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| **From:** | Liz Towne |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | |
| **Subject:** | Alliance for Justice Comments on Redesigned 990 |
| **Date:** | Friday, September 14, 2007 2:43:13 PM |
| **Attachments:** | 990comments.pdf |

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Attached please find Alliance for Justice's comments on the redesigned 990. If you have any questions concerning this matter please feel free to contact me. Thank you.

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September 14, 2007

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

Re: Comments of Alliance For Justice on Redesigned Form 990

Dear Sir or Madam:

Alliance For Justice ("AFJ") submits these comments in response to the draft redesign of IRS Form 990 released for public comment in IR-2007-117 (June 14, 2007).

AFJ is a national association of environmental, civil rights, mental health, women's, children's, and consumer advocacy organizations. Our organizations support legislative and regulatory measures to promote political participation, judicial independence, and greater access to policy processes. We also provide training to numerous nonprofit organizations throughout the country with respect to the rules governing advocacy. While many of the organizations we assist are organized as charitable and educational organizations under section 501(c)(3) of the Internal Revenue Code ("IRC"), a significant number also work with or are affiliated with social welfare and other advocacy organizations organized under IRC § 501(c)(4) and/or IRC § 527.

AFJ supports the Service's stated goals of enhancing transparency, promoting tax compliance, and minimizing the burden on reporting organizations. We do not believe, however, that these goals are achieved within the draft released for comment, especially with respect to the expanded reporting of lobbying and political activities set forth in the core report and Schedule C. These new reporting requirements will lead to substantial confusion within the nonprofit advocacy community and the general public and will add to the burden placed on reporting organizations. For these reasons we strongly urge the Service to reconsider many of the proposed changes concerning lobbying and political activities and, at a minimum, to delay implementation of these elements until these issues can be satisfactorily resolved.

I

The Service Should Not Require Reporting of Lobbying Activities By Non-501(c)(3) Organizations and Should Not Expand Reporting By 501(c)(3) Organizations As Proposed In The Draft

**Schedule C, Part II-B: Application to Non-501(c)(3) Organizations**

Part II-B of Schedule C for the first time would require organizations other than IRC § 501(c)(3) organizations to report on their lobbying activities. There is no statutory authority for this significant expansion of the reporting obligations of IRC § 501(c)(4) and other IRC § 501(c) organizations, nor is there any tax-administration reason for requiring such organizations to maintain records and report on their lobbying activities. Unlike non-electing IRC § 501(c)(3) organizations, which may engage only in an insubstantial amount of lobbying, there is no limit on how much other IRC § 501(c) organizations may spend on lobbying nor is there any restriction on the kinds of lobbying activities they may undertake. There is, therefore, no reason to burden these organizations with additional record-keeping and reporting obligations.

While IRC § 501(c) organizations, other than non-electing IRC § 501(c)(3) organizations, would not be required to report the amounts of their lobbying expenditures in Part II-B, they would be required to attach a statement describing in detail the activities they conducted to influence legislation. This new requirement will force IRC § 501(c)(4) organizations and other IRC § 501(c) organizations to create and maintain expensive new record-keeping systems. In addition, it is important to note that the disclosure of lobbying activities may burden activities that are protected under the First Amendment to the United States Constitution by disclosing the organizations' tactics and strategies and adding significantly to the cost of these activities. *See*, e.g., *Gibson v. Florida Legislative Comm.*, 372 U.S. 539, 557 (1963); *Sweezy v. New Hampshire*, 354 U.S. 234, 245 (1957) (Frankfurter, J. concurring); *United States v. Harriss*, 347 U.S. 612 (1954). The likelihood of interfering with protected speech is enhanced in this context where the Service has not, as discussed below, made clear the kinds of activities that must be reported. Given these constitutional concerns, and the absence of any legitimate tax-related reason for the expansion of lobbying reports to non-501(c)(3) organizations, this aspect of the draft should be dropped in all respects.

**Schedule C, Instructions - Definition of Terms**

The definitions of "Lobbying Activities" and "Legislation" in the general instructions for Schedule C appear to be applicable only to Part II-B of Schedule C, since Parts II-A, III-A and III-B have their own definitions, which may differ from the generic definition applicable to Part II-B.[1] The use of different definitions of "lobbying activities" within the same Schedule and, at least in some cases, for the same organization is bound to create enormous confusion within the nonprofit advocacy community and the general public. Further, the generic definition in the instructions for Schedule C provides virtually no useful guidance to reporting organizations because it fails to address numerous important issues. If, contrary to our strong recommendation in the previous section, the Service continues to apply section II-B to non-501(c)(3) organizations, it should provide a detailed definition of lobbying that provides adequate guidance to reporting organizations and is consistent with the definitions applicable under other Parts of Schedule C.

**Schedule C, Part II-B, Line 2a and Related Instruction**

The draft instruction for Line 2a of Part II-B of Schedule C states that a non-electing 501(c)(3) organization should answer "Yes" if its lobbying activities were "substantial." The instruction fails to state, however, what is meant by the term "substantial" or what activities should be included in the definition of "lobbying," thus leaving organizations without any guidance as to how to respond to this item.

Insofar as Line 2 appears generally to be aimed at organizations that have paid tax under section 4912, this purpose would be better served simply by asking the questions in lines 2b, 2c and 2d, without getting into the difficult definitional questions raised by line 2a, which should be dropped.

**Part V, Line 11d of the Core Report Form and Related Instruction**

Part V, line 11d of the core report would require all nonprofit organizations for the first time to report separately on certain expenses relating to lobbying as part of the general statement of functional expenses[2] in the core report. This proposed change raises a number of difficulties.

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[1] To provide but one example, whereas the statement in the instruction that "legislation" does not include actions by executive, judicial or administrative bodies, some executive branch actions pertaining to legislation are included in the definition of lobbying activities under section 4911. See Treas. Reg. § 56.4911-2(b)(1)(B)

[2] In addition to the objections raised in text, we note that "lobbying" would not normally be regarded as a functional expense.

First, since this part of the form applies to all reporting organizations regardless of their tax status, it requires a separate definition of lobbying activities applicable to all 501(c) and 527 organizations. However, no such definition currently exists and the attempt in the draft instructions to create such an all-encompassing definition will lead to significant confusion with respect to existing definitions under sections 501(c)(3), 4911 and 162(e), which have been in place for many years and which are applicable to portions of Schedule C. For example, the draft instruction for line 11d states that the organization should include "amounts for lobbying before federal, state, or local executive, legislative or administrative boards." Lobbying of executive and administrative agencies, however, is generally not included in the definition of lobbying activities under section 4911, see e.g., Treas. Reg. § 56.4911-2(d)(3) ("legislative body" does not include executive, judicial, or administrative bodies"), and has limited application under section 162(e). See Treas. Reg. § 1.162-29(b)(6). Lobbying of local legislative bodies is also subject to special rules under IRC §§ 162(e)(1)(A) and 6033(e)(1)(A)(ii). See e.g. Treas. Reg. § 1.162-20(c)(5). Use of a generic definition of "lobbying" that includes activities which are not included in more familiar definitions can only lead to confusion on the part of both reporting organizations and the general public.

Second, with the exception of electing IRC § 501(c)(3) organizations, IRC § 501(c) organizations and IRC § 527 organizations are not currently required to maintain separate records of lobbying expenses. The proposed change, along with other changes in Schedule C, will create unnecessary reporting burdens for such organizations.

Third, there is no tax-related reason why nonprofit organizations, including IRC § 501(c)(3) organizations, need to report *separately* on their consulting agreements relating to lobbying. Lobbying is simply another activity by which IRC § 501(c) organizations seek to achieve their exempt purposes, and there is no justification for requiring that lobbying expenses be broken out from other program related expenses such as expenditures and contracts for public education, research, or client services.

In light of these considerations, line 11d should be dropped in its entirety, leaving consulting contracts for lobbying purposes to be included under "other" items in line 11g.[3]

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[3] Any independent contractor who receives more than $100,000 from the organization would also be reported under Part II, Line 10a of the core form, along with a description of the services provided.

II

The Expanded Reporting of Political Activities in the Redesign Relies on Confusing and Inconsistent Definitions Which, In Some Critical Ways, Are Inconsistent With Current Interpretations of the IRC

**Schedule C, Part I-A, Line 1 and Related Instruction**

Line 1 of Part I-A of Schedule C requires all IRC § 501(c) and IRC § 527 organizations to provide a description of their "direct and indirect political campaign activities". This generic requirement should be eliminated for a number of reasons.

First, the information sought serves no tax-administration purpose that is not otherwise served by Part I-C of Schedule C, which requires organizations to report on their exempt function activities within the meaning of IRC § 527(e). Part I-C provides the Service with sufficient information to make any tax-related determination with respect to reporting organizations without requiring a detailed description of the organization's political activities that will add to advocacy organizations' record-keeping and reporting burdens and could interfere substantially with organizations' speech and associational activities protected under the First Amendment. *See*, e.g., *AFL-CIO v. Federal Election Commission*, 333 F.3d 168 (D.C.Cir. 2003).

Second, the instruction's effort to define the types of activities that must be reported is confusing in the extreme. The term "direct and indirect political campaign activities" is not used anywhere else in the Internal Revenue Code or Regulations [4] and, for this reason alone, is likely to lead to significant uncertainty and confusion. The draft definition of this new term in the instruction leaves open a number of important questions and creates its own confusion in light of other applicable definitions in this area. For example, the definition does not make clear whether efforts to influence a ballot measure fall within the definition of "political campaign activities," as they do under many state laws, but not under prior pronouncements by the Service. Under regulations issued by the Service to implement IRC § 527, certain expenditures allowed under federal or state election laws are not

[4] Line 81a of the current Form 990 uses the term "direct and indirect political expenditures". Many of our comments regarding the draft of the redesigned Form 990 are based on the experience of nonprofit organizations in attempting to report under the current form.

currently included within the definition of "exempt function expenditures."[5] Treas. Reg. § 1.527-6(b)(3). These expenditures include administrative and fundraising expenditures for a separate segregated fund established by the organization, partisan communications to an organization's members, and certain nonpartisan voter registration and related activities.[6] See 2 U.S.C. § 441b(b)(2)(A)-(C). Similarly, the regulations defining exempt function expenditures with respect to the tax under IRC § 527(f) currently do not include indirect expenses. See Treas. Reg. § 1.527-6(b)(2). Apart from the confusion caused by the use of a new and unfamiliar definition, if the Service's intention is to require reporting in Part I-A of political activities that do not fall within the definition of exempt function expenditures for purposes of IRC § 527, then organizations will have to maintain two sets of records - one limited to exempt function expenditures and a second including additional (undefined) categories of activities.

Third, the instruction for this new requirement will, at a minimum, cause enormous confusion regarding an important policy and legal question that has remained unresolved by the Service for many years. Specifically, the instruction states that, for organizations other than section 501(c)(3) organizations, "political campaign activities also include activities that support or oppose candidates for *appointive* federal, state, or local public office or office in a political party." In Announcement 88-114, 1988-37 I.R.B. 26, the Service sought public comment on the question of whether efforts to influence the selection of individuals to appointive office should constitute exempt function expenditures within the meaning of IRC § 527(e). *See also,* G.C.M. 39694 (January 22, 1988). Alliance for Justice and other organizations filed extensive comments on this question, which has never been resolved by the Service. *See*, *e.g.*, Judith E. Kindell and John Francis Reilly, "Election Year Issues," in 2002 Exempt Organizations Continuing

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5 The term "political campaign activities" will be particularly confusing for IRC § 527 organizations that are required to file Form 990, since those organizations are generally governed by the term "exempt function expenditures," see IRC §§ 527(i) and (j), and will be unclear as to the meaning of this different terminology. The draft would also require such organizations to maintain two sets of books, one for purposes of filing Form 8872 and another for Form 990. If the Service expects organizations to report under Part I-A of Schedule C activities that are not within the definition of exempt function expenditures under IRC § 527, it should exempt IRC § 527 organizations from this section entirely.

6 While the draft Instruction states that the term "political campaign activities" does not include "any activity intended to encourage participation in the electoral process, such as voter registration or voter education, provided that the activity does not directly or indirectly support or oppose any candidate," the scope of this language is unclear and would not exclude many activities which do not fall within the scope of exempt function activities for purposes of IRC § 527.

Professional Education Technical Instruction Program, 397 n. 27 ("No final determination of this issue has been made.") If the statement in the draft instruction means that efforts to influence appointive offices will now be treated as exempt function expenditures for purposes of IRC § 527(e) and (f), this is a particularly backhanded way to resolve this long-standing legal and policy question. Such a conclusion would have far-ranging impact on the activities of numerous IRC § 501(c) organizations, and would leave the advocacy community with no guidance concerning a host of subsidiary issues that were highlighted in AFJ's 1988 comments.[7] On the other hand, if the Service still has not resolved the question of whether nominations for appointive offices are covered under IRC § 527, but nevertheless intends to include efforts to influence appointive offices within the more general term "political campaign activities," even this more limited interpretation will lead to enormous confusion within the regulated community. Finally, the instruction provides no explanation for it's suggestion that a different rule applies to IRC § 501(c)(3) organizations, adding further to the confusion that will be created and leaving 501(c)(3) organizations without any guidance as to whether they may lobby in support of or opposition to nominees for judicial and executive branch positions.

**Schedule C. Part I-A, Line 3 and Related Instruction**

Line 3 of Part I-A requires all IRC § 501(c) and IRC § 527 organizations to provide the total number of hours of "volunteer labor" used in political campaign activities. This new requirement should also be eliminated, for the same reasons as Line 1 and for other reasons as well.

First, the burden of tracking the number of hours spent by volunteers on a reporting organization's political activities, however they may be defined, will be enormous in terms of both cost and effort. Many IRC § 501(c) organizations have hundreds, if not thousands, of volunteers who participate in their advocacy activities. The task of collecting this information from so many people is almost impossible to fathom. The proposed requirement goes well beyond existing accounting requirements for recognition of contributed services, which require the reporting of volunteer services only in very limited circumstances. See FASB, Statement of Financial Accounting Standards No. 116, ¶ 9 (June 1993). There is no similar

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[7] For example, as AFJ pointed out in its 1988 comments, if expenditures for lobbying Congress or other legislative bodies on appointments must also be reported (and taxed) as exempt function expenditures, the question arises whether the exceptions to lobbying expenditures under IRC § 4911 also apply in this context and, if not, then organizations will be required to maintain two sets of records, one for section 4911 purposes and one for section 527(f) purposes.

requirement in the redesigned Form 990 with respect to contributed services for other program activities, and it should not be included here.

Second, requiring volunteers to submit reports on their advocacy activities will very likely deter many from participating at all. Nonprofit advocacy organizations spend enormous amounts in attracting volunteers to participate in their programs, efforts that will be severely hampered if volunteers will be required to file detailed reports on their activities.

Third, the instruction fails to address numerous important issues such as whether volunteers hours for indirect services should be included, when a volunteer is deemed to be acting on behalf of the organization, and the impact of volunteer services on an organization's exemptions and the tax under IRC § 527(f).

**Schedule C, Part I-C, General Instruction**

The general instruction for Part I-C refers to "political campaign activities," even though the specific line items in this Part pertain to "exempt function expenditures," an entirely different term. Furthermore, as explained above, under current law activities in support of or opposition to candidates for appointive federal, state or local public office or office in a political party are not included as exempt function expenditures, as suggested in the instruction; this instruction is not an appropriate place to resolve this long-standing and complex policy and legal issue.

**Schedule C, Part I-C, Line 1 and Related Instruction**

The draft instruction for Line 1 refers to "political campaign activities," even though the form refers to "exempt function activities". This should be corrected in the final version.

Also, Line 1 asks for information relating to the organization's direct expenditures for exempt function activities. We assume that expenditures by a separate segregated fund established by the organization under IRC § 527(f)(3) are not intended to be included in this item and we recommend that the instruction be clarified to make this clear, as is the case in the instructions for Line 81a of the current Form 990.

**Schedule C, Part I-C, Line 2 and Related Instruction**

The draft instruction for Line 2 also incorrectly uses the term "political campaign activities."

Line 2 appears to overlap in part with Line 5. Since Line 5 covers transfers to IRC § 527 organizations, it would avoid confusion and simplify the form if Line 2 included only transfers made to other IRC § 501(c) organizations. Furthermore, the instruction for this line should state that the organization should report only those transfers that are earmarked to support exempt function activities by the transferee organization. The reporting organization should not be expected to report unrestricted transfers to other 501(c) organizations, since the reporting organization may have no information concerning and no control over how its funds were spent by the transferee organization.

**Schedule C, Part I-C, Line 3 and Related Instruction**

As discussed above, the current regulations defining "exempt function expenditures" for purposes of IRC § 527(f) do not include indirect expenditures. Until these terms are defined, the Service should not require reporting of indirect expenditures on this line.[8]

The reference to Form 1120-POL is also likely to lead to significant confusion. First, many IRC § 501(c) organizations are not required to file Form 1120-POL because they do not have political organization taxable income. Second, the due date for Form 1120-POL is two months before the due date for Form 990. We recommend that this reference be deleted and that information relating to Form 1120-POL be obtained under Line 4. More importantly, the Service should explore changing the due date for filing Form 1120-POL at least for IRC § 501(c) organizations required to file Form 990. In our experience, many nonprofit organizations assume that Form 1120-POL is not due until the date for filing Form 990, and organizations that are aware of the correct filing date often are unable to obtain the necessary information for filing until they have begun the process of preparing Form 990. It would simplify the burden on reporting organizations if the two returns were due at the same time.

**Schedule C, Part I-C, Line 5 and Related Instruction**

The instruction for Line 5 should clarify that it is not seeking information about contributions made directly by individual donors, including an organization's members, to a separate segregated fund or political action committee. Many IRC § 501(c) organizations solicit voluntary contributions

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8 The same objection applies to Part VIII, Line 1 of the core Form 990.

to their connected separate segregated funds in accordance with federal or state law. These contributions are deposited directly into the accounts of the separate funds. The instruction for Line 81a of the current Form 990 is clear on this point and it should be included in the instruction for the redesigned form as well.

The instruction should also make clear that the amount reported in column (e) is not an exempt function expenditure by the reporting organization and should not be included in response to Lines 1 or 3.

**Schedule F, Part I, Line 3**

This item asks whether a filing organization made any grants directly or indirectly to finance political or lobbying activity outside of the U.S. Since grants for lobbying activity are permissible for all types of IRC § 501(c) organizations, while grants for political activity may be improper in some instances, we recommend that the two types of activity not be included in a single question; otherwise, it will be unclear whether a filing organization has made a grant for improper purposes.

Furthermore, it is unclear what is meant by a grant that is made "indirectly" to finance political or lobbying activities.

III

The Service's Attempt to Influence Internal Governance and Management Policies and Procedures of Nonprofit Organizations Is Without Legal Authority, Will Cause Significant Disruption Within the Nonprofit Community, and Will Mislead the Public and Should Therefore Be Eliminated From the Redesign

Part III of the core Form 990 asks a series of questions pertaining to the governance, management and financial policies and procedures of the reporting organization.[9] With limited exceptions, these questions address policies and procedures which are not required by federal or state law or regulation. Moreover, while some of these policies and procedures may be useful for some organizations, they are not universally beneficial and may, in some instances, be counterproductive. As many organization managers have recognized, the one-size-fits-all assumptions which underlie Part III are not appropriate, especially for small and medium size organizations.

[9] Part VII, Lines 11 and 12 of the core form include similar questions and these comments are equally applicable to those new provisions.

While the Service does not explicitly mandate that these policies and procedures be adopted as a condition of exemption, our experience suggests that, independent auditors and other financial advisors frequently require organizations to adopt any policy or procedure highlighted in Form 990 notwithstanding the Service's position that they are optional. IRS examining agents also quickly turn "suggestions" into requirements and insist on reviewing compliance with every policy or procedure mentioned in Form 990.[10] And, finally, the media and the public frequently misconstrue the Service's position, suggesting that organizations are operating improperly when they have not adopted each and every policy or procedure suggested by the Service.

These problems should be sufficient to deter the Service from inserting itself into the area of organizational governance and management. It is also significant that the Service has little or no experience or expertise in determining appropriate mechanisms for nonprofit governance and that Congress itself has refrained from entering into this arena. Finally, the draft instructions contain erroneous, misleading, or confusing statements regarding certain of the specific policies and procedures proposed to be included in this Part:

> **Line 3.** All directors and trustees of nonprofit organizations are subject to fiduciary duties with respect to how they conduct themselves with respect to the organization. While some organizations have found it helpful to adopt separate conflict-of-interest policies, many have concluded that formal written policies and procedures are

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10 The Service's explanation for these new reporting requirements in the Background Paper issued with the Redesigned Draft Form 990 makes clear that the agency is definitely not neutral with respect to the "good government and accountability practices" addressed in Part III. As justification for these reporting requirements, the Service argues that the practices addressed "provide safeguards that the organization's assets will be used consistently with its exempt purposes, a critical tax compliance consideration," and that "a well managed organization is likely to be a tax compliant organization." In our view, and based on our experience working with numerous nonprofit advocacy organizations throughout the country, the practices highlighted in Part III often elevate form over substance and will have little impact on tax compliance. Furthermore, the Service cannot have it both ways - if the policies and procedures highlighted in the redesigned Form 990 are necessary from a tax compliance standpoint, as the Service argues, then examining agents, the media and the public are certainly going to use these standards to measure compliance with organizations' exempt purposes, in effect establishing *de facto* mandates where none actually exist. Finally, as we describe in detail below, the Service's view of what constitutes "good government and accountability practices" is skewed to large, well-funded organizations, conflicts with actual practice by many well-managed, tax-compliant organizations, and may well be counterproductive in many circumstances.

unnecessary, either because the issues normally covered in such policies have not arisen for the organization or because other procedures are in place and have proven to be adequate. Furthermore, there is enormous variety within the nonprofit sector regarding the form of such policies and procedures. The Service should not suggest that there is a single acceptable approach to these issues.

**Lines 4 & 5.** It is not true that Sarbanes-Oxley "requires" certain tax-exempt organizations to adopt written whistle-blower protection and document retention and destruction policies. That statute prohibits retaliation against whistle-blowers and the destruction of records under certain circumstances. While some nonprofit organizations seek to comply with these requirements by adopting written policies, others have concluded that they are unnecessary, particularly given the substantial effort and cost of adopting full-blown written policies in both areas.

**Line 6.** While most states require that written minutes be prepared for meetings of governing boards, many states do not require minutes of committee meetings. There is also no definition of the term "related committees." Is this limited to committees made up entirely of directors or trustees to which the board has delegated specific authority to act on its behalf, or is it intended to include other committees? We know of no legal basis for requiring that minutes be prepared on the schedule set forth ; while some organizations may comply with this requirement, many others do not for perfectly legitimate reasons and there is no basis for concluding that an organization which follows another procedure is not well-managed.

**Line 7.** There is no legal requirement that organizations adopt written policies and procedures governing the activities of chapters, affiliates and branches, or even that the "operations [of such entities] are consistent with the organization's." In reality, the relationships between and among parent organizations and subordinate entities often evolve over time and it may well be counterproductive to the development of an organization to attempt to institute written policies and procedures in this area before the organization is ready to do so.

**Line 8.** Many organizations, especially smaller ones, are unable to afford the cost of an independent accountant. State laws generally do not require that nonprofit financial statements be reviewed or audited, or they provide exceptions for smaller organizations. Again, the Service's simplistic, one-size-fits-all approach is misleading and could

be counterproductive by suggesting to organizations that they need to incur these costs.

**Line 9.** Except in very limited situations, there is no legal requirement that an organization have an audit committee. Some organizations have decided to have their full governing boards review audit reports in lieu of establishing a separate committee to perform this function, while others may delegate this task to a financial or budget committee. The Service has neither the authority nor the expertise to require that all organizations establish separate audit committees.

**Line 10.** The Service has no basis for suggesting that a reporting organization's governing body should (or must) review Form 990 before it is filed. For many organizations this would require a special meeting, at significant additional expense. Further, the size or make-up of the governing body may make it difficult for it to review the return effectively and efficiently.

**Line 11.** While the Internal Revenue Code requires nonprofit organizations to make available certain documents to the public,[11] it does not require that they disclose organizing or governing documents such as bylaws, their conflict of interest policy, if any, financial statements, or audit reports (including any related management letters). State laws generally do not require disclosure of these documents, and there are legitimate reasons why organizations may elect not to disclose these documents. Moreover, by including documents that must be disclosed to the public by law, such as Form 990 and Form 990-T, in the same question as documents for which there is no such legal obligation, the Service will create confusion with respect to the manner in which organizations must make their Form 990 and 990-T available. Thus, the draft of Line 11 suggests that organizations may make their Form 990 available by "other" means, although the instructions do not indicate what other means would be acceptable compliance with the statutory requirement and the Service's previous guidance on this question does not appear to include such an option.

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[11] Although Form 990 must be disclosed to the public, the draft of the redesigned Form 990 eliminates current Instruction M, which explains how such disclosure should be made and makes clear that donor information in Schedule B is *not* subject to mandatory disclosure. We recommend that this provision be included in the final version of the redesigned form. If the Service decides not to include current Instruction M, then it should at least add a provision to the Instructions for Part III making clear that Schedule B is not subject to public disclosure.

IV

The Redesign of Form 990 Should Address the Special Problems of Reporting By IRC § 527 Organizations, Particularly Separate Segregated Funds

Form 990 is directed primarily to IRC § 501(c) organizations. When Congress mandated in 2000 that some IRC § 527 organizations begin to file Form 990, the Service elected to use the existing form rather than develop another form in the 990 series for political organizations, which would have been preferable. This decision has led to numerous questions concerning the application of Form 990 to political organizations for which the Service has provided no guidance. The redesign of Form 990 is an appropriate opportunity to address these questions for the first time.[12] In addition, the Service should exempt IRC § 527 organizations from some parts of Form 990 which are of little or no relevance or are duplicative of information provided on Form 1120-POL or Forms 8871/8872.[13]

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**Section A of Part II of the Core Form and Related Instructions**

Many IRC § 527 organizations are established as separate segregated funds ("SSF") of a related IRC § 501(c) organization. Where the organizing/governing documents of the SSF establish a governing body for the SSF, it is relatively simple to identify the "directors" of the organization, notwithstanding that it is not incorporated. In many instances, however, there may be no organizing or governing documents for the SSF,[14] and decisions about the operations of the SSF may be made by a committee of the related organization, staff of the related organization, or some other informal body. Is the IRC § 527 organization expected to list these individuals as its "directors" or should it list the governing body of the related organization which, as a legal matter, has ultimate authority over the SSF's programs and operations?

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12 In requiring IRC § 527 organizations to file annual returns, Congress expressly authorized "such modifications as the Secretary considers appropriate to require only information which is necessary for the purposes of carrying out section 527." IRC § 6033(g)(2)(A).

13 IRC § 527 organizations are the only groups required to file Form 990 that are also required to file additional regular reports with the Service. If the Service is serious about wanting to reduce the burden on reporting organizations, eliminating duplicate reporting by political organizations would be a good place to start.

14 The Service has stated that "Section 527 does not require an organization to have formal organizational documents, such as articles of incorporation.... The regulation specifically states that the organization need not be formally chartered or established as a corporation, trust, or association....." Rev. Rul. 2003-49 (Q&A 13).

Similarly, if the SSF has registered as a political action committee under federal or state law, it would be required to designate a treasurer and, in some states, a chair. Are these the "officers" of the SSF for purposes of reporting under this section, or are the officers of the related organization to be reported as its officers? Finally, in many organizations, the political director and/or other employees of the related organization serve as the staff for the SSF. Are these individuals to be listed as key employees of the SSF, even though they are paid entirely by the related organization and they may not otherwise fall within the definition of that term.

**Section B of Part II of the Core Form and Related Instructions**

As with section A of this Part, it is very unclear how IRC § 527 organizations should report under this section. Line 3, for example, may have no application to SSFs, which often do not have a CEO, Executive Director, or CFO in the typical sense of these terms, and the SSFs frequently play no part in the hiring of staff, who are employees of the related organization. Should the SSF answer these questions with respect to the CEO, CFO, etc. of the connected organization or simply put N/A? Moreover, as noted above, many SSFs have no governing body in the usual sense. Lines 5a-e are generally concerned with issues under IRC § 4958 which does not apply to IRC § 527 organizations. Line 10a should be limited to compensation paid directly by the SSF, and should not include compensation paid, and presumably reported, by the related IRC § 501(c) organization.

**Part III of the Core Form**

IRC § 527 organizations should be exempted from this Part in its entirety. Since SSFs do not have their own governing bodies, it is unclear how lines 1a and 1b should be answered. Similarly, lines 2 through 9 ask about policies and procedures adopted by or applicable to an organization's governing body. If an SSF responds to these questions by providing information relevant to its connected organization, the responses will be misleading and redundant.

**Parts IV and V of the Core Form and Related Instructions**

IRC § 527 organizations separately report their revenue and expenditures on Form 8872 according to the requirements set forth in IRC § 527(j). IRC § 527 organizations further report financial information on Form 1120-POL. Under these circumstances, the Service should exempt IRC § 527 organizations from reporting under Parts IV and V of the core form.

As previously noted, the operating expenses for IRC § 527 organizations established as SSFs of related IRC § 501(c) organizations are frequently paid directly by the related organizations. There is no place in Part IV of Form 990 for an SSF to report these expenditures as in-kind contributions, nor is it clear how they are to be reported in Part V, if at all, since they are not paid directly by the SSF.

**Schedule B**

Since IRC § 527 organizations must report their contributors on Form 8872, they should be exempt from reporting under Schedule B.

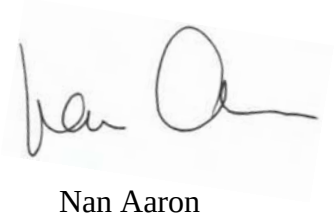
**Schedule I**

Since IRC § 527 organizations already report their contributions to individuals on Form 8872, they should be exempt from reporting these amounts on Schedule I.

## Conclusion

The Service's efforts to expand reporting of lobbying and political activities in the draft redesign of Form 990 has not been carefully considered and will result in confusion within the nonprofit community and to the general public. The Service's effort to suggest governing and management "best practices" also raises numerous problems as set forth in these comments. Finally, the Service should exempt IRC § 527 organizations from many of the reporting requirements in the proposed redesign. We urge the Service to reconsider these areas before issuing a final version of the redesigned Form 990.

Sincerely,



Nan Aaron

| | |
|---|---|
| **From:** | Andy Finch |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | AAMDGOV; |
| **Subject:** | Comments on Form 990 |
| **Date:** | Friday, September 14, 2007 2:56:18 PM |
| **Attachments:** | IRS 07 draft 990 AAMDComments Submitted to IRS 9-14-07.doc |

---

Dear IRS,

Kindly accept the attached document as comments on the Draft Form 990. I have also pasted the document as text below. Please do not hesitate to contact me if you have any questions.

Regards,

Andrew Finch
Co-Director of Government Affairs
Association of Art Museum Directors
1319 F Street, NW - Suite 201
Washington, DC 20004
202-638-4530

Comments to Draft Form 990
Submitted by
Association of Art Museum Directors

Introduction

The Association of Art Museum Directors (AAMD), which represents approximately 180 art museums in the U.S., appreciates the request for comment on the revised Form 990. In the interest of brevity and to avoid duplicating comments AAMD recognizes that many sections in the revised form will be commented on by those representing a broad spectrum of the nonprofit community like Independent Sector and the American Association

Comments to Draft Form 990
Submitted by
Association of Art Museum Directors

Introduction

The Association of Art Museum Directors (AAMD), which represents approximately 180 art museums in the U.S., appreciates the request for comment on the revised Form 990. In the interest of brevity and to avoid duplicating comments AAMD recognizes that many sections in the revised form will be commented on by those representing a broad spectrum of the nonprofit community like Independent Sector and the American Association of Museums (AAM) which represents a broad spectrum of museums.

Several comments by Independent Sector (IS), to which we would particularly like to associate ourselves, is the timing of the implementation of the form. The schedule for implementation does not leave sufficient time for organizations to prepare themselves to accurately comply with the new demands imposed by the revised form unless many of the proposed changes to the revised form are adopted.

In addition, we would like to also endorse the IS comment on not listing city and state of residence for board members (Part II, section A) and instead using the city and state of the institution. In the case of museum board members/trustees their interest is often sparked by the fact that they are significant collectors as well as donors to museums. Having personal information publicly available could put their collections are greater risk of theft and cause some to reconsider their commitment to the institutions they ably serve without compensation.

AAMD would also like to associate our comments with those of the American Association of Museums which represents art museums as well as all other museums including zoos, aquariums and botanical gardens. AAMD particularly notes and endorses AAM's detailed explanation of the 1993 FASB rules for non-capitalization of collections and its recommendations regarding Schedules D and M of the revised form.

AAMD shall restrict additional comments to those issues – other than FASB -- that most directly affect the membership of the AAMD.

## General Comments to Form 990

The AAMD art museums, in a 2006 survey, reported that they hold almost 11 million works of art in trust for the public. That averages approximately 84,000 works of art per reporting museum. Historically, between 70% -- 80% of museum collections are donated, giving art museums between 7.7 million – 8.8 million donated works of art. These numbers exclude the many collections held by other types of museums represented by AAM. In examining the number of works held in trust for the public including the number of works generously donated by the public the magnitude of the implications of

some of the requested information in the revised Form 990 relating to valuation of the collection becomes apparent.

Misconceptions

Unfortunately, there appears to be four general misconceptions about how museums value works of art that we would like to initially raise so that AAMD's comments will be put in proper context.

1. The first misconception is that museums report the value of their collections on the current Form 990 and report values for gifts of works of art as contributions, assets and revenue. Presently, museums do not report the value of their collection nor do they report the value of gifts of works of art. Such values, in most instances, are currently not available or maintained by museums. The proposed modifications to Form 990 are not an extension of what museums currently report, instead, the proposed changes would require museums to appraise, document and report the current value of each piece in its collections. For example, the Metropolitan Museum of Art has over two million works of art and receives thousands of works as gifts every year. In its 2005 -2006 Annual Report it lists 36 pages in fine print of works of donated art (see WEB ADDRESS). This new requirement would result in a substantial financial and administrative burden for all museums, many of whom (particularly smaller museums) do not have the resources for such a change.

2. The second misconception is that the current audited financial statement footnote as required of museums that do not capitalize their collection requires these museums to estimate the value of the collection. Museums are not required to estimate the value of their collections in order to be in compliance with FASB. Instead, most museums tend to use language similar to the following on their financial statements:

> "In accordance with industry practice, art objects purchased, donated and bequeathed are included in permanently restricted net assets at a value of $1."

3. The third misconception is that museums value their collections for insurance purposes. According to the 2006 AAMD Statistical Survey few museums carry 100% coverage on their collections. Instead, most museums purchase blanket policies that only cover certain loss levels. Because museums do not insure every work of art no effort is made to value each work as it is added to the collection.

4. The fourth misconception is that museums could value their collections by using valuations from a donor's Form 8283 to value their works of art as requested by Schedule M. While museums may sign a donor's Form 8283, this is done as an acknowledgement receipt of the gift – not as a validation of the supplied value. In fact, in many cases, the value may not be provided on the form when it is provided to the museum. For a variety of reasons, including the new appraisal rules contained in the Pension Protection Act of 2006, museums would not be able to attest to the valuation supplied by the taxpayer

without their own qualified appraisal. Again, such a requirement would be an enormous strain on museums, many of whom will not have the resources.

## Specific Comments

Comments on Part IV

Line 1g requests the value of non-cash gifts. Art museums do not include in this number the gifts of works of art. Most art museums receive 70% - 80% of their acquisitions as gifts, which are valued for the donor by a qualified appraiser. The donor then reports the gift on his/her tax return. The museum is not part of the valuation process and therefore has no formal way of knowing the value of the donor's gift. Given that museums currently have no systems for tracking the value of gifts and given the volume of the gifts that museums receive, securing individual appraisals for each gift and keeping them updated would be enormously time consuming and expensive. This line has serious implications for Schedule M.

### Recommendation for Part IV

**For line 1g, the instructions should specify that the value of non-cash gifts excludes works of art in a collection if the collection is not capitalized.**

Comments on Schedule D

Part X requests information on collections including whether or not they are capitalized. For all intents and purposes, from an asset standpoint, collections do not exist. Requesting that those museums which do not capitalize their collections must instead supply the footnote to their financial statements will provide no information that will be useful to the public or the service. It will not give any clearer picture of a museum's assets than would be provided in Parts I – VI of Schedule D.

Part XII requests annual payout information for five years from endowment funds. In the art museum field endowment funds, which often can be small, are sometimes established for a specific purpose within the museum, like the purchase of works of art. Earnings from an acquisition endowment fund, for example, might be accumulated over 5 – 10 years in order to amass sufficient funds to actually purchase a work of art. By requiring payout information every year for all endowment funds the form gives a skewed and inaccurate picture of the workings of a museum's various endowments should they have more than one. At a minimum, endowments established solely to acquire works of art should be excluded from this part.

### Recommendation for Schedule D

**Eliminate Part X.** This section adds no useful information.

**The instructions for Part XII should clearly state that board-designated reserve funds or temporarily-restricted funds should not be included in this section.**

Comments on Schedule M

This schedule requests information on works of art including the method of valuation and the revenue reported on form 990, Part IV, line 1g.

Since most works of art are donated and museums purchase very little they are not current in art pricing so the obligation to report the revenue from such gifts would create a severe burden on museums since their gifts can be voluminous in a given year.

In order to comply with the request, not only will museums be required to devote considerable staff time to research those acquisitions that were gifts as opposed to purchase, but there would be considerable additional expense to hire appraisers to provide current, accurate evaluations, since museum staff would unlikely be qualified to do appraisals.

**Recommendation to Schedule M**

**Eliminate the requirement to include non-capitalized collections in this schedule.**

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## Recommendation to Schedule M

**Eliminate the requirement to include non-capitalized collections in this schedule.**

| | |
|---|---|
| **From:** | Erik Johnson |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | |
| **Subject:** | Comments re Form 990 discussion draft |
| **Date:** | Friday, September 14, 2007 3:02:46 PM |
| **Attachments:** | 990 redesign comments letter 9_14.doc |

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Comments on the Form 990 discussion draft are attached and pasted below. Thank you for your consideration.

Internal Revenue Service
Form 990 Redesign, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224
**VIA E-MAIL**

Ladies and Gentlemen:

This letter is in response to your invitation for public comment to the discussion draft of the redesigned Form 990, Return of Organization Exempt from Income Tax. The following comments are submitted on behalf of five supporting organizations that file annual Form 990 returns: the Joseph B. Whitehead Foundation, Lettie Pate Whitehead Foundation, Lettie Pate Evans General Fund, Lettie Pate Evans Restricted Fund and Robert W. Woodruff Health Sciences Center Fund.

We applaud the Service's efforts to reorganize and simplify the Form 990. By organizing like information into separate schedules and eliminating redundant questions, the revised Form 990 should be easier for preparers and more useful to reviewers. Please, though, consider these comments as you continue with the redesign process.

1. Compensation information. Part II of the core form and Schedule

J, Supplemental Compensation Information, request compensation figures as reported on an employee's W-2. In their current draft form, the forms and instructions fail to account for a common paymaster system between multiple organizations.

The Robert W. Woodruff Foundation shares a common administrative arrangement – and common staff – with the Joseph B. Whitehead Foundation, Lettie Pate Whitehead Foundation, Lettie Pate Evans General Fund, Lettie Pate Evans Restricted Fund and Robert W. Woodruff Health Sciences Center Fund. This arrangement results in substantial savings on administrative expenses for the participating organizations. The Woodruff Foundation, a private foundation that files a Form 990-PF annually, serves as common paymaster for each of the six organizations. A shared internal accounting staff manages the common payroll.

Although the Woodruff Foundation serves as common paymaster, staff salaries are apportioned between the six organizations according to an agreement approved by the trustees of each organization. The five supporting organizations reimburse the Woodruff Foundation monthly for salaries and expenses. Each employee's W-2 forms include only the Woodruff Foundation's single employer identification number. No W-2 form contains information for the five supporting organizations. Compensation information on the Form 990 returns for the five supporting organizations described above will not match a W-2 form because no W-2 forms exist for these organizations.

We hope you will consider making an accommodation in the forms and instructions for common paymaster arrangements like ours. Possible solutions include providing an exception in the instructions for those organizations that participate in a common paymaster arrangement or including on the Form 990 core form and/or Schedule J a place to disclose common paymaster arrangements. If no accommodation can be made, we hope that you will provide guidance on how we should answer the compensation questions for the five supporting organizations we administer.

2. Adequate space for responses. We understand that one goal of the

redesigned Form 990 is to eliminate the need to attach multiple schedules. To achieve this goal, please design the schedules to accommodate large blocks of information where appropriate. Notably, Schedule D, Supplemental Financial Statements and Schedule I, Supplemental Information on Grants and Other Assistance to Organizations, Governments and Individuals in the U.S., request large amounts of information but provide limited space. Several of the supporting organizations we manage would be forced to attach separate schedules to completely disclose the requested information.

3. Timing for use of the redesigned Form 990. We agree with those comments filed by Independent Sector encouraging the Service to delay implementation of the redesigned core form at least until reports are due for Fiscal Year 2009 activities. Alternatively, we would also support the Association of Governing Boards of Universities and Colleges' appeal for a two-year transition period during which exempt organizations could choose to file the current or new Form 990. We are particularly concerned that accounting systems and tax preparation software will not be equipped to accommodate the expedited Form 990 drafting and revision process.

Thank you for considering these comments and suggestions. Let me also endorse generally those comments submitted by Independent Sector. By taking time to address concerns outlined in these and other comments, the final Form 990 will certainly be an effective reporting tool for exempt organizations.

Sincerely,

Erik S. Johnson
Secretary
Woodruff, Whitehead & Evans Foundations

| | |
|---|---|
| **From:** | R.S. Tigner |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | |
| **Subject:** | Comment Submission |
| **Date:** | Friday, September 14, 2007 3:15:56 PM |
| **Attachments:** | Coalition Comments_FinalB.doc |

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Attached please find the comments of the Fundraising Coalition. Thank you.

Robert S. Tigner
General Counsel
Assn of Direct Response Fundraising Counsel (ADRFCO)
1612 K St NW #510
Wash, DC 20006
202-293-9640

September 14, 2007

Mr. Ron Schultz
Ms. Theresa Pattara
Form 990 Redesign
ATTN: SE:T:EO
111 Constitution Ave., N.W.
Washington, DC 20224

Re: **Comments on fundraising aspects of the "redesigned" Form 990**

Dear Mr. Schultz and Ms. Pattara:

In an effort to consolidate and focus the concerns of the fundraising community, four principal umbrella groups have banded together to offer these unified comments. We are the Council for the Advancement and Support of Education (CASE), the Association of Fundraising Professionals (AFP), the DMA Nonprofit Federation (DMANF), and the Association of Direct Response Fundraising Counsel (ADRFCO).

CASE is an international association of 52,000 fundraising, communications, marketing, and alumni relations professionals at 3,300 schools, colleges, and universities. AFP represents nearly 28,000 individual members and works to advance philanthropy through advocacy, research, education and certification programs. AFP members work for nonprofits of every size and shape, from large multi-national institutions to small, grassroots organizations. DMANF consists of over 400 nonprofit member organizations that rely on direct and interactive marketing to raise funds and awareness for their missions. It was established 25 years ago and advocates in postal, regulatory, and legislative issues affecting its members. ADRFCO is the professional association for agencies that provide consulting services to nonprofit organizations with respect to direct response fundraising. The forty or so member firms serve over 750 nonprofit clients.

For convenience, we refer to our informal group as the "The Fundraising Coalition." We thank you for the opportunity to present our comments. But more than that, we thank you for your courtesies and patience in meeting with us in advance of this comment deadline. The opportunity to discuss issues face-to-face proved invaluable in helping us shape our comments.

The following comments are limited to aspects of the redesigned Form 990 that particularly relate to fundraising. They first address aspects of Form 990 outside of Schedule G, then some definitional issues, then consider the "triggers" that require an exempt organization ("EO") to file Schedule G, and then move to comments on Schedule G itself.

## NON-SCHEDULE G ISSUES

### 1. Fundraising and Gaming

The most important issue to be addressed is the separation of fundraising from gaming. Although both result in accretions of money to a charity or other EO, the fundraising community *unanimously* views fundraising and gaming as two distinct, unrelated, and separate activities. ***The conduct of bingo and other games of chance to raise money for EOs is not "fundraising."***

First, although gaming may be considered a form of raising funds in that gaming, like fundraising, results in net accretions of revenue to the EO, gaming activities differ fundamentally from fundraising activities. Gaming is a form of entertainment or recreation in which most

players pay fair market value for the opportunity to win a prize. In contrast, the essence of a fundraising activity is to persuade donors to make a gift to the EO. Although some fundraising has an "exchange" element, and may include incidental "gaming" (such as a raffle or door prize), that is not its essence.

There is also a less technical, but no less important, rationale for a separation. Rightly or wrongly, in common usage the term "gaming" carries a whiff -- at the very least -- of the disreputable. Linking gaming and fundraising in the Form 990 makes it likely that some of this taint will be transferred to fundraising. However slight this effect might prove to be, it is not fair to the thousands of nonprofits engaged in raising funds from the public and it is unnecessary.

A distinct separation is consistent with the Code's treatment of most games of chance as unrelated trade or business, while amounts received through fundraising activities are treated as gifts.

**Thus, throughout the Form 990 and its schedules and instructions, "gaming" should be treated separately from, and not as a part of, "fundraising."**

a. The gaming information in Schedule G, Part III should be deleted from Schedule G and moved to a separate schedule.

In addition, to avoid unduly burdening EOs that conduct only incidental gaming, and collecting information about such incidental gaming activities, an EO should be required to complete a separate schedule reporting about gaming activities only if it either (1) conducts gaming activities more than 6 times per year; or (2) receives more than the lesser of $25,000 or 25% of its gross receipts from gaming. This will eliminate reporting from those organizations that conduct an occasional raffle or other gaming activity as an insignificant part of their activities.

Otherwise, the Coalition has no comments on the information proposed to be collected about gaming activities.

b. In Form 990, Part IV, line 11a, the references to gaming should be removed, and information about gaming should be reported on a separate line. The instructions for line 11a will also need to be revised to remove the portion of the chart that states that "Gaming is a fundraising activity. . . ." and lists examples of gaming activities. That should be moved to the instructions for the new line on which gaming revenue would be reported.

c. Form 990, Part I, lines 25 and 26: Although we advocate removal of these lines altogether (see below), if they remain on Form 990, they should be separated, the caption "Gaming & Fundraising" should be deleted, and the phrase "(other than gaming)" should be deleted from the title of line 26.

**2. Form 990, Part I: Lines 25 and 26 should be deleted.**

First, the information required by these lines is not "summary information," but details about the financial results of two particular aspects of the EO's activities, fundraising (if any) and gaming (if any). By highlighting this information on page 1 of the "core" Form 990, the information is given undue prominence.

Further, line 26 would be capturing information on the "summary page" that does not, in fact, summarize the organization's fundraising. Even if computed carefully and consistently (see our comments, below) the Schedule G data only report fundraising associated with outside professionals. Proportionately miniscule results with professionals could be reported on the summary page while millions raised in-house *by the same filer* might not be. Whatever the line

26 boxes represent, it's not a "summary" and would not be useful or illustrative for any users of Form 990.

Equally important, many EOs (e.g., trade associations or credit unions) do not engage in any fundraising or gaming. Many others do engage in fundraising but do not employ professionals to assist them (or do not do so at Schedule G threshold levels). None of these organizations would have anything to report on line 26. The fact that either or both of these two prominent lines are blank will lead some readers to believe that the EO has not properly completed Form 990.

Finally, should these lines remain in Form 990, the percentages called for in column (iv) also do not provide any meaningful information about the EO's qualification for exemption, its liability for any other tax, or even about the organization's overall fundraising performance, and column (iv) should be deleted.

### 3. Part IV – Statement of Revenue

a. **Line 1b** – The term "outside fundraising" has no commonly accepted meaning among EOs. Moreover, although development departments ordinarily track amounts contributed in response to campaigns developed or executed by fundraising consultants or professional solicitors, this information is used primarily for evaluating campaigns, and is not ordinarily communicated to finance offices, nor is it the subject of financial reporting. From the financial reporting perspective, they are all simply "contributions."

b. **Line 1g** – This line should read, "Attach Schedule M if total exceeds $5,000" as is noted in the instructions (compare with line 11a, re: Schedule G).

That having been said, the $5,000 threshold is too low. This should be increased to $25,000. (One used car in good condition would be enough to exceed the threshold.)

### 4. Miscellaneous matters

#### a. Part V – Statement of Functional Expense

**Column (C)** – Line 4 of the instructions should refer to "supervising or carrying out program services or fundraising activities."

**Column (D)** – Although the instructions (at the bottom of page 29) cite the Glossary, the Glossary does not define "joint costs" or "SOP 98-2."

**Lines 1-4** – Columns (C) and (D) should be shaded to preclude any reporting in those columns.

#### b. Part VIII – Statements Regarding Other IRS Filings

**Line 13a** should ask about dispositions of *any* personal property (including nonpublicly traded securities) for which it "was required to file" Form 8282. (Compare Line 14.)

**Form 1098-C** – It would seem appropriate to add a question to the core form inquiring about whether the EO received any vehicles, boats, or airplanes for which it was required to file Form 1098-C, and how many Forms 1098-C it filed.

#### c. Part IX – Statement of Program Service Accomplishments

Page 47 of the instructions refers the user to "the instructions for Part IV, Line 1, "Donated Services or Facilities." There are no such instructions in the Draft.

## DEFINITIONS

Because certain terms have not been defined, and may be subject to varying interpretations by reporting EOs, we recommend that the following definitions be added to the Glossary, where they would apply for both the core Form 990 and Schedule G.

**1. "Special fundraising event" should be defined in the Glossary as:**

> Any event (other than an event conducted in the course of a trade or business that is regularly carried on) for which the organization charges a fee (that may exceed the fair market value of comparable events) to attend or participate, such as a dinner; a sports event; an entertainment or artistic performance or display; or a participatory athletic event. See Rev. Rul. 67-246.

Concurrently, the term "fundraising events" would be changed to "special fundraising events" in Form 990, Part IV, lines 1c, 11a, and 11c, and in Schedule G, Part II (title). Of course, complementary changes would be required in the instructions.

This definition is consistent with the common usage among EOs.

**2. "Professional fundraising" should be defined in the Glossary as:**

> Services performed (other than by an officer, director, or employee in their capacity as officer, director, or employee) for the organization requiring the exercise of professional judgment or discretion consisting of planning, management, or the provision of advice and consulting regarding solicitation of contributions; or the direct solicitation of contributions. However, "professional fundraising" does not include purely "ministerial" tasks, such as printing, mailing services, or receiving and depositing contributions by an entity, such as a bank or "caging" service.

**3. "Fundraising activities" should be defined in the Glossary as:**

> Activities undertaken to induce potential donors to contribute money, securities, services, materials, facilities, other assets, or time. They include publicizing and conducting fundraising campaigns; maintaining donor mailing lists; conducting fundraising events, preparing and distributing fundraising manuals, instructions, and other materials; and conducting other activities involved with soliciting contributions from individuals, foundations, governments, and others. "Fundraising activities" do not include gaming (other than gaming that is incidental to a fundraising activity), or the conduct of any trade or business that is regularly carried on.

The first sentence of this definition is identical to the definition in the AICPA "*Audit and Accounting Guide for Not-for-Profit Organizations.*" The second sentence is added to clarify that the conduct of gaming and other trades or businesses are not fundraising activities.

## SCHEDULE G "TRIGGERS"

The draft Schedule G has two separate and distinct "triggers": (1) Payment of at least $10,000 for "professional fundraising," or (2) receipt of at least $10,000 from fundraising events (including gaming).

First, these triggers are too low. The "triggers" for filing Schedule G should be either (1) $50,000 in gross receipts from "special fundraising events," or (2) expenditure of more than $50,000 for professional fundraising services.

**1. Part IV, line 11a** – The threshold above which Schedule G should be required should be changed to aggregate gross receipts from special fundraising events of more than $50,000. In general, $10,000 is far too low, and will result in a very large proportion of §501(c)(3) and (c)(4) EOs being required to file Schedule G. If the threshold were to remain at $10,000, the result will be that the IRS receives detailed information about the results of special fundraising events conducted by relatively small organizations, and/or that pose very low risk of excessive deductions by misinformed donors.

**2. Part V, line 11e** – As with Part IV, Line 11a, the "trigger" for filing Schedule G should be increased from $10,000 to $50,000. In general, EOs that engage professional fundraisers for <u>any</u> substantial undertaking of public solicitation spend, in the aggregate (including expenses billed by or through the fundraiser), at least $50,000.

These changes would also require a change from "$10,000" to "$50,000" in the filing requirement set forth just under the title of Schedule G.

**3. Schedule G – Required information**

Once Schedule G is required to be filed, EOs should be required to complete each part of Schedule G as if they were separate schedules. Specifically, an EO that is required to file Schedule G only because it received more than $50,000 from fundraising events should be required to complete Part II, but not Part I. Likewise, an EO that is required to file Schedule G only because it paid more than $50,000 for professional fundraising should be required to complete Part I, but not Part II. Of course, an EO that both received more than $50,000 from fundraising events and paid more than $50,000 for professional fundraising would be required to complete Parts I and II. The instructions on the Core Form for Part IV, line 11a and Part IV, line 11e should also reflect this limitation.

This will reduce the reporting burden on EOs, yet still provide the IRS with appropriate information about fundraising activities and events that are significant sources of revenue.

## <u>SCHEDULE G – SUPPLEMENTAL INFORMATION REGARDING FUNDRAISING ACTIVITIES</u>

The title should be revised to read, simply, "Fundraising Activities."

**1. Gaming**

**As discussed above, we believe that detailed information regarding gaming activities should be reported on a separate schedule from fundraising activities.**

**2. Part I – Fundraising Activities**

**a. Line 1a** – The listing of different kinds of fundraising activities is incomplete, too inclusive, and inconsistent. Five of the six listed options are methods of fundraising – the sixth, "grants from governments or organizations," is a source. (Form 1023, Part VIII, line 4 shares the same defect.)

In addition, as the draft Schedule G stands, *all* §501(c)(3) and §501(c)(4) organizations would be required to check the boxes for mail, e-mail, and phone solicitations, even if the CEO only made one phone call, wrote one letter, or sent an e-mail to a prospective or past donor. Instead, the boxes should be checked <u>only if the EO uses a professional fundraiser</u> to assist it in conducting fundraising by that method. This will result in more meaningful reporting for both IRS and state regulators' purposes. **For this reason, Line 1a should be revised to read as follows:**

Does the organization compensate any individual (other than as an employee) or entity to provide professional fundraising services with respect to any of the following fundraising activities? (Check all that apply.)

□ Mail (1) □ In-person solicitation (4) □ Solicitation of government grants (7)
□ E-mail (2) □ Special fundraising events (5)
□ Telephone (3) □ Solicitation of non-government grants (6)

The instructions should include examples of non-government grants, including, e.g., grants from public charities, private foundations, other exempt organizations, and businesses.

**b. Line 1b – This question is far too broad**, and would require reporting of amounts paid to non-key employees engaged in fundraising, printers, list brokers, lettershops, the Postal Service, "cages" (businesses -- including banks -- that process and deposit contributions), web hosting services, webmasters, event planners, florists, caterers, and many others. **To focus the question on significant information, line 1b should be revised to read as follows:**

> Complete the table with respect to any individual or entity that provided professional fundraising services (other than as an officer, director, or employee) to the organization and either: (1) was paid at least $10,000 by the organization for professional fundraising services or (2) had custody or control of funds contributed to the organization.

The instructions should state that custody or control of funds includes control exercised through any arrangement in which the fundraiser's approval is required to disburse funds from an account of or for the benefit of the charity.

**c. Table**

The headings for several of the columns are confusing, and, depending on how expenses for services provided by third parties in connection with a fundraising campaign or event are billed, may lead to reporting of dramatically different *apparent* results for campaigns or events in which the charity netted the same amount. **For these reasons, the column headings in the table should be revised to read as follows:**

Column (i) - Name of individual or entity (fundraiser)
Column (ii) - Activity [no change]
Column (iii) - Gross contributions from activity
Column (iv) - Gross amount paid to fundraiser
Column (v) - Costs

The instructions for Column (ii) should direct the filer to enter the number of the corresponding activity listed in line 1a. The instructions for Column (iii) should be revised to read: "Enter the gross amount of contributions received by or for the organization as a result of the fundraising activity with respect to which the fundraiser listed in column (i) provided services." It is rare for fundraisers to actually collect funds on behalf of a charity, and as the instructions are drafted (amounts the fundraiser "collected"), in nearly all cases, the correct response would be "-0-".

The instructions for Column (iv) should be revised to read: "Enter the total amount of (1) fees paid to the professional fundraiser, (2) incidental expenses incurred and billed by the professional fundraiser, and (3) costs incurred for goods, services, or other benefits provided by third parties (e.g., printers, lettershops, postage) that were paid to the fundraiser by the organization.

The instructions for Column (v) should be revised to read: "Enter the amount of costs incurred by the organization in connection with the fundraising activity described in Column (ii)

and paid directly to a third-party vendor. These may include charges for printing, for a lettershop to assemble mailings, for radio or TV time, or for postage.

We recognize that this eliminates the current column (v), which reports the net amount the EO received from the fundraising event or campaign, but that data can be easily determined by those who are interested. In any event, the proposed changes will result in more consistency in reporting by EOs regarding their financial relationships with outside professional fundraisers.

**d. Line 2** – In light of the changes proposed in line 1b, line 2 should be revised by inserting a new question 2a, to read as follows, and by renumbering the draft question 2 as question 2b:

> 2a. Did the organization pay any disqualified person (other than in their capacity as an employee) for professional fundraising services? If "Yes," complete Form 990, Part II, Section B, Line 5f.

**e. Line 3 -- should be revised to read as follows: "Check the box in front of the name of each state in which the organization is registered or licensed to solicit funds (or which it has notified that it is exempt from registration or licensing)."**

This eliminates ambiguity about the meaning of the term "authorized," and clearly describes the condition that requires reporting. Significantly, it also eliminates the potential -- and considerable -- burden of requiring the filer to report a legal conclusion. Instead, it requires reporting of explicit actions taken by the filer. (We note here that the Line 3 instructions should tell filers to also check the box if they have made good faith application for registration or license but have not received confirmation from the respective state at the time of 990 filing).

To facilitate electronic reporting and completeness, instead of two lines in which state names or abbreviations are written in, line 3 should include a list of all 38 states and D.C., that require soliciting nonprofits to register. The form would supply boxes to be checked if the EO is either registered or licensed in the jurisdiction, or if it has notified the jurisdiction that it is exempt from registration in the state.

For example, Line 3 could read: "Check the box next to each state in which the organization is either registered or licensed to solicit contributions, or that the organization has notified that it is exempt from registration." The list would include only those 38 states (and D.C.) that require charities to be registered or licensed.

| | | | |
|---|---|---|---|
| Alabama | Georgia | Mississippi | Oregon |
| Alaska | Illinois | Missouri | Pennsylvania |
| Arizona | Kansas | New Hampshire | Rhode Island |
| Arkansas | Kentucky | New Jersey | So. Carolina |
| California | Louisiana | New Mexico | Tennessee |
| Colorado | Maine | New York | Utah |
| Connecticut | Maryland | No. Carolina | Virginia |
| D.C. | Massachusetts | No. Dakota | Washington |
| Florida | Michigan | Ohio | West Virginia |
| Minnesota | Oklahoma | Wisconsin | |

**3. Part II – Special Events**

**The title should be revised to read "Special Fundraising Events."**

To ease the burden on small organizations, and to facilitate the collection of meaningful information, the instructions should state: "Do not report amounts from any events whose gross receipts did not exceed $10,000 in the columns for "Event #1" or "Event #2. Instead, enter the aggregate amounts for all such special fundraising events under "Event #3."

**4. Part III – Gaming**

Consistent with the comments above about the importance of clearly distinguishing between fundraising and gaming, and moving the collection of information about significant gaming activities to a separate schedule, Part III should be deleted from Schedule G and moved to a separate schedule.

We appreciate the opportunity to submit these formal comments. We also appreciate the meeting time you spent with us during a very busy time shortly in advance of these comments. Without the dialogue with IRS staff that began in those meetings, we would not have been able to tailor our comments to the needs of the Service (and the Service's perceptions of the needs of other users) as we came to understand them.

We hope to be able to continue this dialogue as the Service processes the many public comments and makes its decisions about the final content of the new Form 990. To that end, the participating organizations of the Fundraising Coalition commit to making our representatives available to the Service as you navigate your decision process.

Thank you for your consideration of our comments and suggestions.

Sincerely,

The Fundraising Coalition

Council for the Advancement and Support of Education
Association of Fundraising Professionals
DMA Nonprofit Federation
Association of Direct Response Fundraising Counsel

| | |
|---|---|
| **From:** | Christina Wessel |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | |
| **Subject:** | Comments on 990 Redesign |
| **Date:** | Friday, September 14, 2007 3:17:39 PM |
| **Attachments:** | Minnesota Council of Nonprofits Comments.doc |

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To the Form 990 Redesign Team:

Attached are comments from staff at the Minnesota Council of Nonprofits and the Hubert H. Humphrey Institute of Public Affairs on the research implications of proposed changes to the Form 990. Thank you for this opportunity to provide input into this process.

Sincerly,

Christina Wessel

Minnesota Budget Project Deputy Director
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MINNESOTA COUNCIL OF NONPROFITS

September 14, 2007

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

To the Form 990 Redesign Team:

The revision of IRS Form 990 is an exciting opportunity to increase our understanding of nonprofit entities and their finances. While understanding that the primary purpose of the Form 990 is as a regulatory tool aimed at increasing transparency and accountability in the sector, we would advocate for equal consideration of the form's usefulness as a source of data about the nonprofit sector and its relationship to the public sector. In response to the IRS's call for comments on the draft version of the form, we offer our recommendations from the standpoint of researchers involved in gathering and distributing information on the nonprofit sector.

In cooperation with the Hubert H. Humphrey Institute of Public Affairs at the University of Minnesota, the Minnesota Council of Nonprofits has been developing a comprehensive longitudinal data set of nonprofit finances, compiling the 990s of more than 8,000 Minnesota 501(c)(3) and (4) organizations from 1999 through the present. Our experience in gathering and analyzing this data has made us intimately aware of the limitations with the current form, and informs our comments on the revised 990.

**These comments are focused on the research implications of changes to Part IV of the revised 990 – the Statement of Revenue. The Minnesota Council of Nonprofits will be submitting, under separate cover, feedback from local nonprofits which comments on the revised 990 more broadly.**

In our current research, any analysis of the financial health and stability of the nonprofit sector in Minnesota is frustrated by our inability to isolate the role of government funding using the current Form 990. Although government grants are listed as a separate category in Part I, line 1d of the current 990, government contracts are often mixed in with other "program service revenue" in Part I, line 2.

The revision of the Form 990 is an exciting opportunity to improve the ability of researchers to study nonprofit sources of revenue. However, we have a few concerns about the way the revised 990 has been drafted that may interfere with the usefulness of the data for research purposes.

- On the revised 990, there is no category to specifically track regular charitable donations not raised through fundraising ventures or, even more significantly, revenue from private, corporate and community foundations. Instead, both of these unique forms of nonprofit revenue are combined under "Contributions, gifts, grants and other similar amounts" (Part IV, line 1f). Any analysis of the financial health of the nonprofit sector loses enormous value if these revenue sources cannot be isolated. It is our recommendation that individual charitable donations and revenue from foundations each receive a separate line on the revised 990 form.

- We are extremely concerned about the addition of open-ended responses under Part IV, line 2 in the Program Service Revenue category. As we've discovered in working with 990 filings, allowing open-ended responses to financial questions leads to extremely unsatisfactory responses. On the current 990, nonprofits will too frequently lump significant portions of their expenses into line v43 instead of taking the time to categorize them appropriately. Although the understandable goal is to get more accurate or detailed financial information from nonprofits on their revenues and perhaps satisfy regulatory concerns, it is far more likely to make the data vague and unreliable. Rather than offering space for open-ended responses, it is our recommendation that the revised 990 should list two or three additional categories under Part IV's Program Service Revenue section. In particular, we would suggest including other kinds of program service revenue – such as payments individuals make to health care clinics, or payments made in the form of vouchers or coupons.

- We are extremely pleased to see an effort to better isolate revenue coming from government sources. As we stated earlier, the ability to track government funding would greatly benefit any research on the financial aspects of the nonprofit sector. However, there are still some improvements that could be made:

    - It is valuable to include a separate category for Medicare/Medicaid payments. However, the instructions should be more specific in explaining to nonprofits how they should track payments for health care services that come through state and local sources. Should payments for state-subsidized health care programs (such as our MinnesotaCare program) be included here – or only payments for the state version of the federal programs (such as Minnesota's Medical Assistance program which is the same as the federally mandated Medicare program)? Should any payments that are not explicitly Medicaid or Medicare related be placed in line 1e?

    - Line 1e in Part IV seems to capture the majority of government funding flowing to nonprofits, however, describing line 1e simply as "Government Grants" will be confusing to nonprofits who often receive government contracts. Based on this terminology, many nonprofits may believe that government contracts should be reported on line 2b. According to the instructions, line 2b seems to refer to an extremely narrow type of government funding. Not only do we fear that the confusing terminology and instructions for line 1e will cause nonprofits to improperly complete the form, we also do not see the value of the distinction made between lines 1e and 2b. What is the purpose of distinguishing between contracts

to provide services to the public and contracts to provide services to an agency? Considering that many nonprofits may not grasp the difference, our recommendation would be to eliminate line 2b and change line 1e to include "government grants and contracts," with the exception of Medicare and Medicaid which are reported under Program Service Revenue. The end result would be that researchers could identify all government funding flowing to nonprofit organizations by combining line 1e and line 2a.

- We fully understand the need and the value of expanding the categories under "contributions, gifts, grants and other similar amounts" and "program service revenue." However, we strongly urge you to do this in a way that does not make longitudinal analysis of the financial data impossible. To the extent possible, please ensure that the new revenue categories of the revised 990 can be collapsed in a sensible way to match the revenue categories from the old 990. It would be helpful for researchers – and possibly even for nonprofits learning to complete the new form – to understand how the revenue categories under line 1 and line 2 on the revised 990 map to the categories under line 1 and line 2 on the old 990.

The challenge in designing any form such as this is drawing a balance between getting the level of detail you are hoping for, but keeping the form from becoming too complicated or burdensome. The reality is that the majority of the nonprofit sector consists of small organizations that operate with limited resources – often relying volunteer boards to put together their 990 returns. The additional complexity introduced into the revenue section of the revised 990 raises significant concerns that the financial data will be less reliable for research purposes.

For-profit industries benefit from multiple tools that enable the sector to perform all kinds of benchmarking and evaluations. For nonprofits, financial information pulled from the Form 990 is the only widely accessible source of data for studying the fiscal health of the sector. Therefore, it is extremely important that this revision process leads to a form that moves us forward in our efforts to provide more – and more accurate – information to the public.

Sincerely,

Christina Wessel
Deputy Director, Minnesota Budget Project
Minnesota Council of Nonprofits
651-642-1904 x233, cwessel@mncn.org

J. Clare Mortensen
Research Associate, Public and Nonprofit Leadership Center
Hubert H. Humphrey Institute of Public Affairs
University of Minnesota, Twin Cities

| | |
|---|---|
| **From:** | Sharon Stewart |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | |
| **Subject:** | Form 990 Comments from Center for Lobbying in the Public Interest |
| **Date:** | Friday, September 14, 2007 3:26:52 PM |
| **Attachments:** | CLPI Comments on Form 990 - Final.doc |

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Attached please find comments on the revised Form 990 from the Center for Lobbying in the Public Interest (CLPI). We also are sending by courier a hard copy of our comments. Thank you for the opportunity to comment.

Sharon L. Stewart
Interim President
Center for Lobbying in the Public Interest
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(202) 387-5048 phone
(202) 387-2008 direct line
Email: _____
Web Site: www.clpi.org

clpi Center for Lobbying in the Public Interest

promoting, supporting and protecting nonprofit advocacy and lobbying

***Sent via e-mail and courier***

September 14, 2007

Lois G. Lerner
Director of the Exempt Organizations Division

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

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

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

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

This letter provides comments from the Center for Lobbying in the Public Interest ("CLPI") on the draft of a redesigned Form 990, Return of Organization Exempt from Income Tax, released by the Internal Revenue Service ("IRS") on June 14, 2007.

CLPI is a Washington, DC-based 501(c)(3) nonprofit organization. CLPI works to (1) *promote* the participation of 501(c)(3) organizations in the public policy process by acting as a catalyst for nonprofit advocacy and lobbying; (2) *support* the participation of nonprofits in the public policy process by providing tools, organizing networks to convey those tools, and building foundation support for advocacy; and (3) *protect* and expand nonprofit lobbying rights.

Our comments below focus exclusively on how the redesigned Form 990 will impact 501(c)(3) organizations, particularly small- and medium-sized organizations, engaged in legally permissible lobbying and advocacy. CLPI supports the IRS's three stated principles of the redesign – enhancing transparency, promoting tax compliance and minimizing the burden on the filing organization – and our comments take these principles into account.

**Core Form**

- *Part V, line 11(d).* This asks for additional new information on lobbying expenses for non-employees by asking for a breakout of program service, management/general, and fundraising expenses under lobbying. This is not consistent with how the information is

collected on Schedule C and will cause considerable confusion. In addition, the instructions add the term "legislative liaison," which is not defined and is broader than the tax law definitions. The instructions also ask for disclosure of lobbying activities with executive, legislative and administrative boards, which is beyond the current IRS definitions of lobbying as well as the information sought in Schedule C. We believe this will create an entirely new reporting regime and recommend eliminating line 11(d) as this information is collected on Schedule C.

- *Part VIII, lines 1-2.* Line 1, as a trigger question for Schedule C, uses the term "direct or indirect political campaign activities." This term does not correlate to tax code definitions and, if left unchanged, could lead unwary 501(c)(3) organizations to incorrectly assume the term applies to legally permissible voter registration and education activities. However, since the term "direct or indirect political campaign activities," in this particular instance, is followed by "on behalf of or in opposition to candidates for public office," filers will likely have adequate guidance to accurately complete the Form. We find line 2, also a trigger for Schedule C, to be clear and concise.

**Schedule C**

- *In general.* We are concerned that the new Form 990 provides a single schedule for *all* 501(c) and 527 organizations to report *all* types of political campaign and lobbying activities. This approach will likely result in confusion among a great number of 501(c)(3) organizations, which comprise the majority of Form 990 files and are subject to a prohibition on political intervention and different rules for lobbying. Therefore, we strongly recommend the IRS create a separate schedule solely for 501(c)(3) organizations to report their lobbying activities. We also support creating a separate schedule for other types of 501(c) and 527 organizations to report their political campaign and lobbying activities. We believe such a schedule would better meet the IRS' three stated principles of the redesign.

- *Part I-A.* The term "direct and indirect political campaign activities" as used in line 1 will cause some, perhaps many, unwary 501(c)(3) organizations to incorrectly assume the term applies to legally permissible activity intended to encourage participation in the electoral process, such as voter registration and education activities. This line, a "one size fits all" question, highlights our concern (stated above) of lumping together *all* exempt-organizations onto a single schedule to report their political campaign *and* lobbying activities. Adding the phrase "on behalf of or in opposition to candidates for public office," as is done in Part V, line 11(d) of the core form, could mitigate some of the problems with this line. A superior approach is the separate schedule referenced above, however, at the very least it would be helpful to change the I-A heading to read, "To be completed by all organizations exempt under section 501(c), except section 501(c)(3) organizations as political campaign activities are prohibited for section 501(c)(3) organizations." The accompanying instructions also should be changed.

- *Part I-B.* We support inclusion of these four questions on the excise tax incurred under section 4955 as it allows the IRS to capture useful information in one place about compliance with current law.

- *Part II-A.* This part, to be completed by 501(c)(3) organizations electing to come under section 501(h), is extensive but appropriately requires specific and objective information that will allow an organization to readily determine compliance with the tax laws. We also believe this part will generate useful information for the IRS and the nonprofit sector alike.

- *Part II-B.* This part is to be completed by 501(c)(3) organizations not electing to come under section 501(h). **We strongly urge the IRS to use the corresponding instructions to Schedule C to highlight the relative advantages of taking the 501(h) election versus the vagueness of the "no substantial part" standard.** By providing filers with accurate information about the benefits of the 501(h) election, the IRS would effectively encourage more organizations, particularly small- and medium-sized organizations, to adopt the clear and definite rules available to them under section 501(h). Specifically, we recommend the IRS use the following language:

  > "Organizations covered by the 'no substantial part' rule are not subject to any specific dollar-base limitation. However, few definitions exist under this standard as to what activities constitute lobbying, and difficult-to-value factors, such as volunteer time, are involved.
  >
  > "Organizations seeking clear and more definite rules covering this area may wish to avail themselves of the election. By electing the optional sliding scale, an organization can take advantage of specific, narrow definitions of lobbying and clear dollar-based safe harbors that generally permit significantly more lobbying than the 'no substantial part' rule."

  This language is taken from a response, dated June 26, 2000, issued by the IRS to CLPI providing information on a number of questions related to lobbying by 501(c)(3) organizations.

  Also, we are troubled by line 2(a). This question requires non-electing 501(c)(3) organizations to determine whether their lobbying activities would disqualify them from 501(c)(3) status. Given that there is no statutory or regulatory definition of the amount of activity that would constitute a "substantial part" of an organization's activity and case law only provides limited guidance, we believe this question would place filers in the untenable position of having to speculate on how the IRS would assess their overall activities. We therefore recommend the IRS delete line 2(a), redrafting line 2(b) to state "Enter the amount of tax, if any, incurred under section 4912" and line 2(c) to state, "Enter the amount of tax, if any, incurred by organization's managers under section 4912."

- *Instructions*. We are pleased the instructions for Schedule C refer to Revenue Ruling 2007-41, guidelines for exempt organizations on the scope of the tax law prohibition of campaign activities by 501(c)(3) organizations, on page 4. We believe this Revenue Ruling provides useful guidance for public charities, and we recommend the instructions either summarize the Revenue Ruling or provide a hyperlink to the Revenue Ruling so organizations can easily access the document on the IRS website.

We thank you for the opportunity to submit comments on the draft redesigned Form 990. If you have questions or need additional information, please contact Sharon Stewart at (202) 387-2008 or sharon@clpi.org.

We look forward to a continuing dialogue with the IRS on these important issues.

Sincerely,

Diane M. Canova
Board Chairperson

Sharon Stewart
Interim President

| | |
|---|---|
| **From:** | Terence Dougherty |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | |
| **Subject:** | Draft Revised IRS Form 990 |
| **Date:** | Friday, September 14, 2007 3:31:12 PM |
| **Attachments:** | 1275_001.pdf |

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On behalf of the American Civil Liberties Union, please find attached comments to the Draft Revised IRS Form 990.
Regards,
Terence.


Terence Dougherty
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September 14, 2007

**VIA Email**

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



To Whom It May Concern:

The American Civil Liberties Union (the "ACLU") is pleased the Internal Revenue Service has given the nonprofit community the opportunity to comment on the Draft Revised IRS Form 990 (the "Draft Form"). We support the IRS's intentions in revising the current IRS Form 990 in order to lessen the burden imposed on reporting entities in completing the Form and lessen the difficulties readers of the Form have had in understanding the Form.

The ACLU is part of a group of nonprofits that has had a series of discussions with Independent Sector concerning many aspects of the Draft Form, and Independent Sector plans to submit comments that derive in part from these discussions. Additionally, the ACLU would like to submit the following comments to the Draft Form under its own name on behalf of itself and other nonprofit organizations, particularly advocacy organizations, in light of civil liberties-related and other general concerns we have with aspects of the Draft Form.

**Part II, Section A**

Column A of Part II, Section A requires that organizations list the "Name, City, and State of Residence" of all officers, directors, trustees, key employees, highly compensated employees, and independent contractors. We believe that privacy concerns are raised in requiring that organizations give the city and state of residence of these individuals in conjunction with their names, which together may enable members of the general public to positively identify those individuals and their residences. The fact that an organization must publicly disclose this highly private information could result in certain individuals being reluctant to provide useful or necessary services to charitable organizations. Further, this information could be used by people hostile to an organization or its mission to harass the listed individuals. This is particularly a concern for advocacy organizations and other organizations doing work in controversial areas. We believe the IRS should permit an organization to list its own address in Column A if the information in this column will be part of the version of the Form made available to the general public.

**Part V, line 11d**

Part V, line 11d asks organizations to list fees they pay for "Lobbying." It would be helpful if the IRS could provide a definition of "lobbying" for purposes of this question that is more specific than the one provided in the instructions to line 11d, which refers to "lobbying and legislative liaison services." Does the definition of "lobbying" in the glossary apply to line 11d? For organizations that have made a Section 501(h) election, does the definition of lobbying set forth in Section 4911 of the Internal Revenue Code apply instead of or in addition to the definition in the glossary (and for organizations that have not made the 501(h) election, does a different definition apply)?

**Part IX, line 2**

AMERICAN CIVIL
LIBERTIES UNION

Part IX, line 2 asks organizations to describe their "most significant program service accomplishment of the year." We believe this question will be difficult for many organizations to answer, particularly organizations that do work in many different programmatic areas. Further, the IRS does not provide sufficient guidance as to how an organization should determine which activity is "most significant." Is it the accomplishment with the greatest national or international impact? –that is the most visible? –to which the organization has devoted the largest share of its resources? –that advances an issue on which the organization takes the lead in the nonprofit community (even if it is not an accomplishment to which the organization devoted a significant portion of its resources as compared to its other activities)? Without clear standards, an organization's answer to this question could be confusing and/or misleading to readers of the Form 990, including potential donors, or could lead to an organization being compelled to respond to the question in such a general manner that the answer provides little information of value.

**Schedule F**

Schedule F asks for specific data concerning individuals who, and entities that, receive funds or services from the organization when those individuals or entities are located outside of the United States. We strongly encourage the IRS to consider more fully the privacy and security issues raised by requiring this information in a section of the Form that presumably will be available to the public, and we think the IRS should reconsider requiring this information given these privacy and security considerations. As one example of the issues raised in Schedule F, if a relative of an individual who is located outside of the United States and who is receiving legal assistance from an organization makes or has made a contribution to the organization, concerns could be raised if the organization is required to disclose in lines 1(a) and 1(e) of Part I, on the table in line 5b of Part I and in Part III, (i) the name of the donor/relative, (ii) the relationship between the donor/relative and the individual receiving assistance, (iii) the country in which the individual receiving assistance is located and (iv) the specific services and the type of assistance being received by the individual. If the very fact that the individual was receiving legal assistance from the organization could compromise the individual's legal status or personal security, the organization's disclosure of this information could put the individual at risk of harm and compromise the confidentiality of the representation of the individual and potentially could cause the organization's lawyers providing the legal assistance to run afoul of their ethical duties to maintain confidentiality. Further, the disclosure of the identity of the donor/relative could put him/her at risk of harm.

Additionally, if such information is required to be reported, query whether there should at least be a dollar threshold and/or a knowledge requirement or time limitation for some or all of the reporting requirements set forth in Schedule F. For an organization with thousands of donors, it could impose a significant burden on the organization to require it to monitor whether a donor of a small amount of money at some time in the past is related in some manner to a person who has received assistance from the organization. There is no current legal requirement that an organization seek detailed information concerning family members of donors prior to receiving a donation; nor is there any requirement that an organization seek information from potential recipients of assistance concerning the relatives of those recipients.

For most organizations, the names and addresses of contributors to the organization are required to be reported to the IRS on Schedule B but are not publicly disclosed. It appears that the IRS intends that donors listed in line 5b of Part I will be disclosed publicly, and we believe the IRS should reconsider public disclosure of these donors.



The consequences of the public disclosure of information required by Schedule F are complicated and could have far-reaching and adverse effects and therefore should be thought through carefully by the IRS and reconsidered given the issues raised above.

**IRS Background Paper**

In the IRS background paper requesting comments on the Draft Form, the IRS specifically asks for comments on "whether the IRS should preclude group returns." This issue is not elaborated further by the IRS in the background paper, the Draft Form or any accompanying explanatory materials. Considering the administrative efficiency of the group return to many organizations, particularly national organizations with small affiliates throughout the country, we would like the IRS to provide much more information about why this question is being raised by the IRS at this juncture in order for the nonprofit community to have a chance to provide meaningful comments. Is the IRS currently studying whether group returns should be precluded? Is there a reason why? Have group returns created possibilities for specific abuses not present in the single-filer context? Could changes be made to lessen the likelihood of such abuses without precluding group returns altogether? Is there a timeframe for the IRS's consideration of this issue (e.g., is the timing expected to coincide with the timeframe for finalizing the Draft Form)?

**Conclusion**

Once again, the ACLU thanks the IRS for giving the nonprofit community the opportunity to provide comments to the Draft Form. We look forward to an open dialogue between the IRS and this community and to the IRS's addressing and responding to issues raised by commentators.

If you have any questions concerning the foregoing, please do not hesitate to contact me.

Very truly yours,

Terence Dougherty, Esq.

| | |
|---|---|
| **From:** | Narric Rome |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | |
| **Subject:** | Comments from Americans for the Arts |
| **Date:** | Friday, September 14, 2007 3:56:13 PM |
| **Attachments:** | AmericansfortheArts990Comments.pdf<br>afta_new_lowres_bluegray SMALL.JPG |

**MEMO**
**To: Tax Exempt Division**
**Internal Revenue Service**
**From: Narric W. Rome**
**Director of Federal Affairs**
**Americans for the Arts**
**Date: September 14, 2007**
**Re: Comments on FORM 990 Revisions**

Thank you for the opportunity to provide comments to the draft revision of the Form 990. Thousands of local arts agencies will be affected by changes to the Form 990, and in ways different from other charitable sectors. We are pleased to provide you with some feedback about how the arts community might be impacted.

**Electronic Filing**

- Americans for the Arts agrees the redesigned form 990 should have an e-filing option. Electronic filing will increase consistency and accuracy and can only benefit the non-profit sector.

**Summary Page**

- Americans for the Arts is concerned the efficiency ratios required on the Summary page will be misleading. Most notably, the request for fundraising expenses listed as a % of total expenses and fundraising expenses listed as a percentage of total contributions and grants. This could lead to a misleading picture of an organization without some explanation of the circumstances that contribute to a high or low percentage. For instance, some organizations will spend reasonable yet varying amounts on fundraising based on their individual structure and needs and other organizations with either a small number of paid staff or those that are service organizations will have personnel costs that equal a relatively high percentage of programming costs.

**Compensation**

- Many performing arts organizations align their fiscal year with their performing season, not with the calendar year. Therefore, the new requirement to report compensation figures as listed on W-2 and 1099 forms will result in the reporting of outdated information. Further, it will be very difficult for performing arts organizations to change their fiscal year to match the calendar year. Americans for the Arts agrees with Independent Sector that the IRS should use W-2 and 1099 data as a general rule (for increased consistency in reporting) as long as an alternative is created for organizations that do not operate on a non-calendar fiscal year.

**Thresholds**

- The new Form 990-N, or e-postcard, will affect many arts organizations that have gross receipts under $35,000. Though it may benefit the overall sector to have information on these very small organizations, the non-profit arts sector needs increased time to communicate this new requirement to arts organizations.

**Financial**

- The new footnote requirements on Schedule D, Supplemental Financial Statements, trigger concern within the arts community as many of these groups maintain collections of art, historical treasures, and similar assets. Further, many small art organizations may not conduct annual audits, and therefore, in order to complete the Schedule D accurately, art organizations will have to increase the number of costly audits they conduct.
- The increased information required on endowment funds may be an issue for small organizations that accumulate fund proceeds over several years without making withdrawals. This is a common practice with small, but growing, arts organizations, in order to increase and secure their financial future; however, not withdrawing funds may appear as malpractice to the IRS.

**Programming**

- Arts organizations are concerned with the new requirement to list their greatest accomplishment or program for the past year. Many arts organizations may find it difficult to list one accomplishment that demonstrates their programming is in line with their mission.

**Compensation**

- Art organizations are quite concerned over the changes for listing a board member's address. This is a privacy concern for the board members and may act as a disincentive to engaging new board members. The IRS should consider requiring only the State and Country of each board member.

**Noncash Donations**

- We are concerned that the authors of Schedule M apparently envision that it will yield the IRS substantial information on gifts of art. While it may indeed do so for gifts of art to fundraising auctions and to organizations that sell art to raise funds, it certainly will not do so for art museums, which are of course the chief recipients of gifts of art, for the simple reason that most museums do not capitalize their collections, and thus neither set a value on much donated work, nor count it as

revenue. According to accounting standards, museums need not capitalize their collections so long as the proceeds from sale of collection items are limited to acquiring other items. In other words, collections are not liquid assets. Requiring a value to be placed on them, simply so that the IRS can know what those numbers are, would impose a gigantic burden on institutions that receive hundreds of objects in a given year, and that possess thousands (and in some cases millions) of objects in their collections. Listing the objects on Schedule M without dollar values would give readers little useful information.

**Political Activities**

- It would appear that much of the information requested by the IRS in Schedule C, for political and lobbying activities is duplicative with organizations' filings with the Federal Election Commission (FEC). Additionally, the IRS requires an estimate of volunteer hours on political campaign activities. Addition clarification may be required to limit an association's responsibility to report activities of its board members that are conducted on their own time, and not on the organization's behalf.

**International Activities**

- The revised draft Form 990 now includes a separate Schedule F that asks a number of questions regarding program and grant activities and other operations outside the U.S. Some tax-exempt organizations are concerned that separate reporting of grants outside the U.S. may result in unnecessary exposure for foreign grant recipients.

**Comments Gathered Directly From Americans for the Arts Members**

- **The Purple Moon Dance Project**

Jill Togawa, Artistic Director, San Francisco, CA
"Providing additional information and filing more schedules than we already do will put an unnecessary burden on our small organization. The current form requires us to provide extensive information about our income, expenses, and other activities.

Having gone through a rigorous application process for our non-profit status I would ask the IRS to reconsider changing the tax filing process."

- **Young Imaginations**

Ron Tarica, San Rafael, CA
"1) Much simpler, and 2) Much shorter! The number of pages for a 990 are absolutely ridiculous and if they have not reduced them then they have failed in my opinion."

- **Interlochen Center for the Arts**

Traverse City, MI
“1. The percentage requirements in Part I or Summary page could be misleading in any given fiscal year. If the percentages need to be there then there should be a way for ICA to explain any unusual percentages.

2. Schedule G, Supplemental Fundraising Activities has a threshold of $10,000 in gross income. This threshold is extremely low, however with ICA's gross income in the millions we will likely have to complete Schedule G regardless. However, Part II of this schedule, "Events", which asks for detailed P&L information on ICA's largest two events and then a third column for all other events lumped together will be very difficult to compile accurate information for. ICA puts on a large number of "events" each fiscal year and to track detailed income / expense for each event will be an onerous task.

3. Part II requires the home address of ICA's board members where in the past it has been acceptable to simply list ICA's mailing address. This may turn off potential board members not only to ICA but also the non-profit sector all together.

4. Schedule F, Statement of Activities Outside the U.S., includes grant recipients (or financial aid recipients in ICA's case). In this form, ICA would need to list all of the financial aid awarded to our international students by country. In addition, in Part III of this schedule, we would need to be even more detailed, basically grouping the international financial aid recipients by city and the financial aid amount received. As is noted in the AFTA memo, this may result in unnecessary exposure for foreign grant recipients.”



**Narric W. Rome**
*Director of Federal Affairs*

wwww.americansforthearts.org

**Americans for the Arts**
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| | |
|---|---|
| **From:** | Necia Hobbes |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | |
| **Subject:** | Draft Form 990 Revisions |
| **Date:** | Friday, September 14, 2007 4:06:39 PM |
| **Attachments:** | FORM 990 - GPNP comments FINAL.doc |

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To Whom It May Concern:

Thank you for the opportunity to comment on the Draft Form 990. Attached, please find attached comments and suggested revisions from the Greater Pittsburgh Nonprofit Partnership (GPNP), a coalition of nearly 300 nonprofit organizations in the Southwest Pennsylvania region.

Sincerely,

Necia Hobbes
Greater Pittsburgh Nonprofit Partnership
The Forbes Funds
Five PPG Place, Ste. 250
Pittsburgh, P.A. 15222


The Greater Pittsburgh Nonprofit Partnership
Comments on Draft Form 990 to The Internal Revenue Service
Friday, September 14, 2007

The Greater Pittsburgh Nonprofit Partnership (GPNP) is a coalition of close to 300 nonprofit organizations in the Southwest Pennsylvania region. Nonprofit organizations exist for a social purpose and to be drivers of social change. The GPNP exists to improve the viability, impact, and effectiveness of the sector. The GPNP serves its members by keeping them informed of issues concerning the sector, educating the public of the work of the sector, fostering collaborations within the sector, and providing a unified voice to speak on behalf of the sector. More information on the GPNP can be found on www.ForbesFunds.org/GPNP.

The GPNP wants to acknowledge the IRS's effort in gathering feedback from those directly affected by the revisions to the Form and appreciates the opportunity to comment on the Draft Form 990. The GPNP supports the analysis and comments of the Independent Sector, but has included below additional comments and recommendations.

The many changes in the Draft will require significant adjustments and changes in preparation for filing organizations, and in keeping with its guiding principles in revising the Draft, the IRS should ensure that the process to issue the final revised Form 990 is not rushed, but that ample time is allowed for consideration of comments and revisions. Subsequently, the IRS should allow sufficient time for filing organizations to educate themselves on the revisions, before the new Form 990 must be completed. The GPNP recommends that either a transition period or delay in full implementation be considered to ensure that nonprofit organizations provide quality work on filling out the Form.

The GPNP is especially concerned with the effect of the revised Form 990 on small nonprofit organizations. Comprised mostly of small nonprofit organizations, 75% of GPNP members have a budget of $1 million and below, and 50% have a budget of less than $500,000. These small organizations often face prohibitive time and resource constraints that could preclude their ability to be as thorough as possible and optimally prepare and fill out the Form. In keeping with the guiding principle in creating this Draft, of *minimizing the burden on filing organizations*, the GPNP advises that redundant information be eliminated and in the event that intensive collection of information is necessary, a recommended timeline with guidelines on tracking the information be included.

## Core Form 990

### Part I: Summary

The GPNP advises that the IRS be mindful that the Summary section creates a lasting first impression on many readers. Therefore, information displayed on this page must be clear without further explanation, and honest in telling an organization's story. In particular, financial ratios (under Revenues and Expenses) can be misleading, creating an unclear picture of the overall financial health of an organization. We recommend that the reader be referred to the actual Revenue and Expense, Parts IV and V, respectively, for such information.

1. Line 7

This line should be eliminated because it is duplicative of information in Part II and could be misleading as it includes no explanation of title or responsibilities.

2. Line 9a

This should be eliminated as it is duplicative of information on Part IV and is better explained in Part IV.

3. Line 8b

Compensation as a percentage of total program service expense is generally a very misleading indicator of a nonprofit organization's effectiveness. The GPNP advises that without substantive evidence to prove that this ratio is indicative of an organization's effectiveness, there is no reason to include this information on Form 990 at all.

4. Line 19b

The Fundraising expense ratio is also generally a very misleading indicator of a nonprofit organization's effectiveness. Again, the GPNP advises that without substantive evidence to prove that this ratio is indicative of an organization's effectiveness, there is no reason to include this information on Form 990 at all. However, if they must be included, the GPNP recommends that an extra item be added for nonprofits to explain the ratios.

5. Line 24b

Total expenses as a percentage of net assets should be eliminated for the same reason as Lines 8b and 19b.

6. Lines 25 – 26

These lines should be eliminated from the summary section as they are already a part of Schedule G, and their inclusion here could be confusing to both filers and the general public.

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

1. Item A

Providing the city and state of residence along with the name of an individual might be a privacy concern. The GPNP recommends that, for the sake of securing an individual's privacy, only the individual's name and the city and state of the organization they are affiliated with should be listed.

## Part III: Statements Regarding Governance, Management, and Financial Reporting

The IRS should declare which issues are mandatory to report on and which are not. The GPNP feels that the public needs to know that some answers/reporting is voluntary, and reflective of a nonprofit's intentional transparency. Additionally, this section should indicate best practices on which issues should be declared. This would be a fitting and appropriate avenue to inform nonprofit organizations of such best practices.

1. Line 2

Documents that have been changed or adapted speak for themselves. It is less administratively burdensome for a nonprofit to attach the changed documents, rather than try to describe the changes. The IRS should also clarify what it means by organizing or governing documents. Each organization can have different types of organizing or governing documents, and the criteria that constitute such documents should be explicitly stated. Additionally, the level of significance in changes made can be different from one organization to another. The GPNP recommends that this question be more specific in its expectations and criteria.

2. Line 7b

Written policies and procedures governing the activities of local chapters, branches, or affiliates are not legally required actions. Therefore, it must be stated within this line item that it is a voluntary action on behalf of an organization. If it is a best practice that the IRS seeks to promote, it should state so in order to lessen confusion and increase awareness.

3. Line 10

Although this is a valid question, the line item needs to indicate that it is not a legal obligation for nonprofits to have their governing body review the Form before it is filed. The indication that it is a voluntary action must be made clear.

4. Line 11

Not all of these requested policies are required by law and none are required by the tax laws. Accordingly, this line should be revised either by explaining what is legally required, or by eliminating the questions asking for the Conflict of Interest Policy, Financial Statements and Audit Report. Not doing so might misconstrue filers to believe that they are legally required to make all these documents public.

## Part V: Statement of Functional Expense

The instructions to the Draft indicate that all organizations will be required to follow SOP 98-2; however, the costs of doing so is often prohibitive for organizations with revenues below $1 million, especially the smaller ones, which cannot afford annual audits. Along with the Independent Sector, the GPNP therefore strongly recommends, "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."

1. Categories

The reporting on allocation of costs/expenses is split into four categories (A – D). Since some activities might fit into two or more separate categories, organizations may interpret and record expenses differently and in a way that is inconsistent and incomparable. The GPNP advises that

either more detailed instructions should be given in allocating expenses to categories, or that only column A (Total Expenses) should be included.

2. Lines 11 – 13
The GPNP recommends that the IRS consider further break down and specify the types of expenses in these questions to avoid confusion and inaccurate categorization or reporting of expenses.

## Part VII: Statements Regarding General Activities

1. Line 11
As an investment policy statement is not required by law, this question should either indicate that such a policy is voluntary or it should be eliminated. Many, if not most small nonprofits have no assets to invest.

2. Line 12
This question asks for a policy on safeguards for transactions or arrangements with related organizations. This question should be eliminated as most nonprofits do not have related entities, and abuses in this area are already covered by the conflicts of interest policy.

## Part IX: Statement of Program Service Accomplishments

1. Line 2
The GPNP feels that choosing just one "significant program service accomplishment" is rather arbitrary and simplistic, especially since the word 'significant' is not defined.

2. Activity Codes
Discarding NTEE codes and switching to new activity codes (as the IRS is considering), might pose a concern and create an undue burden for those who have already adopted the NTEE codes.

| | |
|---|---|
| **From:** | Walda, John |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | Miller Steven T; Lerner Lois G; Clifford.j.gannet@irs.gov; |
| **Subject:** | 990 Comments |
| **Date:** | Friday, September 14, 2007 4:14:52 PM |
| **Attachments:** | NACUBO 990 Comments 091407 Final Version (2).pdf |

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Attached you will find a copy of NACUBO's comments on the redesigned draft of the Form 990. The eighteen higher education associations listed at the end of the letter join NACUBO's statement. If you have any questions related to the letter, please contact Mary Bachinger, director tax policy, 202.861.2581.

John Walda
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September 14, 2007

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

On behalf of the National Association of College and University Business Officers (NACUBO), and the associations listed below, we submit the following comments on the draft redesign of the Form 990, Return of Organization Exempt from Income Tax. NACUBO is a nonprofit professional organization representing chief financial and administrative officers at more than 2,000 colleges and universities. We are grateful for the opportunity to provide comments on the draft 990, and commend the IRS for their outreach to the regulated community for discussion of the draft and recommendations in advance of the comment deadline.

## General Comments on the 990 Redesign

**Escalation of Administrative Burden.** The IRS has stated that the redesign of the Form 990 is based on three guiding principles: enhancing transparency, promoting tax compliance, and minimizing burden on the filing organization. More than 1,100 of NACUBO's member institutions are independent colleges and universities required to file the annual Form 990. We estimate that many, if not most, of these institutions will need to complete 13 of the 15 new schedules included in the draft. Based on the enormous additional reporting burdens created by the redesign, many large and mid-sized institutions believe that they will need to add one full-time administrative position simply to coordinate data collection and track IRS reporting preparation throughout the year.

**Public Disclosure of Proprietary Information.** The Service needs to balance its efforts to enhance transparency with prudent consideration of preserving proprietary information of exempt organizations. The redesign of the Form 990 includes a significant increase in the scope of information required to be reported—information not considered when the existing public disclosure regulations were enacted.

*Recommendation:* The IRS should consider whether summary information can be reported in lieu of specific identifying information when information disclosed for public inspection could adversely affect the filing organization. Protecting the confidentiality of donors, individual investments, manager relationships, and other information does not preclude an organization from publicly disclosing general information about these activities. An alternative

recommendation would be to redact specific schedules from public disclosure, similar to the current provisions regarding Schedule B.

**Deadline for Redesign.** We understand that the Service is compelled to rush redesign of the form due to the current availability of funds and technical staff to program the new form. It is unfortunate that such pressing administrative needs are driving a substantive project that so dramatically impacts the exempt community. It appears that the time pressure of finalizing the form by the end of the year will undermine the process of determining the best ways to improve the Form 990.

NACUBO has actively engaged our members in reviewing the redesign throughout the ninety day comment period, a relatively short period considering the scope and scale of the proposed changes. We have shared our community's perspectives with the Service at meetings in July and August. We are grateful for the opportunities we had to discuss the redesign with the IRS. However, we are gravely concerned that attempts by the Service to force a meaningful overhaul of the Form 990, the first complete overhaul since 1979, into this compressed timeframe will not yield the best results for a useful annual return going forward many years into the future. Given the vast array of concerns and the myriad comments and suggestions that the IRS is likely to receive, the Service is leaving itself little more than a few weeks during which to analyze the comments and chart the best course for the annual information return that the exempt community will be saddled with for the foreseeable future.

*Recommendation:* If the IRS is unwilling to depart from the announced schedule for finalization of the redesigned form, we strongly recommend transitional relief for the effective date to allow institutions and organizations sufficient time to make the necessary changes to data collection, systems alterations, and adjust staffing in order to complete the new return. At a minimum, we ask that the new Form 990 not be effective prior to the 2009 tax year (i.e., returns for tax years beginning in 2009).

**Space limitations.** Space limitations permeate the entire draft of the core form and supporting schedules, particularly given the amount of detailed information that the IRS is requesting. Since this public document is an information return, organizations should be able to provide additional information or attach statements to explain or supplement answers to yes or no questions that could be misunderstood or not easily comparable with other tax-exempt organizations. The IRS goals for increased transparency and disclosure should allow for footnotes or additional statements from an organization describing its policies, procedures and methods for preparation of the 990.

*Recommendation:* If the Service facilitated the attachment of a wide range of supporting documents, reporting organizations could provide the explanation and details that are needed to give a more complete picture of the institution to the public. The space for attachments in the current system is unacceptable because it does not permit the inclusion of any information via formatted text, tables, .pdf attachments, or any supplemental information.

**Dollar Thresholds**. Several questions throughout the return have a small or no dollar threshold resulting in a large volume of activity to be reported by large organizations. This reporting

requirement not only blurs the big picture for the reader of the Form 990, it does not allow a large organization to focus on those transactions that are material. Further, providing such a large volume of data in order to comply with the IRS requirements will increase that school's management and general expenses, which is contrary to institutions' constant efforts to lower such costs.

*Recommendation:* For questions that would be better served utilizing a dollar threshold, we suggest that the IRS adopt a three-tiered approach. The three tiers would be based on whether an organization is small, medium, or large, with the size determined by current-year net assets. For questions employing a threshold, the IRS would give a separate dollar threshold for a small, medium, or large size organization with such thresholds varying in scope depending on the question. The organization would respond according to the question's dollar threshold for its size. The size designation would remain the same throughout the return.

For example, this approach would work well for Schedule I, Part II and Part III which requires the organization to list grants greater that $5,000. In the current draft form, a large university would need to copy the form several times in order to fully report the information required. However, small and medium sized organizations may not report any information on this form since their grants may fall below the stated dollar level. Under the suggestion above, the instructions would allow dollar thresholds of $1,000, $5,000 and $10,000 for small, medium and large organizations, respectively. With a three-tiered approach, the information reported would be relevant to the size of the organization. This would enhance reporting, add clarity for the reader, and retain the ability for the IRS to utilize a one-size-fits-all form.

**Core Form 990, Return of Organization Exempt from Income Tax.** We address the parts of the form in the order that they appear in the discussion draft. Items of high priority are indicated with an asterisk (*).

**Core Form, Page 1, Part I, Line 8b.** We understand the focus on officer compensation, and the prevention of abuse and private inurement. However, the current ratio of officer, director, trustee, and other key employee compensation to program service expense is not a useful metric. We are concerned that this ratio may be misleading to the readers of the Form 990. Part V of the form requires organizations to allocate compensation of officers, directors, and key employees into three categories of functional expense: program service, management and general, and fundraising. Many organizations include a high percentage of their officer compensation in the management and general category.

*Recommendation*: If a percentage must be employed, divide Line 8a by Line 20, Total Expenses, to yield the ratio of officer, director, and other key employee expenses to total organization expenditures.

***Core Form, Part II, Section A, Compensation.** U.S. Treasury Regulation Section 1.6033-2(a)(2)(ii) permits an organization to report compensation on Form 990 for the annual accounting period or the calendar year ending within the annual accounting period.

*Recommendation*: The option of reporting compensation for the fiscal year of the organization or the calendar year should continue provided the organization clearly discloses the reporting period and reports on a consistent basis.

***Core Form, Part II, Section A, 3rd and 4th bullets.** In the third bullet point, the IRS requires organizations to "List all of the organization's former officers, key employees or highest compensated employees who received more than $100,000 of reportable compensation from the organization and any related organizations." In the university context, it is quite common for an officer or key employee with an academic background to continue to be employed as a professor or lecturer upon termination of his or her position as an officer or key employee. Under the current form, organizations would be required to continue to report compensation of former officers and key employees indefinitely even though these individuals are no longer being compensated for duties as officers or key employees.

*Recommendation:* We suggest that the reporting in Part II, Schedule A be limited to compensation received *in an employee's capacity* as a former officer, key employee or highest compensated employee, similar to the language in the fourth bullet point regarding former directors and trustees.

**Core Form, Part II, Section B, Line 3.** "For the CEO, Executive Director, Treasurer and CFO listed in Section A, did the process for determining compensation include a review and approval by independent members of the governing body, comparability data, and contemporaneous substantiation of the deliberation and decision?"

Does this question refer to the time of initially hiring the CEO, Executive Director, Treasurer and CFO or each year if such an individual receives an increase in salary? Also, does this question relate to other officers listed in Section A besides the ones noted in the question?

*Recommendation:* Clarify the instructions to specify which officers are to be included and the timeframe for the information requested.

**Core Form, Part II, Section B, Line 5.** "During the tax year, did any person who is or was an officer, director, trustee, or key employee within the past five years (a) & (b) have a business or family relationship with any person listed on Section A, (c) have a business relationship with the organization directly or indirectly through ownership of more than 35% in another entity, (d) have a business relationship with the organization through a family member, or (e) serve as an officer, director, trustee, or key employee, partner or member of an entity doing business with the organization?"

As presently written, this question would require an organization to send a conflict of interest questionnaire to <u>all</u> former trustees regardless of whether they received compensation. Continuing to send such individuals a questionnaire past their service time could create a chilling effect on those willing to serve on the board, while adding to the burden placed on the organization to acquire this information.

*Recommendation:* The 2006 Form 990 requires former officers and trustees to be listed on Part V-B if they received compensation. Accordingly, the 2006 conflict of interest questions, such as numbers 75 (b) and (c), refer only to those former officers and trustees listed on that schedule. We suggest that the redesigned Form 990 limit Line 5 regarding former trustees to only those listed on the form as receiving compensation as a former trustee within the past five years, versus all former trustees within the past five years.

**Core Form, Part III, Line 2.** "Did the organization make any significant changes to its organizing or governing documents?"

The instructions for this line state the organization must report only "significant changes" to its documents. The instructions further state that the organization must report "any change" to the number, composition or duties of the governing body and of the officers; changes to the policies regarding the conflict of interest, whistleblower and document retention and destruction; and changes to the composition and procedures of the audit committee. These two sentences of the instructions somewhat contradict each other as to what the organization needs to report. Is the list of documents provided by the IRS and noted in the second sentence, intended to serve as examples and the organization is left to determine what is significant; or is *any* such change to the list of documents to be reported?

*Recommendation:* Clarify the instructions to read that the organization is required to report only "significant changes" per the list provided by the IRS and noted above.

**Core Form, Part III, Lines 3a, 4 and 5.** If the organization does not yet have one or more of these policies because they are in a governance approval process or another reason, the organization should be given the opportunity to note that the policy is imminent.

*Recommended for each:* If "no", does the organization plan to have the policy within the next fiscal year?

**Core Form, Part III, Line 3b.** "If yes, how many transactions did the organization review under this policy and related procedures during the year?"

1) Does this question relate only to conflicts of interest reported by the individuals identified in Part II, Section A, or does this refer to all employees? 2) For organizations that require every employee to complete a conflict of interest form, does the question relate to the initial review of responses to determine if a transaction is a conflict of interest under the policy, or only those elevated for review by a committee or the governing body? 3) Does this question cover conflicts of interest in relationships as well as transactions? Without clarity to line 3b in answering the aforementioned questions, a large organization that requires all 20,000 employees to respond to a conflict of interest form may have to report a large number of transactions that were reviewed. Such a number may be misleading to the public and reflect negatively on the organization and its employees, as the response does not allow the organization to further report whether the review of the transactions resulted in it being dismissed, rectified, or immaterial.

This question does not consider that a conflict of interest policy may not focus on single transactions, but rather on the total amount of transactions or on business relationships. Further, a conflict of interest policy may require that a trustee or officer recuse himself from voting on a particular matter. In such cases, the transactions would not be reviewed.

*Recommendation:* The question needs to be rephrased so that it generates a meaningful response understood by its readers, so as to minimize potential misinterpretation.

**Core Form, Part III, Line 10.** "Did the organization's governing body review this Form 990 before it was filed?"

The question implies the entire board should review the Form 990 before it was filed. Practically, either the Audit Committee or another similar committee should receive and discuss the form before it is submitted. It is still the responsibility of management to prepare and review the form.

*Recommendation:* Did a committee of the organization's governing board discuss this Form 990 before it was filed?

**Core Form, Part III, Line 11.** "How do you make the following available to the public? Financial Statements."

*Recommendation:* Clarify to read: Annual Audited Financial Statements

**Core Form, Part IV, Line 1e and 2b.** The instructions defining the difference between these two lines should be closer to the generally accepted accounting principles definition for distinguishing whether a grant is a contribution (1e) or an exchange transaction (2b). Government grants are not currently separated according to the definitions shown in the current instructions, although whether or not the primary purpose of the grant provides a service to the general public or not is part of (but not all of) the analysis required when accounting for a grant. Maintaining the current definition could necessitate a new recordkeeping system for many non-profit organizations.

*Recommendation (instruction for Line 1e):* Enter the total amount of contributions in the form of grants or similar payments from local, state or federal government sources, as well as foreign governments. A grant or other payment from a governmental unit is reported here if it is an unconditional transfer of cash or other assets to the organization in a voluntary nonreciprocal transfer from the governmental unit. (Language excerpted from AICPA Accounting Guide for Not-for-Profit Organizations – Chapter 5: Contributions Received and Agency Transactions – Introduction).

*Recommendation (instruction for Line 2b):* Enter revenues received in the form of fees or contract payments paid by governmental units for a reciprocal transfer in which each party receives and sacrifices something of approximately equal value. (Language excerpted from AICPA Accounting Guide for Not-for-Profit Organizations – Chapter 5: Contributions Received and Agency Transactions – Exchange Transactions section)

**Core Form, Part IV, Lines 2a through 2f.** Lines a-c are pre-filled, but do not relate to all exempt organizations.

*Recommendation:* Lines a - c should be left blank, similar to lines d - f. Or, alternatively, line 2c should be revised to state "Revenue from Program-Related Investments" as opposed to "Revenue from Related Investments." Also, Tuition and Fees and Revenue from Auxiliary Enterprises should be added since those are the major program revenue activities for all colleges, universities and other educational institutions.

**Core Form, Part IV, Lines 10a through 10d, Gain from Investments.** Form 990, Part IV, Lines 10a-d require an organization to report sales of securities in column (i) and sales of all other types of investments (e.g., real estate, royalty interests, or partnership interests) and all other non-inventory assets in column (ii). In each column, the organization must enter the gross sales price on line 10a and the cost or other basis (less depreciation) and selling expenses on line 10b. Lines 10c and 10d report realized gain and net realized gain, respectively.

The disclosure of amounts on lines 10a and 10b does not provide meaningful financial information to the IRS or to the public. Further, this information is difficult to extract from an organization's accounting system and may be misleading to the public. Finally, this breakout is not required for financial statement purposes or for income tax reporting purposes; the calculation is required solely for purposes of Form 990 reporting.

With respect to the presentation of an organization's financial statements or the financial results of the endowment performance, an organization's focus is on measuring the value and growth of the endowment at the end of each fiscal year. Separating gain into its realized and unrealized components and allocating cost basis between those two components is not a natural function of an exempt organization's accounting system. A tax-exempt organization is generally not subject to income tax on its realized gains (except in certain narrowly defined instances which are accounted for separately). In any year, realized gain reflects the sum of gains on numerous transactions, some involving assets in managed accounts in custody of the university and others involving assets held by investment partnerships and other structures in which the university holds an equity interest, often as one of many investors. Each external fund holds a portfolio consisting of numerous portfolio assets, and the way in which the cost basis of each portfolio is allocated and recovered will vary from fund to fund. Estimating the cost basis of realized gains requires a set of assumptions which we believe to be inappropriate and not called for in this context.

*Recommendation:* We recommend that the IRS eliminate the requirement to breakout gains into gross sales and cost basis and require disclosure of net gain only. We believe that by eliminating this requirement, the IRS will demonstrate adherence to two of its guiding 990 redesign principles, namely presenting information in an improved manner and minimizing the burden on the filing organization by eliminating extraneous reporting requirements.

**Core Form, Part V, Line 3.** The instructions should be more explicit as to whether payments to non-resident aliens working or studying in the United States are to be included in this amount.

**Core Form, Part V, Line 11f.** This is another reconciling item from the generally accepted accounting principles presentation of the audited financial statements. Most organizations net all investment management fees into their investment income.

*Recommendation:* We recommend that the Form 990 allow this same method as opposed to grossing up the investment income in order to break out the expenses separately.

**Core Form, Part V, Lines 13 and 16.** Most organizations, including colleges and universities track insurance expense as a separate account but all types of insurance are aggregated together.

*Recommendation:* Split insurance into its own line and delete the references for insurance in the instructions for Lines 13 and 16.

**Core Form, Part V, Line 18, Payments of travel or entertainment expenses for any federal, state or local public officials.** We understand that this requirement was introduced with the 2006 Form 990, however, we feel it is important to mention in our redesign comments that it will be very difficult for an organization to identify payments to government officials with complete accuracy. Accounts payable systems do not track titles of individuals being paid or reimbursed for expenses so it is not possible to simply run a report for "payments to government officials." It would be a very manual process of polling departments to learn about payments or reimbursements to government officials and a manual process for reviewing the accounts payable system. In addition, although virtually every expense reimbursement policy requires documentation of participant names and titles when requesting reimbursement for group meals, there is no way to determine if a particular title belongs to a government official. And even if the organization employee seeking reimbursement indicates that part of the reimbursement was to a government official, it is not practical to ask organizations to then allocate a portion of a five-person lunch to determine if reporting is required on the 990.

*Recommendation:* We suggest this requirement be removed since it is not likely that organizations will be able to provide complete, meaningful information.

***Core Form, Part VII, Line 8a through 8b.** If the joint venture, regardless of ownership or control, is engaged substantially in investment activities generating passive or portfolio income such as interest, dividends, rents, royalties, and capital gain, we suggest that detailed disclosure will be excessively burdensome. Many educational institutions invest in a large number of such entities as part of their investment programs. All income generated by such entities must be disclosed in the appropriate places on the form as it is currently drafted. Information giving the names and proportionate ownership is not meaningful in the context of conduit investment vehicles and could hurt competitive investment opportunities. The investment function is an adjunct to the primary exempt activity but should not generally be regarded as the exempt activity itself. This is an area that calls for consideration of the preservation of proprietary information.

**Core Form, Part VII, Line 8c.** In the context of investment activities, the management or control of these conduit investment vehicles routinely rests with partners or managers who possess the expertise required. It is appropriate to ask about due diligence in the decisions to make the

investment and safeguard the organization's exempt status which is addressed in questions 11 and 12. It is not clear what the purpose of this question is in the investment context.

*Recommendation (lines 8a through 8c):* We ask that the Service revise the instructions to clearly exclude passive investments from the scope of these questions, and focus only on active operational joint ventures.

**Core Form, Part VII, Line 16.** "Does the organization hold assets in term or permanent endowments?" Term and permanent (also called perpetual) endowments are net assets which are funds that are invested for a return.

*Recommendation:* Reword the question to ask, "Does the organization have term and permanent (perpetual) endowments in net assets?"

***Schedule D, Supplemental Financial Statements -General.** For higher education institutions, the information required to be reported is already available in the institution's audited financial statements. We strongly urge the IRS to remove this onerous requirement forcing institutions to recast audited financial numbers and categories into non-GAAP categories and subcategories. The IRS should strive to facilitate the inclusion of audited financial statements in the Form 990, providing both the Service and the public with information that has been independently audited and is GAAP compliant, thus providing both accountability and consistency across the sector.

***Schedule D, Part I.** Investments-Other Securities (Form 990, Part VI, Line 11). Disclosing every single investment in a security, limited partnership, or fund could result in a long list of names which would not be value added information for the average reader compared to reporting this information by category (e.g. stocks, bonds etc). Additionally, the form contains only five lines for this section and such a list from a large organization would potentially require several copies of this page making the return difficult to read and navigate through by those people interested in knowing more about the organization. In addition, making this information public could jeopardize an institution's investment portfolio by making its strategy known to competing investors.

*Recommendation:* We suggest reporting of investments by asset category instead of listing every individual investment in this section. Accordingly, investments would be grouped by stocks, bonds, partnerships, other, etc. This would add more clarity and meaning for the reader in order to understand the organization's investments. If the identification of individual investments continues to be required, then this schedule should not be open to public inspection. (Similarly, other parts and schedules of the redesigned Form 990 requiring detailed listing of assets (e.g., Parts II-VI of Schedule D) should be revised to require listing of assets by category).

**Schedule D, Parts II, V and VI** calls for "Book Value" in column (d) which carries forward to the Balance Sheet. Is "Book Value" limited to the historic cost of the assets summarized? May an institution that carries fair market value use that measurement as its "book value"?

*Recommendation:* Allow fair market value reporting as an option for balance sheet asset reporting.

**Schedule D, Part IV.** Investments-Program Related (Form 990, Part VI, Line 14)
1) What if a portion of the proceeds from the same investment is used for programs and institutional support? How would an organization list every single investment in response to this question, since proceeds are not allocated by individual investment, but rather by the total of all investments? 2) If an investment is program related, yet it is also a security, does an organization list it in both Part I and Part IV?

*Recommendation:* We suggest that the instructions clarify what is required to be reported so that this section can be completed accurately.

**Schedule D, Part IX, Line 4** requires the institution to report the aggregate value of its donor advised funds. Often, institutions will require a donor to waive the advisement right on a fixed percentage of the initial funds transferred to that institution. The donor would be able to advise the institution as to its internal use of such funds. It is unclear whether, the amount that is strictly limited to the donee institution's use includible in the Donor Advised Fund value.

*Recommendation:* Clarify that such amounts do not meet the definition of a Donor Advised Fund.

**Schedule D, Part XII.** Endowment Funds (Core Form 990, Part VII, Line 6). With regard to reporting the past five years of endowment fund activity, this would reach back to fiscal year ending June 30, 2003, for most organizations. Most organizations report the current year and fiscal year comparatively and such information is readily available. To require that organizations report information reported five years ago, would be extremely burdensome.

*Recommendation:* To ease the reporting burden, we suggest that a transition period be offered in that the information would be reported for the current year and immediately preceding tax year. Then for each subsequent year, this information could be rolled forward for comparative purposes until five years worth of data are presented.

***Schedule F, Statement of Activities Outside the U.S. – General.** Schedule F imposes a requirement for detailed information not previously required which may be exceedingly time-consuming for many institutions to compile.

*Recommendation:* Schedule F should have a transition period allowing at least one year after the new 990 effective date to provide time for organizations to prepare for data collection. Further, the information disclosed on this schedule should not be open to public inspection as it may increase the risk for employees and activities in certain countries. As an alternative, totals from Parts I, II and III could be included in Part VII on the 990 if needed to provide the public with scale of the overall activities outside the U.S.

**Schedule F, Part I, Line 1.** Information on Accounts and Activities Outside the U.S. – Activities per Country. 1) Does this question include passive investment activities conducted through non-U.S. entities? Details of foreign investment transactions are already reported on various IRS forms (e.g., Form 926, "Return by a U.S. Transferor of Property to a Foreign

Corporation, Form 8865, Return of U.S. Person with Respect to Certain Foreign Partnerships, and form TD F 90-22.2, Report of Foreign Bank Accounts, etc.). 2) Does the definition of grants include subcontracts or sub-awards made to organizations outside the U.S.?

*Recommendation:* 1) The instructions should clarify that this section does not apply to passive investment activities conducted through investments in non-U.S. activities. Additionally, to ease the reporting burden on large organizations, and to report only material transactions, we recommend that the instructions clarify that the $10,000 threshold for reporting financial accounts applies to Schedule F, similar to Part VII, line 1c of the core Form 990 and Form TD F 90-22.1. 2) Require a minimum duration such as six months or more for an activity before it needs to be reported so that short-term activities would not be reported. 3) Establish a dollar threshold for total expenditures in a country such as $100,000 for an activity to be reported. 4) As it is a common practice for colleges and universities to have subcontracts and sub-awards related to research activities, the instructions should be clarified to exclude the subcontracts from the definition of grant-making.

**Schedule F, Part I, Column F** Total Expenditures in Country are unclear. First, it says "enter the total expenditures for activities conducted in each country," but concludes with "do not report expenditures paid in the U.S. or outside of the listed foreign country, even if they are allocable to the listed activity."

*Recommendation:* The two sentences could be joined and edited to say "enter the total expenditures for activities conducted and paid for in each country, but do not report expenditures paid in the U.S. or outside of the listed foreign country, even if they are allocable to the listed activity." For example, expenditures for employees working in-country but paid from the U.S. would not be included, but expenditures for employees working in-country and paid in-country from a local bank account would be included.

**Schedule F, Part I, Line 5a and Schedule I, Part I, Line 2a.** "Was any individual or organization that received a grant or assistance related to any person with an interest in the organization, such as a donor, officer, director, trustee, creator, highly compensated employee or member of the selection committee?" Large organizations with several hundred donors and grant recipients are not in a position to track this data with respect to all of their donors. In addition, Line 5b(i) requires the disclosure of donors' names, when the identity of donors is not generally public information. This could create a disincentive for individuals to make donations, particularly if they have an existing affiliation with the organization.

*Recommendation:* Change "donors" to "donors listed on Schedule B for the reporting year" and move these questions on Schedules F and I to Schedule B, or another schedule not open to public inspection.

Overall, in order to fully and accurately answer this question the IRS needs to clarify the terms used in this question. Also, in order to reduce the reporting burden, particularly to large organizations, there should be some threshold, similar to the other schedules, such as reporting only amounts in excess of $5,000.

**Schedule F, Part II.** Grants and Assistance to Organizations or Entities Outside the U.S. This section should be similar to Part III identifying the types of grant or assistance, city or region and country, number of recipients, amount of grants, etc. rather than identifying each entity paid.

**Schedule G, Supplemental Information Regarding Fundraising Activities – General.**
For colleges and universities, events comprise only a very small portion of overall fundraising efforts. Currently, there are no campus mechanisms that gather the information requested on the draft schedule.

*Recommendation:* Only require Schedule G reporting where the gross revenue of an event or game activity of $10,000 or more is greater than 2 percent of the amount reported on Part IV, line 1h of the Core form.

**Schedule G, Part I, Line 1b.** "Did the organization have a written or oral agreement with any **individual** (including officers, directors, trustees or key employees…) **or organization** in connection with these or other fundraising activities?" The question is quite broad as it is currently written. "A written or oral agreement with any individual…or organization" pulls in any number of routine operational agreements such as vendor contracts to provide catering services at a fundraising event, etc.

*Recommendation:* The question would be more meaningful if the Service was more explicit about the types of agreements in which it is most interested and included a dollar threshold over which such arrangements need to be disclosed, so that only significant arrangements are included.

***Schedule H, Hospitals.** We request that non-hospital organizations that maintain limited medical facilities for the benefit of their members, e.g. university health centers operated for the benefit of students, etc. should not be required to complete Schedule H. This requirement imposes significant additional burdens on entities that do not currently report according to the Catholic Health Association community benefit model.

*Recommendation:* Modify the requirement so that only organizations whose primary purpose is hospital or medical care are required to file Schedule H.

**Schedule I, Supplemental Information on Grants, Line 2a.** "Was any individual or organization that received a grant or assistance related to any person with an interest in the organization, such as a donor, officer, trustee, creator, highly compensated employee, or member of the selection committee?"

1) Does the term "donor" mean all donors, or only substantial donors? It would be difficult for a large organization with hundreds of donors to know whether a grantee is related by "blood, marriage, adoption, or employment "including employees' children" to any of its donors. 2) Does the term "assistance" include financial aid to students? 3) Does the term "grant" include payments made for grant subcontracts? 4) In the instructions to this schedule, the example of grants and other distributions includes "allocations." What does this term mean?

*Recommendation:* 1) Add clarity and scope to the term "donor" by replacing this term with "substantial donor." 2) In order to reduce the reporting burden, exclude assistance to students from this reporting requirement. 3) Exclude subcontracts and sub-awards from the term "grants" as noted in Part I above. 4) The instructions need to add clarification to the term "allocations" via a definition or examples. Overall, in order to fully and accurately answer this question the IRS needs to clarify the terms used in this question. Also, in order to reduce the reporting burden, particularly to large organizations, there should be a dollar threshold, similar to the other schedules. However, we would suggest a much higher threshold for large organizations, particularly colleges and universities, due to the volume of these types of transactions.

***Schedule J, Supplemental Compensation Information, Line 1.** "Compensation Detail of Officers, Directors, Trustees, Key Employees and Highly Compensated Employees."

1) The instructions, indicate that "all" officers, directors, etc… listed in Form 990, Part II, Section A are to be included on this Schedule J. The instructions then give thresholds related to when compensation information is required to be disclosed. Does an organization report all those listed in Form 990, Part II, Section A or just those that meet the thresholds? 2) The instructions indicate that the individuals' compensation from the organization must be reported on the first row, and compensation from related organizations on the second row. They further state that compensation from other sources must be reported as if it were received directly from the organization. Combining "other sources" of compensation with compensation received by the organization seems misleading. Also to report the same individual on two lines without additional descriptions in the schedule is confusing, particularly to the average reader unless they refer to the instructions.

*Recommendation:* 1) Clarify in the instructions the individuals from Form 990, Part II that are required to be reported on schedule J. If an organization is required to report only those individuals that meet the thresholds listed in the instructions, then the first bullet indicating that "all" officers, directors, etc… listed in Form 990, Part II, Section A are to be included on this schedule should be eliminated. 2) Clarify the schedule so that the income from the organization and other sources are not lumped together.

**Schedule J, Part 1, Column D, Nontaxable Fringe Benefits.** The instructions state "Report the value of all fringe benefits (other than expense reimbursements or allowances for expenses incurred directly by the listed person) provided to the listed person that is not included in Box 5 of Form W-2, or Box 7 of Form 1099, issued to the person."

This broad request is a significant departure from the current requirements on the 2006 Form 990. Per the instructions for the 2006 Form 990, Column (E) should include "both taxable and nontaxable fringe benefits (other than *de minimis* fringe benefits described in section 132 (e)). Include expenses allowances or reimbursements that the recipients must report as income on their separate income tax returns. Examples include amounts for which the recipient did not account to the organization or allowances that were more than the payee spent on serving the organization. Include payments made under indemnification arrangements, the value of the *personal* (emphasis added) use of housing, automobiles or other assets owned or leased by the

organization (or provided for the organization's use without charge), as well as any other taxable and nontaxable fringe benefits."

*Recommendation:* Similar to the language in the 2006 instructions, the reporting should exclude reporting of *de minimis* fringe benefits.

**Schedule J, Part 1, Column E, Nontaxable Expense Reimbursements.** This column requires reporting of "all expenses reimbursements and allowances provided for expenses incurred directly by the listed person that is not included in Box 5 of Form W-2 issued to the person."

Nontaxable expense reimbursements are substantiated business expense reimbursements paid in accordance with an organization's accountable plan; these expenses are not compensation to the individual. Further, it is unclear whether the Service is only looking for direct expense reimbursements, i.e. check to the employee, or whether the Service is interested in all types of business expense payments to employees, including payments on behalf of an employee by corporate credit card, travel advances, payments to vendors on behalf of an employee, such as travel agencies, etc. An attempt to provide a complete and accurate answer to this question would require an organization to gather a great deal of information from multiple source systems and accounts. In addition, an organization would have to further analyze expense reimbursements to ensure that the reimbursements only for the benefit of the listed individual are included. For example, if an employee uses a corporate credit card while on travel with other employees and pays for travel or meal expenses on behalf of the other employees, the organization would be required to segregate the reimbursements for the other employees in order to clearly identify the expense reimbursements for the benefit of the listed employee alone.

*Recommendation:* The requirement to include nontaxable expense reimbursement should be deleted. If the Service is not willing to remove this requirement, nontaxable expense reimbursement should be reported in an area separate from true compensation elements.

***Schedule K, Supplemental Information on Tax-Exempt Bonds -General.** Due to the extensive reporting requirements of Schedule K alone, and the requisite time needed by institutions to prepare to fully comply with them, we request that the regulated community receive the revised Schedule K at the same time it is being sent to the IRS forms unit. This would not be for the purpose of sending in more comments, but to give institutions the maximum amount of time to prepare for their initial filing. Other observations:

1) This schedule appears incomplete in that it does not inquire as to whether the organization is clearly aware of and compliant with arbitrage requirements.

*Recommendation:* Insert questions regarding whether the organization has filed for each bond issue Form 8038-T, Arbitrage Rebate, Reduction and Penalty in Lieu of Arbitrate Rebate, as required, and, if not, whether it met an exception.

2) Schedule K, Parts I and II request much more information about tax-exempt bonds than previously requested by line 64 of the balance sheet under Part IV of the Form 990, and includes an abundance of questions that mirror Form 8038, Information Return and Tax-Exempt Private

Activity Bond Issues, which is filed by the organization when it initially borrows the bond proceeds. The common understanding is that the Form 990 represents the organization's exempt status and typically does not include such detailed questions regarding 'other' exempt statuses, such as accountable plans or tax-exempt bonds. Also, the Internal Revenue Code considers Form 8038 to be confidential, as is the case with most tax filings; however, by providing so much of its information on schedule K which is subject to public inspection, the concern arises whether, in essence, the IRS is subjecting this form to disclosure.

*Recommendation:* (1) include language that explains in detail the pressing need for such information and (2) to avoid any disclosure conflicts, limit the questions to inquiring whether the information on the Form 8038 has changed, and, if so, how.

**Schedule K, Part II, Line 8** on use of proceeds. It would be helpful if the instructions included a definition of the term "working capital expenditures."

***Schedule K, Part III, Lines (2)(a) through 5(b).**
Question 2(a) – "Did the organization enter into a management contract for the financed property? (Y/N)"
Question 2(b) – "If "Yes," did the contract meet the safe harbor under Rev. Proc. 97-13? (Y/N)"
Question 3(a) – "Did the organization enter into a research agreement for the financed property? (Y/N)"
Question 3(b) – "If "Yes," did the contract meet the safe harbor under Rev. Proc. 97-14? (Y/N)"

The design of these questions could, in some circumstances, create a misperception that a given issue is subject to private use when in fact no such private use exists. A management contract or research agreement that does not qualify for the safe harbor under, respectively, Rev. Proc. 97-13 or Rev. Proc. 2007-47 (successor to Rev. Proc. 97-14) does not automatically give rise to private use. Rather, whether private use arises in that case is determined on the basis of "all the facts and circumstances." *See* Treas. Reg. section 1.141-3(b)(4)(i), -3(b)(6)(i). Accordingly, a borrower very well could have a management contract or research agreement that technically does not "meet the safe harbor" but that nonetheless does not constitute private use.

Question 4 – "If "Yes" on lines 2(a) or 3(a), what was the highest percentage of the project that was subject to either a management contract or research agreement?"

We respectfully submit that the question is misdirected in referring to the percentage of the "project." Under current law, private use is calculated on an issue-by-issue, not project-by-project, basis (this could make a significant difference where a single issue finances multiple projects, or conversely where a single issue finances only a portion of a given project).

Question 5(a) **–** "Did any entity, other than a 501(c)(3) organization or state or local government, use the property during the reporting period for use not described in 2a or 3a above? (Y/N)"
Question 5(b) – "If "Yes," indicate the highest percentage of use."

We respectfully submit that question 5(a) is similarly misdirected. It asks about *all* other "uses" of the property, *regardless of whether or not the uses constitute private use*. There are many

other possible "uses" of bond-financed property that do not give rise to private use – including, for example, use by entities that supply vending machines or that rent facilities for certain short-term periods. Also, question 5(b) is misleading in that it fails to address the private payment test under IRC Section 141 and possible exceptions to private use.

Clearly, taken as a whole, questions 2(a) through 5(b) fail to adequately address the restrictions of private use, and can give the impression to interested parties, such as, bondholders and credit rating agencies, among others, that an issue is guilty of excessive private use when, in fact, it is not.

*Recommendation:* Insert one question in lieu of questions 2a through 5b that asks whether each bond complies with the private use restrictions as defined under the IRC and supporting authority for the current year.

**Schedule M – Non-cash Gifts.** Schedule M is required when an organization reports more than $5,000 in non-cash contribution revenue on the Form 990 Part IV, line 1g. Non-cash includes publicly traded and closely held securities, intellectual property, and tangible real and personal property.

Many, if not most university foundations classify transactions by gift type and payment type. Gift types are generally pledges, pledge payments, outright gifts, and gifts-in-kind. Payment types can be cash/checks, securities, and other assets (generally tangible personal and real property and intangible assets). The reporting of Non-Cash Contributions on Schedule M (triggered by an amount reported on a revenue schedule) requires a mixing and matching of gift types and payment types, and a disconnect between revenue recognition and the transfer of assets. This is especially problematic when securities are included in the definition.

Securities are often used as payments on pledges that have been received and recognized as revenue in prior periods. The payment type is noted when the pledge is paid, and is a reduction of a receivable, rather than revenue. With the new form, it would be at this point there is a "non-cash payment" transaction to report on Schedule M, even though no revenue may have been recorded in that period.

Gifts of tangible personal or real property or intangible assets generally occur without a pledge. Revenue is usually recognized when the asset is transferred. In these cases, the contribution could be reported on Schedule M – and agree with the revenue amount on Form 990 Part IV, line 1g.

*Recommendation:* Narrow the scope of donations reported in Schedule M to revenue recorded from gifts of tangible personal or real property, or intangible assets. Eliminate the "securities" categories (lines 10-13) from the schedule.

**Schedule M, Line 27 – Number of 8283 Forms.** Donors are not required to provide an appraisal or complete an 8283 form for gifts to the institution of tangible or intangible property. The appraisal is only required if the donor chooses to take a charitable contribution deduction on

their individual tax return. Gift acknowledgements for gifts of tangible real or personal property or intangible property contain only a description of what was given with no dollar value.

Current software used by institutions do not provide a field for the information requested. Therefore, additional resources will need to be allocated and developed to provide this information.

*Recommendation*: Eliminate the requirement to report the number of 8283 forms for which the organization completed the *Donee Acknowledgement* section. It will not generate meaningful information.

**Schedule M, Method of Valuation – Column C.** There may be many methods of valuation within each line in Part I. Instructions say to list all methods, but it will be impossible to determine the portion of the revenue or asset amount that was derived from the various methods.

*Recommendation:* Revise the question to ask for the primary method used for the majority of items in that category.

**Schedule N, Liquidation, Termination, Dissolution or Significant Disposition of Assets.**
Certain support organizations may experience significant expansions and contractions in the normal course of operations. For instance, supporting organizations investing for the benefit of the primary exempt organization may routinely experience capital inflows and outflows. These are consistent with investment objectives and the requirements of the supported organization. Where these contractions are temporary and ordinary in nature, disclosure may be warranted, however the proper context of these outflows should be communicated to the reader.

*Recommendation:* If the contraction is temporary or ordinary in nature, the return should focus on the destination of cash flows from the events. Perhaps the form could include a threshold question that asks if the event is temporary and, if yes, an area to provide additional details about the event, skipping question 9a-e and expanding on the appropriate corporate governance policies – as in Part I question 3.

***Schedule R – Related Organizations.** Form 990, Schedule R requires disclosure of information with respect to related organizations. The information required to be reported on new Schedule R includes information currently required to be reported on the Form 990. In addition, Schedule R requires additional disclosure with respect to directly and indirectly owned/controlled organizations.

While we appreciate that the IRS requires specific information about related organizations, we are concerned that the public disclosure of such information (e.g., identification of specific investments of an organization) will hinder an organization's ability to invest effectively and will adversely impact an organization's relationships with its investment managers. Further, specific investments and investment strategies/styles of an organization are proprietary and should not be subject to public disclosure. The IRS provides certain exceptions to the public disclosure requirement if such disclosure would adversely affect the filing organization:

*Upon request of the organization submitting any supporting papers described in subparagraph (A) or (B), the Secretary shall withhold from public inspection any information contained therein which he determines relates to any trade secret, patent, process, style of work or apparatus, of the organization, if he determines that public disclosure of such information would adversely affect the organization. [IRC Section 6104(a)(1)(D)]*

*Recommendation:* The IRS needs to balance its efforts to enhance transparency of reporting organizations with consideration of the need to preserve proprietary information of that organization. The IRS should consider whether summary information can be reported in lieu of specific identifying information when information disclosed for public inspection could adversely affect the filing organization. Protecting the confidentiality of individual investments and manager relationships would not preclude an organization from providing general information to the public regarding investment strategies, asset classes, and portfolio allocations.

We recommend that, similar to information reported on Schedule B, the IRS exempt Schedule R from the public disclosure requirements.

**Schedule R, Parts I through IV.** Each section requires the filer to report where each entity is "organized." Does this term refer to the state of incorporation, or the foreign country in which it is located?

*Recommendation:* The instructions need to be clarified as to the meaning of the term "organized" for U.S. and foreign entities.

**Schedule R, Part V, Lines 1(a) through Line 1(p).** The instructions request the filer to list certain transactions with related parties that encompass gifts, loans, leasing and/or sharing of facilities, equipment and other transfers of cash and property. The form also provides a schedule for details of the tractions. The instructions for column (d) of the schedule requires a description of the transaction and further gives an example of sharing of one organization's secretary and prorated reimbursement. To describe this level of detail would unduly burden a large organization.

*Recommendation:* We suggest that there be thresholds for the transactions to be disclosed in Part V. We recommend a dollar threshold in order for large organizations to focus efforts on material transactions.

## Other General Comments

**Group Return.** Elimination of the consolidated Form 990 for subordinates under a group exemption will create an administrative burden by requiring each subordinate to file a separate Form 990.

**Accounting Method Changes.** Currently, the IRS requires an organization to separately file a Form 3115, *Application for Change in Accounting Method*, to change its accounting method for tax purposes. For changes that do not qualify for the automatic accounting method change

procedure, the application must be filed within the year of the change, rather than by the due date of the tax return. This often results in a delay in the organization adopting a method for its Form 990 which it is required to implement for its audited financial statements, thereby requiring two separate financial presentations. In addition, the organization must incur a user fee to implement an accounting method change, thereby adding to its administrative expense.

*Recommendation:* The IRS should permit an organization to change its accounting method without approval from the IRS if: 1) it changes its accounting method to conform to GAAP financial statements and 2) the change has no UBTI impact. The IRS should require an organization to report the change on its Form 990 and to provide an explanation of the change. The requirement to file a Form 3115 should be eliminated for such accounting method changes. Alternatively, such changes should be added to the IRS' list of accounting method changes subject to the automatic approval procedures.

For example, the IRS eliminated the requirement to obtain approval from the IRS with respect to the adoption of SFAS 116. In IRS Notice 96-30 1996-1 C.B. 378, the IRS provides relief from filing Form 3115 to IRC Section 501(c) organizations that change their method of accounting to comply with the provisions of SFAS 116, *Accounting for Contributions Received and Contributions Made.*

**Conclusion.** Except insofar as it relates to determination of tax liabilities and verification of entitlement to tax-exempt status, the IRS should focus on strengthening the current system of financial reporting by nonprofit institutions. Instead, the Service seems to have proceeded well down the road toward creating a second set of accounting and reporting requirements that is at best duplicative and in many cases inconsistent with information that these institutions are otherwise required to disclose in their audited financial statements. In addition to imposing an immense new administrative burden upon these institutions that diverts additional resources from educational purposes, the disclosures requested by the IRS's proposed form are sure to engender both confusion on the part of those who seek to understand and evaluate the operation of these institutions and mischief on the part of those who seek to characterize their actions unfairly. On top of this, the proposed disclosures of investment strategies and relationships with investment managers may harm or diminish the value of those relationships which may impose an additional financial cost on these institutions.

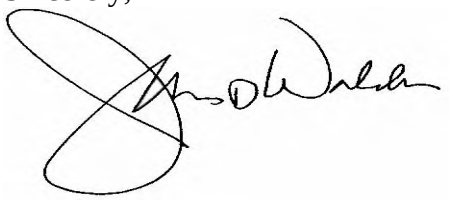
In order to ensure that its efforts add value and increase understanding, rather than merely increasing administrative costs and creating confusion, we urge the IRS to step back from the current time schedule until it develops a comprehensive framework for disclosure by nonprofit organizations that takes into account the existing system of GAAP-driven financial reporting, the potential value of additional disclosures, and the cost to these institutions of making such additional disclosures.

The IRS should continue to engage NACUBO and other exempt stakeholders to gain an understanding of how financial information is generated and collected in colleges and universities, nonprofit hospitals, and other charitable organizations filing Form 990. We welcome the opportunity to continue to work with the Service to help identify solutions.

We reiterate our strong support for postponement of the effective date of any form that is finalized prior to end of this calendar year, until tax year 2009 (returns filed for tax years beginning in 2009).

If you have any questions, please contact me at 202.861.2509 or Mary Bachinger, director, tax policy, at 202.861.2581 or e-mail mary.bachinger@nacubo.org.

Sincerely,



John D. Walda
President and Chief Executive Officer

Cc: Steven T. Miller, Commissioner, Tax Exempt and Governmental Entities
Lois G. Lerner, Director, Exempt Organizations
Clifford J. Gannett, Director, Tax Exempt Bonds

The associations listed below join NACUBO in these comments:

American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
American Indian Higher Education Consortium
APPA: The Association of Higher Education Facilities Officers
Association of American Universities
Association of Catholic Colleges and Universities
Association of Community College Trustees
Association of Jesuit Colleges and Universities
Council for Advancement and Support of Education
Council of Independent Colleges
College and University Professional Association for Human Resources
EDUCAUSE
National Association of Independent Colleges and Universities
National Association of State Universities and Land-Grant Colleges
National Association of Student Financial Aid Administrators
National Collegiate Athletic Association

| | |
|---|---|
| **From:** | Strucko, Eric J *HS |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | Beasley, Sharon L *HS; Kim, Aileen Y *HS; |
| **Subject:** | FW: IRS 990 Draft Comments |
| **Date:** | Friday, September 14, 2007 4:15:57 PM |
| **Attachments:** | Revised Draft 990 Comments to IRS 091407 - accepted changes.doc |

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Please find attached our comments regarding the proposed revisions to IRS From 990.

Eric J. Strucko
Chief Financial Officer
UVA Health Services Foundation

<<Revised Draft 990 Comments to IRS 091407 - accepted changes.doc>>

September 14, 2007

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

Dear Sir or Madam:

This letter is in response to your request for comments on the June 14, 2007 version of the Revised Draft Form 990. Below are comments compiled by our staff based upon their review of the Revised Draft Form 990 and its accompanying instructions.

**General**

- The Service should clarify whether Academic Practice Plans are required to document and report information related to Community Benefit. If so, the Service should clarify the meaning of "Medical Care Facilities" within the context of Academic Practice Plans. For example, please clarify whether a physician's office within an Academic Practice Plan is considered a "Medical Care Facility."

- The Service should clarify the look-back period for reporting information related to Former Officers/Directors. Guidance from the 2006 Form 990 Q&As, dated April 26, 2007, indicates there is no limit to the look-back period. The instructions for the Revised Draft Form 990 appear to indicate that 990 filers would check "former" in a box next to an individual's name only if the person was a former officer/director/key employee within the past 5 years. The instructions are not clear whether that means the look-back period should also be only 5 years.

- Our organization received negative feedback from a current employee, who formerly served as a board member, because his service as a board member had ended approximately 10 years prior to the reporting period. The Service should limit the look-back period for reporting information related to former officers and directors to 5 years. The Service also should remove the compensation disclosure requirement for Former Officers/Directors who are current employees and do not receive compensation as board members.

- The Service should provide instructions for Part VII, Questions 7a, 7b, 9 and 13.

**Schedule A: Public Charity Status**

- In the chart at the bottom of Schedule A, Part I, column (iv), the question reads, "Is the organization in (a) listed in your governing document?" It appears this reference should be (i), rather than (a).

**Schedule H: Hospitals**

- The Service should clarify whether Academic Practice Plans are required to file Schedule H.
- The Service should clearly define the meaning of "Medical Care Facilities" within the context of Academic Practice Plans. For example, please clarify whether a physician's office within an Academic Practice Plan is considered a "Medical Care Facility."
- The Service should clarify whether Academic Practice Plans should include the financial and statistical information on Schedule H for the entire practice plan or only for the "Medical Care Facilities" it operates, if any.
- The Service should delay implementation of Schedule H given the uncertainty regarding which 990 filers will be required to file this form.
- The Service should allow an additional opportunity to comment on the Revised Draft Form 990 once issues surrounding Schedule H have been clarified.

**Schedule I: Grants**

- The Service should clarify whether 990 filers are required to report charitable contributions they make and whether Schedule I is this the appropriate form on which to report contributions made.

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|---|---|
| **From:** | Mike Lavelline |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | IREX-Senior Management; |
| **Subject:** | Comments on Proposed Changes to Form 990, Return of Organization Exempt from Income Tax |
| **Date:** | Friday, September 14, 2007 4:22:19 PM |
| **Attachments:** | |

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TO: Lois G. Lerner, Director of the Exempt Organizations Division of the IRS
Ronald J. Schultz, Senior Technical Advisor to the Commissioner of TE/GE
Catherine E. Livingston, Deputy Associate Chief Counsel (Exempt Organizations)

As the CFO for the International Research and Exchanges Board, a 501 (c) (3) organization, I would like provide comments on the proposed changes to the form 990. The IRS is to be congratulated on its efforts to improve and standardize the 990 reporting requirements for the different sectors of non-profit organizations.

The following are specific comments regarding the draft forms:

Part II - Compensation:

- Section A - The requirement to include the city and state of residence for board members is overly intrusive. Board members of non-profit organizations usually volunteer their time and effort for performing a vital public service. Requiring a member's city and state of residence will hamper an organization's ability to attract qualified individuals to serve as board members. Also in an environment of increasing identity theft requiring the same information for officers and key employees provides additional exposure and risk to this group. A balance needs to be made between providing the public and the IRS with transparent information versus maintaining a certain degree of privacy for these individuals. I suggest that a reasonable alternative is to continue the practice of many organizations of listing the organization's name and address for these individuals on the required 990 schedules.

- Section B - FYI, my position as CFO is a direct hire made by the CEO, not the governing board. I suspect this is not unusual. My compensation is reviewed and considered with other senior managers by the CEO. The board of directors reviews the CEO's compensation only. Perhaps the question posed in #3 does not really fit the reality for CFO positions in most non-profit organizations.

Part III - Governance:

  - Question #9-The functions and responsibilities of an audit committee for my organization are vested in the Finance Committee. This committee reviews the audited financial statements, meets with the auditors and then provides a full report to the board of directors. I suspect many other non-profits may have similar arrangements. Since board members are volunteers, many non-profit organizations try to avoid establishing a multiplicity of committees due to difficulties of attracting the necessary skills and individuals to serve on many committees. Providing a negative answer to the question regarding an audit committee would cast these organizations in an unfavorable light. The question should be rephrased to ask if organizations have their audit reviewed by a Board Committee.
  - Question # 10- I've never heard of any corporate or non-profit organization that has a governing body review the entity's tax return before it is filed. It is unclear what propose would be served by this process. I suspect that it will be highly impractical from a timing standpoint to implement this procedure. Therefore, a negative answer to this question will imply an unreasonable and unjustified perception that the organization is not operating properly. The IRS should consider elimination this pejorative question.

Schedule F Activities Outside the U.S.

The level of detail requested will be extremely burdensome to collect, costly to administer, may be of minimal value to the IRS or the public, and, of greatest concern could present a very real threat to the safety of those working in areas that are hazardous for workers or hostile to American organizations. In addition, it is unlikely that many organizations currently have the capability to provide

breakdown of requested information on an individual country basis. Many international development organizations frequently operate programs on a regional geographic basis which is not addressed by an individual country reporting requirement also. At a minimum, the IRS should review this matter carefully and provide a transition period to allow organizations to develop the systems necessary to provide any required information.

Part II- Box (b) of this schedule requests an IRS code and EIN. However, the schedule is for organizations or entities outside the United States. It is highly unlikely that these organization will have either an IRS code or EIN.

Schedule I Supplemental Information on Grants in the U.S.

While not as problematic as the requirements contained in Schedule F, many organizations may not have the capacity to provide the level of detailed information required in Part II.

In closing I would recommend that IRS delay any implementation of Schedules F and I and engage in dialogue with various segments of the non-profit community to exchange information and gain additional knowledge of what challenges exist for organizations to comply with the significant and very detailed information required by this these schedules.

Thank you for considering these comments.

Sincerely,
Michael J. Lavelline
Chief Financial Officer
IREX
2121 K St., NW Suite 700
Washington, DC 20037

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| | |
|---|---|
| **From:** | Sherri Peters |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | Sander Schultz; |
| **Subject:** | Form 990 Return of Organization Exempt from Income Tax |
| **Date:** | Friday, September 14, 2007 4:24:22 PM |
| **Attachments:** | IRS 990 Comments - 9-14-07.pdf |

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To Whom It May Concern:
Please find attached a letter with comments on the re-design of Form 990.
Sincerely,
Sherri Peters on behalf of Sander Schultz, CFO
National Democratic Institute
2030 M Street, NW, Fifth Floor
Washington, DC 20036-3306

NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS

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

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

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

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

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

BY ELECTRONIC MAIL TO: Form990Revision@irs.gov

RE: Form 990, Return of Organization Exempt from Income Tax

The National Democratic Institute for International Affairs (NDI) respectfully submits these comments in response to the Internal Revenue Service's (IRS) request for public comment on the draft of a re-designed Form 990. We support the IRS in its intent to facilitate transparent, accurate, complete, and consistent reporting by exempt organizations, but wish to express strong reservations about a number of proposed revisions, especially with regard to the new schedule F. We believe schedule F will be especially time consuming and burdensome to complete for organizations like ourselves who are providing services in foreign countries, could risk the security of individuals and organizations with whom we are working, and do not advance the good intentions of Form 990 redesign.

Without regard to the considerations we will detail, we suggest that organizations engaged in overseas activity will need sufficient time to understand and implement any changes that will be required of them. We do not believe it is realistic to require organizations to use the new Form 990 for Fiscal Year 2008. We strongly suggest that the IRS delay implementation until Fiscal Year 2009. With regard to Schedule F pertaining to activities outside the United States, we strongly suggest that the IRS delay its implementation until it convenes a representative group of organizations providing

international assistance to provide specific advice on Form redesign in such a way as to provide the public with information that is clear and accurate but at the same time does not unduly burden these organizations and, at worse, endanger their personnel.

## Core Form

Part I: Summary Page

- Line 8b and line 19b: NDI does not believe that the inclusion of percentages, such as computation of officers, directors, and other key employee compensation, as a percentage of total program service expense (line 8b) or fundraising expense as a percentage of contributions and grants (line 19b) is an appropriate indicator of an organization's effectiveness or efficiency, yet it likely will be interpreted that way by the public. We fear that inclusion of such percentages will undoubtedly give the reader the impression that the IRS believes these percentages are gauges of effectiveness.

Part II: Compensation

- City and State of Residence: Requiring organizations to list the city and state for board members and key employees could open those whose organizations work in controversial program areas to unwarranted harassment. NDI suggests that the IRS encourage organizations to provide city and state of residence, but permit organizations to use their own address if they are concerned about threats.

Part II, Section B

- Line 3: Question 3 asks whether the compensation process for an organization's CEO, Executive Director, Treasurer, and CFO includes "a review and approval by independent members of the governing body, comparability data, and contemporaneous substantiation of the deliberation and decision." While this rightly applies to the CEO/Executive Director of an organization, it does not necessarily apply to the CFO who is most often hired by the CEO/Executive Director, not the Board.

- Threshold of Highest Compensation: NDI supports the proposal to raise the threshold for reporting the compensation of the five highest compensated employees from $50,000 to $100,000. While some have noted that this represents a substantial increase, it should be noted that it has been some time since the original form begin to collect this amount and the impact of inflation over the years keeps this amount nearer the original intent of the provision. The IRS might want to consider indexing this amount to the Cost of Living Index or other annually updated tables so that future revisions of the form are not required solely for this purpose. An alternate approach might be to ask for the five compensated individuals regardless of amount.

Part III. Governance

- We support this new section which asks organizations to indicate whether they are complying with statutory requirements and with best governance practices that exempt organizations are encouraged to follow. We recommend, however, that the questions in this section be reorganized to distinguish between those two types of information (statutory vs. best practices) to reduce confusion for both filing organizations and readers of the form. We also recommend that for the statutory questions, that a reference to the regulation be included.

- The question regarding the number of transactions the organization reviewed under its conflict of interest policy (line 3b) is not an appropriate indicator of whether and how well and organization enforces that policy. Instead, we suggest that IRS ask if a copy of the organization's conflict of interest policy was distributed to all board and key staff members and whether those board and staff members were asked to report any conflicts of interest.

- The question regarding who prepared the organization's financial statements (line 8) is not helpful. Although the intent of the question is not clear, we are assuming that the IRS is concerned that an independent accountant both prepared and opined on the company's financial statements. Since it is possible that an independent accountant or firm prepared the financial statements, and a *different* independent accountant or accounting firm audited such statements, we recommend that the question ask "If an independent accountant or accounting firm assisted with preparation of your financial statements, did the same independent accountant or accounting firm also audit your financial statements?"

- We further recommend that question re Governing Body review of Form 990 (line 10) be revised to ask whether full board or board committee reviews form 990.

Part V Statement of Functional Expenses

- Grants, etc. (lines 1 and 3):
    - The following issues have been identified:
        - The instructions for these line items are not clear or consistent. Grants, etc. to U.S. organizations should be reported on line one, and no qualifications are mentioned in the instruction for line 1. However, the instructions for line 3, grants, etc. for organizations outside the U.S., appear to also include certain grants to U.S. organizations if the U.S. organization meets one of three qualifying criteria.

        - The criteria for reporting a U.S. based organization in line 3 instead of line 1 seems unduly burdensome for the reporting organization to determine. For instance, the stipulation "a grant to a domestic organization if more than one half of its activities are

conducted in foreign countries or for the benefit of persons in foreign countries." This would require the reporting organization to delve into the financial statements of each of its grantees, and even then it would not necessarily be able to determine if more than one half of the grantee's activities were conducted in foreign countries or for the benefit of persons in foreign countries.

- The headings for lines one and three in Part V are mis-leading compared to the definitions provided in the instructions. (Line 3, Grants to organizations outside the U.S., should not include grants to organizations inside the U.S.).

- NDI recommends the following:
  - Line one (and therefore schedule I) should be completely for grants to governments and organizations in the U.S., and line three (and therefore schedule F) should be completely for grants and other assistance to organizations outside the U.S., with no special criteria that could make a U.S. organization be listed in the "outside the U.S." section. Schedule I includes a column for the "purpose of the grant", and at this place an organization could provide the information that the funds were provided for activities in a foreign country, if necessary. However, since the recipient U.S. organization would also be required to submit a 990, the IRS would be obtaining information about its activities on that organization's return.

- Information Technology (line 14): Although not clear, it appears that the salaries and fringe benefits of those who provide IT support, such as at a help desk, would need to be listed in this line item. We believe it is more appropriate for salaries and fringe benefits to be reported on lines 5 through 9.

Part IX Statement of Program Accomplishments

The question (line 2) regarding **the organization's most significant program accomplishment** is vague and requires subjective judgments.

Schedule F Activities Outside the U.S.

NDI is very concerned that the level of detail requested in the form will be burdensome to collect, costly to administer, of minimal value to the IRS or the public, and, of greatest concern, could present a very real threat to the safety of those working in areas that are hazardous for workers or hostile to American organizations. We strongly recommend that the IRS delay implementation of Schedule F until changes are made, after organizations conducting activities abroad are consulted more fully. We would also like to note that some of the general information requested in Part I can be found on web-

sites, annual reports, and other documents, and therefore re-listing country by country activities seems redundant.

- Part I, Line 1, Activities by Country, Column (b), Number of accounts or offices in the country: If the IRS determines that this information is pertinent for itself and the public, we would recommend requesting the information about accounts and offices in two separate columns since the number of offices will not always be the same as the number of accounts.

- Part I, Line 1, Activities by Country, Column (c), Number of employees or agents in country: We would like to understand what value this provides the IRS or the public. This information should remain confidential as to not put undue risk on the lives of our employees.

- Part I, Line 1, Activities by Country, Column (f), Total expenditure in country: The definition used to describe what amount needs to be included in this section is unclear: It says that salaries and fringe benefits for employees located in the country should be included, but that expenses paid in the United States, even if they are allocable to the listed activity, should not be included. This seems to be contradictory because in the case of NDI, some of our foreign-based employees are paid from our Washington headquarters, and sometimes to U.S. bank accounts. Should such employees be included or not? While reporting in-country expenditures may seem straight forward, we do not believe in-country incurred costs can be easily defined even with clarification to the existing instructions. For instance, would wire payments from the U.S. headquarters to vendors, contractors and employees residing in the other country need to be included or not? Corporate credit cards are often used to incur costs, but within one credit card bill there may be expenses incurred within the particular foreign country and other costs incurred outside the particular country. Most organizations would need to *significantly* re-vamp their accounting systems and processes in order to track project costs in this way. This type of information seems unreasonable and therefore we recommend that this column be deleted.

- Line 2, For Grantmakers: Open-ended questions regarding procedures for selecting and monitoring recipients seem inappropriate for a public document. Schedule I, regarding domestic grant-making, asks simply whether the organization maintains records to substantiate the amount of grants or assistance, the grantee's eligibility, and etc. NDI recommends that similar language be substituted in Schedule F after further consultation with organizations providing services in foreign countries. Additionally, a major component of the federally mandated OMB Circular A-133 audits includes reviewing compliance of an organization's sub-recipient monitoring. It does not seem useful for a second regulatory body to retrieve information on sub-recipient monitoring.

- Line 3, Political Activity: No definition or instructions regarding the reporting of political and lobbying activities is provided. Given the variation in political

systems and legal frameworks outside the United States, it is not appropriate to apply rules that govern domestic political and lobbying activities. Readers of the Schedule could wrongly interpret that an organization engaged in such activities outside the U.S. is at best improper and at worst, illegal. Ironically, many organizations engaged in democracy promotion, which this Administration strongly supports, might be the most directly affected.

- Part II, Grants and Other Assistance to Organizations or Entities Outside the United States, Line 1: As recommended under comments on Part V of the core form, we request that the U.S. grantees be reported on Schedule I, no matter if they spent their grant to benefit another country or not. The current combination is confusing and will lead to unintentional mis-information.

- Part II, Line 1, column (a), Name of Organization: We acknowledge that listing the name of the organization is required under the current 990; however, during this time of major revision we recommend that the column for the name of the organization be deleted. In countries where there are organizations and individuals hostile to the purposes of democracy promotion, it puts NDI's grantees at extreme risk. We recommend that a similar format be used that is used for Part III, Grants to Individuals. In Part III, the information is grouped by type of assistance, and the individual's name is not divulged.

- Part II, Line 1, column (f), Manner of Cash Disbursement: The usefulness of this information is unclear, and it may be cumbersome to get the information since within the same year different methods of payment may be used depending on specific circumstances of the particular country.

Schedule J Supplemental Compensation Information

- The Schedule asks for a detailed breakdown of reportable compensation, deferred compensation, non-taxable benefits, and "nontaxable expense reimbursements." NDI strongly opposes the inclusion of "nontaxable expense reimbursements" in this category. The nature of international work requires extensive travel on the part of employees. This is in no way compensation. In order to accomplish the mission of the organization, many may be on travel status for a quarter to half of their time. Including this reimbursed travel as compensation gives the public the distorted impression that travel, even to remote destinations in the developing world, is somehow a form of compensation rather than a method of service. This has implications for how international development organizations are seen by the public and could have implications for fundraising. Expense reimbursements are not compensation and therefore should not be included in a Compensation schedule.

- The Schedule would require information on over 25 items of so-called "non-taxable fringe benefits." Fairly estimating equivalent amounts by individual for such things as subsidized parking or even health care coverage would be

difficult and cause an extensive revision in bookkeeping. If a picnic is held for employees, would the cost of the picnic need to be apportioned among all those attending? This request seems to seek collection of more information than the government or the public need to determine the quality of an organization and therefore we request that it be removed.

NDI is deeply concerned about the additional administrative burden inherent in the expanded Form 990—especially as it relates to organizations doing international work. We strongly suggest that the IRS delay the implementation of Schedule F until it convenes a representative group of organizations providing assistance overseas to provide specific advice on Form redesign in such a way as to provide the public with information that is clear and accurate but at the same time does not unduly burden these organizations and, at worse, endanger their personnel and grantees.

Sincerely,

Sander Schultz
Chief Financial Officer

| | |
|---|---|
| **From:** | jtarai |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | |
| **Subject:** | Fundraising Expenses |
| **Date:** | Friday, September 14, 2007 4:29:30 PM |
| **Attachments:** | |

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JERRY A. TERRILL
341 Claremont Avenue
Mount Vernon, NY 10552-2352

914-667-0136

Internal Revenue Service

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

Ladies and Gentlemen:

Please add the following sentence to the following proposed amendment of Form 990 Instructions for Part V Statement of Functional Expenses:

“Column (B) – Program Service Expenses”

“*Program services* are mainly those activities that further the organization’s exempt purposes. Fundraising expenses should not be reported as program-service expenses even though one of the organization’s purposes is to solicit contributions.”

“Column (D) – Fundraising Expenses”

> "Fundraising expenses which exceed fifty percent (50%) of total expenditures or exceed fifty percent (50%) of total revenues of an organization for three successive fiscal years should result in the termination of the Section 501(c)(3) tax exemption of that organization and the termination of Section 170(c)(2) tax deductible contributions to that organization."

The reason is the excessive private benefit attributable to the excessive fundraising expenses. Cf. *United Cancer Council, Inc. v. Commissioner*, 165 F.3d 1173 (7th Cir. 1999).

Sincerely yours,

Jerry A. Terrill

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| | |
|---|---|
| **From:** | Rich Steinberg |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | Miller Steven T; Putnam Barber; Marion Fremont-Smith; |
| **Subject:** | Comments on proposed revisions to form 990 |
| **Date:** | Friday, September 14, 2007 4:37:17 PM |
| **Attachments:** | |

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I am a Professor of Economics, Philanthropic Studies, and Public Affairs at IUPUI (Indiana University Purdue University Indianapolis), and have conducted extensive research on fundraising costs, published in peer-reviewed journals and books. I wish to object in the strongest terms to the proposal to publish fundraising cost ratios on the revised form 990. First, let me establish my bona fides. I have no vested interest interest in the question -- I do not serve as a fundraiser or consultant to any fundraising entity, nor have I in the past. I have served as an expert witness on nonprofit economics, certified as such by the U.S. Federal Tax Court, and did this for pay but my position was based on scholarly publications appearing years before. I teach in the nation's first traditional Ph.D. program in Philanthropic Studies here at IUPUI, and have served as Co-President of the Association for Research on Nonprofit Organizations and Voluntary Action, the nation's professional organization for primarily academic researchers.

The common sense approach, that something must be wrong if a charity has, say, a 99% fundraising cost ratio is just plain wrong. There are a variety of accounting and related problems that are perhaps remediable, but the core problem is irremediable. As the U.S. Supreme Court properly reasoned in the case of Maryland vs. Joseph H. Munson Co (467 US 947, at 966-67) “[a percentage-based test would likely] restrict First Amendment activity that results in high costs but is itself a part of the charity's goal or that is simply attributable to the fact that the charity's cause proves unpopular." In economic terms, the cost ratio confuses the marginal and average impact of fundraising costs, and as becomes clear in any introductory economics class, it is the marginal impact that matters. Starting with the decision of charities on budgeting for fundraising, I show in my 1986 paper that the right amount to spend does not depend on the popularity of the cause -- and in

particular, making reasonable assumptions about nonprofit objectives, the charity would not increase its expenditure on fundraising in response to incoming donations. Therefore, anytime a donation is added to the pool of receipts, 100% of it is devoted to incrementing charitable services. Relaxing those assumptions, I show that the connection between fundraising cost share and the "price" of giving (how much one has to give to increase spending on charitable services by a dollar) is complex, and that sometimes a higher share signals a lower price. The common sense approach is only correct when the terms of the contract between a charity and its external or internal fundraising staff specify that compensation is based on a share of donations received (Steinberg 1990). Such contingent contracts are not unknown in the nonprofit world, but are rare as they violate the codes of ethics of most professional fundraising associations. One can always calculate a fundraising share after the fact, but this ratio is misleading in the vast majority of cases when contingent compensation is not paid.funds raised.

The accounting controversies are legion, particularly as the IRS is able to devote such scant attention to the accuracy of 990 reports under current funding priorities. A new charity, or an established charity seeking to expand its donor base, is making an investment in prospecting (identifying those that should not be contacted again and those who are likely to remain loyal donors) that will pay returns for many years to come. It is proper to have a fundraising cost ratio greater than 100% for prospecting -- it only sounds like a bad idea because the costs of this investment are not spread out over the useful lifetime of returns. Nonprofits whose mission encompasses public education, political speech, social marketing, religious conversion, or policy advocacy will naturally want to combine their message with every request for funds, so that for these organizations fundraising and mission-related costs are inherently joint, subject to varying interpretations and practices. An organization seeking to free the slaves in Alabama in 1850 would be an excellent investment for supporters of that position even if fundraising costs by conservative accounting rules exceed 100%. Another problem occurs due to confusion around gross and net returns. It is common for organizations to report only the net returns from special events, distorting the cost ratio towards zero. The CEO's time spent in the cultivation of major donations is rarely reported as a fundraising cost, again, biasing the cost ratio towards zero. United Way does not report costs that member agencies accrue from participating in the campaign as fundraising costs, nor does it count the sometimes exorbitant processing

fees charged to nonmember organizations under donor option plans. So it is clear that there are a number of ways in which organizations that are diligent, honest, and conservative in their accounting will be unfairly victimized if portrayed as a relatively high cost charity, whereas those who neglect to include all the costs and use aggressive accounting will be improperly rewarded.

Finally, required reporting of fundraising cost ratios will produce harmful, if unintended consequences. In my 1997 paper, I wrote the following:

"“Whether high-cost charities are outlawed, denied tax-exempt status, or are publicly derided through press releases, the common effect is to pressure charities to cut their costs. This creates a number of distortions. ...[First] it becomes more difficult to maintain the integrity of the campaign. Unfortunately, misleading, high pressure, and intrusive tactics can yield a high rate of return. Under the threat of prosecution ..., organizations in difficult fundraising environments may compromise their integrity and utilize otherwise unacceptable techniques. [Second] attention to this false indicator of efficiency may lower the real efficiency of fundraising. Volunteers appear to be costless in an accounting sense, so that one can lower the apparent cost of fundraising by allocating all available volunteers to the campaign. However, volunteers are a scarce resource, and there is a substantial opportunity cost when using them for any particular purpose -- one loses the opportunity to employ them elsewhere. If volunteers are used for fundraising when they are more efficient as service deliverers, and paid staff are used for service delivery when they are more efficient as fundraisers, the real efficiency of both the campaign and service delivery will suffer. The opportunity cost would be even greater if some of the available volunteers disliked fundraising, and quit in response to the reallocation.
[Third,] the efficiency of prospecting campaigns would also be hurt. Prospecting is a very high cost activity if one ignores its investment aspect - a new donor, once located, can be induced to continue giving for many years by fairly low annual expenditures on donor retention. Even long-established organizations may require a major new prospecting effort due to changing circumstances, and it would be best to get this prospecting over with as soon as possible in order to secure maximal returns next year. However, in an effort to keep the overall cost ratio low, these nonprofits might spread their campaign out over many years, inefficiently delaying their fund acquisition.”

In sum, the requirement that charities report fundraising cost ratios on their 990s is bad public policy. The ratio does not contain any useful information that would help donors or other stakeholders to make better decisions. I say this despite the common-sense (but erroneous) claim that donors should avoid high-cost charities and despite the fact that some donors say they want information in this form. More real information is better than less, but this is not real information. It is information which has the capacity and tendency to mislead persons of ordinary intelligence. There is no public interest in doing so, and the harmful side-effects of this requirement would outweigh the modest gains if I am mistaken on the irrelevance point.

I would be happy to converse or meet with you if you wish clarification or want to argue the points.

References:

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Working Paper. Indianapolis: IUPUI Dept. of Economics.

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"Unanswered email since 1955"

| | |
|---|---|
| **From:** | Thomas Richards |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | |
| **Subject:** | Form 990 Comments - IHRSA |
| **Date:** | Friday, September 14, 2007 4:44:31 PM |
| **Attachments:** | FORM 990 - IHRSA Comments - 9_14_07.doc |

IHRSA
International
Health, Racquet &
Sportsclub Association

263 Summer Street • Boston, MA 02210 • Tel. 617.951.005 • Fax 617.951.0056 • www.ihrsa.org

Comments to the Internal Revenue Service on
the Proposed 990 Form

September 14, 2007

**Introduction**

The International Health, Racquet and Sportsclub Association (IHRSA) has for more than 25 years represented the owners and operators of sports clubs and fitness facilities. IHRSA's 6,000 members, with their more than 100,000 employees, operate proprietary fitness centers that offer important services to the American public. As knowledge has increased concerning the negative health impact of a lack of physical activity, today's adults have significantly increased the demand for fitness services. IHRSA's member facilities are proud of their service to the community and their role as taxpaying businesses in their local communities.

It is well known that, for a variety of reasons, fitness services are also frequently offered through tax-exempt organizations. It is the experience of many IHRSA business owners that some of these tax-exempt organizations are becoming increasingly aggressive in expanding their own facilities and seeking the full paying adult fitness client who has been the typical customer for IHRSA member businesses.

IHRSA members vigorously compete to provide the best services to their clients. Increasingly, however, they find that major competitors are exempt organizations, whose exempt status confers significant cost and capital raising advantages. Many such organizations, when questioned concerning the extent of their adult fitness activities and commercial focus, simply respond that such operations are consistent with their exempt purpose. At present time, it is impossible for any outside party, whether a taxpayer, the IRS, a private competitor, or the local community, to evaluate the merit of such a claim. We therefore believe that the IRS must create a system for determining what a tax-exempt organization is doing to fulfill its exempt purpose and whether the organization’s emphasis on adult fitness activities is more charitable than commercial.

IHRSA strongly supports the IRS proposals to rationalize the current Form 990 and require annual reporting of important information. IHRSA endorses the IRS approach of simplifying the "core" Form 990 and utilizing separate schedules appropriate to particular types of organizations. IHRSA proposes that the IRS adopt an additional schedule that would allow more specific information to be presented about the impact of adult fitness services provided by an exempt organization.

**Specific Comments on the Core Form**

**Activity Codes:**

We note that both the National Taxonomy of Exempt Entities and the IRS Activity Code system are, at best, broad descriptors and may not accurately represent significant activities for many organizations within a category. For example, the IRS code suggests that YMCAs are in code 324, under the general heading of youth activities. However, there are some YMCAs in which, in terms of volume and utilization, adult activities are perhaps far more extensive. The problem is not with the codes, but with the fact that many organizations are moving beyond their original exempt purpose. To the extent that codes or other simple indicators do not recognize this movement, the system is less accurate, and additional information may be valuable.

**Activities and Financial Information:**

IHRSA supports the proposed inclusion of summary information in this section regarding unrelated business income. Although further details are required in later parts of the form, this question gives a useful early flag to interested parties to look for further information.

The proposed form requires calculation of several percentages regarding revenues and expenditures. Such calculations are key to the interests of many donors and students of exempt organizations. Certain organizations may have apparent and reasonable explanations for high percentages in certain categories, but in a system in which thousands of organizations are competing for public and private support, more standard information will improve discussion and evaluation of an organization's effectiveness.

**Governance:**

The IRS proposes a number of useful changes requiring the reporting of specific information relating to governance and board activities. IHRSA particularly supports those proposals that tend to formalize the assembly and review of financial statements and the annual Form 990. Notwithstanding that IRS rules are reasonably clear and long standing on many issues regarding unrelated business income (UBI), it has been the experience of many of our members that local competing exempt organizations all to easily and summarily dismiss the question of whether they generate UBI. It is important that the Board and senior officials have a clear understanding of this and other key financial issues and carefully consider all the relevant issues before they approve the financial statements or 990s.

**Proposed Schedule H – Hospitals:**

IHRSA strongly supports the proposal that would require tax-exempt hospitals to document the extent of their impact on the community. Some exempt hospitals have initiated health and fitness facilities that, while open to doctors and patients, really are aimed at broad traffic from outside the hospital. There is no requirement that this external component of revenue be quantified or justified. Although the proposed form would not address this particular issue, the

principle behind the proposal, that community institutions ought to be able to document their community activities, is important to advance.

**IRS Should Propose a Further Schedule**

IHRSA strongly encourages the IRS to develop an additional schedule to the Form 990, which would be completed by any exempt organization that provides fitness or physical activity services to the general public. (Thus, a college facility only serving students and faculty, or a hospital facility only serving patients and doctors, would not have to complete the schedule). Furthermore, we submit that all tax-exempt organizations operating fitness facilities, presumably to benefit the community, should provide summary data to indicate their record in that activity. We have previously suggested to the IRS that the facility be required to report, for each fitness facility, zip code or other geographic data, on an aggregated basis (not on an individual basis), which would demonstrate whether those individuals using a certain facility are indeed from that community. Such information is typically gathered in the normal course of business, and its reporting would not be a burden to the exempt organization. The information would be an important indicator of whether a specific organization, whose exemption must be justified by its community basis, is indeed primarily serving members of the community.

**Summary**

The entire point of the Form 990 annual information return is to provide information about the exempt organization and its activities. The taxpayers, through the IRS, have granted these organizations the privilege of operating without being required to pay certain expenses, and with the considerable advantage of receiving deductible donations. In return for that privilege, charities must carry out certain purposes. It is not an overstatement to say that, once the IRS exemption is received, the current 990 system is not very effective in eliciting information useful to determining whether exempt organizations are carrying out their missions, and whether, in some circumstances, the exempt purpose has evolved into activities that are more commercial in nature.

We congratulate the IRS for this important first step in improving and reforming the Form 990, and we look forward to continuing reforms to deal with the rapidly evolving exempt sector.

| | |
|---|---|
| **From:** | martyroberts2007 |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | |
| **Subject:** | Require churches & religious organizations to file |
| **Date:** | Friday, September 14, 2007 4:44:32 PM |
| **Attachments:** | |

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As someone who has been dealing with religious affinity fraud and elderly fraud, I am acutely aware of the lack of full financial disclosure and accountability of religious organizations.I agree with this article from American Institute of Philanthropy with has the website www.charitywatch.org.Separation of Church and State Should not Separate Donors from Information “It is far too easy for a dishonest individual to operate a religious charity that steals our money and damages our spirituality.” – Daniel Borochoff, AIP President Donors beware! Charities that claim a religious aspect to their mission may not be legally required to publicly disclose how they are spending your donations. Religious charities that distribute solicitations that are very similar to secular charities may be off the radar screen of governmental agencies that regulate charities. This is why it is especially risky to send a contribution to an unfamiliar religious charity. The lapse of legally mandated a ccountability for religious organizations is particularly unfortunate since these groups account for $75 billion or about half of all U.S. giving in 1997, according to Giving USA. Churches, integrated auxiliaries and related charitable entities are not legally required to register or file annual information with the IRS or with state charity regulators. Freestanding religious organizations that do not fall under the umbrella of a church’s IRS filing exemption are required to register and file information annually with the IRS though most state charity regulatory offices do not require them to do so. AIP strongly believes that all nonprofit organizations that solicit funds from the public, including religious organizations, should disclose their governing board members and financial statements to the public. Congress would greatly assist informed giving to charity if it passed a law that would require all religious and secular nonprofits with incomes over $25,000 that seek tax-deductible contributions from the public to publicly disclose its finances and governing board. AIP believes that such a law would not weaken our First Amendment rights to free exercise of religion but would help to strengthen them by improving the credibility of religious organizations.-------In another article there was an undercover investigation by AIP and ABC news showing just how easy it is to set up a fake

charity. To cut to the chase, it shows why it is so important for donors to learn what portion of funds is being spent on the charity's stated purpose.The American Institute of Philanthropy worked with ABC News on a yearlong investigation of the charity business. Rhonda Schwartz, a producer for ABC News, went undercover to see how easy it would be to set up a phony charity. She called around to people in the telemarketing industry to get the word out that she wanted to join others who make a lot of money in the charity business, with little effort. She first thou ght that she would try starting a children's wish charity since many people are so emotionally shaken by the plight of a terminally ill child that they will automatically want to contribute. But she was advised against it because then she would have to go to the trouble of granting wishes, whereas if she set up a different type of charity she could get away with a lot less work. For instance, she could claim to be running an educational program for a children's charity by simply copying stuff off of the Internet and mailing it to some random schools.Ms. Schwartz's calls led her to Richard Troia, who has a long history in the charity business. With the ABC News hidden camera rolling, Troia gleefully describes his business, how he can help her set up a phony charity and even says: "You'll be able to make a good living off it." He mentioned his success with charities, including the Firefighters Charitable Foundation (an AIP "F"-rated charity) that is raising six or seven millio n a year. "It didn't begin to take off yet. It's just getting rolling," according to Troia. He also enthusiastically spoke about a new charity, United Pet Way that would solicit people to raise money to save pets from being put to sleep. Troia described a carefully worded phone pitch for this charity and said, "it's like a tear jerker."Troia said that he had "access to 10,000 phones" for a telemarketing operation that takes 90% of the money raised. He said that it would be up to her to decide how to spend the remaining 10% but some of it would need to go to a charitable purpose. He advised Schwartz that money should not be taken out early on because "in the beginning, they are gonna look at you." Troia warned that "…your biggest problem is, is gonna be how to get rid of the money."When Troia was shown the undercover tape he said he was against the idea of setting up the charity from the beginning because Schwartz was "too greedy," even though he insisted on keeping 90% of th e money raised.The program ended with Daniel Borochoff, AIP's president, warning that anyone receiving phone solicitations should "think of this guy in your mind because it may be someone like him."The program also discussed Kids Wish USA and its founder Michael Manzer, who was recently sent to prison for mail fraud and money laundering. This charity promised to grant the wishes of terminally ill children yet it did not grant even one wish, according to federal prosecutor Mike Snipes. The program pointed out that

had Manzer spent even a small amount of money to grant one wish, he might not have been prosecuted and his charity might be considered legitimate. A more savvy scammer is going to know that he has a far greater chance of avoiding prosecution if he spends at least something on the charity's stated purpose. This is why it is so important for donors to learn what portion of funds is being spent on the charity's stated purpose.

---------All charities should be required to disclose on a Form 990 if they are using telemarketers such as this report from the state of Washington:Commercial Fundraiser Profile ReportCommercial Fundraiser Profile Report « Back InfoCision Management CorporationMailing Address: Registration #66 Status Active Also Known As Name(s) IMC Phone (330)668-1400 Fax (330)668-1401 Email Web Site Federal EIN 34-1367630 The following financial information has been provided to the Office of the Secretary of State by the above-named organization. Figures are for the organization's fiscal year ending Mar 15, 2006. Contributions $51,933,695 According to the financial information shown at left, 53% of the contributions raised by this organization were returned to or retained by the charity client(s). Amount to Charity Clients $27,267,978 Some Commercial Fundraisers are not required to submit financial information. If the financial report displayed contains zeros or outdated inf ormation, it is possible that the organization is newly registered or has filed as a Commercial Co-Venturer. Please contact the Charities Program for more specific information. Charities Who Have Utilized Fundraiser (past & present) see Washington state website for list.

The Road to Regaining Trust in the Nonprofit Sector: 10 Essential Reforms-published in December 2004 issue of the Charity Rating Guide & Watchdog Report"Public Distrust heightened by too many bad actors in the nonprofit field cries out for regulatory reforms and increased donor diligence."– Daniel Borochoff, AIP PresidentOnly 11% of the public thinks that charities do a very good job of spending money wisely and only 19% feels that charities do a very good job of running their programs and services, according to a recent Brookings Institution study. The study found that confidence in charity is 10-15% lower today than it was in the summer before 9/11.The Senate Finance Committee is currently working on new legislation to improve the accountability, governance and regulation of the nonprofit field. The American Institute of Philanthropy recommends that Congress enact the following vital new measures to help nonprofits regain public trust:1. Require that most charities rai sing money for a highly popular cause, e.g. firefighters, police, veterans, disaster relief, hungry or ill children, cancer, etc… maintain reasonable annual fundraising costs of 35% or

less. Exceptions would be made for groups that have been in existence for less than 3 years or with gross revenues of $500,000 or less. Controversial or unpopular causes, e.g. legalization of marijuana, abortion, gay rights should be allowed to have fundraising costs exceeding 35% per year due to the smaller number of people willing to support these causes. Past attempts to regulate fundraising costs have failed in the courts due to free speech concerns. The First Amendment should continue to guarantee that we have the right to raise money for unpopular causes even if it is very expensive to do so. Opportunistic fundraisers, who purposely pick causes that the public is most likely to support, should not be allowed to hide behind the First Amendment.2. Require that religious organizations solic iting the public uphold the same level of regulation and accountability as secular groups. Dishonest or inefficient fundraisers can choose to form a “religious” charity to avoid being transparent and facing scrutiny from the IRS and many state regulators. AIP believes that this will strengthen the integrity of religious organizations.3. Require all charities that raise $250,000 or more from the public to have an audited financial statement. The chief executive officer should sign a written statement under penalties of perjury that the charity’s audit, as well as its tax form, is complete and reasonably portrays the charity’s finances. Nonprofits need to have an outside accountant audit their books and see to it that adequate internal controls are being followed. The three most recent audits should be made available to the public.4. Require charities to disclose complete audits and tax filings of its taxable business activities and for-profit subsidiaries. There is too much t emptation for charities to bury questionable practices in its minimally accountable for-profit subsidiaries.5. Require charities to make available to the public its audits and tax forms within one year of their fiscal year ends. The failure to do so would incur the risk of losing their ability to offer tax deductions on contributions during the time that the reports are over one year late. Donors need more timely financials in order to evaluate a charity’s current level of efficiency.6. Require a charity’s basic governing documents, including the current articles of incorporation and bylaws, be made available to the public.7. Require all charities to provide upon request a copy of their conflict of interest policy and board approved written documentation that it has been followed. The policy should call for public disclosure of why it is in the charity’s best interests that business be conducted with board members, officers or others with substantial influence over the organ ization, or with their respective family members. This should include records of multiple competitive bids by vendors or lenders who are not related to insiders at the charity. The IRS should levy heavy fines on charities and their executives that condone abusive self-dealing.8. Require

charities to provide upon request a description of their recent activities and accomplishments in relation to the expense categories used in its financial statements. So that donors understand what a charity is raising money for, a board-approved budget should also be made available upon request.9. Require charities to provide whistleblower protections, including procedures for complaints to be made to a rotating committee of independent board members. Mandated employee confidentiality agreements that silence whistleblowers should be outlawed.10. Create a federal regulatory agency for charities: a Securities and Exchange Commission of the nonprofit world. Most regulation of charities takes pl ace at the state level yet charities operate and solicit money in multiple states. Charities are burdened with different filing requirements in about 40 states. Charities and the public would benefit from having one super reporting form that would be provided to a federal agency and any interested donor. If state regulators could free up time and resources spent collecting and filing duplicative forms, then they could do more to crack down on charity abuses.Ultimately, any new rules will only be effective if the directors of nonprofits take them seriously and charity regulators have the resources to enforce them. Being that too many charity directors are asleep at the wheel and government resources are inadequate to regulate over 1.6 million nonprofits, much of the responsibility to improve the sector lies with the donor. AIP will continue striving to serve as your charity watchdog and resource for informed giving. Hopefully, Congress will soon provide us with some important new tools to help us elevate the effectiveness of charitable giving.---------

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|---|---|
| **From:** | Allen, Dan |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | |
| **Subject:** | Form 990 Revision Comments |
| **Date:** | Friday, September 14, 2007 4:45:47 PM |
| **Attachments:** | Form 990 Comments.pdf |

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Hello Form 990 Redesign Team,

My staff and I have reviewed the draft revised Form 990 and prepared the attached comments and recommendations.

Thank you for considering our comments in your redesign of the Form 990.

Blessings,

Dan

**Daniel C. Allen**
Chief Financial Officer
Billy Graham Evangelistic Association
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Billy Graham Evangelistic Association

1 Billy Graham Parkway, Charlotte, NC 28201-0001
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September 14, 2007

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

BY ELECTRONIC MAIL TO: _____

Dear Form 990 Redesign Team:

We appreciate the opportunity provided by the IRS to comment on the proposed revisions to the Form 990.

We understand that the purpose of the Form 990 redesign was based on three guiding principles: improving transparency, improving compliance and reducing of burden to the organization. We fully support these principles.

Therefore, we are limiting our comments to those areas of the proposed forms where we believe improvements can be made that will better support these principles.

**General Comments**

We believe the amount of lead time to implement the new Form 990 does not allow adequate time to make necessary process and systems changes prior to the beginning of the 2008 tax year. With the final forms not expected to be released until December 1, it is an unrealistic expectation for a calendar year entity to have implemented the required systems changes prior to the beginning of their tax year on January 1, 2008. This is especially true since the majority of not for profits rely upon software systems that are written and enhanced by 3rd party software providers. This will create significant and unnecessary reporting burdens on the organizations during 2008. We recommend extending the implementation until 2009 to give more time to review the final redesign requirements and to allow adequate time for proper design, testing, and implementation of new systems necessary.

We also recommend the threshold amounts requiring additional detailed information be increased. (Examples include: Grants over $5,000, non-cash contributions over $5,000) Similarly, the level of detail required on the supporting schedules adds a significant burden to the organizations without substantially increasing the information helpful to the users of the returns. (As an example: 26 categories of non-cash donations.) The substantial increase in non-essential

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704/401-2432

details will require significant hours of additional work to set up, collect and report. This will increase the administrative burden of the not for profit organizations resulting in higher administrative costs. The result will be less dollars available for the not for profit program activities.

**Core Form**
**Part I**
The disclosure of revenue and functional expense percentages on the front page of the form will be confusing to readers when comparing organizations and potentially also when comparing the same organization from year to year. The comparison of these percentages can be misleading across different types of organizations and could imply that there is a "target" percentage that again might be misleading without additional information or context. We recommend that this percentage disclosure be deleted.

With the changes in the proposed form there is no place to report other changes in Net Assets. We recommend a line be added, equivalent to line 20 of Part I on the current form, to report other changes to Net Assets that are not current year revenues and expenses such as transfers.

**Part V**
The request for expense types has changed to include detail information for information technology and exclude detail information for supplies, printing, and postage and telephone lines. Information technology costs could be defined differently by organizations regarding whether or not they include salaries, contract labor, etc. Different capitalization levels across organizations for computer equipment could also impact comparisons of this expense. We feel that without clear definitions, each organization will include different costs for information technology. Supplies, printing, postage and telephone line items represent large dollars for our ministry; and we encourage that these remain detail line items in the revised Form 990. We recommend that the Uniform Chart of Accounts, which has been adopted by many nonprofit organizations, be used in choosing which individual lines are reported in this section.

The proposed form does not include a line to disclose unrealized gains and losses. We recommend that a specific line be used to report this amount.

**Schedule F**
The request for detailed information on foreign activities, employees, accounts, grants and expenses provides more information to the public than is necessary to highlight foreign program activities. Highlighting these activities and reporting them in detail will create significant security risks to those involved in these activities. The impact of this type of information is a cause of great concern to us.

Billy Graham Evangelistic Association
1 Billy Graham Parkway, Charlotte, NC 28201-0001
704/401-2432

We recommend that this request for detailed information be deleted and replaced with an aggregate schedule of all foreign operations. At a minimum, we request that any detailed information provided in this schedule not be subject to public disclosure.

**Schedule J**
Since non- taxable expense reimbursements are not compensation, we recommend eliminating column E of line 1 in this schedule.

**Schedule R**
The request for information on related organizations is very broad. To ensure uniform reporting, it will be critical that the instructions more clearly define "related organizations."

Thank you for the opportunity to provide feedback on the draft Form 990. We hope these comments will be of assistance to you as you finalize your work.

Sincerely,

Daniel C. Allen
Chief Financial Officer

| | |
|---|---|
| **From:** | Pamela Blikstad |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | |
| **Subject:** | Comments - IRS Form 990 |
| **Date:** | Friday, September 14, 2007 4:59:40 PM |
| **Attachments:** | |

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Thank you for the opportunity to provide comments regarding the proposed changes to the Form 990 scheduled for the 2008 tax year. We appreciate the work the committee has undertaken to redesign the form in a way that will lead to greater transparency and accountability within the non-profit sector. We do, though, have several concerns with the form as it is currently being presented. Due to the vast amount of comments already on file, we will mention only those things about which we feel most strongly.

We are an international, faith-based, relief and development agency. Our humanitarian work often takes us to countries which have historically been hostile towards the Christian faith regardless of whether or not the work conducted is secular or religious. We are concerned about the long-term viability of our work and the security of our staff, partners and grant recipients if the disclosures required by Schedule F, Part II are made public, and respectfully request that this schedule be redacted if it remains in the final revised Form 990.

The purpose of a re-designed form should be to provide additional useful information to a broad array of users. While the revised 990 is much more complex, that complexity does not necessarily result in a form that provides the user with more accurate, useful and timely data. For example, the proposed presentation of financial ratios may create an inaccurate and incomplete picture of the organization's activities and financial data. In light of GAAP and gift-in-kind reconciliation issues, these percentages can give a skewed perception of the organization's financial health. Comparison of these ratios among non-profits does not give the reader a better understanding of program accomplishments or organizational efficiencies, and may in fact be misleading. We request that these percentage calculations be removed from the form.

Finally, we believe that the public and the non-profit sector will be served best if the IRS takes additional time to collect and review comments from those most affected by the proposed changes. This can only be achieved by taking the time to work closely with the non-profit sector to create a form that results in a complete and accurate presentation of data without creating an undue burden on the

reporting organization. We join with others in recommending that the IRS delay implementation of the revised form until the 2009 tax year.

Very truly yours,

Pamela S. Blikstad, CPA
Vice President, Finance
Medical Teams International
(503) 624-1000

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| **From:** | Jenny Chung |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | Gabrielle Lessard; Isaac Lodico; Jenny Chung; |
| **Subject:** | Comments on Proposed Revisions to Form 990 |
| **Date:** | Friday, September 14, 2007 5:01:07 PM |
| **Attachments:** | Form 990 Comments gl.doc |

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To Whom It May Concern:

Please find attached Comments on Proposed Revisions to Form 990 submitted by the National Economic Development and Law Center (NEDLC).

Sincerely,

**Jenny Chung**
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September 14, 2007

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

***Re: Comments on Proposed Revisions to Form 990***

Dear Sir or Madam:

The National Economic Development and Law Center submits the following comments on the proposed revisions to Form 990 released June 14, 2007.

NEDLC is a tax-exempt organization dedicated to building economic health and opportunity in vulnerable communities nationally. We partner with and support numerous tax-exempt organizations engaged in community economic development projects. These organizations are diverse and include small community-based organizations, workforce development service providers, micro-enterprise programs and sophisticated community development corporations.

The Service has stated that Form 990 is being revised to enhance transparency, promote compliance and minimize the burden of filing. NEDLC is concerned that some of the proposed revisions will have detrimental effects on many exempt organizations and limited utility in furthering the Service's stated goals. The proposed form would present information in a manner likely to mislead the public, require the disclosure of information unrelated to the reporting organization's governance or operations, and increase the burden of reporting. These effects could undermine support for reporting organizations' activities and deter participation of volunteer directors. Specific concerns are highlighted below.

- **Part I Metrics are inappropriate and misleading measures of an organization's actual efficacy.**

The draft revisions to Form 990 call for the calculation of three metrics at lines 8b, 19b and 24b of Part I. Line 8b asks what percentage of total program expenses are

paid as officer, director, trustee and key employee compensation. Line 19b asks for fundraising expenses as a percentage of total contributions and grants. Line 24b asks for total expenses as a percentage of net assets. While such ratios might serve as useful internal benchmarks, their presentation here—without opportunity for explanation—misleads the public as to their importance in determining whether an organization is well-run, stable and using its resources in furtherance of its mission.

It is entirely possible for equally effective organizations to arrive at widely varying results depending on their programs, as well as their relative size and structure. It is not unusual for community-based organizations to have few or no staff other than 'key employees.' Many small and start-up organizations have few assets, and yet transform minimal resources into remarkable benefits to their communities. These organizations operate in a very efficient manner, but would be required to report a high ratio of expenses to assets or compensation to expenses.

In contrast, a large institution with many employees or assets can produce low ratios while being highly inefficient in its use of funds. Larger organizations have a greater opportunity to spread the costs of 'key employee' compensation over higher program and overhead costs, as well as greater numbers of employees. This comparison demonstrates that an organization's fiscal efficiency cannot be expressed as a simple metric calculated from two tangentially related data points. Yet the public is likely to infer that a high ratio on any of the three metrics indicates poor management, excessive compensation, or other misuse of charitable resources. This perception could have a direct adverse effect on an organization's funding.

Due to the likelihood that the metrics will be misunderstood or misused by the public, the Service should eliminate questions 8b, 19b and 24b.

- **Questions in Part III and Part VII misleadingly suggest that organizations which have not adopted certain policies are poorly governed or noncompliant**

NEDLC fully supports valid legislative efforts to require exempt organizations to have, disclose and follow written governance policies. However, questions in Part III suggest that organizations are noncompliant for failing to adopt policies the Internal Revenue Code (IRC) does not require. These include policies on whistle blowers, document retention and public disclosure of financial statements and audit reports. These questions mislead the public into thinking that an organization is required to have such policies, and suggest that an organization that has not adopted them is poorly governed or noncompliant.

In addition, the questions equate having policies "on the books" with putting them into practice. To the extent that the questions capture an organization's implementation of its policies, their implication is paradoxical. Organizations that have enforced their internal governance policies appear compromised because they are required to report

on the policies' application, but have no opportunity to explain the outcome or the circumstances triggering review. This implication is of particular concern because of the public nature of Form 990. Requiring organizations to report the number of reviews, without explanation, may defeat the policy goal underlying the proposed change by creating an incentive for organizations to avoid review.

Similar concerns are raised by Questions 11 and 12 in Part VII. These questions ask whether a reporting organization has written policies that address situations many organizations never encounter: policies or procedures for review of the organization's investment or participation in joint ventures, disregarded entities and affiliated organizations, and polices that require the organization to safeguard its exempt status in transactions and relationships with related organizations. As with the questions in Part III, the public is likely to regard the lack of such policies as a deficiency in the reporting organization's diligence.

Questions about policies risk misleading the public. These questions should be eliminated or presented in a context that explains their significance and limited to policies required by the IRC or the tax regulations.

- **Disclosure of residential information and business relationships unrelated to the exempt organization invades individuals' privacy without increasing transparency.**

The current version of Form 990 allows officers, directors, trustees, key employees, and highly compensated employees to provide as their address the address of the organization. The proposed revision to Form 990 disallows this practice. Part II, Section A, Line 1a. Column (A) requires that the city and state of residence be reported for officers, directors, trustees, key employees, highly compensated employees and highly compensated independent contractors. While the form does not require these individuals to list their street addresses, disclosure of the city and state of residence is a significant increase in the information provided to the public through Form 990.

It is unlikely that the disclosure of residential information will increase transparency or foreclose any significant route of malfeasance. Instead, key and highly compensated employees will have the burden of knowing that information about their place of residence, as well as their names and salary information, is readily available to any member of the public who might wish to harass or harm them. This additional disclosure may deter qualified volunteers from providing their services as directors and officers. This risk is not merely hypothetical. Many charitable activities, such as the development of affordable housing, can be met with fierce community opposition. The Executive Director of a Northern California organization was forced to resign several years ago after receiving death threats related to her organization's positions on local development issues. The Service should return to its earlier position and allow these individuals to list the organization's address in this field.

Similarly, Part II Question 5b asks if any of the organization's officers, directors, trustees, key employees, highly compensated employees or independent contractors had a business relationship with anyone who was an officer, director, trustee or key employee of the organization during the past five years. The question assumes that any such relationships will be relevant to the reporting organization, and that it is appropriate and productive to collect and report information about them. The collection and reporting of such information would be burdensome for the organization, and its disclosure in a public document may invade the privacy of the affected persons. Such broad reporting is likely to deter the participation of qualified volunteer directors who do not want their private business relationships thrown open to public scrutiny.

Much of the information at issue would have little or no relationship to the organization. The definition of a business relationship includes contracts with an aggregate value in excess of $5000 during the tax year. Under this standard, a key employee who had a former board member provide orthodontic services to her children would likely be required to report the transaction.

While there is no doubt that directors, officers, key employees and other control persons should never use their position with an organization for personal gain, requiring reporting of transactions that are unrelated to the organization's activities or property is overbroad, and detrimental to the organization's best interests. The question should be limited to business relationships involving the activities or property of the organization. If the Service feels that the disclosure of all business relationships is absolutely vital to the transparency and oversight of nonprofit organizations, the reporting threshold for contracts should be significantly higher.

- **Part IX, Question 2 is arbitrary and its purpose is unclear**

Part IX, Question 2 asks an organization to provide a subjective assessment of its "most significant program service accomplishment". This serves neither the reporting nor the disclosure goals of Form 990. Without some objective guidance to frame the response, the limited information provided will be of little use to the public or the Service.

The question ignores the fact that many exempt organizations carry out multiple programs of charitable activities. The Service's request that an organization state its single most significant accomplishment would create competition among staff and put the organization in the unfortunate position of having to discount other significant achievements. Moreover, such a question is likely to elicit responses that are better suited for organizations' promotional materials.

If the Service is convinced of the value of this question, it should explain what the term "most significant" means for purposes of the question. Additional space, or an attachment, should be permitted so organizations may fully explain the significance of the program service accomplishment in the context of all their programs.

In conclusion, NEDLC supports the goals of enhancing transparency, promoting compliance and minimizing the burdens of filing. However, we find that many of the proposed changes miss the mark in achieving those goals, and have unintended adverse consequences for exempt organizations. We appreciate the Service's efforts to obtain public comment about the proposed revisions, and encourage it to increase its efforts to obtain feedback from exempt organizations before finalizing the revised form.

Thank you for your service to the tax-exempt sector.

Respectfully submitted,

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|---|---|
| **From:** | Sarah A. Stoesz |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | |
| **Subject:** | comments regarding the proposed re-design of IRS Form 990 |
| **Date:** | Friday, September 14, 2007 5:07:13 PM |
| **Attachments:** | |

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To Whom it May Concern:

This is the official comment of Planned Parenthood Minnesota, North Dakota, South Dakota regarding the proposed re-design of IRS Form 990. Thank you for giving me an opportunity to comment.

It is the position of this agency that citing an organization's total revenue and expenses is a useful piece of information for the Summary Page of the 990. However, we object to the inclusion of percentages of revenues and expenditures on the Summary Page as it could lead to inaccurate interpretation of a non-profit agency's worth.

Placing the percentages of revenues and expenditures on the Summary Page could lead to a one-dimensional impression of an organization's effectiveness. There are multiple reasons that a worthy organization could have disproportionate expenses allocated to management or fundraising over program in a given year. For example the percentages would not account for the value of volunteer services or discounted access to facilities, equipment, or labor or the need to bolster administrative capacity in the event of a planned capital campaign.

As drafted the Summary Page leaves insufficient space to explain the subtleties of an organization's financial circumstances and therefore makes it difficult to explain the reason for the percentages of revenue and expenditures.

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