

From: [Sterling](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Oversight
Date: Friday, July 27, 2007 1:04:33 PM
Attachments:

Regardless of form, there should be more oversight of nonprofits. How often are nonprofits audited? What investigation is done to assure the nonprofit is in compliance?

North Carolina also exempts certain retirement homes from property taxation. This is a scam against NC taxpayers and raises property tax for those who do pay taxes. And these homes are for the wealthy. They benefit no one else. This is simply wrong. Many of these homes have a golf course, indoor swimming pools, tennis courts and more. And it will only get worse with the baby boomers.

xxxxx xxxxxxxx at xxxxx xxxxx in NC comes to mind but there are many others, all listed on the NC Insurance Commissioner's website.

Please protect taxpayer money by checking on these retirement homes that purport to be nonprofit.

Kay Sterling

From: [Danny Prince](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comments of the Draft Form 990 Redesign of the Core Form released on June 14,2007
Date: Friday, July 27, 2007 10:24:31 AM
Attachments:

I attended the 990 Form Workshop at the IRS Forum held in Atlanta and they instructed that we do comments to this email address. My first comment is on Part I line 1 of the Summary section of Activities and Governance where it asks to briefly describe the organizations mission. I believe, that the space allotted for them to describe their mission in which their mission is already defined, and should actually allow the preparer to be able to input the entire mission,,particularly since this page is described as a snapshot page that potential donors will be perusing.

My second comment address page 11 of 47 on the Instructions posted that talks about penalties that may be charged if an organization files an incomplete return. Where N/A or None is to be there should be a box for every situation where that could occur. I did see in the revamp form there are some places where N/A is a choice, but not in every situation.

Thank you for receiving my comments,
Danny Prince, EA
Drake Software Programmer
Franklin, NC

From: [Randall R. Shepard](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: 990-EZ
Date: Friday, July 27, 2007 7:47:41 AM
Attachments:

What does this redesigned form do, or mean, for the 990-EZ. Is this now effectively eliminated and therefore all orgs must file this 10 page Core form, thereby increasing their filing burden on an annual basis.

rs

Randall R. Shepard, CPA, FHFMA
Audit Principal, NFP/TE Division
The Bonadio Group, *CPAs, Business Consultants & More*
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From: [Brent Hample, India Partners](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC: [Chad Hayward; Hasdorff, Terri \(AID/A\); Like, George E \(DCHA/PVCASHA\); Ben Homan; Defazio, Peter;](#)
Subject: Comments about proposed Schedule F of Form 990
Date: Wednesday, July 25, 2007 5:12:38 PM
Attachments:

Dear Sir or Madam at the IRS,

As an international faith based development and relief agency that conducts humanitarian work in India, and as a member of AERDO, the Association of Evangelical Relief and Development Organizations, we are concerned about the security of grant recipients that will be disclosed if Schedule F, Part II is made a public document.

Although Schedule F does not request the address of grant recipients, with the name of the organization and the city, the agency's security can easily be compromised. This could put the staff of agencies at risk of reprisal by opposition groups or even intolerant governments.

There are many other countries, some worse than India, that are not tolerant of faith-based humanitarian agencies, regardless if the work conducted is of a secular or religious nature.

I ask that Schedule F, Part II be required, but not disclosed to the public.

Thank you for your assistance.

Sincerely,

Brent

Brent H. Hample
President/CEO
India Partners

Phone: 541-683-0696

Fax: 541-683-2773

Website: www.indiapartners.org

Mail: P.O. Box 5470, Eugene OR 97405, USA

.....
India Partners is a Christian international development and relief organization that has been supporting self-help projects in India since 1984. All are served regardless of caste, religion, gender, or creed.

Copied to:

Chad Hayward, Executive Director, AERDO

Terri Hasdorff, USAID

George Like, USAID

Ben Homan, President of Food for the Hungry and AERDO

Congressman Peter DeFazio

From: [Colombo, John](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comments on Schedule H to Proposed Form 990
Date: Wednesday, July 25, 2007 12:13:42 PM
Attachments: [990 Letter.doc](#)

Attached please find a Microsoft Word document containing a letter with comments on the draft Schedule H to proposed Form 990.

Very truly yours,

John D. Colombo
Albert E. Jenner, Jr. Professor
University of Illinois College of Law

VIA E-MAIL

Ronald J. Schultz
Senior Technical Advisor
Tax-Exempt and Government Entities

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

Dear Mr. Schultz,

Below are comments I have with respect to the proposed revisions to Form 990 issued on June 14, 2007. The comments relate exclusively to Schedule H of the proposed revision.

First, let me congratulate the IRS on an exceptional work product. The team working on these proposals obviously put a great deal of thought into the redesign of the Form 990, and the proposed form represents overall a superb effort.

My comments on proposed Schedule H are more conceptual than technical. The IRS explanations regarding the proposed 990 project highlight the importance of “transparency” to the new form. “Transparency,” however, can mean different things in different contexts. One of the obvious meanings and a clear focus of the new form is simply to provide far more meaningful information regarding what nonprofit organizations do and how they do it. This “disclosure transparency” is an extremely important goal of the proposed form, and one of its major strengths.

Another goal, however, is not stated explicitly, but I believe is equally important. That goal is “comparability” – that is, the ability to use information generated by the new form to compare nonprofit organizations to for-profit organizations, to compare the operation of one nonprofit to another, and to compare the operation of a single nonprofit over time. Given the fact that the Form 990 is a public document, the information in the form will be used for these purposes whether the IRS intends for that to happen or not. As a result, the issue of comparability, particularly with respect to the disclosures in Schedule H regarding the operation of nonprofit hospitals, is particularly important.

I. Comparability in Schedule H

A. Require a Schedule H for each “hospital facility.”

As currently proposed, Schedule H suffers from two main problems with comparability. The first problem is that as written, a single Schedule H will be filed by a single reporting entity to cover all of the “hospital facilities” (as defined for Schedule H)

operated by the reporting entity. This approach certainly makes administrative sense; in effect, a single Schedule H is filed by each organization that receives a tax exemption and thus is subject to filing form 990. Modern healthcare organizational structures, however, vary widely. In some cases, a single hospital system might have only one reporting entity that owns several hospitals; in other cases, a hospital system might have each individual hospital as its own reporting entity. If a single Schedule H is “matched” to the reporting entity, then the reported numbers between these two types of multi-hospital systems will not be comparable, because in one case the Schedule H will represent combined numbers from several hospitals, while in the second case each hospital will file its own Schedule H. One can predict that, within certain limits dictated by state licensing laws and liability isolation concerns, this state of affairs will cause some hospital systems to engage in internal corporate restructuring to combine (or split up) operations in order to make the numbers reported on Schedule H as favorable as possible. The result will be numbers that are neither comparable between hospital systems, nor transparent, since outside observers will be unable to “break down” the combined numbers into the separate operational entities.

Both comparability and transparency would be improved, therefore, if a Schedule H were required for *each* “hospital facility” as defined in the new form, whether that hospital files a separate 990 or not. For example, suppose that Hospital System X, Inc. is the 990 reporting entity, and it operates two hospitals in a particular metropolitan area. Hospital A is located in a wealthy suburb and provides virtually no charity care or community benefit as defined in Schedule H. Hospital B operates in a poor inner-city area and provides virtually all the charity care (and other community benefits) reported by System X. It seems to me that if the goals of the proposed 990 are to increase transparency and provide policy makers with information relevant to future tax-exemption policies, then one would want to know what the charity care and community benefit numbers are for each of these hospitals independently, as opposed to a combined number. Having separate Schedule H’s for each “facility” moreover, limits the incentive for health care systems to engage in corporate restructuring to combine or split entities simply to affect the reporting number; if each facility must report its own numbers on a separate Schedule H, there is no reason to engage in any corporate restructuring because the reporting will not be based on separate entities, but rather on each facility operated regardless of the ownership structure.

B. Specify a single method to report relevant numbers.

The second major comparability problem with Schedule H as drafted is that it gives hospitals choices on how to report certain items. For example, the costs of charity care can be reported either by using the hospital’s internal cost accounting method or by using program cost reports and calculating a cost-to-charge ratio. When choices such as these are provided, both transparency and comparability are harmed. Hospitals will naturally favor whichever calculation method benefits them the most, and might even switch methods from year-to-year. This means that the reported numbers will neither be transparent (particularly if internal cost accounting is used, since no one will know precisely how the cost numbers were calculated) nor will they be comparable between

entities choosing different methods. In fact, if hospitals vary reporting methods from year to year, the reported numbers for a single entity will not be comparable over time, destroying comparability between institutions. Similar problems occur in those sections of Schedule H that call for reporting “indirect costs.” Unless the IRS specifies a single methodology for reporting such costs, the resulting numbers will neither be transparent nor comparable across institutions. A variety of empirical evidence suggests that charities routinely minimize their UBIT exposure by aggressively allocating overhead to minimize UBTI. I can see this happening in the community benefit reporting as well, unless the IRS specifies a reporting methodology.

I certainly can understand the desire of the Service to provide some flexibility to minimize the reporting burden on taxpayers. Given the overall purpose of Schedule H to gather data for future policy, however, comparability should trump whatever marginal burden is imposed by requiring a specific reporting methodology. In fact, that burden is not likely to be great: for example, all exempt hospitals participate in Medicare/Medicaid and file cost reports for those programs. Requiring calculation of costs based upon Medicare/Medicaid cost-to-charge ratios will not present any significant burden to nonprofit hospitals, since they already have to prepare those reports.

II. Thoughts on “Community Benefit”

Although Form 990 is a federal reporting form only, the community benefit reporting section of Schedule H is likely to become the “de facto” reporting standard for community benefit across all jurisdictions, if for no reason other than all exempt hospitals will now have to provide this information in a standardized format. As a result, the Service needs to give considerable thought to what “counts” for community benefit purposes.

Fortunately, the current draft of Schedule H already evidences some careful thought about the definition of community benefit. Limiting the reporting numbers to costs, for example, is clearly the correct way to account for these items. Equally important are the reportable items, and I was pleasantly surprised to find that the reporting for activities in Line 5 and Line 9 are limited to activities that directly advance health services, education or research, and do not include general “community building” activities which have been advanced as community benefits by some in the hospital industry (e.g., Alliance for Advancing Nonprofit Healthcare, which has suggested including housing improvements, economic development, environmental improvement, etc.). Hospitals should be exempt based on the health services they provide, not because they paint over graffiti on the sidewalks. The Service should resist, therefore, any attempt to broaden the definition of community benefit contained in the proposed Schedule H.

In fact, I would suggest further narrowing what counts as community benefit to focus more strictly on services that distinguish nonprofit health care providers from their for-profit counterparts. My three additional principles to narrow the community benefit reporting in Schedule H are as follows.

A. *Expenditures for community needs assessment should not count as community benefit expenses.*

A community needs assessment should simply be part of the ongoing operation of any exempt organization, hospitals included. Such an assessment probably should be a requirement for exemption, but it should not result in “extra credit” for the hospital involved because it is simply a required part of good operating practice. Well-run nonprofits assess how to best serve their constituents on almost a daily basis, and hospitals should do the same, but they should not get “credit” for doing so any more than we would give them community benefit credit for successfully treating patients. That’s what they are *supposed* to do as part of simply existing!

B. *No services provided by for-profit hospitals as a voluntary part of normal business operations should count as a community benefit.*

Tax exemption should not be used to subsidize services that would be available from the private market in any event. If a particular service is offered by for-profit hospitals as a part of their voluntary business practices, it is reasonable to assume that it has commercial value and would be available without the incentive of tax exemption. Thus “loss leader” advertising programs like health fairs, blood-pressure screenings and the like should be eliminated from the community benefit concept, unless they are aimed at a particular population that is medically underserved. This concept of eliminating from community benefit any service with a commercial analogue is consistent with the CHA’s overall statement of principles regarding community benefit. The CHA community benefit guidelines, for example, state “Community benefits are programs or activities that provide treatment and/or promote health and healing as a response to identified community needs. *They are not provided for marketing purposes.*” CHA, GUIDE FOR PLANNING AND REPORTING COMMUNITY BENEFIT 109 (2006).

C. *Expenditures that relate to training employees or staff, or which result in a direct economic benefit to the hospital, should not count as community benefits.*

In these cases, whatever community benefit results from the expenditure is offset by a benefit to the institution. For example, one nonprofit hospital tried to claim that the costs of Spanish classes for its staff were “community benefits.” Training your staff to better serve your customers, however, should not be viewed as a community benefit any more than training staff in administrative procedures or how to fill out insurance reimbursement forms. If money spent on training employees counts as community benefit, then every well-run business in the United States deserves tax exemption. Similarly, if a hospital employs medical interns, they get the benefit of cheap labor; if we’re going to give a hospital community benefit credit for providing a “clinical environment” for training interns, then we should offset that against the benefit of having cheap labor. Am I providing a community benefit by employing law students as research assistants and paying them a pittance? After all, they are being trained in legal research. The answer is “of course not;” I’m primarily benefiting myself. Is a law firm doing so by having a summer associate program?

Similarly, the IRS instructions to proposed Schedule H state that medical research includes “Research papers prepared by staff for medical journals.” Again, this has nothing to do with the delivery of health services to patients; it is professional development, and directly benefits the individual writing the paper and the reputation of the institution involved.

III. Two Clarifications Needed

I close my comments by noting two points where the instructions to Schedule H should be clarified. First, my understanding is that charity care as defined in Schedule H does not include bad debt expense. If my understanding is correct, the Service needs to both clarify this point and provide guidance on exactly what constitutes bad debt for this purpose. I have previously opined, however, that a better approach would be to adopt the principles of HFMA Statement 15 on this point. See John D. Colombo, *The Provena Tax Exemption Case: The Demise of Community Benefit?* 55 EXEMPT ORG. TAX REV. 175, 180-81 (2007). Second, my understanding is that Medicare (as opposed to Medicaid) shortfalls do not count as community benefits in the “other unreimbursed government program cost” category. Again, this should be clarified in the instructions, although I agree substantively with the decision to exclude these costs. See Colombo, *supra*, at 181.

Once again, I commend the IRS for its effort on the Form 990 redesign. The overall approach of using the Form 990 as a cogent disclosure document is the right path for this form, and I am sure the final product will reflect significant improvements over what is already a superb effort. I look forward to that final product.

Very truly yours,

John D. Colombo
Albert E. Jenner, Jr. Professor
University of Illinois College of Law

From: [Accounting](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: question
Date: Wednesday, July 25, 2007 11:19:31 AM
Attachments:

Does the new Schedule F mean that form TD F 90-22.1 will no longer be necessary?

Rick Tvedt
Financial Officer
Wisconsin Coordinating Council on Nicaragua
PO Box 1534
Madison, WI 53701-1534
608-257-7230

From: [Judy Brosky](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Life Insurance and Form 990
Date: Tuesday, July 24, 2007 2:43:18 PM
Attachments:

I am certainly not an accounting person, but I find it curious that the financial asset called **cash-value life insurance is not represented in Form 990 reporting.**

I have spoken with Guidestar.org whose website is devoted to nonprofits and Form 990 reporting. I asked where I could find this information. They said they don't have a field for it. It was their suggestion that I send this email. Many nonprofits own cash-value life insurance via purchases, gifts, or through association with any myriad of trust types. With the Uniform Prudent Investor Act and Sarbanes-Oxley, doesn't it seem relevant to have insurance at the very least mentioned in the filing?

When I went to your Revised Form990 Glossary, I hoped I would find life insurance mentioned but I didn't. I also checked Schedule M and it wasn't there either. If I am mistaken and you have included it, congratulations and please advise me where I find can find it. If I am correct and it is not reportable, please consider this as a potential revision.

Thank you for opening the revision process up to the public.

Judy Brosky

Judy Brosky, ChFC, CLU
119 E. Newman Rd.
Williamston, MI 48895
248.770.6899 Cell
517.655.4766 Fax

Good Harbor Financial Group, LLC

From: [Stan Berman](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Form 990-N
Date: Tuesday, July 24, 2007 2:23:56 PM
Attachments:

We have a group exemption covering several hundred subordinate units throughout the United States, most of whom will be required to file the 990-N next year. It would be very useful to an organization like ours, and we would think to any organization with subordinate units covered by a group exemption, if the IRS had mechanism whereby the parent organization was periodically informed which of its subordinate units had filed and/or which had not filed. Such a mechanism could greatly help the parent organization more effectively ensure compliance by all subordinate units with the filing requirement.

Thanks for your consideration.

Stanley M. Berman
Chief Financial Officer
Phone: (202) 857-6522
Fax: (202) 857-6523

From: [Nigro, Louis, 127WG, 6768](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC: ["H.W.Rudolph"; "John Hogan"; Leon, Constantine A Maj
ANG 127 WG/FM; Becker, Charlotte A GS-13 ANG 127 LRS/
LGRS; "Viterna, Mike";](#)
Subject: Form 990 Revision
Date: Tuesday, July 24, 2007 9:12:53 AM
Attachments:

The proposed Form 990 calls for a new Schedule M if organizations report more than \$5,000.00 of non-cash contributions on Form 990, Part IV, line 1g.

Non-cash contributions to our Museum are in the form of historic artifacts and memorabilia.

To complete the proposed Form 990, Part IV, line 1g, we would be required to assign a value to the non-cash contribution.

Paragraph 1.14.2 of Air Force Instruction 51-601 states that we will "not place any value on a gift that a donor might offer to gain a tax benefit, but will suggest that the donor consult a civilian expert for specific tax advice."

Further, these non-cash contributions are not considered financial assets and we internally assign a value only for insurance purposes.

We're caught in between your directives and those of the Air Force.

//signed//

Lt Col Louis J. Nigro
Executive Director, Selfridge Military Air Museum
586-307-6768/5035

|

From: [Linda Henke](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: New Schedule E
Date: Monday, July 23, 2007 6:54:57 PM
Attachments:

I think the questions about schools are not clear. The draft form does not improve on the existing confusion.

The CURRENT (OLD) Schedule A , Part V, Private School Questionnaire, says it is for Private Schools, but that is not made clear in the instructions. If the organization checks the box on Line 6, Part IV ("The organization is not a private foundation because it is... a school. Section 170((b)(A)(ii)."), it is then directed to complete Part V. There are no questions similar to those on lines 2a and 2b of Form 1023, Schedule B, Section I ('Are you a public school because...? Do not complete the remainder of Schedule B").

This is even LESS clear in the draft 990. Schedule E says simply "Schools" at the top. It does not even say "Private Schools". And there are no elimination questions to keep public schools from having to fill out the whole thing.

Thank you for your consideration,

Linda G. Henke, CPA, MBA
Senior Manager
Hayashi & Wayland Accounting & Consulting, LLP
1188 Padre Drive, Suite 101
P.O. Box 1879
Salinas, CA 93902
Tel: (831) 759-6300 Fax: (831) 759-6380

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From: [Cathy Lippard](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC: [Nancy Anthony; Carla Pickrell; Leslie Griffith;](#)
[Cathy Lippard;](#)
Subject: Revised - Response to 990 Revisions from Oklahoma City Community Foundation
Date: Monday, July 23, 2007 5:56:13 PM
Attachments: [990 Revision - Response from Oklahoma City Community Foundation.doc](#)

We transmitted a file to you this morning. Please replace it with this one. The previous submission did not include the OCCF letterhead.

Thank you,
Cathy

Cathy Lippard
Reporting
Oklahoma City Community Foundation
405/606-2915 | Fax: 405/235-5612

We've moved! We are now located at 1000 N. Broadway Ave. Our mailing address remains as listed below.

P.O. Box 1146 | Oklahoma City, OK 73101-1146
["Helping You Help the Community"](#)

Confirmed in compliance with national standards for U.S. community foundations

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OKLAHOMA CITY
COMMUNITY FOUNDATION
Helping you help the community

P.O. Box 1146 • Oklahoma City, OK 73101 • 405/235-5603 • fax
405/235-5612

www.occf.org

July 23, 2007

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

Submitted via email to: Form990Revision@irs.gov

We respectfully submit this in response to your request for comments related to the redesigned Form 990 that is scheduled for the 2008 tax year. The following comments are those we feel most strongly about and aren't meant to represent the entirety of our concerns.

Grant Related Disclosures

We are very concerned about the level of disclosure that appears to be required on Schedules F and I concerning individuals and organizations that receive grants. For example, question 2a on Schedule I asks:
Was any individual or organization that received a grant or assistance related to any person with an interest in the organization, such as a donor, officer, director, trustee, creator, highly compensated employee, or member of the selection committee?
(emphasis added)

When you consider that, during one fiscal year the Oklahoma City Community Foundation distributes grants to more than 1,000 organizations and receives gifts from more than 950 donors, the possible number of relationships is enormous. Also, given the fact that philanthropically minded people tend to be involved with multiple nonprofit organizations, the identification and disclosure of all these relationships seems to be an impossible task.

Attorney-Client Privilege

In some situations, such as Question 5b on page 3 of the Form 990 draft, we may be prohibited from obtaining this information due to attorney-client privilege. The question requires officers, directors, trustees and key employees to disclose business relationships with anyone else in these same categories. Item two from the instructions says that business relationships include the following:

One person was involved with the other in one or more contracts of sale, lease, license, loan, performance of services, or other business transactions involving transfers of cash or property value in excess of \$5,000 in the aggregate during the tax year. (emphasis added)

Due to the fact that there are practicing attorneys on many of our boards and committees, this appears to be asking that they disclose relationships and transactions that are protected under attorney-client privilege. We consider this question to be too broad and think that it should be redesigned or at least clarified to exclude relationships that would fall under attorney-client privilege provisions.

Conclusion

In general, we recommend that broad-sweeping disclosure requirements such as those noted above be revised to be more manageable and actually attainable. While we agree that exempt organizations must continue to be transparent and accountable, we do not believe it will serve the public's interest to create reporting requirements which are unnecessarily burdensome or impossible to fulfill. Also, simply collecting volumes of information will not, by itself, make exempt organizations operate more ethically and be more accountable to the public.

The Oklahoma City Community Foundation values the trust given us by the public, our donors and constituents and continually strives to exceed expectations of transparency and accountability. In doing so, we welcome change which will enhance this goal but the goal must be attainable, manageable and add value to our mission. We believe that the Form 990 revisions discussed in this memo miss the mark in that endeavor.

Sincerely,

Nancy B. Anthony
Executive Director
Oklahoma City Community Foundation

From: [Moja, Dave](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject:
Date: Monday, July 23, 2007 2:55:27 PM
Attachments:

Folks,

First, I thought the telephone forum last week was well done and very informative.

One question we had regarding the new, draft Form 990:

On the DRAFT Form 990, Part IX, Line 3 the form asks for an "Activity Code". Is it correct that these are the codes from the Instructions to Form 990-T (page 24 for 2006)?

THANKS!

Dave Moja

David C. Moja
RSM McGladrey
7351 Office Park Place
Melbourne, FL 32940
phone: 321-751-6200
cell: 719-314-9353
fax: 321-751-1385

The official tax, accounting and business consulting firm of the PGA tour

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From: [Curt Stutzman](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC: [Ron Yoder; Gerry Rush; Mike Piper;](#)
Subject: 990 redesign issues
Date: Monday, July 23, 2007 8:59:32 AM
Attachments: [_____](#)

Sirs:

I am writing to comment on the proposed changes to the nonprofit 990 returns. I applaud your goals in modifying the forms. However, you state your third goal as:

"Minimizing the burden on filing organizations means asking questions in a manner that makes it relatively easy to fill out the form, and that do not impose unwarranted additional record keeping or information gathering burdens to obtain and substantiate the reported information."

Organizations like ours (continuing care retirement communities) have a health care aspect of our operations. Based on your filing requirements in the proposed changes, we anticipate that 990 preparation time will double over the current requirements. The amount of information requested will be quite time consuming to acquire, as much of the information requested is somewhat subjective in content.

This places a burden on organizations such as ours which try to provide all the service we can to clients for the least possible cost. This is a balancing process that requires administrative staffing levels to be kept at a minimum, so that provision of care in front line positions can be maximized. Adding administrative burden through requiring detailed schedules not previously required will cost in time and staffing.

I don't believe that this is the intent, given the goal stated above. I would request that you reconsider the requirements, especially for health care providers.

I support your goals stated for these changes, but question whether your

proposed requirements can satisfy the administrative burden limitations you have stated.

Thank you for the opportunity to comment.

Curtis D. Stutzman
Chief Financial Officer
Virginia Mennonite Retirement Community

From: [Caracci, Peter](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comment on revised Form 990
Date: Saturday, July 21, 2007 8:37:36 AM
Attachments:

July 21, 2007

IRS
Form 990 Redesign, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

To Whom It May Concern:

I want to thank the IRS for taking on the project of redesigning the FORM 990. Your undertaking will benefit all stakeholders associated with non-profit organizations.

Areas of concern:

- **Lack of compliance in recognizing compensation and other financial arrangement payments to employees of management service organizations who maintain Executive, Officer or key level positions within the organization.**

There are cases where Officers and key level employees who work for management service companies dispute their “statutory employee” status.

There is a need to educate those in the non-profit industry, especially Board of Directors on this matter. Staff level employees have little leverage to enforce compliance in areas of hardened dispute with leadership. Also, because independent certified auditors perform no audit review of Form 990, compliance rest solely on leadership’s

discretion. In many cases compliance is under the control of only one individual.

- **Conflict of interest by Board members and management services companies.** I would recommend that the IRS should question whether Officers, Directors and key level management service employees are required to adhere to the same conflict of interest policy as the organization's paid employees. If not, this would flag the organization as an "at-risk" organization.
- **Accountability of the Board of Director**
There is a need for the IRS to establish standards and penalties specifically targeted to Board members. Historically and currently there is little accountability of the Board of Director in the non-profit segment of the economy. At a minimum, Board of Directors should be held to some level of personal accountability for the completeness and accuracy of the FORM 990.

Provided are suggested items for consideration on the revised FORM 990.

Concern: Payments to management service companies

Part I – Summary

Additional question:

5 b. How many individuals employed by a management service company provide over 1,560 hours of service to the organization and its affiliated organizations?

Part II – Compensation and Other Financial Arrangements with Officers, Directors, Trustees, Key Employees, Highly Compensated Employees, and Independent Contractors

Addition to the Section:

1 b. If the organization pays any other person, such as a management services company, for the services provided by any of its officers, directors, trustees, or key employees, report the compensation and other items in Section A as if the organization had paid the officers, directors, etc. directly.

Comment: By stating the requirement directly on the FORM 990 compliance might increase.

Concern: Conflict of interest by Board members and management services companies

Part III – Statement Regarding Governance, Management, and Financial Reporting

Additional questions:

3 c. Are officers, directors, trustees, and management service company employees who hold key positions in the organization required to adhere to the same conflict of interest policy as employees? Yes/No

Comment: By asking this question the IRS can determine “at-risk” organizations. This question might also encourage a reasonable ethical standard that those directing the organization, including officers, directors, trustees and management service company employees who hold key positions, should adhere to the same conflict of interest policies as employees.

Concern: Accountability of the Board of Directors

Part X – Signature Block

Additional Signature:

Two signatures should be required on the FORM 990 return. I would recommend that the signature of (1) Chairperson of the Board or an individual who is a member of the Executive Committee and (2) Operating Officer – Executive Director, President, CFO, or Treasurer be required on the FORM 990 return.

Comment: Board members have to be held to some degree of accountability. Requiring two individuals to sign the return would, I would hope, increase compliance and an awareness of the importance of filing an accurate and complete return. Also, I would also make the recommendation that the Application for Recognition of Exemption (Form 1023) require two signatures also.

Thank you for the opportunity to provide comments.

Very truly yours,

Peter A. Caracci
550 Hempstead Road
Springfield, PA 19064

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Thank you for your cooperation

From: [Howard Donkin](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Such A. Questions
Date: Friday, July 20, 2007 9:04:39 PM
Attachments:

1. **In Schedule A, Part II there is no space asking for membership revenue.** Some IRC 170(b) charities receive small amounts of membership dues even though they are not a membership organization. The dues are really contributions since they do not receive any real benefits of membership. In the 2006, you allowed the membership income to be included in the public support. This redesigned form appears to exclude membership income. Do you agree with my conclusion? I propose that your instructions clarify that the membership income can be included in public support.
2. **Schedule A, Part II, line 13 is not used in the support calculation.** Do you agree with my conclusion? If yes, I propose that you remove line 13.
3. **Schedule A, Part III** states at the top of the page that the IRC 509(a) charity should ..."**Use the cash method of accounting.**" No such wording appears in Part II, so does that mean that the IRC 170(b) charity can use cash or accrual on Part II? Is that true because there is no specific rag controlling the IRC 170(b) charities?
4. **Schedule A, Part III, Line 19** gives the IRC 509(a) charity a second year to meet the 33 percent test. Do the rags say that we have two years for a IRC 509 (a)? Why doesn't the IRC 170(b) charities also get two years to pass the 33% test?

Please feel free to email me with your clarifications. I need your assistance before I can complete my formal response.

Thanks.

H

Howard Donkin, CPA
JACOBSON JARVIS & CO, PLLC
600 Stewart Street, Suite 1900
Seattle, WA 98101-1219

206-628-8990 (Office) 206-812-5484 (Direct) 206-628-0432 (Fax)
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From: [American Institute of Philanthropy](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Proposed Form 990 Changes
Date: Friday, July 20, 2007 6:08:34 PM
Attachments: [Input on Proposed 990 Changes from AIP Copy for IRS
7.20.07.doc](#)

Attention: IRS, FORM 990 REDESIGN, SE:T:EO

To whom it may concern:

In response to the IRS's request for public comment on the proposed changes to Form 990, we are submitting the following letter for your review. We have included this letter in the body of this e-mail, and have also attached it as a Word document. Please contact us at 773-529-2300 with any questions or concerns.

Sincerely,

Laurie Styron
Analyst
American Institute of Philanthropy
773-529-2300

July 20, 2007

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

RE: Proposed Changes to IRS Form 990

To Whom It May Concern:

Thank you for your efforts to improve accountability to the public and transparency in the nonprofit sector through your proposed changes to Form 990, released on June 14th. Many of the changes, if put into effect, will greatly enhance the public's access to important information that was previously not required to be broken-out or disclosed. We appreciate that the new schedules are designed to increase the accounting and reporting burdens of only those charities with more complex financial transactions, and do not force smaller charities with simpler operations to complete additional forms.

With that said, we at the American Institute of Philanthropy (AIP) were shocked by one glaring change to the Form 990 that will significantly reduce charities' accountability to the public, and deny donors of the information they need to understand how their contributions to charity are being used. The current version of the Form 990 requires charities that divide the expenses related to joint educational/fundraising campaigns (Joint Costs) among program, management & general, and fundraising expense, to provide a breakout of what dollar amounts are being allocated to each function. The new Form 990, if adopted, would allow charities to conveniently disguise as program expense what many donors would consider fundraising activities. This would leave the public at a great disadvantage, taking away the one reporting requirement that shows donors what portion of their contributions are being used to fund more solicitations, rather than the bona-fide programs they are intending to support.

The public is being bombarded with an ever-increasing amount of phone and mail solicitations from charities. As a nationally prominent charity watchdog organization, we are flooded with questions from both the public and the media, who want to understand how charities are using donors' hard-earned dollars. Many people are outraged to learn that charities are allowed to claim large portions of solicitation costs as program service expenses. Charities may claim that such activities are educating the public. You would not know this based on the complaints we frequently receive from donors who are fed up with the constant barrage of phone calls and mail they receive from charities requesting contributions. Based on AIP's more than fifteen years of experience reviewing such mail and phone appeals, we think it would be obvious to almost anyone that the primary purpose of solicitations is to raise funds, with the educational component being largely incidental in most cases.

Under current rules, a charity that includes an “action step” in their phone or mail solicitations such as “don’t drink and drive,” or “buckle your seatbelt,” can claim that they are “educating” the public, and can therefore report much of the expense of these appeals as a program. Such “action steps,” often relayed to potential donors through professional fundraisers hired by charities to broadly solicit the public for money, are typically messages of information that is common knowledge. Professional telemarketers, on average, keep two-thirds of the money they raise before the charity receives anything. What this means is that someone donating \$50 to charity through a professional fundraiser may have just paid \$30 to be solicited and “learn” that they should buckle their seatbelt. This is not what most donors would consider to be a charitable program, and the public should not be excluded from knowing how much of a charity’s reported program expense is part of its solicitation activities.

The reporting requirements for joint costs should be expanded not eliminated, so donors know what they are really paying for. Even when following the joint cost reporting requirements of AICPA SOP 98-2, charities are given wide latitude in how they account for and allocate these expenses. In considering changes to Form 990, the IRS should consider adding an additional requirement in which charities would disclose their five most expensive solicitation campaigns, including a breakout of each campaign’s program, management & general and fundraising expenses, including the method used for allocation. The nonprofit should also provide a good description of the program being conducted in conjunction with each solicitation that cites specifically what is being accomplished and why the recipient of the solicitation has a use or need for the information.

At the very least, the current disclosure requirements for joint cost reporting on the Form 990 should remain intact. While a break-out of Joint Costs may continue to be required in a charity’s audit under AICPA standards, this is not enough. There are numerous examples of charities incorrectly reporting or omitting important information from their tax forms, audits, and other reports. The Joint Cost reporting on Form 990 serves to provide information that may be cross-checked with a charity’s audit, state filings, and other data, for consistency and correctness. Such reporting can prevent a charity from claiming that failing to attach a required schedule or omitting important information from their reports was simply an oversight.

In summary, AIP encourages all donors to charity to ask what percentage of their donation is being spent on programs that are not a part of a group's solicitation efforts. If the new IRS form eliminates the disclosure of Joint Cost solicitation allocations, the public will no longer be able to have this very basic question answered by referring to the Form 990. It will also open the floodgates for unscrupulous fundraisers to aggressively solicit, knowing that most of the donating public will not be able to determine that they are only funding fundraising.

I thank you for taking the time to review our concerns, and encourage you to contact me if I can be helpful in providing additional insight into how Form 990 information may improve the oversight of nonprofit organizations and better assist donors and recipients of charity services. These proposed Form 990 changes, if adopted, will have sweeping and long-lasting effects within the nonprofit sector, and it is important that they result in more accountability to the public, not less.

Sincerely,

Daniel Borochoff
President

From: [Gayle Rietmulder](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: comments
Date: Thursday, July 19, 2007 2:17:45 PM
Attachments:

Statement of Functional Expenses

For the past two years, I have worked on a committee to redesign the uniform chart of accounts that is now mandatory for all 69 Make-A-Wish Foundation Chapters. We designed the chart of accounts to conform and flow to the current Form 990, page 2, Stmt of Functional Expenses. The National office of Make-A-Wish has converted 6 chapters to the new chart to date and plans to convert another 17 on September 1, 2007. The remaining chapters will be converted over the next few years.

Our purpose was to make it simple for chapters of all sizes to be able to create a statement that was in the exact order using the exact categories on the current 990. And, to make it easier for the National office to prepare combined statements, etc. The redesign of the form 990, will negate some of the benefits of this major undertaking, and create additional work for the chapters to complete the form. Our chart of accounts will not match up with the revised Form 990.

Another issue is that under GAAP, investment management fees can be netted against investment revenue. For non-profits that have sizable investments, expensing management fees as management and general will have negative impact on the program percentage. The program percentage on the form 990 is already negatively impacted for Make-A-Wish Chapters as we can not report inkind services as expenses. Our inkind service contributions are substantial as we have hotels, limo companies, parks, airlines, etc., donating or substantially discounting their prices in order to grant wishes to children with life-threatening medical conditions.

I would ask that you consider leaving the Statement of Functional Expenses as is and also consider allowing non-profits to report inkind services that are in conformity with GAAP on the Form 990.

Thank you for the opportunity to comment on the redesign.

Gayle

Gayle Rietmulder, CPA
CFO
Make-A-Wish Foundation of
Greater Los Angeles
1875 Century Park East, Suite 950
Los Angeles, CA 90067
(310) 788-9474
(310) 785-9474 fax

From: [Mike Adkins](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comment re revised Form 990
Date: Thursday, July 19, 2007 1:44:58 PM
Attachments:

I was not able to listen to the entire telephone conference today but with regard to the reconciliation between the 990 and audited financial statements, I believe that the 990 should reconcile to any “publicly available financial statements” which might include compilations and reviews. I believe that this is important to improve the consistency between these documents. The revised form indicates the level of financial reporting that is available but the reconciliation only applies to audited financials which a great number of nonprofits do not have.

My compliments on the revision

T. Michael Adkins, CPA

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From: [Fritschel, Karl](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Core Form Part III
Date: Thursday, July 19, 2007 1:40:55 PM
Attachments:

Does a Corporate Name Change constitute a "significant change" for purposes of answering Part III, Question 2?

Karl E. Fritschel, CPA

System Manager, Taxes

Phone: (206) 464-5039

Fax: (206) 464-4737

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From: [Anne Whatley](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: redesigned 990
Date: Thursday, July 19, 2007 1:38:04 PM
Attachments:

Does the redesigned 990 allow for group 990 filings?

From: [Dixon, Janet A.](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC: [Katayama, Alyce C.;](#)
Subject: IRS" New Redesigned Draft Form 990
Date: Thursday, July 19, 2007 1:24:09 PM
Attachments: _____

I was unable to get through during Tuesday's teleconference (IRS' New Redesigned Draft Form 990-hosted by the American Health Lawyers Association) and was hoping that one of the presenters could address my question. I am wondering what the rationale is for not including Medicare on Schedule H, Worksheet 3 "Unpaid Costs of Medicaid and Other Public Programs." It seems that as an "other public program" Medicare should be included in this worksheet. I appreciate any assistance that you may give. Thank you for your help.

Sincerely,
Janet Dixon

Janet Dixon

Quarles & Brady LLP

Health Law Associate
Quarles & Brady LLP
411 East Wisconsin Avenue
Suite 2040
Milwaukee, Wisconsin 53202

Direct Dial: (414) 277-5539
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From: [Sarah C. Harlan](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Missing Worksheet 8 to Schedule H
Date: Wednesday, July 18, 2007 10:03:51 AM
Attachments:

Will the missing Worksheet 8 to Schedule H be placed on the IRS website before the Comment period ends in September 2007?

Thanks,
Sarah C. Harlan, CPA

From: [Lowell Bower](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Suggestions
Date: Tuesday, July 17, 2007 1:43:02 AM
Attachments:

I have been completing income tax returns since 1968 and since 1986 for Form 990. I would like to see the requirement that independant churches, not part of a denomination, file 990-T, giving basic information of the church, to include any schedules that would apply. This is based on the fact that independant churches, as a rule, do not disclose their records to the public.

Lowell D. Bower
PO Box 32390
Columbus, OH 43232
(614) 863-2462

From: [Nancy G Wallace CPA](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Draft Redesigned Form 990 Phone Forum
Date: Monday, July 16, 2007 9:23:10 PM
Attachments:

Hello,

Generally I liked the revisions but I realize that I am supposed to be presenting questions. I have included some feedback as well. I hope you don't mind.

Questions and feedback:

1. 990 page 1, line 11, has to refer to Part IV, line 1h not 1g.
2. part III line 3b: most conflict of interest issues come up at the board level and don't involve staff, yet staff are the people preparing the information for the 990. This seems like a requirement that will always be a problem.
3. Part VII, line 6b, how long of an exception period is envisioned?
4. some of the lines need to refer to the schedules, the draft seems inconsistent with this.
5. Schedule D, I'm not sure what the Service is trying to figure out. Permanently restricted donations, for all but the largest organizations, are bad for the organization and something that most organizations can't control (donor restricted). The reason they accumulate is because the donor says that they want only the income to go to the restricted purpose. I would think the Service would be more interested in an organization which is accumulating temporarily

restricted (TR) net assets since they can be expended.
Accumulating TR net assets is something to be watched.

6) Schedule F: it sounded as if awards to students studying abroad should be reported on this schedule but it isn't clear from the directions. If a university has a study abroad program, would they have to figure out which students are overseas and breakout their Pell Grants, etc.? This would be incredibly difficult administratively. What is the Service trying to accomplish if this is the requirement? Perhaps this requirement is for Schedule I?

7) Schedule I: The TIP says "Do not complete the table if not one recipient received more than \$5,000" but the 990 Part V, line 1 and 2 says "if total exceeds \$5,000). This is confusing.

8) Schedule J: TIP, Why don't we have to report "in Table 1 any employer contributions, investment earnings, distributions, benefit accruals, or other amounts that are attributable to a qualified retirement plan"?

9) Schedule J cont.: I was confused with the reference to line numbers and columns in the instructions. Perhaps having a copy of a form would have helped.

10) Schedule L: Why is the Service looking at loans from disqualified persons? How do they relate to compensation? What is being sought with this question?

Regards,
Nancy Wallace

++++
++++

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From: [Koontz, Richard F](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: new form 990 and disclosure rules.
Date: Monday, July 16, 2007 4:00:49 PM
Attachments:

Right now the Code provides for public disclosure of everything on the Form 990 except for Schedule B. Is it contemplated that the new form 990 and all the new schedules will be subject to the public disclosure rules (but that the unchanged Schedule B will remain something that need not be disclosed)?

Richard Koontz,
Director, Larned A. Waterman
Iowa Nonprofit Resource Center

From: [Linda Mamula](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: comments
Date: Thursday, July 12, 2007 11:13:55 AM
Attachments:

Suggest adding this question: If the directors/trustees are reimbursed for travel and other expenses, is it on an accountable plan or nonaccountable plan?

Part III, 7b: "chapters, branches and affiliates" Suggest "chapters, branches, UNITS and affiliates." It's wise to capture all the terminology that various organizations use.

Linda Mamula

From: [Ron Slagell](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Schedule H clarification
Date: Tuesday, July 10, 2007 10:50:40 AM
Attachments:

My question regards the proposed Schedule H. It wasn't clear to me from the documents that I have seen which types of organizations would be required to complete this schedule.

Is the intent that any non-profit who provides health care be required to fill out this form? For example, ambulance services, home health agencies, etc.? Or is the focus primarily hospitals and affiliated health care facilities.

Thank you for providing clarification on my question.

Ron Slagell
LifeCare Ambulance Service
(269) 565-4110

From: [Paul Bryant](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: IRC 501(c)(8) Fraternal Beneficiary Societies
Date: Monday, July 09, 2007 5:53:39 PM
Attachments:

Problem: Most 501(c)(8), Fraternal Beneficiary Societies simply do not pay membership benefits as required by law. The use of a group exemption number allows them to mis-state their tax exempt purpose. These are insurance companies that simply refuse to establish a system of benefit payments for life, sick, accident or other benefits for their members.

Case In Point: xxxxxxxxxxx xxxxx xx xxxx claim tax exemption under IRC 501(c)(8) and instructs its subordinate not to pay membership benefits. There is no xxxx Lodge paying membership benefits, currently. The IRS is aware of this matter and does nothing about it. Requiring Lodge members to file law suits to require compliance with IRC 501(c)(8).

Fraud: These organization defraud the United States government with impunity and literally steal their memberships fees and dues which should be returned to them as benefits for insurance related concerns.

Lack of Enforcement: Even when informed the IRS has done nothing to correct the above mentioned situation. Breakdown of trust between citizens and their government. IRS is lax and even non existent in the enforcement of IRC 501(c)(8), Fraternal Beneficiary Societies.

Solution: Require separate 990 filing and eliminate the group exemption number.

Conclusion: A simple case study of this matter could be found by an examination of the conduct of the the xxxxxxxxxxx xxxxx xx xxxx. Zero compliance, willful and intentional violation of the law and operating with total impunity. Forcing compliance would reduce overall cost to government regarding health care and allow members to do what the law intended "take care of each-so that the government would not be required to do it for you".

Bryant Carvalho
1100 Mokuhano Street
Honolulu, Hawaii 96825
395-8479

From: [Paul Alberga](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Schedule H Inquiry
Date: Monday, July 09, 2007 1:08:28 PM
Attachments:

Dear IRS Form 990 Redesign Team:

I am currently conducting an audit of tax-exempt hospitals within California, and I have some questions that I hope you can assist me with.

For what purpose is the IRS requiring tax-exempt hospitals to report community benefit and uncompensated care costs on the schedule H? I see on your web site that the new data will better assist the IRS in determining compliance with tax-exempt requirements. How will the IRS be using the data collected in Schedule H to evaluate tax-exempt hospitals?

My understanding is that Form 990 is used only for tax-exempt entities. On the draft Form 990 Schedule H, I noticed that tax-exempt hospitals will need to report community benefit and uncompensated care costs. Will hospitals that are not tax-exempt be required to report any community benefit or uncompensated care amounts to the IRS?

If possible, could you please send me the phone number of a contact at the IRS that I can speak to directly about these issues?

Thank you,

--Paul E. Alberga, MBA
Senior Auditor Evaluator I

California State Auditor
Bureau of State Audits
Phone: (916) 445-0255, ext. 210
Fax: (916) 327-0019

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From: [Blumenthal, Robert](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Thoughts on Form 990 Revisions
Date: Sunday, July 08, 2007 4:53:38 PM
Attachments:

Senators Max Baucus (D-Mont.) and Charles Grassley (R-Iowa), the Chairman and Ranking Member, respectively, of the Senate Finance Committee, recently sent a letter to Treasury Secretary Henry Paulson in which they express their concern over the lack of transparency in the matter of financial reporting by nonprofit organizations. In their letter, they cite a number of areas in which they feel more openness is needed and they suggest a number of measures which would help achieve this. The Senators are proposing a major overhaul and updating of Form 990 which nonprofits file annually with the IRS and which is made available to the public through GuideStar at www.guidestar.org. They point out that Form 990 does not adequately encompass information regarding large complex nonprofits such as universities and hospitals, and they call for more detailed questions tailored to the specifics of these institutions in order to achieve appropriate transparency.

One area of concern cited by the Senators is executive compensation. They point out that executives often receive compensation from multiple sources and that such compensation frequently includes housing, first-class travel, spousal travel, bonuses, and numerous other fringe benefits. In a particularly arresting passage, the Senators point out that "it is often easier to understand how much a Fortune 500 CEO is being paid than how much a charity is compensating its executives." They argue that the public deserves clarity on the matter of total compensation and that this information should be made easily accessible via a single document rather than having to piece it together from multiple sources. A second major area of concern has to do with endowments. The Senators want to ensure that the public can easily ascertain the following information with regard to the endowment of a nonprofit: the size of the endowment, the amount of the endowment being spent, what these funds are being spent on, how these funds are invested, and the costs of managing the endowment. Form 990 provides very little insight into these questions, and the situation is made all the more opaque by the fact that there is no uniform definition of endowment. Furthermore, in

addition to expanding the scope of the information reported on Form 990, the Senators want to ensure that this form is filed and made available to the public in a timely fashion. They point out that extensions for filing are routine and that considerable time passes before the document is actually available to the public.

The Senators are to be commended for their efforts to bring about greater openness with regard to nonprofits. The reforms they propose are much needed. The observation that CEO compensation is much more opaque in the nonprofit sector than it is with regard to publicly traded companies is right on the mark, and I agree that we need the same clarity in both sectors. However, I would extend the analogy further and argue that we should require from nonprofits the same level of transparency with regard to all financial matters that we require from public companies. Publicly traded companies are required to make public, via form 10K, their audited financial statements together with the auditor's notes to those statements. Although many nonprofits, including colleges and universities, are required to furnish to the federal government a set of audited financial statements, there is no requirement that these documents be made public. One of the modifications to Form 990 should be the requirement to include a set of audited financial statements and to reproduce the auditor's notes which accompany those statements. This would be the most effective way of ensuring that the nonprofit sector meets the same standard of transparency which is currently required of public companies.

The Senators' call for a uniform definition of endowment is crucial to the effort of creating greater transparency in the operation of nonprofits. As long as the concept of endowment remains fuzzy, it will be impossible for the public to evaluate meaningfully the effectiveness of the operation of a nonprofit entity. This situation is particularly muddled in the case of colleges and universities. For these institutions, the term "endowment" can mean whatever the governing board wishes it to mean. In some cases, this refers only to invested funds which generate income but whose principal cannot be spent. In other cases, it also includes funds designated by the board as "funds functioning as endowment" or "quasi-endowment funds." These are funds labeled by the governing board as endowment but which may be spent at any time at the discretion of the board. Thus, not only is there no consistency from one institution to the next, but there is also no guarantee of consistency within a single institution from one year to the next. Institutions are free to decide which of their assets to count as endowment and are free to change this determination whenever they choose. In a situation like this, there is no way the public can possibly know the answers to the questions about endowment posed in the Senators' letter. As long as the definition of endowment remains vague and fluid, all attempts to obtain clarity

with regard to this matter will be in vain.

The Senators are correct that it is important that Form 990 be made available to the public as soon as possible. This is currently a very real problem. Extensions for filing are routinely granted and it is not unusual for Form 990 to be posted more than a full year after the end of the relevant fiscal year. Just as public companies are required to furnish financial information in a timely manner, so too should this be required of nonprofits. An extended delay in providing information is not compatible with transparency.

The tax-exempt status enjoyed by nonprofits is a privilege which carries with it certain responsibilities. Among these responsibilities should be the requirement to provide, in a timely fashion and on a regular basis, a transparent picture of the financial position of the organization.

Robert A. Blumenthal
Professor of Mathematics
Oglethorpe University

contact info: http://www.oglethorpe.edu/faculty/~r_blumenthal/

From: [Brian Kimmel](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Form990Revisions
Date: Thursday, July 05, 2007 9:23:25 AM
Attachments:

It is obvious that the Service is trying to make officer compensation more transparent in this revision. I believe the compensation of the chief staff officer should be public. However, I do not see firm logic behind the five highest compensated nor around the threshold of \$100,000 for listing all compensation. The burden of reporting is shifted to the higher-paid metropolitan areas where compensation is in line with other costs of living.

For example, in our small organization of 52 employees, about 25% of our staff would be listed with compensation of over \$100,000. I don't see that as the intent nor do I see value in having to report that information publicly other than to remove a layer of confidentiality from one's personal wages.

Somehow the threshold for disclosure should be adjusted geographically, or better yet, simply raised to a more realistic amount, which in my opinion would be no less than \$150,000.

I hope you take this opinion into consideration prior to issuing the final release.

Thank you.

Brian E. Kimmel

Sr. Vice President & CFO

NACS

The Association for Convenience & Petroleum Retailing®

1600 Duke Street

Alexandria, VA 22314-3436

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From: Harb Hayer
o: *TE/GE-EO-F990-Revision;
CC:
Subject: (no subject)
Date: Tuesday, July 03, 2007 5:01:33 PM
Attachments:

I suggest that you consider printing the mailing address of IRS-Non-profit for filing form 990 at the top of the first page and save lot of headache for callers.
Harb Hayre

See what's free at AOL.com.

From: _____
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Improved disclosure needed for SOP 98-2
Date: Tuesday, July 03, 2007 2:10:48 PM
Attachments:

Being fairly new to the non-profit world, one thing that is very obvious is the blatant misuse of SOP 98-2 especially in direct mail. I think the donating public would be shocked at some of the allocation games going on.

Simply stated, many organizations are sending out hundreds of thousands of “prospect” mailings to people who have never donated to them, and they are allocating substantial portions of that cost to Program Expenses. The theory is that they are informing the public about their cause, but in reality, it’s an envelope that has a letter saying “here’s what we do, please donate”. The costs can run into the millions for some organizations, and people are unaware that these costs, which are of no help to furthering the organization's mission, are being called Program Costs

I recommend that you add in a “reconciliation” like you require for reporting on allocation of indirect costs. It would have organizations show how much they spent on direct mail or other similar fundraising, and how much was allocated to Program Costs.

See what's free at AOL.com.

From: [Vaughn.Gower](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: comments re; reporting
Date: Tuesday, July 03, 2007 9:06:41 AM
Attachments:

the irs is requesting comments regarding eliminating the option to file a group return by affiliated entities. i believe removing this filing option is premature. the irs should retain it until the new reporting changes have had their impact on non profit organizations. several years in the future, if the option is not being used, then remove it.

this option may not have been used much in the past under the out of date 990 forms, instructions and prior to establishing any benchmark targets for community service under the proposed new reporting. but, the implemented changes may raise new reporting issues under which the group filing option has appropriate value in the future.

large non profits (in healthcare and education) create separate non profit and sometimes for profit entities in response to state and federal laws and reg's effecting their operation. community benefit reporting was not the objective of those laws and regs. but, those entities bylaws and governance structure commonly retain a parent holding company or superior entity to which the other entities are accountable and from which their authority is controlled and limited.

in effect, it's the collection of entities that carry out the mission of the parent entity. it is possible that one such subordinate entity will have little community service given a particular set of facts. but, other entities provide large amounts of community service.

under the future community benefit reporting strcuture, when measurement of community benefit may determine continued tax exemption, the collective entities, if under common control, should have the option to report their communnity service on a collective basis.

a compromise would be to limit collective reporting to certain fields of interest such as healthcare and education. or, to limit collective reporting

to entities with revenues in excess of a particular dollar amount. this distinction follows the stratified reporting now reflected in the draft forms.

thank you for your consideration.

Vaughn Gower
Sr Vice President and CFO
1200 South Cedar Crest Blvd
Allentown PA 18105
phone 610-402-7535
fax 610-402-7523

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From: [James King](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Initial Reaction and Comment on the Redesigned Form 990
Date: Monday, July 02, 2007 11:07:03 AM
Attachments: [JD 1375127 5 King & Griffith Impact of IRS New Form 990
AHLA HLW June 22, 2007.pdf](#)

AHLA HEALTH LAWYERS WEEKLY

Impact of IRS's Draft Redesigned Form 990 on Tax-Exempt Healthcare Organizations

James R. King and Gerald M. Griffith¹

IRS Releases Discussion Draft of Redesigned Form 990

First Comprehensive Update in Over 25 Years

On June 14, 2007, the IRS released for comment a Discussion Draft of a redesigned Form 990 (the "Discussion Draft"), the annual information return filed by tax-exempt organizations, including tax-exempt hospitals and other healthcare providers.² In a statement accompanying the Discussion Draft, Kevin Brown, Acting IRS Commissioner, noted "The tax-exempt sector has changed markedly since the Form 990 was last overhauled more than a quarter of a century ago."³ He went on to note that, "We need a Form 990 that reflects the way this growing sector operates in the 21st century. The new 990 aims to give both the IRS and the public an improved window into the way tax-exempt organizations go about their vital mission."⁴

Quick Take on the Discussion Draft's Impact

The IRS's release of the Discussion Draft does not involve any changes in the substantive rules governing tax-exempt organizations. However, in many respects, it is more important than many of the substantive positions that the IRS has adopted. Under the Discussion Draft format, the Form 990 is not just for numbers any more. It has become an SEC-like disclosure document containing a vast store of readily available information about the activities of an organization and the extent to which the organization engages in financial transactions with insiders.

This is extremely important from an enforcement perspective. The constant theme of the Discussion Draft is to ask organizations for detailed information about what they are doing and how they are doing it, particularly in areas where the IRS has perceived the potential for abuse. In other words, the Discussion Draft repeatedly requests organizations to "rat themselves out." This approach gives the IRS ready access to hard factual data to make judgments about the need for enforcement action. In addition, because the Form 990 is readily available to the public, the IRS will be assisted in its enforcement efforts by the "eyes and ears" of various state attorneys general, legislative bodies, the news media, and other interested members of the general public – many of whom will have "an agenda" and all of whom will have quick and easy access to a

¹ Mr. King is a partner in the Jones Day law firm, resident in its Columbus, Ohio, office. Mr. Griffith is a partner in the Jones Day law firm, resident in its Chicago, Illinois, office. Both Mr. King and Mr. Griffith are members of Jones Days Health Law and Tax Practices. Mr. King is currently a Vice Chair of AHLA's Tax & Finance Practice Group. Mr. Griffith is a former Chair of AHLA's Tax & Finance Practice Group and a current member of AHLA's Board of Directors.

² IR-2007-117, June 14, 2007 (available online at <http://www.irs.gov/newsroom/article/0,,id=171329,00.html>).

³ *Id.*

⁴ *Id.*

substantial amount of information. Recent amendments to IRC § 7623 increasing to 30% the maximum potential whistleblower award for tax law violations involving tax liability in excess of \$2 million also will provide a financial incentive for private citizens to ferret out the next big tax deficiency, including among large nonprofit organizations.

Ten-Page Core Form and 15 Possible Supplemental Schedules

The Discussion Draft consists of a Core Form to be completed by each Form 990 filer and a series of 15 associated Schedules. Some of the Schedules are mind-numbingly detailed, designed to require reporting of information only from those organizations that conduct particular activities. The IRS has posted the Core Form, the Schedules, Instructions and other materials offering some insight into the principles and rationale underlying the Discussion Draft on its website.⁵

Three “Guiding Principles” of Redesign

In releasing the Discussion Draft, the IRS stated the redesign was based on three guiding principles:

1. Enhancing transparency to provide the IRS and the public with a realistic picture of the filing organization;
2. Promoting compliance by accurately reflecting the filing organization’s operations so the IRS may efficiently assess the risk of noncompliance; and
3. Minimizing the burden on filing organizations.⁶

The Discussion Draft Greatly Increases Transparency and IRS Oversight Efficiency

The Discussion Draft demonstrates that the IRS has likely taken giant steps forward in achieving the first two objectives. Indeed, the Discussion Draft makes it much easier for both the sophisticated and unsophisticated reviewer to get a strong sense of what the filing organization is all about. Thus, it is undeniable that, in its current form, the Discussion Draft would greatly enhance transparency. Transparency has been a stated concern of the IRS for several years, and the IRS previously sought comments regarding how changes to the Form could achieve the goal of enhancing transparency. For example, in 2002, the IRS announced that it was considering modifying the Form to include requirements similar to those that had been imposed by Congress on for-profit companies after Enron and other corporate scandals.⁷ Specifically, the IRS sought comment on the following:

- Whether an exempt organization should be required to disclose on Form 990 whether it has adopted a conflicts of interest policy or has an independent audit committee;

⁵ See www.irs.gov/charities/article/0,,id=171216,00.html.

⁶ *Supra* note 3.

⁷ See IR-2002-87, Sept. 4, 2002 (available at <http://www.irs.gov/pub/irs-drop/a-02-87.pdf>).

- Whether a non-charitable exempt organization should be required to make additional disclosures about transactions with its substantial contributors, officers, directors, trustees and key employees;
- Whether exempt organizations should be required to disclose additional information about transactions or financial relationships with its substantial contributors, officers, directors, trustees and key employees; and
- Whether there are any other changes to the Form 990 or other requirements that would increase public confidence in the integrity of exempt organization disclosures.⁸

Many of these concepts have evolved into the information requests included as part of the Discussion Draft.

However, it is likely that some segments of the exempt organization community will provide the IRS with comments designed to increase the extent to which the Discussion Draft will present a “realistic picture” of the filing organization. So too will critics of the healthcare industry suggest that the Form, while laudable in the direction it is heading, does not go nearly far enough. For example, Senator Grassley has already noted that the threshold for more detailed disclosure of compensation arrangements is set too high and does not provide the public with adequate information.⁹

Moreover, throughout the entire Discussion Draft, the IRS repeatedly asks organizations to tell the IRS about the organization’s activities in areas in which the IRS has perceived abuses or the potential for abuses. That is, the Discussion Draft repeatedly asks organizations to “rat themselves out” in a publicly available document. Giving the IRS this information will increase the efficiency of the IRS’s enforcement activities and the potential for whistleblowers to file allegations of tax law violations with the IRS. For organizations not making adequate disclosure, the IRS also may add filing a false or fraudulent return to the list of items for discussion at audit settlement conferences. In addition, because the Form 990 is so readily available through Guidestar and other sources, it is likely to modify behavior within the exempt organization community. Filing organizations will want to be able to “tell a good story” on the Form 990 and to avoid, or to mitigate, the damage from unflattering stories in the local and national news media or unwanted attention from state attorneys general. Accordingly, the mere issuance of the Discussion Draft could have a significant effect on the behavior of tax-exempt hospitals well before it becomes effective.

Healthcare Organizations Can Expect Increased Reporting Obligations

As to the third objective, easing the burden on filing organizations, the IRS may, or may not, actually achieve it on an aggregate basis. However, it is clear that healthcare organizations will have an increased, maybe significantly increased, compliance and reporting burden as a result of the redesigned Form 990 as reflected in the Discussion Draft. In that regard, Lois G.

⁸ *Id.*

⁹ See Senate Finance Committee Press Release, “Redesigned Form 990 for tax-exempt organizations” (June 14, 2007) (available online at <http://finance.senate.gov/press/Bpress/2007press/prb061407b.pdf>).

Lerner, Director of the IRS's Exempt Organization's Division noted that while most organizations should not experience a change in burden, "those [organizations] with complicated compensation arrangements, related entity structures and activities that raise compliance concerns may have to spend more time providing meaningful information to the public."¹⁰ Because most healthcare organizations tend to be larger, more complicated organizations, with fee for service income, investment income, tax-exempt bonds and large payrolls, healthcare organizations can expect increased reporting and compliance efforts when the final redesigned Form emerges.

IRS Seeks Comment and Hopes to Use New Form for 2008 Tax Year

The IRS hopes to have the new, redesigned Form ready for use for the 2008 filing year (returns filed in 2009). The IRS seems serious about making every effort to achieve that goal. For example, the IRS is providing a 90-day comment period regarding the Discussion Draft, making comments due on September 14, 2007.¹¹ In order to meet its stated goal of having the Form ready to go for the 2008 filing season in 2009, the IRS notes that "it is critical that comments be received within the comment period."¹² Notwithstanding the aggressive schedule, the IRS says it recognizes that some parts of the Form will need modification after the receipt of input on the Discussion Draft and that certain revisions may require changes in regulations or other guidance.

Specific Comments Relevant to Healthcare Organizations

In releasing the Discussion Draft, the IRS specifically requested comments and suggestions regarding the following items that should be of interest to healthcare organizations:

- Additional items regarding governance and management best practices;
- The reporting of community benefit by hospitals in Schedule H, and, in particular, the extent to which the Catholic Health Association's reporting format on which Schedule H is largely based should be modified;
- Defining "relatedness" for compensation disclosure and other purposes, including arrangements in joint ventures and with for-profit subsidiaries;
- Whether transition periods are necessary in order to ease the burden of implementing the new reporting requirements for certain Form 990 components (such as the tax-exempt bond schedule); and

¹⁰ *Supra* note 3.

¹¹ Questions and comments should be e-mailed to the IRS at Form990Revision@irs.gov or mailed to: Internal Revenue Service, Form 990 Redesign, SE:T:EO, 1111 Constitution Avenue, NW, Washington, DC 20224.

¹² IRS, Background Paper for Redesigned Draft Form 990, at p. 4 (available at <http://www.irs.gov/charities/article/0,,id=171216,00.html>)

- Whether the IRS should preclude group returns for exempt organizations.¹³

In addition, healthcare organizations will have a wide variety of comments once they complete their review of how the Discussion Draft would affect their approaches to recordkeeping, tax compliance and operations. Because of the magnitude of the changes in format and approach by the Discussion Draft, every healthcare organization should consider submitting comments either on its own or through trade groups or associations.

IRS Background Paper Regarding Discussion Draft of Redesigned Form 990

In releasing the Discussion Draft, the IRS also made available a “Background Paper” in which it set forth some of the background and IRS rationale and considerations in the redesign reflected in the Discussion Draft.¹⁴

Current Users of the Form 990

In the Background Paper, the IRS notes that the Form 990 is used by the IRS as the primary tax compliance tool for tax-exempt organizations.¹⁵ In addition, the IRS notes that most states rely on the Form 990 to perform charitable and other regulatory oversight and to satisfy state income tax filing requirements for organizations claiming exemption from state income tax.¹⁶ The IRS also points out that the Form 990 is a public document that is made available by filing organizations, the IRS, and others. For example, Guidestar.org makes Forms 990 from IRC § 501(c)(3) and certain other organizations available online at its website to anyone with an internet connection. As a result, the IRS notes that the Form 990 is the key transparency tool relied on by the public, state regulators, the media, researchers and policymakers to obtain information about the tax-exempt sector and individual tax-exempt organizations.¹⁷

Position of Healthcare Organizations within Overall Demographics of the Tax-Exempt Sector

According to the Background Paper, approximately 1.3 million public charities or other types of non-charitable exempt organizations are included in the IRS master file.¹⁸ This consists of public charities (not including churches), non-charitable tax-exempt organizations and private foundations. For tax year 2004, the most recent year for which complete data is available, the

¹³ *Id* at p. 5.

¹⁴ *Id.*

¹⁵ *Id.* at p. 1.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

IRS received 364,601 Forms 990 and 142,269 Forms 990-EZ, for a total of 506,870 returns.¹⁹ Many small organizations did not have a filing requirement.

The IRS notes that the tax-exempt sector is diverse as to size and types of organizations and sources of revenues and that that smaller organizations make up the largest percentage of the number of tax-exempt organizations. On the other hand, the IRS points out that these smaller organizations account for a relatively low percentage of the total assets and annual revenues of the exempt sector. For example, the Background Paper notes that of all public charities that file annual returns with the IRS, the largest 1% of public charities hold 61% of the assets and derive 66% of the revenues.²⁰

The IRS also identified a large concentration of assets and revenues in the hospital and education sub-sectors because these institutions rely on fee-for-service revenues and investment earnings to fund their operations.²¹ As a result, the Discussion Draft targets hospitals and other healthcare organizations for increased data, on the theory that their larger, more complex organizational structures and operations require more information in order to understand their operations and to determine whether they are in compliance with the rules governing tax-exempt organizations.

Comparison of Redesigned Form to the Current Form 990

Current Form 990 (2006)

The 2006 tax year version of the Form 990 (the most current version of the Form) consists of a nine-page core Form and Schedules A and B.²² In addition, in the 2006 Form 990, there are 36 possible attachments, most of which request additional financial information by each type of filing organization.²³

Discussion Draft Much More of a Disclosure Document Than a Tax Return

The Discussion Draft takes a much different approach. Indeed, in many important respects, the Discussion Draft follows a trend over the last five years ago of requiring more and more information about financial transactions with “insiders.” The result is that the Discussion Draft “morphs” the Form 990 from being largely a tax return where income and expense is reported into an SEC-like disclosure document where narrative and factual information is collected. In particular, the Discussion Draft focuses on corporate governance process, conflicts of interest and operational matters (e.g., charity care, billing, collection, etc.), and requests the information in a reasonably concise and easy to-follow-format.

¹⁹ *Id.*

²⁰ *Id.* at p. 2.

²¹ *Id.*

²² See, e.g., 2006 Return of Organization Exempt from Income Tax (Form 990) (available at www.irs.gov/pub/irs-pdf/f990.pdf).

²³ *Id.*; see also Instructions to 2006 Return of Organization Exempt from Income Tax (Form 990) (available at www.irs.gov/pub/irs-pdf/i990-ez.pdf).

Summary of the Revised Core Form and Schedules

As noted earlier, the Discussion Draft contains a Core Form of ten pages and 15 potential schedules. The IRS believes that the redesigned Core Form promotes tax compliance by allowing the IRS to pinpoint organizations that have particular characteristics of concern without burdening other organizations that do not share these characteristics. The 15 Schedules are intended to provide additional data in more detail where an organization's operations and activities warrant. The 15 potential Schedules are as follows:

<u>Schedule</u>	<u>Description</u>
A	Public Charity Status
B	Contributions
C	Political and Lobbying Activities
D	Financial Statement Matters (including any FIN 48 disclosures)
E	Schools
F	Foreign Activities
G	Fundraising and Gaming
H	Hospitals
I	Grants
J	Compensation
K	Tax-Exempt Bonds
L	Loans
M	Non-cash Contributions
N	Termination and Significant Disposition of Assets
R	Related Organizations

Hospitals Can Expect to File at Least Eight Supplemental Schedules

The IRS estimates that fewer than 10% of filing organizations will have to complete eight or more of the Schedules.²⁴ While that may be true overall, it would appear that most hospitals will have to complete at least eight of the 15 schedules on a more or less regular basis, with special emphasis being put on the following:

- Schedule D for financial reports and FIN 48 matters (See Part VII);²⁵
- Schedule H for community benefit, billing and collection and joint venture reporting;
- Schedule J for detailed compensation reporting;
- Schedule K for tax-exempt bond reporting;
- Schedule L for loans to current and former directors, officers, key employees, top five highest paid employees and disqualified persons (e.g., moving or recruitment loans);and
- Schedule R for related organization reporting.

Other common Schedules will likely include Schedule B for contributions, Schedule C for lobbying activities and, in some cases, Schedule F for organizations with operations overseas.

Part I of Core Form -- The Summary Page

According to the Background Paper, the Summary Page of the Core Form is intended to provide the user with a USA TODAY-like “snapshot” (without the clever, color graphics) of key metrics about an organization without having to go beyond the “front page.”²⁶ For example, the chart below shows the elements of the “snapshot” that are the first items of information presented after learning the organization’s “name, rank, serial number and home address.” As can be seen, this “snapshot” includes information regarding the total number of persons serving on the governing board, the number of “independent” members of the governing board, the amount paid to the highest paid employee and total executive compensation paid as a percentage of overall program service expense:

<u>Line</u>	<u>Information Provided</u>
-------------	-----------------------------

²⁴ *Supra* note 10, at p. 4.

²⁵ For tax years beginning after December 15, 2006, Financial Accounting Standards Board Interpretation No. 48 (“FIN 48”) may require reserves and financial statement disclosure of an uncertain tax position if exemption or unrelated business income treatment is not clear from existing tax law guidance. A position must meet at least a more likely than not standard. Even then, the probabilities of success must be assessed and a reserve still may be required on the financial statements for open tax years if the tax position is not relatively settled.

²⁶ *Supra* note 10, at p. 3.

1	Brief description of Organization's Mission
2	Three most significant activities and activity codes
3	Total number of members of governing body
4	Number of "independent" members of governing body
5	Total number of employees
6	Number of individuals with compensation exceeding \$100,000
7	Compensation of the highest paid individual
8a	Total compensation paid to officers, directors, and key employees
8b	Total compensation in Line 8a as percentage of total program service expense
9a	Gross unrelated business revenues
9b	Net unrelated business income from Form 990T
10	Whether the organization has ceased operations or disposed of more than 25% of net assets

Part II of Core Form – Compensation of Officers, Directors, Key Employees, and Highly Compensated Employees

Part II of the Core Form requires the organization to report information about compensation of current and former officers, directors, trustees and certain other employees. According to the Background Paper, as is the case with the current Form 990, an organization must list each officer, director, trustee or key employee of the organization (a "Listed Person"), regardless of compensation amount (entering -0- where appropriate).²⁷ However, the Discussion Draft departs from the 2006 Form by requiring the reporting of compensation based on Form W-2 reporting for employees and Form 1099 reporting for directors and other independent contractors.

Based on those data, organizations hitting certain triggers will have to file Schedule J regarding Supplemental Compensation Information, which requires substantial additional information. Schedule J and its accompanying 11-page set of Instructions are a dizzying and detailed maze of complex definitions, concepts and examples. In combination with the highly detailed definitions of various terms in the nine-page Glossary accompanying the Discussion Draft, these Instructions may cause severe eye strain and the need for aspirin on a frequent basis.

²⁷ *Id.*

The Schedule J triggers are as follows:

- Reporting amounts paid to Listed Persons who are former (not currently serving but who severed within the last five years) officers, directors, key employees or highest compensated employees;
- Having Listed Persons with reportable compensation (Form W-2, Box 5 or Form 1099, Box 7) in excess of \$150,000 from the filing organization and any “related” organizations for the calendar year ending with or within the filing organization’s fiscal year;
- Having Listed Persons who have received or accrued more than \$250,000 of reportable or other compensation, including deferred compensation, nontaxable fringe benefits, and expense reimbursements from the filing organization and “related” organizations; or
- Having Listed Persons who received or accrued compensation from any source (other than the filing organization) for services rendered to the filing organization.²⁸

Given the size and complexity of healthcare organizations, and the resulting need to attract and retain individuals with the talents and skills necessary to run these organizations, all healthcare organizations will need to master Schedule J. Moreover, under Schedule J, the more complex the compensation arrangement, the more information Schedule J requires. One of the consequences of the detailed reporting regime in the redesigned Form 990 is that exempt organizations likely will need to perform an in-depth review of all financial and governance relationships to determine which entities and individuals are disqualified persons in order to properly answer many questions in the Form, such as aggregate compensation disclosures for disqualified persons (Part V, Line 6), loans to disqualified persons (Part VI, Line 6 and Schedule L) and whether the organization intends to rely on the initial contract exception under Section 53.4958-4(a)(3) of the regulations for payments to disqualified persons (Schedule J, Line 7).

Part III of Core Form – Statements Regarding Governance, Management, and Financial Reporting

While the IRS has no express statutory authority to regulate corporate governance matters, the IRS does have the authority to enforce the tax rules regarding private inurement, private benefit, excess benefit, tax-exempt purposes and record retention practices necessary to substantiate that the organization is being run for one or more tax-exempt purposes. All of the foregoing tax rules are based on and reflect, to one degree or another, state charitable law concepts. In many substantial respects, these rules correspond very directly with these concepts.

For example, the state law fiduciary duty of loyalty corresponds directly with the tax law concepts of private inurement and excess benefit, while the state law fiduciary duty of care

²⁸ See Instructions to Schedule J, at p. 1 (available at <http://www.irs.gov/charities/article/0,,id=171213,00.html>).

corresponds directly to the IRS concept of “reasonable cause,” which is ordinary business care and prudence.²⁹ Moreover, the comparability leg of the rebuttable presumption process corresponds directly to the state law duty of care. Indeed, the triggering of the rebuttable presumption switches the burden of proof to the IRS, making the rebuttable presumption process the functional tax law equivalent of the state law business judgment rule. That is, if, in good faith, the organization follows correct process, the IRS and the courts are likely to defer to the judgment of the organization’s governing board. Furthermore, tax law notions of “tax-exempt purposes” are broader than state charitable organization law purposes, but significant overlap exists between a large number of tax-exempt purposes and state law charitable purposes, such as healthcare under the community benefit standard.

As a result, the IRS believes that good governance and accountability practices provide safeguards that the organization’s assets will be used consistently with its exempt purposes. This is a critical tax compliance consideration, especially with respect to organizations that are subject to private benefit, excess benefit and private inurement prohibitions. Therefore, in the Background Paper, the IRS states, “In our view and experience, a well managed organization is likely to be a tax compliant organization.”³⁰

In order to provide information on how well managed the filing organization is, Part III of the Core Form requires each organization to provide certain information regarding the composition of its governing body, certain of its governance and financial statement practices, and the means by which the organization is accountable to the public by making certain governance information publicly available. In that regard, the Core Form seeks specific information about a number of governance and reporting matters, including the following:

- The number members of governing body (Part III, Line 1a);
- The number “independent” members of the governing body (Part III, Line 1b);
- Whether there have been significant changes to governing documents (this is actually a lessening of the disclosure burden in that the current Form 990 requires disclosure of all changes to the governing documents) (Part III, Line 2);
- Whether the organization has a written conflicts policy and, if so, the number of transactions reviewed pursuant to that policy (Part III, Lines 3a and 3b);
- Whether the organization has a written Whistleblower policy (Part III, Line 4);

²⁹ See, e.g., Treas. Reg. § 301.6651-1(c).

³⁰ *Supra* note 10, at p. 3.

- Whether there is contemporaneous documentation of board and committee meetings (Part III, Line 6);
- Who prepares the organization’s financial statements and whether those statements are audited, reviewed, or compiled by an independent accountant (Part III, Line 8);
- Whether the organization has an audit committee (Part III, Line 9);
- Whether the governing body reviews the Form 990 prior to filing with the IRS (Part III, Line 10);
- How key governance and financial documents are made available to the public (Part III, Line 11); and
- A listing of the states where the organization files the Form 990 as a state law regulatory filing (Part III, Line 12).

Part VII of the Core Form – Information Regarding General Activities

Part VII of the Core Form contains questions about the general activities of the organization. Many of the questions in Part VII serve as “trigger” questions for the various Schedules that an organization will need to complete, depending on its type and activities. For example, Part VII asks a series of questions that will trigger further reporting for many hospitals:

- Whether the organization issues tax-exempt bonds (Part VII, Line 6a and, if so, directing the organization to complete Schedule K);
- Whether the organization holds interests in “disregarded” entities or has “related” entities? (Part VII, Line 7a and, if so, directing the organization to complete Schedule R);
- Whether it conducts all or a substantial part of its activities through partnership or corporation, especially where the organization’s ownership or control is less than a majority position or where the management or control is in the hands of a for profit partner (Part VII, Line 8a);
- Whether the organization provided hospital or medical care (Part VII, Line 9 and, if so, directing the organization to complete Schedule H);
- Whether the organization has a written policy to review investments or participation in disregarded entities, joint ventures or other affiliated organizations, whether exempt or nonexempt (Part VII, Line 11); and
- Whether the organization has a written policy to safeguard exempt status regarding transactions or arrangements with related organizations (Part VII, Line 12).

Other Information Requested in the Core Form, Including the “Most Important Program Service Accomplishment”

Other portions of the Core Form seek information regarding the reporting of revenues, expenses and balance sheet items (*see*, e.g., Parts IV, V and VI). Generally, these portions of the Discussion Draft, with some exceptions, follow the current Form 990 layout. In addition, Part VIII of the Discussion Draft seeks information about various IRS filing requirements, including information regarding excess benefit transaction reporting (found on Line 89 of the current Form 990, but which can now be found in Part VIII, Line 5 of the Discussion Draft). Finally, Part IX of the Core Form asks for information regarding program service accomplishments, including a request on Part IX, Line 2 for information regarding the organization’s “most significant program service accomplishment for the year.”

Schedule H – Community Benefit and Other Information for Hospitals

Scope and Coverage of Schedule H

Organizations that operate a facility that provides hospital or medical care must complete new Schedule H. This new Schedule has five parts:

- Part I – Community Benefit Report;
- Part II – Billing and Collection Practices;
- Part III – Management Companies and Joint Ventures;
- Part IV – General Information; and
- Part V – Facility Information.

Schedule H will, of course, be the key Schedule for all hospitals. It is where the rubber hits the road for hospitals in telling their story about how they meet the community benefit standard for exemption. In that regard, the eight pages of Instructions that accompany Schedule H provide readable and largely helpful definitions and clarifications in providing the information that Schedule H requests. In addition, the community benefit portion of Schedule H is accompanied by eight helpful Worksheets.³¹ The Worksheets are not to be filed as a part of the Form 990 filing but are to be retained to support the information provided on Schedule H.

IRS Rationale and Operating Assumptions in Schedule H

Data Gathering for Policy Makers

The IRS explains some of its rationale in designing Schedule H in the materials accompanying the Schedule. The IRS notes, at one point, “In the hospital area, concerns

³¹ It should be noted that while eight Worksheets are referenced in Schedule H, only seven of the eight are posted with the materials online. Worksheet 8 is missing in action, though one would imagine it will be located before the roll out of the final redesigned Form.

continue to be raised about whether there are differences between for-profit and tax-exempt hospitals. While the health care sector has changed dramatically over the last forty years, the general tax rules governing this sector have not.”³²

The inference here, of course, is that the data collected in Schedule H can be used not only to assist the IRS in enforcing the community benefit standard but also to compare the operations of exempt hospitals operate with those of non-exempt hospitals. Policy makers can then use that data for future legislative efforts if it reveals that no material behavioral differences exist to justify the current level of tax subsidy that exempt hospitals enjoy.

Increased Transparency

The IRS also stated, “The proposed schedule is designed to combat the lack of transparency surrounding the activities of tax-exempt organizations that provide hospital or medical care.”³³ Regardless of whether a lack of transparency existed in the past, the IRS clearly advances transparency in the areas that Schedule H addresses. Additionally, Schedule H will make it not only possible to compare exempt hospitals with for-profit hospitals but also with other exempt hospitals of similar size and mission. (It is likely, however, that in the early years of reporting under the new regime there will be many “false positives” as hospitals learn the in’s and out’s of how to report consistently all of the information that Schedule H requires.)

IRS View of the Substantive Law

The IRS then goes on to say that, “In drafting the schedule, the Service tried to quantify, in an objective manner, the community benefit standard applicable to tax-exempt hospitals.”³⁴ While the Discussion Draft does not make, nor does it purport to make, any changes in substantive law, the inference here is that the IRS believes the factors cataloged in Schedule H are the “objective” metrics under the community benefit standard.

In that regard, Schedule H only sets forth the factors the IRS believes indicate whether an organization is engaging in activities that advance community benefit. Schedule H does not express any view of how much community benefit is enough. That task will be left to the 20/20 hindsight judgment inherent in the overall facts and circumstances analysis of Revenue Ruling 69-545 and the courts. See, for example, *IHC Health Plans, Inc. v. Commissioner*,³⁵ the where the court summarized the community benefit standard and posited the following “plus” test for determining whether an organization provides sufficient benefits to merit § 501(c)(3) status:

In summary, under section 501(c)(3), a health-care provider must make its services available to all in the community *plus* provide additional community or public benefits. The benefit must either further the function of government-funded institutions or provide a

³² Instructions to Schedule H, at p. 1.

³³ *Id.*

³⁴ *Id.*

³⁵ 325 F.3d 1188 (10th Cir. 2003).

service that would not likely be provided within the community but for the subsidy. Further, the additional public benefit conferred must be sufficient to give rise to a strong inference that the public benefit is the *primary purpose* for which the organization operates. In conducting this inquiry, we consider the totality of the circumstances.³⁶

Thus, under the *IHC* “plus” formulation, it is not enough to promote health, nor is it enough to offer care to the entire community for a fee. These are just the starting point for the analysis. In addition, the organization must demonstrate that it satisfies one or more otherwise unmet community needs or that it supplements or advances governmental programs aimed at meeting those same community needs. Moreover, the organization must engage in these activities at a level that is substantial enough to allow the inference that furthering public benefit is the organization’s primary purpose. Schedule H will assist the IRS and organizations in quantifying how well organizations address the various metrics involved.

Specific Comment on the CHA Approach to Community Benefit

Finally, the IRS states that, “For purposes of advancing the discussion in this area, the Service chose to utilize the Catholic Health Association’s (CHA) community benefit reporting model. CHA is a respected leader in the area of charity care and community benefit reporting. The Service recognizes, however, that there will be alternative reporting models and welcomes comments in this area.”³⁷

This statement acknowledges the fine work the CHA has done over the past 15 years, but it also acknowledges that there is not complete agreement within the hospital community on all factors and that many respected members of the hospital community have different views in some areas. For example, while they agree on many points, the CHA and the American Hospital Association (AHA) disagree on some points, such as whether to take the Medicare “shortfall” into account as an item of community benefit. The IRS expressly acknowledges this disagreement among knowledgeable and respected members of the healthcare sector.³⁸ As a result, we can expect extensive comment on which portions of the CHA approach should be followed and where there should be deviation from the CHA approach.

Part I – The Community Benefit Report

Exempt Hospitals Receive Approximately \$12.6 Billion in Annual Tax Benefits

According the Congressional Budget Office,³⁹ based on calendar year 2002 data, the most current data available, nonprofit hospitals receive in the aggregate approximately \$12.6 billion in

³⁶ *Id.* at 1198 (emphasis in original) (internal citations omitted).

³⁷ *Id.*

³⁸ *Id.*

³⁹ Congressional Budget Office Nonprofit Hospitals and the Provision of Community Benefits paper dated December 2006, cited in Treasury Inspector General for Tax Administration Report, “Tax-Exempt Hospital Industry Compliance with Community Benefit and Compensation Practices (March 29, 2007).

governmental tax subsidies, broken down roughly evenly between the Federal government and various state and local tax exemptions and benefits. This means that, in the aggregate, tax-exempt hospitals receive an annual tax “subsidy” from the Federal government of about \$6.3 billion in the form of the basic exemption from having to pay income tax on net income, the ability to receive contributions that are deductible by the contributors and the cost savings from the advantages of tax-exempt financings. They receive another roughly \$6.3 billion from various state and local governmental entities in the form of sales and use tax exemptions, income tax exemptions and real estate tax exemptions.

Community Benefit Report Provides Quid Pro Quo Information for Tax Benefits

Because of the substantial subsidies, the Community Benefit Report will be the first place that the IRS and state regulators look to see whether a filing organization provides enough “bang for the buck” – the community benefit it provides in comparison to the level of tax subsidy that it receives. This report will also be the first place that the news media will look, and it will be a source of information for others in the community including unions, class action plaintiffs lawyers and tax whistleblowers. As a result, hospitals will want to pay very careful attention to the data reported here.

Community Benefit Report Requires Benefit Information at Cost

As noted, the Community Benefit Report basically follows the CHA model for reporting community benefits, and it requires organizations to report, on a unreimbursed cost basis, the cost of providing “Charity Care” and “Other Benefits. The Worksheets indicate that the cost data may be provided based either from the organization’s own cost accounting system or based on a costs-to-charges ratio from cost reports.

In the Charity Care Category, the Report asks for three categories of unreimbursed cost: (i) “traditional charity care”; (ii) the unreimbursed cost of providing Medicaid (the “Medicaid shortfall”); and (iii) the unreimbursed costs of providing benefits under Other Government Programs. There are Worksheets that provide a methodology for computing the costs with respect to each category.

Although Schedule H is based on the CHA model, and, although CHA and AHA have disagreed on the treatment of the Medicare shortfall, it is not clear from the Instructions whether the Report actually takes sides in the CHA/AHA Medicare shortfall debate. While the Instructions dealing with Billing and Collections clearly exclude Medicare and Medicaid from Other Government Programs, the Instructions in the Charity Care section are silent as to whether or not the Medicare shortfall could be included in the Other Government Programs category in some cases, depending on the organization’s particular circumstances.⁴⁰ This should generate a significant amount of comment and continued debate because, for many organizations, Medicare shortfalls can be an important issue and may generate losses that will be material to the organization’s financial status. In this area, the Healthcare Financial Management Association

⁴⁰ *Supra* note 32, at p. 5.

Statement 15 concludes that: “. . . each hospital should decide, based on its circumstances, whether Medicare shortfalls should be part of its community benefit disclosure.”⁴¹ Stay tuned.

In the “Other Benefits” category, the Report asks for cost data regarding the costs of providing five additional categories of community benefit: (i) Community Health Improvement Services and Community Benefit Operations, (ii) Health Professions Education; (iii) Subsidized Health Services; (iv) Research; and (v) Cash and In-Kind contributions to community groups.⁴² If a charitable hospital provides other additional benefits to its community that are not included as part of these five categories, those benefits presumably do not count for community benefit purposes in the view of the IRS. Many charitable hospitals have developed innovative ways to respond to community needs in the past, and hopefully those activities will continue, but Schedule H contains no place for a hospital to report them. As with the Charity Care Category, there are Worksheets for the Other Benefits Category, and the Instructions provide largely useful definitions about the items that can be included in each category. As noted, these definitions and Worksheets are based on the CHA’s work product in this area.

Community Benefit Annual Reports

In addition to the cost-based data computed using the Worksheets, the Community Benefit Report section also asks whether the organization produces an annual community benefit report for its operations and, if so, whether the report is made available to the public (Part I, Lines 12a and 12b). The Instructions suggest that some ways in which an organization can make its community benefit report available to the public are to post the report on the organization's website, to publish and distribute the report to the public and to submit the report to a state agency or other organization that distributes the report to the public.⁴³

Charity Care Policies

Schedule H also asks whether or not the organization has a Charity Care Policy and then asks for a description of that policy (Part I, Lines 13a and 13b). The Instructions indicate that the organization’s description of its charity care policy should include, but should not necessarily be limited to, the following five factors:

- Whether the organization determines eligibility for full or partial charity care on the basis of Federal Poverty Guidelines. For instance, if a patient’s family income must be less than a certain percentage of the Federal Poverty Guidelines for the patient to qualify for free care, the organization is to indicate that percentage. Similarly, if a patient’s family income must be within a certain income range to qualify for discounted care, the organization is to indicate that income range;

⁴¹ Healthcare Financial Management Association, P&P Board Statement 15, *Valuation and Financial Statement Presentation of Charity Care and Bad Debts by Institutional Healthcare Providers* (Dec. 2006), at p. 11.

⁴² *Supra* note 32, at pgs. 3-4.

⁴³ *Id.* at p. 4.

- Whether the organization determines eligibility for full or partial charity care on the basis of an asset test. For purposes of this question, “asset test” means a limit on the amount of total or liquid assets that a patient or the patient’s family may own to qualify for free or discounted care;
- Whether the organization applies its charity care policy uniformly throughout all of its facilities, or whether the application of the policy varies from facility to facility based on socio-economic factors, local law or other factors;
- Whether the amount of free or discounted care provided under the policy is limited by budget caps or other conditions that may result in persons otherwise eligible under the policy not receiving free or discounted care;
- How and when the organization informs its patients of the terms and availability of the policy. Some of the ways in which an organization can inform patients of the terms of the policy are to post the policy in admissions areas, emergency rooms and other areas of the organization’s facilities in which eligible patients are likely to be present; provide a copy of the policy to patients with discharge materials and include the policy or a summary of it in patient bills.⁴⁴

These factors indicate that the IRS remains concerned about the publicity that the charitable hospital provides for its charity care policy and the results that the policy actually produces. For example, in 2001, the IRS issued a Field Service Advice Memorandum containing 14 questions designed to elicit facts regarding a hospital’s charity care policy and its activities.⁴⁵ These questions included whether the hospital had a specific, written plan or policy to provide free or low-cost health services; what directives or instructions the hospital had provided to ambulance services regarding the transportation of poor or indigent patients to its emergency room and whether the hospital maintained “detailed records” regarding the times and circumstances under which it provided free or reduced-cost care.⁴⁶ Despite these questions and the growing focus by the IRS, states attorney generals, plaintiffs attorneys and potentially tax whistleblowers with respect to charity care, no requirement exists under the community benefit standard as interpreted by courts or pursuant to Revenue Ruling 69-545 for a hospital to provide free care in exchange for exempt status under federal law.

Part II – Billing and Collections

Part II of Schedule H asks for information regarding billing and collections. To the authors’ knowledge, this represents the first time that the IRS has asked for information regarding these practices in any organized way. Indeed, Revenue Ruling 69-545, which sets forth the community benefit standard, does not mention billing and collection at all.⁴⁷

⁴⁴ *Id.* at pgs. 4-5.

⁴⁵ *See* Field Serv. Adv. Mem. 200110030 (Feb. 5, 2001).

⁴⁶ *Id.*

⁴⁷ *See, e.g.,* Rev. Rul. 69-545, 1969-2 C.B. 117.

Rationale for Billing and Collection Information

The IRS's stated rationale for adding this request for billing and collection information is that it is needed "in order to better reflect the revenue stream of the organization and to enhance transparency regarding these practices."⁴⁸ Initially, the "revenue stream" concept seems valid for purposes of allowing the IRS to enforce the tax laws. The validity of this concept, however, depends on whether this section gives the IRS information regarding how organizations treat bad debt for charity care purposes and when the organization identifies an amount as either charity care (never entering into its revenue stream) or as bad debt (entering into its revenue stream but ultimately not collectible). On the other hand, some of the information collected in this section seems to have little, if anything, to do with enforcing the tax laws and may fall into the "transparency" category, which makes it nice to know particularly for state regulators, the news media and plaintiffs lawyers.

Section A -- Insurance Categories, Discounts and Bad Debt

Section A requests billing information in a format that breaks patients out by the categories of insurance coverage as follows: (i) Medicare; (ii) Medicaid; (iii) Other Governmental Programs; (iv) Private Insurance; and (v) Uninsured. Section A then requests information regarding how the organization gets from the gross charge amount to the "net expected" and the "fees collected." In that regard, the Instructions contain a useful and instructive discussion of the "discounts" an organization uses in order to arrive at the "net expected" number.⁴⁹

Discounts Defined

According to the Instructions, "discounts" include "any and all billing or contractual discounts or allowances applied to the gross charges."⁵⁰ Thus, the Instructions say that organizations should include discounts such as those negotiated with private insurance companies, discounts applied by government programs, early payment discounts, discounts granted automatically to persons without insurance and discounts granted to charity care patients.⁵¹ A discount may be any portion of a gross charge, including 100% of that charge, and more than one discount may apply to a given charge. For example, the Instructions note that a charge may be discounted by reason of a patient's insurance policy, and the co-pay may be further discounted through the organization's charity care policy.⁵²

Explanation of How the Organization Calculates Bad Debt Expense

⁴⁸ *Supra* note 32, at p. 1.

⁴⁹ *Id.* at p. 6.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

While it does not define the difference between charity care and bad debt, Schedule H, Part II does ask the organization to explain how it calculates bad debt expenses (Part II, Line 5). In this regard, the Instructions make clear that the term “discounts” does not include “an allowance, reduction or adjustment offered or provided to settle or collect an amount previously billed, such as to encourage collection of a past due amount.”⁵³ In other words, discount does not include bad debt. Fair enough.

However, this does not address one of the more contentious and, in the authors’ view, silly debates in this area – whether an organization can treat bad debt as charity care. In the authors’ view, this is a semantic debate, not a substantive one. As a result, organizations should take care in answering this request to ensure that they accurately and carefully respond, taking into consideration the principles set forth in Healthcare Financial Management Association’s Statement 15, which sets forth a basis for distinguishing bad debt from charity care for financial accounting purposes.⁵⁴

In general terms, it is easy to tell the difference between charity care and bad debt. Charity care is an amount that the organization intends to “give away” because the person meets certain criteria. As a result, charity care never enters into the organization’s revenue stream and is never a part of the organization’s accounts receivable. Bad debt, on the other hand, is one key measure of an organization’s revenue cycle effectiveness. It is an amount that initially enters into the revenue stream because the organization did not intend to give it away. It intended to get paid, but it made a bad credit underwriting judgment and, therefore, has an “unintended” operating expense.

The issue that arises here is not one of *whether* bad debt can be counted as charity care but of *when* the organization makes the determination that a particular patient is a charity care patient or a paying patient. Many, including the IRS in the *St. David’s* case at the trial level, have taken the position that, if an amount ever enters the organization’s revenue stream, it can never be accounted for as a charity care amount.⁵⁵ This is a position reminiscent of the old Will Rogers advice on picking stocks: “Don’t gamble; take all your savings and buy some good stock and hold it till it goes up, then sell it. If it don’t go up, don’t buy it.”

What Will Rogers said about picking stocks is equally true about deciding which patient is a charity care patient and which one is a paying patient. It is extremely difficult in many instances to tell whether a particular patient is eligible for charity care at the point of service, and it is often the case that the institution, despite its best efforts, cannot make that determination until some considerable period of time after the service is rendered. This includes, in some cases, waiting until after collection efforts have commenced and the information then becomes available. Indeed, on this point, the United States District Court in the *St. David’s* case made the following colorful, but cogent, observation:

⁵³ *Id.*

⁵⁴ *Supra* note 41.

⁵⁵ *See, e.g., St David’s Health Care System, Inc.*, 89 AFTR2d 2002-2998 (W.D. Tex. 2002), rev’d and rem’d 349 F.3d 232 (5th Cir. 2003).

The government attempts to quibble about how St. David's differentiates between free care that is charity and free care that is bad debt. The Court thinks that is a silly and meaningless distinction for purposes of this case. When all who need emergency care are treated regardless of willingness or ability to pay, the function is charitable regardless of what the accountants discover later. The government uses the alleged fact that St. David's attempts to collect payment from all patients before determining whether the care rendered was charity care or bad debt to show that St. David's actually provides no charity care. This implicitly attempts to require St. David's to determine before rendering care, whether to expect payment from that particular patient, a luxury allowed only to those privileged to live in a bubble constructed by theories without the rude pin prick of practicality that so frequently bursts such bubbles. Not surprisingly, the IRS offers no method by which that determination could be made, perhaps it could be based on skin color, the brand name of clothes worn by the patient upon entering the emergency room, or shaking a magic eight ball.⁵⁶

It would be helpful if, in the final Instructions or in some other form of guidance, the IRS addressed this issue. In that regard, the authors urge the IRS to adopt the standards set forth in the Healthcare Financial Management Association's Statement 15, which sets forth a thoughtful and useful way of addressing this issue, requiring that the organization make every practical effort to make charity care eligibility determinations before or at the time of service but recognizing that determinations can be made at any time during the revenue cycle and that there should be no rigid time limit for when determinations are made.⁵⁷ This is a much better approach than "shaking a magic eight ball."

Section B – Collection Practices

Schedule H, Part II, Section B asks whether the organization has a written collection policy and, if so, for a description of that policy. The Instructions note that the description should include a statement of how and when the organization informs patients of the terms of the policy as well as a description of how the organization collects debts from patients.⁵⁸ If the organization uses collection procedures or refers collections to third parties, the organization is to describe when such procedures are used or when such referrals take place. The Instructions also indicate that the organization should note whether amounts that are designated as charity care may be subject to collection procedures or referred for collection to a third party either before or after the charity care determination is made.⁵⁹

⁵⁶ *Id.* at 2002-3005.

⁵⁷ *Supra* note 41, at p. 5.

⁵⁸ *Supra* note 32, at p. 6.

⁵⁹ *Id.*

As noted above, the charity care versus bad debt information seems relevant to the community benefit standard. However, much of the remaining request for information is a stretch if the goal is enforcement of Federal tax laws. The best theory would be that, under state charitable law concepts, under which the healthcare exemption qualifies as a tax-exempt purpose, there is a requirement that charitable hospitals follow some particular set of debt collection polices that are different from those of other organizations. While many plaintiffs lawyers, some attorneys general and some state tax departments have made such arguments, no general, underlying state charitable law concept requires a separate set of debt collection practices for charitable hospitals or specifies what those practices might be. While some states, such as Illinois, have enacted hospital-specific billing and collection legislation, the relevant compliance details are tied to the particular requirements of the statute and not susceptible to uniform national reporting or, arguably, even within the jurisdiction of the IRS.

As a result, it seems strained to try to shoehorn this request into a category that ties directly to a Federal tax law requirement. That having been said, the rules under IRC § 6033 and the Treasury Regulations thereunder clearly give the IRS the authority to promulgate forms and instructions requesting information of this kind. As a result, hospitals should carefully describe what they do and why.

Part III – Management Companies and Joint Ventures

Discussion Draft’s Overall Emphasis on Joint Ventures Outside of Schedule H

Joint ventures have been a hot topic for the IRS and other regulators, the Senate Finance Committee and other legislative bodies, the media and class action plaintiffs lawyers. As a result, under both the enforcement and transparency prongs of the IRS’s approach to the redesign of the Form 990, the Discussion Draft, in a number of places, requests a significant amount of new information regarding joint ventures.

For example, Part VII, Statement Regarding General Activities, has a series of questions regarding joint ventures. Line 7b asks whether the organization is related to any tax-exempt or taxable entity, and, if yes, requires the organization to complete Schedule R regarding related entities. Note that the definition of “related organizations” in the Glossary only includes parents, subsidiaries, brother-sister corporations and supporting/supported organizations.⁶⁰ It does not appear to include any organization where the control (direct or indirect) is 50% or less unless the filing organization is the managing partner or managing member of a partnership/LLC or a general partner in a limited partnership.

In addition, Line 8a asks whether during the tax year the filing organization conducted all or a substantial part of its exempt activities through or using a partnership, LLC or corporation. The Instructions require organizations to answer “yes” if the organization conducted exempt activities through or using one or more partnerships, limited liability companies or corporations and the aggregate exempt activities conducted through or by such entities involved a substantial portion of the organization’s capital expenditures or operating budget or a discrete segment or

⁶⁰ Glossary to Discussion Draft, at p. 8 (available at <http://www.irs.gov/charities/article/0,,id=171213,00.html>).

activities of the organization that represent a substantial portion of the organization's assets, income or expenses of the organization, as compared to the organization as a whole.⁶¹ This question does not depend on the level of control over the other entity, but it does ask only about substantial activities. The Instructions do not define "substantial." However, based on other guidance in other areas, anything over 15% may be substantial.⁶²

Line 8b further requires detailed information, including the primary activity, of any partnership, LLC, or corporation in which the filing organization's ownership or control was 50% or less, based on vote or value. This question only applies if the joint venture is a substantial portion of overall activities of the filing organization. It represents, however, the first time that the IRS has asked specifically for disclosure on the Form 990 of joint venture arrangements where the exempt organization does not have more than 50% control as well as the first time that the IRS has focused on ownership percentage. Through this question, the IRS will be able to identify potential targets for focused compliance checks or correspondence audits to assess compliance with the control test of *St. David's*, etc. In that regard, ownership percentages are also potentially relevant in analyzing whether control and other rights are proportionate to ownership. To date, however, the IRS has not expressed concern about exempt organizations having lower ownership percentages than voting percentages in partnerships, LLCs and corporations.

Line 8c seeks information about whether the organization was a partner in a partnership, member of an LLC or shareholder of a corporation that was managed by a company that was controlled by taxable partners, members or shareholders. This question does not depend on the level of control over the other entity, nor is it limited to substantial activities. Rather, it applies to even ancillary joint ventures. It is possible that this question signals an increased interest by the IRS in potential inurement and private benefit issues related to ancillary joint ventures, which may be reflected in future compliance checks.

Line 11 asks whether the organization has a written policy or procedure to review the organization's investments or participation in disregarded entities, joint ventures, or other affiliated organizations (exempt or non-exempt). Like question 8, this question may be part of a move to gather more information about nonprofit/for-profit joint ventures and may signal a future IRS compliance initiative.

Line 12 further asks whether the organization has a written policy that requires the organization to safeguard its exempt status with respect to its transactions and arrangements with related organizations. The Instructions indicate that an organization is to answer "yes" if the organization has adopted a policy that requires the organization to negotiate in its transactions and arrangements with other organizations such terms and safeguards adequate to ensure that the organization's exempt status is protected. One such safeguard is control by the organization over a partnership sufficient to ensure that the partnership furthers the exempt purpose of the

⁶¹ Instructions to Discussion Draft, at p. 42 (available at <http://www.irs.gov/charities/article/0,,id=171213,00.html>).

⁶² See Internal Revenue Manual [7.8.1] 27.10.1 (May 25, 1999) (withdrawn I.R.C. 501(m) commercial-type insurance audit guidelines).

organization. Other safeguards are requirements that a partnership in which the organization is a partner give priority to exempt purposes over maximizing profits for the partners; that the partnership not engage in any activities that would jeopardize the organization's exemption; that returns of capital, allocations and distributions be made in proportion to the partners' respective ownership interests; and that all contracts entered into by the partnership with the organization be on arm's-length terms, with prices at fair market value. If a related organization does not substantially further the exempt purposes of the organization, safeguards might include steps taken to ensure that the related organization's activities will not be attributed to the organization, or if they are, will not be sufficient to threaten the organization's exempt status.

The Instructions are particularly instructive of the safeguards the IRS expects to see in nonprofit/for-profit joint ventures. Although the question is limited to related organizations, it is likely that the IRS will apply to same standards to 50/50 or minority control positions in assessing unrelated business income or, where the joint venture is substantial or involves insiders, determining whether there is a risk to tax-exempt status (inurement, private benefit).

Schedule H's Specific Requests for Healthcare Joint Venture Information

Schedule H follows this overall trend in the Discussion Draft by requesting information specifically targeted at management companies and joint ventures in the healthcare areas (Schedule H, Part III). In that regard, Schedule H requires hospitals to identify all management companies and joint ventures in which the hospital is either a partner or shareholder if (a) current or former (within the past five years) directors, trustees, officers or key employees ("Listed Persons") or physicians own in the aggregate 5% or more of the profits interest or stock; and (b) either manages hospital or medical care operations for the filing organization or directly provides hospital or medical care, or owns any property used by the filing organization or others to provide hospital or medical care. The required information includes name of the entity, description of its primary activity, and a breakdown of percentage of ownership among the filing organization, Listed Persons and physicians. The stated purpose of this disclosure, according to the Instructions, is to provide an "understanding [of] the structure of the [filing] organization and any inurement or private benefit issues."⁶³ Examples given in the instructions of organizations to be reported include ancillary services joint ventures, joint ventures leasing out hospital facilities, and equipment leasing joint ventures.⁶⁴

Given the high level of interest in joint ventures overall, and the emphasis placed on joint ventures throughout the Discussion Draft, healthcare organizations will have to take care in describing their joint venture arrangements and, more importantly, in structuring them in the first instance. This is true not only for the reasons discussed above but also because FIN 48 will require organizations with joint ventures to make a judgment that their joint venture arrangements are structured in a manner that enables the organization to take a more likely than not position that the tax structuring they have done works and then to make a second judgment as to the amount of reserve, if any, they need to make to take into account any uncertainty in their position.

⁶³ *Supra* note 32, at p. 1.

⁶⁴ *Id.* at p. 7.

Part IV – General Information

Description of Community Needs Assessment Process

In Part IV, the IRS seeks information regarding how the organization assesses the healthcare needs of the communities it serves. This is a very important portion of Schedule H. Indeed, the first step in satisfying the community benefit standard is likely conducting a community needs assessment. While some have criticized community needs assessments as, in effect, disguised market studies, it is clear that boards should be involved actively in determining what needs exist in the community and how the organization can best serve those needs given its financial resources and charitable mission orientation. In this regard, all charitable hospitals operate with finite resources, and, under the community benefit standard, these hospitals may allocate their resources in a manner that, in their judgment, best suits the needs of the communities they serve. In many instances, this means a substantial dollar commitment to charity care spending and to other activities that further charitable healthcare activities.

In recognition of this fact, the community benefit standard permits a flexible approach to determining which services are best suited to a particular community and how best to allocate limited resources to meet the needs of a particular community. These objectives are generally served by the community needs assessment process, which involves the board actively (i) setting the organization's mission overall, including the role of charity care and other tax-exempt objectives in the mission; (ii) establishing systems to monitor and measure the organization's compliance with its policies; and (iii) allocating the resources of the organization in a manner that best serves the community. Needs assessments need not be developed unilaterally by each hospital, and many can rely on existing assessments prepared by local health departments and community based organizations. If assessments are not available, then developing such an analysis can be done together with community groups as one approach to engaging in productive dialog regarding needs and collaborative approaches to meeting them.

Patient Education Regarding Charity Care and Other Assistance

Part IV also asks that the organization describe how the organization's patient intake process informs and educates patients about their eligibility for assistance under federal, state, or local government programs, or under the organization's charity care policy. Unlike the charity care and billing and collection portions of the Instructions, where the IRS suggests the content it would like to see, the Instructions here are silent, and organizations will have to come up with their own descriptions. This free form approach will generate a lot of information, but, because each organization will be left to its own devices, the descriptions will vary widely. This will not facilitate easy comparison of practices from organization to organization given the wide variety of ways in which the information will be presented on Schedule H, although it may be the IRS plan to sift through these data and generate specific criteria later.

Whatever the IRS's approach is here, it would seem that organizations will almost certainly include this kind of information along with the criteria for eligibility for charity care, and given the calculations of charity care as excluding other assistance, organizations will clearly have the information and the economic incentive to make patients aware of other organizations that will pay part or all of the patient's costs. In any event, organizations should review what

they are doing in this regard, and it would be good to take whatever practical steps can be taken to ensure that the information provided to patients is in a “patient friendly” format.

Parts IV and V – General Information and Facilities Information

Part IV seeks information of the organization’s emergency room policies and procedures, including the hours of operation, if applicable, and it seeks any other information important to describing how the organization’s hospital’s facilities further its exempt purposes. Part V follows on the last question in Part IV by seeking specific information regarding activities and programs conducted at each facility. The Instructions then go on at some length defining what constitutes a “facility”⁶⁵ and what constitutes “medical ore hospital care.”⁶⁶

Conclusions and Observations

As noted at the outset, the Discussion Draft is a remarkable work product from an overstressed agency. While the IRS work product is not perfect by any stretch, on an overall, tax policy basis, it is a good first (and giant) step forward. As we noted at the outset, under the Discussion Draft format, the Form 990 is not just for numbers any more. It has become a disclosure document containing a vast store of readily available information regarding the activities of an organization and the extent to which the organization engages in financial transactions with organization insiders.

From an enforcement prospective, this will not only give the IRS ready access to hard factual data to make judgments about the need for enforcement actions but it will also modify behaviors by managers of tax-exempt organizations. The fact that the Form 990 is a public domain document gives the IRS a boost in enforcement because the eyes of IRS agents will be supplemented by the eyes of state attorneys general, legislative bodies, the news media, and other interested members of the general public, all of whom will be able to gain quick and easy access to a substantial amount of information. Welcome to the future.

⁶⁵ The Instructions note that for purposes of listing its facilities, a "facility that provides medical or hospital care" means a building, other structure, or campus that is dedicated to providing medical or hospital care. A facility that provides medical or hospital care does not include a component wing or department of a hospital, clinic, or other discrete facility.

⁶⁶ The Instructions note that “Medical or hospital care” includes the type of care provided by hospitals, rehabilitation institutions, outpatient clinics, skilled nursing facilities, and community mental health or drug treatment centers. A facility that provides medical or hospital care includes one that treats any physical or mental disability or condition, whether on an inpatient or outpatient basis. Such facilities also include those of non-medical institutions (e.g., colleges, prisons) that operate facilities that provide medical or hospital care. A facility that provides medical or hospital care does not include a convalescent home or home for children or the aged, a cooperative hospital service organization, or an institution whose principal purpose or function is to train handicapped individuals to pursue a vocation. Nor does it include a facility whose principal purpose or function is to provide medical education or medical research, unless it is also actively used in providing medical or hospital care to patients as an integral part of medical education or medical research.

From: _____
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: FW: Comment from Web Site: Form 990 Schedules Control #
2886
Date: Monday, July 02, 2007 10:59:20 AM
Attachments:

-----Original Message-----

From: postoffice@www.irs.gov [<mailto:postoffice@www.irs.gov>]

Sent: Wednesday, June 27, 2007 2:05 PM

To: *TAXFORMS

Subject: Comment from Web Site sent to *Taxforms@irs.gov

This letter is in response to new Form 990 schedules. The forms that will have the most drastic effect on our agency are Schedule G - Supplemental Information Regarding Fundraising Activities and Schedule M - Non-Cash Contributions.

I am the CFO of the Central Maine Area Agency on Aging, d/b/a Senior Spectrum. Our service area encompasses 6 counties plus two additional communities in Maine. Approximately 40% of our total revenue is received from federal and state grants.

During our most recent year complete June 30, 2006, we received a total of nearly \$570,000 in non-cash contributions. Nearly 90% of those contributions came in the form of a building donated to us by a local municipality - that type of event is not a reporting issue. However, the remaining \$60,000 in non-cash contributions will become a reporting nightmare for us.

One of our major programs is Meals on Wheels. In conjunction with that program, a supermarket chain gives us daily donations of surplus food, primarily fresh items that would have to be used within a short period of time. We use many of those items ourselves, and pass on usable items to the local soup kitchen. To the best of my knowledge, the supermarket doesn't place a value of the donated items. However, our chef does so by comparing what he would have had to pay if he purchased through our normal vendors. We use this value to determine our meal costs and to recognize the donation on our books. However, these are bulk items with no real way to quantify them for the Schedule M. We don't have a scale that could weigh these items or any other way to reasonably determine the amount received.

During our FY06, we recorded over \$100 per week in such food contributions for an annual total of \$5,784. Tracking these donations and reporting will present a significant increase in bookkeeping, recordkeeping, and reporting with minimal value to the IRS.

Another non-cash area that presents problems involves mileage. This would fall under an "other" category. To deliver our Meals on Wheels, we primarily utilize volunteers. With a rural area such as ours, many of these volunteers (and we have several hundred) put a great deal of mileage on their personal vehicles. The drivers are eligible to be reimbursed

by us for their mileage.

In order to obtain reimbursement, each volunteer must submit a report and request for reimbursement on a monthly basis. Optionally, rather than receive the reimbursement, a volunteer can donate all or a portion of that reimbursement to our agency.

During FY06, we received \$13,218 in such donations. Although we maintain files for the reimbursement/donation forms, we do not aggregate on an individual basis. Given the format of the Schedule M, it appears that you are requesting information on each donor, something that would again mandate extremely onerous bookkeeping, recordkeeping, and reporting requirements for us.

We have similar issues for many other donated services or goods, ranging from the several thousand dollars in advertising donated by our local newspaper to items such as craft supplies or books donated for our Adult Daycare program. How do you measure the quantity of \$50 worth of craft supplies? What is the quantity when a donor gives us vouchers to be used at the local taxi service for seniors who have no other way to get to a medical appointment?

In total our non-cash contributions are well above your \$5,000 limit. However, with the exception of the building and perhaps the food, the other donations come from literally hundreds of people. Given both the nature of the donations and the volume of donations, tracking them individually will be impossible without incurring substantial additional expenses that would not be eligible for any additional funding. Given that an additional clerical person would cost us at least \$30,000 annually, including taxes and fringe benefits, accepting non-cash contributions would end up costing more than 1/2 the value of the contributions.

Similarly, Schedule G Part II will be a disaster for us. We have seven satellite centers, each serving a specific local client population. As noted above, our grant funding is only 40% of our revenue. We are constantly putting on fund-raising events, from spaghetti dinners to a golf tournament and many other types. Our FY06 revenue from special events was \$40,717, again well above your cutoff level. However, this probably consisted of 40 or 50 separate events, with only a couple producing what could be perceived as significant net revenues. The paperwork to maintain separate records on each event will again require more manpower, and again that will be unfunded manpower.

We ask that you reconsider your criteria for reporting and take into account the expense that would be incurred by the reporting organizations.

Thank you for your consideration.

Jeffrey Lauder, CFO

Central Maine Area Agency on Aging, d/b/a Senior Spectrum

From: [Bonnie Russell](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Reformatting an easy form.
Date: Saturday, June 30, 2007 4:04:10 PM
Attachments:

Please keep the financials on the First page for three, simple yet pragmatic reasons.

1. Few bother with pr inspired, broad-based "mission statements."
2. Key information is always in the numbers. Numbers at a glance, is better.
3. It works, don't break it.

Thank you.

Most sincerely,

Bonnie Russell

We only work with the best. It's simpler that way.

From: [William Rosenfeld](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Feedback on Use of Outsourcing to Avoid Salary Disclosure
Date: Friday, June 29, 2007 6:52:43 PM
Attachments: _____

This is to provide feedback on the draft redesigned form 990. I want to raise an issue that has troubled me for some time. The concern is with charities using outsourcing to hide the compensation of the organization's executives.

I became aware of the issue in 2003 because of participation in an event called the xxx xxxx xxxxxxxxx, a large athletic charity event in Massachusetts. Rumors about the executive's compensation were rampant so I tried to use 990 reporting to find the truth. It turns out that executive compensation is listed as N/A (see attached sample). This is because all the staff is outsourced to a management company that is run out of the house of the charity's chief executive and, at the time, had no other customers.

I contacted the IRS and learned of the attached Announcement 2001-33 designed to explicitly address this issue. However, the proposed changes were never issued and the result was to effectively provide charities a free pass to report as they like, exactly the opposite of what was intended. I also tried working with the Massachusetts Attorney General but received no satisfaction.

See the video link at [xxxx://xxxxxxxx/xxx.xx](#) to see local TV coverage of the issue that provides additional detail.

I've read the revised instructions and can't determine whether this practice will now be banned. This is still going on at this particular charity and presumably spreading to other charities. Anything you can do to see the issue finally addressed would be appreciated.

Bill Rosenfeld
Lexington, MA

From: [Howard J. Levine](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comments on draft
Date: Friday, June 29, 2007 2:17:02 PM
Attachments:

We prepare a significant number of Forms 990. The comments below are based on our experience with relatively small (under \$250,000 or revenues) community based organizations, as well as much larger organizations.

Part 1, Line 8 – This computation takes the program related key employee compensation as a percent of total program expenses. I believe the concept is a good one, but it should be total compensation divided by total expenses (column A instead of B).

Part 1, Summary – I do not see any value in the Gaming & Fundraising boxes, either to the public or the organization, on the bottom of the page.

Part 3, Governance – This will be problematic for most organizations. In particular:

#4 and #5 are ridiculous for small nonprofits and I believe should be eliminated.

#10 asks if the governing body reviews the Form 990. I know of no organization that has its board review the Form 990 so this should be eliminated.

Part 5, Statement of Functional Expenses – Line 23, other expenses has only six lines. You should add a place on Schedule “D” either for the detail of these expenses or as an overflow. That will avoid an attachment.

Part 8, Other I.R.S. Filings – Questions 9a and 10a (the number of W-

2's and 1099's filed) are really not meaningful numbers in any way, so I would suggest just asking the yes or no question.

Part 9, Program Accomplishments – The “direct revenues” column will be virtually impossible for small organizations to accurately accumulate and I am not entirely sure what benefit it provides the reader.

Schedule A, Part 2, Line 16 – Most organizations that have been around any length of time have no idea what the effective date of exemption is. I would suggest you eliminate that line.

Schedule A, Parts 2 and 3, Line 20 – Currently when an organization files a Form 990-PF the first year there is a mismatch and it generates considerable I.R.S. correspondence. This problem should be addressed before the new form is released.

Schedule D, Part 12 – Going back four years will be a great burden, especially in the first year. I wonder what this tells the I.R.S. or the reader? Perhaps going back two years would be better.

Schedule D, Part 13 – This schedule seems needlessly confusing. A simple reconciliation would be adequate.

Schedule J, Part 1 – Column “E”, “nontaxable expense reimbursements” has nothing to do with compensation and will be very difficult to accurately track. For example, if parking is reimbursed this must be tracked? I understand you are looking at total compensation, and there can be significant abuse in this area, but to include this as an element of compensation seems a bit overreaching.

Overall the revision is very well thought out. I do wonder, however, if there should not be an “EZ” form for smaller organizations, since so much of this is not applicable for them.

Please feel free to either e-mail or to contact me at the address below if you have any questions,

Howard

Howard J. Levine C.P.A.
16600 Sherman Way, Suite 280
Van Nuys, CA 91406
818-994-5562

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From: [Mark Janssen](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Feedback on Redesigned Form 990
Date: Thursday, June 28, 2007 12:17:50 PM
Attachments:

A couple of cosmetic comments for the redesigned Form 990:

Part I, line 11 - should reference Part IV, line 1h rather than 1g

Part I, line 15 - should not include Part IV, line 3 (line 3 is already accounted for in Part I, line 13)

Part IV, line 14 - should reference lines 1h and 13e rather than lines 1g and 13c

Part IX, column headings between lines 2 and 3a, Column (A) - the * is not referenced in the column to the left of Column (A) in the same way the Column (B) ** is referenced.

Thanks,
Mark Janssen

From: [Sonshine Soup Kitchen](#)
To: [*TE/GE-EO-F990-Revision:](#)
CC:
Subject: New form
Date: Thursday, June 28, 2007 10:37:15 AM
Attachments: [Sunflower Bkgrd.jpg](#)
[sunbannA.gif](#)

We have been eligible to use the 990E Z since 1989. This was the first year that our donations exceeded the \$100k that pushed us to use the 990.

Comments :

- 1) Seems that there should be a higher breakpoint for using 990E Z as there is a huge difference in organizations that bring in half million plus to those under.
- 2) Smaller organizations cannot afford in-house accountants and need language understandable to the ordinary population.

Cynthia Dwyer, Executive Director
Sonshine Soup Kitchen
4 Crystal Avenue #4
Derry, New Hampshire 03038
603-437-2833
Office hours: 1:00 to 6:00, Monday through Thursday
www.soupinderry.org

A volunteer is a person God has chosen to answer the prayer of someone else. ~Alan Mahan



From: Debra Cage
To: *TE/GE-EO-F990-Revision;
CC:
Subject: 990 revisions
Date: Wednesday, June 27, 2007 11:11:39 AM
Attachments:

Our office prepares 10-15 990 forms each year. The new form is very detailed and in general, will be very informative to the public. However, for our organizations that require the 990 (not 990-EZ) it is very cumbersome and confusing for the organizations. For 100% of our clients the new part II does not even apply. There should be a separate schedule to attach if compensation is over \$100,000. It should not be a part of the main form. Actually, there should be two separate reportings required. Financial information should be on one reporting. That is the information that accountants can help the organizations with. The narrative regarding program services, questions about activities, numbers of members, directors, etc. should all be on separate forms. These are items the accountants do not know about the organizations, however, the small organizations see forms from the IRS and assume that we have all the information needed from looking at financial statements in order to complete the whole form. If the non-financial information were included on separate forms, the organizations would be more receptive to the fact that the forms aren't "all numbers" related.

Debra Cage
Lindahl & Cage, Ltd.

Raymond Dugdale & Co., P.C.
CERTIFIED PUBLIC ACCOUNTANTS

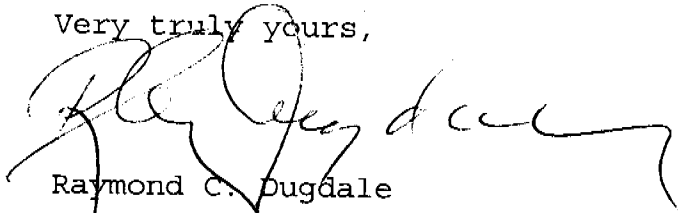
June 26, 2007

INTERNAL REVENUE SERVICE
Form 990 Redesign, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

To Whom It May Concern:

Enclosed are my suggested changes to the new Form 990.

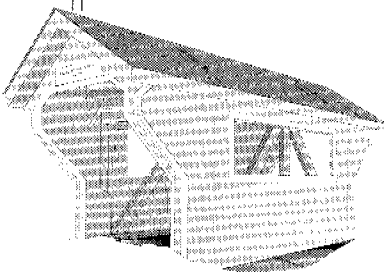
Very truly yours,



Raymond C. Dugdale

Enclosure

137 MIDDLE STREET
MANCHESTER, NH
03101-1905
TELEPHONE 669-3454
FACSIMILE 647-4500



Return of Organization Exempt From Income Tax

OMB No. 1545-0047

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)

20XX

Open to Public Inspection

Department of the Treasury
Internal Revenue Service(77)

▶ The organization may have to use a copy of this return to satisfy state reporting requirements.

A For the 20XX calendar year, or tax year beginning _____, **20XX, and ending** _____, **20** _____

- B** Check if applicable:
- Address change
 - Name change
 - Initial return
 - Termination
 - Amended return
 - Application pending

C Name of organization _____

D Employer identification number _____

Number and street (or P.O. box if mail is not delivered to street address) Room/suite _____

City or town, state or country, and ZIP + 4 _____

E Telephone number _____

F Name and address of Principal Officer: _____

G Website: ▶ _____

- I** Accounting method:
- Cash
 - Accrual
 - Other ▶ _____

J Books

In care of _____

Located at _____

H Enter amount of gross receipts \$ _____

K Organization type (check only one) ▶ 501(c) () ▶ (insert no.) 4947(a)(1) or 527

Telephone number () _____

L Year of Formation: _____

M State of legal domicile ▶ _____

Part I Summary

Line for activity should be longer code should be shorter.

- 1** Briefly describe the organization's mission: _____
- 2** List the organization's three most significant activities and the activity codes (Part IX):
- a $\xrightarrow{\text{Code}}$ b $\xrightarrow{\text{Code}}$ c $\xrightarrow{\text{Code}}$
- 3** Enter the number of members of the governing body (Part III, line 1a) **3** _____
- 4** Enter the number of independent members of the governing body (Part III, line 1b) **4** _____
- 5** Enter the total number of employees (Part VIII, line 9a) **5** _____
- 6** Enter the number of individuals receiving compensation in excess of \$100,000 (Part II, line 2) **6** _____
- 7** Enter the highest compensation amount reported on Part II, Section A (sum of columns D and E) **7** _____
- 8a** Enter officer, director, trustee, and other key employee compensation (Part V, line 5, column (B)) **8a** _____
- b Divide line 8a by line 17 _____ %
- 9a** Enter total gross unrelated business revenue from Part IV, line 14, column (C) **9a** _____
- 9b** Enter net unrelated business taxable income from Form 990-T, line 34 **b** _____
- Check this box if the organization discontinued its operations or disposed of more than 25% of its assets and attach Schedule N.

S/B Part II

S/B Part III

S/B Part IV

	Amount	% of Total
11 Contributions and grants (Part IV, line 1g, column (A))		
12 Program service revenue (Part IV, line 2g, column (A))		
13 Membership dues and assessments (Part IV, line 3, column (A))		
14 Investment income (Part IV lines 4, 5, 6, 8, 10d)		
15 Other revenue (Part IV, lines 3, 7, 9d, 11c, 12c, and 13e, column (A))		
16 Total revenue add lines 11 through 15 (must equal Part IV, line 14, column (A))		100%
17 Program service expense (Part V, line 24, column (B))		
18 Management and general expenses (Part V, line 24, column (C))		
19a Fundraising expenses (Part V, line 24, column (D))		
19b Percentage of contributions (divide line 19a by line 11) _____ %		
20 Total expenses (must equal Part V, line 24, column (A))		100%
21 Net income (line 16 minus line 20)		
22 Total assets (Part VI, line 17)	Beginning of Year	End of Year
23 Total liabilities (Part VI, line 27)		
24a Net assets or fund balances line 22 minus line 23		
24b Total expenses (line 20) as percentage of net assets (line 24a) _____ %		

S/B Fundraising as a percent of contributions

	(i) Gross Revenue	(ii) Expenses	(iii) Net to organization	(iv) Divide column (iii) by column (i)
25 Gaming	(Schedule G, Part III, line 1 column (d))	(Schedule G, Part III, line 7)	(Schedule G, Part III, line 5)	
26 Fundraising (other than gaming)	(Schedule G, Part I, line 1b column (ii) total)	(Schedule G, Part I, line 1b column (iv) total)	(Schedule G, Part I, line 1b column (v) total)	%

Part II

Part II Statement of Revenue

strange work - what does this mean?

		(A) Total Revenue	(B) Related or Exempt Function Revenue	(C) Unrelated Business Revenue	(D) Revenue Excluded From Tax under IRC 512, 513, or 514
Contributions, gifts, grants and other similar amounts	1a Federated campaigns				
	b Outside fundraising or commercial co-ventures				
	c Fundraising events				
	d Related organizations				
	e Government grants (contributions)				
	f All other contributions, gifts grants, and similar amounts not included above				
	g Noncash \$ _____ Attach Schedule M				
	h Total				
Program Service Revenue	2a Medicare/Medicaid payments				
	b Fees and contracts from government agencies				
	c Revenue from related investments				
	d				
	e				
	f				
	g Total				
Other Revenue	3 Membership dues and assessments				
	4 Interest on savings and temporary cash investments				
	5 Dividends and interest from securities				
	6 Income from investment of tax-exempt bond proceeds				
	7 Royalties				
	8 Other investment income <i>(Schedule)</i>				
	9a Gross Rents	(i) Real	(ii) Personal		
	b Less rental expenses <i>(Schedule)</i>				
	c Rental income or (loss)				
	d Net rental income or (loss) <i>(Line 9a minus Line 10b)</i>				
	10a Gross amount of sales of assets other than inventory	(i) Securities	(ii) Other		
	b Less: Cost or other basis and sales expenses <i>(Schedule)</i>				
	c Gain or (loss)				
	d Net gain or (loss) from investments <i>(Combine line 10c, column (i) and (ii) (Lines 10a minus Lines 10b))</i>				
11a Gross income from fundraising events (not including \$ _____ of contributions reported on line 1c). Attach Schedule G if total exceeds \$10,000. If any amount is from gaming, check here					
b Less direct expenses <i>(Schedule)</i>					
c Net income from fundraising events					
12a Gross sales of inventory, less returns and allowances					
b Less cost of goods sold					
c Net income or loss from sales of inventory					
Miscellaneous Revenue		Business Code			
13a					
b					
c					
d					
e Total					
14 Total Revenue. Add lines 1g, 2g, 3-8, 9d, 10d, 11c, 12c, and 13c.					

Part III

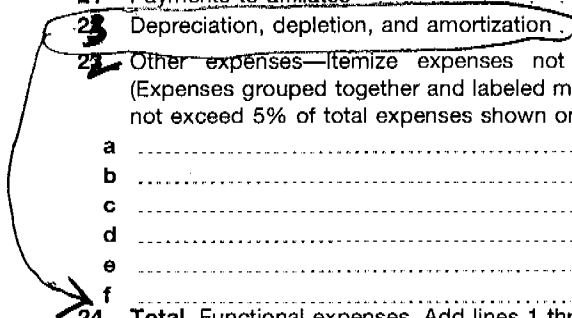
Part III Statement of Functional Expense

501(c)(3) and (4) organizations must complete all columns.

All other organizations must complete column (A) but are not required to complete columns (B), (C), and (D).

Do not include amounts reported on lines 9b, 10b, 11b, and 12b of Part IV.

Table with 4 columns: (A) Total expenses, (B) Program service expenses, (C) Management and general expenses, (D) Fundraising expenses. Rows include categories like Grants to governments, Compensation of officers, Advertising, and Total Functional expenses.



Part IV

Part VI Balance Sheet

		(A) Beginning of year	(B) End of year
Assets	1 Cash—non-interest-bearing		1
	2 Savings and temporary cash investments		2
	3 Pledges and grants receivable, net		3
	4 Accounts receivable, net		4
	5 Receivables from current officers, directors, trustees, key employees or other related parties. Complete Schedule L		5
	6 Receivables from other disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B). Complete Schedule L		6
	7 Notes and loans receivable, net		7
	8 Inventories for sale or use		8
	9 Prepaid expenses and deferred charges		9
	10 Investments—publicly-traded securities		10
	11 Investments—other securities. Complete Part I of Schedule D		11
	12a Investments—Land, buildings, and equipment. Cost basis. Complete Part II, Schedule D	12a	12c
	12b Less accumulated depreciation	12b	
	13 Investments—other. Complete Part III of Schedule D		13
	14 Investments—Program Related. Complete Part IV of Schedule D		14
	15a Program Related—land, buildings, and equipment: cost basis. Complete Part V of Schedule D	15a	15c
	15b Less: accumulated depreciation	15b	
16 Other assets. Complete Part VI of Schedule D		16	
17 Total assets. Add Columns A and B, lines 1 through 16 (must equal line 35)		17	
Liabilities	18 Accounts payable and accrued expenses		18
	19 Grants payable		19
	20 Deferred revenue		20
	21 Tax-exempt bond liabilities. Complete Schedule K		21
	22 Escrow account liability		22
	23 Payable to current and former officers, directors, trustees, or key employees (attach Schedule L)		23
	24 Mortgages and notes payable to unrelated third parties secured by:		
	a Investment property shown on lines 10, 11, 13, and 14		24a
	b Land, building, and equipment shown on lines 12 and 15		24b
	25 Unsecured notes and loans payable		25
	26 Other liabilities. Complete Part VII of Schedule D		26
27 Total liabilities. Add lines 18 through 26		27	
Net Assets or Fund Balances	Organizations that follow SFAS 117, check here <input type="checkbox"/> and complete lines 28 through 30, and lines 34 and 35		
	28 Unrestricted net assets		28
	29 Temporarily restricted net assets		29
	30 Permanently restricted net assets		30
	Organizations that do not follow SFAS 117, check here <input type="checkbox"/> and complete lines 31 through 35.		
	31 Capital stock or trust principal, or current funds		31
	32 Paid-in or capital surplus, or land, building or equipment fund		32
	33 Retained earnings, endowment, accumulated income, or other funds		33
34 Total net assets or fund balances		34	
35 Total liabilities and net assets/fund balances		35	

Part I Compensation and Other Financial Arrangements with Officers, Directors, Trustees, Key Employees, Highly Compensated Employees, and Independent Contractors

Section A Complete this table for all persons required to be listed. Attach additional pages as needed.

1a* List all of the organization's current officers, directors, trustees (whether individuals or organizations) and key employees regardless of amount of compensation. Enter -0- if no compensation was paid.

* List the organization's five highest compensated employees (other than an officer, director, trustee or key employee) who received reportable compensation of more than \$100,000 from the organization and any related organizations.

* List all of the organization's **former** officers, key employees or highest compensated employees who received more than \$100,000 of reportable compensation from the organization and any related organizations.

* List all of the organization's **former** directors or trustees that received, in their capacity as a former director or trustee of the organization, more than \$10,000 in reportable compensation from the organization and any related organizations.

(A) Name, City, and State of Residence	(B) Position (check all that apply)							(C) Check box if full-time officer or employee	(D) Reportable compensation from the organization	(E) Reportable compensation from related organizations	(F) Aggregate loans and other amounts owed to the organization	(G) Aggregate loans and other amounts owed to related organizations
	Individual, Trustee or Director	Institutional Trustee	CEO or Executive Director	CEO or Treasurer	Other Officer	Key Employee	Other					
1b Total												
2	Total number of individuals who received more than \$100,000 in reportable compensation from the organization											

Part VII

Part III Statements Regarding Governance, Management, and Financial Reporting

		Yes	No
1a	Enter the number of members of the governing body		
1b	Enter the number of independent members of the governing body		
2	Did the organization make any significant changes to its organizing or governing documents? If "Yes", briefly describe these changes.	2	
3a	Does the organization have a written conflict of interest policy?	3a	
3b	If "Yes," how many transactions did the organization review under this policy and related procedures during the year?	3b	
4	Does the organization have a written whistleblower policy?	4	
5	Does the organization have a written document retention and destruction policy?	5	
6	Does the organization contemporaneously document the meetings of the governing body and related committees through the preparation of minutes or other similar documentation?	6	
7a	Does the organization have local chapters, branches or affiliates?	7a	
7b	If yes, does the organization have written policies and procedures governing the activities of such chapters, affiliates and branches to ensure their operations are consistent with the organization's?	7b	
8	Does an officer, director, trustee, employee or volunteer prepare the organization's financial statements? Indicate whether an independent accountant provides any of the following services: Compilation <input type="checkbox"/> Review <input type="checkbox"/> Audit <input type="checkbox"/>	8	
9	Does the organization have an audit committee?	9	
10	Did the organization's governing body review this Form 990 before it was filed?	10	
11	How do you make the following available to the public? Check all that apply.		
	Organizing/Governing Documents <input type="checkbox"/> n/a <input type="checkbox"/> website <input type="checkbox"/> other website <input type="checkbox"/> office <input type="checkbox"/> other		
	Conflict of Interest Policy <input type="checkbox"/> n/a <input type="checkbox"/> website <input type="checkbox"/> other website <input type="checkbox"/> office <input type="checkbox"/> other		
	Form 990 <input type="checkbox"/> n/a <input type="checkbox"/> website <input type="checkbox"/> other website <input type="checkbox"/> office <input type="checkbox"/> other		
	Form 990-T <input type="checkbox"/> n/a <input type="checkbox"/> website <input type="checkbox"/> other website <input type="checkbox"/> office <input type="checkbox"/> other		
	Financial Statements <input type="checkbox"/> n/a <input type="checkbox"/> website <input type="checkbox"/> other website <input type="checkbox"/> office <input type="checkbox"/> other		
	Audit Report <input type="checkbox"/> n/a <input type="checkbox"/> website <input type="checkbox"/> other website <input type="checkbox"/> office <input type="checkbox"/> other		
12	List the states with which a copy of this return is filed:		

Part VII Statements Regarding General Activities

	Yes	No																				
1 Did the organization conduct any of the following outside the U.S.?																						
a grantmaking, fundraising, trade, business, or program service activities?																						
b maintain an office, employees or agents?																						
c maintain an interest in, or signature or other authority, over a financial account <i>If "yes" to any of these questions, complete Schedule F.</i>																						
2 Did the organization receive or hold a conservation easement, including easements to preserve open space, the environment, historic land areas or historic structures? If yes, complete Part VIII of Schedule D and Schedule M																						
3 Did the organization provide credit counseling, debt management, credit repair, or debt negotiation services? If "yes", complete part XI of Schedule D.																						
4 Did the organization maintain any donor advised funds or any accounts where donors have the right to provide advice on the distribution or investment of amounts in such funds or accounts? If "yes", complete Part IX of Schedule D and Schedule M.																						
5 Did the organization maintain collections of works of art, historical treasures, or other similar assets for public exhibition, education, or research in furtherance of public service rather than financial gain? If "yes", complete part X of Schedule D.																						
6a Did the organization have any tax-exempt bonds outstanding at any time during the year? If yes, answer 6b-6d and complete Schedule K. If no, go to question 7.																						
6b Did the organization invest any net proceeds of tax-exempt bonds beyond a temporary period exception?																						
6c Did the organization maintain an escrow account other than an advance refunding escrow at any time during the year to defease any tax-exempt bonds?																						
6d Did the organization act as an "on behalf of issuer" for bonds outstanding at any time during the year?																						
7 At any time during the year,																						
a Did the organization own 100% of an entity disregarded as separate from the organization under Regulations section 301.7701-2 and 301.7701-3? If yes, attach Schedule R																						
b Was the organization related to any tax-exempt or taxable entity? If yes, attach Schedule R																						
8a During the tax year, did the filing organization conduct all or a substantial part of its exempt activities through or using a partnership, LLC, or corporation?																						
b If yes, identify below the name and primary activity of such partnership, LLC, or corporation in which the filing organization's ownership or control was 50% or less (attach additional pages if necessary):																						
<table border="1"> <thead> <tr> <th>Name</th> <th>Primary Activity</th> <th>Ownership %</th> <th>Type of Entity</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>			Name	Primary Activity	Ownership %	Type of Entity																
Name	Primary Activity	Ownership %	Type of Entity																			
c Is the organization a partner in a partnership, member of an LLC, or shareholder of a corporation that was managed by a company that was controlled by taxable partners, members or shareholders?																						
9 Did the organization operate, or maintain a facility to provide hospital or medical care? If yes, complete Schedule H.																						
10 Is the organization a school as described in section 170(b)(1)(A)(ii)? If yes, complete Schedule E																						
11 Does the organization have a written policy or procedure to review the organization's investments or participation in disregarded entities, joint ventures, or other affiliated organizations (exempt or non-exempt)?																						
12 Does the organization have a written policy that requires the organization to safeguard its exempt status with respect to its transactions and arrangements with related organizations?																						
13 Is the organization filing Form 990 in lieu of Form 1041? Enter the amount of tax exempt interest received or accrued during the year ▶																						
14 <i>501(c)(7) Organizations.</i> Enter:																						
a Initiation fees and capital contributions included on Part IV, line 14	14a																					
b Gross receipts, included on Part IV, line 14, for public use of club facilities	14b																					
15 <i>501(c)(12) Organization.</i> Enter:																						
a Gross income from members or shareholders	15a																					
b Gross income from other sources (Do not net amounts due or paid to other sources against amounts due or received from them).	15b																					
16 Does the organization hold assets in term or permanent endowments? If yes, complete Schedule D, Part XII																						
17 Is the organization required to attach Schedule B, Schedule of Contributors?																						

Part VIII Statements Regarding Other IRS Filings

	Yes	No
1 Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? If "Yes", complete Schedule C, Political Campaign and Lobbying Activities.		
2 Did the organization engage in lobbying activities? If "Yes", complete Schedule C.		
3a Was the organization a party to a prohibited tax shelter transaction at any time during the tax year?		
3b Did any taxable party notify the organization that it was or is a party to a prohibited tax shelter transaction?		
3c If "yes" to 3a, did the organization file Form 8886-T, <i>Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction</i> ?		
4a Did the organization, during the year, receive any funds, directly or indirectly, to pay premiums on a personal benefit contract?		
4b Did the organization, during the year, pay premiums, directly or indirectly, on a personal benefit contract?		
5a <i>501(c)(3) and 501(c)(4) Organizations.</i> Did the organization engage in an excess benefit transaction with a disqualified person during the year?		
b Did the organization become aware that it had engaged in an excess benefit transaction with a disqualified person during a prior year?		
c If "Yes," complete the table below.		

Name of Disqualified Person	Description of Transaction	Corrected? (Y/N)

	Yes	No
d Enter the amount of tax imposed on the organization managers or disqualified persons during the year under section 4958.	5d	
e Enter the amount of tax on line 5d reimbursed by the organization	5e	
6 <i>501(c)(3) supporting organizations and sponsoring organizations maintaining donor advised funds.</i> Did the supporting organizations, or a fund maintained by a sponsoring organization, have excess business holdings at any time during the year?	6	
7 <i>501(c)(3) and other sponsoring organizations maintaining donor advised funds.</i>		
a Did the organization make any taxable distributions under section 4966?	7a	
b Did the organization make a distribution to a donor, donor advisor, or related person?	7b	
8a Did the organization have unrelated business gross income of \$1000 or more during the year covered by this return?	8a	
b If "Yes," has it filed a Form 990-T for this year?	8b	
9a Enter the number of employees reported on Form W-3, <i>Transmittal of Wage and Tax Statements</i> filed for the calendar year ending with or within the year covered by this return	9a	
b If at least one, did the organization file all required employment tax returns?	9b	
10a Did the organization provide Forms 1099 as required?	10a	
b If "Yes", indicate the number filed	10b	
11a Did the organization provide goods or services in exchange for any contribution of \$75 or more?	11a	
b If "Yes", did the organization notify the donor of the value of the goods or services provided?	11b	
12a Did the organization solicit any contributions that were not tax deductible?	12a	
b If "Yes", did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?	12b	
13a Did the organization sell, exchange, or otherwise dispose of tangible personal property for which it filed Form 8282?	13a	
b If "Yes", how many Forms 8282 did the organization file during the tax year?	13b	
14 For all contributions of qualified intellectual property, did the organization file Form 8899 as required?	14	

Part IX Statement of Program Service Accomplishments (See the instructions.)

1 Did the organization make any significant changes in its activities or methods of conducting activities? Yes No
If "Yes," describe these changes.

2 Describe the organization's most significant program service accomplishment for the year:

**Total must equal Part V, line 24, column (B)

		(A) Direct Revenue*	(B) Program Service Expenses** Required for 501(c)(3) and (4) orgs. and 4947(a)(1) trusts; optional for others
3a	Activity Code: _____ _____ _____ _____ (Grants and allocations \$ _____)		
b	Activity Code: _____ _____ _____ _____ (Grants and allocations \$ _____)		
c	Activity Code: _____ _____ _____ _____ (Grants and allocations \$ _____)		
d	Other program services (attach schedule) (Grants and allocations \$ _____)		
e	Total		

Part X Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Please Sign Here

Signature of officer _____ Date _____
Type or print name and title _____

Paid Preparer's Use Only

Preparer's signature _____ Date _____ Check if self-employed
Firm's name (or yours if self-employed), address, and ZIP + 4 _____ Preparer's SSN or PTIN (See Gen. Inst.) _____
EIN _____ Phone no. _____

Third party designee

Do you want to allow another person to discuss this return with the IRS? Yes. Complete the following. No
Designee's name _____ Phone no. _____ Personal identification number (PIN) _____

From: [P.M. Pollock](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Form 990 revision & 501(c)6
Date: Monday, June 25, 2007 3:20:18 PM
Attachments:

Concerning the proposed revisions to Form 990 intended to markedly enhance disclosure of activities of tax exempt, "public benefit" corporations:

I urge that the enhanced reporting requirements of the new Form and especially of its schedules be applied to business associations [501(6)] as well as 501(c)3s. The current lack of even a required Schedule A for business associations enables self-dealing by staff and insiders. For example, medical associations and their affiliated "Foundations for Medical Care" are, I believe, very much a swamp in need of drainage for the benefit of practicing physicians and their patients. Full disclosure of insider's relationships would reveal the depth of the problems to the association memberships, possibly resulting in the members withdrawing their heads from their normal residence in the sand.

Thank you,

Peter M. Pollock
360 Monroe Drive
Palo Alto, California 94306

From: [Don Dalton](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comment letter and attachment
Date: Monday, June 25, 2007 2:18:20 PM
Attachments: [FirstIRSletter062207.pdf](#)
[Health Affairs CCR FINAL 1.pdf](#)
[ATT778687.txt](#)

Thank you for the opportunity to comment in the accompanying letter and attachment.



NCHA
PO Box 4449
Cary, NC 27519 - 4449

919 / 677-2400
919 / 677-4200 fax
www.ncha.org

North Carolina Hospital Association

June 22, 2007

IRS Form 990 Redesign, SE:T:EO
1111 Constitution Avenue, NW_
Washington, DC 20224

Dear Sir or Madam:

I am writing on behalf of the North Carolina Hospital Association and its 134 members. Our association has worked on comparable community benefit reporting for over two years and appreciates the Service's efforts to standardize reporting of hospital community benefits through changes to the IRS Form 990. We heartily applaud and support this movement, believing that the public will benefit from greater transparency among hospitals on this issue.

We are further encouraged that the first of three guiding principles in the Form 990 redesign stresses comparability among hospitals. Thank you also for recognizing and welcoming comments on alternatives to the Catholic Health Association's (CHA) community benefit reporting model.

Briefly, our concerns with the CHA model are that it fails to produce comparable results and masks the problems of the uninsured. Allowing reporting organizations to use either a sophisticated cost accounting method or a cost-to-charge ratio to answer the same question ensures no meaningful comparison or aggregation of data. The CHA guidelines prompt hospitals to allocate bad debt charges -- not costs -- generated by uninsured patients to charity care, Medicare, Medicaid and other payors. This hides the impact of the uninsured. The inclusion of bad debt charges as an expense is contrary to the federal government's accounting principles (GASB) and dramatically overstates these payor losses.

Our concerns with the calculation of Medicaid losses on Worksheet 3 are two-fold. First, it accepts multiple methodologies. Second, answers based on Medicaid cost reports misrepresent Medicaid activity. Not all Medicaid services are covered on the report and not all expenses are included. Among the exclusions are such vital and unavoidable expenses as liability insurance and interest expenses. Utilizing the cost report forms for reporting cost related to either Medicare or Medicaid understates the true cost of providing care.

The attached article by Dr. Sarah Broome, Director of Economic Research for the association, discusses the impact of various costing methodologies on elements of hospital community benefit reports. One of the research results is that cost report-based methods produce different, unpredictable estimates of Medicare and Medicaid losses. The average CHA estimate of Medicaid losses is nearly twice the average cost report-based estimate. The cost report methodology produced the lowest Medicaid loss estimates, on average. Estimates based on cost reports, however, are not consistently lower than other estimates. Nearly a quarter of hospitals showed higher Medicaid losses using the cost report method. Medicaid service and expense exclusions from cost reports drive this inconsistency in cost report-based Medicaid loss estimates.

Another conclusion of the paper is that including bad debt charges as a hospital expense dramatically increases loss estimates. On average, Medicaid loss estimates using CHA guidelines are 50% higher than the more conservative American Hospital Association ratio. While there is no data comparing results with cost-based accounting systems, anecdotal evidence in North Carolina indicates this methodology produces markedly different estimates. Most hospitals have neither cost-based accounting systems nor the capability to perform this comparison.

This article has not been circulated previously because it was submitted for publication. Although our releasing it to you now will eliminate it from consideration for publication in a professional journal, we believe its findings need to be considered in your selection of a costing methodology and other guidelines for determining hospitals' community benefits.

Thank you for your leadership and consideration of this crucial element of community benefit reporting. We encourage the Service to join the State of North Carolina in implementing a single costing methodology for hospital community benefit reports. We anticipate filing additional comments after further review of the form and schedules.

Sincerely,

NORTH CAROLINA HOSPITAL ASSOCIATION

William A. Pully
President

Attachment

Cc: NCHA Member Hospitals
North Carolina Medical Care Commission

From: DonaldCarlson@vgsjob.org
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: New 990 rules
Date: Friday, June 22, 2007 12:06:55 PM
Attachments:

I would like to see you adopt a "consolidated" 990 rule that would force GAAP consolidation rules on the 990 filings/

Don Carlson, CPA
CFO Vocational Guidance Services, Cleveland, Ohio 44103 216-881-6215

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Date: 22/6/2007

To:Form990Revision@irs.gov

From: [Vaughn.Gower](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: comments re; schedule h
Date: Friday, June 22, 2007 11:44:52 AM
Attachments:

the irs deserves credit for much good work and obvious effort to reconstruct the 990 in a way that simplifies filing for small tax exempt org's and collects relevant data to address transparency and needed electronic analysis for larger org's.

for org's wishing to communicate their story effectively, this document will help not only with irs needs . it will also help community members understand. much better to replace imagination and guesswork with data.

re; schedule h, i urge that 1) unreimbursed medicare and 2) bad debt at cost be added to the community benefit report.

the effect of excluding these real world underpayment for services provided to patients is very large. in my organizations, in fy06 medicare underpayments were \$34.6m and bad debt at cost was \$11.7m. that total of \$46.3m represents 45% of fy06's entire community benefit amount of \$101.6m.

1) medicare payments have not covered cost at hospitals for years nationally. and similarly, at the hospital organizations i have cfo responsibility for where community benefit reporting has occurred for nearly 20 years, virtually every fiscal year has seen medicare payments below the cost of providing services to medicare patients

and, medicare steering committee's have spoken of medicare in the same fashion as medicaid has long been seen: it's purpose today (different from it's cost based origins 40 years ago) is to NOT fully pay for it's total costs. ie; it's better to partially cover hospital costs than make no payment at all. besides , payment for all costs is unaffordable by the federal budget.

and, the losses are large, as illustrated above. these large medicare losses influence hospital planning and cause cost shifting to the private sector to enable the overall gov't and private revnues to provide sufficient cash for

capital investments to refresh facilities and equipment and grow as community demand grows.

finally, pennsylvania passed it's act 55 approximately 10 years ago and saw fit to include unreimbursed medicare in it's community benefit definitions. all pa hospitals have been reporting it as community benefit ever since act 55 became law.

the medicare loss is systemic, it's large and it's real. and, it is directly analogous to medicaid.

excluding unreimbursed medicare from community benefit, is not logical, would be unfair and, would be inaccurate. i know the irs wants to get this right.

please include unreimbursed medicare in community benefit reporting.

2) as to bad debt at cost, the same exact reasoning and pa act 55 status applies as i've outlined for medicare above. bad debts at cost are analogous to charity care at cost as unreimbursed medicare is analogous to unreimbursed medicaid.

bad debts are another real world cost. i urge the irs to include them in community benefit reporting.

i'd be pleased to answer any questions you may have.

Vaughn Gower
Sr Vice President and CFO
1200 South Cedar Crest Blvd
Allentown PA 18105
phone 610-402-7535
fax 610-402-7523

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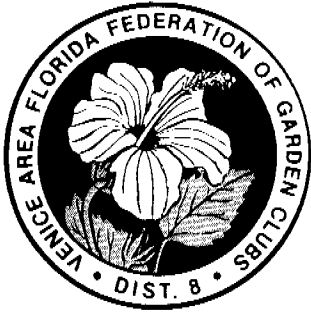
From: [Norman Bandemer](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comments on revisions to IRS form 990
Date: Friday, June 22, 2007 10:28:23 AM
Attachments:

1) Signature Block:

The new form should be signed by the Chairman of the Board, Chief Executive Officer and the Chief Financial Officer... (all three should attest the the accuracy and completeness of the information.

2) Contract agencies receiving over \$100,000 should all be listed... and any relationship with board members, or other executives should be revealed.

Norm Bandemer
616-450-6511



VENICE AREA GARDEN CLUB

Venice, Florida

June 22, 2007

Form 990 Redesign
1111 Constitution Ave. N.W.
Washington, D.C. 20224
Attn: SE:T:EO

Dear Sirs:

The threshold for filing of Form 990 needs to be raised. It has remained at \$25,000 since 1976. In relative terms thirty years ago our small organization never reached the filing threshold of \$25,000. In 2007 dollars it is much more likely every year that we will have gross receipts of \$25,000. For small organizations like ours filing out complex forms (10 pages with Schd A) is a burden. It means more detailed record keeping and as a small group our pool of people to perform this function is limited. It also becomes a financial burden as we may have to pay to have the forms completed.

Thank you.


Lynn Macedonio
Treasurer
Venice Area Garden Club
PO Box 1685
Venice, Florida 34284

From: [Anthony DeStefano](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comment on Form 990 Revision
Date: Thursday, June 21, 2007 6:02:55 PM
Attachments:

Dear Sir or Madam:

I am very pleased to comment on the proposed change to Form 990, Return of Organization Exempt from Income Tax published on 06/14/2007. If I can provide any further assistance, please do not hesitate to contact me.

1. I believe that such a dramatic change all at once in the Form 990 and its schedules will be very confusing for stakeholders who are used to the current form, and very expensive for organizations that need to comply. I am sure that the administrative burden here falls disproportionately on smaller organizations.
2. Page 1, Part I, Line 1 is not long enough to include all the necessary information.
3. Page 1, Part I, Line 2 does not contain enough room to enter all the necessary information.
4. I believe that Page 2, Part II is very useful to stakeholders with two exceptions. First, there are so many position titles in use by tax exempt organizations that Column B on that page is essentially of little value. And second, the information required under Section A of Part II is overkill. For example, I see no utility to a list of former directors or trustees receiving compensation as low as \$10,000.
5. I believe that the information, layout and percentage calculations in Part I, Lines 11 through 21 have much value to the Form 990 stakeholders.
6. I believe that the information in Part I, Lines 22 through 24a has value, but that line 24b has little value to stakeholders.
7. I believe that the information in Part II, Section B serves mainly to highlight certain deferred compensation and nepotism and so has no value since I am not aware of any laws that preclude either.
8. Part III applies mainly to large organizations and is very expensive and

cumbersome for smaller organizations. A “No” answer makes the organization look bad for documentation that is not necessary for smaller organizations.

9. I am not familiar with a “Fee from a government agency.” I believe this caption should read “Grants, cooperative agreements and contracts from government agencies.”
10. The thresholds in Part V for “Grants ... \$5,000,” and “Professional fundraising ... \$10,000” are much too low and create an administrative burden for smaller organizations.

Anthony DeStefano, CPA
413 N. Warwick Road, Apt. 22A
Somerdale, NJ 08083
P. 856-784-7164
C. 609-706-9451
E-mail: Adestefano2@aol.com

See what's free at AOL.com.

From: [Magid, Phil - Fiscal Services Director](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: revision 990
Date: Thursday, June 21, 2007 1:59:00 PM
Attachments:

I question why hospitals should be singled out for additional reporting. Should not all tax exempt organizations have to justify their tax exempt status?

Philip Magid

Director of Fiscal Services
Shriners Hospitals for Children - Chicago
773-385-5416
F773-385-5453

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From: [Irving, Judi](#)
To: [*TE/GE-EO-F990-Revision:](#)
CC:
Subject: Additional Compensation of Executives
Date: Wednesday, June 20, 2007 9:17:50 PM
Attachments:

The redesigned form should also include all compensation received by highly compensated individuals from entities that are controlled by the nonprofit organization.

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From: [Jordan Chodorow](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Draft Form 990
Date: Tuesday, June 19, 2007 5:25:06 PM
Attachments:

Hello. My name is Jordan Chodorow. I am a tax attorney in Los Angeles. I have a couple of questions about the Draft Form 990 and Instructions. I'd be very much obliged if someone from IRS could respond either via e-mail or by telephoning me at 310-445-7641.

1.) The Instructions to Part III, Line 2 refer to changes to policies regarding whistleblowers and document retention/destruction and the Tip states, "Sarbanes-Oxley requires certain tax-exempt organizations to adopt whistleblower protection and document retention and destruction policies." In reading Sarbanes-Oxley, I found (at Sec. 806) a civil action to protect whistleblowers of companies with a class of securities registered under section 12 of the Securities Exchange Act of 1934 or companies required to file reports under section 15(d) of the Securities Exchange Act of 1934. Neither of those sections appear to apply to our client (a tax-exempt organization), but it does not appear that they could apply to any tax-exempt organization. Is there another section of Sarbanes-Oxley to which the Tip refers? The portions of Sarbanes-Oxley relating to document retention/destruction (found at Sec. 802 of Sarbanes-Oxley) appear to apply to accountants who conduct audits of issuers of securities to which section 10A(a) of the Securities Exchange Act of 1934 apply. Again, this does not appear to apply to our client, but could it apply to any tax-exempt organization?

2.) Part III, Line 1b of the Form itself refers to the number of "independent members of the governing body." The Instructions state, "See the *Glossary* for definitions of certain terms." Where can I find the Glossary for purposes of defining the term "independent members of the governing body"?

Thank you very much for your time and consideration.

Best regards,
Jordan Chodorow
De Castro, West, Chodorow, Glickfeld & Nass, Inc.

10960 Wilshire Boulevard
Fourteenth Floor East
Los Angeles, California 90024-3881
Telephone: (310) 478-2541
Direct: (310) 445-7641
Fax: (310) 473-0123

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IRS CIRCULAR 230: Federal tax advice contained in this communication is not provided or intended by this firm to be used for (i) the purpose of avoiding federal tax penalties that may be imposed, or (ii) promoting, marketing or recommending any entity, investment, plan or arrangement to any person.

From: [Lisa Bender](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: New 990 Forms
Date: Tuesday, June 19, 2007 5:03:14 PM
Attachments:

Sirs;

I for one am not savvy on these forms, but I am so aggravated by the amount of what we as a non-profit 501 (c) 3 have to keep track of all this to turn in. We are Federal Tax Deductible, but we can't seem to get the State of Oklahoma to approve us for it!

We are just trying to take care of our Military men and women who are serving our country, by sending them care packages from home. But yet, we have to write down every item that comes through our doors, every check or penny from every donor. We cannot put out our events in the media or on the internet without keeping some kind of record of it so that it can be turned in to the IRS at the end of the year? What is that all about? Why can't we just keep a record of the donations we get in, write up the fair market value, keep a record of the amount of monetary donations and if we have to pay to do any advertising ~keep the receipts of that to turn in and call it good?

I sure hope that you can explain to me in laymen's street terms why all this other has to be done, because so far, no one has been able to get it through my thick country skull!

**Serving with Respect,
Lisa Bender~mom of Spc. John Bender OKARNG
~aunt of W.R. Grauke US NAVY
2007 2nd Vice President
Broken Arrow Blue Star Mothers Ch. 5
www.babluestar.org**

Patriot Guard Rider #45244

BAbluestarmom
www.patriotguard.org

From: [PETER SWORDS](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Self-dealing Information
Date: Tuesday, June 19, 2007 4:05:53 PM
Attachments:

Friends,I

In the redesigned form, where does one find the Great Self Dealing Question, namely , Question 2 of Part III of the current Schedule A? (During the year, has the organization ... engaged in any of the following acts with ...?)

Thanks.

Peter Swords

From: [Cynthia Leon](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Group Return
Date: Tuesday, June 19, 2007 3:07:33 PM
Attachments:

In the instructions to the Core Form under "Where did it go", the instructions say that group return boxes H and I have been eliminated. The reader is referred to a ".. request for comments on eliminating group returns".

Where is the request for comment on the eliminating group returns?

Thanks,

Cindy Leon

Cynthia M. Leon
Director
WTAS
335 Commerce Drive, Suite 201
Fort Washington, PA 19034
Phone: 215-664-0611
Fax to Computer: 917-229-5182
Fax: 215-654-8968

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SAVE PAPER - THINK BEFORE YOU PRINT!

From: [Matt Utterback](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Schedule N
Date: Tuesday, June 19, 2007 10:54:04 AM
Attachments:

In the top part of schedule N it reads "To be completed by organizations that check box on Form 990, Part I, **Line 11**."

It should read: "To be completed by organizations that check box on Form 990, Part I, **Line 10**."

*Matt Utterback, CPA
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From: [Arleen Mundy](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Form 990 revision
Date: Monday, June 18, 2007 9:53:38 PM
Attachments:

I'd like to see clearer instructions for the 990 on a couple of issues.

1. One of the questions on the form 990 was if the tax exempt organization received more than \$5k in non cash contributions and if so, how much? If people volunteer their time and labor, how is that valued? Are you talking in aggregate or is that greater than \$5k by one individual? I prepare a 990 for a VFW. Volunteers work the canteen (a bar that serves hamburgers and other light fare). What value does one put on these services? Or volunteers might do clean up or mow the lawn etc. Volunteers take care of the record keeping. For special events, a committee plans the event. All these are volunteers who donate time and services. Is this what you're referring to when you ask are services donated to this organization?

There needs to be clarification in the instructions of what information you really need. As the tax preparer I know these things are done, but I have no idea how much time or value any of these services are worth. And no records are maintained for ALL the services that are volunteered. Someone painted the hallways for the cost of the paint. And when a major project is done, I'm not sure if the price is cut by the subcontractor because of the type of organization it is. A lot of people respect what these men and women did for our country and donate time and money so the membership has a nice place to go to.

2. Over the years certain assets have been acquired. Some of the older items have been junked or replaced, but not sold. So unfortunately a lot of fully depreciated items are still sitting on the books. If those items are written off in the current year to adjust for undocumented disposals of assets, (none were sold - maybe donated, but not for any compensation). One of the proposals I saw had to do with asset disposals. How about a better explanation of what you want said about the book's assets being adjusted to actual or about assets junked or donated or whatever.

3. Special events - again some of the related expenses may be blurred with

other ordinary operating expenses. An ad, for instance, may list several activities that are going on at the VFW. I lump all the advertising together - not that it is that great of a number, but nevertheless, several events may be listed. How specific must the details of the activities be narrowed down to?

4. Another special events question. If a fund raiser is done that is, let's say for example, a golf outing to raise money for some cause either for the VFW itself or for another specified charity, and the VFW sends a team to represent their Post in the fundraising efforts, is the cost of the golf paid by the post for the players allowed as a related fund raising expense? Does anyone have to report the \$40 cost paid on their behalf as income? There is nothing said about such things in anything I've read. I'd love to see some directions mentioned in the instructions regarding things of this nature.

5. 990T question. The post whose return I prepare rents out their hall to outsiders for weddings and meetings. Is it proper to prorate common expenses such as utilities and building maintenance based on the number of days the facilities are available or should it be by the number of days actually rented out? We were audited once many years ago and was told to use the number of days of availability. Just checking to see if that's still the case. No where is guidance given in this area that I could find.

The frustrating thing is there is not enough people on the IRS help line who know this information. And finding qualified instructors who give seminars on preparing the 990's & 990T's is no sure guarantee that you've been given accurate information. I spoke to one such person today who told me charity given to the VFW, a 501(c) 19 non profit is non deductible on an individual's tax return. But when my client went on IRS's web site for Pub 557, she found a statement that said it was deductible. I also quizzed several of my colleagues that I considered well versed in tax law and got the same negative answer. All were surprised that the VFW was treated differently than fraternal organizations like the Eagles, the Elk, the Moose Lodge etc. There is a tremendous lack of resources to find on how to accurately complete a Form 990.

IRS should make available speakers to come to tax professional seminars and discuss these types of issues to find out what questions the professionals have to discover what misconceptions there are out there. I think this is how you should garner information to help you revamp the 990 and get the compliance you seek.

I know my issues are not great in value for my particular return, but the concepts are indicative of concerns many of us professional preparers face when we do certain types of returns. For some of us, our exposure to some tax situations is limited and we deserve to have a resource of clear instructions for each line if it's expected that we properly prepare a return.

Thank you for making this forum open to professionals for their input.

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From: [Aaron Dorfman](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC: [Zerbe, Dean \(Finance-Rep\); Russ_Sullivan](#)
Subject: why no changes to 990-PF?
Date: Monday, June 18, 2007 3:27:43 PM
Attachments:

Lois G. Lerner
Director, Exempt Organizations Division
Internal Revenue Service

Dear Ms. Lerner:

As you know, the National Committee for Responsive Philanthropy (NCRP) has long promoted transparency and accountability for nonprofits. I was pleased, therefore, to see many of the proposed changes to Form 990. NCRP will be reviewing the proposed changes during the coming weeks and will submit comments. I was surprised, however, to see that you have not proposed any changes to the 990-PF. Why is that? Are changes forthcoming? The public interest would be served by improving the 990-PF, too.

Best regards,
Aaron

Aaron Dorfman, Executive Director
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202-387-9177 x13
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From: [Jack B. Siegel](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Jack Siegel's Comments Regarding Proposed Revisions to the Form 990
Date: Sunday, June 17, 2007 4:04:17 PM
Attachments: [June 17 2007 Jack Siegel Comments Re June 14 2007 IRS Form 990 Proposed Revisions.pdf](#)

Ladies and Gentlemen:

Attached please find my comment letter on the proposed revisions to the Form 990 that were made available by the Service on June 14, 2007.

Jack B. Siegel, Principal
Charity Governance Consulting LLC
Tele: 773-325-2124

<http://www.charitygovernance.com>

Author: A Desktop Guide for Nonprofit Directors, Officers, and Advisors:
Avoiding Trouble While Doing Good (Wiley 2006)

Services: Nonprofit Board and Officer Training and Consulting Services
Focus: Tax, Financial, Accounting, Governance, and Fundraising

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VIA E-MAIL TRANSMISSION

June 17, 2007

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 Form 990 revisions proposed on June 14, 2007. This is an important project. Anyone who reviews the proposal will notice the significant thought and care that went into this phase of the project. I have my concerns and disagreements, but my comments are offered as constructive suggestions and observations.

A. **OVERARCHING PHILOSOPHICAL CONSIDERATIONS.** I have already seen comments from tax practitioners advising the Service to shy away from disclosure and focus on the Form 990 as a tax return. I do not find these comments surprising, but I do find them to be shortsighted, particularly to the extent that such comments are rooted in the belief that opaqueness and secrecy somehow serve the interests of tax-exempt organizations.

The Form 990 is best characterized as a tax return, but it is unique. Unlike other tax returns, it is subject to public disclosure pursuant to Section 6104 of the Code. When Congress enacted Section 6104, it clearly viewed the Form 990 as serving both the administrative needs of the Service and the public's interest in organizations that receive significant government subsidy in the form of tax-exemption, favorable bond financing, funding through tax-subsidized

contributions, favorable postal rates, exemptions from security law registration requirements, access to federal grant money, and many of the other benefits that come with charitable status.

The Omnibus Budget Reconciliation Act of 1987 ("OBRA 1987") greatly expanded public access to the Form 990 by requiring charities to make their Form 990s available to the public on request rather than requiring the public to obtain the forms from the Service. The legislative history to OBRA 1987 is clear in expressing congressional intent that the Form 990 be used by both the Service in administering the tax laws and the public in assuring accountability. Specifically, House Report 100-391 (1987) provides:

For example, the present-law disclosure procedure does not result in full and timely public disclosure of the activities of charitable organizations, as needed to facilitate accountability of such organizations to the public from whom they solicit tax-deductible funds. . . . In the case of charitable organizations, the committee believes that increased availability of information will help assure that the double tax benefits of deductibility of contributions and exemption from income tax are limited to organizations whose assets are devoted exclusively to charitable purposes, as required by the tax law. Also, because most such charities regularly solicit contributions or receive other support from the public, the public should have ready access to current information about the activities of these organizations...

Given this clear congressional intent, I hope that the Service will reject practitioner assertions that the Form 990 is merely a tax return and therefore its scope should be limited to numbers and answers to questions asking whether the organization has complied with specific Code sections. In rejecting this erroneous view, I hope the Service will remind these practitioners that both the public and the media have ready access to Forms 990 through GuideStar and the National Center for Charitable Statistics at the Urban Institute. In my experience, the first place virtually every reporter begins when investigating a charitable organization is GuideStar. Given that reality, charities and their advisors should welcome an expanded Form 990 which offers them the opportunity to better explain what otherwise might be raw and therefore potentially misconstrued information. In short, full disclosure is in everybody's best interests.

B. TOO MUCH RELIANCE ON INSTRUCTIONS. I had hoped that the revised Form 990 would be a self-contained form, with reduced reliance on lengthy instructions. Unfortunately that did not happen, and as the Service moves toward finalizing the Form 990, I hope the Service will reconsider the decision to place so much reliance on the instructions. Admittedly, completing Form 990 requires knowledge of both technical and complex concepts. Yet, the evidence will bear out my observation that people don't read instructions. This is true for preparing a tax return, setting up a new computer, or using a cell phone. The consumer electronics manufacturers and designers realized long ago that requiring people to read instruction manuals as a substitute for embedded and intuitive design only leads to technical support phone calls from unhappy and confused consumers.

The IRS has every right to expect that professionals will take the time to familiarize themselves with the instructions, but even a professional should be able to fill a tax return out without constantly referring to lengthy instructions. In the Background Paper to the Redesigned Draft Form 990, the Service indicates that it believes it has achieved greater transparency without adding to the compliance burden borne by nonprofits and their advisors. I view that as more aspirational than reality, but by developing a more self-contained form, I think the Service might move in a direction that everyone will benefit from.

My concern goes beyond minimizing the compliance burden. People are routinely using the data from the Forms 990 for financial analysis and comparisons. It is imperative that there be consistency between how organizations report information and respond to questions. Return preparers, be they volunteers or professionals, will inevitably guess wrong at what terms mean in questions, making their responses meaningless and even counterproductive. This makes a more self-contained form an imperative. Like everyone else who deals with the public, the IRS must be prepared to take the public as it is rather than as the Service would like the public to be.

If the Service is unable to significantly reduce the size of the instructions packet when it is finalized, then upon completion of the Form 990 revision process, the Service should immediately begin a project to place a Form 990 online that builds the instructions into a system of context-sensitive help. Congress should be encouraged to enact any necessary enabling legislation.

C. MOVEMENT AWAY FROM ATTACHMENTS IS A MISTAKE. On page 12 of the Core Form Instructions, the Service states:

Completing all lines. Do not leave any applicable lines blank or attach any other forms or schedules instead of entering the required information on the appropriate line on Form 990.

The Background Paper to the Redesigned Draft Form 990 indicates that this instruction in the Core Form Instructions is just part of a fundamental movement away from attachments. Specifically, the Background Paper states:

In addition, the revision continues the move away from allowing unstructured material (e.g., PDF files) to be filed with the form. In the context of electronic filing, such material presents technological and cost difficulties and in any event results in non-searchable data.

The laudable goals of full disclosure and transparency are best served by permitting organizations to freely attach documents containing supplemental information and disclosures. For example, some organizations have included a full set of financial statements, including the statement of cash flows and footnotes as PDF attachments. To eliminate ready access to this important information would be a mistake.

There are also questions of fundamental fairness. The Summary Page to the Core Form asks for several key metrics that are often misused by members of the public and watchdog

groups. Specifically, Lines 8b asks for a ratio of highly compensated employees to total program expenditures, and Line 19b asks for what is often characterized as a fundraising efficiency ratio. Organizations should be given the opportunity to explain these numbers through the inclusion of attachments. Otherwise, an organization that is just beginning a major capital campaign may have its fundraising efficiency metric unfairly compared to an organization that is not engaged in such a campaign.

The Background Paper refers to cost difficulties as one reason for moving away from attachments. I can understand how multiple PDF files could pose administrative issues. However, Adobe Acrobat Professional permits an organization to easily combine what could be multiple PDF files into one easily indexed (and bookmarked) PDF document. Admittedly handling even one PDF document might impose extra cost on the IRS. However, expending the funds to facilitate such an attachment is warranted given the revision's goals. Moreover, permitting attachments is consistent with fundamental fairness. In short, full disclosure and transparency are incompatible with reducing all information to numeric data or "yes/no" responses. The Service must be more flexible.

D. SUMMARY OF SPECIFIC SUGGESTED CHANGES AND ADDITIONS TO FORM 990. I set forth detailed suggestions regarding changes and additions to the proposed Form 990. To summarize the most important ones, I would like to see the Service: (i) add cash flow information to the information it collects; (ii) require a restricted, temporarily restricted, or permanently restricted designation for each asset category when the organization prepares its statements in accordance with SFAS 117; (iii) request more detailed information regarding compensation; and (iv) require disclosure of information regarding management letters received from auditors (the organization's use and response, rather than specific recommendations regarding changes to the system of internal controls). I would also like to see specific questions pertaining to financial fraud, and the presence of elected officials on boards. The Summary Page to the Core Form must either eliminate the financial efficiency metrics asked for on Lines 8b, 19b, 25, and 26, or provide adequate space for detailed explanations in immediate proximity to the questions. Finally, the IRS should reduce the scope of the relationships captured and reported in Part II of the Core Form.

E. SPECIFIC COMMENTS ON CORE FORM 990. Here are my line-by-line comments to the Core Form 990:

1. **Heading Block—Absence of Organizational Form.** On the Form 1023, the organization must indicate its organizational form. Unfortunately, the Form 1023 is not as readily available to the public as the Form 990. Consequently, the Service should add a question immediately before Line L which asks the organization to specify whether it is organized as a (i) corporation; (ii) charitable trust; (iii) limited liability company; or (iv) unincorporated nonprofit association. There are important governance implications from organizational form. If there are space limitations, this question could be added to Part III of the Core Form, Governance, which currently takes up only half a page.
2. **Heading Block—Status as a Membership Organization.** Three questions should be added asking whether the organization is a membership organization, and if so,

whether the members have voting rights and whether the members are corporate entities. These questions should immediately follow my new proposed question regarding organizational form. Once again, if there are space limitations, these questions could be added to Part III of the Core Form, Governance.

3. **Part I, Summary, Line 2—The Three Most Significant Activities.** Each of the three most significant activities should be listed on a separate line. This is very useful information and deserves to be listed so that it can be viewed at a glance. Placing the three activities on the same line makes it more likely that the information either will be abbreviated or disclosed in an attached exhibit, defeating ready access to the information.
4. **Part I, Summary, Line 2—Most Significant.** The instructions are inadequate. What is meant by “most significant?” Is this a judgment call, or is significance based on the number of employees or the value of the assets supporting the activity, or the number of people benefiting from it?
5. **Part 1, Summary, Line 8b—Compensation Metric.** This number compares the total compensation paid to those who are assumed to be highly compensated individuals to total program expenses. This focus suggests that a high percentage is bad or inappropriate despite the fact that a detailed analysis is necessary to determine the significance of a high percentage. Thoughtful people are trying to move the public and media away from reliance on simplistic and often misleading metrics like this one. The Service should eliminate this question unless the Service provides the organization with adequate space next to the number to explain why the number is low or high.
6. **Part 1, Summary, Line 19b—Fundraising Metric.** This number compares the total fundraising expenses to total contributions. The underlying assumption is that a lower percentage is better than a higher one. Once again, thoughtful people are trying to move the media and the public away from reliance on simplistic and potentially misleading metrics. Specifically, the Maryland Association of Nonprofits has promulgated a Standards of Excellence Code. Paragraph A of its Fundraising Standard provides as follows:

A nonprofit's fundraising costs should be reasonable over time. On average, over a five year period, a nonprofit should realize revenue from fundraising and other development activities that are at least three times the amount spent on conducting them.

This standard recognizes the artificial nature of a one-year measuring period. An organization might have begun a 3-year capital campaign, incurring significant upfront costs. Existing accounting principles do not permit those costs to be amortized over the three-year period. As a consequence, the number entered on Line 19b can be distorted and misleading. There are other legitimate reasons why there

might be one-year spikes in fundraising expenses which, when analyzed with a simplistic metric like 19b, do not reflect fundraising efficiency.

The BBB Wise Giving Alliance has also developed a set of standards for charity accountability. As a general rule, a charity will be deemed to have satisfied the BBB Wise Giving Alliance financial efficiency if the charity spends no more than 35% of related contributions on fund raising (Standard 9) and at least 65% of its total expenses on program activities (Standard 8). However, the Alliance realizes the problems with numerical metrics, resulting in the creation of an exception to the 35% and 65% standards. Under this exception, the charity is deemed to have met the standard if the charity,

[P]rovide[s] evidence to demonstrate that its use of funds is reasonable. The higher fund raising and administrative costs of a newly created organization, donor restrictions on the use of funds, exceptional bequests, a stigma associated with a cause and environmental or political events beyond an organization's control are among factors which may result in expenditures that are reasonable although they do not meet the financial measures cited in these standards.

Given these industry standards, the Service should either eliminate the question in Line 19b, permit organizations to calculate it over a three- or five-year period, and/or provide adequate space next to the number to permit the organization to explain it.

7. **Part I, Summary, Lines 25 and 26—Gaming and Fundraising.** These two questions should be eliminated. Once again, the Service is placing too much emphasis on common metrics that are often misleading and misused. At a minimum, space should be provided to permit organizations to explain the calculations and their implications. The Service has historically been mesmerized by high fundraising expenses paid to professional fundraisers. As Judge Posner pointed out in *United Cancer Council v. Commissioner*, 165 F.3rd 1173 (7th Cir. 1999), there might be legitimate reasons why fundraising fees based on a percentage of gross amounts raised are high. Questions 25 and 26 do not permit an organization to highlight those reasons. Schedule G should be sufficient.
8. **Part II, Compensation, Line 1a—Ordering the List of Individuals Whose Compensation is Disclosed.** Column B is helpful because it permits all relevant individuals to be included in one comprehensive schedule. It would be helpful if organizations were instructed to list the individuals in descending order (individual trustees or directors first, institutional trustees second, CEO or Executive Director third, and so forth rather than alphabetically). That would result in all the individuals within one classification being grouped together.
9. **Part II, Compensation, Line 3—Use of the Glossary.** The instructions do not define the term “independent.” That is left to a glossary. While I understand how a

glossary reduces the size of the instructions, I believe it is asking too much for people to read instructions and know that there is a supplemental glossary. If the Service is going to rely on a glossary, then when it uses a term in the instructions that is defined by the glossary, the Service should use bold, italics, capital letters, or some otherwise identifying font characteristic to provide a signal to the reader.

Also, when the instructions make a reference to a Code section or a Treasury Regulation, they should be clear that the referenced legal authority is controlling.

10. Part II, Compensation, Line 5b—Covered Relationships are Too Broad.

Investigative reporters will like this question, but compliance is impractical. Specifically, the question asks whether any person who is an officer, director, or trustee has a relationship with anyone listed in Section A, which would include volunteer directors. I certainly can envision a cultural institution with 70 volunteer board members and a partner in a major law firm who serves as its volunteer secretary. In many communities, this lawyer and his law firm will have professional relationships with many of the other board members that are unrelated to the cultural institution. This question would force the organization to divulge all of those relationships. The organization is unlikely to have access to that information and disclosure of client relationships might raise attorney-client privilege issues. The problem is compounded once affiliated entities are added to the requirements. This rule would be far more workable if disclosure were required only when the person on Schedule A or the officer is compensated. The fundamental problem is the failure to distinguish between paid staff and volunteer officers.

I suspect the Service will receive many comments containing other examples of when these disclosure requirements are unworkable or too broad.

11. Part III, Statement Regarding Governance, Question 1a—Definition of the Governing Body. This question provides a perfect example of the problems that come with separating the form from the instructions. Only after reviewing the glossary does it become evident that the “governing body” includes both voting and nonvoting directors and trustees. At a minimum, the question should be revised to read as follows:

Enter the number of governing body members, including both voting and nonvoting members.

If the Service does not do this, some organizations will include just voting members while others will include both voting and nonvoting members. As a consequence, statistical and comparative analysis of this question will be meaningless.

From a substantive standpoint, this question should be split into two questions, one asking for the number of voting members and the other asking for nonvoting members. There should also be questions asking for the number of ex-officio board members (with separate numbers reported for voting and non-voting members),

emeritus members, and other nonvoting board members. A valuable revision to Form 990 was made in 2005 with Question 75a to Part V-A, which reads:

Enter the total number of officers, directors, and trustees permitted to vote on organization business at board meetings.

This question should be retained.

12. **Part III, Statements Regarding Governance, Question 3b—Review of Conflicts of Interest.** At a minimum, this question needs to be refined. First, the Service should substitute “board or committee of the board” for “organization.” Second, and related, the Service should set a dollar threshold (e.g., the value of the transaction exceeds \$5,000, or 2% of the organization’s gross revenue, whichever is greater), rather than relying on what will be differing views of what constitutes a material conflict.

More to the point, this question either should be eliminated or significantly revised. It carries the implication that something is wrong if a lot of conflicts are reviewed. As a general matter, I am disturbed when organizations are engaged in many and a wide variety of conflicts-of-interest transactions. I am not the least bit disturbed when a conflicts-of-interest policy results in potential conflicts being surfaced for review by the board, followed by the board refusing to approve the transactions. This is a case where a more opened-ended question would be appropriate.

13. **Part III, Statement Regarding Governance, Question 4—Responses to Whistleblowers.** In Question 3b, the form asks about the number of conflicts reviewed pursuant to the conflicts-of-interest policy. Why doesn’t the form ask about the number of incidents that are brought to the board’s (or a committee’s) attention as a result of a report by a whistleblower? I have similar reservations about this question that I expressed question 3b, but whatever the decision, I believe consistency is warranted.

14. **Part III, Statement Regarding Governance, Question 5—Document Retention Policies.** The definition of *document retention and destruction policy* is in the glossary. Once again, separating the instructions/glossary from the form will result in inconsistent and incorrect responses to this question. Based on my experience in talking about record retention and destruction policies to nonprofit groups, most nonprofits mistakenly believe a record retention schedule is a retention and destruction policy. The retention schedule is part of a policy, but it is not the policy.

15. **Part III, Statement Regarding Governance, Question 6—Approval of Minutes.** This question should be prefaced with the phrase “As a general practice.” I can envision scenarios where an organization regularly prepares and approves minutes, but because of scheduling issues or a requested rewrite of a portion of proposed minutes before they are approved, minutes for one or two meetings are not *contemporaneous*, as that term is defined. By prefacing the question as I have

suggested, the organization would still be able to answer “yes” if the board had been attentive and diligent in reviewing meeting minutes before they are approved.

16. **Part III, Statement Regarding Governance, Question 8—Preparation of Financial Statements.** This is not a meaningful question. It seems to assume that having someone other than the outside auditors prepare the financial statements would be unusual, which is a faulty assumption. The better question would be to ask whether the financial statements are prepared by a paid employee of the organization, on the one hand, or a volunteer, on the other. In both cases, asking whether these individuals have financial training or are CPAs would provide both the public and the IRS with some sense of the amount of reliance that should be placed on the statements.
17. **Part III, Statement Regarding Governance, Question 9—Committees.** Why is this question limited to audit committees? Committees are important to a well-functioning board. The Service should ask whether one or more committees address the following functions: (i) executive; (ii) compensation; (iii) audit; (iv) finance; (v) investment/endowment; and (vi) gift-acceptance.
18. **Part III, Statement Regarding Governance, Question 10—Board Review of Form 990.** This excellent question needs to be rephrased if it is to be meaningful. The question should ask whether there was a presentation to the governing body about the Form 990 at a meeting of that body, or alternatively, whether a copy of the Form 990 was given to each member of the governing body. As phrased, an organization cannot answer “Yes” if its practice is to distribute the Form 990 to members of the governing body, because it does not know whether the members reviewed the Form 990.
19. **Part III, Statement Regarding Governance, Question 11—Public Disclosure of Documents.** The n/a designation needs clarification. “Not applicable” could mean that the organization doesn’t have an audit report or that it does not make it available to the public. Moreover, the listed documents should also include the Form 1023/1024 exemption application.
20. **Part III, Statement Regarding Governance—Financial Issues.** I would suggest adding a separate component to the governance questions for financial issues. The following are among the issues that I believe should be addressed:
 - a. If the organization’s financial statements are audited, did the independent auditor provide the organization with a management letter?
 - b. If the organization received a management letter,
 - i. Was it reviewed by the board or the audit committee?

- ii. Did the board or the audit committee instruct the organization's management to address the suggestions set out by the independent auditors in the management letter?
- iii. Does the board or audit committee regularly follow up with management regarding management's progress in implementing suggested responses to the management letter?
- c. During the last five years, has the organization received a qualified audit opinion from its independent auditors? If so, a copy of each qualified opinion should be attached.
- d. If applicable, does the organization undergo an audit required by the Single Audit Act and OMB Circular A-133?
- e. Does the organization regularly adopt an annual operating budget for the organization?

The Service should be particularly interested in the answers to questions a through c, because it must use the financial information that the organization's accounting system is generating as part of the audit process. The Service should be more concerned about organizations that are ignoring the advice of outside professionals or are having disputes with them.

- 21. **Part IV, Statement of Revenue, Line 1b—Contributions from Outside Fundraiser Efforts.** The instructions should specify whether this number is based on gross revenue raised by the fundraiser, or is net of fundraiser fees. The more informative approach would be to have two separate sub-line items—*Gross Funds Raised* and *Amount Retained by Fundraiser for Fees and Expenses*—with the net number then placed on Line 1b.
- 22. **Part IV, Statement of Revenue, Lines 1c and 11—Fundraising Event Contributions vs. Revenue.** Separating these two lines has proven to be a problem, with some organizations failing to report the contributions as a separate item on the current Form 990. Moreover, even when organizations follow the instructions, members of the media may fail to read the two lines together. From a usability standpoint, the two lines should be in the same location. I acknowledge that this will distort the contributions number. As a compromise, the revision should change Line 1c to read as follows:

Contributions from Fundraising Events (See Line 11 for
the Corresponding Event Revenue)
- 23. **Part IV, Statement of Revenue, Line 3—Membership Dues.** If an organization reads the instructions, the treatment of membership dues is *relatively* clear. It would be helpful if those instructions were better reflected in the form. Specifically, rather than placing non-benefit related membership dues in the catchall Line 1f, why not

have a separate category for those benefits immediately before Line 1f, and then change Line 1f to Line 1g? This is where dues paid to advocacy organizations would go. To the extent an organization bifurcates its membership dues between Line 1f and Line 3, there should be a required disclosure that explains the basis for the bifurcation.

24. **Part IV, Statement of Revenue, Lines 4 and 5—Dividends and Interest.** Rather than mix dividends and interest on Line 5, Line 4 should be divided into part a (short-term debt) and part b (long-term debt). Short-term debt would be debt with a maturity of one year or less. Line 5 would then be limited to dividend income.
25. **Part VI, Balance Sheet, Line 3—Pledges.** Significantly more information is required with respect to pledges. The numerical disclosures should follow FASB 116, Paragraph 24, requiring an aging schedule (due within a year, due between one and five years, and due more than five years). The amount of pledges from disqualified persons should also be disclosed. Failure to pay those pledges timely could raise issues under the intermediate sanctions, making this a relevant question. Finally, and this might be more appropriately reported in Part III to the Core Form, the organization should describe its write-off policy. Does it generally enforce an unpaid pledge, or does it routinely write off unpaid pledges? This is relevant to those who might be considering a contribution in reliance on the promises of others to make contributions.
26. **Part VI, Balance Sheet, Assets.** Some charities may be the beneficiaries of split-interest arrangements. Others may have turned management of assets over to community foundations through fiscal agency arrangements (see SFAS 136 for details on accounting for fiscal agency arrangements). The Core Form's balance sheet should do a better job of segregating assets subject to these arrangements from other assets.
27. **Part VI, Balance Sheet, Lines 28, 29, 30—Unrestricted, Temporarily Restricted, and Permanently Restricted Assets.** The proposed revisions make no changes to these three lines. As is, this disclosure is not particularly useful because it aggregates amounts. The Core Form's balance sheet should be revised to provide for disclosure of restrictions for each asset category comparable to that presented in GAAP-compliant financial statements if the organization has financial statements prepared in accordance with SFAS 117. Elsewhere, the Service indicates that it is requiring disclosure because certain information is not readily available to the public. This is important information and unless the organization publicly releases its financial statements—which many organizations do not—this information is not available to the public.
28. **Part VI, The Missing Statement of Cash Flows.** The Form 990 requires the organization to disclose its balance sheet and income statement. It does not require the organization to disclose its statement of cash flow (statement of sources and uses of funds). Generally Accepted Accounting Principles define these three statements as core financial statements. See SFAS 117, Paragraph 6. To receive an unqualified

audit opinion, an organization's financial statements must include all three statements. I have tried, but it is difficult to recreate a statement of cash flows from the balance sheet and income statement information reported elsewhere in Part VI. It is time that the Form 990 requires this third statement.

29. **PART VII, GENERAL ACTIVITIES—REORDERING QUESTIONS.** The questions in Part VII cover a wide variety of disparate issues. As presented, there is no logic to the ordering of these questions. For ease of use purposes, the Service should consider re-ordering the questions so that the order of the questions tracks the sequential flow of Schedules A through R.
30. **Part VII, General Activities, Lines 6a, 6b, 6c, and 6d—Tax Exempt Bonds.** Question 6a is appropriate. Questions 6b, 6c, and 6d should be moved to Schedule K. These questions are inconsistent with the overall laudable approach of separating detail that is applicable to select organizations through the use of discrete schedules.
31. **Part VII, General Activities, Lines 11 and 12—Questions Regarding Investment Review and Protecting Exempt Status.** These questions should be eliminated. While good governance is the goal, not everything needs to be reduced to a written policy. I would much prefer to have a knowledgeable tax professional, and the board when appropriate, reviewing these issues on an ongoing basis rather than having every organization adopt a boilerplate form that is stashed in a file cabinet. In the case of Line 11, why is it more important to review investments in disregarded entities as opposed to reviewing all investments?
32. **Part VII, Other IRS Filings, Lines 4a and 4b—Personal Benefit Contracts.** As noted, the design of the Form 990 should facilitate completion without the need to constantly refer to instructions. By using the term *personal benefit contract*, the form obscures the focus of these two questions. These questions should refer to “life insurance or annuity contracts.”
33. **Part VII, Other IRS Filings.** There should be a question asking whether an employee, contractor, or agent stole, embezzled, or otherwise engaged in financial fraud that resulted in a loss to the organization in excess of \$5,000 or 2% of gross revenue, whichever is less. There is much debate over the extent of fraud and financial mismanagement in the nonprofit sector. As far as I know, there is no comprehensive assessment. The IRS is in the unique position to gather meaningful statistics on this issue. To the extent the Form 990 is used by prospective donors to assess whether to make a charitable contribution to an organization, what could be more relevant than knowing whether a contribution is likely to be used to further mission, or stolen by an insider for personal gain?

There is a clear tax administration reason for the IRS to ask this question. Treasury Regulation Section 53.4958-4(c)(1) provides as follows:

In no event shall an economic benefit that a disqualified person obtains by theft or fraud be treated as consideration for the performance services.

Presumably this language was added to the regulations so that the intermediate sanctions could be invoked to force a disqualified person to return what would seem to be an automatic excess benefit. Many organizations are aware that they must report the payment of excess benefits when responding to Question 5a of Part VIII of the Core Form, but I would venture that most don't view a theft or embezzlement as an event that could trigger the intermediate sanctions. By asking the suggested question, the Service would be obtaining information to permit it to better enforce the tax laws.

34. **PART IX, STATEMENT OF PROGRAM SERVICE ACCOMPLISHMENTS, LINE 1—CHANGE IN ACTIVITIES.** The *organizational test* set out in Treasury Regulation Section 1.501(c)(3)-1(b)(1) focuses on exempt purposes, while the *operational test* in Treasury Regulation Section 1.501(c)(3)-1(c)(1) focuses on the organization's primary activities. Although Question 3 of Part III to the Core Form does ask about changes to the organization's governing documents, neither that question nor Line 1 of Part IX ask specifically about changes in purposes as distinct from changes in activities. Either Question 3 should be modified, or an additional question should be asked following Line 1 to elicit a response that focuses specifically on change in purposes.

F. **SCHEDULE, SUPPLEMENTARY INFORMATION.** I will leave it to others with more practical experience with the technical distinctions between public charities and private foundations to comment on the specifics of this schedule. The Service is to be commended for isolating this issue. The form makes clear once again why a major legislative overhaul is necessary to simplify an unnecessarily complex determination.

G. **SCHEDULE B, CONTRIBUTORS.** No change, no comment.

H. **SCHEDULE C, POLITICAL CAMPAIGN AND LOBBYING ACTIVITIES.**

1. **Two Additional Questions.** The Core Form should include two additional questions:
 - a. Does the organization's governing body include or does the organization employ any key employees who held elected office or who served as paid staff members or campaign aides to someone who held elected office?
 - b. Does the organization have a written policy regarding political activity by officers, directors, or employees?

Politicians do have a right to form and to serve on the boards of charities, but the tax law prohibits charities from intervening in political campaigns. Just as the Form 990 asks for special disclosures related to highly-compensation and disqualified person to

permit the Service to enforce tax law provisions aimed at those persons, the Form 990 should ask for necessary information related to politicians involved with charities to permit the Service to better hone its focus on charities that may be more susceptible to prohibited interventions and abuse. For a comprehensive discussion of recent and potential abuses of charities by politicians, see my article, *THE WILD, THE INNOCENT, AND THE K STREET SHUFFLE; THE TAX SYSTEM'S ROLE IN POLICING INTERACTIONS BETWEEN CHARITIES AND POLITICIANS*, 54 *Exempt Organization Tax Review* 117 (November 2006).

2. **Schedule C, Part 1-A, Political Campaign and Lobbying Activities—Enhanced Political Activity Questions.** Question 1 of Part VIII of the Core Form asks about political activity. It directs organizations that answer “yes” to proceed to Schedule C. I assume the enhanced political activity questions are those found in Part 1-A. First, and most importantly, the internal referencing structure does not make much sense. The introductory notes/commentary suggests that the Service expects all organizations to complete this portion of Schedule C. The apparent goal is to elicit facts that might suggest that the organization has engaged in political activity despite its belief that it has not. Yet, by answering “no” to Question 1 of Part VIII, the very organizations that the Service wants more information from don't provide it.

Given the 2004 and 2006 PACI reports, the paucity of questions designed to uncover political interventions is surprising.

I. **SCHEDULE D, SUPPLEMENTAL FINANCIAL STATEMENTS.**

1. **Schedule D, Part VIII, Supplemental Financial Information—Fin 48.** Thank you for proving correct one of my predictions about likely responses to Fin 48. See my article, *APPLYING FIN 48 TO TAX-EXEMPT ORGANIZATIONS: TOO MUCH OF NOTHING OR IT'S ALL TOO MUCH?*, 56 *Exempt Organization Tax Review* 157 (May 2007). Now, if the Service is going to require this information, it should include the statement that is included in the Overview to Schedule D on Schedule D itself so that taxpayers fully understand their rights. Specifically, the following statement should be included:

Disclosure of this footnote on the Form 990 has no impact on the Service's position relating to requests for tax accrual workpapers. Such workpapers will continue to be governed by existing Internal Revenue Manual. Organizations should call 202-XXX-XXXX to report alleged violations by Service personnel of those restrictions on the use of tax accrual workpapers.

2. **Schedule D, Part X, Organizations Maintaining Collections of Art—Receipt of Partial Interests.** Given the recent controversial legislation regarding gifts of partial interests of art works, the Service should ask whether the organization has received such gifts, together with a request for other relevant information. I do note that this is covered to some extent in Schedule M, Non-Cash Contributions.

3. **Schedule D, Part X, Organizations Maintaining Collections of Art—Footnote Disclosure.** I have no problem with the request for relevant footnotes from the organization's financial statements. However, why not just ask for all the footnotes from the financial statements? For example, in this same section the Service effectively asks for liabilities attributable to pension plans (to the extent they are not otherwise reported on Line 23 of Part VI). The footnotes to financial statements generally include detailed discussions of these liabilities. When I am reviewing an organization's finances, I am just as interested in those liabilities as I am in the treatment of collections. Selective disclosures are not helpful.
 4. **Schedule D, Part XI, Trust/Escrow Accounts—Definition.** It is not clear what an escrow account is for purposes of this question. Is this a reference to split-interest trusts, fiscal agencies, or something else? The Service will receive useless responses unless it better defines what arrangements this question is directed at.
 5. **Schedule D, Endowment Funds—General Observations.** This will prove to be useful information, but more information is warranted. Specifically, the data should be broken down into the unrestricted, temporarily restricted, and permanently restricted categories. Moreover, board designated endowment should be separately presented. At a minimum, there should be an additional question asking what rate, if any, that the board has adopted as a spending rate. Equally important, but likely to be more controversial, there should be a series of questions asking about investment objectives, portfolio mix, identification of investment managers, and investment management fees.
 6. **Schedule D, Reconciliation of Revenue Per Audited Financial Statements—General Observations.** Unfortunately, this schedule is largely unchanged. In my experience, it is often impossible to use this schedule to work from the tax statements to the financial statements. This appears to be due to the heavy reliance on "Other," with organizations rarely providing much detail. The Service should either rework this schedule, or require organizations with audited financial statements to submit them with the Form 990.
 7. **Schedule D, Reconciliation of Expenses Per Audited Financial Statements—General Observations.** See comment 6 immediately above.
- J. **SCHEDULE E, PRIVATE SCHOOLS.** No comments at this time.
- K. **SCHEDULE F, STATEMENT OF ACTIVITIES OUTSIDE THE UNITED STATES.** No comments at this time.
- L. **SCHEDULE G, SUPPLEMENTAL INFORMATION REGARDING FUNDRAISING ACTIVITIES.**
1. **Schedule G, Supplemental Information Regarding Fundraising Activities.** Within the last month, the AICPA promulgated Technical Practice Aid Section 6140, which addresses some technical issues regarding accounting for fundraising expenses. This aid mentions the AICPA's Audit and Accounting Guide for Not-for-Profit

- Organizations, which also addressed fundraising expenses. I have not yet had a chance to fully review Section 6140 or compare the AICPA Audit Guide to the proposed Form 990 and the relevant instructions. If the Service has not, I would strongly urge it to consider the merits of conforming tax reporting of fundraising expenses with the financial accounting treatment of those expenses.
2. **Schedule G, Supplemental Information Regarding Fundraising Activities.** With this information, there is no need for Questions 25 and 26 to Part 1 of the Core Form. Both interested members of the public and the media will quickly come to know and love Schedule G. Therefore, forcing organizations to further summarize this information serves no purpose and opens the summaries up to misuse and misinterpretation.
 3. **Schedule G, Part II, Line 2, Supplemental Information Regarding Fundraising Activities—Charitable Contributions.** There has been ongoing controversy over whether fundraising events that lose money are important loss leaders for charities. Some are offended when a large annual ball loses money as top donors dine on caviar and sip champagne. Others contend that these events cement long lasting relationships with major donors, more than paying for themselves in future contributions. I don't take sides in that debate, but I am concerned that it may influence what charitable contributions are included on Line 2. The Service should adopt a convention that Line 2 only includes charitable contributions that are either collected as part of the admission fee or that are made at the event.
 4. **Schedule G, Part II, Supplemental Information Regarding Fundraising Activities—Advertising and Sponsorship.** There should be separate revenue lines for advertising fees (in program books) and event sponsorship payments (excluding purchases of tickets or tables).
 5. **Schedule G, Part II, Column C—Other Events.** Even though a specific event-by-event breakdown of dollar amounts is required, I think organizations should list each event (date and type) to the extent gross revenue from an event exceeded \$10,000.
 6. **Schedule G, Additional Information—Politicians.** There should be a question asking whether elected officials attended the event on a complementary basis, and another question asking whether elected officials or candidates spoke at the event.
 7. **Schedule G, Part III, Gaming—Publications.** As an aside, the Service's publications on charity gaming do not provide adequate information regarding withholding and backup withholding obligations. If organizations are going to be asked to provide this level of detail, more detailed publications should be available.
- M. **SCHEDULE H, HOSPITALS.** No comments at this time, except to note that given the controversy over these issues in recent years, I suspect most hospitals will have this information readily available. The critical issue will be whether the hospitals believe the requested information permits them to tell their side of the story.

- N. **SCHEDULE I, SUPPLEMENTAL INFORMATION ON GRANTS.** No comment at this time.
- O. **SCHEDULE J, SUPPLEMENTAL COMPENSATION INFORMATION.**
1. **Schedule J, Supplemental Compensation—Compensation Committee.** There should be a question asking whether the board utilizes a compensation committee (see Item 17 to Section D of this letter).
 2. **Schedule J, Supplemental Compensation—Compensation Consultants.** There should be a question asking whether the board retains an outside compensation consultant to assist it with setting senior executive compensation. If so, there should be follow-up questions asking whether the board retains the consultant directly and whether the consultant is retained by the organization for other work.
 3. **Schedule J, Supplemental Compensation—Monitoring of Reimbursements.** There should be a question asking whether the board (or a committee) monitors expense account reimbursements to the executive director/CEO and the CFO.
 4. **Schedule J, Supplemental Compensation Information, Line 1—Tally Sheet.** The requested information is broken down in terms of tax terminology. I would like to see the Service move away from that approach, and instead rely on the format of tally sheets that are typically presented at board meetings.
 5. **Schedule J, Supplemental Compensation Information, Line 2—Accountable Plan.** The more relevant question (or an additional question) would seem to be whether the organization adheres to an accountable plan, as defined in Code Section 62(c) and Treasury Regulation Section 1.62-2.
 6. **Schedule J, Supplemental Compensation Information, Line 3—First Class Travel, Club Dues, and Personal Residence.** There should be a separate line for each of these items. There should be a fourth line for other supplemental compensation such as personal chefs, gift allowances, personal secretaries for spouses, and use of automobiles and private jets.
- P. **SCHEDULE K, SUPPLEMENTAL INFORMATION ON TAX-EXEMPT BONDS.** No comment at this time.
- Q. **SCHEDULE L, SUPPLEMENTAL INFORMATION ON LOANS.**
1. **Schedule L, Parts 1 and 2, Supplemental Information on Loans—Legality.** In view of an investigative report, Parts 1 and 2 should contain a question asking whether the loan is legal under state law. See Harvy Lipman and Grant Williams, *Assets on Loan: Nonprofit Groups Lend Millions to Officials, Chronicle Study Finds*, *Chronicle of Philanthropy* (Feb. 5, 2004). I suspect state charity regulators would appreciate this question because it would provide them with information, as well as cause some charities to review state law.

2. **Schedule L, Parts 1 and 2, Supplemental Information on Loans—Past Due.** Parts 1 and 2 should contain a question asking whether the loan is past due.

R. **SCHEDULE M, NON-CASH CONTRIBUTIONS.**

1. **Schedule M, Non-Cash Contributions.** There should be a question asking whether the organization has a gift-acceptance policy. If so, there should be a follow-up question asking whether each gift was accepted in accordance with the policy.
2. **Schedule M, Non-Cash Contributions.** There should be a statement that the charity is not responsible for the valuation, but is relying on the valuation set out in the qualified appraisal.

S. **SCHEDULE N, LIQUIDATION, TERMINATION.** No comment at this time.

T. **SCHEDULE R, RELATED ENTITIES.** No comment at this time.

U. **CONCLUSIONS.** I think all interested parties will agree that the team assigned to the Form 990 project has produced an excellent proposal. I have no doubt that the Service will receive many comment letters and that the final version will reflect many of the comments.

I would hope that the Service will consider providing periodic progress reports summarizing how it is responding to comments, even going so far as to occasionally put out a notice indicating that the Service is considering incorporating certain suggestions. This would permit all interested parties to react timely to possible changes to the proposal and expedite finalization.

My focus in this letter has been on the forms. In the coming weeks, I plan to take a closer look at the instructions. I will provide the Service with any additional comments should I have them. In the meantime, thank you for permitting me to have input into this important process.

Sincerely yours,

Jack B. Siegel
Principal, Charity Governance Consulting LLC

From: [Jason Hunt](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: 990 Revisions
Date: Saturday, June 16, 2007 12:38:52 PM
Attachments:

Dear IRS,

First of all, let me say what a wonderful job you have done in researching and developing a more relevant information return for exempt organizations. I do believe this revised form will aid in compliance efforts and if anything will force exempt organizations to introspectively examine their operations (now that they will be forced to be more transparent). I would like to offer the following suggestions:

1. I would like to see disclosure of the organizations average annual compensation for all employees except those reported in Part II. The most logical placement would be immediately after line 7 (Enter highest compensation amount reported on Part II, Section A). This would give stakeholders the ability to determine what I call the organizations “earnings multiplier” (i.e. the number of times the average annual compensation for the rank and file workers can be divided into the highest compensated persons). Personally, I don’t like to see the “earnings multiplier” exceed 5.
2. I would encourage you to consider changing line 8a (Enter officer, director, trustee, and other key employee compensation (Part V, line 5, column (B))). Instead of requesting compensation reported under program service expense (column B), I would suggest using column A (total). This would allow stakeholders to see a more meaningful percentage on line 8b. This would give the percentage of compensation paid to officers, directors, trustees, and other key employees for every dollar of program service expense (which is why the organization exists – to fulfill its exempt purpose).
3. In Part III – line 11 (How do you make the following available to the public?), I would suggest that you remove the “other website” option and require the organizations to disclose any website that the items listed are available. For example, if a hospital does not disclose the organizations Form 990 on its website, but the Form 990 can be found on Guidestar’s website, the hospital should disclose this in the space provided for “other”.
4. I would also recommend that you ask Hospitals (on Schedule H) to disclose whether or not their charity care policy is available on their website or elsewhere.
5. Below are some other brief suggestions:

- a. Disclosure of certain “entertainment” expenditures (e.g. event tickets, arena suites, etc.)
- b. Disclosure of officer, director, trustee, or key employee fringe benefits (e.g. vehicle, country club, etc.)
- c. Disclosure of executive bonus pay and factors considered in determining amount of bonus (if any)
- d. Disclosure of proceeds from tax exempt bond financing
- e. Disclosure of capital expenditures
- f. Signature requirements (board chairmen and CEO)

Thanks again for a wonderful job on revising Form 990 and for considering my suggestions.

Sincerely,

Jason A. Hunt, CPA

From: [michael alape](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: revised 990
Date: Friday, June 15, 2007 10:18:45 PM
Attachments:

The form should have a schedule that **along with** highest compensation of officers or directors, should also report perks such as personal use of credit cards, personal use of company luxury cars, justification of large bonuses etc. so that the taxpayers and people that donate their hard earned income know where the money is being spent. In general there should be more disclosure and accountability of these transactions.

Also, the general public should be able to get schedule "A" by request **from the federal government**, so they can get the form anonymously.

Typically these organizations are given millions of taxpayer money to run their organizations but that doesn't mean that the officers take their fiduciary responsibility seriously. Greed is greed and it is easy to abuse the system when millions of dollars are going thru the checking account.

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From: Bob Ayrsman
To: *TE/GE-EO-F990-Revision;
CC:
Subject: Requirement on Disclosure on Benefits on Form
Date: Friday, June 15, 2007 6:55:54 PM
Attachments:

I suggest that there be a section for "disclosure on benefits" in a tax exempt organizations. I have served as the Treasurer of a 501c4 Social Welfare organization and became aware that thousands of dollars were being spent to benefit a board member. He did not want to disclose this benefit and did not do so in the tax return. The rest of the board were 'swayed" by his position...he was in law enforcement a Palm Beach Sheriffs deputy... and I was the "bad guy for wanting to tell the others in our association that this was going on and it was not being reported to the IRS. Thousands and thousands of dollars later it still goes on in other Associations that are Supposed to be Exempt for Taxes, but operate as private organizations that benefit only individuals.

I have filed US Mail Fraud, DPR complaints, FL Bar Complaints on this exact issue. Tax exempts should no be benefiting individual people and NOT dislcose this HUGE exemption for Fraud.

Bob Ayrsman
284 Woodlands Rd. Palm Springs, Fl .33461
1

See what's free at <http://www.aol.com>.

From: [SECIA NC](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comments on the new 990 form draft
Date: Friday, June 15, 2007 3:26:48 PM
Attachments:

It all looks pretty straightforward, other than the questions dealing with "What was your most significant accomplishment this past fiscal year". I know it's for the sake of comparing organizations and keeping things transparent, but it still seems like the kind of data collection that you wouldn't want the IRS dealing with. In my opinion, they should deal with numbers, which they do very well... leave the higher order deductive reasoning skills to others and don't try and make the IRS into something that it's not.

James De Sota
Neighborhood Coordinator
SECIA (Southeast Como Improvement Association)
837 15th Ave SE
Minneapolis, MN 55414
612 676 1731

From: Ron Peters
To: *TE/GE-EO-F990-Revision;
CC:
Subject: Revised Schedule M, Line 29
Date: Friday, June 15, 2007 2:18:10 PM
Attachments:

Schedule M, Line 29 is confusing. I am under the understand the a charity is not required or "must" hold any contributed property for 3 years? The only requirement I believe is that if the charity disposes of the contributed property within 3 years an 8282 must be filed.

Line 29 as proposed, will hurt charities who receive real property as donations and need to sell within 3 years to raise operating funds, as donor's will interrupt this line as a must for the charity to hold the property for three years.

Perhaps Line 29 should be written as follows" During the year, did the organization receive by contribution, any property where if disposed of within three years from the date of the initial contribution, an Form 8282 must be filed."

Let me know.

Ron Peters

Peters & Associates
11 Wellington Court
Saratoga Springs, New York 12866
518-584-5624
518-573-1070 (Cell)
518-490-1177 (Fax)

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From: [Ahmjrcpa at aol](mailto:Ahmjrcpa@aol.com)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Exemptions
Date: Friday, June 15, 2007 1:28:04 PM
Attachments:

There are too many organizations that presently qualify

Am a CPA and don't understand why labor organizations, country clubs, Elks, etc qualify as not-for profit

Hospitals, schools, charitable organizations I do understand

See what's free at AOL.com.

From: [Cathy Hefti](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Form 990
Date: Friday, June 15, 2007 12:06:07 PM
Attachments:

I belong to a small Soroptimist club in western Nebraska. We are a 501(c)(3) organization and are therefore required to file you form 990. We have no employees, all officers and board members are volunteers. We raise money to give to charitable organizations. Since we are not accountants and are volunteers, we are required to pay an account to prepare our 990. It is a very burdensome, complicated form for an organization such as ours. I would ask that you please review your requirements for completion of this form and make it easier and shorter and one that a layperson could complete without having the additional expenditure of a professional to prepare it.

Thank you.

From: [Schulte, Gregg \(Jefferson\)](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comments
Date: Friday, June 15, 2007 11:30:16 AM
Attachments:

Dear 990 Re-Designers:

As a 32 year veteran of non-profit operations, and a career accountant and finance manager, I have had opportunity over these years to examine many, many 990 forms, principally through Guidestar.org. In doing this, I have always felt that the information on them does not portray the whole story of the finances for the organization. Here is what I sense are the weaknesses:

- (1) The 990 form does not require the audit report footnotes. This is a major weakness in this form/report. I would assert that anyone who has ever examined financial statements for an entity is well aware that the information contained in the footnotes is extremely important information. Indeed, some of those footnotes are well more important than some of the numbers appearing on the statements themselves. Issues such as contingencies, inventory methods, investment assumptions, contingent liabilities, debt pay-off schedules, pending litigation, depreciable lives, subsequent events, expansion or contraction plans, etc. etc. are critical pieces of information, none of which are in the financial statement numbers.
- (2) The 990 form does not include a Statement of Cash Flows, one of the 3 principal financial statements which organizations produce. Since the accounting profession has long realized the significance of this Statement, and therefore mandated its presentation along with the Income Statement (Statement of Activities) and the Balance Sheet (Statement of Financial Position), then it MUST be an important piece of information. And certainly it is. I can attest to that as both a reader of financial statements and a person responsible for compiling them and working with the external auditors on them.
- (3) The 990 form consolidates unrestricted, temporarily restricted,

and permanently restricted amounts, balances, revenues and expenses, unlike published financial statements. Consequently, it is very difficult (often impossible actually) for the 990 reader to make any sense of the statements; or perhaps better, to draw final conclusions about the financial operations and the existing financial position of the entity.

If the IRS and/or Congress and/or any of the other independent bodies now addressing the issue of full-disclosure of financial information for non-profit organizations really wants to do something significant to enhance full-disclosure, my advice for them is to force these NPO organizations to publicly publish and provide to all requesters not just the 990 form (which does of course contain some important information not in the audit report/published financial statements) but also the actual full financial audit report including all the footnotes and all the financial statements.

Sincerely,

Gregg Schulte
Chief Financial Officer
Jefferson Community & Technical College
Louisville, Kentucky 40202
502-213-2259

From: [Sara Wyszomierski](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Activity Code and Group return question
Date: Friday, June 15, 2007 8:52:05 AM
Attachments:

Good morning,

I was reading through the proposed changes to the Form 990 and could not find a description for what the "Activity Code" is in the core form, Part IX, Statement of Program Service Accomplishments, lines 3a-c. Would you be able to send me a description for what this field will be for?

Also, I read that section H in the header of the 990, for group returns, is to be eliminated. I understand you are interested in feedback about this, but I was wondering what will take the place of this, if anything? Will organizations such as the Susan G. Komen for the Cure affiliates all be required to file separately?

Thank you for your help,

Sara Wyszomierski
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From: [Randy Livingston](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Feedback
Date: Thursday, June 14, 2007 9:10:26 PM
Attachments:

In the examples you provide for Schedule J, I encourage you to provide clearer direction or an example for a non-qualified deferred compensation program where the future benefit is defined (e.g., beginning at age 65, an annual benefit equal to 2% of final salary for each year served in role), but the present value would be based on actuarial assumptions.

Randy Livingston
Vice President for Business Affairs & CFO

From: [Carmichael, Kevin](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: FIN 48 Considerations
Date: Thursday, June 14, 2007 5:19:40 PM
Attachments: _____

In reviewing the Form 990, I am wondering whether you have taken into consideration FIN 48 which was issued by the FASB last summer. FASB clearly indicates that this interpretation of FAS 109 is applicable to exempt organizations that issue GAAP based financial statements. If the goal is transparency, then the ability to analyze book/tax disparities or potentially abusive transactions should exist in the Form 990 and associated 990-T. Looking at the balance sheet and income statement format in the proposed 990/ and current 990-T, such potential book/tax disparities would be disclosed in attachments related to other expenses or liabilities, if at all. Should there be a Schedule M or M-3 as with a Form 1120 to analyze changes in tax liabilities?

I have not looked very hard at this. My comments are off the cuff. From casual observation, though, it seems the intent of FIN 48 in financial statements would be completed by a corresponding reconciliation in the tax forms.

Kevin Carmichael



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From: [Greg Heidelberg](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Suggestion
Date: Thursday, June 14, 2007 5:13:29 PM
Attachments:

While doing research on not-for-profit organizations I often run into trouble with large tax-exempt systems that file separate 990's for their individual entities. To solve this problem could the IRS make the filing organization list by name the other entities to which they are affiliated? For example, health systems that have hospitals, home health, long-term care, etc and each file their own 990. These organizations frequently only list the compensation of their top executives in one place. As a result you can research one of the entities with revenue of \$100M paying their CEO \$500,000. But in reality the CEO sits atop a \$1B system. This produces false results when conducting research. I hope you will take my suggestion into consideration, and hopefully provide a logical solution. Thanks.

From: [Howard](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: 990 Revisions
Date: Thursday, June 14, 2007 5:03:26 PM
Attachments:

Move Part 1 lines 1 – 10 and 25-26 to Part III

Move Parts IV – VI to in front of Part II

Move Schedule D Part XIV to page 4 so its on same page as expenses

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From: [Thomas G. Malkoch, CPA, CFP](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comment on Form 990 Draft Changes
Date: Thursday, June 14, 2007 4:09:10 PM
Attachments: _____

Dear Administrator:

I have read the revised Form 990 and the Background Paper on the Draft Form 990 and I have some ideas about some changes I think are necessary. Specifically, I believe that questions 3, 4, 5, and 6 on Form 990 Part III need to be eliminated. These four questions are much too intrusive into the internal management of the organization. In the Background Paper under the section about Form 990 Part III, it states in part that the changes were made to inform the Internal Revenue Service and the public about, "Safeguards that organizations' assets will be used consistently with its exempt purpose." Frankly, this purpose indicates an attempt to expand its influence beyond the limits set by Congress. The entities that traditionally have been most involved in the safeguarding of these organizations' assets have been the various States, usually through a particular department and the States' Attorney Generals.

Consequently, I believe that questions 3, 4, 5, and 6 on Form 990 Part III should be eliminated because they 1) intrude too far into the provinces of the various States, and 2) go beyond the limits the Congress has set on the IRS.

Thomas G. Malkoch, CPA, CFP[®]
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From: [Lori Tsuruda](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Suggestion to Add "Insurance" line under 990 Section V
Functional Expense
Date: Thursday, June 14, 2007 3:48:18 PM
Attachments:

990 Section V Functional Expenses should include an Insurance category with the directions to include general liability, unowned and owned auto, directors and officers, workers compensation, and possibly health insurance not included in employee compensation.

Insurance is a rising expense that nonprofits are unable to do much to reduce since we already file no claims, and yet in this litigious society we must purchase it.

For smaller nonprofit organizations, insurance costs can be a large percentage of expenses, so it is worthwhile to itemize this as a practice.

Lori Tsuruda
Founder & Executive Director

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From: [Gale Scott](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: transparency issue
Date: Thursday, June 14, 2007 3:40:31 PM
Attachments:

Issue:

corporate names that differ markedly from the name an institution uses in public. You can't find a 990 if you don't know the name its filed under.

Why not ask institutions to list on the 990 any other names of institutions in their organization that they use in advertising, press releases, or other direct communication with the public?

This would be helpful to the public, particularly reporters, trying to locate 990s from uncooperative organizations or organizations that are trying to conceal executive compensation.

From: [Caprera, David A.](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: New form 990
Date: Thursday, June 14, 2007 3:21:52 PM
Attachments:

Part III, questions 1 and 4 are "loaded." They both are aimed at issues that have never been resolved at a formal level by the IRS and Treasury.

Under 145, bond-financed property has to be owned by a governmental unit or (c)(3). Whether a partnership is "looked through" to its partners for this purpose is something that, according to Rebecca, "they are studying." (I believe the correct answer is "yes".) No precedential guidance has yet been issued. (See the proposed but DOA mixed use regs.) But question 1 appears to be targeting deals where the proceeds were used by (c)(3) partnerships. I have to believe this is designed to identify audit targets.

Similarly, question 4 asks a question I wouldn't know how to advise my client to answer. If you have a non-qualifying management or service contract, the manager is considered to be a user of the bond-financed property. But the regulations have never said "how much of a user?" Suppose I contract out valet parking for a bond-financed 501(c)(3) hospital or governmentally owned convention center, and it turns out that the contract doesn't meet the management contract rules (to make it simple, let's say the contract term is 20 years and the maximum allowed would be 15.) How much of the project does the parking company use? I can't believe it is 100%. Do I measure on the value of the contract as a share of the total revenues or cost of the facility (like the naming rights ruling)? Do I figure out how much the driveway costs? These questions put the cart before the horse in terms of IRS enforcement. It isn't improper per se for the IRS to ask these questions, but sure as I am sitting here typing this, the information is going to be used to examine bond issues and question their tax-exempt status in circumstances where there is not adequate guidance for the IRS enforcement people to be certain they know the answers. This is wrong.

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