with each other

families, and playing golf together twice a week. This relationship is not a reportable business relationship.

9. **Example 9—Investment Relationships**. B and C are members of the organization's 15-member board of directors. The facts are the same as in Example 8, but B and C each invest as limited partners in a land development partnership. Each holds at 12% interest. There is no relationship or possibility of a relationship between the organization and the investment partnership. This relationship must be reported as a business relationship.

   Should the addition of what is a remote (*vis-à-vis* the charity) investment relationship make this relationship any more reportable than the one in Example 7. This example demonstrates just how difficult it may be for the organization to detect reportable business relationships, making it clear why there should be a limitation on how much effort an organization must undertake to detect such relationships.

10. **Example 10—Investment Relationships**. The facts are the same as in Example 8, but B and C each own a half-interest in the land as tenants in common and are not considered to be partners for federal income tax purposes. As a business relationship is defined, direct ownership in an asset does not appear to be a covered relationship if the ownership does not result in a partnership. Should it be?

11. **Example 11—Personal Relationships**. B and C are members of the organization's 15-member board of directors. They also are good friends, whose families often vacation together. They decide to purchase a villa in the South of France so that their families can vacation together during August of each year. For legal reasons, they decide to place the villa in a corporation. Each holds a 50% interest in the corporation. In addition to the opportunity for their families to spend time together, B and C expect to earn a hefty profit on the sale of the villa five years hence.

    Is the corporation an investment entity, or is this a personal relationship outside the scope of the instruction's definition for reportable business relationships? Should the addition of what is

a remote (*vis-à-vis* the charity) investment relationship make this relationship any more reportable than the one in Example 8.

12. **Example 12—Ordinary Course of Business Relationships**. B and C are members of the organization's 15-member board of directors. B is the CEO of a large mutual life insurance company that sells insurance in all 50 states. This past year, C purchased a $2 million whole life insurance policy from B's employer. The policy was one of 300,000 policies sold during the year. C purchased the policy through the DEF insurance agency, paying a $50,000 insurance premium. B is unaware of the purchase. Although the policy was sold by the DEF agency, the contract is between C and B's employer. As I read the definition for a reportable business relationship, this transaction is subject to disclosure.

    Shouldn't there be an exception for transactions in the ordinary course of business, particularly when one of the parties who causes the relationship to be reportable is unaware of or was not instrumental in the transaction? Similar examples could involve a director who also heads a large investment brokerage firm or a corporate trustee.

    This example demonstrates just how difficult it may be for the organization to detect reportable business relationships, making it clear why there should be a limitation on how much effort an organization must undertake to detect reportable business relationships. It further demonstrates the need for "an ordinary course" or "consumer goods and services" exception. One approach would be to require disclosure for transactions involving key employees and highest compensated individuals, but not for others. This approach strikes me as far less burdensome and far more targeted. These employees work for the organization full-time and should therefore be more aware of transactions. Moreover, employees are often the ones who can produce the most benefit for someone in terms of buying influence.

13. **Example 13—Ordinary Course of Business Relationship**. B and C are members of the organization's 15-member board of directors. B is the owner and head of a large automobile dealer. This past year, C purchased a $50,000 automobile from B's dealership. The automobile was one of 4,000 automobiles sold by

the dealership during the year. See the comments in Example 12, which are equally applicable here.

14. **Example 14—No Look back**. B was a member of the organization's 15-member board of directors, but resigned before the start of this year because of other commitments. B also is the owner and head of a large automobile dealer. C is the organization's executive director. This year, C purchased a $50,000 automobile from B's dealership. The automobile was one of 4,000 automobiles sold by the dealership during the year. This transaction is not reportable because there is no look-back rule.

G. **Core Form—Part VI—Governance, Page 3—Line 4, Changes to Organizational Documents**. The instruction asks for the appropriate information in the first paragraph, specifically stating the organization need not report a change in policy that "does not entail a change to the organizing document or bylaws." The examples then make reference to conflicts-of-interest, whistleblower, and document retention and destruction polices. Most people do not consider these policies to be an *organizing document* or *bylaws*. Moreover, the Form 1023 only addresses conflicts-of-interest policies and it is conceivable that a conflicts-of-interest policy will be adopted after Form 1023 is filed and exemption is recognized. Consequently, in many cases, Form 990 users will not have the original document for reference and comparison purposes. Similar issues are posed by the request for disclosure of changes in the composition or procedures of an audit committee. Also, the instruction contradicts itself by then asking for information about changes in the policies in the list of examples of significant changes.

H. **Core Form—Part VI—Governance, Page 3—Line 4, Changes to Organizational Documents**. Changes to organic documents should be attached rather than summarized. Why ask the organization to paraphrase? Attaching the document is less work and more accurate.

I. **Core Form—Part VI—Governance, Page 4—Line 5, Material Diversion of Assets**. This question is a most excellent addition to the form. The instruction should make clear that the dollar amount resulting in a material diversion be based on the loss before recovery from or restitution of the funds by the perpetrator, or before recovery under an insurance policy or bond. The $250,000 amount should be reduced to $50,000. The Service should retain a dollar/percentage formula, but it should also require

disclosure of all diversions that would qualify as felonies if charges were brought (i) even when the amounts involved wouldn't otherwise trigger disclosure under the formula, and (ii) even if the decision is made not to bring charges or the charge is negotiated down to a misdemeanor. Finally, while people shouldn't be interested in the name of the perpetrator, the instructions should require that a description of the position held by the perpetrator be disclosed. This will serve to identify the level at which the diversion took place and whether it involved financial or non-financial personnel. None of these charges should influence behavior regarding the decision to pursue a claim under an insurance policy or to press charges.

J. **Core Form—Part VI—Governance, Page 4—Line 6, Members or Stockholders**. The term "members" should be defined so that it includes persons or entities with legal status of a member of the organization under the state's nonprofit corporation or comparable law. By way of clarification, the definition should specifically exclude "affinity" members.

K. **Core Form—Part VI—Governance, Page 5—Line 8, Documentation of Meetings and Actions**. State that documentation is contemporaneous even when minutes are approved subject to agreement that a change will be made to the draft minutes and re-circulated to the board. Also filers should be instructed to look to state law for the definition of minutes. The reference to e-mail exchanges as board action is troubling. The instructions should defer to state law about whether electronic communication amount to board action.

L. **Core Form—Part VI—Governance, Page 5—Line 9a—Local Chapters, Branches, or Affiliates**. The concept of legal authority needs to be better developed. For example, a central organization that exercises control of local chapters through its position as the sole member of each local chapter exercises organic legal control. It is less clear if the central organization exercises legal control for purposes of this response if it exercises some control through a franchise agreement or other contractual arrangement. Suppose the national or local chapter has the right to terminate the arrangement at anytime, but then the local must cease using the recognized name? Suppose the agreement only addresses issues involving quality control, but not governance? There is not a right or wrong answer, but the Service should provide more detail regarding what constitutes a covered arrangement. The organization should be directed to provide a general discussion in Schedule O of how it exercises legal control over chapters, branches, or affiliates.

M. **Core Form—Part VI—Governance, Page 6—Line 10, Governing Body Review of the Form 990**. See earlier comment in Section V.

N. **Core Form—Part VI—Governance, Page 6—Line 12a, Conflicts of Interest Policy**. The language suggests that the Service is only interested in financial conflicts of interest. If that is the case, the instruction should affirmatively state so. If not, the instruction should provide an example of a non-financial conflict that a conflicts-of-interest policy would have to cover before it is considered a policy for purposes of Questions 12a and 12b. Like the instruction to Lines 13 and 14, this instruction should make clear that an organization can answer "Yes" if it has put the policy in place before the end of its taxable year.

O. **Core Form—Part VI—Governance, Page 7—Lines 13 and 14, Whistleblower and Documents Retention Policies**. The reference to Sarbanes-Oxley in the TIP should be replaced with a general reference to "federal law." Technically, the statement is correct as is, but the bulk of Sarbanes-Oxley does not apply to nonprofits. This statement could result in confusion that all the provisions of Sarbanes-Oxley apply to nonprofits. They don't.

P. **Core Form—Part VI—Governance, Page 7—Lines 15, Process for Determining Compensation**. As part of the Schedule O disclosure, the organization should identify those positions covered by the question that were not subject to the specified procedures and why they weren't. In other words, why doesn't the question ask whether these procedures were followed for all officers and key employees?

Q. **Core Form—Part VI—Governance, Page 7—Line 16, Joint Venture Policy**. The organization should indicate whether the policy to protect exempt status was in effect before the organization entered into the listed ventures.

R. **Core Form—Part VI—Governance, Page 8—Line 18, Public Availability of Forms 1023, etc**. Organizations should be instructed that they may not check the otherwise applicable box for a year in which they have been penalized for not making the application or return available. The instruction should explicitly state that organizations are entitled to check "another's Web site" box if their returns are regularly posted on GuideStar (even though GuideStar redacts the signatures).

S. **Core Form—Part VI—Governance, Page 9—Line 19, Public**

Availability of Other Documents. The Form 1023 does not necessarily require any of these policies to be attached. If there is a conflicts-of-interest policy it is to be attached to the Form 1023, but there is no requirement that there be one. The second paragraph suggests that all these policies must be included as part of the Form 1023 or Form 1024. The instruction should be corrected.

VIII. **CORE FORM—PART VII—COMPENSATION**.

A. **Core Form—Part VII—Compensation, Page 1—Overview**. Who is an officer of a nonprofit is not always clear. There are really two categories of officers, officers of the board, as defined by state nonprofit corporation law, and officers who have management authority. For example, a large hospital could have dozens of officers if an officer is defined as a vice-president or assistant vice-president. The public should be interested in whether the board president, treasurer, or secretary is compensated regardless of the level of compensation. On the other hand, an assistant vice-president in the hospital pharmacy is an officer who is involved in the day-to-day management of the hospital's operations. Disclosure should be required in this case only if the assistant vice-president is a key employee or one of the five highest compensated employees.

B. **Core Form—Part VII—Compensation, Page 1—Overview and Definition of Key Employee**. The threshold should be lowered to $100,000. This information potentially reduces the burden of other Section 501(c)(3) and (c)(4) organizations that are trying to develop compensation comparables for purposes of setting salaries. Moreover, any threshold has the undesirable effect of ratcheting up salaries because it biases the data. For example, 100 organizations may have someone who performs a particular function, but if only 5 are paid over $150,000, it looks like everyone holding the position is paid over $150,000 when in fact 95 position holders are not.

Moreover, if $100,000 is the threshold for highest compensated individuals, it is hard to see why $100,000 should not be the threshold for key employees. The different thresholds create the anomaly that a highest compensated employee's compensation is disclosed despite the fact that it is lower than the compensation paid to a key employee. Furthermore, key employees are the ones who exert managerial influence over the organization. That is not necessarily true of highest compensated employees, who may be technical people who exert little or no influence

over the organization's overall management or governance (e.g., a heart surgeon).

C. **Core Form—Part VII—Compensation, Page 2—Director or Trustee**. It is unclear why there is a need to single out "institutional trustees" until the reader reaches the bottom of page 3. The definition should be moved so that its relevance is more apparent. Better yet, eliminate the definition and rely on the Glossary.

D. **Core Form—Part VII—Compensation, Page 5—Column B, Average Hours Per Week**. This question points out the trouble with aggregating compensation for multiple entities. It makes it difficult to determine on an entity-by-entity basis what exactly is being paid to the individual and how much effort the individual devotes to a particular entity. Unfortunately, the concept is so engrained that I suspect it is too late to really address the potential abuses arising from aggregation.

E. **Core Form—Part VII—Compensation, Page 8—Compensation Table for Reporting on Part VII or Schedule** J. This table is a helpful aid.

F. **Core Form—Part VII—Compensation, Page 12—Schedule J Reporting of Listed Individuals with Compensation Greater Than $150,000**. This table is also a helpful aid. The reference to "Compensation Greater Than $150,000" in the heading should be eliminated because the table indicates that in certain instances, Schedule J reporting is required even if the person does not make over $150,000.

IX. CORE FORM—PART VIII—STATEMENT OF REVENUE.

A. **Core Form—Part VIII—Statement of Revenue, Page 1—Column B**. The instructions should specifically state that the destination of revenue, alone, does not result in funds being treated as related or exempt function income.

B. **Core Form—Part VIII—Statement of Revenue, Page 2—Contributions, Gifts, Grants, and Similar Amounts Received**. Is the first full sentence suggesting that pledges must be reported in accordance with SFAS 116, or is it saying that if the organization elects to report in accordance with SFAS 116, it should adhere to this reporting practices for pledges? Are pledges considered grants for this purpose?

C. **Core Form—Part VIII—Statement of Revenue, Page 2, Line 1b—**

Membership Dues. The example should progressively add more and more items such as: (i) discounted tickets; (ii) free parking while attending a concert; (iii) a 10% discount on CDs at the organization's bookstore; (iv) access to a patrons' room with the right to purchase food; and (v) access to a patrons' with free drinks and sandwiches. There should be an example involving benefits that are treated as goods or services.

D. **Core Form—Part VIII—Statement of Revenue, Page 3, Line 1e—Government Grants**. Provide several examples of grants that are payments from the government that directly benefit the government rather than the charitable class.

E. **Core Form—Part VIII—Statement of Revenue, Page 4, Line 2—Program Service Revenue**. Clarify whether the amount of a museum membership is included in Line 1b or Line 2 if the primary benefit of a museum membership is free admission. Clarify whether the amount paid to an academic research association is included in Line 1b or Line 2 if the primary benefit of the membership is reduced admission to an annual two-day conference of members where research by members is presented. In keeping with the tenor of these questions, the discussion on page 6 should be expanded and specific examples should be offered. What is meant by "reasonable relationship?"

F. **Core Form—Part VIII—Statement of Revenue, Page 8, Line 8a—Gross Income from Fundraising Events**. The chart raises two questions. First, the last sentence in the *Fundraising Does Not Include* column states that these are contributions. This improperly suggests that people who buy tickets to raffles and lotteries are entitled to deduct the ticket purchases as charitable contributions. Second, if a ticket to a dinner/dance includes automatic entry into a drawing for a prize, is the ticket price fundraising revenue or something else? Must an allocation be made?

G. **Core Form—Part VIII—Statement of Revenue, Page 9, Line 8c—Net Income or (Loss) from Fundraising Events**. When this is first read it sounds as if income from fundraising events is subject to tax when in fact net income from these events often escapes taxation because the activity isn't considered to be regularly carried on. Lawyers and accountants who work with exempt organizations will understand this, but others may draw the wrong conclusion. A little more discussion is therefore warranted—"It may be unrelated, but it isn't necessarily taxable."

X. **CORE FORM—PART IX—STATEMENT OF FUNCTIONAL EXPENSES.**

A. **Core Form—Part IX—Statement of Functional Expenses, Page 13—Allocating Indirect Expenses**. It is not clear to me why internal re-allocation results in a $5,000 reduction in total expenses. An allocation might shift the expenses between categories, but total expenses should be unaffected. Please explain.

This allocation is reported on Line 24. I realize the form is set in stone, but I would encourage the Service to consider adding a separate line for this allocation.

B. **Core Form—Part IX—Statement of Functional Expenses, Page 15, Line 5—Benfits Paid to Members**. The instructions should better define member for this purpose.

C. **Core Form—Part IX—Statement of Functional Expenses, Page 15—Compensation of Current Officers, Directors, Key Employees**. To emphasize the Service's point regarding taxable year, insert "organization's" before "tax year" in the second paragraph.

D. **Core Form—Part IX—Statement of Functional Expenses, Page 17, Line 11e—Professional Fundraising Fees**. I am not sure how to address the problem, but I suspect there is a lot of discretion in how organizations and fundraisers distinguish between fundraising fees, on the one hand, and printing and material costs, on the other. It certainly would be easy enough to quote a fee heavily weighted to material costs that includes fundraising advice and campaign design strategy. As a consequence, unless the Service imposes a concrete rule, I suspect the variations in reporting practices will make the distinction relatively meaningless, particularly for purposes of comparing otherwise similarly-situated organizations.

E. **Core Form—Part VIII—Statement of Functional Expenses, Page 20, Line 21—Membership Dues Paid to Other Organizations, Tip**. Organizations should not be given a choice between Lines 1 or 21. This could result in different affiliates of the same national organization reporting the same amount in different places, rendering comparisons meaningless. Specificity should control, with all amounts reported on Line 21.

XI. **CORE FORM—PART IX—BALANCE SHEET**.

A. **Core Form—Part IX—Balance Sheet, Page 22, Lines 5 and 6—Receivables from Officers, Directors, and Other Disqualified Persons**.

Are pledges from officers, directors, and other disqualified persons reported on Line 3 or Line 5? Pledges from these people should be included in Line 3 because pledges pose unique governance issues for nonprofits. In many cases, the bulk of an organization's pledges will be from its directors and trustees. The instructions should specifically address these issues.

B. **Core Form—Part IX—Balance Sheet, Page 23, Line 11—Investments: Publicly Traded Securities**. In the past, the Form 990 has had separate columns for tax and fair market value reporting of assets. That is not present in this balance sheet. The instructions should require that marketable securities be marked to market as of the balance sheet date. In any event, the valuation methods should be disclosed on Schedule O.

C. **Core Form—Part IX—Balance Sheet, Page 26, Lines 27, 28, and 29—Restrictions**. State that the reported amounts should be consistent with how the amounts are reported if audited GAAP financial statements are prepared. Reference should be made to both FSAS Nos. 117 and 124.

XII. **CORE FORM—APPENDICES**.

A. **Core Form—Appendix A, Reference Chart**. No comment.

B. **Core Form—Appendix B, Determining Gross Receipts**. No comment.

C. **Core Form—Appendix C, Gross Receipts and Section 501(c)(15) Organizations**. No comment.

D. **Core Form—Appendix D, Public Inspection**. The Service should explicitly address the adequacy of disclosure through GuideStar. GuideStar disclosure should satisfy all statutory disclosure requirements.

E. **Core Form—Appendix E, Group Returns**. No comments.

F. **Core Form—Appendix F, Disregarded Entities, Page 17, Item 2—Number of Volunteers**. Organizations should not be given an option. They should report the number of individuals who volunteer for the disregarded entity.

G. **Core Form—Appendix G, Intermediate Sanctions**. Both the public and the Service would be better served if this appendix were reconfigured as a separate plain language publication regarding the intermediate sanctions and the process of setting compensation. Then the instructions could make

reference to the publication, thereby reducing the size of the instructions.

XIII. **CORE FORM—GLOSSARY**.

A. **Core Form—Glossary, Page 1—Audit of Financial Statement**. The definition seems to be focused on audit opinions. It doesn't correctly describe an audit. An audit is a process. The issuance of an audit opinion is the culminating step in the process. I would check with the AICPA for a better definition.

B. **Core Form—Glossary, Page 8—Events**. First, clarify that prizes of nominal value refers to the entire list, not just to raffles or lotteries. Second, address events that include raffles and lotteries as part of the event—like a dinner that includes a drawing.

C. **Core Form—Glossary, Page 12—Independent Member of the Governing Body**. Might Item 2 refer to a payment to the board member or the member's employer, partnership, or controlled entity (more than 35%)? This would be a better way to handle these issues than by reference to Schedule L. As subsequently will be addressed in detail, the large board exception should be eliminated.

D. **Core Form—Glossary, Page 13—Key Employee**. The definition should note that it applies to certain persons employed by the filing entity, as well as to the relationship between a person and a for-profit entity. See the instructions for Item 3 for Line 2 of Part VI of the Core Form—indirect transactions.

E. **Core Form—Glossary, Page 16—Permanent (True) Endowment**. This definition should reflect the recent change in the law made by the Uniform Prudent Management of Institutional Funds Act, which moves away from distinctions between principal and income. Consider this definition (or a variation thereon) of endowment:

> An aggregation of funds that are maintained to provide a permanent source of support. To be included as part of permanent endowment, a fund must carry a stipulation that it be invested and be permanently maintained in accordance with the donor's intentions and restrictions, or standards of prudence, with the understanding that the institution can spend a portion of the fund for current purposes, as specified by the

> donor, or in the absence of clear specifications by the donor, as determined by the organization's governing body by applying relevant law, which includes the Uniform Prudent Management of Institutional Funds Act or the Uniform Management of Institutional Funds Act. Permanent (true) endowment does not include quasi endowment.

This definition may requires some tweaking.

F. **Core Form-Glossary, Page 17—Professional Fundraising Services**. The Service should provide a rule requiring that organizations must fragment contracts between services and ministerial tasks when both are called for under one contract.

G. **Core Form—Glossary, Page 19—Quasi-Endowment**. Board-designated endowment is a synonymous and commonly used term, so there should be a reference to it.

H. **Core Form—Glossary, Page 20—Sarbanes-Oxley**. After the last sentence, add the following:

> Many of the provisions in this legislation do not apply to nonprofit entities.

In fact, the term and its use should be eliminated from the instructions.

I. **Core Form—Glossary, Page 21—Significant Disposition of Net Assets**. The definition should create an exception for turnover in investment (endowment) assets due to investment strategies. The form itself draws this distinction.

J. **Core Form—Glossary, Page 23—Term Endowment**. Change the reference from "income" to "support."

XIV. **Schedule A. Public Charity Status and Public Support**. I leave it to others who work with these issues on a regular basis to make specific comments. Overall, the instructions for Schedule A appear to be much more concise and focused than the existing instructions or those that were originally proposed.

XV. **Schedule C. Political Campaign and Lobbying Activities**.

A. **Page 2—Definition of Terms**. This section should be deleted. The

Glossary defines all of these terms. Define once, use when needed!

B. **Page 12—Part II-B Lobbying Activity**. There should be a clear statement instructing organizations that have completed Part II-A that they should not complete this section—not even with zeros. There are reasons why it is useful for the public to know whether an organization has the Section 501(h) election in effect. Organizations that complete both Parts II-A and II-B create confusion.

XVI. **SCHEDULE D. SUPPLEMENTAL FINANCIAL STATEMENTS**.

A. **Page 3—Part II. Conservation Easements—General Observation**. Real estate transactions often include multiple deeds due to the arcane nature of real property law. Does it make sense for purposes of these rules to require multiple easements granted by the same or related donors on contiguous parcels of property as part of a series of contemporaneous grants to be treated as one easement despite the fact that there may be multiple easements recorded? This certainly would track the economics better than focusing on specific deeds and easements.

B. **Page 5—Part III, Line 2—Works of Art Held for Financial Gain**. People in the museum industry may have developed practices to comply with SFAS 116, but the statement in the instructions is less than clear on what happens when objects are held for financial gain. Add one or two examples. Probably the most helpful example would address the receipt of a work of art followed by an immediate sale of that work.

C. **Page 7—Part V—Endowment Funds, Generally**. The FASB pronouncements that govern endowment accounting are outdated and in the view of many incorrect. To avoid burdening the sector, the Service should adhere to those standards, but it should recognize the problems with them. In any event, reference should also be made to FSAS 124. The instructions should be updated once the FASB finalizes FASB FSP 117-a.

D. **Page 7—Part V, Lines 1 through 4—Endowment Funds**. First, eliminate the definitions because each one is defined in the Glossary. Second, as noted earlier, the definitions need to be written to reflect UPMIFA, which is likely to be adopted by most states.

E. **Page 8—Part V, Line 3(a)(i)—Endowment Funds**. Question 4 asks the taxpayer to identify endowment funds held by related organizations. An instruction should be added that the amount of endowment held by each

related organization be disclosed on Schedule O, along with a brief description, the reason for, and the nature of each arrangement. Similar funds should be allowed to be aggregated for purposes of this disclosure. Does the term "related organization" include supporting organizations and donor-advised funds?

F. **Page 9—Part VII—Other Securities**. Adopt a rule similar to the one that applies to "Other Expenses" on Line 24 of Part IX of the Core Form. In other words, if a category of investments exceeds more than 5% of the total other investments, it should be separately scheduled. In recent months, there have been stories about charities that held auction-rate debt, CMOs, and other types of financial products that have resulted in losses or markdowns. A Form 990 reader should be able to ascertain the level of concentration in a charity's investment portfolio to that degree of specificity.

G. **Page 10—Part X—Other Liabilities—Fin 48**. Does the text of the Fin 48 footnote include the tabular reconciliation? In other words, what does the term text refer to? It should. This should be clarified.

H. **Page 10—Parts XI, XII, and XIII—Reconciliation between Tax and GAAP**. An organization should be required to separately schedule and identify any item (like transactions or items can be aggregated) that exceeds 2% of the total reconciliations. In other words, combining material items requiring reconciliation under the "Other" category should not be permitted. Consequently, the instruction for Line 8 of Part XI should specify the level of detail required to be scheduled in Part XIV. This also is true for Lines 2d and 4b of Part XII and Lines 2d and 4b for Part XIII.

XVII. **SCHEDULE E, SCHOOLS**. No comment.

XVIII. **SCHEDULE F, STATEMENT OF ACTIVITIES OUTSIDE THE UNITED STATES**.

A. **Page 2—General Instructions**. Unless the definitions differ from those set out in the Glossary, delete.

XIX. **SCHEDULE G, SUPPLEMENTAL INFORMATION REGARDING FUNDRAISING OR GAMING ACTIVITIES**.

A. **General Comment**. Delete all definitions.

B. **Page 3—Col. (ii)—Type of Activity**. Consider listing 15 or 20 activity codes that describe common activities. Organizations should then be

instructed to list the applicable codes in col. (ii). One number should be designated as "Other." In the case of "Other," organizations should be asked to describe the activity on Schedule O.

C. **Page 4—Part II—Fundraising Events**. Once again, the instructions should distinguish between freestanding raffles and lotteries and ones that are tied to a dinner or other event. The first step is to distinguish between embedded raffles and lotteries (part of a larger event like a dinner) and stand-alone raffles and lotteries. The second step is to clarify the use of the phrase nominal value.

D. **Page 5—Part II, Lines 4 and 5—Cash and Non-Cash Prizes**. If tickets could be purchased separately for a raffle drawing, but the buyer didn't have to attend the event, would those ticket sales be reported as part of the event revenue in Part II or as gaming revenue in Part III?

XX. **SCHEDULE H, HOSPITAL**. I leave comments to those who regularly work with hospitals.

XXI. **SCHEDULE I, SUPPLEMENTAL INFORMATION ON U.S. GRANTS**.

A. **Generally**. Delete the definitions.

B. **Page 4—Line 2—Grant Recipients**. There is a reference to Line 1, but there is no Line 1 in Part II. Is the reference to the specific listings above Line 2?

C. **Page 4—Line 3—Grant Recipients**. There is a reference to Line 1, but there is no Line 1 in Part II. Is this a reference to the specific listings above Line 2?

D. **Page 4—Line 3—Grant Recipients**. Why not just refer to churches, integrated auxiliaries, and organizations with gross revenue of $5,000 or less in the instructions for Line 2?

XXII. **SCHEDULE J. COMPENSATION INFORMATION**.

A. **Page 4—Part I--First Class Travel**. Does first-class travel include business class? Please clarify.

B. **Page 4—Part I--First Class Travel**. The classification of any travel on an organization-owned plane is too broad. The Service should draw similar distinctions in the case of charter travel. Examples would be helpful. Here

are several:

1. **Example 1**: Disaster Relief Agency maintains a list of doctors that it contacts whenever there is a disaster any place in the world. Because time is of the essence and it is often difficult to obtain flights to remote locations, the agency has purchased a plane. When there is a disaster, the doctors are asked to report to the centrally-located hanger to be flown on the plane to the area hit by the disaster. Several key employees and directors, who are doctors, often are included in the disaster response team so that they can assist the victims. This is not considered first-class or charter travel.

2. **Example 2**: Same facts as Example 1. When there are no disasters, the executive director of Disaster Relief Agency uses the plane to fly to meetings with funders. The executive director also uses the plane to travel to conferences and speaking engagements. This is considered first-class or charter travel.

3. **Example 3**. Same facts as in Example 1, but because of the cost of ownership, Disaster Relief Agency charters a plane for the travel to remote locations. This is not considered first-class or charter travel.

4. **Example 4**. Disaster Medical Supply Agency uses a specially-equipped plane to fly pharmaceuticals to areas around the world that have been hit by disasters. The agency's pharmacist, who is a key employee, accompanies the shipments to make sure that the drugs are properly stored. This is not considered first-class or charter travel.

5. **Example 5**. An art museum is lending a priceless painting to a European museum for a major retrospective on the painter. It charters a plane to transport the painting, as is required by the museum's insurance carrier. The museum's executive director and chief curator both accompany the painting on its journey. This is not considered to be first-class or charter travel.

In short, there are legitimate reasons for using a charter or for an organization to own a plane. The Part I, Line 1a questions are designed for public shaming. Even though an organization can offer an explanation, it should not be put in that position if there are legitimate business reasons for

the arrangement, particularly given the fact that many reviewers will not take the time to review Schedule O.

C. **Page 4—Part I—Travel for Companions**. Instructions should provide that the box need not be checked if the family member is a key employee or highest paid employee if the companion is also engaged in bona-fide business. It is conceivable that both members of a married couple work for the same organization.

D. **Page 8—Line 8—Initial Contract Exemption**. Delete the last sentence. It suggests that an organization forfeits the initial contract exemption if it acts diligently by using comparables and documenting the arrangement.

XXIII. **SCHEDULE K. SUPPLEMENTAL INFORMATION ON TAX-EXEMPT BONDS**. I leave comments to bond counsel.

XXIV. **SCHEDULE L. TRANSACTIONS WITH INTERESTED PARTIES**.

A. **Page 3—Part I, Line 1—Excess Benefit Transactions**. The instruction requests a lot of information, yet Line 1 does not provide sufficient space for a full response. There should be an instruction to use Schedule O or, alternatively, the Service might consider a Schedule L-1, Continuation Sheet. Adding a continuation sheet shouldn't require a major programming effort.

B. **Page 3—Part I, Line 2—Amount of Tax**. The instructions for Line 2 should distinguish between a correction payment and excise tax.

C. **Page 3—Part 1—Excess Benefit Transaction**. Delete the definition. The highlights (which also should be deleted) point out that the instructions warn of serious consequences. I don't see much of a warning. Consider a CAUTIONARY note.

D. **Page 3—Part II—Loans, Generally**. I strongly disagree with the decision to exclude pledges from the definition of loans in Schedule L. Pledges can provide a board member with significant and sometimes undue influence. Consequently, interested-party pledges warrant disclosure. If not here, then in Part IV.

Even if the Service rejects my general comment, it should require the disclosure of past-due pledges from interested parties. These should no longer be viewed as mere contractual obligations, but ones that have ripened into a "full" debtor/creditor relationship. The question facing the

Service is whether unpaid pledges are better characterized as potential excess benefits under the intermediate sanctions. That treatment would seem to be appropriate when no interest is accrued on the unpaid balance of a past due pledge.

E. **Page 4—Part III—Grants**. The Service should explicitly exclude grants made by social service agencies to board members in their capacity as members of the charitable class. As noted earlier, under federal law, at least one-third of the members of a community action agency's board of directors must be low-income individuals living in the community or their representatives. In some cases, low-income directors may receive various forms of assistance from the agency. Requiring these individuals to be publicly identified could prove embarrassing to some, thereby making it more difficult to recruit low-income board members.

F. **Page 5—Part IV—Business Transactions Involving Interested Parties, Large Board Exception**. The large-board exception is a bad idea for three reasons. First, it provides an incentive for the use of executive committees, thereby concentrating board power in a small group of individuals. This provides other board members with the cover that often results in abdication of duties. Second, if major decisions are still left to the full board, it permits the organization and its directors to hide relationships that might influence those major decisions. Third, the executive committee might use insider contracts to encourage the larger board to more readily adopt executive committee recommendations or re-appoint executive committee members. In other words, it provides the opportunity for undisclosed back scratching. For these reasons, the exception should be eliminated.

G. **Page 6—Part IV—Business Transactions Involving Interested Parties, Aggregation**. A couple of examples would be helpful. More importantly, I believe the aggregation rule should be eliminated. If a firm is paid for services that aggregate above a certain amount—$10,000 currently—Schedule L reporting should be triggered. Deciding what constitutes a separate or discrete transaction poses some knotty issues. Moreover, money is money. The purpose of Schedule L is to disclose transactions with insiders because of the potential for undue influence, or private or excess benefit. Once the cumulative payments over a given period of time exceed the specified threshold, the motivations for abuse are identical. In fact, there may be greater opportunity for abuse in the case of a series of small transactions rather than one large one because the board or other independent actor may be more inclined to examine the larger transaction

rather than the all the little ones. Given the prevalence of computer accounting systems, it should not be difficult for an organization to determine aggregate amounts paid to one vendor. I do not have a problem with aggregating smaller transactions and reporting them all together as "Legal Services" or "Purchases of Supplies."

XXV. **SCHEDULE M. NON-CASH CONTRIBUTIONS**.

A. **Definitions**. Delete all definitions and refer readers to the Glossary.

B. **Page 7—Line 31—Gift-Acceptance Policy**. First, the Service needs to provide several more examples. Second, now seeing the definition of non-standard contributions, I find this question to be meaningless. I'd go back to the programmers and ask them to remove the non-standard contribution limitation. In other words, does the organization have a gift-acceptance policy? That is a meaningful question pertaining to governance. If still necessary, the term *non-standard contribution* should be defined in the Glossary.

XXVI. **SCHEDULE N. LIQUIDATION, TERMINATION, DISSOLUTION OR SIGNIFICANT DISPOSITION OF ASSETS**.

A. **Page 3—Part I, Line 2—Payments**. I don't profess to be an expert in qualified benefit plans, but distinguish between future salary to be paid by the surviving entity (clearly reportable) and payments of benefits that had already vested under a reporting organization's benefit plan that is transferred to or managed by the new organization. In other words, distinguish between payments for future services and payments for services that have already been rendered.

XXVII. **SCHEDULE R. RELATED ORGANIZATIONS AND UNRELATED PARTNERSHIPS**.

A. **Page 4—Specific Instructions, Definition of Control, Indirect Control**. This paragraph is ambiguous. The first sentence suggests that control is determined by a general assessment of the situation. The second sentence refers to Section 318—sort of "by the way you might want to take a look at Section 318." Are there two ways to determine control, or is control determined solely by applying Section 318. If it is the latter, the first sentence should be deleted. It then might be helpful to provide one or two examples.

B. **Page 6—Part II, Column (E)—Predominant**. A Glossary definition of

predominant and several examples would be helpful.

I think all interested parties will agree that the team assigned to the Form 990 project has produced an excellent set of instructions. I have no doubt that the Service will receive many comment letters and that the Service will be open to incorporating many of the suggestions.

Thank you for permitting me to have input into this important process. If I can be of assistance in clarifying any of my comments, please do not hesitate to have the appropriate person call me.

Sincerely yours,

/s/ Jack B. Siegel

Jack B. Siegel
Principal, Charity Governance Consulting LLC

From: Lilleberg, Norm
To: *TE/GE-EO-F990-Revision;
Subject: New 990 filing date
Date: Monday, April 28, 2008 11:03:17 AM

It looks like the new 2008 990 is going to force us to make a change in our chart of accounts, which will make us change our financial reports, write new reports, etc.

Our reporting year for the new 2008 - 990 reporting requirements started on October 1, 2007 – well before the new information came to us. I am requesting a year's delay in the implementation of the form to allow us to adjust our systems to accommodate the new requirements. Non-profits don't have the resources to make wholesale systems changes in such a short timeframe with the short staffing environment under which we normally operate.

Sincerely,

Norm Lilleberg
Wycliffe Bible Translators, Inc.

From: Sara Wyszomierski
To: *TE/GE-EO-F990-Revision;
Subject: RE: Form 990 question
Date: Monday, April 21, 2008 10:51:00 AM

I would recommend that The National Taxonomy of Exempt Entities Classification System be used. I would be interested to know what other options you are considering if you are making that information available.

Thank you,

Sara

From: JnSma6

To: *TE/GE-EO-F990-Revision;

Subject: Re: Revisions for 501 3c

Date: Tuesday, April 29, 2008 8:21:48 AM

For Non Profit Community based after scholl at risk programs what are the new revisions as far as donations and what is expected in order to take any amount that is provided either monetary or donationsof items such as food clothing etc thank

****

From: Craig Johnson
To: *TE/GE-EO-F990-Revision;
Subject: Whistleblower Policy
Date: Thursday, May 01, 2008 10:21:25 AM

Somewhere we need an example of a Whistleblower Policy for a non-profit.