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29 July 2007

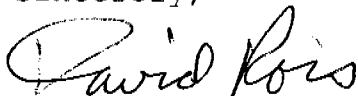
Form 990 Redesign  
1111 Constitution Ave., N.W.  
Washington, DC 20224

Attention SE:T:EO

I head a small public charity that operates entirely through the efforts of unpaid volunteers. Thus, we do not have a professional staff to review your revisions to Form 990.

Since our Board has not reviewed those proposed revisions, I am submitting the attached comments as a personal communication instead of on behalf of our organization.

Sincerely,



David E. Ross

Form 990, General Comment: Within the first three pages, there should be a checklist of schedules with two columns: "Attached" and "Not Applicable". Every schedule should be listed by title. This would replace a substantial portion of Part VII as well as a portion of Part VIII; also, it might possibly replace all or portions of other parts of Form 990.

Form 990, Part II: We operate entirely with unpaid volunteers and have NO employees. Our trustees (directors) and officers are also unpaid. Other charities our size and smaller also operate this way. This part should be a separate schedule that we should not have to file. Instead, there should merely be a checkbox on the form where we can indicate that this information is not applicable because we pay no employees, officers, or directors. (See my General Comment on Form 990.)

Form 990, Part III, line 10: Our entire Board of Trustees does NOT review our Form 990. It is prepared by our Treasurer and reviewed by our President. This line should provide for a review by some or all officers rather than by the entire Board.

Form 990, Part IV: One of our programs is a community garden, which provides parcels where apartment tenants can grow vegetables. There is an annual fee for each parcel to defray the costs of water, trash collection, repair and replacement of garden tools, etc. On which line would this annual fee be reported? We also charge a one-time, refundable deposit for each parcel; if the gardener surrenders the parcel without cleaning out dead plants, the deposit is used to pay for restoring the parcel so that it can be reassigned. How do we report this deposit?

Form 990, Part IV, lines 1a-h: If a charity does a direct-mail solicitation involving no event or merchandise and receives money in response, is this fund-raising (line 1b or 1c) or is this other contributions (line 1f)? This needs to be clarified in the instructions.

Form 990, Part IV, line 5: We participate in an investment pool operated by a much larger charity. That charity treats the funds invested in the pool as donations and the earnings paid to the investors as grants. Is this correct? This needs to be clarified in the instructions.

Form 990, Part V: Liability insurance is an expense for all charities. There should be a line to report the cost of liability insurance covering the organization (corporate insurance in our case) and another line to report directors and officers liability insurance. The latter line should provide for indicating whether volunteers are also covered.

Form 990, Part V: See my comment on Part IV, line 5. Is this an asset? Or (for Form 990) have we made a grant to the investment pool?

Form 990, Part VII, line 4: We maintain "donor-defined funds". We determined these are not donor-advised funds in terms of recent legislation because (a) our Board can decline to accept the donor's advice after the fund has been established and (b) the advice is made by a committee, a majority of whose members are not related to the donor. Do we answer "yes" or "no" on this line?

Form 990, Part X, Third party designee: Any officer of the charity should automatically be a designee.

Schedule G, Part I, line 1aPart I, line 1a: I question whether grants received from a government agency is "fund-raising". Also, since donations might be received long after a direct-mail solicitation occurs, I must also question whether this is really fund-raising; after all, how would we report a donation received more than a year after the solicitation (in a different reporting year)? In many cases, a good direct-mail solicitation also serves to publicize the charity and build a future base of donors.

Schedule I, General Comment: Much of this is not applicable when grants are made to government agencies. This should be two separate schedules, one for grants to government and one for grants to organizations.

Schedule I, Part II, Columns (e) through (h): For grants to government, we should not have to complete these columns (thus, see Schedule I, General Comment). A major beneficiary of our charity is a local public school system, an independent government unit. So far in 2007, we have made 21 grants to the schools in amounts from \$100 to \$3,975. We also made several grants to our County's public library. In addition, we purchase items for the schools and library. A complete list would run many pages. This would be an excessive burden for our totally volunteer staff. With respect to grants and donations to government, I am not sure how such detailed reporting can be justified.

**From:** [Jack B. Siegel](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Jack B. Siegel's Second Set of Comments  
**Date:** Sunday, July 29, 2007 10:00:20 PM  
**Attachments:** [July 29 2007 Jack Siegel Comments Re June 14 2007 IRS Form 990 Proposed Revisions Instructions.pdf](#)

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Ladies and Gentlemen:

Attached please find my second set of comments regarding the proposed revision to the Form 990. This set of comments focuses on the instructions, but does comment on other issues. For some reason, when the Word document is converted to pdf, several item numbers drop out. I don't believe this will adversely impact on the Service's review of my comments.

Thank you.

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

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**VIA E-MAIL TRANSMISSION**

July 29, 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 you with a second set of comments regarding the proposed revisions to the Form 990. I submitted my first set of comments in a letter dated June 17, 2007.<sup>1</sup>

I am glad to see that many organizations are taking the process seriously and offering comments. In view of the constructive partnership that has evolved between interested constituencies and the Internal Revenue Service (the Service), I would highly recommend that you schedule public hearings shortly following the close of the comment period. My expectation would be that the Service would provide its initial reactions to recurring comments, with the opportunity for interested parties to respond, resulting in a dialogue that would inevitably improve the end result.

In this second letter, I intend to address the following issues in the order indicated: (i) transmission letter to Office of Management and Budget; (ii) mandated GAAP reporting; (iii) design principles for the Form 990 instructions; (iv) removing clutter and repetition from the Form 990 instructions; (v) specific examples of violations of design principles in the proposed

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<sup>1</sup> If the Service decides to post comment letters on the Web or otherwise publish them, I would appreciate my June 17<sup>th</sup> and this letter being grouped together, if that is possible.

revisions to the Form 990 instructions; (vi) specific substantive comments regarding the proposed revisions to the Form 990 instructions; and (vii) additional and revised comments regarding the proposed Form 990 Core Form and schedules.

My first comment letter focused on the forms, but I occasionally found that to adequately comment on the forms I had to examine the interplay between the forms and the instructions. In focusing on the instructions for this letter, I once again examined the interplay between the forms and instructions. Some of my comments therefore include additional comments regarding the forms.

#### **A. TRANSMISSION LETTER TO THE OFFICE OF MANAGEMENT AND BUDGET**

I certainly am no authority on the administrative review process that the Office of Management and Budget (OMB) conducts on proposed forms produced by federal agencies. It is my understanding that OMB will be conducting a review of the revised Form 990 and the instructions before they are released.

Assuming I am correct, I hope the Service will point out to OMB in the transmittal letter that the Form 990 is not the typical tax return, but also functions as a public disclosure document. Consequently, the Service should caution OMB against asking for reductions in the number of required disclosures on the grounds that certain disclosures are unrelated to the determination of tax or the enforcement of internal revenue laws. If OMB resists disclosure, the Service should remind OMB that the SEC routinely receives hundreds if not thousands of pages in disclosures from corporations and other entities that are subject to the federal security law reporting requirements. The focus of those laws is on full and meaningful disclosure. That is also one of the purposes that Congress has assigned to the Form 990.

#### **B. MANDATED GAAP REPORTING**

Before proceeding to my more specific substantive comments, I want to emphasize the importance of Generally Accepted Principles (GAAP) to the Form 990 disclosure process. GAAP provides a uniform, clearly articulated, and widely understood set of rules for disclosing financial information. GAAP also has the advantage of having addressed a number of unique aspects of nonprofit accounting, meaning that GAAP establishes conventions for dealing with a number of quirky issues. Moreover, when financial statements are audited by independent certified public accountants, as is generally the case with larger organizations, we know that the information has been reviewed on fairness and materiality grounds. Consequently, except to the extent required by the tax on unrelated business income, those organizations that prepare their financial statements on a GAAP-compliant basis should be required to do so for purposes of Form 990 reporting.

Given the importance of GAAP, both the forms and the instructions should clearly and consistently state that GAAP-compliant reporting is required. The instructions also should eliminate all options that permit organizations to report on a GAAP-compliant basis or some other one (except in the case of UBIT).

Finally, I would go so far as to mandate GAAP-compliant Form 990 reporting for all organizations filing Form 990. After all, every organization that is subject to reporting must produce a set of numbers one way or another, so why not require everyone to report information using the same standards?

### C. DESIGN PRINCIPLES FOR THE FORM 990 INSTRUCTIONS.

The instructions to the Form 990 are critical from the standpoint of assuring that each organization reports data using comparable definitions and standards. If some users find the instructions opaque because of their style and format, those users are more likely to guess as to what is being asked for, resulting in reporting inconsistencies. By and large, those inconsistencies defeat Congressional intent that the Form 990 serve as a disclosure document.

At this time, it is not possible to fully assess whether the proposed revisions to the Form 990 instructions satisfy the objective of producing consistency in reporting because the instructions are not formatted. It is clear that the instructions for the current Form 990 (2006) are difficult to use. That is not surprising because those instructions evolved over many years, resulting in a patchwork feel to them. When Congress enacted a new revision, the Service responded with ad hoc changes to the instructions rather than a total rewrite.

In formulating the revision to the instructions, the Service should keep the following two design principles in mind: The instructions should:

- **Be as brief as possible.** The focus should be on assuring that preparers know exactly what information is being requested rather than educating users about the law and ancillary requirements. This means removing (and separately setting out in the Glossary) lengthy definitions, as well as avoiding discussions of the same issue in different locations.
- **Make information readily accessible.** To accomplish this, the Service will have to develop a well-thought out taxonomy and greatly improve the layout to provide visual cues. The Service should avoid the current stylebook used in writing tax publications.

In short, it is time for the Service to take the same leap that Apple recently took when it transformed the archetypical cell phone by introducing the revolutionary iPhone.

### D. REMOVING CLUTTER AND REPETITION (THE HORCRUXES) FROM THE FORM 990 INSTRUCTIONS.

The Service will only be able to satisfy the objectives of complete and comparable reporting if it rewrites and redesigns the instructions from the ground up. Here are several specific suggestions that will aid that redesign:

1. **ONE SET OF INSTRUCTIONS.** To facilitate downloading the instructions, the Service should compile the instructions for the Core Form and the schedules in one booklet rather than creating a separate set of instructions for each schedule. In fact, the

Service should consider one consolidated packet that contains all the forms and all the instructions.

2. **DISCUSS ONCE.** Beginning with Page 8 of the current Form 990 (2006), the instructions discuss many issues in more than one place. This double referencing is both unhelpful to users and detrimental in terms of assuring that all organizations are reporting comparable information. All information pertaining to a schedule or a line should be in one location. Users should not have to look for a line reference and then wonder whether somewhere else earlier in the instructions additional guidance is provided.
3. **LINE NUMBERING.** To facilitate references and electronic searches, the Service should adopt a reference scheme that permits users to easily access the information about particular lines to the Core Form and the various schedules. Referring simply to Line 10 is unhelpful because the reference could be Line 10 of any number of parts or schedules. The Service should consider adopting the following referencing convention:
  - a. **CONSECUTIVE NUMBERING.** Schedule line numbering should be consecutive, without restarting at “1” for each schedule part.
  - b. **TAXONOMY.** The instructions should refer to line numbers using a combination of the schedule reference and the line number. Under the envisioned approach, the instructions would refer to Line 10 of Schedule A as Line A-10. If the Service rejects the recommendation regarding consecutive numbering, then the reference for Line 10 of Part I of Schedule A would be Line A-I-10. Obviously the Service could choose another convention. For example, Line A.I.10 is a viable alternative. The critical goal should be a taxonomy permitting users to enter a line number in the Acrobat search engine that retrieves references in the instructions to the specific line for which the user is seeking guidance.

**HEADERS.** The Service should use headers to further assist readers in quickly finding information. For example, the header for the page that covers Lines 1 through 10 of Part I of Schedule A would appear as follows:

Schedule A, Supplementary Information	Part I, Lines 1-10
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4. **APPENDIX.** The instructions should adopt the same approach that was adopted in the design of the Core Form and schedules. There should be a core set of instructions that is applicable to all organizations, with an appendix. That appendix should list each type of tax-exempt organization (by Code section), with all special instructions relating to a particular type of organization discussed together. This would eliminate the need for users to skip over inapplicable information, with the added advantage of highlighting in one place the special considerations that apply to particular types of organizations.



**INDEX.** The instructions should contain a comprehensive index.

**E. SPECIFIC EXAMPLES OF VIOLATIONS OF DESIGN PRINCIPLES IN THE PROPOSED REVISIONS TO THE FORM 990 INSTRUCTIONS.**

I will not list every violation of my design principles in this section, but I will try to provide sufficient examples to make my overarching point: Good design matters. I will begin with some general comments, and then proceed in serial order through the proposed revisions to the instructions.

1. **ELIMINATE TIPS.** All tips should be deleted. Tips are an implicit acknowledgement that the instructions are not well designed.
2. **USE STYLES.** The instructions should use a combination of indentation, outline numbering, and font faces to visually provide cues to the user as to how each level relates to the instructions as a whole. Page 3 of the proposed instructions provides a perfect example of bad design. It includes the following headings: (i) *General Instructions*; (ii) *A. Who Must File*; (iii) *TIP*; and (iv) *501(c)(15) Organizations*. These headings are relatively indistinguishable in terms of how they relate to each other. Is *501(c)(15)* part of *Who Must File* or is it a separate set of instructions applicable to Code section 501(c)(15) organizations? The user cannot tell with just a glance.
3. **USE THE GLOSSARY AND AN APPENDIX.** Once again, page 3 of the proposed instructions provides an excellent example of why an appendix would be useful. The vast majority of users have no interest in the filing requirements that apply to Code section 501(c)(15) organizations. Moreover, these tax-exempt insurance companies are likely to be represented by knowledgeable lawyers and accountants who already know the filing requirements. Yet, at least a page of *General Instructions* is devoted to Code section 501(c)(15) entities. A simple reference to an appendix that included highly specialized information pertaining to these entities would speed users through the instructions, making it more likely that they would read the instructions in their entirety, or at least not skip over the wrong parts.

Page 4 of the proposed revisions to the instructions poses a similar problem. At least half a page is devoted to the definition for a *qualified state or local political organization*. Why not place this in the Glossary, with an appropriate signal that this is a defined term?

Page 6 of the proposed instructions offers a similar opportunity. The vast majority of users know the Code section that refers to their organization. This chart has no utility, particularly if the Service adopts the suggested appendix.

4. **PAGE 11. PUBLIC INTEREST LAW FIRMS.** This discussion should be moved to the suggested appendix.
5. **PAGE 12. RECORDKEEPING.** This either should be split out as a separate section, or eliminated. My preference would be to eliminate it because it does not support the

- objectives of complete and comparable information. At the same time, I can certainly see the argument that it does support the audit function. Possibly a new section at the end of the instructions discussing audits would be a good location for this information.
6. **PAGE 12. COMPLETING ALL LINES.** This is a perfect example of needless repetition. This topic is covered in more detail in Section H, *Failure to File Penalties*. Why not change the title of Section H to *Completing the Form*, and merge the requirement that all lines be completed with a discussion of the penalties?
  7. **PAGE 12. ASSEMBLING THE FORM 990.** This is an important discussion. It should be set out as a separate section. This should probably appear earlier in the instructions.
  8. **PAGE 14. COMPLETING THE FORM 990 HEADING.** At this point, the proposed revisions to the instructions have moved from general comments to specific ones addressing individual lines on the Form 990. Greater clarity and accessibility could easily be achieved by using headers and roman numerals—I. *General Instructions*; II. *Completing the Heading of Form 990*; etc. If the section referred to as *Heading* is to be so referenced, the Form 990 should follow the parts convention, indicating in black background and white typeface where the *Heading* is.
  9. **PAGE 8. ACCOUNTING PERIODS AND METHODS.** This was explained in great detail in Section D to *General Instructions*. All organizations must provide this information, so the longer explanation in *General Instructions* should be moved to this point in the proposed revisions.
  10. **PAGE 15. ITEM H, ENTER THE AMOUNT OF GROSS RECEIPTS.** *General Instruction B* does not define gross receipts. This portion of the form will be completed by all organizations. Consequently, this should be the one place in the form where *gross receipts* are defined unless the Service decides to place greater reliance on the Glossary through a cross reference the Glossary. Whichever approach the Service takes, the instruction should be clear that gross receipts are determined before deduction for fundraising fees and commissions.
  11. **PAGE 15. ITEM I, ACCOUNTING METHOD.** Once again, this portion of the form is completed by all organizations, making it more useful to place the entire *Accounting Methods* discussion currently located in the *General Discussion* here.
  12. **PAGE 27. LINE 11C, NET INCOME FROM FUNDRAISING EVENTS.** Define the term *bingo* in the Glossary.
  13. **PAGE 45. CAUTION.** Although I understand why the Service has added the cautionary note about UBIT and estimated taxes, this is nevertheless extraneous commentary. The instructions are already long enough. All content that does not facilitate the completion of the Core Form and the schedules should be eliminated. The IRS has any number of publications that address UBIT. These publications are

the appropriate place to address estimated taxes. Every extra bit of information makes it more likely that a user who does not know the specific requirements for completing Form 990 will stop reading, rely on intuition, or just guess.

More important, this cautionary instruction reflects what I suspect to be an erroneous assumption: Users who do not understand the basic obligations imposed on organizations read the instructions from front to back. I suspect most users don't take such a rational approach, meaning that this cautionary note serves only to make navigation through the instructions more difficult for users who rely on the instructions.

14. **PAGE 45. LINES 11A AND 11B, DISCLOSURE REQUIREMENTS FOR CHARITABLE CONTRIBUTIONS.** See comment 13 above. It is equally applicable here. A cross reference to Publication 1771 would be sufficient.
15. **INSTRUCTIONS TO SCHEDULE A. PRIVATE FOUNDATION STATUS.** The instructions should be rewritten to provide far greater reliance on references to the appropriate regulations. In my experience, those performing the calculations required for this schedule will (should) be reviewing the Treasury Regulations rather than an abbreviated summary of those regulations. Any attempt to summarize those regulations is futile. It will likely result in reporting errors in cases when the preparer does not consult the regulatory language.
16. **INSTRUCTIONS TO SCHEDULE C. POLITICAL CAMPAIGN AND LOBBYING ACTIVITY.** The instructions do nothing more than parrot statutory definitions. As is true for the instructions relating to Schedule A, these instructions should make liberal cross references to the appropriate regulations in order to eliminate a succession of mind-numbing definitions. I find it highly doubtful that users actually read what quickly becomes boilerplate language. Most of this content should be moved to the Glossary, with appropriate cross references.
17. **INSTRUCTIONS TO SCHEDULE G. SUPPLEMENTAL INFORMATION REGARDING FUNDRAISING ACTIVITIES. PAGE 2. PART III-GAMING.** Page 26 of the core instructions contains a laundry list of activities that constitute gaming. Why is that list repeated here? The term *gaming* should be defined in the Glossary, with the text of the instructions referring to the Glossary when warranted.
18. **INSTRUCTIONS TO SCHEDULE G. SUPPLEMENTAL INFORMATION REGARDING FUNDRAISING ACTIVITIES. PAGE 2. PART III-BINGO, PULL-TABS/INSTANT BINGO.** See 17 above.

**INSTRUCTIONS TO SCHEDULE G. SUPPLEMENTAL INFORMATION REGARDING FUNDRAISING ACTIVITIES.** Much of the discussion involving withholding and occupation or stamp taxes could be eliminated with a simple reference to the appropriate publications.

**F. SPECIFIC SUBSTANTIVE COMMENTS REGARDING THE PROPOSED REVISIONS TO THE FORM 990 INSTRUCTIONS.**

Clearly the Service should focus on the design of the instructions to the Form 990, but there are also issues in terms of substance. I have purposely placed my comments on design first because I suspect that instruction design is an afterthought, receiving short shrift—that is not meant as a criticism, but an acknowledgment of the way things work.

My comments on the substance of the proposed revisions to the instructions are equally important, and now follow.

1. **PAGE 9. STATE REPORTING.** This instruction, which permits organizations to file the Form 990 using the accounting rules required by a particular state, reaches the wrong result. If a state wants to deviate from the accounting rules used to prepare the Form 990 or the Form 990's presentation, it should feel free to do so for purposes of its own filing requirements by providing for a supplemental disclosure describing the deviation from the Form 990. However, given the Form 990's status as a disclosure document, the Form 990 must foster consistent reporting by all organizations across the nation regardless of their state of incorporation or states in which they are required to file reports because of solicitation or other activities. To allow otherwise is to effectively introduce up to 51 sets of accounting rules into the Form 990 disclosure process, making comparisons meaningless. Moreover, requiring organizations to compile a reconciliation between state and GAAP conventions is of no benefit to users if the reconciliation is not required to be filed with the Form 990. More importantly, users should not have to standardized Form 990 data using such reconciliations. Requiring users to standardize data prevents efficient use of electronic databases.
2. **PAGE 15. ITEM M, STATE OF LEGAL DOMICILE.** Referring to the state of incorporation for a corporation makes sense. It also makes sense to refer to the state of formation in the case of limited liability companies because there is a state filing requirement that must be satisfied before the limited liability comes into existence. In the case of trusts, however, the place of formation is not necessarily the state in which the trust documents were signed (formation). Often the legal domicile turns on where the trust is administered, which can be different than the location of the trust's assets or trustee. To avoid inconsistencies caused by variations in state law, the better approach is to ask where the trust is administered. In the case of unincorporated associations, the better approach is to ask for the state in which a majority of the members reside.
3. **PAGE 14. ITEM B, CHECKBOXES.** If the Service is eliminating the requirement that there be attachments, how can an organization comply with the requirement that the information be attached to the Form 990?
4. **PAGE 15. ITEM D, EMPLOYER IDENTIFICATION NUMBER.** The IRS should consider addressing the question of which EIN to use at the time EINs are applied for rather than at the time the Form 990 is filed.

5. **PAGE 15. PART II, SECTION A—REPORTABLE COMPENSATION.** This portion of the form provides very important and useful information. A number of changes should be made to the instructions.
- a. **AFFIRMATIVE STATEMENT THAT NO ONE MAKES OVER \$100,000.** The form requires that the compensation for the five highest paid employees (other than officers, directors, and key employees) be reported only to the extent that individual compensation exceeds \$100,000. Some organizations have refused to complete this portion of the existing form (with its \$50,000 threshold). In the case of organizations that do not have any employees (other than officers, directors, and key employees) who receive compensation in excess of the compensation threshold, there should be a requirement that they affirmatively state so. Users will then have a better idea whether what would otherwise be a blank space is blank because the organization has no employees with reportable compensation or because the organization simply refused to answer the question. As a matter of course, the Service should immediately begin assessing penalties if this section is left blank, with a computer-generated letter showing accrued penalties being sent to the organization, accompanied by a demand for payment.
  - b. **GAMING THE RETURN BY MANIPULATING THE DEFINITION FOR KEY EMPLOYEES.** There is no generally understood definition for the term *key employee*. Moreover, the Glossary does not contain one. Given the relatively well-developed definitions in Code section 4958, why not replace “officers, directors, and key employees” with the concept of disqualified persons (to the extent they hold these positions) reflected in Treasury Regulation section 53.4958-3? That change would better align the return with the Service’s audit efforts. Moreover, organizations wanting to game the return would be unable to argue that what are arguably key employees (subject to reporting even if the compensation is below \$100,000) are non-key employees (whose compensation must exceed \$100,000 before reporting is required).
  - c. **ELIMINATE \$100,000 THRESHOLD.** The Service should require all organizations to report the compensation of the five highest paid employees regardless of their level of compensation. The regulations under Code section 4958 encourage organizations and their governing bodies to rely on comparables in setting compensation. The Form 990 is a low-cost source for comparables for those organizations who are willing to take some time to search GuideStar for similarly situated organizations. Moreover, I know of at least one commercial firm that compiles and sells Form 990 electronic databases which are used by organizations in assessing compensation issues. Any minimum threshold results in the elimination of data that is potentially valuable to organizations and their boards in satisfying the rebuttable presumption under Code section 4958 and complying with legal duties imposed by state law.
  - d. **SET THE \$100,000 THRESHOLD AT A MORE APPROPRIATE NUMBER IF A THRESHOLD IS RETAINED.** The \$100,000 number appears to represent a “quick and dirty” estimate of the level of compensation that warrants disclosure. If a

threshold is retained, why not link it to the amount set out in Treasury Regulation section 53.4958-(d)(3)? Once again, this better aligns the form and the associated instructions with the Service's audit function. Moreover, it provides for an annual inflation adjustment.

6. **PAGE 20. PART III, LINE 2. SIGNIFICANT CHANGES IN POLICIES.** In some cases, the examples of what is significant are too broad. Specifically, requesting organization to report any change in the duties of officers is too broad of a request. As currently defined in the Glossary, the term *officers* is far more encompassing than those officers required under state nonprofit corporation law statutes (traditionally, the president, secretary, and treasurer). The duties of various operational officers (executive director, CFO, COO, chief information officer, chief curator, chief physician, and chief of risk management, just to name a few major positions) frequently change. A more appropriate request would be to ask for a description of any major restructuring in the organizational hierarchy.

The request for changes in officer compensation also appears to be too broad to be useful and is somewhat redundant. Specifically, Part II of the Core Form and Schedule J already require specific dollar amounts to be disclosed, so changes in dollar amounts will be apparent by comparing returns for successive years. More important would be a discussion of changes in the benchmarks that govern incentive compensation and changes in the philosophy used to determine base compensation. In short, by asking mores specific questions, this question might generate more useful information.

7. **PAGE 20. PART IV, STATEMENT OF REVENUE. OVERARCHING CONSIDERATION.** The instructions should provide that when the organization prepares its financial statements on a GAAP-compliant basis, the data entered for the statement of revenue should be based on the organization's GAAP financial statements.
8. **PAGE 21. PART IV, LINE 1. CONTRIBUTIONS, GIFTS, GRANTS, AND OTHER SIMILAR AMOUNTS.** A few examples would be helpful.
9. **PAGE 21. PART IV, LINE 1. CONTRIBUTIONS, GIFTS, GRANTS, AND OTHER SIMILAR AMOUNTS.** The instructions should mandate reporting consistent with GAAP, rather than providing organizations with an option to use a methodology outside of GAAP.
10. **PAGE 21. PART IV, LINE 1B. CONTRIBUTIONS FROM OUTSIDE FUNDRAISERS OR COMMERCIAL CO-VENTURES.** The instructions should indicate that this number is determined before reduction for fundraising fees and commissions.
11. **PAGE 22. PART IV, LINE 1D. RELATED ORGANIZATIONS.** This instruction is unclear. It appears that payments between related organizations for overhead, fundraising, or administration and management services are excluded. Several examples clarifying the instruction would be helpful.

12. **PAGE 22. PART IV, LINE 1E. ALL OTHER CONTRIBUTIONS, GIFTS, AND SIMILAR AMOUNTS.** The Service should consider explicitly excluding what SFAS 136 refers to as agency transactions. This could be accomplished through several examples, together with appropriate reference to SFAS 136. At the same time, the Service should add a line requiring disclosure of the nature and amount of agency transactions.
13. **PAGE 23. PART IV, LINE 2B. FEES AND CONTRACTS FROM GOVERNMENT AGENCIES.** Once again, the Service should at least consider a review of SFAS 136, which attempts to distinguish between different categories of payments, including those from government entities. There would seem to be little reason not to rely more explicitly on SFAS 136 in dealing with the distinctions between contributions, fees for services, and agency transactions. Doing so would more closely align financial reporting practices with reporting practices for purposes of Form 990. This is probably a case where a deviation from GAAP is warranted to the extent that the definition of a charitable contribution under Code section 170 differs from the GAAP definition for a contribution.
14. **PAGE 23. PART IV, LINE 3. MEMBERSHIP DUES AND ASSESSMENTS.** Trying to ascertain what portion of a payment is a contribution and what portion is for membership benefits is an exercise in metaphysics. For example, a \$75 membership to a museum might entitle the member to one-year of free admission and a 20% discount at the museum's bookstore. In that case, the distinction between contribution and benefit will depend largely on each member's usage. Under Code section 170(f)(8) and Treasury Regulation section 1.170A-13(f)(8), all \$75 is deductible as a contribution, raising the question why the instruction doesn't explicitly adopt that position for contributions of \$75 or less. A good case can be made that the rule should be extended to all contributions providing benefits of the type referred to in the regulation. Once again, the overarching consideration should be consistency in reporting by similarly situated organizations. At a minimum, the Service should require affected organizations to disclose the basis of their allocations as part of a supplemental schedule. As noted, all Tips should be eliminated as such and then integrated into the text.
15. **PAGE 25. PART IV, LINE 11A. GROSS INCOME FROM FUNDRAISING EVENTS.** The second example at the bottom of Page 26 is a bad one. It implies that the contribution need not be reduced for the value of the dinner. The better example would be to state that the admission price is \$250, the value of the dinner is \$100, and the value of the mug is \$5. The gross income from the event would be \$250, reported on Line 11a, with \$150 shown in the Line 11a parenthetical and Line 1c.
16. **PAGE 28. PART V. IN GENERAL.** The organization should be required to attach a description of the allocation methodology. This assures that members of the media, the public, and researchers can make appropriate adjustments in data so as to facilitate comparisons between organizations. Requiring that the organization need only retain this information is inconsistent with transparency and full disclosure.

17. **PAGE 28. PART V. CAUTION.** Separate state disclosure requirements should be ignored when preparing the Form 990. As noted, the Form 990's utility will be greatly diminished if state law controls how accounting data is reported.
18. **PAGE 29. PART V. COMBINED EDUCATIONAL CAMPAIGN AND FUNDRAISING SOLICITATIONS.** Information is requested regarding joint cost allocations following Line 44 of Part II of the current Form 990 (2006). The corresponding instructions are more detailed than the portion of the proposed revisions that address joint cost allocations. The equivalent of Line 44 should be added to the proposed revision to Form 990, with the instructions appropriately expanded.
19. **PAGE 30. PART V. EXAMPLE.** This example is anything but clear.
20. **PAGE 32. PART V, LINE 5. COMPENSATION OF CURRENT OFFICERS, DIRECTORS, AND KEY EMPLOYEES.** Consistent with earlier comments, compensation included on this line should represent compensation paid to disqualified persons, as such term is defined by Treasury Regulation section 53.4958-3.
21. **PAGE 32. PART V, LINE 6. COMPENSATION, NOT INCLUDED ABOVE, TO DISQUALIFIED PERSONS.** Here the Code section 4958 intermediate sanctions are introduced into the instructions. Distinguishing between disqualified persons and key employees is not a meaningful distinction because there will be significant overlap. Lines 5, 6 and 7 should be left in place. However, the three lines should be redefined as follows: (Line 5) compensation of current directors; (Line 6) compensation to disqualified employees (as defined in under Code section 4958(f)(1) and persons described in Code section 4958(c)(3)(B) other than current directors); and (Line 7) other salaries and wages.
22. **PAGE 32. PART V, LINE 8. PENSION PLAN CONTRIBUTIONS.** Separating out pension plan contributions provides useful information. However, Lines 5, 6, and 7 implicitly acknowledge that users want a breakdown of current wage compensation based on the level of influence the individuals exert over the organization. Assuming that is a useful breakdown, that same breakdown should be reflected for pension plan contributions.
23. **PAGE 32. PART V, LINE 9. OTHER EMPLOYEE BENEFITS.** For the reasons set out in 21 and 22 above, this information should be separately reported for each recipient category set out in Lines 5, 6, and 7 of Part V.
24. **PAGE 33. PART V, LINE 11F. INVESTMENT MANAGEMENT FEES.** This line clearly reflects cash payments by the organization to investment managers. It is unclear how hedge fund and partnership allocations (splits) are handled. Presumably, the organization would be required to include a 2% annual management fee taken by a hedge fund manager at the hedge fund level. It is not at all clear whether a 20% carried interest is included in this amount, and if so, how and when it is included. Given the increasing reliance on hedge fund and partnership investments by exempt organizations, the instructions should provide more clarity.



25. **PAGE 34. PART V, LINE 12. ADVERTISING EXPENSES.** It is unclear what an in-house fundraising expense is. Is this the cost of raising funds from the organization's employees, or is it the cost of fundraising campaigns developed in-house, but seeking funds from external funding sources?
26. **PAGE 34. PART V, LINE 13. OTHER EXPENSES.** This line should be broken into subcategories (for an example, see Lines 11a through 11g). In particular, telecommunication expenses and insurance costs can be material.
27. **PAGE 34. PART V, LINE 17. TRAVEL.** This expense category should be split into three subcategories that track the classification scheme reflected in Lines 5, 6 and 7 of Part V.
28. **PAGE 35. PART V, LINE 18. PAYMENTS OF TRAVEL OR ENTERTAINMENT EXPENSES FOR ANY FEDERAL, STATE OR LOCAL PUBLIC OFFICIALS.** The form and instructions should provide for a supplemental attachment disclosing each official (and any family or staff members) who were the beneficiaries of travel or entertainment expenses paid for by the exempt organization. The attachment should also disclose the purpose of travel or entertainment (e.g. to give a university commencement speech, discuss public policy, or promote trade with a foreign country). There have been a number of recent media reports of expenditures by Code section 501(c)(3) organizations for private plane and other travel by elected officials. See, for example, Paul Pringle, *Nonprofit Subsidizes Schwarzenegger Travel Frills*, L.A. TIMES (July 5, 2007). It is apparent that the media is having difficulty obtaining this important information.
29. **PAGE 35. PART V, LINE 19. CONFERENCES, CONVENTIONS, AND MEETINGS.** This instruction should provide that expenses covered by Line 18 should not be included here. For example, a politician might be asked to be the keynote speaker at a conference sponsored by an exempt organization. Reimbursement of the politician's travel expenses and any legally permitted honorarium should be reported on Line 18 rather than Line 19.
30. **PAGE 35. PART V, LINE 21. PAYMENTS TO AFFILIATES.** The instructions require far more clarity and a more workable aggregation rule than is currently present.
  - a. **COMMON ACCOUNTING OR PAYMENT SYSTEMS.** Large hospitals and universities may be comprised of multiple entities that use common payment and accounting systems for internal control purposes. Although accounting and payments may be centralized, each entity bears the actual cost of its transactions. In these instances, there literally could be tens of thousands of inter-organizational payments, all tracked with sophisticated accounting software. No one outside of the organization needs or cares to see all of this detail reported on the Form 990 or in financial statements. It is the practice of the accountants to use eliminations to discard all this information when preparing financial statements. Just the end result or substance of these transactions is reported. For example, Subsidiary A may have its entire payroll processed by Common Entity, with Common Entity taking the funds out of Subsidiary A's bank account to

cover the payroll. In this case, the Service, the media, charity watchdogs, and the public are interested in Subsidiary A's payroll expense, not the intercompany transfers. The instructions should clearly state that the intercompany payments generated by these sorts of arrangements are disregarded for purposes of Line 21.

- b. **PAYMENTS TO AFFILIATES.** The public should be interested in payments by local affiliates to national organizations operating in what are termed *federated systems*. Line 21 is intended to capture those payments. However, the instruction do not indicate whether those expenses should then be categorized as program service expenses, management and general expenses, or fundraising expenses. From the standpoint of traditional efficiency metrics, organizations have an incentive to classify these payments as program service expenses. The instructions should adopt a rule that specifies how these expenses are allocated when the payments to the national organization are not specifically attributable to the individual categories. Possibly these expenses should be allocated between the three expense categories in the same proportion as all other expenses incurred by the local entity so that organizations cannot game the metrics. Whatever the method of allocation, it should be defined so that meaningful comparisons between entities can be made. Organizations should be required to disclose the payees by name and explain the relationships.
- c. **TIP.** First, the tip should be eliminated, with its content being integrated into the text of the instruction. More important, organizations should not be given the option of reporting payments to affiliated or national organizations that do not represent membership dues on Line 21 or Line 1. This jeopardizes the ability of people to make meaningful comparisons of data for different organizations.

**31. PAGE 36. PART V, LINE 22. DEPRECIATION, DEPLETION, AND AMORTIZATION.**

Giving organizations a choice between using MACRS or GAAP for purposes of calculating depreciation is unacceptable because it makes comparisons between different organizations meaningless. All organizations should be required to use MACRS or all organizations should be required to use GAAP. Admittedly, mandating a uniform system would be much easier to implement if the Service were writing on a clean slate. Unfortunately, now mandating that one depreciation system be used by all organizations would require the group of organizations that currently use the other system to adopt a change of accounting method. Possibly, the Service could avoid that result by simply requiring one system to be used by all organizations for all assets placed in service after a specified date. The sector would then have a transition period, with the data becoming more uniform with the passage of time.

But for UBIT, my preference would be for mandating the use of GAAP for reporting depreciation. As a practical matter, cost recovery information is for the most part meaningless because it often bears little relation to actual economic obsolescence.

If the Service decides to permit organizations to continue to choose between the different systems, it should at least require each organization to disclose the system that it is using to calculate depreciation (i.e., MACRS or GAAP).

The Service should also establish a rule that applies when two organizations using different systems merge. The FASB is currently considering a major change in the rules that apply to accounting for mergers of nonprofit entities. As I understand the proposal, it would eliminate pooling accounting. This could have the effect of distorting subsequent calculations of depreciation. Although it is not clear how such changes should be addressed for purposes of the Form 990, the Service should be considering the potential impact.

32. **PAGE 36. PART VI, BALANCE SHEET. OVERARCHING CONSIDERATION.** The instructions should provide that when the organization prepares its financial statements on a GAAP-compliant basis, the data entered for the balance sheet should be based on the organization's GAAP financial statements.

33. **PAGE 37. PART VI, LINE 3. PLEDGES AND GRANTS RECEIVABLE, NET.** Organizations that prepare their financial statements in accordance with GAAP should not be given a choice to report pledges on a basis other than that required by SFAS 116.

The gross number should be reported, with a separate allowance for write-offs. Pledges are charitable assets. Boards should not adopt a policy of simply writing off all unpaid pledges before undertaking any collection efforts. To do so arguably violates the board's duty of care. The Form 990 should not obfuscate inappropriate policies.

34. **PAGE 37, PART VI, LINE 4. ACCOUNTS RECEIVABLE, NET.** Accounts receivable should be reported both gross and net of doubtful accounts.

35. **PAGE 38. PART VI, LINE 9. PREPAID EXPENSES AND DEFERRED CHARGES.** The instructions should provide examples that explain the distinction between prepaid expenses and deferred charges.

36. **PAGE 38. PART VI, LINE 10. INVESTMENTS IN PUBLICLY TRADED SECURITIES.** On occasion, an exempt entity will invest in a partnership or other pass-through entity that in turn invests in publicly-traded securities. Are these securities included on Line 10 or Line 11? The instructions should be clear on this point

37. **PAGE 38. PART VI, LINE 11. INVESTMENTS—OTHER SECURITIES.** The investments reported on this line should be broken out into the following subcategories: (i) hedge funds; (ii) other partnerships; and (iii) interests in split-interest arrangements. As a general proposition, the Service should be careful to make sure it has captured information for all material and meaningful breakdowns before using the terms *Other* or *Miscellaneous* to capture remaining catchall amounts.

38. **PAGE 38. PART VI, LINE 14. PROGRAM-RELATED INVESTMENTS.** Program-related investments could include such items as loans to students or low-income individuals, or an interest in a corporation that operates a restaurant employing low-income individuals. Some of these investments could take the form of interests in pass-

- through entities. The instructions should clarify whether, and if so, when these investments should be reported on Line 14 or Line 11. The instructions to Line 11 should provide appropriate cross reference to the instructions for Line 14. Probably the best way to characterize the distinction between Lines 11 and 14 is to distinguish between investments that are held principally for the production of income (endowment) and those that further the organization's exempt function other than providing income. That distinction should be better reflected in the instructions.
39. **PAGE 38. PART VI, LINE 15A. PROGRAM-RELATED—LAND, BUILDINGS, AND EQUIPMENT.** An organization might hold these assets through a single-member limited liability company. The instructions should discuss whether the land, building, and equipment are reported here or whether the interest in the limited liability company is included in Lines 13 or 14. As a general matter, the forms and the instructions are inadequate in addressing how investments in affiliated entities are handled. Given the increasing sophistication of exempt entities when it comes to the use of affiliated entities, both the forms and the instructions should reflect a well-thought out approach to this difficult issue.
40. **PAGE 39. PART VI, LINE 22. ESCROW ACCOUNT LIABILITY.** If an organization is a trustee of and/or beneficiary under a split-interest arrangement, the organization might be viewed as having an offsetting liability to an individual or entity that has a beneficial interest in the split-interest arrangement. See, American Institute of Certified Public Accountants, AICPA Audit and Accounting Guide for Not-For-Profit Organizations, Chapter 6 (May 1, 2007). The instructions should clarify whether the offset is included here.
41. **PAGE 39. PART VI, LINE 23. PAYMENTS TO CURRENT AND FORMER OFFICERS, DIRECTORS.** So there is no ambiguity, the instructions should specifically refer to the individuals listed in Part II of the Core Form.
42. **PAGE 39. PART VI, LINE 24. MORTGAGES AND NOTES PAYABLES TO UNRELATED THIRD PARTIES.** The reference to "investment or other real property" is confusing. Is investment limited to real property investment property, or does it include investments in securities? Based on the subsequent references to particular lines, the term includes securities. Less ambiguous language (investment property) should be adopted.
43. **PAGE 39. PART VI. LIABILITIES.** Deferred compensation outside of a qualified plan is a liability, yet there is no specific line for this compensation. A separate liability should be reported for this liability. There should be clear instructions about how underfunded qualified pension liabilities are to be handled. At a minimum, there should be a disclosure of the underfunding and the amount. Even if the organization has no legal obligation to correct the underfunding, it may need to do so in order to maintain good relations with its workforce.

44. **PAGE 40. PART VI, LINE 28. UNRESTRICTED NET ASSETS.** The instructions should specifically provide that board-designated endowment is classified as an unrestricted asset.
45. **PAGE 40. PART VI, LINES 31 THROUGH 33. ORGANIZATIONS THAT DON'T FOLLOW SFAS 117.** The instructions should provide greater detail and examples. The notion of the typical tax-exempt organization having outstanding stock is counter-intuitive. This may be due to my lack of my specific knowledge, but I can't recall seeing this information on any return I have ever reviewed. Is this aimed at the membership social club, with initiation dues?
46. **PAGE 42. PART VI, LINE 7B. RELATED ENTITIES.** There should be a discussion of what constitutes "related" for purposes of this question. Are covered relationships limited to an ownership interest (e.g., stock or limited partnership interest), or do covered relationships include relationships created through membership and overlapping boards, as well as relationships created through support requirements?
- Schedule R and the corresponding instructions rely on a detailed definition to spell out covered relationships between organizations. That definition should be transferred to the Glossary, with the instructions making reference to that definition when and as needed.
47. **PAGE 42. PART VI, LINE 8. SUBSTANTIAL PART.** It is not clear what constitutes "a substantial part." Instead of using an ambiguous term, the instructions should use percentages. Taxpayers who want to comply with requirements should not have to guess.
48. **PAGE 42. PART VI, LINE 8B. LESS THAN 50%.** Is this a typo? What about entities where control is greater than 50%?
49. **PAGE 41. PART VIII. STATEMENTS REGARDING OTHER IRS FILINGS.** Reference to the Glossary should not be a Tip.
50. **PAGE 44. PART VII. LOBBYING. QUESTION 2 OF THE CORE FORM.** There is no instruction regarding Line 2 and the definition of lobbying. Does the definition for lobbying include activities described in the exceptions in Code section 4911(b)(2)?
51. **PAGE 45. PART VII. LINE 12. SOLICITATIONS OF NONDEDUCTIBLE CONTRIBUTIONS.** Much of the commentary in this instruction is extraneous. A cross reference to Code section 6113 and Notice 88-120 should suffice. Having said that, I understand that the Service is using this commentary in an effort to educate, so I suspect there will be no changes. Nevertheless, it is not clear that the last paragraph regarding organizations that qualify under Code section 170(c) to receive contributions should automatically check "No," as the instructions indicate. There have been instances where Code section 501(c)(3) organizations have solicited contributions to assist specific victims of disasters and their survivors. The beneficiaries may not constitute a charitable class because a small group of

- specifically named individuals generally is not considered an indefinite group. In other words, it is possible for a Code section 501(c)(3) organizations to solicit non-deductible contributions.
52. **PAGE 46. PART IX, LINE 1. STATEMENT OF PROGRAM SERVICE ACCOMPLISHMENTS.** The form and the instruction should also request information about changed purposes. Although purposes and activities should be aligned, the law draws a distinction between the two. Compare Treasury Regulation section 1.501(c)(3)-1(b)(1) with Treasury Regulation section 1.501(c)(3)-1(c)(1).
53. **PAGE 46. PART IX, LINE 2. MOST SIGNIFICANT ACCOMPLISHMENT.** What is the Service going to do when some organizations provide more than one accomplishment, refusing to pick the “most significant” one? If the Service wants only one, the instructions should clearly reflect that fact.
54. **PAGE 46. PART IX, LINES 3A THROUGH 3C. PROGRAM SERVICE ACCOMPLISHMENTS.** The focus on clients served, days of care, therapy sessions, or publications issued really misses the distinction between outputs and outcomes measurement. A food bank can serve a lot more people if it distributes food that is inexpensive but high in starch and fat. Many of its clients, however, will have shorter remaining life spans if they eat that food. A literacy center can teach 1,000 adults to read at the 1<sup>st</sup> grade level, or with the same dollars, it can teach 100 adults to read at the 10<sup>th</sup> grade level. A homeless shelter can train 1,000 homeless people for minimum wage jobs, but do nothing to improve work ethic. As a consequence, 990 of those people could be back out on the streets two months after going through the training. On the other hand, that same shelter could train 50 homeless people and address work ethic and other relevant factors, with all 50 still employed two years after completing the training. In short, the sort of data the Service is asking for is superficial. It often provides the wrong incentives for charities and misleads donors. This aspect of the question should be dropped. At some point, donors who are really concerned about outcomes must kick the tires by visiting the operation or asking questions. If the question remains, supplemental disclosure through attachments should be encouraged and facilitated.
55. **PAGE 47. PART IX. DONATED SERVICES.** Some guidance should be provided about how those volunteer services are valued. The Service should make reference to OMB Circular A-110 or other appropriate source for a methodology so that valuation methods are consistent across organizations.
56. **INSTRUCTIONS TO SCHEDULE D, SUPPLEMENTAL FINANCIAL STATEMENTS. PART III. INVESTMENTS—OTHER.** The instructions should make clear that museum collections are excluded from this number if the collection is not reported as an asset for financial statement purposes. In other words, GAAP should be followed.
57. **INSTRUCTIONS TO SCHEDULE D, SUPPLEMENTAL FINANCIAL STATEMENTS. PART VI. OTHER ASSETS.** See 56 above.

58. **INSTRUCTIONS TO SCHEDULE D, SUPPLEMENTAL FINANCIAL STATEMENTS. PAGE 6. PART IX. DONOR ADVISED FUNDS, COLUMN B.** Taxpayers are asked to list separate funds or accounts other than donor advised funds. The Service should provide several examples illustrating what it has in mind. Is the Service focused on restricted gifts such as scholarship funds, fiscal agencies, or some other specific type of arrangement?

59. **INSTRUCTIONS TO SCHEDULE D, SUPPLEMENTAL FINANCIAL STATEMENTS. RECONCILIATION OF REVENUE PER AUDITED FINANCIAL STATEMENTS.** The instructions need to be far more explicit in the level of detail required. In my experience, the reconciliations are often vague and do not permit someone to reconstruct the audited financial statements using the Form 990 balance sheet and income statement information with the aid of the reconciliation. Each material difference between GAAP and tax should be explained, with a description of the difference, its effect on the statements, and the amount involved.

More fundamentally, the Service could eliminate the need for this sort of reconciliation by requiring all data included on the return to be from GAAP-compliant financial statements when such statements are readily available. The Form 990 is largely an information return rather than a return that examines the tax base as determined under the Code. Consequently, there is little, if any, reason for deviating from GAAP.

60. **INSTRUCTIONS TO SCHEDULE G, SUPPLEMENTAL INFORMATION REGARDING FUNDRAISING ACTIVITIES. PAGE 2. LINE 3.** Why is authorization to solicit the appropriate trigger? The question and instructions should ask for all states in which the organization does solicit (although Internet solicitation per se should probably be disregarded because of the uncertainty in the law that currently exists).

61. **INSTRUCTIONS TO SCHEDULE J, SUPPLEMENTAL COMPENSATION INFORMATION. OVERARCHING COMMENT.** Consistent with my prior comments, the focus on key employees should be replaced with appropriate references to disqualified persons, as defined by Code section 4958.

62. **INSTRUCTIONS TO SCHEDULE J, SUPPLEMENTAL COMPENSATION INFORMATION. PAGE 3. LINE 1. COMPENSATION DETAIL.** The instructions should only require organizations to use reasonable efforts to obtain information from related parties. It is conceivable that related parties may refuse to release the information. The Service's current approach assumes the organization is in a position to force release of information.

63. **INSTRUCTIONS TO SCHEDULE J, SUPPLEMENTAL COMPENSATION INFORMATION. PAGES 9 TO 11.** The template is extremely helpful.

64. **INSTRUCTIONS TO SCHEDULE L, SUPPLEMENTAL INFORMATION ON LOANS. OVERARCHING COMMENT.** Consistent with my prior comments, the focus on key

employees should be replaced with appropriate references to disqualified persons, as defined by Code section 4958.

65. **INSTRUCTIONS TO SCHEDULE M, NON-CASH CONTRIBUTIONS, OVERARCHING COMMENT REGARDING DETAIL.** The instructions should be far more specific in terms of the information and level of detail that is being requested, particularly in case of Books and Publications (Line 4), Clothing (Line 5), Household Goods (Line 6), and Securities—Publicly Traded (Line 10).

At first, it appears that the Service is requesting aggregates for gifts within each category. Yet, this is not entirely clear, particularly because of the reference to single shares of stock in the discussion of publicly traded securities, which suggests that the Service wants each gift (100 shares of XYZ stock listed), rather than the aggregation of all gifts of stock. The Service should correct this lack of clarity with several examples. Here are two hypotheticals that attempt to clarify my concerns:

**Hypothetical 1:** Donor 1 gives Charity 100 shares of Publicly Traded Stock 1 valued at \$20,000. Donor 2 gives Charity 400 shares of Publicly Traded Stock 2 valued at \$100,000. Is the revenue reported on Form 990, Part IV, Line 1g \$120,000 for purposes of completing Schedule M, Part I, Column b, Line 10? Or does the Service want an attachment showing each contribution?

**Hypothetical 2:** Charity collects donated books throughout the year for sale at its annual book sale. Donor 1 gives Charity a box of 100 books, valued at \$50. Donor 2 gives Charity one book valued at \$10,000. Is the revenue reported on Form 990, Part IV, Line 1g is \$10,050 for purposes of completing the Schedule M, Part I, Column b, Line 10? Or does the Service want a supplemental schedule showing each contribution?

In Hypothetical 2, the books donated by Donor 1 are based on a valuation convention that values paperback books are valued at .50 cents each. The book donated by Donor 2 is valued based on a qualified appraisal. Must Charity list two categories of book contributions for Line 4 of Schedule M, which would require the use of an attachment?

66. **INSTRUCTIONS TO SCHEDULE M, NON-CASH CONTRIBUTIONS, OVERARCHING COMMENT REGARDING SPLIT-INTEREST TRUSTS.** How is this information to be reported when the gift takes the form a split-interest arrangement?
67. **INSTRUCTIONS TO SCHEDULE M, NON-CASH CONTRIBUTIONS. PAGE 6. LINES 23-26—OTHER.** Organizations should not have to collect or track information regarding gifts of clothing and households goods that were not in *good used or better condition*, particularly in the case of items that do not exceed \$500 in value and for which a qualified appraisal was not obtained. I assume many of these items are discarded because they have little if any value.



68. **INSTRUCTIONS TO SCHEDULE N, LIQUIDATION, TERMINATION, DISSOLUTION, OR SIGNIFICANT DISPOSITION OF ASSETS. OVERARCHING COMMENT.** Consistent with my prior comments, the focus on key employees should be replaced with appropriate references to disqualified persons, as defined by Code section 4958.
69. **INSTRUCTIONS TO SCHEDULE N, LIQUIDATION, TERMINATION, DISSOLUTION, OR SIGNIFICANT DISPOSITION OF ASSETS. LINE 1(C).** The instructions should make clear that unless the value of an asset is otherwise known, or there are other legal requirements requiring a valuation, that it is not necessary to obtain an appraisal or valuation simply for the purpose of completing Schedule N.

#### G. ADDITIONAL COMMENTS REGARDING FORMS.

I previously commented on the forms in my earlier letter. I offer the following additional comments:

1. **WHAT SHOULD BE IN THE SUMMARY.** The Service should not be surprised if it receives a number of comment letters suggesting that the entire Summary to the Core Form be eliminated. While I certainly share the some of the concerns of those who will make that suggestion, I have no doubt that the Summary is here to stay. With that in mind, I offer the following suggestions and modifications to the existing version of the Summary:
  - a. **ELIMINATE PERFORMANCE METRICS IN THE SUMMARY TO THE CORE FORM.** I am now even more convinced that the Service should drop the metrics (Lines 8b, 19b, 25, and 26) from the Summary to the Core Form. The Form 990 should adopt the disclosure model reflected in federal securities laws. Required disclosures should be non-judgmental. In other words, organizations should be required to disclose raw data. The Service should then leave it to individual users as to how they want to massage, manipulate, and analyze the disclosed data. The SEC doesn't tell security analysts what discount rates to use, whether a 10 or 15 earnings per share number is the norm, whether a quick ratio is more informative than a defensive interval ratio, or what capital asset pricing model to use. Similarly, the Service should leave it to each Form 990 user to arrive at his or her own conclusions about what metrics are most telling. What is the trendy metric today may well be discredited a year or two from now.
  - b. **PART IX OF THE CORE FORM. STATEMENT OF PROGRAM SERVICE ACCOMPLISHMENTS.** Others have agreed with my observation that Line 2 of Part I of the Core Form does not provide sufficient space for organizations to describe their activities. Some commentators are concerned that members of the public and media will only review the Summary, failing to examine Part IX. Given that concern, it might be best to eliminate Line 2 and insert an appropriate cross reference to Part IX.
  - c. **POSSIBLE ADDITIONS TO THE SUMMARY.** If the Summary remains, I believe there are several pieces of information that will be far more relevant to users.

Specifically, the Service should add questions to elicit the following information in the Summary:

- i. **Existence of an Audit.** The summary should ask whether the organization's financial statements are audited by an independent public accountant, and if so, whether the resulting audit opinion is unqualified.
  - ii. **GAAP-Compliant Information.** The Summary should ask whether the organization's financial statements are GAAP-compliant and whether the information reported in the Form 990 is based on those statements.
  - iii. **Financial Fraud or Embezzlement.** In keeping with my June 17<sup>th</sup> comments, I would like to see a question asking whether the organization has been the subject of any fraud or embezzlement during the last year.
2. **PART VII, LINE 3. CREDIT COUNSELING, DEBT MANAGEMENT ACTIVITIES.** The question asked by Line 3 regarding credit counseling agencies should be deleted. Yes, that is the Service's latest crusade and rightfully so, but can't that be handled through activity codes? This is a question that applies to a very limited number of organizations, meaning that the vast majority of organizations should not have to deal with the issue.
3. **SCHEDULE R, RELATED ORGANIZATIONS.** Additional columns should be added asking the amount of the entity's taxable income and whether that taxable income would be considered UBI if conducted by the exempt organization. There will likely be objections to mandatory disclosure of this information on privacy grounds. I will leave to Chief Counsel to evaluate those issues. In fact, I suspect that issue is already present in the question asking for total income and end-of-year assets in Parts III and IV of Schedule R. However, I don't see that as an issue in the case of the question regarding the hypothetical nature of the income.

I would also like to see ownership interests in subsidiaries and other organizations separately reported on the balance sheet in Part VI of the Core Form rather than concealed through inclusion on Lines 11, 13, 14, or 16 of Part VI.

4. **THE GLOSSARY.** The Service should give serious consideration to greatly expanding the Glossary, and then using it for all EO publications. That would help shorten all publications and assure needed consistency. This can probably wait until the Form 990 revision project is finalized.

## H. CONCLUSIONS

Although much of the attention regarding the Form 990 revision project has centered on the revised Forms, I hope that my letter demonstrates why the instructions are equally as important and why the Service needs to give serious consideration to formatting, brevity, and accessibility when it converts the current draft document into printed instructions. For many organizations, the clarity and accessibility to the information in the instructions will be what determines whether the information reported is both useful and meaningful.

As is obvious, the revision of the Form 990 and the accompanying instructions is a massive project. As I understand process, the Service plans to issue a revised proposal once it considers and incorporates the comments it receives. At the time that the revision to the proposal is issued, I hope the Service will also issue a redlined copy so that interested parties can better track the changes.

I do not plan to provide the Service with additional comments at this time. If I can be of service in answering any questions, please feel free to contact me. Once again, thank you for permitting me to have input into this important process.

Sincerely yours,

Jack B. Siegel  
Principal, Charity Governance Consulting LLC

**From:** [Art Judd](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Revised Form 990  
**Date:** Monday, July 30, 2007 6:51:51 AM  
**Attachments:**

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I am the president of the South Austin Hospital Auxiliary in Austin, Texas. I feel sure that there are many organizations similar to ours.

We operate with all volunteers.

We have no paid staff.

We have no paid contractors.

Board of Directors members receive no direct or indirect compensation.

Our gross receipts are primarily from sales of inventory in our gift shop.

Our annual gross receipts are slightly above the \$100,000.00 threshold for filing form 990 rather than form 990EZ.

Completing form 990 is a severe burden on our members.

We respectfully urge the IRS to raise significantly the threshold for filing form 990 rather than form 990EZ, perhaps to \$250,000.00

Thank you for your consideration.

Arthur W. Judd  
President, South Austin Hospital Auxiliary  
901 W. Ben White Blvd.  
Austin, TX 78704  
512-448-7405

**From:** [Stan Berman](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** 990-N  
**Date:** Monday, July 30, 2007 10:20:57 AM  
**Attachments:**

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For organizations that have large numbers of subordinate units covered under a group exemption, each of which will have to file the 990N electronic postcard, we think it is very important that a means be developed to inform the parent organization which subordinate units have filed.

It should be remembered that in many cases, the subordinate units are composed totally of volunteers. In some cases, particularly where the members of subordinate units are older, there may be no one belonging to the unit who is computer literate. A feedback mechanism directly from the IRS to the parent will be very important to help the parent organization ensure compliance by all of its subordinates with the filing requirement, if merely to protect the organization as a whole.

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

**From:** [Linda Henke](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Schools Questionnaire  
**Date:** Monday, July 30, 2007 1:19:26 PM  
**Attachments:**

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I previously wrote to you about proposed revisions that create the new Schedule E. I was not clear as to why I am interested in public schools which file Form 990.

My concern is with Charter Schools, which are sort of "hybrid" public schools. They are multiplying rapidly. There are 600 in California so far.

I have been looking at the Form 990 of many charter schools on Guidestar. They are completing the Private School Questionnaire (Part V of Schedule A) because they are directed to complete the questionnaire when they check the box for "school" on Line 6, Part IV of Schedule A. there is no instruction to ignore the questionnaire if the entity is a public school.

There should be one or two elimination questions at the top of the NEW Schedule E, similar to those on Lines 2a & b, Section I, Schedule B of Form 1023. These ask "Are you a public school...? If "Yes",... Do not complete the remainder of Schedule B".

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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[www.hw-cpa.com](http://www.hw-cpa.com)

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**From:** [Eyler James](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Comments on Form 990 Revisions  
**Date:** Monday, July 30, 2007 1:21:56 PM  
**Attachments:**

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On behalf of Coliseum Psychiatric Center, a 60-bed freestanding psychiatric hospital in Macon, GA I would like to thank you for the opportunity to comment on the new draft Schedule H (Hospitals) to Form 990. I am writing now because I understand that the Internal Revenue Service (IRS) is requesting early comment on the forms and plans several rounds of changes. I appreciate the work that the IRS has put into the new form and schedules and its openness to comments from the hospital community.

Based on our initial review, I have one primary concerns with Schedule H that I am asking the IRS to address: The filing deadline for Schedule H is far too short and should be extended. Implementation should be delayed until 2010 to accommodate the delay the IRS anticipates in issuing instructions, as well as the need to create systems to capture the required information.

Sincerely Yours,

James W. Eyler, FACHE  
CEO  
Coliseum Psychiatric Center

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**From:** [Ldharbel](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Revised Form 990  
**Date:** Monday, July 30, 2007 2:08:26 PM  
**Attachments:**

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To Whom It May Concern:

For the last 32 years I have had involvement with not-for-profit organizations. It has been my experience, both in small business and in the NFP's, there are often significant amounts of taxable benefits that employees receive that go unreported because the organization does not properly report them as income on the W-2. Some of the omissions are ignorant omissions, while, I believe, other omissions are willful ignorance where there might even be some doubt, but it is nice to plead ignorance and not worry about it.

I believe that a questionnaire section on the Form 990 that specifically addresses these areas would be beneficial for achieving greater compliance. For example:

1. Is each employee receiving a housing allowance not reflected on his/her W-2 actively employed as a Minister of the Gospel in accordance with Code Sec. 107? (See instructions) Instructions would contain specifics about who qualifies for the housing allowance. (The others that qualify are, of course, those are required to live on the premise to perform the job; in this case, a question such as, "Would the employee be allowed to own his/her own home off the premise?," would tell you whether it is truly a requirement of the employer to live on the premise.
2. Is the personal use of automobiles, including personal use of company paid gasoline or other company-paid expenses included on each affected employee's W-2? (See instructions)

While a person responsible for correct reporting may not have a problem with "ignorant" noncompliance, questions that draw the problem to his/her attention may result in compliance, at least for the future. The person responsible for preparing the 990 will also be less likely to lie on the form about whether a taxable benefit is reported properly on a W-2 than he will be to omit the inclusion on the W-2 when detection is unlikely.

I don't like paying taxes any more than anyone else, but I do believe we should all pay what we are supposed to pay. Just one housing allowance improperly granted for say \$10,000 a year would rob the government of significant taxes.

These are just some thoughts, for what they are worth, about some things that have bothered me for a long time.

Larry D. Harbel  
Certified Public Accountant  
410-267-0505

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Get a sneak peek of the all-new [AOL.com](http://AOL.com).

**From:** [Jerry Beckerman](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:** [astrand](#)  
**Subject:** 990 Revision suggestion  
**Date:** Monday, July 30, 2007 8:19:04 PM  
**Attachments:** [image.jpg](#)

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Dear IRS,

As a new 990 filer this year, we wanted to be able to acknowledge pro bono contributions from consultants. These contributions have been very meaningful in supporting our organization, yet there was no way for us to account for these contributions and keep within the IRS rules. It's probably obvious, but we feel that our non-profit would benefit significantly from a rule/form change related to this since:

(1) If consultants could be recognized as making a contribution at a dollar value it would reduce their tax liability and this in turn would encourage more consultants to provide pro bono services; and

(2) In a real way, when our organization receives this value from pro bono services, the value of our organization increases both in terms of the value of the services we provide to youth and in the perception of our organization in our community (which in turn can affect our budgets and grants received).

Perhaps a rule change such as proposed above could be made along with a maximum amount of pro bono contributions that would be recognized by the IRS.

While I would guess this is not a new request to your agency, I thank you for this opportunity to offer these ideas.

Sincerely,

Jerry Beckerman  
Executive Director  
Segue Career Guidance Program  
*Empowering students to explore,  
find, and act on their life's path.*

[www.SegueProgram.org](http://www.SegueProgram.org)  
805 643 3444



**From:** [Linda E. Berggren](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Group Returns  
**Date:** Tuesday, July 31, 2007 9:43:31 AM  
**Attachments:**

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I am confused about the changes proposed for group returns, and I was unable to locate additional information about this change except for the brief mention of it on page 1 of 47 of the Overview in the "Heading" section.

Please explain this further.

Linda E. Berggren  
Gifford, Hillegass, & Ingwersen, LLP  
Certified Public Accountants and Advisors  
Phone: 770-396-1100 Ext. 1315  
Fax: 770-393-0319  
[www.ghi-cpa.com](http://www.ghi-cpa.com)

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**From:** [Jim Baird](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:** [astrand](#)  
**Subject:**  
**Date:** Tuesday, July 31, 2007 12:57:19 PM  
**Attachments:** [ole0.bmp](#)

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Internal Revenue Service  
Regulatory Review Division

Re: Comments on Proposed Form 990 revisions

Our organization is a 501 C-4 economic development corporation that helps small businesses grow and create jobs by helping them expand. Since the early 1980s, we have helped over 1,200 small businesses create over 13,000 new jobs in our operating area.

We definitely see the need for reasonable and efficient regulation of the nonprofit sector. It is essential that abuses in this sector are weeded out. We strongly support the processes currently in place in the 990 reporting system and believe that the current processes are fully adequate to address these abuses. Between the current 990 process in place and the powers of intermediate sanctions already held by the IRS, the Agency has all of the regulatory authority and information that it needs to go after abusive nonprofit corporations.

Unfortunately, often when government agencies find potential abuses, rather than utilize the existing rules and procedures to penalize the abusers, the reaction is to implement new rules and regulations that end up punishing everyone without singling out any of the abusers. That is certainly the case here in the proposed new regulation, wherein virtually all non profits would need to fill out massive amounts of new and additional paperwork in order to operate. As we understand it, the proposed new rule calls for a new core 990 Form of 10 pages accompanied by up to 15 additional schedules (fifteen!).

Politicians consistently speak against the burden of over regulation and how it damages the efficiency of the private sector. What is often lost in this debate is

that this same type of overregulation severely damages the ability of the nonprofit sector to deliver the critical human services needed throughout the country.

Our organization objects to and opposes the entirety of the newly proposed rule because:

- > The nonprofit size threshold is far too small at \$25,000 in revenues;
- > The regulation is tremendously burdensome and wasteful for nonprofit organizations of any size; and
- > The current regulations and processes already in place are fully adequate to find and penalize abusers.

You know, at one time this country had a very good president who proposed that many of the pressing and unmet needs of the poor and disadvantaged citizens of this country could be met by the private and nonprofit sectors coming together in "a thousand points of light". Our organization, and many thousands of others like it are working very hard to try to accomplish the vision of that president. How ironic that the current Administration proposes vastly burdensome regulations that would so greatly hamper that presidents vision.



James R. Baird, Executive Director  
Bay Area Employment Development Company  
1801 Oakland Blvd., #100  
Walnut Creek, CA 94596  
925-926-1020  
[www.bayarea504.com](http://www.bayarea504.com)



**From:** [Dan Warco](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Comment on Revision of IRS Form 990  
**Date:** Tuesday, July 31, 2007 12:58:34 PM  
**Attachments:**

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To whom it may concern:

I have deep reservations regarding the revised Schedule F: Statement of Activities Outside the U.S. Many non-profit entities receive government assistance in the form of grants (e.g. from USAID, CDC, HHS, etc.) and subsequently pass those grant monies to sub-grantees in third-world countries. My current employer has well over 200 subgrantees all over the world. Although I certainly appreciate the need for greater transparency, separately listing the "legal name," "address," amount, and description of activities for each of these subgrantees would take an unbelievable amount of time (weeks, at best). This reporting burden is much too large and onerous for charitable organizations to handle. Perhaps a compromise approach of listing activities by "region" or having a much higher threshold than the current \$5,000 (or maybe listing the 10 largest) would provide greater transparency, but also not impose undue burdens on charitable organizations.

Thank you very much,

Dan

Dan Warco, CPA  
Controller  
The Elizabeth Glaser Pediatric AIDS Foundation  
1140 Connecticut Avenue, NW, Suite 200  
(202) 448-8462 (office)  
(202) 330-5076 (fax)



## AMERICAN RESEARCH COMPANY

August 1, 2007

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

Dear Sir or Madam,

I am writing in reference to the Internal Revenue Service (IRS) request for comments on the proposed redesign of Form 990, specifically changes being proposed in the area of executive compensation.

### Who We Are - What We Do

Based in suburban Washington D.C., American Research Company (ARC) has been providing compensation and comparable pay data for CEOs of non-profit membership associations for the past 17 years. ARC's **National Compensation Study (NCS)**, published annually, is routinely used by thousands of association CEOs as well as boards of directors, compensation consultants, and human resource and finance executives to determine appropriate CEO compensation and, in recent years, to assist in complying with IRS "safe harbor" guidelines, in order to avoid potential problems with "intermediate sanctions."

Although the information published by ARC is derived in part from mail survey questionnaires sent annually to a randomly selected sample of associations, it is also based on a significant quantity of IRS 990 Forms. Historically, the NCS has contained information from 500-850 mail survey respondents, along with 1,000-5,000 IRS Form 990s, representing CEOs of randomly selected organizations. The **2007-2008 National Compensation Study**, to be released at the end of September, will contain data on 6,000 non-profit associations.

The NCS features numerous tables segmenting CEO base salary and total compensation by organization revenue size, geographic area, type of membership, and type of industry or profession represented. In addition, ARC provides CEOs with a customized 2-page report providing them with the average total compensation, plus the 25th and 75th percentile figures for an association with characteristics similar to theirs. The report uses a weighting system based upon a multiple regression analysis, which simultaneously incorporates all objective association characteristics which have been found to have a statistically significant relationship with compensation.

### **The Current Form 990**

Part V, Section A currently captures three elements of compensation used in ARC's annual Study: 1) Compensation; 2) Contributions to employee benefit plans and deferred compensation plans; and 3) Expense account or other allowances. Among many of ARC's association clients there has been a perceived lack of clarity as to what information should be included in these columns. However, we have found when comparing Form 990 information with known information from survey questionnaires, the common interpretation is that: 1) "Compensation" is equivalent to base salary; 2) "Benefits" means deferred compensation; and 3) "Allowances" are taxable perks (such as car allowance, imputed value of life insurance, etc.). Bonuses received by executives are typically included either under "Compensation" or "Allowances." Using this generally accepted interpretation, ARC has been able to combine IRS Form 990 compensation data with similar components of compensation obtained from our survey questionnaires, allowing for a reasonable tie-in.

### **Problems with Redesigned Form 990, Part II, Section A**

From the point of view of providing accurate compensation comparability data, a major concern with the redesigned Form 990 is that the majority of filers will be asked to provide *less* information than with the current Form 990. The three elements mentioned above - "Compensation," "Benefits" and "Allowances" - would be replaced with one single figure representing W-2 reported compensation. Removed from the new form is a major component of compensation - deferred compensation - received by 73% of the CEOs that respond to our survey questionnaires. For the purpose of establishing reasonable comparable compensation, IRS guidelines indicate that deferred compensation should be included: *"IRC 162 standards apply in determining reasonableness of compensation, taking into account the aggregate benefits provided to a person and the rate at which any deferred compensation accrues"* (Intermediate Sanctions IRC 4958 Update, Page E-20). Eliminating this essential component of compensation from the redesigned Form 990 makes compliance with the guidelines impossible.

Additionally, the specification of "Allowances" (perquisites) is not requested on the redesigned Form 990, with the exception of those individuals required to fill out the new Schedule J. Again, this will result in a gap in an important component of compensation, and will result in less information than is available currently in the Form 990.

Two additional items scheduled for removal from the redesigned Form 990 are Job Title and Average hours per week devoted to position (Part V, B). Given the high rate of CEO turnover in associations from year to year, when comparing multi-year

Form 990s, the inclusion of job titles insures that any new employee indicated on the form corresponds to the same job title. Also, if there are two paid CEOs with the same title in a particular year, this would indicate an overlap of employees, invalidating the return for full-year comparison purposes. (In some cases, an "Interim Executive Director" is listed, and that organization would also be invalidated for that year). Finally, associations and compensation consultants have a need to determine equivalent pay for senior staff positions across comparable organizations, and without job titles this is impossible. The element of Average hours per week devoted to the position is required to establish a definable cutoff for "part-time" versus "full-time" work. The threshold used by ARC is 30 hours; CEOs working less than that are considered part-time and are eliminated. Although the proposed form includes a box indicating whether the work is full or part-time, the specific number of hours is needed to assist in sorting out confusion between actual organization staff versus elected leaders who work only minimal numbers of hours.

#### **Form 990 Part IX is Missing on the Redesigned Form 990**

Part IX: "Information Regarding Taxable Subsidiaries of Disregarded Entities" has been eliminated in the redesigned form. The current Form 990 asks for Name, Address, EIN, Organization Name, and Total Income of the organization's subsidiaries. This information is vital in determining the total size of organizational revenues under the scope and control of the CEO. Our research data indicate a statistically significant positive correlation between the size of the organization's revenues and the pay of the CEO, therefore compensation comparability data would be inaccurate without the inclusion of subsidiary organization revenues in the overall organizational revenue figures.

#### **Problems with Schedule J - Supplemental Compensation Information**

[*Note:* As we understand it, Schedule J is to be completed by organizations that answer "Yes" to any one of the questions in Section B, which include having an employee with taxable/reportable compensation of more than \$150,000. The IRS estimates that only 5% of all filers will be required to complete Schedule J. However, our data indicate that with regard to the association group, approximately 40% of the association CEOs will exceed the \$150,000 threshold criteria in 2007.]

Two significant problems we foresee with the new Schedule J are: 1) a lack of reported information on deferred compensation (qualified plans), which is requested on the current Form 990, and; 2) the confusion that will likely result from combining compensation elements with non-taxable fringe benefits, and business expense allowances or reimbursements into one total figure.

Although Schedule J requests much more detail on compensation information, the element of deferred qualified compensation is missing. Only *non-qualified* deferred compensation is requested. As mentioned earlier, qualified pension plans represent a major component of compensation, and this information would no longer be available for comparability purposes.

Under the redesigned form, Schedule J filers would be required to calculate the total of Base salary, Bonus, Severance, and "Other compensation" (perquisites) and to provide that figure in Column B-v. This total figure does not include deferred compensation - either qualified or nonqualified. The filer is then asked to take this total compensation figure in Column B-v, and add *nonqualified* deferred compensation, non-taxable fringe benefits, and business expense reimbursements and allowances to arrive at a second grand total compensation figure (Column F). The presence of two totals will undoubtedly be confusing in determining which one represents compensation for comparability purposes. The first total excludes deferred compensation plans. The second total includes only *non-qualified* retirement plans, but leaves out qualified plans, while including business expenses of the organization, organization-wide benefits given to all employees, and business expense allowances and reimbursements. This second compensation total will, in our view, cause significant confusion in determining compensation for purposes of comparability.

Although information detailing non-taxable fringe benefits and expense allowances may be useful to IRS agents for compliance and auditing purposes, if these items are to be explicitly added to compensation for purposes of determining reasonableness of pay, then information for *all* organizations should be obtained (not just for Schedule J filers), and in our opinion, there will need to be considerably more clarification from the IRS as to what items are to be included.

In our view, the non-taxable elements of compensation are nebulous and subject to different interpretations. We would therefore anticipate confusion and concern among volunteer leaders of associations as well as CEOs as to which non-taxable fringe benefits and business expense allowances should be included. Similarly, it would be difficult, if not impossible for volunteer leaders to determine specific dollar amounts for benefits that go beyond taxable pay and deferred compensation. For example, to determine reasonableness of pay, volunteer leaders, when comparing IRS Form 990 average compensation for similar associations (for IRS Code 4958 guidelines), would be required to affix dollar amounts to their own CEO's non-taxable benefits such as health, dental and vision insurance, business transportation, travel, meals and entertainment, business social and country clubs, dining clubs, college tuition, and educational programs/seminars, expense allowances and so on. Compensation elements might also include health club memberships, paid parking,

laptop computers, cell phones, frequent flier miles, airline club memberships, other association membership fees, first class or business travel, paid vacations, etc. The volunteer leaders would also need to know what specific elements are included in the Form 990 averages so they could make direct comparisons with their own CEO's compensation.

Another problem is the inclusion of *business expense* allowances in executive compensation, which would unnecessarily inflate a CEO's pay. For example, a CEO might have a \$100,000 business expense allowance that permits him to pay for unbudgeted expenses that arise during the year - expenses such as attendance by staff members at a trade show, or an unexpected seminar that needs to be arranged for the membership. A CEO's compensation would be bumped up dramatically by such an addition. Indeed, a CEO commonly has authority to approve and sign all checks of the association, thus the "expense allowance" of the CEO could well be viewed as the entire association budget.

It is our opinion that non-taxable fringe and business expense allowances and reimbursements represent a tremendously grey area, subject to great variance in interpretation, and not measurable across associations with any reasonable degree of accuracy. Of particular concern is the possibility that a volunteer board of directors or association CEO will use ARC's published compensation data, which uses the commonly accepted definition of "compensation" to be all compensation items which are taxable *now*, or will be in the *future* (i.e., deferred compensation), and feel confident they are discharging their fiduciary responsibility according to IRS guidelines, only to later learn that when the IRS includes all non-taxable fringe benefits and business expense allowances, the CEO's pay becomes "excessive," exposing the CEO and volunteer leaders to the possibility of large personal fines.

#### **Problems with Both Part II (Section A) and Schedule J**

Currently, in order to comply with IRS guidelines for the "rebuttable presumption" that a transaction is not an "excess benefit transaction," an association must rely on "appropriate data as to comparability." According to the IRS, "*relevant information includes, but is not limited to compensation levels paid by similarly situated organizations...for functionally comparable positions*" (Federal Register, Vol. 67, No. 15, Wed. January 23, 2002, p. 3096). Therefore compensation information for non-profit executives must be combined with similar organizations and aggregated into comparable sub-groups (for example, by geographic region, revenue size, type of industry or profession represented, etc.). On the proposed Form 990, however, different sets of compensation questions are asked of the low income versus the high income group. For comparative purposes, the elements of compensation need to be the same. Some questions being asked on the new Schedule J are relevant for the

lower compensated group, which also has a mandate to determine acceptable levels of compensation. Our survey data indicate that nearly half of *all* association CEOs receive a *bonus*, 73% receive *deferred compensation* (qualified and nonqualified), and 21% receive *taxable perquisites*. If an association wishes, for example to determine a typical bonus for a CEO of a Washington D.C.-based \$5 million educational society, our firm would only be able to provide relevant information for part of that group - namely, for filers who were highly compensated and who completed Schedule J. The information provided would thus be incomplete and inaccurate.

### **Suggested Changes to the Form 990 Redesign**

1) To solve the problem of a majority of filers being asked for *less* compensation information than under the current Form 990, *all* tax-exempt filers should be required to provide the same basic minimum compensation information so elements can be added together to create overall averages. The essential components of compensation are: 1) Base Salary, 2) Bonus, 3) Perquisites (taxable), and 4) Qualified, and Non-qualified pension plans. The current Form 990 already asks all filers to provide three components of compensation. This would expand the number only by one, to four. The result would be enhanced transparency, and improvement of comparability between organizations.

2) On Schedule J, we recommend the elimination of Column F which requests a *second* total of compensation to include nonqualified deferred compensation, non-taxable fringe benefits and business expense allowances and reimbursements. If these elements must be added to "total compensation," then for comparability purposes, the question must be asked of all filers, and considerably more clarity would need to be provided by the IRS. Assuming the IRS is seeking a more complete picture of all non-taxable items accruing to the CEO, our suggestion is that clarification on the new Form 990 be made in the instructions, indicating that these non-taxable items do not represent part of "compensation" in the measurable and comparative sense. Subsequently, if an IRS audit should determine that non-taxable items listed should, in fact, be taxable, then the dollar amounts would be placed under B-iv: "Other Compensation" and they would be quantified for comparability purposes. This would enable the IRS to obtain the needed information, while at the same time affording clarity to association CEOs and boards of directors who need to be able to quantify comparable pay at similar organizations.

3) We recommend re-inserting the request for Job Title and Average hours per week devoted to the position. If sufficient space is an issue, job titles can be placed on the second line following the names in Part II, Column A, instead of City and State for each executive. The common answer to the City and State question is the

organization's location, and this information is already requested on the first page of the Form 990.

4) Re-insert the old Part IX question which asks for Name, Address, EIN, Organization name and Total income for subsidiary organizations.

5) An additional item which would be of assistance in comparing compensation would be a question asking for clarification of dates worked, if less than an entire fiscal or calendar year. When there are two CEOs listed in a given year, the information is useless, since the time period for which each one worked is unknown.

### Summary

In order to effectively help association clients maintain compliance with existing IRS regulations regarding comparable pay for their CEOs, consultant firms such as ARC depend heavily upon the IRS Form 990 for precise compensation data. In its current form, the redesigned Form 990 creates, in our view, an unnecessary level of uncertainty and ambiguity for associations attempting to conform to IRS requirements. By explicitly requiring that non-taxable fringe benefits and ordinary and necessary business expense items be included under "compensation," the new Form 990 exacerbates rather than solves the concerns expressed in the IRS Background paper concerning the current Form 990's lack of an adequate "*basis for comparing an organization with its peers.*" As a result, we remain deeply concerned that the onerous nature of the proposed changes will lead to less cogent compliance rather than more. Additionally, due to the more limited compensation information to be required on Part II, and the elimination of pension information altogether, the IRS goal of "enhancing transparency" will have the opposite effect. We remain hopeful, however, that the suggested changes contained in this letter will receive favorable consideration prior to final publication and that the new Form 990 can be significantly improved in time for the 2008 tax year.

We appreciate the opportunity to provide comments and critique, and remain available to offer whatever assistance might be considered appropriate going forward.

Sincerely,



Jeannine M. James, Ph.D.  
President



**From:** [Rick Hoffman](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Public Comment  
**Date:** Thursday, August 02, 2007 10:13:58 AM  
**Attachments:**

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US Department of Treasury

Internal Revenue Service

Dear Madam or Sir:

Thank you for permitting public comment on the proposed revision to form 990. I have three comments.

- 1) Form 990 is a public disclosure form; therefore it should be in a format that the general public would understand. In its current form it is barely understood by tax professionals.
- 2) There are many different types of non-profits and each type is distinct from the other; therefore it seems appropriate to create a separate form 990 for each non-profit to address more specifically their distinct activity.
- 3) A Labor Union 501(c) (5) already provides public disclosure as required by the Department of Labor. The filing of an IRS Form 990 is simply a redundancy and an unnecessary expense and burden on such organization. In light of this fact, it seems sufficient for the IRS as it relates to Labor Unions to only be interested in distinguishing their exempt purpose income from their unrelated business income. This is accomplished currently by your requiring the reporting of income but allowing DOL Form LM-2 to be used as a substitution document for expenses. The IRS should not require Labor Unions to file Form 990 or at least in the alternative should continue to allow DOL Form LM-2 to be used as a substitution document.

Thank you for considering my comments.

Sincerely,

Richard Hoffman

**From:** [Phyllis Edans](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Please consider  
**Date:** Thursday, August 02, 2007 4:04:11 PM  
**Attachments:**

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Making the home city & state address information for officers, directors and employees available only to the IRS - ie, not open to public inspection

Many may choose not to serve in these capacities if their names & addresses are public information. Hopefully, this can be handled like the contributors is done currently.

Phyllis L. Edans, CPA, CAE

**From:** [Ted Cuppett](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Question  
**Date:** Friday, August 03, 2007 12:50:11 PM  
**Attachments:** [dh\\_logo.gif](#)

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Many tax-exempt hospice organizations operate inpatient facilities, which in certain states are licensed as hospitals. These facilities provide inpatient care, generally during the later stages of life principally for palliative care-related needs. Are such inpatient units considered hospitals for purposes of completing the new Schedule H? Thank you for your response.

***William T. Cuppett, CPA***

Member



**DIXON HUGHES** PLLC  
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**From:** [Samuel B. Magids](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Revisions to Form 990  
**Date:** Saturday, August 04, 2007 12:29:03 PM  
**Attachments:**

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Charitable organizations that meet all requirements of a charity should not object to the revisions to Form 990. Such non-objecting charitable organizations will give donors confidence in making contributions to such charitable organizations

Why? Charitable organizations should not be reluctant to report how and by whom they are being operated and the persons receiving benefits (how and the amount thereof). Contributions should be used at a high percentage (possibly at least 90%) to aid underprivileged, poor, and unhealthy people and worthwhile causes. Satisfactory and qualified charitable organizations should report on Form 990 how much of and for what purpose the contributions are being used. While churches are seeking that the IRS keep their 990 forms confidential, who besides the IRS will make the determination that the churches qualify as charitable organizations? I have concern that any church that supports Muslim jihads is not charitable but is attempting to overthrow all other churches and the U.S. Constitutional government.

I support that the IRS issue a certificate of a qualified charitable organization and notify media of its issuance. Can a donor rely solely upon the communication of the soliciting organization that contributions to it are tax deductible charitable contributions?

I would appreciate your response and care in following the above ideas.

**From:** [Gary Packwood](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Suggestion  
**Date:** Saturday, August 04, 2007 1:52:55 PM  
**Attachments:**

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I am writing to make a suggestion for the revision of the 990.

I suggest that all organizations who file a 990 be required to prominently display a notice on their publications and web sites that they (The name of the organization) is Exempt from Income Tax.

Thank You for this opportunity to comment

Gary Packwood  
Houston, Texas

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Get a sneak peek of the all-new [AOL.com](#).

**From:** [John McCrary](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** form 990  
**Date:** Sunday, August 05, 2007 5:57:54 PM  
**Attachments:**

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I believe the revised form is an improvement. I support complete information gathering on all non-profits as an aid toward deciding which entities should receive gifts. J. McCrary



**From:** [Patti Reiland](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Schedule F  
**Date:** Monday, August 06, 2007 11:35:21 AM  
**Attachments:**

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*Dear Sirs,*

*I'm concerned with more and more information required of Foreign Activities. I understand the U.S. law regarding a person or organization on the Specially Designated Nationals and Blocked Persons List and even agree with it. However as a religious organization our Ministry is concerned about countries that persecute Christians simply for their belief. For instance China, our Chinese office has had to move several times this past year in the middle of the night to avoid detection, capture or worse.*

*Are there plans to keep portions of Schedule F from having to be publicly disclosed? Or for that matter providing the address that grant money is sent to in China? The reporting of such is not the issue, rather the contact information where the individual can be traced is of concern.*

*Respectfully,*

*Patti Reiland*

*Patti Reiland*

*Legal & Contracts Coordinator*

*Crown Financial Ministries, Inc.*

*Phone: 770/534-1000 ext. 455*

**From:** [Jim Mattes](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:** [bbecker; mhatton.](#)  
**Subject:** DRAFT IRS Form 990 Comments  
**Date:** Monday, August 06, 2007 2:53:01 PM  
**Attachments:**

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To Whom It May Concern:

Grande Ronde Hospital has the following concerns regarding the draft IRS Form 990:

1. Schedule J, Section 1, Column (E): We believe that nontaxable expense reimbursements should be reported, but SHOULD NOT be included in compensation. To do so inflates and inflames compensation.
2. Schedule J, Section 3: We strongly believe that first-class travel, club dues, and personal residence should not be commingled. Club dues should not include service clubs. There should be a blank space to explain what is included. The public should not be misled into thinking payment of Rotary dues (for example) is country club dues or that when checking the box because of Rotary dues the public thinks the hospital is paying for first class travel or for a personal residence.
3. Schedule J, Section 4: We recommend that compensation arrangements with physicians who are bonused based on revenue production should be excluded. There should be a blank space to explain what is included.
4. Timing: The changes to the Form 990 are sweeping and will require that our hospital develop and implement mechanisms to capture data. Moreover, the IRS draft appears to need a lot of work. We urge you to delay implementation until January 1, 2009 or later.

Jim Mattes, President/CEO  
Grande Ronde Hospital  
Phone: 541-963-1454  
Fax: 541-962-2501

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**From:** [Jody Blazek](#)  
**To:** \*TE/GE-EO-F990-  
[Revision;](#)  
**CC:**  
**Subject:** Comments on 990 Draft  
**Date:** Tuesday, August 07, 2007 9:35:10 AM  
**Attachments:** [Blazek letter to IRS with revised pages.doc](#)  
[Revised Page 1.pdf](#)  
[Revised Page 8.pdf](#)  
[Revised Page 9.pdf](#)  
[Suggested Order of Parts and Schedules.doc](#)

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Comments on the June 14 990 Draft which we compiled in my office are attached. After we spent most of last week, and for myself, this past weekend, working on this, I cannot imagine how many hours you IRS folks spent developing the draft. What an effort! Thanks for requesting our comments.

Our first attempt to send this email was rejected due to the size. We were therefore, not able to incorporate our revised pages into the narrative. We hope it still makes sense.

*Jody Blazek CPA  
Blazek & Vetterling LLP  
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**Theresa Pattara and Lois Lerner**  
**Internal Revenue Service**  
**By email to:**  
[Form990Revision@irs.gov](mailto:Form990Revision@irs.gov)

Dear Theresa and Lois,

The revised Form 990 as released by the Internal Revenue Service June 14, 2007, will materially expand the information submitted annually by tax-exempt organizations. The design has many good features that foster the enhanced transparency desired by the Congress, Independent Sector's Panel on the Nonprofit Sector, and many others. In order to achieve this goal, however, the job of gathering the information and preparing Form 990 for filing will be much harder. We offer our suggestions on the proposed core form and schedules highlighted with bullet points following our reasoning for the change.

We particularly hope you will consider our revision of the Summary page, re-ordering of core parts and schedules, and reorganized Parts VII and VIII. Lois, you said in the announcement of the draft, "Most organizations should not experience a change in burden. However, those 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." Sorry, we expect the time and resulting cost to prepare the return will be significantly increased though we make suggestions for increases in thresholds and separation/combination of schedules that could help. Certainly if the new form is required for Form 990-EZ filers, the burden will be significantly increased as will the possibility for incorrect and incomplete filings for returns prepared by persons not well versed in the tax rules for tax-exempt organizations. We strongly suggest Form 990-EZ be maintained possibly with an increased revenue level of \$200,000 – 250,000 as described in our conclusion.

Our suggestions follow in order of the proposed Parts and Schedules including the pages for which we suggest redesign. We congratulate you and your IRS colleagues on an amazing job. It has been a challenge to evaluate and we thank you for the opportunity to make comments.

August 7, 2007

Jody Blazek CPA

**Part I – Summary.** Rationale for suggested revisions highlighted with bullets follow.

**Lines 1 and 2.** To evidence a nonprofit organization is operating to benefit its exempt constituency, and thereby qualifies for classification as a §501(c) tax-exempt entity, the information presented in the Part I summary should include both a description of the mission or tax-exempt purpose and a brief description of activities conducted to accomplish that goal. There should be sufficient lines to allow the organization to paint a picture of its essential functions. Nonprofit organizations are based on dreams of improving the human condition or achieving a social goal. They work to help children in need or feed the hungry, to save an endangered species, to enhance and improve a profession, and to address a myriad of other issues that benefit the common good of society as a whole or a group of persons with mutual interests. This part should convey that essence with a reference to the detailed description of exempt activities and program service accomplishments, that is relegated on the draft to the last page as Part IX (II). It is in Part IX (II) that the organization describes its activities in detail, explaining its accomplishments and the number of persons served, books published, research reports issued, students taught, and the like. Additionally, the addition of a column on this part to reflect revenue generated in connection with the top three exempt functions is a good idea.

- Summary should be reorganized as illustrated.
- Part IX should be renumbered to become the second page or Part II of core form.
- Activity or NTEE codes should be reflected on Part IX (II) if considered appropriate to allow for statistical comparisons of organizations performing similar functions. It seems that NTEE codes will be easier for most organizations to look up, because they are readily available on [www.guidestar.org](http://www.guidestar.org). The IRS has made no mention of how one might find an organization's activity code, although it is listed in the IRS Exempt Business Master File.

**Lines 3 and 4.**

- Remove these lines and replace with a reference to Part III (VI) that describes board structure, relationships, and governance policies.

**Line 5.** Disclosure of the number of employees, unaccompanied by an amount of their total compensation, is essentially a meaningless number. To compound the issue, many nonprofits have a significant number of volunteers, in addition to employees, that perform services integral to the operation of the organization. In such cases, the number of employees is not indicative of total work involved in conducting the activities. For example, local Girl Scout programs are primarily conducted by volunteers. Part VIII (IX) repeats this information so that disclosure of the number on the front page is unnecessary and is duplicative.

- This line should be removed.
- If the line remains, line 5a should report total employees, line 5b report total compensation, line 5c total number of volunteers, and line 5d the value of in-kind services donated by volunteers.

**Lines 6 and 7.** These lines should also be replaced with a reference to Part II (VII) where details are presented. The persons who manage as well as those that conduct the daily chores of a nonprofit can, and should, be paid a decent and reasonable wage for the services they perform. Indeed, the vast majority of persons who are compensated by nonprofits are reasonably, if not inadequately paid, for the work they perform. The tone of the compensation questions and ratios on the front page perpetrate the suspicion that nonprofit organizations operate to benefit those that control them. Though this theme has been put forth by skeptics based on a few flagrant abuses highlighted in the press in recent years, it is not the modus operandi of the majority of tax-exempt organizations.

The IRS Executive Compensation Compliance Initiative during 2005-2007, looked at 1,826 organizations. Reporting errors were found, but penalties were only imposed on 40 individuals found to be receiving excessive compensation and benefits.<sup>1</sup> The reports said you found “high compensation amounts were generally substantiated based on comparability information.” Thus the disclosure – on the front page – of the number of individuals receiving compensation in excess of \$100,000, plus the reportable compensation of the highest paid person, smacks of sensationalism. Focusing attention on the single person who has the highest compensation could be misleading for a number of reasons. His or her tenure with the organization could be longer than others, for example. A better version of his or her comp can be provided when it is viewed in relation to other highly paid persons displayed on Schedule J (G). The recommendation is again that the Summary refer the reader to the part on which a list, with names and amounts, of all officials, plus key and highly paid employees and contractors is presented.

- Replace these lines with a reference to Part II (VII) and Schedule J (G).
- If line 6 remains as it is, the words should read “number of individuals receiving reportable compensation in excess of \$100,000.”
- If line 7 remains, the amount should be relabeled total compensation and come from Schedule J (G) where overall compensation is reported. The number now reflected comes from Part II (VII) which is equivalent to reportable Medicare wages and does not include non-taxable benefits or deferred compensation. See recommendation for Part II (VII) that suggests all persons with compensation of \$100,000 or more (indexed for inflation) be reported on Schedule J (G) rather than the complicated list now provided in Lines 6-9 of Section B.

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<sup>1</sup> EO Update March 2, 2007 contains a 10-page report of the study which includes a recommendation that the redesign project focus on reducing the number of places the same information (about compensation) is reported on the form.

**Lines 8, 19, and 24.** These lines proposes ratios to evaluate a nonprofit organization with performance indicators or metrics. Given the extraordinary variation in nonprofit operations, finances, and other circumstances, the ratios will not yield indices with which to compare one organization to another. The specific flaws in each of the ratios follow:

**Part I, Line 8b.** This line calculates officer, director, trustee and key employee compensation reported as program expense as a percentage of total program expense. Practices for allocation of functional expenses vary from one nonprofit to the next based on the organization's individual circumstances. Officer compensation may be reported in all three of the functional cost columns on line 5 of Part V (IV). Such an allocation is common for organizations whose officials perform all three functions, particularly modest ones. For major institutions, officer compensation is instead customarily reported in Column C as Management & General Expense. A ratio that compares only officer comp in the Program Service Expense, Column B, to the total of Column B would omit all compensation of such officials. Clearly the suggested ratio will be inadequate, inconsistent, and misleading and would be like an *oranges to apples* comparison in many circumstances.

**Part I, line 19b** – On this line, the organization compares its fundraising costs to the results of that effort. The individual circumstances of each nonprofit often make a comparison of fundraising costs to revenues flawed and inappropriate. For example, consider a new organization that has launched its initial fundraising campaign. Assume it takes three years for the effort to yield a reasonable level of public support. Comparing its fundraising costs to donations realized during the first year or two would likely yield a very poor, and undeserved, result by comparison to a mature organization. The Better Business Bureau/Wise Giving Alliance guide for calculating this ratio suggests there may be other situations in which the ratio may be flawed, such as when one organization raises money that is restricted to benefit another organization so that the revenue is not reported on the entity paying the bills for the fundraising effort.<sup>2</sup> When an organization's ratio fails to meet the 65% of costs devoted to programs, the BBB/WGA prompts organizations to provide explanations when conditions exist that cause its ratio miss that mark. The Summary provides no opportunity for explanation. If a fundraising efficiency ratio is desirable to provide benchmarks or metrics for nonprofits, it should be tailored for the varying types of nonprofits and presented on a separate part that allows explanations of special circumstances.

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<sup>2</sup> Go to [www.give.org/standards/newcbbbstds](http://www.give.org/standards/newcbbbstds).

**Part I, line 24b.** This line compares the total of current operating expenses to the organization's fund balance. Again the results of this calculation will not be comparable across all nonprofits. Only if the nonprofits could be grouped by discipline, age, location, tax classification, or other factors would this number be useful. For example, a typical §509(a)(3) supporting organization would annually spend a relatively modest portion, and in the case of an asset-holding organization, zero percent, of its fund balance whereas the nonprofit it supports might spend one-half or more. An endowed institution's spending ratio would also be very different from a human service organization that has modest working capital and depends upon government and federated funding entities to provide its annual revenue. Again, unless these differing conditions are taken into account, the ratio would yield flawed comparisons.

- Remove the ratios.
- If a compensation ratio is retained, it should compare the total compensation of officials and highly paid persons in relation to total compensation for all persons performing services for the organization.

**Line 9.** The revised Summary refers the reader to Part IV (III), Statement of Revenue, where unrelated business income is segregated and identified. Listing the information in this part is duplicative and does not describe the source of the unrelated business income. Part VIII (IX) asks whether the organization has unrelated business income and if so, was Form 990-T filed. It seems more appropriate to report the amount of net unrelated business taxable income in connection with that question. Additionally, since §501(c)(3) organizations are now required to have Form 990-T available for public inspection, it seems that the information could be found there as well.

- This line should be deleted.
- The amount of net unrelated business taxable income could be reported in association with the 990-T filing question in Part VIII (IX).

**Lines 11-20.** For the same reasons expressed for lines 8, 9, 19b, and 24b, a comparison of functionally allocated expenses to total expenses without room for an explanation is prejudicial against organizations with special circumstances and should be eliminated. A more informative comparison would be between current year totals and last year's totals.

- The percentage column should instead reflect last year's totals.

**Line 21.** Form 990 is to be prepared in accordance with the financial reporting practices of the organization so that terms used by the accounting profession should be used. Line 21 (renumbered on the revised Summary as line 14) should be entitled "Excess of revenues over expenses," rather than "Net Income," to conform to the title used on financial statements presented under generally accepted accounting practices.



- Change title of Line 21 (14).

**Lines 25 and 26** - The prominent position of “gaming” in Part I suggests that a significant portion of Form 990 filers conduct such activity. This fact is not evidenced by the author’s experience. The same information is presented in Schedule G (D).

- Remove this information but add Summary reference to Schedule G (D).

## **Part II - Compensation and Financial Arrangements with Officials**

This part intends to foster transparency by listing all relevant individuals in one comprehensive schedule. It names persons who manage(d) the organization, plus the top five highest compensated employees all on one page. Unfortunately, compensation presented is only equal to reportable Medicare wages on Form W-2 or non-employee compensation reported on Form 1099. You state this method removes ambiguity and uncertainty. However, it results in an understatement of compensation by the omission of non-reportable benefits, such as health insurance and pension contributions paid by the employer. For all those nonprofits with officials compensated below the threshold for Schedule J (G), this Part presents an incomplete picture of compensation paid. Additionally the requirement that fiscal year reporting organizations report the W-2 amounts will remove the ability to tie the totals on line 1b of Part II to any lines in Part V (IV).

Indeed nonprofits can, and do often, function in competition and concert with for-profit organizations. When such situations exist, it is the role and responsibility of the IRS to review and potentially examine such relationships to assure no private benefit inures to the self-interested individuals. We think the five-year period for evaluating relationships is excessive. Gathering the information will be burdensome for many organizations.

Section B will indeed be burdensome, particularly for those many modest organizations that lack such relationships. It is for this reason that I recommend Section B lines be moved either to Part III (VI) and Schedule J (G) (subject to the more than \$100,000 threshold). The following changes should be made to allow disclosure of the total economic benefit provided for persons compensated by nonprofit organizations.

- Redesign this Part to reflect reportable compensation (if that is still desirable) plus nonreportable benefits including deferred compensation to arrive at total compensation. The more detailed display and policy questions would still be suitable for the highly compensated.
- Totals for Section A column (d)-(g) should be removed because the amounts will not always tie to other parts of the form.
- Schedule J (G) should be completed for all persons receiving reportable compensation in excess of \$100,000 (indexed and tied to current \$4958 threshold floor for Intermediate Sanction purposes), including amounts received from related organizations. Add this direction at the top of Section B to replace the confusing lines 6-9.

- Lines of Section B, Part II, except for line 10, should be moved to Schedule J (G).
- The titles in Line 3 of Section B should say “Officers, directors, and key employees” rather than “CEO, Executive Director, Treasurer and CFO” to achieve full disclosure.
- The question in Section B, Line 3 addresses two issues: level of governance procedures applied to compensation decisions and adherence to rebuttable presumption standards under §4958. Its placement here signals you hope all 990 filers will follow these procedures for establishing reasonableness of compensation paid. If so, this line should be moved to Part III (VI).
- If Section B is retained, Line 5 should be applicable only to persons for whom compensation is reported in Section A, and not to volunteer, uncompensated persons and Lines 6-9 should be eliminated because they are too complicated and will lead to mistakes in reporting.
- Line 10b presents total number of independent contractors paid more than \$100,000, including those reported on 10a. Parenthetical phrase should read (including those in 10a and 5f.)

### **Part III – Governance, Management, and Financial Reporting**

Part III (VI) will be troubling to some because the information requested represents a monumental reach beyond the tax code and regulations setting forth standards for maintaining tax exempt status. This part is proposed to meet the mandate from Congress and others that information reporting foster “transparency” for tax-exempt organizations. In their proposed instructions to this part they say, “All organizations must answer each question in section III (VI) even though certain policies and procedures may not be required under the Internal Revenue Code.” The discussion draft entitled *Good Governance Practices for 501(c)(3) Organizations* announced by Steve Miller this spring more fully presents this position.<sup>3</sup> No one would say that it is inappropriate for a nonprofit organization – the very essence of which is to operate to benefit its constituents rather than those that control it – to have a conflict of interest policy. The Federal tax code, for many categories of tax-exempt organizations, requires that the organization NOT operate to provide private inurement to its insiders. The issue here is whether the proposed questions elicit adequate information to evaluate satisfaction of that requirement. Additionally, the fact that U.S. income tax reporting is based on a self-assessment system, one could suggest this part is inappropriate. Instead a tax compliance checklist that contains these questions could be recommendation by each organization for an internal review to facilitate self-regulation.<sup>4</sup>

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<sup>3</sup> Go [www.irs.gov/charities/charitable/article/0,,id=167626,00](http://www.irs.gov/charities/charitable/article/0,,id=167626,00)

<sup>4</sup> See checklists in Chapter 19 of *Tax Planning and Compliance for Tax-Exempt Organizations* 4<sup>th</sup> Edition, John Wiley & Sons, Hoboken, New Jersey.

**Line 1a.** This line should clarify if non-voting members are counted. The instructions to Column (B) on Part II (VII) say “members of advisory board are not considered directors or trustees.”

- Line 1a should read “Enter the number of governing body members, including both voting and nonvoting members.”
- New line 1b (based on Question 75a from 2006 Form 990) could be added to read, “Enter the total number of officers, directors, and trustees permitted to vote on organization business at board meetings.”

**Line 1b.** This line could change to clarify the meaning of independent in the form itself.

- Enter the number of independent, or uncompensated and unrelated to those that are, members of the governing body.

**Lines 3-5 and 7b.** These lines should acknowledge the possibility of a paperless organization.

- Eliminate the word “written.”

**Line 6.**

- Before this line, insert Lines 11 and 12 from Part VII (VIII) regarding investments and transactions with related organizations.

**Line 8.** From a good governance standpoint, the relevant and appropriate part of this line asks if the organization has independent accountants that prepare a “compilation, review, or audit.” Accountants providing a review or audit cannot perform the internal or management function of maintaining the organization’s financial books and records. The answer to the question, “Does an officer, director, trustee, employee or volunteer prepare the organization’s financial statements?” will almost always be yes. One wonders why the question is asked. If the question remains, the word “bookkeeper” might be added.

- Omit first sentence of question 8.

**Line 10.** Increasingly, organizations that engage independent accountants to audit their financial reports and prepare their tax return have their governing body review the Form 990 before it is filed. The approval is, however, often delegated to the finance committee or financial officer as is acceptable under fiduciary responsibility standards. Those standards approve delegation to persons specially trained to consider certain matters, such as investment advisors.

- This question could add the phrase, “or persons designated by the board to perform that oversight” after the word body.

### **Bottom of this Part.**

- Add a caveat regarding questions asked: “Policies surveyed in this part are recommended for good governance, management, and financial oversight, but are not required.

### **Part IV – Statement of Revenue**

Totals should be provided on this part for “Investment income” and “Other revenue” in order to tie to the totals on the Summary. The parenthetical instructions to complete line 15 of Part I now reflected on the summary page indicate Rents and Royalties are to be treated as “Other revenue.” Such revenues normally represent exempt function or investment income. Additionally, the instructions for line 15 of Part I erroneously include line 3 of Part IV (III) (membership dues) which has already been reported on line 13 of Part I.

- Clarify that lines 1b and 1c should reflect gross receipts.
- Add line under line 3 to highlight total membership fees.
- Add total for investment income after line 10 (line 11) and total for other revenue after line 13 (line 15).
- Revise lines 14 and 15 of Part I to reference the new totals created on Part IV (III).

### **Part V - Statement of Functional Expense**

The additional lines for expenses in this part are welcomed. See box reflecting thresholds and consider whether line 3 should refer to completion of Schedule F (L) and if so, should the threshold be more than \$5,000 to match lines 1 and 2.

- Re-title Line 12 as “advertising and promotion.
- Provide room for more expense descriptions by adding as many lines to item 23 as page allows.

### **Part VI - Balance Sheet**

This part adds no reporting burden and is fine.

## **Part VII - Statements Regarding General Activities**

Suggestions of reordering these questions are attached. The rationale for rearrangement is to group items with similar import beginning with activities that require schedules be prepared listed in alphabetical order by schedule. Next come the questions germane to different categories of §501(c).

- Questions 6b, 6c, and 6d should be moved to Schedule K (N).
- Word “written” should be removed from lines 11 and 12 which are moved to Part III (VI).
- Line 13 should be moved to Part VIII (IX) in order to be consistent with the titles of the parts.
- A question should be added in order to prompt the completion of Schedule A for §501(c)(3) organizations.
- Question 2 should be revised to read “complete Part VIII of Schedule D (C).” If the organization answers “yes,” merely because it held a conservation easement during the year, then it may not necessarily have a non-cash contribution to report on Schedule M (combined with Schedule B).
- Question 4 should be revised to read “complete part IX of Schedule D (C).” We do not understand why Schedule M (combined with Schedule B) would be required merely because the organization maintains donor advised funds.
- Questions 1 and 2 from Part VIII (IX) should be added to this part since they prompt the completion of Schedule C (K).

## **Part VIII - Statements Regarding Other IRS Filings**

A suggestion for reorganizing this part is also illustrated. The tax compliance requirements now listed in Part VIII (IX) are expanded in Form order. The questions pertaining to issues of concern for particular categories of tax-exempt organizations are drawn together and listed in code section order on Part VII (VIII).

- Rename title “Statements Regarding Disclosures and Other IRS Filings” since questions are presented which pertain to disclosures made to donors related to contributions received rather than forms required to be filed with the IRS.
- Add questions which prompt the filing of additional forms: TDF 90-221, 926, 1098-C, 1120-POL, 4720, 5471, 5500, 8621, 8858, 8865, 8870, 8872

## **Part IX - Statement of Program Service Accomplishments**

This part can be improved as follows:

- Move this part to the 2<sup>nd</sup> page of the core form (Part II).
- After line 1, add back first two sentences of Part III (of Form 990 as it exists today) that point out the “return is available for public inspection and serves as the primary source of information about a particular organization, etc.”
- Delete line 2 that asks for the most significant program service accomplishment as the top three accomplishments are summarized in Part I (as redesigned) and expanded later in this part.
- At the end, add the question, “Did the organization receive donated services or use of materials, equipment or facilities at n charge or at substantially less than fair value? If “Yes,” you may indicate the value of these items here. Do not include this amount as revenue in Part IV (III) or expense in Part V (IV).

## **Part X – Signature Block**

You will note that there is plenty of room after the new Part IX to add the signature block underneath.

## **Schedule A Supplementary Information for Organizations Exempt Under Section 501(c)(3)**

**Cash vs. Accrual Issue.** The removal of the requirement that §509(a)(1)/§170(b)(1)(A)(vi) organizations calculate their public support ratio using only the cash method is a welcome change. It can be hoped that the IRS is able, as it indicates it plans, to convince the Treasury Department to change the regulations to allow the accrual method for reporting revenues for the §509(a)(2) test.<sup>5</sup> The separate schedule for §509(a)(2) organizations acknowledges the differences and should foster accurate calculations for the two distinct tests. The other key component of the revision uses five, rather than four,<sup>6</sup> years for this public support test. Again, a regulation change will be needed. It is presumed this change will allow substitution of this schedule for the Form 8734 now filed by new organizations whose public status was provisional under the advance ruling system.

**Part I, line 11h.** For supporting organizations, the information requested for organizations they support will be troublesome for those that support a class of beneficiary organizations, such as all public schools in Cleveland, Ohio. Instructions for line 11h should allow a “yes” check for supported organizations whose charters list beneficiaries by class.

**Part II.** The biggest problem with new Part II involves the line on which business income not treated as unrelated under section 513 as public support<sup>7</sup> is reported. Such revenue comes from the sale of donated goods and low-cost articles, fees for food service, housing, and other amenities provided for the convenience of its members, students, patients, officers, and employees, bingo, conventions, fairs, and expositions, and cert sponsorship payments. For many nonprofits, this type of revenue represents a substantial portion of their support. The current instructions provide such revenue is reported on line 17 and therefore not treated as support for §170(b)(1)(A)(vi) organizations.<sup>8</sup> The revised form must be clarified as follows:

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<sup>5</sup> Reg. §1.509(k)

<sup>6</sup> Reg. §1.509(a)-3(c) says “four taxable years immediately preceding the current taxable year.”

<sup>7</sup> According to IRC§509(d)(2).

<sup>88</sup> Regs. 1.170A-9(e)(7) and §1.509(a)(2)(ii). Note that for §509(a)(1) purposes, the fair value of the donated goods is a contribution and therefore included in public support, but donated services of volunteers is not counted.

- The instructions to Line 9 could clarify the definition of net unrelated business activities. What expenses are allowed in calculating net income? Additionally, are losses allowed on this line, or should -0- be reported instead?
- Line 10 of Part II should be omitted because it is NOT counted as Total support for this purpose. Instead, the instructions for line 13 should indicate revenue from such sources is reported on that line.
- Line 11, Other income, for both parts could be expanded with examples. Telling a lay person to report “support as defined in section 509(d) that is not otherwise reported may not yield good results.
- Clarify whether line 13 on Part II should include only the current year or all five years of exempt function income.
- Line 19 indicates that in order to meet the Facts and Circumstances test, both lines 14 and 15 must be 10% or more. However, the Regulations<sup>9</sup> allow an organization which qualifies under this test to be treated as publicly supported for the current year and the succeeding year. Therefore, line 19 should be revised to read “line 14 or line 15 is 10% or more” similar to line 18.

## **Schedule B - Schedule of Contributions**

**Non-cash donations.** The description of non-cash contributions on this Schedule should be combined with Schedule M. A column to enter one of twenty-three codes identifying the type of property donated can easily be added to Schedule B, Part II. Column (c) of Part II of Schedule B could be revised to add a description of valuation method. If indeed the information is used to evaluate the need to audit the organization and its donors, connecting the object donated with the donor is preferred.

What Schedule M (B) accomplishes is to reflect the total number of art works. The intended use of the quantification of categories of noncash donations is not explained, but the information could be gathered from the addition of codes to Schedule B. The combination of names with codes on Schedule B might provide a better auditing technique than the display of information on Schedule M (B). Lastly, the questions asked on the bottom of Schedule M (B) regarding the filing of Forms 1098-C and 8282 are also asked on Part VIII (IX).

- Schedule M should be eliminated by combining important elements with Schedule B.

**>2% Exception.** Many organizations classified as public charities under §170(b)(ii)-(iv) that file Form 990 can also qualify under a §170(b)(1)(A)(vi) due to the public sources of their revenue, including private schools and hospitals. The instructions should emphasize such organizations also qualify to only report on Schedule B contributors of amounts in excess of 2% of total contributions.

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<sup>9</sup> Regs. 1.170A-9(e)(4)(ii)



## **Schedule C - Political Campaign and Lobbying Activities**

Activities directed at changing public affairs are often referred to as “Political Activities.” The title to this Schedule would clarify the distinction made in the tax rules if the title “Political Campaign” was changed to “Influencing Elections.” Following that thought, the parts should be labeled as follows:

- Part I-A should be labeled “Influencing Elections.”
- Part I-B should be labeled “Lobbying.”
- Part I-C should be labeled “Expenses to Influence Elections.”
- Add a question to Part I-C that asks “Was the organization required to file Form 8871 to establish exemption?”

## **Schedule D - Supplemental Financial Statements**

**Attachments:** This schedule replaces plain paper attachments used in the past to provide details for certain types of assets. This part, perhaps more than any other, illustrates the IRS’s resolve to disallow attachments for electronically filed returns. Dependent upon its circumstances and type of assets, a wide array of organizations may find this schedule does not provide sufficient lines to do complete reporting. Take “other investments,” as an example. For diversification, a major institution may have funds invested in 10-20 different hedge funds that this schedule and the instructions anticipate should be listed. The issue here is whether the instructions should prompt description of the top four items with others being reported as a total similar to the method for reporting exempt function activities on the existing Part III of Form 990.

**Parts II and V.** Since most nonprofits do not use MACRS, in the interest of reducing attachments, the erroneous inclusion of Form 4562 in Form 990 should be eliminated. This directive would not replace the requirement that those following the method for Form 990-T purposes attach Form 4562 to Form 990-T.

- Add to the description “Form 4562 not required.”

**Part XII - Endowment Funds.** Presenting five years of financial information about endowments will be burdensome to some organizations during the first four years this part is completed. If this part is intended to demonstrate the quality of fiduciary oversight, shouldn’t the same information be requested for other types of restricted funds? Better yet, the following question could be added to Part III (VI), “Does the organization adhere to covenants placed on its temporarily and permanently restricted assets?”

**Part XIII - Reconciliation of Net Assets.** This part should be completed as follows:<sup>10</sup>

Part XIII Reconciliation of Tax-to-Book Change in Net Assets
1. Total Revenue (Part IV, line 14 column (A) )
2. Total Expense (Part V, line 26, column (A) )
3. Excess or (deficit) for the year (line 1 minus line 2)
4. Adjustments to arrive at Book change in net assets
5. Net unrealized gains/losses on investments
6. * Donated services and use of facilities
7. * Investment expenses
8. Prior period adjustments
9. Other (specify) _____
10. Total adjustments (net)
11. Excess or (deficit) for the year per Books (Part VI Line 34(b) - 34(a))

### **Schedule F - Statement of Activities Outside the U.S.**

Part I should provide more room for describing directly conducted activities. The titles to the columns should also reflect the fact that this schedule will be filed by non-(c)(3) organizations. It is amazing how difficult it is to fit requested information into the small spaces on many of the schedules. Column (b) asks for the number of accounts or offices and currently occupies more room than necessary. Parenthetically this combination of factors seems a bit odd. Does the IRS intend to establish cooperating agreements with countries indicated? The number of bank accounts should be reflected on TDF-90-221. The absence of a question about the U.S. Treasury best practices for transfers to foreigners, both for-profit and nonprofit, is surprising. Question 2 of Part I could include this reference.

- The threshold for providing detailed information about grantees –both organizations and individuals should be raised to at least \$25,000.
- Titles to Part II and III should prompt filer to designate when these parts are not applicable in the head note to the part.
- Columns (d) and (e) of Part I could be combined and entitled “Type of activity - chapters of international business league, water-well drilling, pharmaceuticals for the poor, agricultural consulting, etc. to allow more space.

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<sup>10</sup> This reconciliation prepared by and used with permission from Julie Floch CPA, Eisner & Company, New York.

## **Schedule G - Supplemental Information Regarding Fundraising Activities**

This schedule embodies two distinct types of fundraising activities and should be separated in the interest of reducing the number of pages filed. Most nonprofits that conduct fundraising events do not conduct gaming activities and vice versa. To reduce the reporting burden, the threshold for filing the suggested separate schedule containing only Parts I and II could be raised to \$25,000. Specific suggestions for reporting Events in Part II also follow:

- Part III to report Gaming should be a separate schedule.
- Line 3 should contain a parenthesis that explains it is a net number (lines 1-2).
- The lines should be renumbered to add as line 4 “Cost of Direct Donor Benefits.”
- Line 9 of Part II should be referred to line 11a of Part IV (III), Statement of Revenue. It is presumed that the fundraising component of events will continue to be reported as expenses on the Statement of Functional Expense.

## **Schedule H – Hospitals**

Comments on this Schedule are being presented by persons with relevant experience.

## **Schedule I - Supplemental Information on Grants and Other Assistance to Organizations, Governments and Individuals in the U.S.**

The information requested in this Schedule presents several issues. The number of lines provided, particularly in Part II, will be insufficient for many grant-making organizations. You should consider raising the threshold for attaching this part, particularly if there is an interest in limiting the need for attachments. Since recordkeeping and relationship questions are asked in Part I, the need to audit the information will be signaled by Part I, not necessarily by the information listing in Part II. Requiring the EIN for all tax-exempt grantees will present a significant burden for some organizations.

- Raise threshold for attaching this schedule to \$25,000 or more.
- Design for column (h) key words or codes to achieve some consistency in the characterization of the grants paid by discipline or cause.
- Fill the page with more lines for Part II.

## **Schedule J - Supplemental Compensation Information**

Comments on this Schedule are being presented by other persons.

## **Schedule K - Supplemental Information on Tax Exempt Bonds**

Comments on this Schedule are being presented by persons with relevant experience.

## **Schedule L - Supplemental Information on Loans**

This schedule should at last remedy those many 990 filers who omit loan information requested in the instructions and presents no additional reporting burden.

## **Schedule M – Non-Cash Contributions**

This schedule will be administratively burdensome. It is the responsibility of the donor to value non-cash property for income tax purposes. Though the charitable recipient acknowledges receipt of the donation on Form 8283, the charity does not necessarily record the donation at the same amount. Donated clothing and household goods, as an example, are not customarily recorded item by item by the charity. Instead, revenue is reported at the sales proceeds actually received for selling the inventory. In other instances, particularly for food and used clothing not in “good or usable condition” that are not to be resold, the goods are recorded according to a per pound value.

Column D will present a difficult, if not impossible, task of specifically identifying those items that received as donations during the year and those on hand at year end. Take for example, publicly traded securities. Assume the organization that already holds shares of IBM receives additional IBM shares that are deposited with its investment custodian and not tracked by shares. Used clothing or food inventory items present the same problem. Unless there is some significant purpose in gathering this data, it should be eliminated.

- Eliminate Schedule M and add “Type of Donation” code to Schedule B. See discussion for Schedule B.
- Add donated service/facility use bullet to page 1 Summary to highlight resources not reported as revenue.

## **Schedule N - Liquidation, Termination, Dissolution of Significant Disposition of Assets**

- Clarify the first sentence at the top by replacing the word **any** with **its only** activities.
- Allow by instructions reporting “N/A” regarding fair market value information in column (c) of Parts I and II when transaction involved is a donation to another tax-exempt organization. In such cases, the terminating organization should not be required to obtain valuations. It is the responsibility of the recipient organization to obtain such information to record the donation for financial reporting purposes.

## **Schedule R - Related Organizations**

This schedule adds no burden and is fine.

## **Glossary**

Notification should be placed on the form that definitions can be found in the glossary. Items included therein should be identified by either making the terms bold or in a different type. Lastly, the instructions can refer to the glossary when using terms contained in the glossary rather than repeating the definition.

## **Conclusions**

The burden of completing the revised form will undoubtedly increase. The Blazek & Vetterling tax staff estimates that fees for preparation of Form 990 may increase 50% at a minimum and in some cases double for time required to provide enhanced details. Suggestions of increased thresholds, particularly simplification of the Schedule J (G) attachment level, would ease the burden somewhat. A \$25,000, rather than \$5,000, threshold for completion of Schedule F (L) seems reasonable, particularly if the Form 990-EZ is not maintained. The suggested consolidation of Schedules B and M removes duplicated information. Most significantly, the reordering of the schedules to track the core form plus reorganization of parts VII (VIII) and VIII (IX) will enhance form flow and understanding for the preparers.

The most important threshold question not yet answered is whether Form 990-EZ will remain and it certainly should. The lower level of \$25,000 should also be retained, with a possible increase to \$200,000 on the top revenue side. Asset level could remain at \$250,000. Annual preparation of the IRS return is a good burden that disciplines the nonprofit to keep adequate financial records and maintain other compliance filings. Questions would have to be added to Form 990-EZ to prompt filing of Schedules A, B, E (J), G (D) (plus schedule created to bifurcate G for gaming), I (F), L (H), N (O) and R (M) where applicable, plus a condensed version of the compliance questions in Part VIII (IX). A parallel and laudable goal would be to design a Form 990 for non-501(c)(3) or (4) filers.

Before the draft is cast in stone, specialists in the sector and the IRS should spend time reviewing the new form side-by-side with the instructions with a goal of making the form self-contained. The reliance on instructions cripples the reporting system. Agreed, the rules are complex and often need explaining, but I routinely review 990s of prospective clients completed with total disregard for the instructions.

Lastly, the IRS should request the regulation change that would introduce a universal requirement for electronic filing.

## Form 990 Draft June 14, 2007

### Suggested Order of Core Form Parts

<b>Part Description</b>	<b>Recommended</b>	<b>IRS draft</b>
Summary	I	I
Statement of Program Service Accomplishments	II	IX
Statement of Revenue	III	IV
Statement of Functional Expense	IV	V
Balance Sheet	V	VI
Statements Regarding Governance, Management, and Financial Reporting	VI	III
Compensation and Other Financial Arrangements With Officers, Directors, Trustees, Key Employees, Highly Compensated Employees, and Independent Contractors	VII	II
Statements Regarding General Activities	VIII	VII
Statements Regarding Other IRS Filings	IX	VIII
Signature Block	X	X

### Suggested Order of Schedules

<b>Schedule Description</b>	<b>Recommended</b>	<b>IRS draft</b>
Supplementary Information for Organizations Exempt Under Section 501(c)(3)	A	A
Schedule of Contributors	B	B
Supplemental Financial Statements	C	D
Supplemental Information Regarding Fundraising Activities	D	G
Non-Cash Contributions	E	M
Supplemental Information on Grants and Other Assistance to Organizations, Governments, and Individuals in the U.S.	F	I
Supplemental Compensation Information	G	J
Supplemental Information on Loans	H	L
Hospitals	I	H
Schools	J	E
Political Campaign and Lobbying Activities	K	C
Statement of Activities Outside the U.S.	L	F
Related Organizations	M	R
Supplemental Information on Tax Exempt Bonds	N	K
Liquidation, Termination, Dissolution, or Significant Disposition of Assets	O	N



**Part VIII Statements Regarding Activities**

		Yes	No																
<b>1</b>	Is the organization exempt under 501(c)(3)? If "yes," complete Schedule A. ....																		
<b>2</b>	Is the organization required to attach Schedule B, Schedule of Contributors? .....																		
<b>3</b>	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 C and Schedule M (if required). ....																		
<b>4</b>	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 C. ....																		
<b>5</b>	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 C. ....																		
<b>6</b>	Did the organization provide credit counseling, debt management, credit repair, or debt negotiation services? If "yes," complete part XI of Schedule C. ....																		
<b>7</b>	Does the organization hold assets in term or permanent endowments? If "yes," complete part XII of Schedule C. ....																		
<b>8</b>	Did the organization operate, or maintain a facility to provide hospital or medical care? If "yes," complete Schedule I. ....																		
<b>9</b>	Is the organization a school as described in Section 170(b)(1)(A)(ii)? If "yes," complete Schedule J. ....																		
<b>10</b>	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 K. ....																		
<b>11</b>	Did the organization engage in lobbying activities? If "yes," complete Schedule K. ....																		
<b>12</b>	During the year, did the organization conduct any of the following outside the U.S.?																		
<b>a</b>	grantmaking, fundraising, trade, business, or program service activities? .....	<b>12a</b>																	
<b>b</b>	maintain an office, employees, or agents? .....	<b>12b</b>																	
<b>c</b>	maintain an interest in, or signature or other authority, over a financial account? .....	<b>12c</b>																	
If "yes," to any of these questions, complete Schedule L.																			
<b>13</b>	At any time during the year,																		
<b>a</b>	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," complete Schedule M. ....	<b>13a</b>																	
<b>b</b>	Was the organization related to any tax-exempt or taxable entity? If "yes," complete Schedule M. ....	<b>13b</b>																	
<b>c</b>	Did the organization conduct all or a substantial part of its exempt activities through or using a partnership, LLC, or corporation? .....	<b>13c</b>																	
<b>d</b>	if "yes," identify below the name and primary activity of such partnership, LLC, or corporation in which the organization's ownership or control was 50% or less (attach additional pages if necessary):																		
<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:30%;">Name</th> <th style="width:30%;">Primary Activity</th> <th style="width:10%;">Ownership %</th> <th style="width:30%;">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> </tbody> </table>		Name	Primary Activity	Ownership %	Type of Entity														
Name	Primary Activity	Ownership %	Type of Entity																
<b>e</b>	Was 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? .....	<b>13e</b>																	
<b>14</b>	Did the organization have any tax-exempt bonds outstanding at any time during the year? If "yes," Complete Schedule N. ....	<b>14</b>																	
<b>15</b>	<b>501(c)(3) and 501(c)(4) Organizations</b> Check box if not one of these organizations. <input type="checkbox"/>																		
<b>a</b>	During the year, did the organization engage in an excess benefit transaction with a disqualified person? .....	<b>15a</b>																	
<b>b</b>	Did the organization become aware that it had engaged in an excess benefit transaction with a disqualified person during a prior year? .....	<b>15b</b>																	
<b>c</b>	If "yes," to 15a or 15b, complete the table below (attach additional pages if necessary):																		
<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:30%;">Name of Disqualified Person</th> <th style="width:40%;">Description of Transaction</th> <th style="width:30%;">Corrected? (Y/N)</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>		Name of Disqualified Person	Description of Transaction	Corrected? (Y/N)															
Name of Disqualified Person	Description of Transaction	Corrected? (Y/N)																	
<b>d</b>	Enter the amount of tax imposed on the organization managers or disqualified persons during the year under Section 4958. ....	<b>15d</b>																	
<b>e</b>	Enter the amount of tax on line 5d reimbursed by the organization. ....	<b>15e</b>																	
<b>16</b>	<b>501(c)(7) Organization.</b> Enter:																		
<b>a</b>	Initiation fees and capital contributions included on Part IV, line 14 .....	<b>16a</b>																	
<b>b</b>	Gross receipts, included on Part IV, for public use of club facilities .....	<b>16b</b>																	
<b>17</b>	<b>501(c)(12) Organization.</b> Enter:																		
<b>a</b>	Gross income from members or shareholders .....	<b>17a</b>																	
<b>b</b>	Gross income from other sources (Do not net amounts due or paid to other sources against amounts due or received from them) .....	<b>17b</b>																	



**Part IX Statements Regarding Disclosures and Other IRS Filings**

		Yes	No	N/A
<b>1 a</b>	Did the organization provide goods or services in exchange for any contribution of \$75 or more? .....			
<b>b</b>	If "yes," did the organization notify the donor of the value of goods or services provided? .....			
<b>2 a</b>	Did the organization solicit any contributions that were not tax deductible? .....			
<b>b</b>	If "yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible? .....			
<b>3 a</b>	During the year, did the organization maintain a foreign bank account or have foreign investments? .....			
<b>b</b>	If "yes," has it filed other forms related to such investment(s) for this year (TDF 90-221, 926, 5471, 8621, 8858, 8865)?			
<b>4 a</b>	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. <b>4a</b>			
<b>b</b>	If at least one, did the organization file all required employment tax returns? .....			
<b>5 a</b>	Did the organization have gross unrelated business income of \$1,000 or more during the year covered by this return? .....			
<b>b</b>	If "yes," has it filed a Form 990-T for this year? .....			
<b>6 a</b>	Is the organization filing Form 990 in lieu of Form 1041? .....			
<b>b</b>	If "Yes," enter the amount of tax exempt interest received or accrued during the year. <b>6b</b>			
<b>7</b>	For all contributions of automobiles, did the organization file Form 1098-C as required? .....			
<b>8 a</b>	Did the organization file Forms 1099 as required? .....			
<b>b</b>	If "yes," indicate the number filed <b>8b</b>			
<b>9 a</b>	During the year, did the organization have political organization taxable income under Section 527(f)(1)? .....			
<b>b</b>	If "yes," has it filed a Form 1120-POL for this year? .....			
<b>10 a</b>	During the year, did the organization engage in any transaction subject to excise tax under Chapter 41 or 42 of the Internal Revenue Code? .....			
<b>b</b>	If "yes," did the organization file Form 4720 for this year? .....			
<b>11 a</b>	Does the organization have any employee benefit plans? .....			
<b>b</b>	If "yes," has it filed Form 5500 for this year? .....			
<b>12 a</b>	Did the organization sell, exchange, or otherwise dispose of tangible personal property for which it filed Form 8282? .....			
<b>b</b>	If "yes," how many Forms 8282 did the organization file during the tax year? <b>12b</b>			
<b>13 a</b>	During the year, did the organization receive any funds, directly or indirectly, to pay premiums on a personal benefit contract? .....			
<b>b</b>	During the year, did the organization pay premiums, directly or indirectly, on a personal benefit contract? .....			
<b>c</b>	If "yes," to 13b, has it filed Form 8870 for this year? .....			
<b>14</b>	<b>527 Organization</b> Was the organization required to file Form 8872? .....			
<b>15 a</b>	Was the organization party to a prohibited tax shelter transaction at any time during the tax year? .....			
<b>b</b>	Did any taxable party notify the organization that it was or is a party to a prohibited tax shelter transaction? .....			
<b>c</b>	If "yes," to 3a, did the organization file Form 8886-T? .....			
<b>16</b>	For all contributions of qualified intellectual property, did the organization file Form 8899 as required? .....			

**From:** [Robert Williams](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** 501(3)(c) Political Endorsements  
**Date:** Tuesday, August 07, 2007 3:21:51 PM  
**Attachments:**

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Indirect political endorsements are made by some section 501(3)(c) organizations when an organizational board member or officer permits a political candidate to list their name as a supporter along with the organization name and no disclaimer is made that this is a personal endorsement rather than an organizational one. I have observed as many as 10 such endorsements on one piece of campaign literature. The result is an indirect or implied endorsement by the 501(3)(c) organizations whose names were prominently featured.

To address this issue, it is suggested a line "1a" be added to Part VIII of the revised Form 990 to read something like "If a 501(3)(c) organization, have measures been implemented to assure board members, officers and other officials are not allowing the organizational name to be used in conjunction with personal political endorsements? If yes, please attach a copy of those measures. If no, please attach a list of measures the organizations plans to implement, including a timetable for implementation."

Robert Lyle Williams  
2030 Quenby St.  
Houston, TX 77005-1633  
Tel: 713-523-5293

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**From:** [Sugita Seeley, Brenda](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Form 990 Redesign Comments  
**Date:** Wednesday, August 08, 2007 9:59:09 AM  
**Attachments:** [E\\_RightFaxRFaxGateINA1733a512-7945-4f9c-b32b-20f1acfb25c4.TIF](#)

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Dear Sir or Madam,

Attached are our commnets regarding the redesign of Form 990.

Thank you for providing the opportunity to provide input.

Sincerely,

Brenda Sugita Seeley  
more than just moneysm BECU  
Legislative & Compliance Officer  
206.439.5056, fax: 206.214.1624

NOTICE: This communication and any attachments may contain privileged or otherwise confidential information. If you are not the intended recipient or believe that you may have received this communication in error, please reply to the sender indicating that fact and delete the copy you received without printing, copying, retransmitting, disseminating, or otherwise using the information. Thank you.

August 8, 2007

Internal Revenue Service  
Form 990 Redesign  
ATTN: SE:T:EO  
1111 Constitution Ave., N.W.  
Washington, DC 20224

Subject: Redesign of Form 990

Dear Sir or Madam:

Boeing Employees' Credit Union (BECU) appreciates the opportunity to offer input and comments on the topic of redesigning IRS Form 990. BECU is a state-chartered, federally insured credit union with assets of \$7.5 billion and a membership base of over 500,000.

Part II of the core form and Schedule J, Supplemental Compensation Information requires the organization to report information about the compensation of officers, directors, trustees, and certain other employees. Additionally there is a requirement to report compensation based on Form W-2 reporting for employees and Form 1099 reporting for directors and other independent contractors. We feel this would be a significant burden as we have many employees that are paid over \$100,000 annually. Some of these individuals aren't necessarily "key" in directing the strategic direction of the organization; however market demands that we pay this salary. We don't think this information would serve any purpose to the reader. It should be limited to "senior management/officers and board of directors.

Part III of the core form includes questions regarding governance, management and financial reporting including the number of members of the governing body; whether there are specific written policies; and the method by which certain documents are made available to the public. We do not believe that these items are a good indication that safeguards are in place to provide that an organization's assets will be used consistently with its exempt purpose. Just because there are written policies and procedures and ensure documents are made public, does not guarantee that adequate safeguards and controls exist. This information can be found in examinations and/or independent audits.

We agree that group returns should be prohibited. We cannot find any benefit of group returns. Also, we believe that a new form for the 2008 filing year which would apply to returns filed in 2009 would allow sufficient time for compliance.

Thank you for allowing us the opportunity to provide comments.

Sincerely,



Gary J. Oakland  
President and CEO

**From:** [Robert Blumenthal](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Form 990 revisions  
**Date:** Wednesday, August 08, 2007 11:45:33 AM  
**Attachments:**

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I have read with great interest the efforts of Senators Baucus and Grassley to achieve greater transparency with regard to the financial reporting of nonprofit organizations. I am particularly interested in the matter of reforming Form 990 so as to achieve this increased transparency. I just published an article on this matter which can be accessed via the link below. In the article, I offer some specific suggestions concerning Form 990.

[http://www.popecenter.org/clarion\\_call/](http://www.popecenter.org/clarion_call/)

Sincerely yours,  
Robert Blumenthal

**From:** [Bruce Byers](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** suggestions for Part II, Compensation  
**Date:** Wednesday, August 08, 2007 12:16:18 PM  
**Attachments:**

---

PLEASE keep the requirement for "*average hours per week devoted to position*" in the revised Form 990.

The *hours devoted* should also be included for the "*compensation from **related organizations***". These figures will make the reporting much more meaningful. Employees of a tax-exempt sometimes work for its for-profit subsidiary. The commingling of personnel is one of the biggest issues I am concerned with. It is essential to have accounting for the hours a person spends working at each business.

*Thank you for improving Form 990.*

Bruce Byers, pres./mgr.  
NORTH STATE GAS SERVICE, INC.  
Forest City, NC

**From:** [Bruce Byers](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** suggestion for revised form 990  
**Date:** Wednesday, August 08, 2007 12:28:13 PM  
**Attachments:**

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PLEASE keep the requirement for "*average hours per week devoted to position*" in the revised Form 990.

The *hours devoted* should also be included for the "*compensation from **related organizations***". These figures will make the reporting much more meaningful. Employees of a tax-exempt sometimes work for its for-profit subsidiary. The commingling of personnel is one of the biggest issues I am concerned with. It is essential to have accounting for the hours a person spends working at each business.

*Thank you for improving Form 990.*

Bruce Byers, pres./mgr.  
NORTH STATE GAS SERVICE, INC.  
Forest City, NC

**From:** [Martina Gallegos](#)  
**To:** [\\*TE/GE-EO-F990-Revision; Tom Silk;](#)  
**CC:** \_\_\_\_\_  
**Subject:** Tom Silk's article re nonprofit governance project and Form 990  
**Date:** Wednesday, August 08, 2007 9:00:43 PM  
**Attachments:** [GOVERNANCE ARTICLE W-0 FORM 990 8.08.07 \(00056856-2\).DOC](#)

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Here is a scrubbed version of Tom Silk's article.

Let's hope so -- please let me know.

And thanks, too, for your patience.

Best regards,

Martina Gallegos

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Any tax advice contained in this email was not intended to be used, and cannot be used, for the purpose of avoiding penalties that may be imposed under federal tax law. A taxpayer may rely on our advice to avoid penalties only if the advice is reflected in a more formal tax opinion that conforms to IRS standards. Please contact us if you would like to discuss the preparation of a legal opinion that conforms to these rules.

=====

**Martina Gallegos**  
**Assistant to Tom Silk, Brigit Kavanagh,**



**Eric Gorovitz & Jan Caldwell**  
**Silk, Adler & Colvin**  
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**GOOD GOVERNANCE PRACTICES  
FOR 501(c) (3) ORGANIZATIONS:  
SHOULD THE IRS BECOME FURTHER INVOLVED?**

**By Thomas Silk**

The board of directors in the United States is today composed of directors who are essentially part-time performers with other demanding responsibilities. So structured, the board is blind, except to the extent that the corporation's managers or independent gatekeepers advise it of impending problems.

John C. Coffee Jr., *Gatekeepers: The Professions and Corporate Governance*, page 7 (2006)

**Introduction**

Should the IRS actively encourage good governance practices by exempt organizations? The question is not entirely new. It was addressed directly almost three years ago by former Commissioner Mark Everson in his statement before the Senate Finance Committee on June 22, 2004.<sup>1</sup> Commissioner Everson stressed the need to improve coordination with the States, particularly with NASCO (the National Association of State Charity Officers) and requested expanded authority to share with state charity officials tax-exempt organization returns and related information. He recognized (p. 7) a “need to publicize practices that will help and encourage ... [exempt] organizations and their officers to prevent abuse,” and he announced the development by the IRS of a plain-language brochure that would “set-forth certain practices we believe will be useful in promoting good governance, ethics, and internal oversight.” The brochure was to be available in the fall of 2004.

Although the brochure seems to have gone missing, the governance project itself has recently shown signs of life. At a meeting of exempt organization councils, Marvin Friedlander, Manager, EO Technical Branch, mentioned the project which now had taken the form of “Good Governance Practices for 501(c) (3) Organizations”. On February 2, 2007, that document was published unofficially.<sup>2</sup>

On April 27, Steven T. Miller, Commissioner, Tax Exempt and Governmental Entities, addressed the governance topic in his speech at the 24<sup>th</sup> Annual Conference on Representing and Managing Tax-Exempt Organizations sponsored by Georgetown University. His reflective paper raised the question of “what the Service should do with governance practice.” He allowed that “it’s neither self-evident that we should get involved, nor obviously something we should avoid,” and he asked “whether it would benefit the public and the tax-exempt sector to require organizations to adopt and follow recognized principles of good governance.” “At a minimum,” he concluded, “we should educate on basic standards and practices of good governance and accountability. And we should strongly encourage the community in its efforts to formally

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<sup>1</sup> IR-2005-81.

<sup>2</sup> EO Tax Journal (vol. 12, no. 1, January/February 2007. (Hereinafter sometimes referred to as GGP.)

elevate standards ... Someone needs to lead the sector on this issue. If not the IRS, then whom?”<sup>3</sup>

The debate in response to that question has been, and may continue to be, spirited. I have heard many practitioners argue that governance is the sole purview of state law, and that the IRS should stay away from the issue. My own view is that whether IRS guidance on charitable governance is or is not a good thing is beside the point. It is going to happen – either under this administration or the next.

It is not far-fetched to imagine a national scandal featuring a prominent charity in violation of standards of charitable governance, but incorporated in a state with inadequate charitable enforcement. In the congressional hearings that might follow, IRS would surely be in a far more defensible position if it had already gone forward to educate the charitable sector about the importance of good governance practices than if it had not. Subsequent legislation introduced by a supportive Congress may easily resolve any jurisdictional ambiguities about governance of charitable organizations and enforcement.

That the IRS and Congress are marching in step on governance is suggested by recent events. In a letter dated May 29, 2007, from Senators’ Baucus and Grassley to Treasury Secretary Paulson, they note that “time and time again we have seen poor governance at the core of problems of charities.” They refer to a similar mention by Commissioner Everson in his letter to the Finance Committee in March, 2005, “Many of the situations in which we have found otherwise law-abiding organizations to be off-track stem from the failure of fiduciaries to appropriately manage the organization.” And the Senators conclude by noting that “Form 990 can serve a useful purpose of bringing a focus on governance issues both for the board and management of the charity as well as the public.”<sup>4</sup>

On June 14, the IRS released for public comment a discussion draft of a redesigned Form 990, containing, for the first time, extensive questions about governance. The core governance information portion of the redesigned Form 990 is found at Part III at page 4.

The same factors that are compelling state charity officials to expand their public education efforts, particularly through the medium of the Internet, are also at work within the IRS. The cost of enforcement of charitable and tax-related laws at the state and federal levels is substantial and is not declining. Widespread and effective educational efforts may significantly reduce enforcement needs. The Internet provides a low-cost high-touch option for reaching a national audience,<sup>5</sup> and we are at the very early stages of discovering techniques that will make further unleash the power of the Internet.

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<sup>3</sup> EO Tax Journal’s Weekly Email Tax Service 05/01/2007 pp. 6-7.

<sup>4</sup> See Tax Analysts Doc. 2007-12969.

<sup>5</sup> In its report on “High-Speed Services for Internet Access: Status as of June 30, 2006”, the FCC reported (pp. 1-4) that 65 million high-speed lines connect homes and businesses to the Internet, and in the prior 12-month period high-speed lines increased by 52% . Further, “more than 99% of the country’s population lives in the 99% of Zip Codes” where high-speed Internet services are available. [www.fcc.gov/web/stats](http://www.fcc.gov/web/stats).

Although the IRS has available to it a broad variety of publication formats which it may use to educate about governance, including Form 990, Form 1023, and related instructions, none can match the taxpayer-friendly accessibility and immediacy of the Internet. The usefulness of the IRS website, [www.irs.gov/charities](http://www.irs.gov/charities), to exempt organization specialists continues to increase, particularly with the addition of the Internal Revenue Manual and articles from the Exempt Organization Continuing Professional Education Program. Just recently, informational features have been added, directed to members of the public who may themselves want to learn about forming or operating a charity, including “Life of a Public Charity,” “Life of a Private Foundation,” and an online interactive workshop on exempt organizations ([www.stayexempt.org](http://www.stayexempt.org)) with, so far, five modules.

All this is irrelevant to the governance project, it may be objected, because the Commissioner has jurisdiction over federal tax-exempt organization matters but not over governance. It may be customary to think of the cluster of fiduciary duties as uniquely of state concern. But the truth is less narrow. Whether referred to as the duty of care or the duty of compliance, traditional fiduciary duty includes the duty to oversee and supervise compliance with federal tax laws as well as with state charitable and tax laws.

The purview of State Attorneys’ General and the IRS overlaps. The jurisdiction of State Attorneys’ General includes the prevention of waste of charitable assets, which may occur due to fines or penalties stemming from violations of federal tax laws as well as state laws. The jurisdiction of federal tax officials in enforcing federal tax-exempt organization laws extends to promoting compliance with those laws by directors and officers by providing guidance and information likely to enhance such compliance – including awareness of good governance practices.

It is surely in the public interest, and it may also be in the mutual interest of the IRS and NASCO, that good governance practices in the charitable sector, including high ethical standards and transparency, be encouraged. The solution may call for a joint effort. Perhaps IRS/EO and NASCO could join together and appoint a Task Force on Governance charged with producing *the Good Governance Guide for Charities*. Congress, in amending 6104 in 2006 to provide that the Service can now disclose its audits to the Attorneys General, surely recognized this changing trend and the need for increased cooperation.

The complete text of the GGP follows, together with my comments on the GGP as well as on the governance provisions of the redesigned Form 990.

### **Good Governance Practices for 501(c)(3) Organizations<sup>6</sup>**

The Internal Revenue Service believes that governing boards should be composed of persons who are informed and active in overseeing a charity’s operations and finances. If a governing board tolerates a climate of secrecy or neglect, charitable assets are more likely to be used to

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<sup>6</sup> Focus on IRS and Treasury, EO Tax Journal (vol. 12, no. 1, January/February 2007).

advance an impermissible private interest. Successful governing boards include individuals not only knowledgeable and passionate about the organization's programs, but also those with expertise in critical areas involving accounting, finance, compensation, and ethics.

Organizations with very small or very large governing boards may be problematic: small boards generally do not represent a public interest and large boards may be less attentive to oversight duties. If an organization's governing board is very large, it may want to establish an executive committee with delegated responsibilities or establish advisory committees.

The Internal Revenue Service suggests that organizations review and consider the following to help ensure that directors understand their roles and responsibilities and actively promote good governance practices. While adopting a particular practice is not a requirement for exemption, we believe that an organization that adopts some or all of these practices is more likely to be successful in pursuing its exempt purposes and earning public support.

### **Comment**

The first paragraph of GGP, on the composition of the governing body, contains sound advice – directors should exercise oversight in a manner that is informed and active; the board should avoid secrecy and neglect; and a governing body would be well-served by including one or more directors with expertise in the relevant areas of accounting, finance, compensation, and ethics.

The last clause, while well-intended, may produce unwanted results. An expertise qualification, while a realistic aim for boards of publicly traded companies, may be setting the bar too high for charitable organizations. The solution, I suggest, may be to broaden the qualification to “expertise, knowledge, or experience,” and to make plain that this is an ideal not always attainable in practice.

The second paragraph, addressing the structure of the governing body, warns against boards that are too large or too small. The cautionary note about large boards deserves at least another sentence to introduce the problem of trophy directors who fail to govern and to alert the more sophisticated reader to the interest taken by scholars in this problem and to the solutions they propose.<sup>7</sup> The statement about small boards – “Small boards generally do not represent a public interest” – is wrong and inappropriate. It should be deleted. The truth is that small boards come in many flavors, from the single-trustee of a traditional charitable trust, to the few members on the board of a family foundation, to the start-up small charity that begins with a small board and seeks to grow, in time, with attentive and resourceful directors. It should also be noted that state laws authorize nonprofit boards with a single director.<sup>8</sup>

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<sup>7</sup> Failure to Govern? The Disconnect Between Theory and Reality In Nonprofit Boards And How to Fix It, Stanford Social Innovation Review (Sept, 2005); Marion R. Fremont-Smith, Governing Nonprofit Organizations: Federal and State Law and Regulations, p. 433 (2004); Fishman and Schwarz, Nonprofit Organizations: Cases and Materials, p. 180 (2d Ed., 2002); American Law Institute, Principles of the Law of Nonprofit Organizations, p. 99-103 (Preliminary Draft 3, May 12, 2005)

<sup>8</sup> See, e.g., Cal. Corp. Code §5120(a).

The third paragraph is important. While it contains the Service’s recommendation that directors actively promote good governance practices, it makes clear that “adopting a particular practice is not a requirement for exemption.”

Since all three paragraphs of this first topic concern the governing body, I recommend that this, the only untitled and un-numbered topic, be entitled “governing body,” and be given the first number.

Redesigned Form 990 asks the organization to provide the number of members of the governing body, the number of independent members, and whether it made any significant changes to its governing documents. It also asks whether the organization takes and maintains minutes of its governing body and related committees.

## **1. Mission Statement**

A clearly articulated mission statement that is adopted by an organization’s board of directors will explain and popularize the charity’s purpose and serve as a guide to the organization’s work. A well-written mission statement shows why the charity exists, what it hopes to accomplish, and what activities it will undertake, where, and for whom.

### **Comment**

Doubtless, most texts in Nonprofit Governance 101 recommend a mission statement. It does belong in a Guide to Good Governance.

By itself, the process of drafting and discussing such an aspirational statement can be stimulating and beneficial, but if the mission statement is to be more than that, if it is to serve as a core description of charitable identity and a map for the future, the charity needs to find a way to foster, among its directors, a continuing awareness of its goals and objectives.

This is often done by including the mission statement in the charity’s Code of Ethics and by requiring directors to sign an annual statement affirming that they have read, understood, and agree to comply with the Code of Ethics.

The GGP should warn against allowing the mission statement to migrate into the Articles of Incorporation or other organic documents. Traditionally, statements of purposes and powers in Articles of Incorporation were highly detailed. The modern practice in most states is to give the charity the greatest flexibility of operation by drafting purposes and powers clauses broadly, enabling the charity to be organized and operated for any of the purposes described in Section 501(c)(3) and permitting the charity to exercise powers as defined by comprehensive state-empowering statutes. An extreme example of the disabling impact of a restrictive purpose clause is a California case in which the Court ruled that the purpose clause of the Articles, which provided that the charity was to own and operate a hospital, prevented the charity from selling the hospital and operating medical clinics instead.<sup>9</sup>

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<sup>9</sup> Queen of Angels Hospital v. Younger, 66 Cal. App. 3d 359 (1977).

Oddly enough, the governance provisions of redesigned Form 990 do not ask whether the organization has a mission statement. I recommend that the Glossary in redesigned Form 990 contain this definition of a mission statement: “A statement explaining why the charity exists, what it hopes to accomplish, and what activities it will undertake, where, and for whom.” Further, the mission statement should be added to the list of documents contained on line 11 of Part III, page 4, of the redesigned Form.

## **2. Code of Ethics and Whistleblower Policies**

The public expects a charity to abide by ethical standards that promote the public good. The board of directors bears the ultimate responsibility for setting ethical standards and ensuring they permeate the organization and inform its practices. To that end, the board should consider adopting and regularly evaluating a code of ethics that describes behavior it wants to encourage and behavior it wants to discourage. The code of ethics should be a principal means of communicating to all personnel a strong culture of legal compliance and ethical integrity.

The board of directors should adopt an effective policy for handling employee complaints and establish procedures for employees to report in confidence suspected financial impropriety or misuse of the charity’s resources. Such policies are sometimes referred to as *whistleblower* policies.

### **Comment**

If the Board intends to make plain to everyone involved with the charity that the Board expects them to adhere to the highest ethical standards – and that following minimum legal requirements are not enough – the Code of Ethics should reflect that intent. Here is one version of a suitable provision for the Code of Ethics.

#### **Law and Ethics**

Charity shall comply with all applicable federal, state, and local laws and regulations and shall seek the advice of counsel when necessary or appropriate. Compliance with the law, however, is the minimum standard of expected behavior. Charity shall also adhere to the highest ethical standards. All resolutions and other legal actions by the Board of Directors and all actions by directors, officers, and employees shall satisfy two requirements: (1) they shall be legally permissible, and (2) they shall also reflect the highest ethical standards as determined by the person involved within such person’s best judgment.

It has become a best practice for nonprofit organizations to adopt a whistleblower policy that goes far beyond the criminal prohibitions imposed by law. The charity should be alerted, however, that laws of many states add whistleblower provisions, including required postings in the workplace. Those provisions should be integrated into any whistleblower policy the charity adopts.

Whistleblower policies tend to contain the following elements: (1) the scope of the policy extends beyond making it clear that an employee will not be punished for disclosing

information about a federal law violation; the policy encourages employees to be vigilant about possible illegal (state or federal) (or unethical) conduct and to report any such information, (2) the report may be made anonymously, and (3) the policy assures employees that no retaliation, demotion, or other adverse action will be taken against any person who reports their good faith concern and warns employees that they may not participate in such action.

Whether a whistleblower policy is expressed as part of the Code of Ethics or as a separate document is a matter of individual style. My own preference is to include it in the Code of Ethics for the practical reason that the requirement of annual affirmation of the Code by each director may bring the whistleblower policy to the attention of those directors without the need to remember to affirm yet another document.

It is one thing to adopt appropriate policies, but it is equally, if not more important, to make sure that all board members are aware of the policies and that the policies are followed. Many of the for-profit corporations that have found themselves in the public spotlight during the past ten years had solid conflicts of interest and ethics policies in place, but they neglected to remember to actually follow them.

Redesigned Form 990 asks whether the organization has a written whistleblower policy, but it is silent as to a Code of Ethics. I recommend that line 11 of Part III be amended to include a Code of Ethics in the list of documents listed, and I recommend that the Glossary contain the following definition of a Code of Ethics: “A policy that expresses a commitment to ethical standards and may address matters such as transparency, accountability, diversity, and governance.”

### **3. Due Diligence**

The directors of a charity must exercise due diligence consistent with a duty of care that requires a director to act:

- In good faith;
- With the care an ordinarily prudent person in a like position would exercise under similar circumstances;
- In a manner the director reasonably believes to be in the charity’s best interests.

Directors should see to it that policies and procedures are in place to help them meet their duty of care. Such policies and procedures should ensure that each director:

- Is familiar with the charity’s activities and knows whether those activities promote the charity’s mission and achieve its goals;
- Is fully informed about the charity’s financial status; and
- Has full and accurate information to make informed decisions.

### **Comment**



There is a glaring omission from this general description of the duty of care in the GGP, and that is the complete absence of any mention of reliance provisions. Common law, nonprofit corporation statutes in most states, and the standards of conduct for directors contained in the Revised Model Nonprofit Corporation Act (1987) and the Proposed Model Nonprofit Corporation Act (Third Edition, 2006) permit a director to avoid duty of care liability if the director acts in reliance on individuals or committees under certain circumstances.<sup>10</sup>

Because fiduciary duties are interpreted frequently at the state rather than at the federal level, this topic would benefit by adding the views of NASCO representatives or appointees to those of IRS representatives or appointees.

Redesigned Form 990 makes no direct statement about the duty of care. Fiduciary duty is tested in another way, however, by determining how the organization responds to questions about conflict of interest policies and practices, compensation review, financial review, and other related detailed inquiries.

#### **4. Duty of Loyalty**

The directors of a charity owe it a duty of loyalty. The duty of loyalty requires a director to act in the interest of the charity rather than in the personal interest of the director or some other person or organization. In particular, the duty of loyalty requires a director to avoid conflicts of interest that are detrimental to the charity. To that end, the board of directors should adopt and regularly evaluate an effective conflict of interest policy that:

- Requires directors and staff to act solely in the interests of the charity without regard for personal interests;
- Includes written procedures for determining whether a relationship, financial interest, or business affiliation results in conflict of interest; and
- Prescribes a certain course of action in the event a conflict of interest is identified. Directors and staff should be required to disclose annually in writing any known financial interest that the individual, or a member of the individual's family, has in any business entity that transacts business with the charity. Instructions to Form 1023 contain a sample conflict of interest policy.

#### **Comment**

Adoption of conflict of interest policies by charitable organizations is encouraged today by a multiplicity of sources. The Sarbanes-Oxley Act requires listed companies to adopt a conflicts policy, and the influence of that Act on nonprofit organizations has been substantial, particularly on large educational institutions and hospital foundations. Best practice codes recommend that charities adopt a conflicts policy.

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<sup>10</sup> See, e.g., Cal. Corp. Code §5231(b).

The content of conflicts policies is also changing. The traditional conflict of interest policy, emerging from corporate law, focused on validation, the procedures a Board must follow to permit a conflict of interest to exist. The modern conflicts policy requires disclosure of conflicts, as a separate matter, entirely apart from validation. It contains remedies for failing to disclose conflicts. In the charitable sector, the concept of conflicts of interest is being transformed to reflect, as well, emerging ethical concerns. This is best illustrated by the treatment of conflicts of interest in the American Law Institute’s project, *Principles of the Law of Nonprofit Organizations*, where a single-page conflict of interest text is followed by 50 pages of commentary and where conflicts policies reach beyond financial conflicts and include non-pecuniary conflicts as well.<sup>11</sup> Finally, the modern conflicts policy applies to directors, officers and employees, while the traditional policy applies only to directors.

The sample conflicts policy recommended by the IRS should be reviewed and revised to include non-pecuniary conflicts, to reach officers and employees as well as directors, and to contain an annual statement affirming that they have read, understood, and agree to comply with the conflict of interest policy.

Redesigned Form 990 asks whether the organization has a written conflict of interest policy, and how many transactions the organization reviewed under this policy during the year (lines 3a and 3b, Part III, page 4). The definition of conflict of interest policy in the glossary does not cover most employees but limits the policy to officers, directors, and managers. However, the definition of a conflict is broad, extending beyond financial benefits (a conflict exists whenever a covered person “may benefit personally from a decision he or she could make”).

## **5. Transparency**

By making full and accurate information about its mission, activities, and finances publicly available, a charity demonstrates transparency. The board of directors should adopt and monitor procedures to ensure that the charity’s Form 990, annual reports, and financial statements are complete and accurate, are posted on the organization’s public website, and are made available to the public upon request.

### **Comment**

Comprehensive website disclosure – whereby nonprofit organizations strive towards maximum transparency of operations to the widest possible audience with a minimum of expenditure – has quickly become a best practice of nonprofit governance. Website disclosure may result from legal requirements. For example, the IRS requirement of tax-return disclosure for charities gives the taxpayer the choice of making its annual Form 990 or 990 PF available to anyone who requests it or, alternatively, posting it on the charity’s website. California has also

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<sup>11</sup> Discussion Draft, April 6, 2006 (Disclosure: I am an adviser to that ALI Project.)

adopted the website-posting option for public disclosure of audited financial statements required by the Nonprofit Integrity Act of 2004.

A charitable organization may benefit if it maximizes use of its website as a channel of information accessible to all who desire to be informed about the charity and its operations.<sup>12</sup> I recommend that the following transparency policy be included in a Code of Ethics, adopted and enforced by the Board of Directors, and posted on the charity's website:

### **Transparency**

Charity shall provide comprehensive and timely information to the public, the media, and all stakeholders and shall be responsive to reasonable requests for information. All information about charity shall fully and honestly reflect its policies and practices. All financial and program reports shall be complete and accurate in all material aspects.

Basic financial and organizational information about charity, including the current Form 990 and the current audited financial statement, shall be posted on charity's website, along with this Code of Ethics, the Conflict of Interest Policy, the Articles of Incorporation (or other organizing document), and Bylaws.

Redesigned Form 990 addresses the transparency issue indirectly. It does not require outright that the organization make information available to the public. Instead, Part III line 11 asks whether the organization makes available to the public its governing documents, conflict of interest policy, Form 990, Form 990-T, financial statements, audit report. The organization may check one of five boxes: not applicable, website, other website, office, or other.<sup>13</sup>

## **6. Fundraising Policy**

Charitable fundraising is an important source of financial support for many charities. Success at fundraising requires care and honesty. The board of directors should adopt and monitor policies to ensure that fundraising solicitations meet federal and state law requirements and solicitation materials are accurate, truthful, and candid. Charities should keep their fundraising costs reasonable. In selecting paid fundraisers, a charity should use those that are registered with the state and that can provide good references. Performance of professional fundraisers should be continuously monitored.

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<sup>12</sup> Taxpayers are also becoming aware that other websites can be used for marketing purposes. For example, Guidestar maintains a comprehensive database of tax returns of 501(c)(3) organizations, provided by the IRS ([www.guidestar.org](http://www.guidestar.org)). Sophisticated donors are turning to Guidestar's database for information about possible grantees. In turn, sophisticated donees, in recognition that the audience for the tax returns is not only the IRS but also possible donors, are expanding the description of their purposes and activities as described in Form 990, transforming it into a marketing publication for donors as well as an information return for the IRS; for an example, see Memorial Sloan-Kettering Cancer Center's Form 990 for 2004 at [www.guidestar.org](http://www.guidestar.org).

<sup>13</sup> Questions about written policies are not limited to Part III in the redesigned Form 990. For example, Part VII lines 11 and 12 asks whether the organization has a written policy to review investments or participation in affiliates and whether it has a written policy requiring it to protect its exempt status as to transactions with affiliates.

## **Comment**

This is a topic that could benefit from the help of NASCO. Other points might be made here such as a reminder of the need to register in each state where the charity solicits funds.

Redesigned Form 990 contains a new Schedule G applicable to fundraising activities. The Schedule addresses fundraising activities generally, events, and gaming, requiring detailed financial information about each type of activity.

## **7. Financial Audits**

Directors must be good stewards of a charity's financial resources. A charity should operate in accordance with an annual budget approved by the board of directors. The board should ensure that financial resources are used to further charitable purposes by regularly receiving and reading up-to-date financial statements including Form 990, auditor's letters, and finance and audit committee reports.

If the charity has substantial assets or annual revenue, its board of directors should ensure that an independent auditor conduct an annual audit. The board can establish an independent audit committee to select and oversee the independent auditor. The auditing firm should be changed periodically (*e.g.*, every five years) to ensure a fresh look at the financial statements.

For a charity with lesser assets or annual revenue, the board should ensure that an independent certified public accountant conduct an annual audit.

Substitute practices for very small organizations would include volunteers who would review financial information and practices. Trading volunteers between similarly situated organizations who would perform these tasks would also help maintain financial integrity without being too costly.

## **Comment**

Only a few states currently require annual financial audits of nonprofit corporations, although that is changing.<sup>14</sup> Independent financial audits have become such a fundamental and essential test of the financial soundness of any corporate enterprise that all best practice codes of nonprofit governance require that every nonprofit corporation with substantial assets or annual revenue should be audited annually by an independent auditing firm.

Along with a mandatory audit requirement for nonprofit organizations of significant size, core best practices require that the board of directors appoint an audit committee. GGP should be

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<sup>14</sup> California, for example, did not mandate charitable audits until it enacted the Nonprofit Integrity Act of 2004, requiring financial audits of charities with annual gross revenues of \$2 million or more. [www.caag.state.ca.us/charities](http://www.caag.state.ca.us/charities)

revised to address the notion of an audit committee. The audit committee should be composed of one or more directors. All of the directors must be independent, in the sense that they may not be paid for services by the nonprofit corporation, aside from a reasonable honorarium. While audit committee members need not meet the SEC definition of an “audit committee financial expert,” it is desirable that at least one member should be knowledgeable, generally, about organizational financial matters.

The audit committee must have received delegated authority from the board to function effectively and independently of management.

Two provisions in the GGP warrant further discussion. The notion of changing the auditing firm every five years is a legacy from Sarbanes-Oxley. Like the requirement of including an expert on the board, this requirement to change auditing firms is neither practical nor appropriate for nonprofit organizations generally. The availability of auditing firms with the expertise to audit charities and the willingness to do so for a reduced fee is limited. Moreover, the costs to an accounting firm of creating a financial baseline for a new client are not insignificant. Many accounting firms spread those fees over a number of years. But if the expected life of a charitable client is to be limited to five years, the universe of available auditing firms may diminish even further.

Another solution should be sought so that the charity may benefit by a fresh auditing perspective. Changing the auditing partner but not the auditing firm may be worth considering. This may be an area where the insights of NASCO could be helpful. NASCO’s view might also be useful in evaluating the practicality of advising small charities to use volunteers to review financial information and to trade volunteers with similar organizations.

Redesigned Form 990 asks three questions about financial review: whether the organization has an audit committee, whether the financial statements are prepared by an insider or by an independent accountant, whether they take the form of a (checkoff) compilation, review, or audit, and whether the governing body reviews the Form 990 before filing (lines 8, 9, 10, Part III, page 4).

## **8. Compensation Practices**

A successful charity pays no more than reasonable compensation for services rendered. Charities should generally not compensate persons for service on the board of directors except to reimburse direct expenses of such service. Director compensation should be allowed only when determined appropriate by a committee composed of persons who are not compensated by the charity and have no financial interest in the determination.

Charities may pay reasonable compensation for services provided by officers and staff. In determining reasonable compensation, a charity may wish to rely on the rebuttable presumption test of section 4958 of the Internal Revenue Code and Treasury Regulation section 53.4958-6.

### **Comment**

This is one area where the charitable sector is far ahead of the for-profit sector. Most restrictions on the payment of compensation to corporate officials in the for-profit sector are imposed by new corporate governance rules adopted by the NYSE and other stock exchanges. The Sarbanes-Oxley limitations on compensation are modest and require the CEO and CFO to pay back bonuses or other incentive or equity-based compensation paid during the 12 months after financial statements are restated under certain circumstances.

In the charitable sector, by contrast, restrictions on the payment of excessive benefits, including unreasonable compensation, are imposed by federal tax law. To benefit from a presumption of reasonableness for insider compensation decisions, charities must base compensation decisions for chief executive officers, chief operating officers and chief financial officers on objective, documented comparable information. It is becoming a best practice for charities to rely on that type of information in determining the compensation paid to anyone if it is substantial, whether or not they happen to be a senior officer or other insider.

Redesigned Form 990 devotes two pages to detailed questions about compensation paid to insiders and to independent contractors (Part II, pages 2-3). This is a substantial change from the meager information requested on compensation by the current Form 990. This detailed information will give the IRS, as well as state charity officials, new tools to enforce existing prohibitions on excess compensation, and the disclosures (or lack thereof) may lead to new legislation or regulations.

## **9. Document Retention Policy**

An effective charity will adopt a written policy establishing standards for document integrity, retention, and destruction. The document retention policy should include guidelines for handling electronic files. The policy should cover backup procedures, archiving of documents, and regular check-ups of the reliability of the system. For more information see IRS Publication 4221, *Compliance Guide for 501(c)(3) Tax-Exempt Organizations*, available on the IRS website.

### **Comment**

This a topic on which the input of NASCO would be particularly helpful. For example, the reference to IRS Publication 4221 tends to reinforce the notion (see p. 7) that records need be kept only for three or four years, standard periods of limitation for federal income tax and employment tax records. But state laws differ widely. In California, for example, the limitation period applicable to actions by the Attorney General for violations of the charitable self-dealing statute is 10 years.<sup>15</sup> Relevant corporate records, including minutes and accounting records, should be kept for at least that long.

Document destruction policies can be a trap for the unwary. At the least, a reader should be advised that all document destruction should be halted the moment the charity knows it is

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<sup>15</sup> Cal. Corp. Code §5233(e).

being investigated by a federal or state law enforcement agency and routine destruction should not be resumed without the written approval of legal counsel or the chief executive officer.

Redesigned Form 990 asks whether the organization has a written document retention and destruction policy (line 5, Part III, page 4)

## **Conclusion**

The Service's interest in good governance practices of exempt organizations is expressed by statements of IRS officials, in the draft of Good Governance Practices, and in the redesigned Form 990, which adds, for the first time, questions about governance practices.

The governance questions are not to be taken lightly. They are not asked as part of a benign poll of charitable organizations. They are backed with the full enforcement power of the federal government. Form 990 must be signed under penalties of perjury, requiring that the information be complete and truthful, to the best of the knowledge and belief of the signing officer. An incomplete or false statement made knowingly on Form 990 may be punishable as a civil matter (IRC § 6721), as a misdemeanor (IRS § 7207), or as a felony (IRC § 7206).

Practitioners would be well advised to counsel their exempt organization clients on the wisdom of (1) adopting good governance policies (2) following them in practice, and (3) responding in a complete and truthful manner to the governance and other questions put by the redesigned Form 990.

**From:** [Pattara Theresa](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** FW: Analysis of Glossary  
**Date:** Thursday, August 09, 2007 6:33:21 PM  
**Attachments:** [Comments on Glossary.doc](#)

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**From:** Jody Blazek [mailto:Jody.Blazek@bvcpa.com]  
**Sent:** Tuesday, July 24, 2007 5:34 PM  
**To:** Pattara Theresa; Lerner Lois G  
**Cc:** Eve Borenstein (BAM Law); Pat Read  
**Subject:** Analysis of Glossary

Dear Theresa and Lois,

Folks in my office are devoting time each week to analysis of the Form 990 Draft. We expect to respond to the concerns expressed on the Phone Forum, reports of your speaking engagements, and comments from Independent Sector and others. For example, we expect to make suggestions about the flow of the schedules and corresponding Core Form parts, particularly Parts VII and VIII. Meanwhile, we were pleased with, and thought you might want to consider, our analysis of the Glossary sooner than later. We are happy to work with you to achieve our mutual goal of improving transparency for the nonprofit sector.

*Jody Blazek CPA  
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(713) 439-5739  
(713) 439-5740 fax*



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## Evaluation of definitions provided in the Proposed Instructions and Glossary of IRS DRAFT of Form 990 issued June 14, 2007

In looking solely at the Form without looking at the instructions, we found a definition was needed for the following terms. A star (\*) in the Term column indicates no definition in either the instructions or glossary.

Term	Explained in instructions	Found in Glossary
Activity code <sup>1</sup> *	No	No
Independent <sup>2</sup>	No	Yes
Reportable compensation	Yes	Yes
Non-qualified deferred compensation	No	Yes
Family relationship	Yes	No—says see instructions
Business relationship	Yes	Yes
Doing business with	No	Yes
Expense reimbursements	Somewhat	No
Conflict of interest policy	No	Yes
Whistleblower policy	No	Yes
Disqualified persons	No	Yes
Escrow account liability	Yes	No
Term or permanent endowment	No	Yes
Prohibited tax shelter transaction*	No	Yes—but must see Section 6707A(c)(2) and Regs. Sect. 1.6011-4(b)(3) and 1.6011-4(b)(4)
Personal benefit contract	No	Yes
Excess benefit transaction	No	Yes—and further defines by DAF and SO requirements
Excess business holdings <sup>3</sup>	Says see instructions for Form	No

<sup>1</sup> Activity Code—There is no explanation of what it is or how to find it. The Phone Forum indicated that the IRS wanted comments on whether the use of NTEE codes would be preferred to activity codes. NTEE codes are available on Guidestar.

<sup>2</sup> Independent—Why is a board member independent if she/he receives compensation for serving as a board member, but not as an employee?

	4720	
Taxable distribution (under Section 4966)	Yes	No
Qualified intellectual property	No	Yes
Net income from unrelated business activities <sup>4</sup> *	No	No
Unrelated business taxable income from businesses acquired after 6/30/75 <sup>5</sup> *	No	No
Political campaign activities	Yes	Yes
Political expenditures	Yes	No
Section 527 exempt function activities*	No—though instructions imply they are equivalent to political campaign activities	No
Exempt function expenditures*	No—same as above	No
Exempt purpose expenditures	Yes	No
Intangible assets	Yes	No
Racially nondiscriminatory policy	Yes	No
Gaming	Yes	No
Charity care	Yes-worksheet calculates	No
Supplemental nonqualified retirement plan	Yes	No
Equity-based compensation	Yes	No
Related organization	Yes—repeated from glossary	Yes
Direct controlling entity	Yes	No

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<sup>3</sup> Excess business holdings—Why not provide definition in glossary or instructions? How likely is it that preparer will go to Code to look up?

<sup>4</sup> UBI for public support classifications—the instructions do not provide any clarity as to the distinction between the two types listed. Schedule A, Part II, line 9 says “Net income from unrelated business activities.”

<sup>5</sup> Part III, line 10b says “Unrelated business taxable income from businesses acquired after 6/30/75.”

**From:** [David Ross](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Brief comment on the proposed form 990 revision  
**Date:** Friday, August 10, 2007 1:58:27 PM  
**Attachments:**

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The following is a comment on the proposed form 990 revision.

There what seems to be a typographical error in Schedule C, Part-II-A, line 2b. (based on draft document posted online and dated 6/14/2007)

Line 2b **currently reads:** "Lobbying ceiling amount (150%, line 1a, column (e))"

Line 2b **probably should read:** "Lobbying ceiling amount (150%, line 2a, column (e))"

Please note that the 2006 form 990 Schedule A, Part VI-A Line 46 reads: "Lobbying ceiling amount (150% of line 45(e))"

Similar confusion in Schedule C, Part-II-A, line 2e.

Line 2e **currently reads:** "Lobbying ceiling amount (150% of line d, column (e))"

Line 2e **would be more clear if it read:** "Lobbying ceiling amount (150% of line 2d, column (e))"

Thank you for providing the opportunity to comment. I hope this is helpful. .

David A. Ross, J.D., Public Policy Officer  
Pennsylvania Association of Nonprofit Organizations  
777 East Park Drive, Suite 300  
Harrisburg, PA 17111  
p(717) 236-8584 x1009 | f(717) 236-8767

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Check-out PANO's public policy website at <http://www.pano.org/publicpolicy/publicpolicy.php>.  
Visit [www.pano.org/events.php](http://www.pano.org/events.php) for PANO's *upcoming programs, clinics and co-sponsored events*.

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**From:** [Jason Hunt](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** FW: 990 Revisions  
**Date:** Sunday, August 12, 2007 2:12:53 PM  
**Attachments:**

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Dear IRS,

In addition to my previous comments (see below), I would also recommend the following:

1. I would like to see tax-exempt entities report the value of subsidies that they receive. Subsidies would include, but not be limited to the following:
  - a. Federal income tax exemption
  - b. State income tax exemption
  - c. State sales tax exemption
  - d. Local real estate tax exemption
  - e. Below market interest rates on tax-exempt bond financing
  - f. Others

I think this information would be useful in comparing the value of community benefits offered by tax-exempt entities and the value of the subsidies provided to these entities.

Thank you once again for your time and consideration.

Jason A. Hunt, CPA

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**From:** Jason Hunt []  
**Sent:** Saturday, June 16, 2007 12:38 PM  
**To:** 'Form990Revision@irs.gov'  
**Subject:** 990 Revisions

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:** [Konni](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** 990 revision suggestions  
**Date:** Sunday, August 12, 2007 10:10:55 PM  
**Attachments:** [revamp 990.doc](#)

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(attachment is the same as contents of this email)

My suggestions for changing the Form 990 come from my recent experience trying to expose mismanagement and corruption at a nonprofit organization where I worked for several years. None of it is apparent by looking at their Form 990s.

These suggestions come from my examination of their 990's and are concerned primarily with more transparency regarding employee compensation. Two of the employees (the operations supervisor and the mechanic) in this organization are getting compensation way beyond what is apparent by examining the Form 990s, but I only know this because I worked there, not because of what I could see on the 990s.

**1) The form should require the organization to list all 1099's issued and should indicate whether any of the recipients are employees, employee' family members, board members, etc. because a business name does not always reflect the name of the person.** In this case, 2 full-time employees each have their own "business" and rent their machinery (bulldozers, backhoes, etc.) to the organization. They are not independent contractors, so the amount does not get reported on Schedule A Part II A or B. They are paid wages for operating and for fixing their own machinery. Therefore, these employees are receiving additional compensation, the amount of which is not evident to anyone examining the return. Since business names don't always reflect the name of the owner (and one of these employees has a business license with his wife, who has a different last name, listed as owner), it is necessary to ask questions about the ownership of the business.

**2) Schedule A, Part III, Statements About Activities During the year, has the organization, either directly or indirectly, engaged in any of the following acts**

**with any substantial contributors, trustees, directors, officers, creators, key employees, or members of their families?**

This organization answers NO to these questions, because they do not list the operations supervisor or the mechanic as a “key employee.” In fact, they list no key employees at all. I believe the operations supervisor is a key employee according to the definition. The mechanic may not be a key employee, but I believe he makes more than his salary in machine rental. Therefore, I believe the word “key” should be removed and the question should apply to ALL employees. This organization normally has 3 fulltime employees (of which I was one) and a couple of part-time office employees, including the executive director. The salary of the operations supervisor went from below \$50,000 (since it wasn’t listed on the schedule) on the 2002 and 2003 returns, to \$62,968 (+4219 contributions to employee benefit plan) 2005 return and \$70,293 + 4603 on 2006 return. That’s an amazingly hefty increase over 2 years, but at least it is listed.

**3) Itemized statements should be required of any expense category over a certain amount.** This organization lists “Land/Trail expenses \$83,593” (period ending 9/30/06) as part of “Other Expenses” over \$250,000 (Part II, Line 43g). There is no detail listed anywhere for an expense of this size, to show what expenses are included under “Land/Trail expenses.” I believe this category includes the expenses for rental of the machinery from the employees, as well as the fuel and maintenance costs as those are not listed anywhere else. (Wages are listed on line 26, so I assume no wages are included in “Land/Trail expenses.”

Part II Statement of Functional Expenses, Line 37 for “Equipment Rental and maintenance” has nothing in those columns for the machine rental. The result is that no one can tell just how much is being paid for equipment rental or that any machinery is being rented at all. Even if it was listed there, it would not be apparent that it is being rented from employees. Are these employees being given 1099’s?

They may say they prefer to keep the machinery rental and fuel etc. in the lands/trails category, but whatever the reason for preparing the return in this manner, the result is that it conceals the true compensation these two employees are receiving. I also believe this is gross mismanagement of the company’s money, again indiscernible to the public, because it’s bad policy to rent from your employees in the first place, but especially with no oversight – who is to say how many hours have been put on any of these machines for billing purposes? Only the operations supervisor and some of the machines are his, while the others belong to his buddy,

the mechanic. This might be acceptable if done in an upfront and obvious manner, for a good reason, and with appropriate oversight but it is hidden and not done for a good reason and there is no oversight. Making it worse, they could rent for discount or get donation of nice new machinery from NC Machinery instead of old machines the employees own. (They have created a nice nest with a golden egg in it for themselves.) And, if those expenses were upfront and seen to be high, someone examining the return would see how much is expended and might ask why the club doesn't purchase its own equipment instead of renting year after year from its own employees.

**PART VI- OTHER INFORMATION line 82a “Did the organization receive donated services or the use of materials, equipment, or facilities at no charge or at substantially less than fair rental value.”**

Their returns for the periods ending 9/03, 04, and 05 say NO while 06 says Yes and the Supporting Statement cites \$47,765 from NC Machinery and \$990 from Benco. While I was working there (5/03-8/05) it was my understanding that NC Machinery donated heavy equipment for club use each year, but there's no reflection of that in the returns for those years, just suddenly on the 06 return. And “Benco” is the same name of the operations supervisor's business, so I would assume that means HE “donated” services or use to the club. Or is it some other “Benco,” unlikely as that may be? They should be required to give more information in support of line 82a, like the full name and address of the giver and should ask if the giver is an employee.

Daniel C. Rhode  
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