

From: [Liz Callahan](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: comments are attached
Date: Friday, September 14, 2007 2:10:37 AM
Attachments: [Comments from The CBO Center to the Internal Revenue Service Regarding Proposed Changes to Form 990.doc](#)
[image001.jpg](#)
[image002.jpg](#)

Thank you for considering the attached comments.

Liz Callahan
Executive Director



The CBO Center
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4700 Ygnacio Valley Road
Concord CA 94521
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www.cbocenter.org



Comments from The CBO Center to the Internal Revenue Service Regarding Proposed Changes to Form 990

September 12, 2007

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

Email: _____

To: Form 990 Redesign Team

The CBO Center, a nonprofit management support organization serving community benefit organizations in the East Bay, supports the Service's efforts to redesign the Form 990. As one of the only sources of information and data about the nonprofit sector, the 990 shapes our perceptions and, in many cases, our policies and practices in ways that may never have been intended. It is critical, therefore, that as the Service works to enhance transparency, promote compliance and minimize the burden on filing organizations, the Service also seeks to create a reporting tool that will allow those of us who serve this sector - donors, volunteers, consultants, mso's - to gain as accurate a picture as possible of the organizations that comprise the public benefit sector.

Of the more than 4000 nonprofits headquartered in the East Bay that file 990s, approximately 80% have operating budgets under \$500,000, 65% have budgets under \$200,000, 26% are staffed entirely by volunteers. The CBO Center is committed to ensuring that all nonprofits, including our small, grassroots organizations, have the information they need to be in compliance with all federal and state laws and regulations, and that their interests and perspectives are represented as the Service considers revisions to the 990.

General Comments

We have reviewed the comments submitted by the National Council of Nonprofit Associations (NCNA), BoardSource, and the draft comments prepared by Independent Sector (IS). We concur with much of what those organizations have presented. Areas where our views diverge or where we feel strongly about the need for changes to the draft form are noted below.

- We agree that additional time will be needed for implementation of any changes. We also would like to see the comment period extended. The vast majority of nonprofits are just becoming aware of the intention to revise the 990. The IRS



would be well-served by allowing another 60 days to solicit input and feedback from more of those small- to mid-sized

organizations mentioned above. With additional time, convening organizations like The CBO Center would be able to facilitate town hall meetings and other large group processes for that purpose.

- We agree with NCNA's recommendation that the reporting threshold be established at \$50,000 and that organizations with revenues of less than \$50,000 utilize the new IRS reporting postcard 990 N.
- Use of a "you must file schedule x" matrix will reduce confusion and help organizations sort through the (still) large number of schedules.

Specific Comments on the Core Form and Schedules

Heading of Form 990

- We cannot emphasize enough the importance of protecting the privacy of board members and, therefore, allowing the address of the organization to appear in the heading.
- Year of formation should be changed either to year of incorporation or year that tax-exempt status was determined.

Summary Page

- We agree with NCNA's recommendation to relocate governance-related questions to Part III and the gaming and fundraising lines to Part IV.
- Asking an organization to describe its mission is confusing. The summary page is the appropriate location for placement of the organization's mission statement. Further information about the organization's activities is presented elsewhere in the document.
- We take issue with the emphasis that some watchdog organizations place on the ratio of compensation to program expense as well as the ratio of administrative to program expense. Fundamentally, we disagree with the underlying assumption that there is a correlation between a low ratio of compensation to program expense and well-managed organizations. First of all, we believe it's important to note that for the majority of nonprofit organizations the issue is not over-compensation of key employees, but under-compensation. Second, without further explanation, that ratio tells the reader of the form absolutely nothing about how effectively or efficiently an organization is managed. Many organizations, including management support



organizations, depend heavily on key employees to deliver services. For us, the expenses associated with delivering programs and services are relatively low. Our real cost is in hiring and retaining top level consultants and trainers so that we have a high quality product. We agree with the IS and see no reason to highlight this ratio on the summary page.

- We agree with NCNA's recommendation that Part IX of the proposed form be moved to the summary page. That information is far more revealing and informative that the simple ratios being asked for on Lines 11-20.
- We agree with NCNA's position on Line 19b and with their concerns about the presentation of ratios on the summary page. Ratios seem to be designed to communicate more than data about an organization. Again, there is an underlying assumption that efficient and effective organizations utilize fewer organizational resources to raise money and that the lower the cost of the fundraising dollar, the better. Well, yes and no. We had a client organization that trained service dogs for people with visual and other disabilities. They barely lifted a fundraising finger and their endowment was larger than some universities'. Why? Because the combination of puppies and disabled children was simply irresistible. Start-up organizations, on the other hand, must devote significant resources as they develop donor relationships - relationships that often take years to reap actual cash contributions. Thus, we support NCNA's suggestions that, at the very least, a check box be added to allow organizations to indicate whether there are circumstances leading to a higher than usual fundraising to program ratio.

Part II - Compensation

We agree with all of NCNA's recommendations and suggested revisions, particularly their recommendation that the Service eliminate the request for the names of former members of the governing body.

Part III - Governance, Management and Financial Reporting

We agree with NCNA, BoardSource and IS that there must be introductory language that makes it clear what is a statutory requirement and what is considered good governance - a term we prefer to "best practices." Further we agree with NCNA that in the interest of both the reader and the preparer, it is important to state that not all of the practices listed are necessary or appropriate for every organization. The CBO Center further believes that organizations with operating budgets of less than \$100,000 and those that are run entirely by volunteers should be given the option of not completing those questions that ask about practices that are not legally required.



THE CBO CENTER

We agree with the remainder of NCNA's comments on this section and wish to draw particular attention to Line 3b. The question as currently worded is entirely irrelevant. More relevant would be a question as to whether board and key staff file annual disclosure forms indicating their business and nonprofit interests.

DRAFT



Part IV - Revenue

We agree with NCNA's comments on this section. In support of their recommendation regarding Line 1e, we offer the example of The CBO Center. We currently receive general operating support from two California counties. Technically, those funds are unrestricted, yet they come to us through a contract that contains much of the same boilerplate as all other county contracts with nonprofits that are linked to the delivery of specific services. In our case, we provide the counties with our annual operating plan and it is appended to the contract. Would we report those revenues in Line 1e or in Line 2b? More precise explanation is needed.

Parts V, VI and VII

We concur with NCNA's comments and suggestions.

Part VIII - Statements Regarding Other IRS Filings

Question 1 should indicate that it is intended to be answered by organizations with status other than 501(c)(3).

Part IX - Program Service Accomplishments

We agree with NCNA that this section should be moved to the front page, however, we disagree with their recommendation that organizations be given the option to provide attachments as needed to fully reveal their organization's accomplishments. We believe there is a danger inherent in trying to position the 990 as an all-purpose instrument. It is primarily a business transaction form and is not intended to serve as an organization's annual report. Anyone interested in finding out more about an organization can do so on its website.

Part X - Signature Block

We agree with NCNA's recommendations.

Schedules A through R

We agree with NCNA's recommendations and wish to draw the Service's attention to two schedules: Schedule C and Schedule M



Schedule C: Political Campaign and Lobbying Activities

The CBO Center has been watching recent developments in Washington that have resulted in a narrowing of nonprofits' rights to be engaged in political activities, even those as benign as voter registration. Schedule C promises to further hamper those activities by requiring all nonprofits, even those who have not elected section 501(h) to estimate volunteer and staff resources (time and money) spent lobbying. Generally, there's a reason organizations do not elect 501(h): their lobbying activities, if they exist at all, tend to be so infrequent that they are unconcerned about having to pass the vague "substantial" test if audited. Asking these same organizations to track their lobbying activities as if they were electing to be covered by section 501(h) seems to defeat the purpose of having that separate designation. The CBO Center recommends that there be a check-off box asking non-electing organizations if they engaged in lobbying activities, and if so, to provide a good faith estimate of the number of *staff* hours spent doing so.

Schedule M: Non-Cash Contributions

The CBO Center strongly urges the Service to consider NCNA's recommendation for a rule and form change that would recognize pro bono contributions from consultants. The value derived from pro bono services cannot be underestimated, particularly when one considers the number of small organizations that would never be able to access professional expertise were it not for pro bono contributions from generous consultants.

From: [Mike Gross](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: FW: URGENT - Following the Money
Date: Friday, September 14, 2007 9:45:48 AM
Attachments:

I would like to re-iterate what my fellow scouter has mentioned below and strongly recommend that your new design take into account the ability for organizations to co-mingle revenues and expenses in a manner that allows them to 'cook the books' as it were in order to report their finances in a flattering way. This is both deceiving and negligent.

I would consider it negligent on the part of the IRS if you did not take this seriously and change the draft proposal to include this correction.

Seriously,
Mike Gross
A TAXPAYER and a SCOUTER.

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

From: Scouts-L Youth Group List [<mailto:Scouts-L@listserv.tcu.edu>] On Behalf Of Jay Thal
Sent: Thursday, September 13, 2007 9:21 PM
To: SCOUTS-L@listserv.tcu.edu
Subject: URGENT - Following the Money

Tomorrow, SEPTEMBER 14, 2007 is the DEADLINE.

Nearly three months ago I alerted Scouts-L of the IRS request for comments on revising the Form-990 used by non-profits to report their income and expenditures, see: <http://www.irs.gov/charities/article/0,,id=171216,00.html>

If you are similarly (or dissimilarly) concerned, as I am you have one more day to send your comments to:
<Form990Revision@irs.gov>

This is what I wrote:

- > I would like regulations and a Form-990 which would identify when a
- > non-profit charged fees to "program" recipients and then commingles
- > those fees into its general income.
- >
- > Such actions allow the non-profit to claim expenditures on those
- > recipients (with the commingled funds) making it APPEAR that a
- > significant percentage is delivered to the recipients and making
- > fundraising and administrative expenditures appear smaller. It's a
- > shell game.
- >
- > If a good organization, like the Salvation Army, charged the needy
- > for soup and sandwiches it would be called a Restaurant -- not a
- > non-profit. Particularly non-profits operating in interstate commerce
- >
- > I suspect many other Non-Profits act in the same fashion. But, my
- > specific concern/example(s) is (are) with the Boy Scouts of America
- > and its 300+ BSA Councils. (I am a 1954 Eagle Scout and continue
- > as a Troop leader.)
- >
- > Either the Scout, his family, or the Scout's Troop/Unit pays a fee
- > for going to summer camps run by BSA Councils. If that fee is not
- > paid the Scout does not go to summer camp.
- >
- > Those BSA Councils commingle those fees into their general revenues
- > and thus claim that a high percentage (often 30-40%) are expended
- > upon youth. If those fees were isolated and not commingled the
- > Form-990s would mostly show a near 0% of Council income were
- > devoted to the youth BSA claims to serve.
- >
- > Yes, I understand that it costs to provide a camping experience.
- > But, the camp(s)' operating budget should be isolated. Yes, where
- > camp operating expenses exceed fees, subsidies for operational
- > shortfalls from the Councils' general income are legitimately to be
- > claimed.
- >
- > Scouting actually occurs "on the ground" within units/Troops, run
- > by volunteers, that are totally supported by independent entities.
- > Little if any money trickles down from any of the 300+ Councils to
- > aid any unit/Troop.
- >
- > Further, having personally reviewed the Form 990s of many Councils

- > there is no consistency in reportage. Sometimes you see travel
- > costs, sometimes not. Sometimes you see expense accounts,
- > sometimes not. Etc. Certainly, similar organizations, such as all
- > BSA Councils should be reporting similarly. They do not. That is
- > a failure of 300+ accountants, or poorly written instructions.
- >
- > Your new forms and instructions do not appear to address problems
- > such as I describe above, whether if be BSA or some other of the
- > half a million reporting non-profits. Your "Background Paper"
- > speaks to lifting burdens from those required to report, but it
- > doesn't seem to help stakeholders in assessing whether their
- > contributions have been effectively spent.
- >
- > Jay Thal

YiWWSWd,

Jay Thal

From: [McSwiggan, Gerald](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Business Civic Leadership Center"s comments to the 990 form
Date: Friday, September 14, 2007 10:04:47 AM
Attachments: [2007.9.14_990 comments.doc](#)

Please find BCLC's comments to proposed 990 rewrite. They are attached.

<<2007.9.14_990 comments.doc>>

Thank you for the opportunity to comment,

Gerald McSwiggan

Manager, Special Projects

Business Civic Leadership Center

U.S. Chamber of Commerce

202-463-5627

gmcswiggan@uschamber.com

REGISTER TODAY

2007 Global Corporate Citizenship

Conference:



September 14, 2007

Acting Commissioner Linda Stiff
1111 Constitution Avenue, NW
Room 3000
Washington, DC 20224-0002

Dear Commissioner Stiff:

The Business Civic Leadership Center (BCLC) is pleased to respond to the IRS' request for feedback regarding the new 990 form.

BCLC is a 501 c(3) public non-profit affiliate of the U.S. Chamber of Commerce that represents business corporate citizenship programs and corporate private foundations. We are therefore in a unique position to see the issue from both the standpoint of a 990 filer and as a representative of decision makers who use the 990 form as part of their evaluation process. After consulting with many companies, here is a sample of their feedback:

- 1) The IRS should define 2-3 core objectives it wants to achieve with this form, and align all of its questions to achieve them. It should be "value neutral" in terms of evaluating the social contributions of non-profit entities. Social value is in the eye of the beholder.
- 2) The form should be simple to use and easy to understand.
- 3) There should be a "tiered" approach – more information should be requested of more complex organizations, but there was not a consensus about what the tier levels should be. Whatever they are, they should be indexed annually to inflation.
- 4) Non-profit organizations are becoming more complex. It is helpful that the 990 Form requires documentation of top funders and governors of the organization, as is itemization of non-profit audit and governance procedures. Conversely, non-profits should not be required to disclose compensation of persons spending less than 50% of their work hours on the organization.
- 5) Some companies would like to gain a clearer understanding of performance evaluation costs separate from either management costs or accounting costs.
- 6) The glossary is helpful, but should be expanded to include definitions such as "management costs".
- 7) Some companies would like to see additional information on contingent liabilities.
- 8) Some companies welcomed Part IX—statement of program service accomplishments. While the required "most significant accomplishments of the year" statement is subjective, it gives stakeholders a better sense of the scope of the work being done.

Thank you for this opportunity to comment. We applaud the IRS for its willingness to update the 990 Form and receptiveness to outside feedback.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Jordan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Stephen Jordan
Senior Vice President & Executive Director
U.S. Chamber of Commerce
Business Civic Leadership Center

From: [Melany Brown](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Form 990 suggestions
Date: Friday, September 14, 2007 10:52:07 AM
Attachments: [IRS 990 letter Sep2007.doc](#)

Please see the attached for our comments on the proposed Form 990 modifications.

Thank you.

Melany

Melany Brown

Executive Director

Executive Alliance

206-328-3836 | www.exec-alliance.org

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September 13, 2007

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

Thank you for the opportunity to comment on the proposed revisions to Form 990.

This letter supplements our earlier comments dated August 29, 2007.

We continue to believe that the best course would be to remove entirely the calculations of various ratios from the first page of the Core Form -- questions 8b, 19b, 24b, 25 and 26.

If the calculation required by question 19b is retained on the form, we suggest that the following approach replace the current text:

19b. Using data for the past five years, calculate the percentage ratio of total contributions to total fundraising expenses (the sum of this and four previous years' entries on line 19a or equivalent divided by the sum of this and four previous years' entries on line 11 or equivalent multiplied by 100): enter here _____ %

19c. Do you expect this percentage ratio to remain approximately the same (within plus or minus 10 percentage points) during the next three years? () yes; () no, it is expected to decrease by more than 10 percentage points; () no, it is expected to increase by more than 10 percentage points.

The instructions should permit organizations formed within the last five years to present the actual results for the lesser period.

The instructions for lines 11 and 19a should also make clear that in both cases, the reported totals should include all revenues and all expenses (be "gross" rather than "net"); as this latter issue has been an on-going problem with reporting using the current Form 990, we anticipate it will be covered thoroughly in the instructions for these lines and for Schedule G.

Observers of responsible fundraising by reputable organizations have repeatedly discovered that individual organizations experience large variations in fundraising expenses (and results) from year to year. These variations reflect both strategic choices made by the organizations and the unremarkable vagaries inherent in fundraising activities. Examples of the sorts of events that can distort any statistic based on a single year's experience include the initiation or completion of a significant special campaign, accidents in the timing of appeals and responses, the receipt of significant unanticipated bequests, and participation in fundraising experiments which are either much more, or much less, successful than anticipated. Statistics dominated by such variations should not be interpreted as reflecting on the underlying character of the organization nor or the wisdom of its management of fundraising activities.

Thank you for your attention to this suggestion.

With best wishes,

A handwritten signature in blue ink that reads 'Melany Brown'.

Melany Brown

cc: Steven T. Miller, IRS

From: [Paul Verrette](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comments on the Draft 990
Date: Friday, September 14, 2007 11:11:27 AM
Attachments: [Final 990 Comments.pdf](#)

Please find attached comments on the Draft 990 from the Charities Review Council.

Thanks,
Paul

Paul Verrette
Accountability Program Manager
Charities Review Council
(651) 224-7030 ext. 17

www.smartgivers.org



September 14, 2007

IRS

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

990 Redesign Team:

We are pleased to submit these comments on the 6/14/2007 Draft of the redesigned IRS form 990. The Charities Review Council is a 61-year-old community resource serving Minnesota donors and nonprofits. Our mission is to provide tools for donors to make informed giving decisions that help build a stronger nonprofit sector.

We are very supportive overall of the Form 990 redesign. We believe that for the general public, nonprofits, sector support groups, and researchers the 990 is an important public education document – an opportunity to demonstrate transparency and compliance with federal regulation. The redesigned 990 has many features that will help the general public and consumers of the 990 learn more about nonprofit practices more effectively and easily.

We do recommend that the IRS carefully consider the impact of the information provided on the Form 990. If the information provided on the 990 is not clear and fair to large numbers of nonprofits it could do a disservice to the public by misrepresenting nonprofits.

Timeline Recommendations

We support Independent Sector's and the National Council of Nonprofit Associations' (NCNA) recommendation to delay implementation of the Core Form until reports are due for Fiscal 2009 activities. We also recommend that implementation of all schedules take place at the same time. We believe that staggered implementation of schedules could lead to reporting inconsistencies.

While we are eager to benefit from the redesigned 990 as soon as possible, we recognize that many nonprofits may have to change their practices in order to favorably answer some of the non-statutory questions in some sections. We also believe that it is crucial to allow nonprofit staffs and boards time to understand the new form. In addition, many nonprofits lack the resources to prepare for the additional reporting.

We and other organizations like state associations for nonprofits will need additional time to educate nonprofits on the implications and use of the new form. We believe that this will result in more nonprofits submitting more 990s that are accurate. This will also allow more time for nonprofits to make adjustments to governance practices that are

highlighted in the 990. For example, many smaller nonprofits may not have a whistleblower policy. With adequate time for education, the delayed implementation would allow nonprofits to put in place policies that are affordable and appropriate to their needs—thus improving the overall accountability of the sector.

Overall Redesign Comments

We support the separation of the 990 into the core form and specialized schedules. We are also supportive of changes made to facilitate e-filing. We recommend that e-filing include the option to attach pdf files for additional explanation.

We also recommend that the IRS make efforts to educate the public on how to interpret the form. It will be important for the public to understand the meaning and limitations of the information presented on the form.

Summary Page

We support the inclusion of the summary page. Based on our experience answering inquiries from the general public and media, the summary page will be helpful. The information provided here will help many types of users to quickly obtain a good summary of a nonprofit’s mission, primary activities, and basic financial information regarding income and expenses. However some of the information and the format of this draft could raise unrealistic expectations and omit important information.

We commend the IRS for including the mission and primary programs on the summary page. This is an important change that will reinforce the reasons for tax-exempt organizations by prominently displaying their purpose. Nonprofits are much more than financial information. Any consideration or investigation of a nonprofit without knowing its mission and programs is incomplete.

We recommend the following changes for the summary page:

- Line L – Because “year of formation” is ambiguous, change it to “year of incorporation.”
- Line 1 – Change to “Organization’s board-approved mission statement:” and allow more space—a minimum of three full lines.
- Line 2 – More space for listing the activities. The codes are not needed on the summary page if they are included in the full program listing and relevant schedule. There should also be a reference to Statement of Program Accomplishments.
- Line 6 and Line 7 - Remove from the summary page. The distinction between compensation over \$100,000 and under is not based on a statute or relevant national standard. Placing this information here could create an expectation that this is an important determinant of excessive compensation, when in fact many more factors are involved. It also encourages illogical comparison by the public between nonprofits, with insufficient knowledge of whether the situations are

- comparable—which they generally aren't. This information along with much more comprehensive compensation data is covered well in Part II and schedule J.
- Line 8a and Line 8b - Remove from the summary page. For small organizations, this proportion will always be very high. In such cases, a high percentage is normal. Most nonprofits are service organizations and it is normal that most of people's time should be spent on program services. The placement on the summary page with no public education invites meaningless and misleading comparison.
 - *Expense* section –Include payments to affiliates. This is important information that can help the public understand the flow of resources between national and local chapters of nonprofits.
 - *Gaming and Fundraising* section – If an organization does not fill schedule G, this section will be empty. This section should be removed and replaced with a reference to schedule G.
 - *% of Total: Lines 11-21* – The inclusion of the percentage columns on the summary page could suggest that the IRS implies that there are recommended percentages and could also lead to erroneous comparisons of efficiency between nonprofits. Without context or explanation these percentages can be misleading as a means to evaluate nonprofits. For example a nonprofit in its first two years could very easily have higher fundraising or administrative costs than one whose fundraising has matured or has achieved economies of scale. We recommend the removal of this column and replacing it with the revenue and expense information from the two previous year's filings. One problem with the current 990 has been the inability to see information about revenue changes and resource use for more than one year. Large changes in revenues or expenses in three years can reveal important information about growth and sustainability. (The public would benefit from this more than seeing percentages that can still be calculated with the removal of the draft's "% of total" column.)

Remaining Sections of the Core Form

- The Statement of Program Accomplishments should follow the summary page, reflecting the importance of this information. In the redesigned 990 this statement is currently Part IX of the Core Form. We also recommend the following for the Statement of Program Accomplishments:
 - Lines 3a, b, c... - Remove the direct revenue column . Many nonprofits may not have direct revenue but may have adequate support from other sources such as unrestricted public support. The inclusion of the column could create an expectation that direct revenue is expected. More space should be allotted for the narratives.
 - Use the National Taxonomy for Exempt Entities for program activity codes.
 - Allow organizations to include attachments, but limit their length , e.g. to 150 words per program description.
 - The addition of two questions that will enable nonprofits to communicate effectiveness:

What are the three biggest goals for the organization in the next year?

What progress did the organization make in the last year?

- Part II Compensation - A blanket requirement to provide the city and state of board members would be unreasonable for many organizations. While a majority of organizations could potentially provide the city and state of board members, the needs of the few that require confidentiality for board members must be respected. The provision of the city and state of each board member should be optional but recommended. We also recommend that the full compensation including contributions to employee benefit plans and deferred compensation. The proposed limit of just reporting the information from box 5 of the W-2 would reduce transparency.
- Part III Statements Regarding Governance, Management, and Financial Reporting – This section should make clear which questions are in response to existing regulations versus those questions that are related to promising governance practices. We also have the following specific recommendations:
 - Line 2 – More room is needed to explain changes.
 - Line 3a – The number of transactions reviewed under a conflict of interest policy is an ambiguous measure that does not provide useful information about whether or not the policy is adequately invoked. The public may wonder whether a high number is a good thing or a bad thing, when in fact it’s impossible to tell. The question should be changed to “Does the organization’s conflict of interest policy include an annual written disclosure statement and have all board members and key staff signed it this year?”
 - Line 8 – This question must make a distinction between larger and smaller organizations. In many states smaller nonprofits are not legally required to have an audit. We believe that all organizations could benefit from--at minimum--a compilation provided externally. But not all organizations can afford such services. A limit could be used such as “If your organization has revenues of \$350,000 or higher.”
 - Line 9 – If an organization does not have an external audit; it is normal to not have an audit committee. This question should somehow clearly only apply to audited nonprofits. The distinction should be clear to the readers of the 990.
- Part IV – We support the recommendation of the NCNA to add categories in 1 a-f that include more common revenue resources such as corporate and foundation grants and individual donations. We also recommend that registration and other program related revenue and educational program registration be added to lines 2 a-g.
- Part V – We support the recommendation of the NCNA to include the entire joint costs panel from the bottom of page 2 of the current 990. Without this information it is hard for the public to judge the credibility of an organization’s fundraising costs.

- Part VI – We support the recommendation of the NCNA to include distinctions between current and long-term assets and liabilities. The lack of this information makes it difficult to judge liquidity.

Schedule C

We agree with the recommendation of Independent Sector to label this schedule “Political Campaign Activities” and to include a reminder that 501(c)3 organizations are prohibited from engaging in partisan political activities.

Schedule G

We support the recommendation of Independent Sector to report fundraiser relationships in the chart in Line 1B by individual contracts with time periods rather than the current listing by individual. The increased event reporting through the schedule and required attachments will be very helpful for the general public.

Schedule I

There should be more room in Part II column H to describe the purpose of the grant.

Schedule J

We support Independent Sector’s suggestion to change Line 5 to “contingent on” rather than “determined in whole or in part by.” We believe this could help highlight compensation based directly on a percentage of earnings by a nonprofit. We also support the NCNA’s comment that not clarifying this statement could confuse the use of performance related job assessment related to meeting revenue goals with commission based compensation.

Schedule M

This schedule will add to the reporting burdens for many smaller to mid-size organizations. We realize that it will help the IRS to monitor the possible overvaluations for charitable deductions related to non-cash contributions. We support the NCNA’s recommendations in this area:

- Publish a valuation guide to increase the uniformity and ease of reporting valuation methods.
- Change the filing threshold for this schedule to \$10,000.

Replacing the 990 EZ with the Redesigned Core Form

In addition to our recommendations for the redesigned 990, we would encourage the IRS to discontinue the use of the 990 EZ. We support the recommendation of the NCNA to use the reporting postcard for organizations with \$50,000 or less in revenues and the redesigned 990 core form for those organizations with more than \$50,000 in revenues.

Group Returns

We recommend discontinuing the use of group returns. Such returns make it very hard for the public to track the activities of local or regional units of related national organizations. Discontinuing group returns would increase the accountability of local and regional boards of independent nonprofits within nationally related associations.

Additional Private Return

If there is information, such as board members' home addresses, that the IRS needs but it would not be prudent to include in a public return, the IRS should consider requesting it in a return that is not available to the general public.

Again, we commend the IRS for this redesign of the 990. Our suggestions are aimed at improving public understanding of important descriptive information about nonprofits education and taking into account the impact of this form on organizations of all sizes.

Sincerely,

Richard Cowles
Executive Director

Paul Verrette
Accountability Program Manager

From: [Brody, Evelyn](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC: [Brody, Evelyn;](#)
Subject: Comments on Core Form , Part Part III (Governance)
Date: Friday, September 14, 2007 11:22:21 AM
Attachments: [brody-990-governance.pdf](#)

Ms. Lerner, Ms. Pattara, and Mr. Schultz:

Attached are my comments on Part III (Governance) of the proposed Core Form. I suggest replacing the current combination of open-ended and targeted, but secondary questions with those that will elicit a more fundamental picture of the organization's governance structure and practices.

Many thanks for considering my comments and suggestions, and best of luck with the redesign.

Sincerely,

Evelyn Brody

Evelyn Brody
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September 14, 2007

Lois G. Lerner, Director, Exempt Organizations Division

Theresa Pattara, Project Manager

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

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

RE: Comments on Part III (Governance) of Core Form, 990 Redesign

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

I am writing to provide comments regarding Part III (Governance, Management, and Financial Reporting) of the Core Form of the redesigned Form 990 package proposed on June 14, 2007.

As others have explained in written comments, and as is acknowledged in your draft instructions, this draft Part combines information on legally-mandated practices and on recommended practices for good governance. Moreover, as your draft illustrates, determining whether an organization has adopted *and follows* good practices is impossible to determine with a handful of threshold yes/no questions that provide no opportunity for the organization to explain or for the Service to follow up. Finally, several of these questions appear prompted by the concerns of Sarbanes-Oxley (which generally does not apply to non-publicly traded companies, much less to nonprofits). I appreciate that you mean by these questions to educate exempt organizations about their governance responsibilities. That being so, I recommend that you replace the current combination of open-ended and targeted, but secondary questions with those that will elicit a more fundamental picture of the organization's governance structure and practices.

As Reporter for the American Law Institute's project on "Principles of the Law of Nonprofit Organizations," I included extensive discussion of the composition and functioning on charity boards in § 320 of Tentative Draft No. 1 (2007). (The ALI membership began but did not complete consideration of that Tentative Draft at its May 2007 Annual Meeting, and so this letter, like that Tentative Draft, reflects my views only.) One principle expounded in draft § 320 is the board's responsibility to have in place mechanisms to facilitate sound operations, but it is not usually the obligation of the full board itself to carry out all of these functions. As I will revise it, the "black letter" of draft § 320 provides:

§ 320. Board Responsibilities, Functions, and Composition

Subject to any authority reserved to the charity's membership or other person –

(a) All powers of the charity are exercised by or under the authority of its governing board, and the activities and affairs of the charity are managed by, or under the direction and subject to the oversight of, the governing board (see § 325). The governing board must ensure that those persons who are responsible for the affairs of the charity are clearly identified.

(b) The governing board's functions normally include, but are not limited to:

(1) monitoring implementation of the charity's purposes, and modifying those purposes as necessary and appropriate in accordance with §§ 230 and 240;

(2) adopting bylaw provisions that address governance issues, and amending the bylaws as necessary and appropriate;

(3) constituting the governing board and filling the chief executive position, and monitoring the board's and the chief executive's performance of their legal and organizational responsibilities;

(4) holding periodic meetings of the board (and membership, if any);

(5) setting and reviewing policies, particularly those addressing matters reserved to the board by law or the organizational documents, and providing direction to and oversight of management;

(6) overseeing the charity's fiscal integrity and performance by

adopting the budget, setting investment and spending policies, seeking appropriate resources, and exercising oversight over the charity's assets, both investment and programmatic;

(7) overseeing appropriate communication with the charity's constituencies and the public; and

(8) overseeing the establishment of appropriate procedures for internal controls, including financial controls, legal compliance, and information flow to the board.

With comments and Reporter's Notes, draft § 320 runs 76 pages, and coverage of such topics as the duties of loyalty and care and the operation of board committees appears in separate sections. Obviously, the Service will not be able to use the Form 990 (even with instructions) to educate exempt organizations completely about fiduciary duties.

It seems to me that most useful for the Service, potential donors, the press, and anyone else who reviews the Form 990 would be a series of questions that describe the governance structure of the organization and that determine whether the organization has in place procedures to support good governance. At the same time, it is important to recognize that these organizations are private entities, whose obligation to make public disclosures must be based on the requirements of the Code. I agree with those who have urged you make clear – on the Form itself and not just in the instructions – which of these items are legally required, so that readers do not draw inappropriate adverse inferences. Finally, I urge you to allow for attachments of explanations by the organization and, as described below, to require attachments of amended organizational documents and audited financial statements (when available). To these ends, I suggest you replace the current 12 questions in Part III with something like the following 10 questions:

Line 1. [If not added to the Heading of the Form 990] What is the organization's legal form? [Note that this fundamental question, which appears on the Form 1023 but not on the annual form, identifies which state organizational law applies.] Boxes should be provided for: corporation, unincorporated nonprofit association, charitable trust, limited liability company, or other (with a line to describe).

Line 2a. Is there a person or persons who can elect one or more members of the governing board?

Line 2b. If so, describe them.

Line 3. Did the organization make any significant change to an organizational document? [I would not distinguish between “organizing” and “governing” documents, which terms are not self-defining, and I would not include organizational policies; refer instead to articles/trust instrument/constitution (or similar document) and bylaws.] If yes, attach a conformed copy of the amended document. [It can be difficult to summarize changes, and the organization might be unsure which changes to report. For completeness, the revised Form 990 should continue to require attachment of amended documents.]

Line 4. Identify [here, if not in Part II (Compensation)] the voting members of the governing board. [The glossary and Part II need to define directors and trustees as those with voting power on the governing board. Confusion arises not just over honorary or advisory board members, but also over ex officio (most typically, the executive director) positions, which might or might not come with a vote.] Mark with an asterisk those governing board members, if any, who are independent (see instructions).

Line 5a. Indicate whether the organizational documents or board policies address:

- Relationships with local chapters, branches, or affiliates
- Governing board committee structure and procedures

Line 5b. Identify with a checkmark which, if any, of the following policies exist in the organizational documents or have been adopted by the date this return is filed. Note: Do not check off unless the organization monitored and enforced compliance this year.

- Board attendance
- Conflicts of interest/dualities of interest
- Travel and expense reimbursement
- Internal controls, legal, and ethical compliance
- Investment management/endowment spending policy

Line 6. Identify with a checkmark which of the following practices are followed by the organization this year (see instructions) [explain when an audit is required by the federal Single Audit Act or state law and, for whistleblowers and document retention, by federal law (including Sarbanes-Oxley, for federal matters) and possibly by state law]?

	Yes	Not Required/Applicable This Year
Audited financial statements (attach)	<input type="checkbox"/>	<input type="checkbox"/>
Prohibition on whistleblower retaliation	<input type="checkbox"/>	<input type="checkbox"/>

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Page 5

Document retention/destruction _____

Line 7. Was the organization's governing board or a board committee provided with and given an opportunity to review this Form 990 before it was filed?

Line 8a. How do you make the following documents available to the public (see instructions) [explain about old exemption applications]? Check all that apply. [Provide same boxes as on the draft, except that for "other website," require the URL, and separately provide boxes for "not applicable" (spell out) and "not filed".]

Form 1023/1024
Form 990
Form 990-T

Line 9b. Describe other documents and policies which you make publicly available, and how.

Line 10. List the states with which a copy of this return is filed.

Note that other portions of the redesigned Form address whether particular events occurred during the year. See, for example, the questions in line 5 of draft Part VIII of the Core Form, relating to excess-benefit transactions. I support two additional questions:

Line * [drawn from federal securities requirements for publicly traded companies]. During this reporting period, was there a resignation (or refusal to stand for re-election) of a board member due to an expressed disagreement over operations, policies or practices, or a removal of a board member, officer, or key employee for cause? If so, describe the circumstances.

Line ** [drawn from the California Division of Charitable Trusts' annual registration report]. During this reporting period, was there a material theft, embezzlement, diversion, or misuse of the organization's property or funds? If so, explain and describe the organization's response.

Thank you very much for considering my suggestions. Please let me know if I can answer any questions or provide any further assistance.

Sincerely,

Evelyn Brody

From: [Gallagher, Janne](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC: [Gallagher, Janne;](#)
Subject: Comments Council on Foundations Re Form 990 Redesign
Date: Friday, September 14, 2007 11:35:04 AM
Attachments: [07 COF Comments on Form 990 Redesign 091407.pdf](#)

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

Please see the attached comments from the Council on Foundations on the Form 990 redesign.

Sincerely,

Johanna Van Dyke
Coordinator, Governance
Council on Foundations
1828 L Street, NW, Suite 300
Washington, DC 20036
Phone: 202/467-0466 Fax: 202/785-3926
E-mail: _____



Via E-mail Transmission

September 14, 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

Theresa Pattara
Project Manager, Form 990 Redesign, SE:T:EO

Form 990 Redesign
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

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

These comments are offered on behalf of the Council's community foundation and public charity members. Because our members are primarily grantmakers, these comments approach the revised form from that point of view, reflecting mainly issues that are particular to grantmaking institutions. The Internal Revenue Service has already received and will continue to receive very thoughtful and detailed comments from organizations such as Independent Sector and BoardSource, from individual tax-exempt organizations, and from practitioners. Although we do not repeat them here, the Council shares many of the concerns expressed in those comments. Like many others, we think that implementing a revised Form 990 for the 2008 tax year will not give the IRS enough time to thoughtfully review all of these comments and make necessary adjustments to the form and instructions. Nor will such an accelerated implementation date allow filers sufficient time to adopt new policies to ensure that they are maintaining data that will be required to complete the form. Finally, we agree with others that a second round of comment would be desirable to ensure that the revised form strikes the appropriate balances between the information needs of the IRS and the general public and the burdens imposed on filers.

Comments on Core Form

Part I – Summary: The Council shares the view expressed in other comments that the proposed display of percentages of revenues and expenses will be misleading. In that connection, we would particularly highlight Line 8a, which proposes to display

compensation paid to officers, directors, trustees, and other key employees that is reported as a program expenses as a percentage of the organization's expenditures for program services. The instructions do not offer any rationale for why this is a meaningful comparison or why it is important to include on page one. This comparison will unfairly disadvantage smaller organizations where the CEO spends time delivering program services compared with larger organizations where the CEO's time is charged entirely to management and general.

Line 9 – Unrelated Business Revenue: We concur with the comments of the New York Community Trust that requiring the display of information from Form 990-T on Form 990 will lead to delays in filing Form 990. This is due to delays in receipt of Schedule K-1 from investment partnerships where the investment income may be subject to UBIT. An alternative might be to report prior year information.

Line 14 – Investment Income: The amounts reported on this line by charities with significant endowment will fluctuate substantially from year to year depending on the realization of capital gains and losses.

Line 19a – Fundraising Expenses: The Council's public charity members differ from many Form 990 filers in that they generally are organizations that receive small numbers of large gifts rather than large numbers of small gifts. Accordingly, they have greater year-to-year fluctuations in their total contributions received. Further, fundraising expenses may be incurred well in advance of the actual receipt of a gift, as is often the case with respect to bequests. For this reason, displaying fundraising expenses as a percentage of that year's gifts, grants, and contributions is likely to be misleading. In some years an annual percentage may be significantly higher than the organization's average over time. In other years, it may be much lower.

Line 24b – Expenses as a Percentage of Net Assets: This ratio will be low for organizations with substantial endowments and could lead readers to the erroneous conclusion that endowed organizations do not have charitable activities that are commensurate in scope with their resources.

Part II – Compensation and Other Financial Arrangements

Section A

The Council generally supports the display of compensation in a single, tabular format. We believe the use of Form W-2 or Form 1099 information in completing this part will lead to greater consistency in reporting. While the use of calendar-year information will lead to some lag in reporting of compensation by fiscal-year tax filers, year-to-year differences in compensation generally are not large and we believe the lag is outweighed by the improvements in consistency and appreciate that fiscal-year filers will not be required to recalculate, and in some cases estimate, compensation based on their fiscal

years. We agree with several comments already filed that compensation should include contributions to qualified retirement plans.

The Council supports separate reporting of compensation paid to institutional trustees. We believe this reporting will become a useful resource for benchmarking fees to institutional trustees. In this connection, the term “institutional trustee” is defined in the glossary as referring to a trustee that is an institution rather than an individual. Since there appears to be some confusion on the definition, it may help by providing a brief example, such as, “a bank that is trustee of a charitable trust.”

We concur with the recommendations by several commenters to allow continued use of the organization’s address, rather than the individual’s city and state of residence.

Section B

Line 5: We note, as have others, that certain relationships may be confidential as, for example, an attorney member of the board who has another board member as a client. We also note that a five-year lookback will require extensive recordkeeping, particularly for organizations with larger boards. Finally, a board member may be unaware of relationships that fall within the reporting requirement and thus not disclose them to the organization. She may not know, for example, that her grandson’s wife has a business relationship with the brother-in-law of someone who last served on the board four years previously. The instructions do include a helpful “tip,” which states that filers are not required to report information they do not possess if they have made a reasonable effort to secure it. We believe this “tip” should be retained and included directly in the instructions, not just as a “tip,” so that filers will be confident that they will not be penalized for failing to disclose relationships that fall within the protections of confidentiality or are not disclosed to them.

Part III – Statements Regarding Governance, Management and Financial Reporting

Line 3b. We do not think that disclosing the number of transactions reviewed under a conflict of interest policy is helpful information. Many conflicts policies include transactions that may present the appearance of a conflict as well as those where a true economic conflict is present. However, there is considerable variation among organizations in the kinds of transactions covered under the heading of appearance and this will cause large differences in the number of transactions reported. Further, the required reporting with respect to the number of transactions addressed under the policy may create a perverse incentive not to have a policy at all or to draft the policy in order to cover the narrowest range of transactions possible. We do not think this would be in the public interest.

Line 10: It is not always reasonable to expect that a governing board will review Form 990 and particularly that it review it prior to filing since the board is unlikely to have the expertise necessary to critique the form’s preparation. Further, for organizations that have

an annual independent audit, a briefing on the findings of the auditor is more likely to provide the board with the information it needs to oversee the organization's finances. We recommend that the question be revised to ask whether the board, or a committee designated by the board, reviews the organization's audit report, the organization's financial statements, and/or Form 990.

Instructions: The statement in the instructions for lines 3-5 states as a "tip," that Sarbanes Oxley requires tax-exempt organizations to adopt whistleblower and document retention policies. This statement is inaccurate. Sarbanes-Oxley creates or extends penalties for persons who retaliate against whistleblowers who report certain financial misdeeds or who destroy documents in anticipation of a federal investigation. These penalties apply to tax-exempt organizations as well as to businesses. However, while policies may help prevent the commission of one of the prohibited acts, Sarbanes Oxley does not require an organization to adopt a policy or penalize it for failing to do so.

Part V – Statement of Functional Expenses

Line 3 -- Grants and Other Assistance to Governments, Organizations and Individuals Outside the U.S. The instructions to line 3 state that in addition to reporting grants to foreign persons, this line is to be used to report grants to certain US persons, including grants to a foreign branch office of a domestic organization (since a branch office would not have a separate legal existence, we presume this statement refers to grants earmarked for use by a foreign branch office); grants to domestic organizations that conduct more than one-half their activities for or for the benefit of foreign persons; and grants made primarily to benefit foreign persons, including US citizens living abroad.

The Council recommends that the instructions be modified to exclude grants by one US organization to another US organization. We are concerned that requiring certain grants to US organizations to be reported on this line (and in Schedule F) will create a trap for the unwary since grantmaking institutions would not normally think that grants to another US organization should be reported as foreign grants. Further, reporting these grants on Line 3 will lead to double counting, make it difficult or impossible to use aggregate information from the line to estimate the flow of grant funds outside the United States. Finally, and very importantly, requiring grantmakers to determine whether their grantees conduct more than half their activities overseas will add substantially to the cost and complexity of grantmaking with no apparent public benefit in return.

Line 6: The Council concurs in the comments filed by the New York Community Trust regarding the display of payments to disqualified persons.

Line 11d – Lobbying: The instructions state that expenditures for lobbying to be reported on this line include expenditures for lobbying before administrative agencies rather than just legislative bodies. This implies a broader definition of the term "lobbying" than that currently found in section 4911 and the accompanying regulations. We recommend revising the instructions to make clear that organizations should apply the rules under section 4911 in determining which expenditures to report on this line.

Part VII – Statements Regarding General Activities

Line 4: This question asks whether the organization maintained any donor advised funds. However, it also asks whether the organization has any “accounts where donors have the right to provide advice on the distribution or investment of funds in such funds or accounts.” This is similar to a question on the 2006 Form 990 that has caused considerable confusion among Council members. The Pension Protection Act of 2006 enacted a reasonably clear statutory definition of a donor-advised fund. The Technical Explanation of the PPA by the staff of the Joint Committee on Taxation elaborated on this definition by providing some examples of funds that do not meet one or another of the definition’s three prongs even though there may be some element of donor advice in the operations of the fund. The PPA also contained two statutory exemptions from the definition and authorized Treasury to grant additional exemptions in appropriate circumstances. Our members have expressed confusion about whether the second part of the line 4 question is asking about funds that are within the statutory and regulatory exemptions or whether they must report any fund for which a donor may provide advice even though the fund is clearly not within the statutory definition. The level of confusion being expressed by our members suggests strongly to us that the IRS will not receive useful information with respect to the second part of the question because organizations are reaching differing conclusions about what should be reported. We recommend that this question be limited to reporting funds that are donor-advised within the statutory definition.

Line 8a. We believe this question was not intended to encompass investment activities. The instructions should make this clear.

Line 12: This line asks whether the organization has a written policy regarding safeguarding its exempt status with respect to transactions with related organizations. We understand that this line was intended to encompass only transactions with related organizations that are not charitable entities. Thus, for example, an organization that is exempt under section 501(c)(3) would not need a policy to safeguard its exempt status in its transactions with affiliated (c)(3) entities. The instructions should make this clear. We also understand that it was not intended to encompass investment relationships, such as the participation by a charitable entity as a limited partner in an investment partnership (these relationships appear to be covered by Line 11; however, there are no instructions for line 11). Again, the instructions should make this clear.

Line 16: The instructions should provide guidance on the types of fund that should be considered to be an endowment, including, for example, whether funds that are set aside by the board as “quasi-endowment” should be reported. There also are some discrepancies between the legal definition of an endowment, as set forth in the Uniform Management of Institutional Funds Act (and the successor Uniform Prudent Management of Institutional Funds Act) and the accounting treatment of those funds. The instructions should clarify whether organizations should classify funds as endowed based on the statutory definitions or report only those funds that accountants consider to be temporarily or permanently restricted. For example, many community foundation endowments are reported by accountants as unrestricted because the community foundation possesses the authority to

vary the restriction in carefully subscribed circumstances. As a legal matter, however, these funds are endowed.

Part VIII – Statements Regarding Other IRS Filings

Line 7a: We note again the need for the Internal Revenue Service to adopt a definition of the term “distribution.” Given the importance of this issue to charities with donor-advised funds, we believe there should be notice and an opportunity to comment on the definition. To the extent that the instructions for line 7a imply a definition as by extending the term to include compensation paid for services and reimbursements of out-of-pocket expenses, we recommend that the instruction be modified or withdrawn.

The first paragraph of the instruction is also in error in stating that a sponsoring organization must exercise expenditure responsibility for all distributions from a donor-advised fund. Expenditure responsibility is required only for distributions to entities that are not public charities and to certain Type III supporting organizations.

Comments on Schedules

Schedule A

Line 11: The Council asks that the IRS state that grantmakers may rely on the answer to line 11 to determine whether a supporting organization is Type I, Type II, or Type III and, if Type III, whether it is or is not functionally integrated.

Line 11i: This line and the instructions require supporting organizations to list each of the organizations they support. Type I supporting organizations are permitted to support a class of charities. This line should be modified to permit Type I supporting organizations to identify the organization or organizations that exercise control and to describe the class of charities they support.

This line also includes a box to check whether the organization has notified the supported organization of its existence. Notification is mandatory only for Type III supporting organizations and would be impracticable or impossible for Type I supporting organizations that support a class of charities.

Finally, the line requires reporting of amounts paid to or for the benefit of the supported organizations. Consistent with the recommendations above regarding Type I supporting organizations that support a class of charities, the instructions should be modified to provide that these supporting organizations report the amounts paid to the supported class as payments to, or for the benefit of, the supported organizations that exercise control.

We presume that supporting organizations that carry on direct charitable activities for the benefit of their supported organizations would report their expenditures in column (vii), but the instructions should make this clear.

Schedule D: Supplemental Financial Statements

Part IX. As we have already discussed, there is no common understanding of what constitutes a fund that is “similar” to a donor advised fund. The result will be incomplete and inconsistent reporting. We recommend confining Part IX reporting to donor advised funds as that term is now defined in section 4966.

Part XII. As noted in our comments on the core form, the instructions should provide guidance on which funds are to be reported under the heading of “endowment.” Does the line for investment earnings or losses include unrealized gains and losses? Clarification also is needed for funds held by community foundations, distributions from which are restricted to the organization that contributed the fund. Legally these funds are the property of the community foundation and are currently reported as assets on Form 990. Pursuant to SFAS 136, however, these funds are reported on audited financials only as an asset with a corresponding liability. The instructions should make clear whether reporting on Part XII should be based on the legal status of the funds or on the accounting treatment.

Schedule F:

The Council’s comments on the core form summarize our reservations with respect to the expansion of this form to include grants to certain domestic organizations and the significant burden that grantmakers will face in determining whether grants should be reported on this schedule or on Schedule I. We also noted the double counting that is likely to result. We note here that there is an inconsistency between requiring grantmakers to report grants to domestic charities for overseas use and the instructions for Line 1 for operating charities. Those entities are instructed not to report their US expenditures on Schedule F even if they are allocable to an activity conducted outside the US.

We share the concerns expressed by many commenters about the vulnerability of foreign aid workers and grant recipients. We concur that the IRS should devise a procedure that would allow grantmaker to designate some information as confidential, if, for example, the grantmaker reasonably concludes that disclosure would threaten a recipient’s life or liberty. We understand that Congressional action may be required to authorize withholding of this information from public disclosure and we recommend that disclosure not be required until such time as Congress has acted.

Part I

Lines 5a and 5b: These lines, which also appear on Schedule I, require reporting any assistance or grant to an individual or to an organization that is related to “any person with an interest in the organization.” Examples of “persons with an interest” include not just those individuals who are persons of substantial influence with the organization, but also all of an organization’s donors and anyone who sits on a grant selection committee. This question is overly broad in that it apparently requires reporting, for example, all grants to organizations with boards that include one or more donors to the grantmaker even though the donors derive no personal benefit of any kind from the grant. Many of our

members have hundreds and even thousands of donors. It is literally impossible to identify all of the organizations with which they, and members of their families, have “relationships” and then track whether grants are made to those organizations. For organizations that directly carry on charitable services, the line appears to require the identification of all donors to the organization who also receive services, i.e., “assistance,” from the organization even though they are legitimate members of the class being served. Thus, a hospital apparently would be required to identify all donors that have been patients and a university all students whose parents have made contributions to the school. These listings will be extremely burdensome to produce, will not provide useful information to either the IRS or to anyone reviewing Form 990, and will in many cases breach donor confidentiality. We recommend dropping these lines.

Line 2: The instructions should clarify the level of detail required for such items as the criteria used to select grant recipients. Given the variety of grant programs that funders maintain, providing detailed descriptions of the processes and criteria for each could be very burdensome. We suggest either that grantmakers be permitted to provide a general description of the process they follow similar to what is provided by private foundations seeking advance approval for programs that make grants to individuals, or that the IRS instead substitute the question from Schedule I that asks whether the grantmaker maintains appropriate records.

Part II

Line 2 is confusing. The instructions state that the line is to be used if a grantee happens to be one of the very small number of foreign organizations that have been determined by the IRS to be exempt under section 501(c)(3). However, as noted above, the schedule requires reporting of grants to domestic organizations that conduct more than half of their activities abroad and to domestic organizations if the grant is earmarked for a foreign branch. Most, if not all, of these domestic grantees will have IRS determinations that they are exempt under section 501(c)(3). Adding these domestic grantees with determination letters to foreign grantees without determination letters and reporting the total on Line 3, as is apparently required, will be completely confusing to anyone trying to assess a filer’s international organizations.

Schedule I

Line 2a: This line asks for the same information with respect to domestic grantmaking as line 5 of Schedule F. For the reasons stated in our comments to Schedule F, we believe line 2a should be dropped.

Part II: We agree with the comments filed by the New York Community Trusts that the listing of grants should be more carefully tailored to reflect grants that are material in terms of the size and scope of a grantmaker’s overall grantmaking activities. The grantmaker could be asked to report the basis for its determination of materiality.

Schedule J

In general, the presentation should aid substantially in gaining uniformity in the reporting of compensation. We disagree, however, that nontaxable expense reimbursements should be included in the overall total and reported as compensation. In order for expense reimbursements to be not taxable, employees must carefully document the expenditures and it seems both inaccurate and unreasonable to imply that these amounts are a form of compensation. We also note that while there is some superficial appeal in reporting the total amount of an individual's expense reimbursements, the total provides no context that would enable the IRS or anyone reviewing the final to determine whether the expenses were reasonable or excessive. Persons who travel frequently for their organizations, for example, will report a substantial reimbursement amount even if the expenses they incur are well within accepted guidelines for reasonableness. Similar reasoning applies to reporting nontaxable fringe benefits as compensation. However, we do believe that Schedule J should report contributions to qualified retirement plans as well as contributions to nonqualified plans.

Schedule M

Line 29: We recommend that the instructions make clear that it is not necessary to check the "yes" box if a condition of a gift is that the property be used by the donee organization in furtherance of its charitable purposes.

Sincerely,

A handwritten signature in black ink, reading "Janne Gallagher", followed by a long horizontal flourish line extending to the right.

Janne G. Gallagher
Vice President and General Counsel

From: [Betty Snyder](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comments on proposed Form 990 revision
Date: Friday, September 14, 2007 11:36:07 AM
Attachments: [image005.jpg](#)
[image006.jpg](#)
[image007.jpg](#)
[image008.jpg](#)



September 14, 2007

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

Dear Sir or Madam:

The undersigned professional appraisal organizations, representing more

than 30,000 credentialed appraisers in the U.S., appreciate the opportunity to comment on the proposed redesign of Form 990 (the return filed by exempt organizations including public charities). Our comments are limited to the proposed addition to Form 990 of a new Schedule M on which exempt organizations would be required to report details of non-cash contributions [1]

received, including their value and the method used to establish value.

IRS states as its rationale for proposing the new Schedule M, concerns about “overvalued charitable deductions involving non-cash contributions” and a need, for tax administration purposes, to better identify “organizations that receive particular categories of property.”

Many members of our organizations (who are business appraisers; personal property appraisers; or real property appraisers) provide tax-related appraisal services within their respective areas of expertise, including the valuation of non-cash property for charitable contribution purposes. IRS estimates that 20% of the 506,000 tax exempt organizations which file a Form 990 each year receive non-cash contributions of more than \$5,000. A recent Service study involving tax year 2003 data compiled from Forms 8283, concluded that six million individual taxpayers reported 14.3 million non-cash

[2]

donations valued at \$36.9 billion.

Our organizations, while supportive of the stated rationale for Schedule M, have several questions and comments about the new Schedule and its Instructions, as follows:

(1) **Independence of Exempt Organization Valuations:** The Schedule and Instructions do not make clear whether the statements of value required from the exempt organization must be separate and independent from statements of value claimed by the donors of the non-cash property, as supported by Qualified appraisals. We assume that separate and independent statements of value are contemplated; but we believe that clarification on this point is necessary.

(2) Nature of the Value of Non-Cash Property To Be Reported: The proposal lacks clarity on the nature of the values to be reported by the tax-exempts. Almost without exception, donors claiming a tax deduction for charitable contributions of non-cash property are required to base those deductions on the fair market value of the property at the time contributed. Neither Schedule M itself nor the Instructions to that form specify that the values to be reported are the fair market values of the non-cash property received. We assume that fair market value is the measure to be utilized when tax-exempts report non-cash donations; but, we believe that clarification on this point is required.

(3) Reliance on Qualified Appraisers and Qualified Appraisals To Establish Value: Neither Schedule M nor the Instructions to that form address the important issue of who may value the non-cash property to be reported by the tax-exempt recipients. Amendments to Section 170 of the Internal Revenue Code mandated by the Pension Protection Act of 2006 affirmed and greatly strengthened previous IRS policies specifying that donors are required to rely on Qualified appraisers and Qualified appraisals to establish the value of non-cash charitable contributions. Neither Schedule M nor its Instructions address the qualifications required of those valuing non-cash property received and reported by the tax-exempts. We assume that the requirements which pertain to donors' appraisals of non-cash property also apply to the appraisals prepared by the recipients; however, we respectfully urge clarification on this point.

Our organizations would be pleased to assist Treasury and IRS in any way you believe helpful to refine the Schedule M proposal. If you have any questions or would like to contact our organizations, please call or contact the government relations representative of the American Society of Appraisers, Peter Barash (202) 466-2221 peter@barashassociates.com; or Don Kelly of the Appraisal Institute (202) 298-5583, dkelly@appraisalinstitute.org.

[1]

IRS states that Schedule M “requires [tax-exempt] organizations that receive over \$5,000 of non-cash contributions to provide detail regarding various types of non-cash contributions, including...closely held securities, intellectual property, cars, art, collectibles, real estate interests, conservation easements, household goods and clothing. It obtains valuation information used by the organization to report revenues and assets on its financial statements relating to the types of properties received by the organization.”

2

In general, a Form 8283 must be filed if the amount of a claimed deduction for all non-cash charitable gifts is more than \$500. If the non-cash property has a claimed value of more than \$5,000, a qualified appraisal performed by a qualified appraiser is usually required.

Sincerely,

American Society of Appraisers

Appraisal Institute

American Society of Farm Managers and Rural Appraisers

National Association of Independent Fee Appraisers

Betty Snyder
Director of Communications
American Society of Appraisers
Phone (703) 733-2107
Fax (703) 742-8471
E-mail _____

Advance Your Career with ASA's Exceptional October Educational Offerings! Register early and save on these Business Valuation and Machinery and Equipment courses: BV202, BV204 and ME203 in Chicago, Ill., Oct.11–14 and ME201 (aviation specific) and ME202 (aviation specific) in Rockford, Ill., Oct. 4–11. [Click here to register today.](#)

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[\[1\]](#)

IRS states that Schedule M “requires [tax-exempt] organizations that receive over \$5,000 of non-cash contributions to provide detail regarding various types of non-cash contributions, including...closely held securities, intellectual property, cars, art, collectibles, real estate interests, conservation easements, household goods and clothing. It obtains valuation information used by the organization to report revenues and assets on its financial statements relating to the types of properties received by the organization.”

[\[2\]](#)

In general, a Form 8283 must be filed if the amount of a claimed deduction for all non-cash charitable gifts is more than \$500. If the non-cash property has a claimed value of more than \$5,000, a qualified appraisal performed by a qualified appraiser is usually required.

From: [Niblock, James S.](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: P.E.O. International Chapter Comments on Proposed Form 990
Date: Friday, September 14, 2007 12:08:12 PM
Attachments: [PEO Comment Letter re 990 Changes.pdf](#)

Ladies and Gentlemen:

Attached in .pdf format please find comments from the International Chapter P.E. O. Sisterhood regarding the proposed revisions to Form 990. These comments are submitted to you in accordance with your request for comments set forth in IR-2007-117 issued on June 14, 2007. Thank you for your consideration of these comments.

Sincerely,

James S. Niblock
Brown Winick Law Firm
Attorneys at Law for
International Chapter P.E.O. Sisterhood

James S. Niblock

Attorney
515-242-2461 *direct*
515-323-8561 *direct fax*
www.brownwinick.com



666 Grand Avenue
Suite 2000 Ruan Center
Des Moines, IA 50309

Brown, Winick, Graves, Gross, Baskerville, & Schoenebaum P.L.C.
Notice: This E-mail (including any attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§2510-2521, is confidential and may be legally



International Chapter P.E.O. Sisterhood

Director of Finance
P.E.O. Executive Office
3700 Grand Avenue
Des Moines, Iowa 50312-2899

515-255-3153, Ext. 3715
Fax 515-255-3820

September 13, 2007

VIA EMAIL: Form990Revision@irs.gov

Form 990 Redesign
ATTN: SE:T:EO
1111 Constitution Ave., N.W.
Washington, DC 50224

Re: Comments in Response to the Draft Redesigned Form 990

Ladies and Gentlemen:

The International Chapter P.E.O. Sisterhood ("P.E.O.") is pleased to offer the following comments regarding proposed revisions to Form 990, its schedules, and the new filing threshold requirements generally. P.E.O. welcomes this opportunity and thanks those who have labored diligently to make these proposed revisions and who will the many comments submitted in response.

Comment #1—New Annual Electronic Notice (Form 990-N)

According to the information sent to us by the IRS in a notice dated June 21, 2007, all small tax-exempt organizations will now be required to submit an annual filing. For those who fall below the minimum amount requiring a Form 990 (\$25,000 in receipts), an electronic notice, or e-postcard (Form 990-N), will now be required by the 15th day of the fifth month after the fiscal year-end. Exceptions are given for those organizations included in a group return, churches and their auxiliaries and associations.

P.E.O. holds a group exemption for all of its local and state chapters. Currently, that list includes 6,006 chapters. Each year we receive a large mailing from the IRS that includes a listing of each of those organizations with their federal EIN numbers. We are required to review that cycle listing and submit any changes to the IRS by April 1. The information contained includes EIN number, official name the individual chapter, address and appropriate code that tells the IRS whether or not an annual Form 990 is required. We do this for each of the 6,006 chapters under the P.E.O. group exemption—a very labor-intensive task.

The new Form 990-N that will be required will ask for organization name, address, EIN number, tax period and a statement that the organization's annual receipts are normally under \$25,000. This is essentially the same information already submitted on the annual cycle listing. This is duplication of effort for P.E.O. and for the IRS. We strongly urge that the IRS consider exempting organizations included in a group exemption from having to comply with the Form 990-N filing requirement.

Comment #2—New Data Collection and Reporting Requirements for Form 990

The discussion draft issued on the IRS web site for the revised Form 990 is overwhelming. The new Form will easily double the amount of information for us to collect and process for reporting. It is clear that our Form 990 filings for local and state chapters also will be very time-consuming. At a minimum, we will complete a 10-page Form 990 and a 4-page Schedule D for each of those chapters. Additionally, P.E.O.-related International charitable funds will be subject to additional filing schedules.

In order for us to gather the information necessary to complete the revised Form 990, we will have to increase the reporting requirements passed down to our chapters. Like many nonprofits, our chapters are run almost entirely by unpaid volunteers. The additional reporting requirements will present a hardship for our chapters to gather the information and will complicate our efforts to complete the necessary filings.

We are not only concerned with the time involved to complete the revised Form 990, but also the time needed to collect the information. Our structure provides that local chapters report their financial information to their respective state chapter. The state chapters then forward the local chapter information, along with a state chapter financial statement, to the International Chapter office where the returns are completed. For the purposes of tax data collection, the state chapters are charged with making sure each local chapter has submitted a financial report. P.E.O. doesn't even begin to receive those reports from state chapters until at least two months after a local chapter's year-end. The new requirements will cause us to ask for even more information, which will slow down the process and will be confusing our volunteer officers.

These additional filing requirements not only present a hardship for those of us who are preparing the returns at International Chapter, but also for our volunteers who give of their time for our organization. This could have a serious impact on our ability to recruit new volunteers to serve as local and state chapter officers. The ripple effect of that could be devastating to nonprofit organizations such as P.E.O.

Comment #3—Increase Threshold Amounts for Filing Requirements

It is my understanding that there are currently no plans to increase the minimum amounts the IRS uses to determine who must file a Form 990 and who qualifies for a Form 990-EZ. For at least the 17 years that I have been involved with filing Form 990s, the dollar amounts have been the same, meaning that a return is required if receipts are normally more than \$25,000 and a Form 990-EZ only allowed if the receipts are less than \$100,000 and assets do not exceed \$250,000.

These amounts should at a minimum be indexed to reflect the time value of money. For the ten-year period of 1990 to 2000, adjustments for CPI would have increased the minimum filing requirement from \$25,000 to \$33,000. There has been no provision for this at all, though the IRS does routinely adjust other tax deductions and allowances. This has resulted in an increasing number of smaller nonprofits falling under the filing requirements.

From the questions presented on the revised Form 990, it is clear the IRS is interested in gleaning more information from very large, multi-layer managed nonprofit organizations whose multiple activities might require additional governmental oversight. In that case, there should be much

more consideration given to adjusting filing requirements for small to middle-sized nonprofits. We suggest more streamlined filing requirements for those non-profit's whose annual gross revenues are under \$25 million or whose gross assets are less than \$100 million. Only poor tax administration policy would impose the same requirements on nonprofits that do not have the same resources available to devote to annual tax compliance matters as much larger nonprofits do.

Sincerely,

Kathy A. Soppe / jsu

Kathy A. Soppe
Director of Finance, for
International Chapter P.E.O. Sisterhood

From: [Cory Kallheim](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC: [Jennifer Hilliard;](#)
Subject: Comments on Redesigned Form 990
Date: Friday, September 14, 2007 12:37:54 PM
Attachments: [Comments to IRS re 990.doc](#)

Attached are the comments of the American Association of Homes and Services for the Aging on the redesigned Form 990. Thank you for the opportunity to comment on the proposed changes.

Sincerely,

Cory Kallheim
Senior Attorney
American Association of Homes and
Services for the Aging
2519 Connecticut Avenue NW
Washington, DC 20008
Phone (202) 558-5691

Mark your calendar!
AAHSA Annual Meeting & Exposition
October 21-24, 2007
Orlando -- Orange County Convention Center South
"Live Your Story"



September 14, 2007

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

Re: IRS Draft Form 990

To the Form 990 Redesign Team:

The American Association of Homes and Services for the Aging (AAHSA) appreciates the opportunity to submit feedback on the Draft Redesigned Form 990. The members of AAHSA (www.aahsa.org) help millions of individuals and their families every day through mission-driven, not-for-profit organizations dedicated to providing the services that people need, when they need them, in the place they call home. Our 5,700 member organizations, many of which have served their communities for generations, offer the continuum of aging services: adult day services, home health, community services, senior housing, assisted living residences, continuing care retirement communities and nursing homes. AAHSA's commitment is to create the future of aging services through quality people can trust.

AAHSA commends the Internal Revenue Service's (IRS) efforts to revise the Form 990 to facilitate accurate, complete, and consistent reporting by exempt organizations. AAHSA believes that the Draft Form 990 is a step forward in achieving that goal.

As a member of the Independent Sector, a coalition of leaders in the charity and philanthropic sector, AAHSA has closely followed the Independent Sector analysis and comments on the Draft Form 990. AAHSA concurs with the vast majority of concerns addressed in the Independent Sector comments. In addition, BoardSource and the National Council of Nonprofit Associations (NCNA), which both represent nonprofit organizations across the exempt organization sector, have submitted instructive comments.

In order to not duplicate efforts on many shared areas of concern, AAHSA would direct the IRS to the comments of the Independent Sector, BoardSource, and NCNA. AAHSA submits the additional following comments on the redesign of Form 990.

Overview

The massive redesign of Form 990 presents many challenges not only to the IRS, but also to the exempt organization community. After the IRS reviews the comments from the field and makes further improvements based on the feedback, exempt organizations will need time to make changes to their record-keeping and accounting systems. With this consideration in mind, AAHSA does not feel it is realistic to report using the new Form 990 for the Fiscal Year 2008. Accordingly, we urge the IRS to delay implementation until Fiscal Year 2009 so that organizations will have the opportunity to digest the changes and technical assistance from the IRS and other state and national organizations and update their record-keeping accordingly.

AAHSA also supports the IRS goal of electronic filing, but there must be sufficient space on the form and schedules to provide information without adding separate attachments. AAHSA encourages the IRS to add sufficient space to the core form and schedules where appropriate.

Core Form – Part I, Summary Page

AAHSA supports the IRS approach of gathering essential summary information on the first page of the Form 990. The summary page provides a clear and quick picture of the organization to the public and regulators. Although the approach is satisfactory, there are some improvements necessary to the summary page that will make it clearer and more useful for analysis by the public and IRS.

Request for Percentage Calculations – Lines 8, 11-15, 17-19, and 24

The request for financial information, including total revenue and expenses, is an important part of the summary. The requests for percentages of revenue and expenditures, expenses as a percentage of assets, and the percentage of program services delivered by key employees, however, may provide misleading information to the readers of the form. By requesting this information, the IRS is implying that there is an “appropriate” percentage, which is somehow an indicator of the organization’s efficiency or effectiveness, and that these percentages should be very important for readers of the form. This information is not particularly useful and potentially misleading as indicated below.

Every organization is different in how it delivers services as well as its revenue and expenses. Some organizations use volunteers to deliver program services and others use key employees as well as “non-key” employees. And, with respect to health care organizations in particular, some services are delivered by highly compensated employees such as physicians, which may skew the percentage of program expense

delivered by key employees and officers. As a result, the correspondingly different percentages such organizations may record on line 8b (percentage of program service expense delivered by key employees and officers) would bear no relationship to the efficiency or effectiveness of the organization.

As for other examples on the summary page, the computation of total expense as a percentage of net assets may be misleading when an organization is setting aside funds for such things as a new facility or building, new service programs, or to purchase new equipment necessary to deliver services. Also, a large gift or bequest can certainly skew an organization's percentage of fundraising expense as a percentage of contributions and grants. In addition, such a gift or bequest may be the product of several years of work and cannot be a direct fundraising expense in any given year. There is also no room on the summary page to explain the facts and circumstances underlying the percentage calculation.

At the bottom, the request for percentage calculations on the summary page is not meaningful and can be misleading. AAHSA requests that the IRS eliminate the columns calculating percentages on lines 8, 11-15, 17-19, and 24. The information to calculate these percentages is available to those interested in such an analysis, but it should not be highlighted on the form as some important indicator of organizational efficiency or effectiveness, when there is no evidence to support such a conclusion.

Core Form – Part II, Compensation

Addresses of Board Members – Line 1a

AAHSA believes that nonprofit board service is a public activity and rosters should be public information. However, public service on these boards sometimes carries significant risk for board members if the organization is involved in a controversial issue or an unfortunate event. AAHSA agrees with other nonprofit organizations submitting comments on this issue that the IRS should encourage organizations to provide the city and state of residence of board members, but allow organizations to use their own business address for board members concerned about such disclosure.

Core Form – Part III, Governance

Conflict of Interest Policy – Lines 3 and 3a

AAHSA supports the IRS asking organizations whether they have a conflict-of-interest policy. The subsequent question (line 3a) inquiring about the number of transactions reviewed under the policy, however, will not provide a meaningful response. A well-run

organization may not have any transactions during the year, while another similarly well-run organization may indicate a number of transactions were reviewed. The answer simply does not provide any useful information. A more meaningful question would be whether such policy was distributed to the board and key staff members for review.

Audit Committee – Line 9

While AAHSA encourages organizations to have an independent audit or audit committee review its financial statements, many organizations with small boards and limited organizational structures may approach the audit responsibility without designating a specific and/or separate committee. Such approaches include having a joint finance and audit committee or using the executive committee to handle the audit. In addition, it is difficult for some smaller organizations to recruit members of the board that have the requisite financial background to serve on an audit committee. The question may be better posed as a subpart of line 8, with the instructions clearly stating that such a practice is not required by federal law, but is a best practice.

Schedule H: Hospitals

This new schedule must be completed by organizations that operate a facility that provides hospital or medical care. The stated IRS rationale for this schedule is that there have been concerns raised as to “whether there are differences between for-profit and tax-exempt hospitals.” The proposed schedule is designed to combat the lack of transparency surrounding tax-exempt medical care providers by adopting the Catholic Health Association’s (CHA) community benefit reporting model.

AAHSA submits that the applicability of Schedule H is overly broad. The title of the Schedule is “Hospitals,” yet the description of organizations that must complete the Schedule includes any “facility that provides hospital or medical care,” which is defined to include the type of care provided in a host of settings. In a telephone forum on July 18, 2007, IRS representatives briefly acknowledged that the definition may be overly broad and stated that the Service was working on the definition over the course of the summer. Nevertheless, it is important to emphasize that the questions asked of organizations required to file Schedule H are geared to hospitals and are not readily extended to other types of providers. As a result, AAHSA advises that the IRS limit applicability of Schedule H solely to hospitals.

If the IRS chooses not to limit the applicability of Schedule H solely to hospitals, AAHSA’s next concern is the conflicting definition of what constitutes medical or hospital care and who is required to complete proposed Schedule H. Regarding the latter, the IRS provides the following definition:

For purposes of listing its facilities, a “facility that provides medical or hospital care” means a building, other structure, or campus that is dedicated to providing medical or hospital care. A facility that provides medical or hospital care *does not include a component wing or department of a hospital, clinic, or other discrete facility.*

“Medical or hospital care” includes the type of care provided by hospitals, rehabilitation institutions, outpatient clinics, *skilled nursing facilities*, and community mental health or drug treatment centers...

A facility that provides medical or hospital care does not include a convalescent home or *home for children or the aged*, a cooperative hospital service organization, or an institution whose principal purpose or function is to train handicapped individuals to pursue a vocation.

IRS Schedule H guidance p. 8 (emphasis added)

As noted above, the definition is confusing because the guidance states that it includes skilled nursing facilities, but not homes for the aged, and distinguishes between facilities and wings or components of a larger facility, all the while clearly focusing on hospitals. Does this definition encompass a Continuing Care Retirement Community (CCRC), which typically includes independent living, assisted living and skilled nursing all in one campus? A CCRC typically houses the skilled nursing in a separate wing or facility. So, does that exclude the CCRC from the definition of a medical provider per the first paragraph cited above? If so, free standing nursing facilities would have to complete Schedule H, but CCRCs with a nursing component or other facilities with a similar continuum would not be required to complete Schedule H. AAHSA does not believe that the IRS had this intent with regard to long term care facilities in any form.

Another distinguishing feature between hospitals and long term care facilities involves the sources of payment for services rendered. Hospitals largely rely on private insurance and, to some extent, Medicaid as payment for services rendered. Long term care facilities, by contrast, rely heavily on private funds and Medicaid, and to a lesser extent, Medicare, for payment. As a result, data reported by each type of facility under Schedule H would not be comparable.

Aside from the confusion over the definition of a medical provider in the long term care area, the most important distinction is that nursing facilities and hospitals operate under different IRS revenue rulings and requirements for federal tax exemption. The revenue ruling that is the basis of the community benefit standard for hospitals (69-545), and the proposed Schedule H, are not relevant to nursing facilities and elderly housing. The revenue rulings that guide federal tax exemption for nursing homes and elderly housing

From: [Mark A. Mix](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: 990 Revisions
Date: Friday, September 14, 2007 12:45:18 PM
Attachments: [AIP Letter.pdf.pdf](#)

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

Re: Form 990 Revision Project

Dear Sir or Madam:

The National Right to Work Committee joins with those opposed to enlarging and placing more emphasis on fundraising percentages, as is proposed in the form990coreform, bottom of page 1. Such calculations are meaningless in the absence of context. (For example: Is the organization new? Does it promote an unpopular cause? Is it prospecting for new supporters? Has it received an unexpected, large gift? Does it receive government grants? Does it have a few, wealthy donors? Is its donor base people of more modest means who contribute modest gifts?)

As others have commented, the American Institute of Philanthropy (AIP) and other self-appointed "watchdog" groups constantly harp on fundraising (and administrative) costs as a percentage of either funds raised or expenditures, and some state officials do likewise. Politicians use it for campaign fodder. But, in the Village of Schaumburg and other cases, the U.S. Supreme Court has held attempts to force soliciting organizations to blacken their own name with arbitrary calculations of high fundraising costs an unconstitutional infringement of First Amendment rights of free speech and association. The Court declared that cause promoting or educational program expenses were often intertwined with a fundraising appeal,

and reasonable allocations of joint costs had to be allowed as a constitutional matter. This has never been accepted by the watchdog community, including AIP, which uses the joint cost information on the existing 990 to arbitrarily reassign those costs and blacken the reputation of the organization. Form 990 reporting should not help them accomplish their unconstitutional goal of blackening the names of organizations that use joint activities to promote their program and incidentally raise funds. It is enough that IRS requires functional accounting in accordance with GAAP. Let people calculate whatever percentages they desire and draw whatever conclusions they desire.

In further support of these comments, we attach a February 16, 2006, letter we sent to AIP on its flawed views of joint cost allocations and arbitrary recalculations of an organization's (ours) professionally audited figures.

We also join with those who believe this revision project will create more work and administrative costs for the nonprofit community, especially smaller organizations that have to stretch every penny they raise. The revisions seem geared more to very large, multi-million or multi-billion dollar nonprofits (hospitals, universities, the United Way, etc.). But the costs of compliance will weigh most heavily on the relatively smaller organizations and divert more resources from program to administrative efforts, giving the watchdog groups more to complain about.

And, of course, the watchdog groups' "program" for which they do their own fundraising is, among other things, that nonprofits spend too much on fundraising and administration. Making administration more costly will feed the watchdog groups' misguided programs and help their fundraising. Why should the IRS serve them?

Sincerely,

Mark A. Mix, President
The National Right to Work Committee
8001 Braddock Rd., Suite 500
Springfield, VA 22160
(703) 321-9820



National Right to Work Committee

A COALITION OF EMPLOYEES AND EMPLOYERS

NATIONAL HEADQUARTERS BUILDING

Mark A. Mix
President

February 16, 2006

Daniel Borochoff, President
American Institute of Philanthropy
3450 N. Lake Shore Drive, Suite 2802
P.O. Box 578460
Chicago, IL 60657

Dear Mr. Borochoff:

Enclosed per your recent request are copies of the Committee's most recent audited financial statement (2004) and IRS Form 990 (2004). The Committee does not publish an annual report.

We appreciate your efforts to hold nonprofits accountable and to ensure that donors and potential donors have information with which to make informed decisions before contributing their hard-earned dollars, and we are pleased to have this opportunity to provide you with information on the Committee.

However, we also want you to know that we are disappointed with your treatment of joint program/fundraising cost allocations.

While you concede that social welfare groups like ours (i.e., IRC Section 501(c)(4) organizations) have legitimate reasons for allocating joint costs between fundraising and program functions, you then pick an arbitrary figure out of thin air – thirty percent (30%) of joint costs – which you deem to be an acceptable allocation to program expense, and you reallocate any amount over that to fundraising. This criterion of yours is stated as follows:

The mailings and phone calls of social welfare groups . . . may serve a dual purpose: raising funds and recruiting/educating members to write their congressman or make other attempts to influence legislation. AIP counts up to 30% of the cost of such mailings and phone calls as program expenses in its

Daniel Borochoff, President
American Institute of Philanthropy
February 16, 2006
Page 2

lower number for “% Spent on Charitable Purpose,” its higher number for “cost to raise \$100” and its overall grade. Please note however, that many of these groups consider such mailings and phone calls to be largely educational and allocate over 30% of these costs to program expenses. These accounting differences may cause lower overall grades for some social welfare organizations.

And, of course, ours is one of the organizations given a lower grade as a result of your arbitrary position on joint cost allocations.

As you must know, since you are knowledgeable in these matters, charity solicitation watchdogs have for years attempted to blacken the reputations of organizations that combine program activities with fundraising. It used to be state attorneys general and state solicitation laws, which used a “primary purpose” rule to force organizations to overstate their fundraising costs by treating all joint activities as fundraising.

The U.S. Supreme Court declared this approach unconstitutional in *Village of Schaumburg v. Citizens for a Better Environment*, 100 S. Ct. 826 (1980), which held that cause solicitation is protected by the First Amendment and that governmental regulation of it “must be undertaken with due regard for the reality that solicitation is characteristically intertwined with informative and persuasive speech seeking support for particular causes . . . and that without solicitation the flow of such information and advocacy would likely cease.” *Id.* at 834.

Indeed, our organization’s communications always include “informative and persuasive speech seeking support for” our cause. We constantly keep our members and the public informed of legislative and public policy developments on our issues, tell them how they can become involved to influence the outcome, and provide them with avenues to become involved, whether it is contacting their legislators or public officeholders, signing a petition, or other means – the key is enabling and encouraging them to get involved and hold legislators, public officials, and bureaucrats accountable.

And, yes, we cannot carry out such a program without simultaneously asking for support, so we do, in almost every program communication, in a pro forma, routine way. However, simply adding a request for financial support, under SOP 98-2, converts our program communications into “joint purpose” communications, requiring us to allocate the related costs between program and fundraising, which we do.

A few years after *Village of Schaumburg* was decided, the AICPA promulgated SOP

Daniel Borochoff, President
American Institute of Philanthropy
February 16, 2006
Page 3

98-2 to update auditing guidelines for allocating joint costs which include fundraising. Each year thereafter, our auditors have examined our joint cost allocations in light of that SOP and have issued unqualified opinions with respect thereto.

Yet, despite our significant efforts to comply with SOP 98-2 and despite the professional opinions we have received from our licensed CPAs, you continue to arbitrarily reallocate part of our program joint costs to fundraising, and you do this without any foundation whatsoever. Your reallocation is based solely on your personal, subjective view and assumption that the U. S. Supreme Court, the AICPA, and our own auditors have it wrong and that you, with your arbitrary view and assumption, have it right.

We disagree, and we wanted you to know that we disagree. You should accept the functional cost allocations which CPAs find to be in accord with Generally Accepted Accounting Procedures (GAAP), including SOP 98-2.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Borochoff". The signature is written in a cursive style with a large initial "D".

MAM/emm
Enclosures

From: [Shortill, Kevin](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Draft Redesigned Form 990
Date: Friday, September 14, 2007 1:09:32 PM
Attachments: [Scan001.pdf](#)

Dear Sir/Madam:

In response to the request for comments in News Release IR-2007-117 (June 14, 2007), we respectfully submit the enclosed comments on the draft redesigned Form 990 on behalf of our clients, the National Football League (the “NFL”) and the Office of the Commissioner of Baseball d/b/a Major League Baseball (“MLB”). Both the NFL and MLB are classified by the Internal Revenue Service as tax-exempt, 501(c)(6) trade associations. The members of the NFL and MLB are, respectively, the approximately 30 for-profit professional football and baseball teams. The NFL and MLB organize and schedule professional games and provide game officials. All profits go to the for-profit teams, which are taxable entities.

We appreciate the effort of the Internal Revenue Service in addressing tax-exempt organization reporting and disclosure issues, as well as the request for, and consideration of, our comments.

If there is any question, please contact me at (202) 662-5113.

Thank you, again, for the opportunity to submit comments.

Respectfully submitted,

Kevin Shortill

<<Scan001.pdf>>

Under IRS standards of professional practice, certain tax advice must meet requirements as to form and substance. To assure compliance with these standards, we disclose to you that this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties.

COVINGTON & BURLING LLP

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KEVIN J. SHORTILL
TEL 202.662.5113
FAX 202.778.5113
KSHORTILL@COV.COM

September 14, 2007

BY HAND DELIVERY

Internal Revenue Service
Form 990 Redesign
1111 Constitution Avenue, NW
Washington, DC 20224

Attn: SE:T:EO

Re: Draft Redesigned Form 990

Dear Sir/Madam:

In response to the request for comments in News Release IR-2007-117 (June 14, 2007), we respectfully submit the enclosed comments on the draft redesigned Form 990 on behalf of our clients, the National Football League (the "NFL") and the Office of the Commissioner of Baseball d/b/a Major League Baseball ("MLB"). Both the NFL and MLB are classified by the Internal Revenue Service as tax-exempt, 501(c)(6) trade associations. The members of the NFL and MLB are, respectively, the approximately 30 for-profit professional football and baseball teams. The NFL and MLB organize and schedule professional games and provide game officials. All profits go to the for-profit teams, which are taxable entities.

We appreciate the effort of the Internal Revenue Service in addressing tax-exempt organization reporting and disclosure issues, as well as the request for, and consideration of, our comments.

If there is any question, please contact me at the number or address above.

Thank you, again, for the opportunity to submit comments.

Respectfully submitted,



Kevin J. Shortill

Enclosure

COVINGTON & BURLING LLP

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September 14, 2007

BY HAND and BY EMAIL

Internal Revenue Service
Form 990 Redesign
1111 Constitution Avenue, N.W.
Washington, DC 20224

Attn: SE:T:EO

Re: Draft Redesigned Form 990

Dear Sir/Madam:

In response to the request for comments in News Release IR-2007-117 (June 14, 2007), we respectfully submit the following comments on the draft redesigned Form 990 on behalf of our clients, the National Football League (the "NFL") and the Office of the Commissioner of Baseball d/b/a Major League Baseball ("MLB"). Both the NFL and MLB are classified by the Internal Revenue Service as tax-exempt, 501(c)(6) trade associations. The members of the NFL and MLB are, respectively, the approximately 30 for-profit professional football and baseball teams.¹

General Observations

Both at the time of, and since, the issuance of the proposed redesigned Form 990, officials of the Internal Revenue Service have made public statements emphasizing -- correctly in our view -- the magnitude of the undertaking and the importance of the new Form 990. Yet a review of the comments submitted to the Internal Revenue Service to date reveals relatively few comprehensive written comments on the proposed redesign on behalf of tax-exempt organizations that are *not* 501(c)(3) charities. Perhaps more comments from non-501(c)(3) organizations will be submitted closer to the deadline. But the paucity of comments submitted so far suggests the possibility that the non-501(c)(3) organizations directly affected by

¹ The NFL and MLB organize and schedule professional games and provide game officials. All profits go to the for-profit teams, which are taxable entities.

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the new Form 990 have not yet understood or faced up to the significance of the requirements imposed by this new reporting regime on non-501(c)(3) entities.

We agree that enhanced transparency of certain exempt organizations, such as 501(c)(3) charities, is a laudable goal. However, as described below, transparency *outside* the 501(c)(3) context must be carefully weighed against significant, countervailing privacy concerns and the increased administrative burden of complying with the new rules. We think that privacy, and other, concerns justify requiring a less stringent disclosure standard for non-501(c)(3) organizations. This is especially true with respect to compensation, which is the principal focus of this letter.

Against this background, we set forth below our principal comments. These are not intended to be exhaustive. We respectfully request that the Internal Revenue Service delay implementation of the draft redesigned Form 990 until it has had the opportunity to review the public comments that it receives and to incorporate them, to the extent that the Internal Revenue Service deems prudent, in a future redesigned Form 990.

Principal Comments

The most obvious change in the proposed Form 990 involves a perennially sensitive matter -- the disclosure of individuals' compensation. Excessive compensation, when paid by a 501(c)(3) charity, is without doubt a proper concern of the Internal Revenue Service (the "IRS"). However, the Form 990's increased emphasis on compensation disclosure, and in increasing detail, is misplaced with respect to non-501(c)(3) organizations, such as 501(c)(6) trade associations, for a number of reasons.

First, with respect to trade associations, there can be no question of whether donors' contributions are being spent wisely in the public interest (or unwisely, such as being wasted on excessive compensation) because there are no contributions made by members of the public to these organizations. A principal theory underlying the granting of tax exemption to charities, unlike trade associations, is that charities benefit the general public in ways that the government finds useful and beneficial. Thus, in the context of 501(c)(3) organizations, the IRS has a very real obligation to ensure that the public's charitable contributions are not misspent. In a sense, the IRS is in the position of safeguarding the interests of the general public. The IRS does not, and should not, however, have the same *parens patriae* responsibility with respect to trade associations, which are formed, and must be operated, to benefit members of an industry or a line of business (*i.e.*, not the general public).

Second, on a related note, trade associations, unlike 501(c)(3) organizations, have certain built-in, structural safeguards that reduce, or even eliminate, the risk of excessive compensation. For example, trade associations are composed of for-profit members. The for-profit members have a keen interest in ensuring that compensation is not excessive. The reason for this is clear -- increased compensation adds to the amount of dues paid by the members. This is

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especially true for entities such as the NFL and MLB, which each have only approximately 30 members. Thus, the risk of waste in the trade association context, if it exists at all, must be significantly less than in the 501(c)(3) area. Indeed, neither the IRS nor, as far as we are aware, the public has identified any concerns, or even questions, about the compensation practices of 501(c)(6) organizations. In the absence of such concerns, we believe it is premature to require this type of disclosure from tax-exempt trade associations, especially in light of the significant burden that compliance with the Form will impose on them.

Third, as noted above, there are substantial, countervailing privacy concerns that need to be weighed against increased compensation disclosure. Disclosure of compensation is an exception to the general rule that individual taxpayers' income is strictly a private matter, and that the IRS will not disclose such information. Thus, disclosure of compensation is, and should be, required only if there is a significant public policy compelling disclosure, which is not present here. These privacy concerns are particularly strong in the non-501(c)(3) area and are the same privacy concerns which people working in private enterprises expect. Requiring disclosure of compensation in the 501(c)(6) area merely tends to invite prurient, unwarranted and not particularly useful scrutiny, such as that by the press and neighbors.

Moreover, even in the 501(c)(3) area, the increased reporting does not appear to be driven by actual, known compensation excesses. In point of fact, with respect to the 501(c)(3) entities examined as part of the IRS's Executive Compensation Compliance Initiative, the IRS expressly concluded that while significant *reporting* issues existed, "[e]xaminations completed to date do not evidence widespread concerns other than reporting."²

Principal Specific Recommendations

In light of the foregoing comments, we have a number of specific initial suggestions:

I. The new Part II of the redesigned Form 990 basically would require disclosure of the compensation of the directors and officers. However, the draft Form 990 also would require disclosure of not only the compensation of certain key employees, the definition of which has been substantially expanded in the new draft Instructions, but also the five highest compensated employees other than directors, officers and key employees. For the reasons described above, we do not think these additional disclosures are warranted, relevant, or even helpful to the public. Although, in fact, we do not believe that any compensation reporting is appropriate for 501(c)(6) organizations, we recommend that compensation reporting in Part II, for non-501(c)(3) organizations, be limited to the Commissioner.

² "Report on Exempt Organizations Executive Compensation Compliance Project -- Parts I and II," dated March 2007.

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2. Many of the new, more detailed disclosures required by proposed Schedule J are invasive of employees' privacy, are likely to confuse the public, and do not appear to have particular relevance to "compensation" as that term is commonly understood. On this last point, for example, Column (D) on Schedule J requires an exempt organization to account for, and disclose as compensation, the value of all *non-taxable* fringe benefits for all listed individuals. The draft Instructions to Schedule J provide extensive lists of possible non-taxable fringe benefits, including, for example, the value of transportation and travel expenses paid directly by the organization for business travel. Many association executives who are required to travel extensively for business will be surprised to learn that the value of business flights is to be considered part of their "compensation" for reporting purposes. These amounts are not indicative of an individual's *compensation* (i.e., payments or benefits to the individual in exchange for the performance of services to the organization), and they do not appear to have any other relevance in the context of non-501(c)(3) organizations. For all of these reasons, and those noted in the prior section of this letter, we recommend that Schedule J be deleted in its entirety. We would emphasize that Part II of the redesigned Form 990, even without Schedule J, seems to include most compensation information that 501(c)(6) organizations are required to report on the current Form 990 (except for deferred compensation). In the alternative, we recommend that only 501(c)(3) organizations be required to complete and file Schedule J.

3. The redesigned Form 990 would require each individual listed in Section A of Part II to disclose his or her personal, home address. We are aware of the many comments already submitted to the IRS on this point. We limit our comment here to adding our voice to the chorus of voices already raised noting that this disclosure is personally intrusive and is likely to lead to increased personal risk for the listed individuals in a number of contexts. We recommend that the IRS continue to permit organizations to provide the city and state of the organization, as under the current Form 990.

4. The IRS is to be applauded for revising the definition of a "related" organization and, more particularly, for proposing that the recently adopted 8-part definition, which proved to be unmanageable in practice, be discarded. This is consistent with a continuing trend of amendments pointing to a narrower, and more useful, definition of "related." With the exception of controlled subsidiaries and controlling parents, we have serious doubts whether compensation paid by a related organization for work performed -- *not* for the reporting organization but for the paying organization -- is particularly relevant to the enforcement of any tax law or as an aid to the public's understanding of an organization. It is difficult to see how compensation that is paid to an individual for services provided to a different organization should be subject to the disclosure obligation. Accordingly, we recommend that the definition of "related," for compensation reporting purposes, be limited to subsidiaries owned and/or controlled by the reporting organization and to controlling parents.

* * * * *

Internal Revenue Service

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For all these reasons, we believe it would be prudent to delay implementation of the redesigned Form 990 until the IRS has had the opportunity to review the public comments that it receives and to incorporate them, to the extent that the IRS deems prudent, in a future redesigned Form 990. We, and no doubt others, would very much like the opportunity to review the next version of the Form 990.

Thank you, in advance, for your consideration of these comments, which represent our views on matters of importance to the NFL and MLB and, we believe, 501(c)(6) trade associations in general.

We look forward to working with you on the revision of the Form 990.

Respectfully submitted,

Andrew H. Friedman

Jeremy D. Spector

Kevin Shortill

COVINGTON & BURLING LLP

Internal Revenue Service
September 14, 2007
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On Behalf of:

NATIONAL FOOTBALL LEAGUE

OFFICE OF THE COMMISSIONER OF BASEBALL

cc: Form990Revision@irs.gov

Kevin Shortill | **Covington & Burling LLP**

1201 Pennsylvania Avenue N.W.

Washington, D.C. 20004-2401

Ph: 202.662.5113 | Fx: 202.778.5113

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From: [Ray McLeod](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comments on Draft Resdesigned Form 990
Date: Friday, September 14, 2007 1:10:31 PM
Attachments: [IRS 990 response 9-14-2007.pdf](#)

Thank you for the opportunity to review and comment on proposed changes to the Form 990.

Ray A. McLeod
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CENTER FOR NONPROFIT MANAGEMENT
strong nonprofits build strong communities

Internal Revenue Service

September 14, 2007

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

The Center for Nonprofit Management in Dallas appreciates the opportunity to provide feedback on the proposed changes to the 990 Form. After review, it is evident that a great deal of work has been done by the IRS to research, design and draft the revised 990 Form and subsequent schedules.

We have reviewed the proposed changes internally and conducted an information and feedback session led by a panel of nonprofit accounting experts along with executives and financial officers of nonprofit organizations. The attendees worked in small groups and reported their top issues and ratings on the impact they feel the proposed changes will have. We have attached those summaries with our response.

We believe accountability and transparency are the basis for building community trust in the collective work of the nonprofit sector. The overhaul of the 990 Form is overdue and the inconsistencies in reporting diminish the value of the 990 Form to the public. In particular, the schedules will help aggregate data into meaningful statistics and enable trend analysis and greater ability to establish benchmarks.

We believe that the final 990 Form will be a positive development in providing standardized reporting and increasing transparency. In our role of building the capacity of nonprofits, we believe that the current form has limitations that cause us concern specific to nonprofits' ability to manage accounting changes to follow new reporting requirements.

We believe that a balance between new reporting requirements and the resulting impact on nonprofits must be based on the benefits of change and the resulting additional costs of compliance. Of particular concern is the impact of smaller nonprofits which make up a high percentage of our sector. The IRS should raise reporting requirements to nonprofits with budgets of \$100,000 or above. In addition, the IRS should develop a streamlined 990EZ Form for nonprofits with budgets of \$100,001 to \$500,000 to maximize the costs of compliance and benefits to the public for nonprofit accountability.

Sincerely,

Ray A. McLeod
Vice President
Client Services and Communications

Cynthia B. Nunn
President



IN THE WILSON HISTORIC DISTRICT



FORM 990: Group Discussion Comments

Group 1

- 1) Request **TOO MUCH** info
(Especially smaller Non Profits Organizations/run by volunteers)
- 2) **Suggest:** Raise mandatory filing to \$50K gross
- 3) **Question:** Where report in-kind (rev. form)
- 4) **Clarify:** Private foundation status/tests

Group 2

- 1) **Suggest:** Layers of less complex forms for smaller organizations (EZ)
- 2) **Need:** More (& Better) IRS **help**
- 3) Links on IRS site w/ Frequently Ask Questions/ “990 Turbo Tax” Software

Group 3

- 1) **Postpone** time for comment **AND** useless implementation to 2009
- 2) **Misleading** ratio of high paid employees: program exp.
- 3) **990 not** place to explain programs/outcomes
--deterrent to service
- 4) **Summary Page 990**—disclosure of responsible person
Related Party issues discouraged service
 - Limit this ^ disclosure

Group 4

- 1) Variety of Issues Disc. Service
 - a. SSNs-identity
 - b. Less-Knowledgeable donors = Challenge to understand
- 2) Request CNM to continue with training **in detail**



IRS 990 Proposed Changes Individual Responses

Rank

1 **2** **3** **4** **5**
Very Negative **Negative** **Undecided** **Positive** **Very Positive**

Comments/Issue	Rank	Implication
Postpone amount of time for a comment. September 15 is too soon.	1	Insufficient time to make thorough comments.
Postpone implantation of new 990 until 2009.	1	Many non-profits will not have sufficient time to make bookkeeping changes necessary to track new required individual expenses.
Part 1 Line 8a & b% does not tell information that is useful. For example	1	Annual total budget \$75,000 /Employee paid \$35,000 a year. Prog. Expenses \$32,500. 8b% ≥ 100% If annual total budget is \$10,000,000 yr. Highest compensation is \$150,000 yr. Prog. Expense=2,700,000 8b%=2%
Form 990 should not be used to explain programs, outcomes.	2	Donors should get that info. From other sources provided by the organization.
Front of 990 asking for name & address principle officer may deter some folks from accepting officer role.	2	Difficulty in getting people to accept position as President or Chairman.



Individual Responses con't

Comments/Issue	Rank	Implication
Excessively complex for non-profits.	1	Assures incorrect filings.
Forms should be layered as to amount of revenue. Exp. 24,999↓ Form 990N; \$25,000 to 1,000,000 file less complicated form; over \$1,000,000 990	5	Zeros in on the upper level non-profits that are much more prone to be in violation.
The \$25,000 threshold S/B indexed, the rate has not been adjusted in years.	5	More fair today's \$ value.
There needs to be more free help from theirs to help with complicated filings.	4	More accurate filings.
Have links on the IRS site on 990 page to many other websites that have related information.	5	More accurate filings.
Provide a software package that answers 990 related questions as in-depth as possible.	5	More accurate filings.
Provide a 990 Turbo Tax type software.	5	More accurate filings.
Increased Information Gathering (Functional Allocation)	1	Added cost of doing business
Increased disclosure	2	Discourage qualified potential board members and volunteers.
Recommendation: Expand increased reporting requirements to 5-10 M Corps.	4	Don't waste time on small operations. Aim at meaningful targets.



Individual responses con't

Comments/Issues	Rank	Implication
Program expense vs. Salary of key employees Skews program percentages	1	
Former directors/officers, etc.—employees How long is 'former' --- board members?	3	
Conflict of interest--- i.e. → attorney doing work for organization	2	
Donor perception— Less knowledgeable readers	2	
Train small charities to complete.	2	Who will do— Support those who can't afford.
Inform/Train Board Members—provide general outlines on why/how/what	2	--especially volunteers— Driven organization One <u>or</u> zero staff
---affect people's willingness to serve on board	1	

From: [Pat Read](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comments on Proposed Redesign of Form 990
Date: Friday, September 14, 2007 1:19:52 PM
Attachments: [IS_Final_Comments_Draft_Form_990.pdf](#)

On behalf of Independent Sector, I am pleased to submit the attached comments on the proposed redesign of the Form 990. Please contact me if there are any questions or problems in reviewing these comments.

Pat Read

Pat Read
Senior Vice President, Public Policy & Government Relations
Independent Sector
1200 Eighteenth Street, NW, Suite 200
Washington, DC 20036
202-467-6147

<http://www.independentsector.org>

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<<IS_Final_Comments_Draft_Form_990.pdf>>



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Public Agenda

**The Honorable
John W. Gardner (1912-2002)**
Founding Chair

Brian O'Connell
Founding President and President Emeritus

September 14, 2007

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

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

Theresa Pattara
Project Manager, TE/GE Division

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

RE: Comments on Proposed Redesign of Form 990

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

Thank you for the opportunity to review and comment on redesigned Form 990 package proposed by the IRS on June 14, 2007. Independent Sector strongly supports the Internal Revenue Service in its efforts to revise the Form 990 to facilitate accurate, complete, and consistent reporting by exempt organizations. The Draft 990 is a significant step forward toward achieving that goal. The Draft generally will be easier for exempt organizations to complete, and for both exempt organizations and the public to understand. We specifically commend the separation of information relevant only to particular types of organizations into distinct schedules, the elimination of redundant and sometimes confusing information requirements, and the reorganization of the Form to combine related questions that are currently scattered throughout the Form. There are, however, many areas in the draft Core Form and Schedules that are unclear or incorrect and need significant revision.

In this letter, we recommend:

- That the IRS delay implementation of the Core Form until Fiscal Year 2009 reports to permit organizations to make necessary changes to their accounting and record-keeping systems.
- That the IRS substantially revise and delay implementation of Schedule F, Statement of Activities Outside the U.S., Schedule G,

Supplemental Information Regarding Fundraising Activities, Schedule H, Hospitals, and Schedule M, Non-Cash Contributions.

- That the Core Form be reorganized to focus first on the organization's program activities, followed by core financial information, to put compensation, compliance, and governance information into the proper context.
- That the Summary Page be restructured to provide more information on the organization's program activities, add information on government funding and variations in fund balances, and eliminate misleading financial ratios. We further recommend that the IRS eliminate the table on gaming and fundraising activities, which only applies to a limited number of organizations and provides confusing information, and reinstate this information in the revenue portion of the Summary Page.
- That Compensation information be expanded to include information on job titles of listed individuals, non-taxable contributions to and deferred wages set aside in qualified pension and welfare plans, and the average number of hours the individual works for the organization. Organizations should be encouraged, but not required, to provide the city and state of residence for board members.
- That Governance information be divided into practices that are required by law and those that are recommended for the organization's consideration. We have also recommended changes to questions about enforcement of conflict of interest policies and audits of financial statements that would provide more accurate and meaningful information for filing organizations and readers of the Forms. We recommend that the Form include a clear statement that not all recommended practices will be appropriate or cost-effective for all exempt organizations.
- That the Revenue statement provide clearer titles for specific contribution lines, and additional information to distinguish government grants from contracts and to separate the portion of membership dues attributable to contributions versus other revenue. We further recommend that the IRS permit organizations to report expenses and receipts for other investment income, and gains or losses from sales of assets and fundraising events, in the same manner used on their audited financial statements.
- That the Functional Expense statement should not confuse functional categories, such as Information Technology, with natural expense lines such as wages, professional fees, furniture and equipment, etc. This also applies to definitions for the Advertising and Office Expense lines. Costs for printing should be itemized separate under the appropriate functional category. Employee benefits should not include expenses for group events that provide a *de minimis* benefit to individual employees.

Details on these and other recommendations follow.

Implementation and Transition Periods

This massive re-design effort presents many challenges for both the IRS and the filing community. Independent Sector and many other organizations have spent countless hours

analyzing the changes to the Form and preparing alternatives to help the IRS achieve the goals of the re-design. It is clear that the IRS now faces a difficult task in incorporating these changes before it can issue its final revised Form and instructions. We are specifically concerned about many areas in the instructions to the Form which need clarification or where there are currently no instructions. Clear, complete instructions are essential for exempt organizations to provide accurate reports. **We recommend that the IRS publish revised instructions to the Core Form and schedules as soon as possible and allow an additional public comment period to identify and resolve potential areas of confusion.**

Once the Service has released its final Form and instructions, exempt organizations will need time to review and understand the new Form, and make necessary changes to their accounting and other record-keeping systems, as noted throughout these comments, before they can provide complete the Form accurately. IS members, such as the Trust for Public Land, have informed us that the revised form will significantly add to their compliance burden for smaller organizations with limited resources. We have also heard from much larger organizations, like the American Cancer Society, of the time and greatly increased costs that will be involved in restructuring accounting and other record-keeping requirements to respond to some of the new schedules.

Like the Service, Independent Sector is anxious to move forward as quickly as possible with an improved Form 990. Nonetheless, we do not think it is realistic to require organizations to use a new Form to report financial information and other activities for Fiscal Year 2008. **We strongly encourage the Service to delay implementation of the Core Form until reports are due for Fiscal Year 2009 activities. We further recommend that the Service provide an additional year or more for revision and implementation of Schedule F, Statement of Activities Outside the U.S.; Schedule G, Supplemental Information Regarding Fundraising Activities; Schedule H, Hospitals; and Schedule M, Non-Cash Contributions.**

Filing Thresholds

The Service has requested input from the nonprofit community on what the thresholds should be for the different versions of disclosure forms the Form 990 series. Independent Sector makes the following recommendations:

Form 990-N (E-Postcard): We recommend requiring that the Form 990-N should be filed by all organizations with revenues under \$50,000. Because raising this threshold could adversely impact the reporting requirements of some states, we also recommend adding to the Form 990N a requirement to report total revenues and expenditures for the year.

Form 990-EZ: IS members believe that it is premature to consider elimination of the Form 990-EZ because the Core Form 990 is still in flux. Until we see what the final revisions to the primary form look like, we cannot make a determination as to which parts or schedules would or would not be appropriate for smaller organizations. Therefore, for the near term,

IS recommends raising the threshold for filing the Form 990-EZ to apply to organizations with revenues of \$50,000 or more, but less than \$200,000 and assets below \$250,000.

Form 990: As a result of these other changes in thresholds, the Form 990 would be used by organizations with revenues above \$200,000 or assets above \$250,000.

As a final matter relating to filings, **IS recommends that the IRS adopt the proposal by its Advisory Committee on Tax-Exempt and Government Entities (ACT) to allow organizations that failed to submit Forms 990 as required to file the Forms, along with any taxes due, in the next two years, without paying penalties for late filing.** The new reports that small organizations will be required to file as a result of the Pension Protection Act will undoubtedly alert organizations that may not have been aware of previous filing requirements. Before revoking their tax-exempt status and forcing potentially programs to cease operation, the IRS should allow these organizations the opportunity to come into compliance.

Implementation Considerations Regarding Electronic Filing of Attachments

Independent Sector strongly endorses the move to electronic filing of Form 990s and commends the Service for restructuring the disclosure forms with this goal in mind. The new design restructures questions and the presentation of financial and other information based on the assumption that all or most returns will be filed in the future by electronic means.

Electronic filing will promote effective tax form preparation and tax administration by providing immediate feedback on incomplete and potentially inaccurate information before returns are filed. E-filing allows the IRS to reject and provide immediate feedback to organizations about incomplete returns and those with obvious inaccuracies.

The redesigned form seeks to eliminate the many attached statements and replace them with structured disclosures largely contained in schedules. The move to an electronic format, however, appears to have eliminated the opportunity for a filer to explain the reason for amounts or text that has been recorded on the form. **We recommend that nonprofits be allowed to provide attachments in machine-readable formats (rather than document images) to clarify or expand information provided in the Form.**

Near-universal electronic filing of Form 990s cannot be accomplished without statutory change. The IRS currently has the authority to require larger organizations to file electronically. For the 2006 tax year, entities with assets of more than \$10 million were required to file electronically if they filed more than 250 returns (including W-2s and other returns). Beginning in 2008, the smallest tax-exempt organizations that are not required to file the Form 990 because they have gross receipts of less than \$25,000 will be required to file electronically an annual notification to the IRS containing basic contact and financial information. Between these largest and smallest organizations is the vast majority of nonprofits that continue to file paper returns. **Independent Sector supports changing**

section 6011(e) of the Internal Revenue Code to grant the Service authority to require electronic filing of Form 990s and similar forms for organizations that file 5 or more returns.

Comments on Core Form

Organization of the Core Form

Independent Sector wholeheartedly endorses the approach taken by the Service of providing essential summary information on the first page of the Form 990. This approach, when properly constructed, will provide a clearer picture of the organization, its operations and its finances, to regulators and members of the public. Any evaluation of the finances and governance operations of an organization should begin with an understanding of the organization's purpose and primary activities and how it serves the "public good." **We therefore recommend that the Core Form be re-structured to place program information (Section IX) immediately after the Summary Page, followed by the financial sections (Part IV, V, and VI). Compensation information (Part II) should follow the program and financial information that provides the necessary context for evaluating the reasonableness of compensation arrangements. The sections related to compliance questions (Part VII, Statements Regarding General Activities and Part VIII, Statements Regarding Other IRS Filings) that are primarily of interest to regulators, and the section regarding governance and reporting (Part III) which is designed to improve compliance and encourage adoption of recommended practices, should be the last sections of the Form.** We have provided specific recommendations on each section of the Core Form below.

Part I: Summary Page

We recommend that the Summary Page be restructured to provide more information about the organization's program activities – information that is essential for understanding its financial and governance structure – and to eliminate arbitrary financial ratios that are not an accurate measure of the organization's effectiveness or efficiency.

- 1. Program Information:** The Summary rightly begins with a brief description of the organization's mission (line 1) and program activities (line 2). **We recommend that the first line ask the organization to "Briefly describe the organization's mission or primary purposes" to gather a clearer picture of the organization's work. We further recommend that more space be allocated to report program activities, rather than simply a one word description with a code that will not be understood by many organizations and most readers.**
- 2. Activity Codes for Program Activities (line 2): Independent Sector strongly recommends that the IRS continue to use the National Taxonomy of Exempt Entities (NTEE) as its coding system.** The NTEE was developed by the charitable community because of inadequacies in the previous coding system used by

IRS. That system used 140 purpose codes, which had accumulated over the years to meet legislative and regulatory needs. There were no clear directions for organizations to use in selecting the appropriate codes, and many organizations were coded incorrectly.¹ The system did not provide for consistent analysis and aggregation by the IRS or outside researchers.²

Since its creation in the early 1980s, the National Taxonomy for Exempt Entities has become the industry standard for classification of nonprofit organizations and their program activities. There are existing thesauruses and guides to help in classifying activities appropriately. As the IRS considers any changes to its current coding system, we recommend that it convene organizations like The Foundation Center, the National Center on Charitable Statistics, and Independent Sector, each of whom has over two decades of experience in using NTEE, as well as representatives of other organizations and research programs with an interest in and experience with NTEE and other coding systems to consider any changes to NTEE that may be required to reflect new activities.

3. **Activities and Governance** (lines 3-9): Independent Sector believes that it is helpful to have brief summary information on the size of the board, total number of employees, and total board and key employee compensation to put financial information in context. **We object to the listing of the highest compensation amount (line 7) without any information regarding the title or responsibilities of the individual who received that compensation, and we believe that those who are interested in examining compensation levels are better served by the comprehensive information provided in Part II of the draft Core Form. We further object to the inclusion of both the gross and the net unrelated business revenue (lines 9a and 9b) on the Summary Page without further information on the source of that revenue.** Some have questioned the accuracy of reports by exempt organizations that have zero or negative net income from unrelated business activities, but this is not an unusual or unacceptable occurrence for nonprofit organizations. For example, an organization may have received income for advertising in a conference program which is considered unrelated business revenue but which, in fact, only offsets a small portion of the costs in producing that program. Information on an organization's unrelated business activities is properly presented in Part IV, Statement of Revenue, and it is there that readers should turn for a better understanding of its operations. The information does not belong on the summary page.

¹ *The Federal Budget and the Nonprofit Sector*, pp 10-11, The Urban Institute, 1982. "In the IRS data, for example, the Rockefeller Foundation is listed as a medical research institute instead of a foundation; the Carnegie Corporation is classified as an educational institution; and Loyola University of Chicago shows up as a church." P. 11.

² Virginia A. Hodgkinson and Christopher Toppe, "A New Research and Planning Tool for Managers: The National Taxonomy of Exempt Entities," *Nonprofit Management & Leadership*, Vol. 1, No. 4, Summer 1991, p. 403.

4. **Financial Information and Efficiency Indicators:** The brief information on the organization's total revenue and expenses in broad areas is an essential part of the Summary.

Given increased interest by the public and public officials in the extent to which government relies on nonprofit organizations to deliver essential services on its behalf, **we recommend that the IRS add a new line 11a to the Revenue portion of the Summary page to highlight the amount of government grants included in total contributions and grants (line 11). We also recommend that the IRS add a new line 11b to highlight the amount of government fees and contracts (drawn from Part IV, lines 2a and b) included in total program service revenue (line 12).**

Independent Sector strongly objects to the inclusion of percentages of revenues and expenditures as appropriate indicators of an organization's effectiveness or efficiency. Inclusion of these percentages gives the impression that the IRS believes there is a "right" percentage for each calculation and that these are important factors for readers of the Form to consider. We are not aware of any research that supports the view that a high or low percentage in any of the indicators included on the draft provides valid information about an organization's effectiveness in delivering services that improve lives. While a few "watchdog" organizations evaluate charities solely on these financial indicators, most responsible evaluation systems look at a wide variety of factors to determine whether an organization is operating ethically and efficiently.

Independent Sector believes an exempt organization should spend a significant percentage of its annual budget on programs that pursue its mission. The budget should also provide sufficient resources for effective administration, and, if the organization solicits contributions, for appropriate fundraising activities. There can be many reasons why percentages of funds allocated to different purposes will be higher or lower in a given year, or even over a period of years. For example, in the early years of a capital campaign, an organization typically has much higher fundraising expenses as it takes time to generate contributions. Conversely, an organization can receive an unusually large bequest or contribution in a given year through no direct fundraising effort of its own. The Summary Page would not allow sufficient room to explain the variances these circumstances, and others, produce.

We therefore recommend that the IRS drop the column requiring organizations to calculate revenues and expenses on lines 11-15 and lines 17-19 as percentages of the total amounts. The columns that are provided to report these percentages would be more useful if they included comparative data from the previous year or the average amounts over the preceding five years. The latter would require charitable organizations to conduct additional calculations on Parts II and III of Schedule A, thereby increasing the time and cost of completing the reports. Therefore, we are not recommending that the IRS add this information to the

Summary Page. Those who are interested in calculating such percentages on their own would have the necessary information available to them.

We further recommend that the IRS drop the following percentage calculations on the Summary Page:

- **The computation of officer, director, and other key employee compensation as a percentage of total program service expense** (line 8b). This percentage could vary widely depending on the size of the organization and the nature of its program services. An organization that relies primarily on volunteers to deliver program services may have a relatively low percentage of key employee compensation devoted to program services, whereas an organization that relies heavily on key employees to deliver services would have a much higher percentage. Neither of these percentages is a valid indicator of the organization's efficiency or effectiveness.

Further, compensation as a percentage of program expenses implies that time spent by officers in management and fundraising is a bad thing as it will adversely impact the percentage. Instead, the IRS and the nonprofit community have been encouraging organizations to pay more attention to compliance and government issues, necessitating that officers and key employees allocate more of their time to management and general expenses.

Finally, this percentage will be even less valid for organizations whose fiscal year does not coincide with the calendar year, as compensation data reported on Part II, Section A, is likely to be based on calendar-year W-2 or 1099 data, whereas total program service expense will be based on the organization's fiscal year. Those who are interested in the allocation of this compensation will find a more accurate presentation on Part V, Statement of Functional Expense, line 5. **There is no reason to highlight the program percentage on the Summary Page and IS recommends that line 8b be eliminated.**

- **The computation of fundraising expenses as a percentage of contributions and grants** (line 19b). As noted in the discussion of total fundraising expense as a percentage of total expenses, this percentage can vary greatly depending on the organization's size, structure, and current priorities. This calculation is further complicated by the many variations in the sources of contributions and the fundraising costs associated with different types of contributions. For example, a single large gift or bequest can be the result of extensive work in prior years, thus skewing the organization's reported percentages in both the current year and prior years, or it may not be related to any direct fundraising effort by the organization. An organization may incur significant expenses in applying for a government grant that it may or may not receive, while another organization whose government funding has been cut may need to increase the amounts spent on fundraising to reach out to new private funding sources. This calculation would therefore provide misleading information for regulators or readers of the Form.

- **The computation of total expenses as a percentage of net assets** (line 24b): This percentage is not an appropriate indication of whether an organization is spending money on current programs commensurate with its resources. As currently stated, the net assets (line 24a) would include permanently restricted assets that an organization may not be able to access except under very specific conditions; temporarily restricted assets that an organization will spend for specific purposes; and unrestricted funds that an organization may be setting aside funds to purchase or build new facilities, expand its program services, or purchase equipment necessary for its programs. A more complete, useful picture of the allocation of an organization's net assets or fund balances is provided on Part VI, Balance Sheet, lines 28-35. If the IRS believes this information is important to include on the Summary Page, it would be more helpful to readers to ask organizations to indicate their unrestricted, temporarily restricted, and permanently restricted net assets than to include this misleading indicator.
5. **Net Assets or Fund Balances** (lines 22-24): The summary page drops "other changes in net assets or fund balances" found on page one, line 20 of the current form. According to the instructions, amounts reported here include "unrealized gains and losses on investments carried at market value and any difference between fair market value and book value of property given as an award or grant." The current presentation of net assets or fund balances does not explain variations in net assets or fund balances other than the net revenues or losses for the year. **We recommend that the IRS reinstate line 20 from the current Form 990, "Other changes in net assets or fund balances" and continue to ask organizations to provide an explanation.** While this information is available in Part XIII of Schedule D, it should be readily apparent to all readers of the Form.
 6. **Gaming and Fundraising Information** (lines 15, 25, and 26): We disagree with the choice to highlight gross and net revenues from gaming and other fundraising events in a separate table, **rather** than in the list of revenue earlier in the Summary. The table takes up valuable space on the Summary page, without providing equivalently useful information. Because the required information is derived from Schedule G, it will be left blank by over 75% of filers (according to IRS estimates), leading uninformed readers of the Forms to assume that the organizations have filed incomplete returns. There is great confusion among our members as to whether this table applies to all gaming and fundraising activities conducted by the organization, or only those conducted with the assistance of an external fundraising consultant.

The Draft includes a percentage calculation of net revenue as a percentage of gross revenue which significantly distorts the value of fundraising events to charitable organizations. First, the table does not show the total contributions received for such events, only the portion of those contributions which constitute an exchange transaction (a reciprocal transfer in which the donor receives something of commensurate value for that portion of the contribution). Clearly, such additional contributions are a major reason for conducting such fundraising events and often

support the planning, preparation, and many other direct expenses involved. Second, an organization may conduct a fundraising event which costs more than it brings in as either exchange transaction or contribution revenues because it wants to raise awareness about its issues or programs, or interest individuals who may become long-term substantial contributors to the organization. **We therefore recommend that the revenues from gaming and fundraising be reinstated as separate lines in the Revenue section of the Summary Page, rather than subsumed under Other Revenue (line 15) and separated out in the table on lines 25 and 25.**

Part II: Compensation

Independent Sector supports the presentation of all board and employee compensation in a single list which applies to all exempt organizations, but as stated earlier, we believe that this information belongs after the description of the organization's program activities and financial information. We appreciate the introduction of the columns (B) which allow organizations to indicate the multiple positions a single individual may hold and distinguishes individual from institutional trustees. We do have the following suggestions for improving this section of the Core Form:

- 1. City and state of residence:** Independent Sector encourages charitable organizations to provide the city and state of residence for their board members, but we recognize that this practice may subject board members of organizations that are working on controversial issues or program areas to unwarranted harassment. **We therefore recommend that the IRS encourage organizations to provide the city and state of residence, but continue to permit organizations to use their own business locations if they are concerned about these privacy issues.**
- 2. Job Titles:** In addition to the columns indicating the positions held by individuals listed, **we recommend that an additional line be added in Column A (Name, City and State of Residence) to require organizations to indicate the job title of individuals who are included as Key Employees, Other, or Former.** The job title is a helpful indicator of the job functions for which the individual is responsible. **We recommend that the Instructions clarify that "institutional trustee" refers to a trustee that is a member of the 'governing board' of an institution and not just managing and acting as a custodian of assets..**
- 3. Definition of Key Employees:** The definition of key employees in the proposed glossary is more detailed than the definition in the current instructions, and should reduce some of the inconsistency in reporting between organizations. This definition would be even clearer if the IRS were to include in the instructions examples of a "distinct segment or activity of the organization," and what is meant by a "substantial portion of the activities, assets, income, or expenses of the organization." Organizations may continue to interpret the single column for CEO or Executive Director as applying only to the Board Chair, and the column for CFO or Treasurer as applying only to the Board Treasurer, without clear instruction from the IRS that this is not what is intended.
- 4. Full-Time Officer or Employee (Column C):** We appreciate the indication of whether an individual is a full-time officer or employee, but we also think it would be

- useful to know for board members and part-time employees the average number of hours worked per week.
5. **Reportable Compensation** (Columns D and E): The proposal that organizations indicate compensation as reported on a Form W-2 or 1099 will clarify the compensation amounts to be reported and ensure greater consistency in reporting for organizations that operate on a calendar year. We therefore support the approach as applied in most situations. We are concerned, however, that organizations whose tax years are not calendar years will be providing much more dated information (e.g., if the fiscal year ends on June 30, the organization would file its return on November 15 with compensation information as of December 31 of the prior year) than is currently required. Multiple organizations that utilize a common paymaster generally do not have W-2 data for disclosure purposes, since only the paymaster issues the W-2 and the employee cost is apportioned among several organizations. **Independent Sector recommends using W-2 and 1099 data as a general rule, but believes the Service should provide an alternative for organizations that do not have ready access to such information or that operate on a non-calendar fiscal year.**
 6. **Contributions to Employee Benefit Plans:** Contributions to qualified pension and welfare benefit plans are a significant piece of the compensation provided to employees. This information would not be available to the public as the Core Form is currently constructed. This could distort comparative compensation data amongst organizations, particularly those with deferred compensation, such as section 403(b) plans or flexible benefit and qualified transportation plans. **We recommend that a column be added to the compensation table in Part II of the Core Form to provide disclosure of this important information. This could be easily accomplished if the IRS were to combine columns F and G for separate reporting of aggregate loans and other amounts owed to the organization and to related organization.** We believe that very few organizations will have such loan amounts to report and additional information on the loans will be available on Schedule L.
 7. **Threshold for Highest Compensated Employees:** Independent Sector supports the proposal that organizations be required to report the compensation of the five highest compensated employees – other than the CEO, CFO, and other key employees – only if those individuals are paid more than \$100,000 in the reporting year. While some have noted that this represents a relatively substantial increase from the current \$50,000 threshold, we believe that this change is appropriate **so long as it is clear that organizations must report the compensation paid to the CEO, CFO, and other key employees (such as program directors), regardless of their compensation level.** We point out that the inclusion of job titles for key and other employees, as recommended in item 2 above, would aid organizations that currently use Form 990 for wage comparison purposes.

Part III: Governance

Independent Sector supports this new section which asks organizations to indicate whether they are complying with statutory requirements and with governance and disclosure practices

that exempt organizations are encouraged to follow. As noted earlier, **we recommend that this section be placed at the end of the Form. We further recommend that the questions in this section be reorganized to distinguish between those two types of information to reduce confusion for both filing organizations and readers of the form.** We agree that the instructions should indicate that all exempt organizations are required to complete both sets of questions. Specifically, we recommend that the questions be arranged as follows:

Statutory Reporting Requirements

- Changes to organizing or governing documents (line 2)
- Contemporaneous documentation of board actions/minutes (line 6)
- How the organization made its organizing/governing documents, Form 990, and Form 990-T available to the public (lines 11 a, c, and d)
- List of states with which a copy of the return is filed (line 12)

Recommended Practices and Other Information

- Number of members and independent members of governing body (lines 1a and b)
- Written conflicts of interest policies (line 3a)
- Written whistleblower policy (line 4)
- Written document retention and destruction policy (line 5)
- Whether the organization has local chapters, branches, or affiliates and, if so, whether it has written policies and procedures governing their activities (lines 7a and 7b)
- Whether an independent accountant: compiles, reviews, and/or audits statements and, if so, whether the organization has an audit committee (lines 8 and 9 with suggested modifications described below)
- Whether the organization's governing body or a committee thereof reviewed the Form 990 (line 10 with suggested modifications described below)
- Whether the organization makes its conflict of interest policy and audited or un-audited financial statements available to the public (lines 11b, e, f with suggested modifications)

In addition to re-organizing the questions, we offer the following recommendations:

- 1. Composition of Governing Board** (lines 1a and b): We support the change of wording on this question from those who are “permitted to vote at board meetings” to the simple number of members and the number of members who are independent. **The instructions should clarify that individuals who are “honorary” or “advisory” members of the board and who do not have voting privileges should not be included in these counts.**
- 2. Changes in Organizing or Governing Documents** (line 2): We support the change from requiring organizations to attach amended governing documents to requiring organizations to describe the changes that were made. The draft instructions should be clarified to note that this question only applies to organizing and governing documents, such as articles of incorporation, charters, constitutions, trust instruments,

or bylaws. As currently stated, the Instructions confuse organizing documents that are filed with applications for tax-exemption with policies addressing issues that may, or may not, be incorporated in the organizing documents. Instead, **Independent Sector suggests that the IRS add a separate question asking filing organizations to report whether they adopted or made changes in policies affecting compensation, conflicts of interest, whistleblowers, or document retention and destruction, or the composition or procedures of the audit committee.** As a transition matter, we have heard concerns that many organizations will not be able to implement several of the governance policies in the time between publication of the new Form 990 and the end of the reporting period. For this reason, **we recommend that filers be permitted to answer as of the filing date rather than the end of the reporting period.**

- 3. Conflict of interest policy enforcement** (line 3b): This question regarding the number of transactions the organization reviewed under its conflict of interest policy is not an appropriate indicator of whether and how well an organization enforces that policy. A responsible organization might not have any transactions involving a conflict of interest in a given year, whereas it might choose to review several transactions in another year as part of an overall review of procedures. Neither number provides helpful information on the effectiveness of the review process. Instead, **we recommend that the IRS ask each organization to report whether it distributed a copy of its policy to all board and key staff members during the year and whether those board and staff members were asked to report any relationships they or their family members have to individuals or organizations with whom the organization transacts business.**
- 4. Document Retention and Destruction Policy** (line 5): The yes/no reply to this question could lead to inaccurate disclosure without a clear understanding from the IRS as to what it would consider an adequate written policy. It would be helpful to include guidance in the Instructions as to what a written document retention and destruction policy should include.
- 5. Local Chapters, Branches, or Affiliates** (line 7): Some of our members were confused about whether this question is intended to include separate offices of the organization or separate legal entities. **We recommend that the definitions of affiliated and related organizations be standardized throughout the Form and this question be rephrased to ask whether the organization has written policies and procedures governing the activities of its subsidiaries (organizations controlled by the organization).**
- 6. Financial Statement Preparer** (line 8) **and Audit Committee** (line 9): An organization's financial statements would either have to be prepared by an employee or volunteer (including a volunteer board member) or by an external bookkeeper or accountant. The question as currently phrased does not, therefore, seem helpful. The recommended practice is to have an independent accountant prepare a compilation or review for smaller organizations or conduct an audit for larger organizations. Only if it

has its financial statements audited would the board consider whether it could benefit from having a separate audit committee to oversee that process. Some states require organizations that solicit funds from the public and that meet certain financial criteria to have audited financial statements and have a separate audit committee. Outside of those states, many organizations with small boards of directors or limited organizational structures may not choose to delegate the audit oversight responsibility to a separate committee. **IS recommends that these questions be broken down into three parts: “Does the organizations that have an audited financial statement for the year?” and “If so, did an independent audit committee review the audited financial statement?”, and “Does the organization make its audited financial statements available to the public on its website?”** Some of our members have suggested that it would be helpful to ask organizations that have audited financial statements to indicate whether the audit report provided an unqualified, qualified, adverse, or disclaimer of opinion or included a “going concern” explanatory paragraph. If these questions are included, the Form should provide space for the organization to explain any problems with the audit report. **We also recommend that the Instructions make clear that federal law does not require organizations to have financial statements audited unless the organization receives certain amounts in federal government funding, nor does federal law require that the board establish a separate audit committee.** These are both practices that exempt organizations, particularly organizations with annual revenues in excess of \$1 million, should consider adopting.

- 7. Governing Body Review of Form 990** (line 10): Most boards delegate the responsibility for reviewing the Form 990 to a committee composed of individuals with the appropriate knowledge, such as a Finance or Audit committee, rather than asking the full board to review the form before it is filed. Others find it necessary to have the Form reviewed after filing to avoid asking for extensions of filing deadlines. **We recommend that this question be rephrased to ask “Does the board, or a committee thereof, review the organization’s Form 990 on an annual basis?”**
- 8. Public Disclosure** (line 11): The new presentation serves as a useful reminder of the alternative ways an organization must make certain documents available to the public, but it confuses documents that must be disclosed with those the Service encourages organizations to disclose. **We recommend that this section be separated** as discussed above. We also find the lines for “financial statements” and “audit report” to be confusing, and **recommend instead that the IRS ask about whether the organization makes its audited financial statements available to the public as part of the questions related to audits** (number 6 above).
- 9. Other governance questions:** The draft also asks in Part VII, Statements Regarding General Activities, whether the organization has a written policy or procedure to review investments or participation in disregarded entities, joint ventures, or other affiliated organizations (question 11), and whether the organization has a written policy that requires it to safeguard its exempt status with respect to its transactions and arrangements with related organizations (question 12). **Independent Sector suggests**

that the two questions regarding investment policies and transactions with related organizations be moved to the Governance Part, and listed with the informational or best practices group of questions.

- 10. Explanations of Negative Responses:** Many of our members are concerned that a “no” response to any of the recommended practices could give a misleading impression of the organization’s management and governance practices. **We recommend that the IRS include a clear statement on the Form that all organizations must respond to the questions regarding recommended practices, but that not all of these practices will be appropriate or cost-effective for all exempt organizations.**

Part IV: Revenue

The consolidation of Parts I and VII on the current form and the expansion of revenue lines is a significant improvement over the current form.

- 1. Contributions, gifts, grants** (lines 1a –f): The draft form breakdown is clearer than the current form’s “direct” and “indirect” public support, however there is still confusion about the appropriate treatment of revenues from federated campaigns, from related organizations, and from government. **We recommend that line 1a, federated campaigns, be renamed “contributions received through a federated giving program.”** The Instructions should clarify how a federated giving program should report the portion of contributions it retains to cover its own expenses, rather than funds distributes to other organizations. **Line 1d, related organizations, should be renamed “contributions (not including fees for service) from related organizations.”** The Instructions should clarify the payments from related organizations that are contributions, fees for service, and other revenue. **We recommend that line 1e, “Government grants (contributions)”, include a reference to lines 2a and 2b (Medicare/Medicaid payments and fees and contracts from government agencies) and that the Instructions clarify the distinction between grants and contracts. We also recommend that the IRS add a reference on line 1c, fundraising events, to line 11a, gross income from fundraising events other than contributions, to reduce confusion between these two types of revenue.**
- 2. Program Service Revenue** (lines 2a-g): As noted above, further clarification is needed in the Instructions on the distinction between government grants and contracts. We do not believe that the business codes currently used on the Form 990-T are appropriate for coding revenues from exempt services, and we are continuing to work on how NTEE might be adapted to encompass appropriate program service revenues.
- 3. Membership Dues and Assessments** (line 3): A portion or all of some membership dues and assessments may be a contribution which has negligible benefit to the member, but which is used to provide benefit to the general public or the nonprofit’s service beneficiaries. The other portion of such dues would constitute an exchange transaction,

for which the individual or organization member receives a reciprocal economic or substantive benefit and which is fully or partially refundable if the member withdraws its membership. **We recommend that a line for Membership Dues with the appropriate cross-references be included in both the Contributions and the Other Revenue portions of this Statement, and that the Instructions be amended to provide further guidance to help organizations classify membership dues appropriately.**

4. **Other Revenue** (lines 3-12): Many organizations report “other investment income” (line 8) as the net receipts after investment management fees have been applied. As noted in our discussion on the Summary Page, the application of unrealized gains and losses can also affect an organization’s financial statements when reporting is done on an accrual basis. Under GAAP, nonprofit organizations have the option of reporting net gains or losses from sales of assets and from fundraising events or reporting revenues and expenses separately. **We recommend that the IRS permit organizations to report expenses and receipts for other investment income, and gains or losses from sales of assets and fundraising events on the same basis used in their audited financial statements, but encourage organizations to report revenues and expenses separately.**
5. **Technical Corrections:** There is a typo in the Instructions for line 5 (interest from receivables should be reported on Part IV, Statement of Revenue, line 5 – not line 13). Column shading on line 2g also needs to be corrected.

Part V: Statement of Functional Expenses

The revised presentation is generally easier to follow for both filers and readers of the form, but some of the new line items may be confusing as noted below. Some of the changes in the natural expense lines (lines 1-23) will require adjustments in the accounting systems used by exempt organizations and may require changes to uniform grant application and reporting forms that were designed to conform to the current categories.

The general instructions to the draft Form 990 indicate that all organizations will be required to follow SOP 98-2 regarding joint allocation of fundraising costs and the box asking organizations to indicate whether they follow SOP 98-2 has been removed. The “tip” in the instructions that expenses attributable to “providing information regarding the organization itself, its use of past contributions, or its planned use of contributions received are fundraising expenses,” and not program expenses, is too general and does not reflect the guidance in SOP 98-2.

While we believe it is important to standardize the ways in which organizations calculate their fundraising expenses, the costs of implementing SOP 98-2 may not be justified for organizations with revenues below \$1 million, particularly those that do not find the expense of an annual audit appropriate given the size and nature of their operations. **We recommend that the IRS reinstate the box indicating whether or not the organization**

follows SOP 98-2, with a note that all organizations with more than \$1 million in annual revenue are required to follow that standard.

We have the following observations and recommendations regarding specific line items:

- 1. Grants and other assistance to organizations and individuals outside the U.S.** (line 3): **We recommend including a reference to the requirement that organizations must complete Schedule F if the total exceeds \$5,000** (similar to the reference to Schedule I for lines 1 and 2).
- 2. Compensation to disqualified persons** (line 6): The title of this line does not correspond with the instructions which indicate this line should be used for total compensation and other distributions provided to disqualified persons under sections 4958(c)(3)(B) and 4958(f)(1). The glossary then indicates the long list of disqualified persons identified in that section of the tax code. We agree that the IRS needs to have this information, but it does not seem appropriate as part of the Statement of Functional Expense since it applies to so few organizations and would separate out expenses that should be reported on other lines. **Rather, we recommend that the IRS include this information in the sections of Schedule D that relate directly to supporting organizations and sponsors of donor-advised funds.**
- 3. Other employee benefits** (line 9): The instructions indicate that this line is to be used for both contributions to employee benefit plans, and expenses related to employee events (such as a picnic or holiday party). Most exempt organizations, following generally accepted accounting principles, track expenses related to such events in their appropriate natural category (i.e., meeting expense, supplies, etc.). This change would require a change in accounting practice, and we believe it would confuse contributions to qualified pension and welfare plans with expenses that provide a de minimis benefit to individual employees. **We therefore recommend that this line be used only to report payments made by the employer to qualified pension and welfare programs and deferred spending accounts such as section 125 medical spending and child care accounts.**
- 4. Fees for Services (non-employees)** (lines 11a through 11g): The new breakout of all the fees for services categories is a great improvement and should further consistent, accurate reporting. **We recommend that the title of category 11d, Lobbying, be changed to “Lobbying and Advocacy Assistance,”** as many consultants who provide lobbying services to an organization also provide general advice on legislative issues and internal government relations operations that are not covered by the definition of lobbying in the Tax Code. **We further recommend that the IRS add at least three additional lines for organizations to indicate other types of consultants** (such as communications, information technology, program development, or evaluation consultants) which would allow regulators and the public to better understand what is included under “other” fees for service. As noted in our discussion of investment revenues, **many organizations do not report investment management fees as a**

separate expense and the instructions should make clear that separate reporting of these expenses is encouraged but not required.

5. **Advertising** (line 12): The instructions for this line indicate that it should be used to report in-house fundraising campaigns (other than fees to independent contractors). We believe this is an inappropriate confusion of the functional expenses (expenses attributed to a program or function which are indicated in columns B – D) with a natural expense (specific types of expenses which may be attributed to different functions). **We recommend that the instructions clarify that this line should be used to report direct advertising expenses, rather than all in-house fundraising expenses.** Direct costs attributable to in-house fundraising activities (such as compensation, telephone, postage, etc.) should instead be listed in their appropriate natural expense category under column D, and the instructions should be amended to clarify this issue. The instructions also indicate that “internet site link costs” should be reported on this line, which is confusing terminology to many organizations. We assume this phrase refers to the costs of purchasing “advertising space” on an external website which provides a link to the organization’s website, as opposed to the costs of maintaining domain names and, if so, the instructions should state this distinction more clearly.
6. **Office expenses** (line 13): We believe the IRS has appropriately combined in this line a number of related expense items, each of which is often a relatively small portion of an organization’s expenses. The instructions indicate that property or occupancy-related insurance should not be reported on this line. **We recommend that the instructions also indicate that this line does not include insurance purchased as part of employee welfare plans (such as health, dental, and life insurance) which should be reported on line 9, employee benefits. We further recommend that the IRS reinstate a separate line for reporting printing and postage costs, rather than including “printing of a general nature” in this broad category.** (See further comments below.)
7. **Printing and publication costs:** Printing costs are spread several places in the new draft, again producing confusion between functional expenses and natural line items. Printing costs of a general nature are to be reported as part of office expenses (line 13); printing costs related to conferences or conventions are to be reported as part of “conferences” (line 19); and it is assumed that printing of brochures and other fundraising materials should be reported under “advertising” (line 12). This is a significant change from current accounting practice for most organizations and could lead to considerable confusion. For example, is printing of an annual report an advertising or office expense? **We recommend that the IRS reinstate a separate line for printing and copying costs, which organizations would then assign to the appropriate functional columns.**
8. **Information Technology** (line 14): While we agree with the interest in capturing the costs of new technology, this line as currently described pulls together too many disparate natural expense lines and will result in confusion for both reporting organizations and users of the Form. Most accounting systems categorize costs related

to information technology under the appropriate natural expense, for example, the cost of computer hardware is generally captured under “furniture and equipment,” and the costs of computer maintenance agreements are typically recorded with other “repairs and maintenance.” Fees to consultants and service bureaus for assistance with designing websites, technical support, and other needs are recorded separately under “fees for service.” **We therefore recommend that this line be dropped.**

9. Conferences, conventions and meetings (line 19): We agree with the addition to the instructions which specifically state that travel to such meetings must be reported under “travel,” rather than as a part of the cost of convening or registering for the meetings. Most accounting systems currently separate travel costs from the costs involved in holding a conference or meeting (such as space and equipment rental, producers, etc.). Some accounting systems currently incorporate registration fees for conferences sponsored by other organizations with the costs of sponsoring their own conferences. **We therefore recommend that the IRS add a new, separate line to report tuition and registration fees paid for employees or volunteers to attend conferences and programs sponsored by other organizations.**

10. Payments to affiliates (line 21): As recommended earlier, the Form should be consistent in its use of affiliated versus related organizations. **We therefore recommend that this line be renamed “payments to related organizations” using the definition provided in the glossary.**

Part VI: Balance Sheet

We believe the combination of pledges and grants receivable into a single line will reduce confusion, as does the elimination of lines for reporting allowances for doubtful accounts for all receivable lines. While the Core Form no longer asks organizations to indicate whether they are reporting investment holdings in publicly-traded securities and other securities at cost or fair market value, there is much more specific information about valuation methods for particular types of investments on Schedule D. Independent Sector supports these changes. *Technical Note:* There is a typo in the instructions for line 5 (interest from receivables should be reported on Part IV, Statement of Revenue, line 5 – not line 13).

Part VII: Statements Regarding General Activities

The questions in this section are more clearly stated and arranged to facilitate use by both filing organizations and readers of the Form. The instructions should clarify that line 1a regarding activities conducted outside the U.S. does not include a grant to a U.S.-based organization for activities it conducts outside the U.S. or fundraising activities involving U.S.-based offices of corporations which have headquarters outside the U.S. As noted earlier, **we recommend that lines 11 (regarding whether the organization has an investment policy) and 12 (regarding a written policy on safeguards with respect to transactions and arrangements with related organizations) would be more appropriately included on Part III: Governance. Line 17 which asks whether the**

organization is required to attach Schedule B (Contributors) should be clarified to indicate organizations that are required to report their contributors.

Part VIII: Statements Regarding Other IRS Filings

The instructions for line 8b regarding filing of the Form 990-T indicate that the organization can only respond 'yes' if the 990-T is filed prior to filing the 990. Many organizations must wait to receive their K-1 information before completing the Form 990-T, and therefore request and receive an automatic 6-month extension for filing that Form. Requiring organizations to respond affirmatively to this question only if the 990-T has been previously filed could result in further delays in filing the Form 990. **We therefore recommend this question be re-phrased as: Has or will the organization file a Form 990-T within six months of filing the Form 990?**

Part IX: Statement of Program Service Accomplishments

Information about the filing organization's program service accomplishments is essential for setting the context for governance, compensation, and financial information, and **Independent Sector strongly recommends that this section be moved to Part II of the Core Form, immediately following the Summary Page.**

The question regarding the organization's most significant program accomplishment (line 2) is too vague and requires organizations to make subjective judgments that will inevitably result in substantial inconsistencies between organizations. Our members tell us that it would be very difficult to pick just one major accomplishment. An organization may be in the vanguard of an issue for which it is best known, but that may not be the program to which it devotes the most resources. Other organizations may find their most important services in terms of clients served or other program outcomes, even though those programs rely heavily on volunteer contributions rather than direct expenses. **We therefore recommend that this line be dropped in favor of providing more space for the organization to describe its four major program services and its other program services. Furthermore, we recommend that the organization be permitted to determine the appropriate method for determining its most important programs and to explain the basis used to determine importance.**

The new column A, Direct Revenue, asks organizations to report revenue derived from fees for service or sales of goods that directly relate to the listed activity, but not other revenue (such as restricted grants and contributions) attributable to the program. As the asterisk reference for this column is not included on the draft form, we question whether the total revenue reported on line 3e, column A, should equal the total reported on Part IV (Statement of Revenue), line 2g, column A (total program service revenue), or B (related or exempt function revenue). It is unclear whether unrelated business activities should be included in Part IX, or whether this section applies only to exempt purpose activities.

We note that many of our members have called for the inclusion of the value of volunteer services devoted to particular programs, while others note the tremendous difficulty of

determining a value that accounting staff would feel comfortable verifying under penalty of perjury. **We therefore recommend that the IRS permit organizations to provide an estimate of the volunteer resources used to deliver specific program services.**

Comments on Schedules

Schedule A: Supplemental Information for Organizations Exempt Under Section 501(c)(3)

- 1. Part I: Reason for Public Charity Status:** This new presentation provides a much clearer picture of the reasons why an organization has been granted public charity status. The expanded information on supporting organizations will help filing organizations in complying with new legal requirements, although it may initially present challenges for organizations in gathering the necessary information. The supporting organization information will be particularly helpful to private foundations and donor advised funds in determining whether they are permitted to support a particular organization.
- 2. Part II and Part III: Support Schedules:** These two schedules are a significant improvement over the complicated support schedule on the current Schedule A. The presentation more clearly differentiates public support categories from other types of support, thereby easing the computation of the public support percentage.
 - a. We disagree with the proposal to drop the line for membership dues and assessments from Part II (for organizations that meet either the 33 1/3 percent public support or the 10 percent facts and circumstances test). Both the Schedule and the instructions need to provide further guidance to help organizations determine the contribution and exchange portions of membership dues. The exchange portion is that amount of the dues payment for which the individual or organization member receives a reciprocal economic or substantive benefit and which is fully or partially refundable if the member withdraws its membership. The contribution portion, for which the benefit to the member is negligible and which is used to provide benefit to the general public or the nonprofit's service beneficiaries, is considered a part of a public charity's public support. If that amount is to be included in line 1 of Part II, it should be clearly stated on both the Schedule and the instructions.
 - b. It would be helpful for the instructions to note the corresponding line items from Part IV, Statement of Revenue, on the Core Form for each of the revenue lines in Parts II and III of Schedule A.
 - c. While organizations can easily answer lines 17 and 18 to verify its continued status as a public charity, we do not think it is appropriate to ask an organization to make its own determination as to whether it meets the 10 percent Facts and Circumstances Test (line 19) or should be re-classified as a private foundation. **We recommend, instead, that the IRS ask for further information which would provide an indication as to why the organization should be considered to meet the Facts and Circumstances Test.**
 - d. While we originally thought it would be wise to permit organizations to use either the cash or accrual methods in completing Part II, further investigation with our members suggests that this choice would lead to inconsistencies in reporting

among organizations or even for a single organization that uses different methods in different years. **We therefore recommend that IRS continue to require all organizations to use the cash basis in reporting this information.**

Schedule C: Political Campaign and Lobbying Activity

We agree that the proposed Schedule C could be a great help to organizations in understanding their legal obligations and to facilitate both education and enforcement by the IRS. **We recommend that Part I-A should be clearly labeled “Political Campaign Activities” and the instructions should note that the tax code prohibits 501(c)(3) organizations from engaging in partisan political activities.** Without this heading and clear instructions, some organizations could incorrectly assume this section applies to permitted voter registration and education activities.

We believe the more detailed questions in Part II-B regarding lobbying activities of 501(c)(3) organizations that do not make the section 501(h) election provide a much clearer statement than is currently available as to the types of information such organizations are expected to collect. We recognize, however, that many organizations will need to establish new record-keeping systems to ensure they are properly recording the costs associated with each activity. We believe that the question on line 2a – did the activities on line 1 cause the organization to be not described in section 501(c)(3) – is stated improperly and gives the impression that violations automatically result in the loss of tax-exempt status. **We recommend that question 2a be rephrased to request whether any of the activities reported on line 1a constituted a violation of prohibitions on political campaign activities by 501(c)(3) organizations. Questions 2b, c and d would then be appropriate.**

Schedule D: Supplemental Financial Statements

We appreciate that this new schedule combines and standardizes several attachments required on the current form, but many organizations were unaware that the IRS expected the level of detail presented on this schedule or were able to attach reports from investment funds or financial professionals to complete the current form. We do not believe that all exempt organizations should be required to complete this Schedule.

On **Part VII, Other Liabilities**, the draft calls for organizations to include the text of the audited financial statement footnote which reports the organization’s liability for uncertain tax positions under FIN 48. While arguments can be made that footnotes to audited financial statements must be read in the context of the entire statement, Independent Sector believes at this time that this item provides an acceptable alternative to attaching an organization’s full audited statements, given the challenges of attaching a PDF file that would not be compatible with the e-filing system.

The Title of **Part IX, “Organizations Maintaining Donor Advised Funds or Other Similar Funds or Accounts,”** is confusing. Since there is a clear statutory definition of donor advised funds, **we recommend that the IRS drop the phrase “other similar funds or accounts.”**

On **Part X, Organizations Maintaining Collections of Art, Historical Treasures, and Other Similar Assets**, the Service asks whether the organization reported contributions of these items as revenue or capitalized such contributions on the current or previous tax forms. It then asks the organization to provide the text of the audited financial statement footnote which discusses the organization's holdings of these assets. Generally accepted accounting principles (both FASB and GASB) do not require museums to capitalize their collections due to ethical obligations to treating collections as financial assets and the lack of resources to establish and maintain valuations. As a result, very few nonprofit museums do capitalize their collections. **We believe therefore that the new questions in this section will not provide the IRS with the desired information regarding the financial status of such organizations, and could lead to greater confusion by museums and the general public regarding these matters. We therefore recommend that the IRS drop this portion of Schedule D.** For a more detailed analysis of the impact of IRS proposal in this Part, we refer the Service to statements filed by IS members the American Association of Museums and the Association of Art Museum Directors.

Part XII, Endowment Funds, has raised much confusion and concern among exempt organizations. There is no clear definition of "endowment fund" and the reference to Part VII, Line 16 on the Core Form only asks whether the organization holds assets in term or permanent endowments. We therefore believe these questions will confuse, rather than clarify concerns regarding the use of endowment funds to support charitable activities. For example, this new section would not apply to funds held by related organizations for the reporting organization's benefit or funds that are invested without being subject to specific donor restrictions. Some organizations believe that this section would apply more broadly to temporarily-restricted funds where the board or the donor has determined that it is in the organization's best interest to accumulate funds to purchase land, buildings, equipment, or other program materials at some point in the future. Others have pointed out variations in state law definitions regarding endowment funds. It should also be noted that most organizations are not permitted to use permanently restricted funds in ways that are contrary to the donor's specifications, without obtaining court approval for such variances. **We therefore recommend that this Part XII be dropped from Schedule D until there is greater clarity about the information needed by the IRS and elected officials to evaluate appropriate performance.**

Part XIII, Reconciliation of Net Assets: As noted in our discussion of the Summary Page of the Core Form, **we recommend that the IRS include a line to report "other changes in net assets" on the Summary Page and provide a reference to this part of Schedule D.**

Schedule F: Activities Outside of the U.S.

Independent Sector has several serious concerns about the new schedule for reporting grants and activities outside the U.S. While we agree with the IRS that the current form "does not request adequate information regarding the activities of exempt organizations outside the United States," we believe that the proposed schedule presents a very real threat to the safety

of those who are working to improve the lives of people in parts of the world that are hazardous for workers or hostile to American organizations and interests. We further believe that many of the sections in this schedule, as detailed below, require information that will be extremely difficult and time-consuming for organizations to gather.

The expanded definition of foreign grantmaking to include grants to U.S.-based organizations if more than half of their activities are conducted outside of the United States or grants to U.S. organizations for relief and other efforts outside the U.S. will be extremely costly and time-consuming for organizations, and could greatly hinder support in response to natural disasters and other emergencies. **We therefore recommend that this Schedule be limited to expenditures made to persons or organizations based outside the U.S.**

We recognize that the IRS and the nonprofit community must balance our desire to ensure that charitable resources are not improperly diverted to activities that harm our nation's interests with the need to protect the people who are working to deliver important humanitarian services and to improve civic life throughout the world. We are prepared to work with Congress to institute the necessary statutory changes which would enable the IRS to treat this Schedule with the same degree of confidentiality that is currently given to contributors listed on the current and proposed Schedule B. **We strongly recommend that the IRS delay implementation of Schedule F until that change can be accomplished.**

Part I, General Information on Accounts and Activities Outside the United States:

- 1. Activities by Country** (line 1): Very few organizations maintain the data on expenditures and program activities on a country-by-country basis; rather data is generally kept on the basis of regions or continents. Organizations would require time to revamp their accounting and information systems, and this process would impose a significant burden on organizations with offices in a large number of countries. Many religious organizations may employ staff who coordinate the work of volunteers in several countries, making it particularly difficult to track activities by country. **We recommend that the IRS instead define, in consultation with organizations that conduct significant international activities, particular regions rather than specific countries for which this information should be provided.**
- 2. Grantmaking Procedures** (line 2): This open-ended question regarding procedures for selecting and monitoring grant recipients seems intrusive for a public document. Schedule I regarding domestic grantmaking activities asks more directly on Part I, line 1, whether the organization maintains records to substantiate the amount of the grants or assistance, the grantees' eligibility for the grants or assistance, and the selection criteria used to award the grants or assistance. **If the intent on Schedule F is to identify whether organizations are observing particular required or recommended practices for international grantmaking, the question should be phrased more specifically to indicate what those practices are. Otherwise, we recommend that the question in Schedule I, Part I, Line 1, be used on Schedule F.**

3. **Political or Lobbying Activities** (line 3): There is no definition or instructions regarding reporting of political and lobbying activities. Given the many variations in the political systems and legal frameworks under which charitable organizations operate outside of the U.S., it may not be appropriate to apply rules that govern domestic political and lobbying activities. Some could wrongly interpret that organizations that respond affirmatively to the question regarding funding of political or lobbying activity outside the U.S. are violating the law. **We recommend that this question be dropped until there is more appropriate clarification of the laws and expectations in this area.**

4. **Public Disclosure of Information Regarding International Activities** (lines 4a and b): The Core Form of the draft asks about the public availability of certain documents that charitable organizations are required to share and some that organizations are encouraged to share (such as conflict of interest policies, financial statements, and audit reports). To accomplish their missions and attract support, most charitable organizations share information about their program activities broadly, and Independent Sector clearly encourages all organizations to do so. We do not think it is appropriate to single out one area of an organization's activities with regard to public information as this question does.

5. **Relationships with grantees** (lines 5a and 5b): Organizations with a substantial number of donors find it impractical to obtain retrospectively the requested information regarding donor relationships with agencies outside the U.S. For most, this would require surveying donors on an annual basis and establishing a separate database of all related organizations against which all grant recipients must be checked. For sponsoring organizations of donor advised funds, information related to fulfillment of their legal obligations regarding grants and distributions benefiting donors is provided on Schedule D. **We therefore recommend that this question be dropped from Schedule F.**

Part II, Grants and Other Assistance to Organizations or Entities Outside the United States

The information required in lines 2 and 3 regarding assistance to 501(c)(3) organizations and to other organizations does not seem valid given that most foreign organizations are not recognized in the U.S. and the regulatory structure for charitable organizations in most other countries is not easily comparable to the U.S. system. The questions could therefore leave a misleading picture regarding the types of foreign organizations supported by U.S.-based charities. An alternative to an IRS determination letter would be to allow counsel to offer equivalency letters stating that the recipient operates under a status of another country's laws that is equivalent to 501(c)(3). We are continuing to explore other alternatives to gather more useful data that would address IRS' concerns.

Schedule G: Fundraising

The proposed Schedule G must be completed by organizations that receive more than \$10,000 from a fundraising event or gaming activities, or that paid more than \$10,000 for outside professional fundraising services. The Form is very confusing as it is currently presented, and it does not seem appropriate to combine fundraising activities with gaming activities that are subject to significantly different state laws and regulations.

The thresholds for completing Schedule G are extremely low, given that many smaller organizations (such as school parents' associations) may easily surpass the \$10,000 threshold from a single event that does not involve professional fundraising consultants. **We do not recommend that organizations that file the Form 990-EZ should be required to complete this Form and urge the IRS to conduct further investigations to determine appropriate thresholds before this Schedule is implemented.**

Independent Sector shares the IRS' concerns about professional fundraisers who receive a high proportion of contribution revenues, but it is not clear to us that the information requested on Part I will provide sufficient information for regulators or the public to distinguish between reasonable and questionable arrangements with outside fundraisers. Line 1a asks organizations to indicate whether they engaged in various solicitation techniques, but the inclusion of "grants from governments or organizations" is a funding source rather than a solicitation technique. The table on line 1b would be difficult to complete for many organizations which have multiple contracts with a single individual or organization to assist in fundraising solicitations. Also, it should be understood that in the initial phase of a contract, it is not unusual for fees paid to consultants to exceed gross receipts from a particular type of solicitation. To ensure that regulators and the public get a clear picture of these arrangements, **we recommend that this question be restated to require organizations to report on separate contracts and note the beginning and ending date of the contract period.**

The question on Part I, line 2, focuses solely on those fundraisers who have a direct relationship to an officer, director, or key employee of the organization, but the question is confusing as stated and refers the filer back to the Core Form to provide additional information. **Here, too, we recommend that the IRS consult with organizations that make extensive use of professional fundraising consultants to identify information that would be more helpful to explain relationships with professional fundraisers, as well as to identify inappropriate relationships.**

In Part II, Events, our members have indicated that the instructions for the proposed Form are confusing regarding what constitutes the "direct expenses" to be reported. The instructions to the current Form clearly state that direct expenses should include "only the expenses directly attributable to the goods or services the buyer receives from a special event." The proposed instructions are unclear as to whether the cost of special event staff or contractors could apply to special event labor other than that which is directly attributable to goods or services provided.

In Part III, Gaming, it should be noted that organizations may contract with multiple parties to conduct gaming activities and line 17a should provide room for multiple contacts to be reported. Our members also question the appropriateness of line 16 regarding the individual who prepares the gaming/special events books since these books should not be kept separately from the organization's overall financial records and the Core Form already identifies the individual responsible for that function.

Schedule H: Hospitals

As you are aware, substantial concerns have been raised by our member organizations and others about the new recordkeeping requirements hospitals will need to institute to comply with the new Schedule H. There continues to be strong debate about the appropriate definition of "community benefit" which has not yet been resolved by Congress. We therefore strongly encourage the IRS to continue its consultation with the hospital community and delay implementation of Schedule H until these questions are resolved.

Schedule I: Grants

We believe this Schedule should allow sufficient space for organizations to provide information on grants without having to attach a separate list. We have the same concerns about question 2a regarding the relationship between grantees with "any person with an interest in the organization" as we noted in our discussion of Schedule F. As we stated earlier, this information would be extremely time-consuming and costly for organizations with many donors to compile, and we believe that Schedule D contains the information needed to determine compliance for sponsoring organizations of donor advised funds. **We therefore recommend that questions 2a and 2b be dropped from this Schedule.**

Those of our members who make substantial numbers of grants each year have also raised concerns about the \$5,000 threshold for reporting grants information and have suggested using the same criteria used to list contributors on schedule B (those who made contributions of \$5,000 or more or whose contributions equaled 2 percent or more of total contributions, whichever is greater). Other members are interested in having full information about the grantmaking activities of private foundations and support the \$5,000 threshold. Therefore, Independent Sector does not have a recommendation regarding grant thresholds at this time.

Schedule J: Supplemental Compensation Information

The new breakdowns of the types of compensation paid to a given individual will help to eliminate confusion over seemingly high compensation that is, in fact, a reflection of severance pay or bonus or incentive compensation. The matrix in the instructions of Schedule J describing where different types of compensation should be reported appears to provide helpful information, but it is likely that it will only be read by organizations that must complete this schedule. IS believes that it would be appropriate to include that matrix in the instructions to the Core Form.

We are confused by the inclusion of nontaxable expense reimbursements (line 1E) in the report of compensation and feel this will produce a misleading picture of compensation as well as imposing a time-consuming burden on organizations to compile. This could include reimbursements of taxi or bus transportation taken by employees to attend business meetings, an item that is often reimbursed through petty cash funds, as well as business lunch expenses. In other cases, such expenses are paid directly to airlines, travel agents, hotels, or credit card providers and may not be tracked in accounting records to particular employees. Any substantial expense reimbursement – such as a housing fund for a key employee – should be included in taxable compensation. **We recommend that line 1E be dropped from the Form.**

Our members have also raised concerns about question 3 which groups together payment of first-class airfare, club dues, or use of personal residences, and provides no space for the organization to explain the reasons why it paid or reimbursed such expenses. For example, an organization may be required to pay first-class travel because of unexpected travel needs and the unavailability of other travel or accommodations. **We suggest that the IRS include space for organizations to disclose the facts and circumstances that led to such expenditures. We also recommend disaggregating the three items into separate questions or asking filers to check boxes for each payment type that is provided.**

Contingent Compensation: Questions 5a and 5b ask whether the compensation of any board member, officer, key employee, or other individuals listed in Part II of the Core Form was determined in whole or in part by the revenues or net earnings of the organization or of any related organization. These questions appear to be drawn from the Intermediate Sanctions regulations, which indicate that such a determination could be an indicator of an excess benefit transaction, but provide no further details. While Independent Sector opposes strictly percentage-based compensation, we recognize that it would be extremely rare for an organization not to consider the revenues and net earnings of the organization in determining whether or not it could provide an increase in compensation to key employees, or whether such an increase would be deserved by a given employee. For example, an organization may substantially increase its contributions and earned income through improved management, fundraising, and program activities and a board would therefore consider those increased revenues in evaluating the performance and determining appropriate compensation levels. **IS, therefore, is concerned that the questions in lines 5a and 5b are not useful for compliance purposes and would create too much confusion to justify their inclusion on the Schedule. IS further believes that if the Service views such questions as critical to enforcement of the Internal Revenue Code, then it recommends that “contingent on” revenues would be more clear and appropriate than “determined by.”**

Schedule M, Noncash Donations

This new Schedule is designed to gather information on how organizations arrived at the numbers reported for non-cash contributions on Part IV of the Core Form, Statement of Revenue, and must be completed only by organizations that report more than \$5,000 in non-cash contributions. While we appreciate the intent of this new Schedule, we believe it raises

serious concerns among nonprofit organizations that do not currently record non-cash contributions in their accounting records at their “fair market value,” given the time and cost involved in establishing such values.

If the intent of this Schedule is to identify non-cash contributions claimed at a high value, our members have suggested that further information should be provided on Schedule B regarding substantial non-cash contributions of individual donors. We have serious concerns about the time and cost involved in gathering this information as expressed in comments filed by our member organizations, Goodwill Industries and the New York Community Trust, and **we strongly recommend that this schedule be dropped or delayed until the IRS can develop a more appropriate method of gathering the information it desires.**

We thank you for your efforts to reach out to the nonprofit community to make the revised Form 990 a more effective tool to strengthen compliance and accountability of all exempt organizations. We look forward to working with you as you continue to improve the Core Form and Schedules. Please contact me at 202-467-6147 for [further assistance.](#)

Sincerely,



Patricia Read
Senior Vice President, Public Policy and Government Relations
Independent Sector

From: [Dan Moore](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC: [Chuck McLean; Bob Ottenhoff; Dan Moore;](#)
Subject: Comments from GuideStar
Date: Friday, September 14, 2007 1:31:06 PM
Attachments: [Comments by GuideStar to New Form 990 09 14 2007.pdf](#)

Please find attached to this email, the comments from GuideStar regarding the proposed revisions to the Form 990. We appreciate the opportunity to provide comments. Please let us know if we can be of further assistance as you review all comments and make revisions to the proposed form.

With warm regards,

Dan Moore

Vice President, Public Affairs

GuideStar

[202.360.9012](tel:202.360.9012)

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September 14, 2007

Lois Lerner
Director, Exempt Organizations Division
Internal Revenue Service
Form 990 Redesign, ATTN: SE:T:EO
1111 Constitution Ave., N.W.
Washington, DC 20224

Dear Ms. Lerner:

We thank the Internal Revenue Service (the “IRS,” the “Service,” or the “Agency”) for the opportunity to share our thoughts on the draft revised Form 990.

GuideStar is the leading provider of information about the nation’s exempt organizations. Americans visited our Web site nearly 8 million times last year to obtain information about nonprofit organizations. GuideStar’s users include a wide range of people inside and outside the nonprofit sector: individual donors, nonprofit leaders, grantmakers, government officials, academic researchers, journalists, and individuals and companies that provide services to nonprofits and donors.

Every year we answer thousands of questions about Form 990. Some users find it helpful in making wiser and more informed decisions, but many find it confusing and complicated. We frequently explain to national reporters how to reconcile apparent discrepancies between financial information presented on the Form 990 with audited financial statements, provide numerous training sessions for nonprofits about their disclosure obligations and the importance of the Form 990, and discuss the returns’ strengths and weaknesses with academic researchers and Congressional staff. People rely on GuideStar not only for access to 990s but also for our expertise on interpreting them. The comments below reflect this unique perspective.

IRS Goals in Modernizing the Form 990: Enhance Transparency, Promote Tax Compliance, and Minimize Burdens on Filing Organizations

We applaud the IRS’s three guiding principles in redesigning the form — to enhance transparency, promote tax compliance, and minimize burdens on filing organizations — and appreciate the fact that the IRS is addressing critical areas for reform. We are pleased that through these comments, we are able to assist the IRS in creating a new Form 990 that meets these goals. Rather than provide a line-by-line review, we wish to offer a broad analysis to guide the Service as it considers alternatives for the final version of the redesigned form. We cannot overemphasize the importance of the task that the IRS is embarking on; it is critical for federal tax administration that returns be accurate, complete, and filed in a timely manner.

The Form 990 serves several important roles. First and foremost, the form, as an information return, enables the IRS to gather information for tax compliance purposes. Indeed,

as the Service noted in its Background Paper accompanying the redesigned draft Form 990, the IRS uses the form “as the primary tax compliance tool for tax-exempt organizations.”¹ In the words of the IRS, “The purpose of information returns . . . is to provide information necessary for the Service to properly administer the revenue laws.”² Accordingly, the guiding principal should be that information requested should, in fact, assist the agency with ascertaining tax compliance. Assuring this tax compliance is also a vital way of protecting the hundreds of thousands of nonprofit organizations that strive to follow the IRS guidelines while pursuing their public service missions. Many of the nonprofit abuses that have been publicized were the result of violations of the tax code and insufficient oversight resources, not shortcomings of the Form 990.

The redesigned Form 990, however, goes beyond information required by the Internal Revenue Code or the underlying regulations. Although tax-exempt organizations should certainly be cognizant of best practices, what an organization does with regard to them is a business judgment matter for the organization — and its donors — rather than an issue for tax administration. Devoting space on the Form 990 to immaterial information diverts attention from true issues of tax compliance.

Many states also use the Form 990 to satisfy state tax reporting requirements and to monitor tax-exempt organizations. In addition, because the Form 990 is a public document, it provides important information to the public, the media, and others about the missions, programs, and finances of individual tax-exempt organizations as well as the tax-exempt sector as a whole. Because of the form’s vital role, it is essential that organizations are able to complete it accurately and that the IRS, the public, and others are able to use it effectively.

We applaud the IRS’s efforts to modernize the Form 990. As a result of both significant changes to the tax-exempt sector and piecemeal revisions to the form over the years, however, the Form 990 has become increasingly difficult for organizations to complete as well as for the public to decipher. Tax-exempt organizations, state regulators, researchers, and other sophisticated users of the return consistently remark that the 990 provides an incomplete and often inaccurate reflection of the filing organization, even when it is completed appropriately.

IRS efforts to improve the completeness and accuracy of the current return are hampered by well-known issues: imprecise questions, insufficient instructions, and inadequate funding to develop the necessary processes and procedures to access all of the information on the return. Furthermore, the IRS regrettably suffers from insufficient compliance personnel to perform follow-up on incomplete or inaccurate returns.

It is for these reasons that GuideStar recommends that the IRS concentrate its collection activities on gathering only the most important items from nonprofit organizations and performing this task at the highest quality levels. Collecting even more data than currently is

¹ Internal Revenue Service, Tax-Exempt & Government Entities Division, *Background Paper: Redesigned Draft Form 990* at 1 (2007) (emphasis added).

² G.C.M. 36506.

gathered may only result in additional data that are inaccurate and incomplete. If that occurs, the new Form 990 will not provide better service to the public or the nonprofit community.

It is also important to put the Form 990 into context. The Form 990 is not the only means or manner in which nonprofits make public disclosures about their work. There is a competitive marketplace of donor choice in which nonprofits operate. Donors exercise considerable control over the behaviors of nonprofit organizations. The power to give, or not to give, places significant control in the hands of donors to extract information they need to support the causes that they are interested in. To ignore the power of this marketplace to discipline nonprofits and to encourage appropriate transparency is to miss the fundamental changes taking place because of the growth and power of the Internet. The Form 990 is an important tax report but should not be seen to shoulder the burden of being the primary source of information about nonprofits.

There will always be a long list of information requests that some would like to add to the Form 990 in the name of transparency and protecting donors. We take a different approach, one that seeks to harness the power of donor choice, the power of the Internet, and encourage voluntary efforts for nonprofits to share information.

We should guard against saddling the Form 990 with extraneous disclosures that do not aid in efficient tax administration. Complexity adds both time and cost to completing the form and may not provide the IRS with an accurate return. Finding the appropriate balance is necessary for the Service to accomplish the redesign of the Form 990 and to achieve its three stated goals.

Extensive Discussion with the Nonprofit Sector and Data on Compliance Trends Are Necessary to Achieve the IRS's Goals

A return that requests substantial amounts of information but that is frequently inaccurate or incomplete does not serve the IRS's core mission to enforce federal tax laws consistently and fairly. We understand that the Service takes the view that there is a narrow window of time within which the Service can make changes to the Form 990. It is vitally important, however, that any revised return and related instructions be sufficiently clear, simple, and precise in order to improve significantly the accuracy and completeness of each filed return.

We understand the desire of the IRS to advance this form in a timely fashion. The extensive comments that the IRS has received so far, however, are only a small sampling of the questions, concerns, and competing demands that the Service faces as it seeks to modernize the Form 990. Because of these complexities and the sincere desire of most nonprofit organizations to support the modernization of the form, we urge the Service to find ways to introduce the new form over a period of years and for organizations of varying sizes.

The rich and complex nature of the tax-exempt sector requires extensive discussion to ensure that the goals articulated by the Service are met. The lack of clarity about what the Service intends to do regarding the filings of Forms 990-EZ raises fundamental questions about

the potential burden on filers. The Service should address this outstanding question as promptly as possible. Many commentators have raised serious questions about filing thresholds and implementation schedules for the various schedules in the proposed new form. Comments from labor unions, fraternal organizations, and chambers of commerce raise important questions about whether one form can fit all filers.

Data exist that can aid the Service in further study of compliance issues. GuideStar has worked with the Service in the past and with other federal agencies such as the Government Accountability Office to inform policy analysis and tax compliance. We urge the Service to use data to make better decisions in modernizing the Form 990.

Enhancing Transparency: Summary Page Should Help Provide a “Realistic Picture” of an Organization

Given our role in the tax-exempt sector, we routinely hear from the public that the current Form 990 is confusing and difficult to understand. The chief complaint by our users is the lack of timeliness of the disclosures made on the form. On average, the form is filed some eight months following the close of an organization’s fiscal year. Many organizations take two extensions and file their respective returns as much as ten and one-half months following the close of their fiscal years. The redesign of the Form 990 does not address this critical flaw in the current system, and we fear that the complexity of the proposed revision will add to the delay in filings and public disclosure.

We have also learned that individuals and organizations make donation decisions and render evaluations of nonprofits based on one or two lines on the form. As a result, not only must the Form 990 be easy to understand but, in the words of the Service, it must also provide a “realistic picture of the organization and its operations.”³

The proposed form, however, does not provide a realistic picture of an organization. Certain questions elicit information that, to the untrained eye, is unhelpful, misleading, or both. For example, Part I of the form, also known as the Summary Page, asks each organization to compute ratios regarding compensation, revenues, assets, and fundraising. These ratios lack the necessary context to be meaningful or useful to the public. Moreover, rather than being informative, they are misleading; these ratios give individuals a false sense that they understand an organization’s operations and can lead them to make incorrect inferences about the organization.

Similarly, although information regarding compensation is necessary for tax administration, highlighting the dollar amounts by themselves on the Summary Page suggests that the amounts have meaning outside the context in which they are earned. Further, the Summary Page only provides space for approximately three words to describe the filing organization’s most significant activities. There is a real danger that the public and the media

³ IRS, *Background Paper* at 2.

will incorrectly infer that organizations with lower compensation data or lesser operating ratios are more effective than those with higher figures.

These features of the redesigned form are examples where the IRS has attempted to increase transparency but has inadvertently done so in an ultimately unproductive manner. We respectfully suggest that the Service strive to request information in such a way as not to be misleading to the public, the media, or others who wish to learn more about individual tax-exempt organizations or the tax-exempt sector as a whole.

We recommend that the Service give more opportunity for each filing organization to describe its program service accomplishments as a key aspect of the Summary Page. We would also urge the Service to return the more detailed information on Program Service Accomplishments to Page 2 of the revised form. In our experience, donors most want to see what nonprofits do. The current draft misses this essential point, highlighting inputs and ratios (without proper context) and giving only passing reference to nonprofits' outputs and outcomes.

We urge the Service to keep its focus on providing a realistic picture of the filing organization. Toward that end we offer the following:

Summary Page — In addition to the comments on the Summary Page that we have offered above, we recommend that the Service consider requiring nonprofits to supply two years of basic financial information on the form's Summary Page. This approach will provide the basic users with trend line information, allow for a realistic picture for comparisons, and provide the user with information with which to evaluate changes in the nonprofit. It will be important for the Service to allow filers to include explanations that provide additional information and necessary context to explain unusual circumstances that occur between years. The goal should be to provide a realistic snapshot and to provide filers with an opportunity to add context where appropriate.

Main Form, Part II — Although the "Position" check box is a welcome addition to the reporting of compensation, the lack of a "Title" data field is problematic. For many nonprofit organizations, the Form 990 is a major source of comparable compensation information for positions other than CEO, CFO, etc. Not providing a "Title" field will make such comparisons impossible. Also, operating under the commonsense rule that filers will find a way to misinterpret any form, it is likely that in many cases employees with titles such as "President" or "Comptroller" will be indicated as "Other" in the position check box, rather than under "CEO or Executive Director" or "CFO or Treasurer," respectively.

Main Form, Part V — Our experience is that the allocations between program, fundraising, and administrative costs are not consistently reported and therefore are not reliable data points for comparative purposes. The totals in the functional expenses are extremely valuable data. It is our understanding that the allocations of expenses for program, administration, and fundraising were added to the Form 990 at the request of state charity officials in 1979, when the Form 990 was last revised, and that these fields are not necessary for tax compliance purposes. We suggest that the Service eliminate the reporting of allocations of

functional expenses on the new Form. In its place, the Service can require reporting based on more than one year to show trends in reported expenses. The allocation of costs to program, fundraising, and administrative areas adds cost to completing the form but does not provide accurate and reliable data. The states that require this information can best obtain it from audited financial statements that they also require. In audited financial statements, trained professionals who are independent of management perform tests to ascertain the reliability of these allocations. If these data are necessary, they should be reliable. Audited financial statements, and not an information tax return, are best suited to collecting these data.

Main Form, Part IV — The proposed breakdown of contributions, gifts, and grants is welcome. Many different types of users would find it useful if line 1f were further detailed to include grants from private foundations, donor-advised funds, and other.

Main Form, Part IX — In a perfect world, it would be fascinating to be able to compare the direct revenues generated by program services with the expenses incurred. In the real world, however, most organizations would find it very difficult to report this information in a reliable way. The likely outcomes are (1) organizations will do the best they can, but the information they provide will not be very good; (2) organizations will narrow and restrict what they report as program service accomplishments in order to connect them more easily to revenue generated; or (3) organizations will go to a great deal of trouble and expense to change their systems to report this information faithfully.

Main Form, Part X — The Signature Block raises concerns for some filers and their paid preparers. Although it is material who authorizes the filing of the Form 990 and who has been paid to prepare the return, the actual signatures are not material public disclosure. Additionally, the requirement for disclosure of the preparer's SSN or TPIN has raised concerns among paid preparers who have inadvertently listed their Social Security Numbers on the form. Although the instructions are clear, it is noteworthy that even paid preparers who are faced with too many choices will make disclosures that are not required. Separating the disclosure of who authorized and who was paid to prepare the form from the actual signatures will balance the privacy concerns of some filers with necessary tax compliance requirements.

Minimizing Burdens on Filing Organizations

We strongly support the Service's efforts to modernize the form, as a simpler Form 990 will not only minimize the burden on filing organizations but will also give the IRS and the public a more accurate picture of individual tax-exempt organizations and the sector as a whole. We believe, however, that the IRS could do more to simplify the form. For example, GuideStar's own auditors estimate that in the first year of the new form's use, we, along with our auditors, will spend 50 to 100 percent more time in compiling information and completing the redesigned form, with an attendant increase in cost. Based on these estimates, we are projecting that it may cost GuideStar as much as \$5,000 more to complete the proposed Form 990. Although costs will vary for each organization, new compliance costs will place a major financial burden on nonprofit organizations, with little quantifiable benefit and the prospect of no

better quality data. We respectfully suggest that in finalizing this form, the IRS consider whether it could be further simplified to reduce the burdens imposed on tax-exempt organizations.

The current Form 990 can be difficult for tax-exempt organizations to complete because the questions do not always relate directly to an organization's activities or its auditing requirements. According to the IRS, one of the most common complaints about the existing form is that many of the questions and instructions are unclear.⁴ If an organization does not properly complete the form, the IRS and the public will have an inaccurate or inadequate picture of the organization. One study of the tax-exempt sector found serious, widespread errors and underreporting on the current Form 990 and attributed these errors in part to confusion about how to complete the return.⁵ For organizations that engage in many common activities, such as holding fundraising events and making grants, the draft Form 990 will require substantially more information arrayed in new categories. Such a significant increase in the amount of required information is likely to exacerbate confusion unless the questions and instructions are subject to extensive vetting by those who have to complete the form. We urge the IRS to permit such a discussion to occur, rather than let itself be driven by internal scheduling concerns. The potential impact on the tax-exempt sector is too significant for hasty action.

The Service should consider other ways to minimize the burden on filers. We suggest the Service consider:

- Raising the filing threshold for 990-N filers from \$25,000 to \$50,000, as the Tax Payer Advocate and others have recommended. Indexing the filing thresholds and making periodic adjustments will balance the need to gather information from filers against the burden providing additional information will impose on small, community-based organizations.
- Some changes to the 990-N to address the needs of state charity officials. The IRS should, however, establish 990-N filing requirements that meet federal goals, as our federal system permits state regulators to require additional filings at the state level. Overall, the decision to require additional information is a matter for state legislators and is best left to individual states to determine as appropriate.
- Changes to the Form 990-EZ that are based on elements of the Core Form and Schedules A and B. The filing threshold for 990-EZs should be raised from \$100,000 to \$500,000. The Service needs to balance the need to gather relevant data against the burdens of filing timely, accurate, and complete information for organizations with total revenues from \$50,000 to \$500,000. Our federal system permits state regulators to require additional reporting by these organizations if state legislatures determine that additional information is needed from organizations of this size.

⁴ IRS, *Background Paper* at 2.

⁵ *Form 990 Reporting Errors*, Philanthropy Matters, Vol. 2, Issue 2, at 14, 14-15 (2006).

- Focusing on the 100,000 organizations with total revenues greater than \$500,000. For this group of filers, the Service should carefully stagger the reporting of many of the new schedules to provide time for changes in record keeping, which are a significant driver of the increased costs of compliance.

Conclusion

Because the Form 990 is a critical document for both tax compliance and public disclosure, the IRS should ensure that it has taken the time to evaluate thoroughly the redesigned form and the impact it will have on the tax-exempt sector. In the past, the IRS has encountered difficulties when it has rushed to release new features. For instance, the Service did not plan for the continued public disclosure of e-filed Forms 990 and, as a result, forms that were e-filed in 2004 were not publicly available until May 2007. We are concerned that if the Service pushes too quickly to release a final version of the redesigned Form 990, the agency may not serve itself, exempt organizations, or the public well.

Tax-exempt organizations will need time to prepare for new reporting obligations, including establishing new processes to track and report information that the new form requires. If the organizations do not have time to prepare adequately, they may not be able to complete the form accurately or on time. Accordingly, we recommend that the Service take all reasonable steps to minimize the new compliance costs as it implements the new Form 990.

Thank you very much for your time and consideration. If you have any questions or concerns, please do not hesitate to contact me at (757) 229-4631.

Sincerely,



Robert Ottenhoff
President and Chief Executive Officer

From: [Bob Hannibal](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: FW: Comments on Proposed Form 990 Revisions
Date: Friday, September 14, 2007 1:50:49 PM
Attachments:

Dear Sirs:

Thank you for the opportunity to comment on the proposed redesign of Form 990. I represent a small, Midwest private K-12 school that has no highly compensated employees or officers, no “complicated compensation arrangements”, and no activities that should raise any compliance or private inurement concerns. In fact, the school operates at a cost of less than \$5,000 per student, which is significantly below the costs of public education. Our current net assets amount to about \$1 million, which, accumulated over 25 years, averages to an increase of only \$40,000 per year, or slightly more than two percent of last year’s total revenue of \$1.74 million.

Our most recently filed Form 990 (tax year 2005) consisted of 19 pages, four of which were blank due to asking for information not applicable to our situation. Of the Form 990 itself, one of the eight pages was blank; three of the six pages of Schedule A were blank; the rest consisted of the two-page Schedule B and three pages of attachments.

The new proposed Form 990 would require a filing of 27 pages, nine of which would be non-applicable. In addition to the ten-page Form 990, we would be required to file seven of the 15 possible schedules, four of which would each have two blank pages. Schedules A, G, and R would require from us only one of each of their three pages to have any pertinent information on it.

In specifics, the proposed redesign of Form 990 would look like this for our school:

Page 3 of Form 990 would be totally non-applicable; the only items filled in would be marked “no”.

Schedule A would consist of three blank pages with the exception of a check in the box on line 2 of page one.

Only four of 15 “Parts” of Schedule D would appear to apply to us, leaving pages two and four completely non-applicable as well as half of page one and most of page three.

Pages two and three of Schedule G would not apply to us at all, another of the schedules for which we would file three pages when one would suffice.

The only part of Schedule R that would apply to us is Part I, leaving the other two and one half pages blank.

In summary, the proposed new Form 990 would substantially increase our reporting burden (at the very least in terms of the amount of paper required), with no apparent benefit to the IRS or to the public.

If “enhancing transparency”, “promoting compliance”, and “minimizing the filing burden” are indeed the three guiding principles in this redesign, perhaps some questions are in order:

How many Section 170(b)(1)(A)(ii) private schools have been found to be “problematic” or “abusive of the law”?

Are there some simple numeric “tests” (such as cost per student) that could be applied to differentiate between the “problem” and “non-problem” institutions so that the “non-problems” could be relieved of the reporting burden necessary for the others?

Could not a “Form 990-EZ-School” form be utilized by small institutions such as ours (and, I suspect, most small private schools) that would ask the basic information on the proposed Form 990’s pages 1, 4, 8 and 9, and Schedule E? Some of those questions might trigger the use of other schedules, while most schools could keep the paperwork (and related labor costs) to a minimum.

Our purpose for existence is education, not profit. If profit were our motive, it would show in our financial statements, as it clearly does not. While we certainly appreciate the necessity of accountability to regulatory authorities such as the IRS, we would request that some consideration be given to the fact that while some organizations might try to take inappropriate, unethical or even illegal advantage of a non-profit status, the rest of us should not be penalized for their actions.

Thank you again for the opportunity to comment on the proposed redesign of Form 990.

Sincerely,
Robert Hannibal
Staff Accountant
Cair Paravel Latin School
Topeka, Kansas
(785) 232-3878

From: [Cindy Lewin](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: comments from the Nonprofit Organizations Comm, ACC
Date: Friday, September 14, 2007 1:52:54 PM
Attachments: [IRS comments 08-07 letterhead final.pdf](#)

Please see the attached comments from the Nonprofit Organizations Committee of the Association of Corporate Counsel.

Cynthia M. Lewin
Chair, Nonprofit Organizations Committee
Association of Corporate Counsel



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Washington, DC 20036-5425

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NONPROFIT ORGANIZATIONS COMMITTEE

September 14, 2007

Submitted by E-mail to Form990Revision@irs.gov

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

Dear Form 990 Redesign Staff:

I write on behalf of the Nonprofit Organizations Committee of the Association of Corporate Counsel. The Association of Corporate Counsel (ACC) was formed in 1982 as the professional bar association for in-house counsel, and today has almost 22,000 members worldwide. One of the primary missions of ACC is to act as the voice of the in-house bar on matters of concern in corporate legal practice. The Nonprofit Organizations Committee of ACC has over 1100 members who practice as in-house and general counsel to nonprofit organizations, primarily 501(c)(3) organizations, including both charities and private foundations, and 501(c)(6) organizations.

As in-house counsel to the tax-exempt sector, it falls to our membership to put into practice "on the ground" the laws, regulations, and other compliance procedures required by the Service. Given our intimate perspective on nonprofit operations, we believe we bring an important point of view to the debate on the proposed Form 990.

While our membership has many detailed comments on individual line items, we have chosen to comment only on four overarching issues that reflect widely-shared concerns of our membership:

I. Misleading Nature of Summary Section on First Page

The new form requires on the front page a summary of the organization's activities, governance, revenues, expenses and fundraising activities. This is evidently intended to provide a "snapshot" of the organization for the general public. However, by including items in the summary, the Service is placing its official imprimatur on the judgment that these are the most important aspects to consider about a nonprofit. The public, most of whom do not have significant background in assessing tax-exempt organizations, is likely to take the Service's word for it.

We have grave misgivings about this approach. The information in the summary, by necessity given limited space, is presented without context or established metrics to help the user comprehend it. Further, in some cases, terminology that sounds negative is used to describe appropriate behavior. For these reasons, the summary is highly susceptible to being misunderstood or misinterpreted, and thus prejudicial to the reporting organizations.

Specifically, the various percentages to be calculated are provided without context. While it is true that some of these ratios are used by some charity evaluation groups, those groups set standards that explain their views of appropriate ranges for these ratios. Without that context, the public will likely draw the conclusion that lower is always better for management and fundraising costs – why else would the Service be drawing their attention to these figures? But it is well established that nonprofit organizations with inadequately funded management are frequently ineffective, while those with very low fundraising costs are simply underreporting. Moreover, the ratio of key employee compensation to total program expenses is not even used by the major charity evaluation groups and thus is a metric with no context even for those well-versed in the nonprofit sector.

Similarly, the number of board members is not an established metric for high-performing nonprofits. While large boards were once preferred, now the trend is toward smaller boards. Organizations will have widely differing answers to this question depending on their governance structure (membership, chapter-based, self-perpetuating board), and it has not been established that those differences are correlated to their effectiveness. Also, organizations have different approaches to having related parties on their board – medical facilities often have physicians, religious charities have ministers. The Better Business Bureaus Wise Giving Alliance standards recognize this and allow up to 10% compensated board members. Without such context, the public may draw an unwarranted negative inference.

The focus on compensation is also misleading. No context is given for whether salaries over \$100,000 are unreasonable under the Service's own "intermediate sanctions" test or are appropriate given the location of the organization's offices. Further, the highest compensation amount often includes severance pay, a retirement bonus, or deferred compensation and is not reflective of the organization's overall compensation system. A more detailed picture of the organization's compensation is provided on the very next page (although even that page lacks accuracy given the double-counting of deferred compensation)– it is inappropriate to single out a potentially misleading figure on the first page.

Finally, the form's use of standard tax terminology may unintentionally cast aspersions on perfectly legitimate activity. As to unrelated business income, the words "unrelated" and "business" wrongly suggest to readers that the organization is engaging in something inappropriate. A similar example is "gaming" – a word that sounds racy, with vaguely criminal overtones. Yet the picture evoked by a Bingo game at the neighborhood senior center is completely different. Including these activities in the summary may in itself have an inflammatory effect, without adding much to the understanding of the reporting organization, as these activities are often a relatively minor part of an organization's total operations.

Nonprofit organizations cover a huge breadth and range in their variety, and a meaningful summary of the complex information in the Form 990 may not be possible. It is also not necessary. The form itself provides a wealth of information to the interested reader, and other groups provide comparative data on nonprofits in different formats that will serve the needs of different audiences. At the very least, the form should allow for the organization to provide written explanations of the summary items, to help address the misleading impressions that otherwise may occur.

II. Implied Establishment of "One Size Fits All" Governance Practices

Part III of the proposed revised 990 deals with governance. The IRS is in a uniquely complicated position to pursue governance matters through the 990. On one hand, the 990 is an enforcement vehicle by which the IRS and state charity officials gather information to use in making decisions to pursue more information or initiate an audit. As IRS officials have said, standards of governance can reflect on an organization's standards of compliance. On the other hand, the 990 can be a useful tool for educating – albeit somewhat forcefully – the sector and the public about the importance of certain governance policies, practices, and standards. Unfortunately, even the best of intentions can have the potential of opening the door to unintended consequences, including infringing on matters best left to the states, undermining the ability of private individuals and organizations to exercise business judgment in the fullest light of applicable circumstances, and imposing on the sector a "one size fits all" view of governance practices.

Traditionally, matters of corporate and entity governance have been within the purview of the states and subject to enforcement by state corporate and charity officials. It certainly seems to be appropriate for the IRS to inquire through the 990 about the presence of certain policies and procedures through which tax exempt organizations can more readily ensure compliance with applicable federal laws. For instance, the existence and application of a conflicts of interest policy can simultaneously and with consistency facilitate compliance with the state-based duty of loyalty and federal-based prohibitions against self-dealing and excess benefit. Similarly, inquiring about the presence and application of whistleblower and document retention policies, which are arguably federal law mandates, or about financial controls can serve legitimate enforcement purposes and educational opportunities.

Some contend that only asking about the presence and general application of such policies does not go far enough to evidence compliance and that it will be too easy for organizations and the people who run them to concoct minimalist compliance protocols. Pursuing such depth through the 990, however, risks embarking on a slippery slope of trampling on matters of state authority. Moreover, the downsides of using the 990 to probe more deeply into governance matters outweigh the potential for catching those with a "race to the bottom" mindset.

Using the 990 to inquire more deeply, for instance about the size of the governing body, the number of independent members of that body, or (even more problematically) specific numbers of conflict of interest transactions reviewed, can inadvertently present an aura of the

IRS appearing to pass a judgment— either good or bad but in either event without full information -- that the press and public may unfairly and inaccurately extrapolate from the fact of the questions being asked and answers being given without adequate context. Moreover, inquiring too deeply about conflict of interest transactions could have an unintended and unfortunate “chilling effect” in that organizations might implement narrow policies bounded by rigid legal parameters. Under such legalistic policies, organizations might forgo considering the implications of potential transactions not contemplated by narrow constraints, such as the appearances of conflict when a legal conflict does not exist. Such a result can actually undermine the very transparency and accountability that the 990, and Part III in particular, are pursuing.

The depth of inquiry into governance matters through the 990 can expose implicit “one size fits all” expectations that might be blindly pursued in an effort to comply with what people may interpret to be IRS expectations thereby displacing more thoughtful, appropriate, and effective decision-making at individual board and management level. The diversity of the sector in size, mission, operations, and otherwise – including approaches to governance -- contributes to its effectiveness. Uniform governance expectations from government, whether explicit or implicit, will threaten that effectiveness more than does the relatively low rate of law breaking from within the sector.

III. Arbitrary Reporting of Compensation of All Employees with Salaries of \$100,000

The form requires disclosure of the individuals with annual compensation above an arbitrary ceiling of \$100,000. The Committee believes that, given the vast diversity in size and revenue of nonprofit organizations, the selection of a single threshold will yield confusing information on large organizations and misleading information on small organizations. A single threshold also does not allow for the large disparity in salary levels between major urban areas and smaller cities and rural areas, nor does it recognize the difference in skills required and the marketplace demand for, say, a traditionally low-paid preschool teacher and a biomedical researcher. The Committee would recommend consideration of a sliding scale pegged to the organization’s total budget, a higher figure that would limit reporting to fewer staff, or similar alternative. Further, whatever number is chosen should be adjusted regularly for inflation, or it will soon be even more over-inclusive.

IV. Need for Delay of Implementation

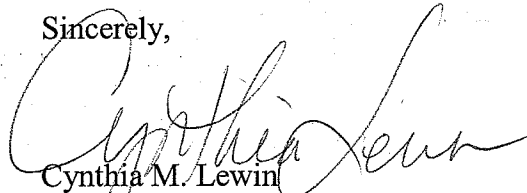
The draft Form 990 requires a massive amount of new information and recordkeeping. For example, significant new reporting is required in Parts II and V (requiring compensation reporting for two different periods), Part IX (matching direct program revenues with program expenses, which is not required for financial statement purposes), Schedule G (fundraising), Schedule I (grants), Schedule K (tax-exempt bonds), and Schedule M (non-cash contributions). Major accounting firms are advising our organizations that the new Form 990 will cost more to prepare than the current form, another indicator that the form involves added complexity.

For compliance, calendar year organizations would need to have procedures in place to begin collecting this information by December 31, 2007 – less than four months away. This would be difficult even if the final form was available today. The volume of comments and the careful attention the Service is devoting to those comments will further impede the release of the new form in time for organizations to have sufficient time to prepare for meaningful compliance.

We urge the Service to delay implementation of the new Form 990 or at least the various schedules until 2009 (assuming that a final form can be completed and released to the public well before January 1, 2009). To do otherwise risks unfairly burdening the nonprofit community, most of whose members are understaffed, underfunded, and least able to handle it.

We applaud the Service for its significant efforts in reshaping the Form 990, a valuable undertaking. We also applaud its openness to public comment on this important process and for its outreach to the public through phone seminars, speaking engagements, and publications. Thank you for your consideration of these comments.

Sincerely,



Cynthia M. Lewin
Chair, Nonprofit Organizations Committee
Association of Corporate Counsel

From: [sharond](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Revised 990 Concerns
Date: Friday, September 14, 2007 2:15:04 PM
Attachments:

We track the number of items sold by major category. There is no way we could track the items donated. All of us sell well over 800 million items based on a rough estimate driven by our experience. The number of donated items will likely exceed 1 billion. Trying to keep track and report on this information is too burdensome to imagine.

Further, we do not want the responsibility and liability shifted to us to value items. Our mission is driven by our donations, please do not hinder that process.

Sharon L. Durbin
President/CEO
Land of Lincoln Goodwill Industries
800 N. 10th Street
Springfield, IL 62702
Tele: 217/789-0400
Fax: 217/789-7239

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