

**From:** [Euwema.Ken](mailto:Euwema.Ken)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:** \_\_\_\_\_  
**Subject:** United Way of America Comments on the Draft Revised Form 990  
**Date:** Sunday, September 09, 2007 10:29:07 PM  
**Attachments:** [Draft Comments to IRS on new Form 990 - Final.pdf](#)

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To Whom It May Concern:

Attached is a PDF of our comments on the Draft Revised Form 990 per your request for public comment in IR-2007-117 issued on June 14, 2007.

In addition to offering these comments and recommendations, please be advised that we welcome any opportunity to discuss any aspect of the Draft Revised Form 990 with you directly. If we can be of any further assistance to you, please feel free to contact me using the contact information below.

Sincerely,

Kenneth C. Euwema  
Vice President of Membership Accountability  
United Way of America  
701 N Fairfax  
Alexandria, Virginia 22314

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# Comments to the Internal Revenue Service on the Revised Draft Form 990



United Way of America

**what matters.**<sup>TM</sup>



September 7, 2007

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

RE: Revised Draft Form 990

To whom it may concern,

We would like to thank the Internal Revenue Service (IRS) for the opportunity to offer opinions on the Draft Form 990 and associated new Schedules. We greatly appreciate the work that has been done in researching, discussing, and crafting the current Draft forms and overall we see this as a great stride forward in making the Form 990 serve the broad purposes required of it today.

We have undertaken a detailed review of both the forms and instructions in order to provide you with a response that we believe reflects the best interest of United Way organizations (UWs), Federated Fundraising organizations (FFO), and Non-profits in general. We have also sought to address what in our experience are the concerns of donors who often look to Form 990 as a means of evaluating non-profit performance as they weigh where to invest their donations for maximum impact.

Our hope is that the new Form 990, in whatever format it eventually takes, will allow for greater transparency and accountability by placing an emphasis on an organization's quantitative and qualitative outcomes. Reporting requirements, right up-front, should state an organization's progress against specific, articulated objectives. Simply, the form should very clearly report what an organization set out to accomplish and to what extent they actually did that, so that the reader can then examine the financial information in the proper context.

It is our belief that any public reporting of financial information must be balanced with an accounting of the results achieved. Without that balance of information, the constituencies non-profits seek to serve will not be able to accurately assess the true return on investment in their community.



## GENERAL IMPRESSION

In general, United Way of America (UWA) believes the draft revised Form 990 will be a more useful tool to the average user, regardless of their level of expertise in reading financial reports. The approach of providing key summary information that then points the reader to supplementary information for greater detail is a marked improvement over having organizations prepare their own schedules with varying formats and levels of detail. The increased consistency that will be derived from the use of standardized schedules will improve transparency considerably.

UWA is also pleased to see that the IRS has incorporated into the draft revised Form 990 many of the points we have advocated over the past five years through our United Way Membership Requirements and Standards of Excellence as well as through our participating with other distinguished groups such as:

- The “Uniform Guidelines Project”.
- The Greater Washington Society of CPAs Quality Reporting Task Force.
- The Panel on Non-Profit Accountability.

Several recommendations made by the above groups appear to have been incorporated into the draft revised Form 990. We noted the following, more prominent points as follows:

- A clearer definition of "key employees" and "compensation" is incorporated to promote consistent reporting by all.
- More detailed information is provided on Officers, Directors, Trustees, and Key Employees.
- Expansion of the section on compensation so that fewer organizations will need to provide compensation information on a separate schedule.
- Elimination of the current single line for Excess or (Deficit) for the year and add the four mandatory ‘Changes in net assets’ categories items required by GAAP for the Statement of Activities.
- Expanded classifications of professional and other contract service fees to create more consistent and transparent reporting.
- Addition of a question “Has the completed Form 990 been presented to and approved by the board of the organization?” which encourages charities to adopt sound governance policies.
- Questions added about what types of financial information are made available to the general public and where it is available which encourages charities to make additional information available publicly and improve overall transparency.



- Greater separation of Revenue from Contributions by Source - however we note that the new form no longer separates direct vs. indirect revenue (e.g. raised by you vs. raised for you) which is a change we do not support.
- Required additional detail on amounts reported as “Other Expenses” such that significant/material amounts (in excess of 5 percent of total expenses) will be disclosed in a more transparent manner.

We applaud the IRS for heeding the recommendations of the non-profit community in creating this draft revised Form 990 and offering us the opportunity to contribute additional comments/recommendations. At this critical stage of development, we have observed a number of areas where we believe the draft revised Form 990 could be enhanced. The remainder of this letter will enumerate in greater detail the specific points and we respectfully request that the IRS give due consideration to making further changes.

## CORE FORM 990 PART I - Summary

### Lines 1- 2

In the Background Paper for the Redesigned Draft Form 990 that was issued by the IRS, it is noted that *“the current form neither adequately describes the filing organization nor provides a basis for comparing an organizations with its peers... the form fails to provide a complete picture of the reporting organization”*. We very much agree with this observation.

The Background Paper goes on to say that one of the guiding principles in the redesign is to *“enhance transparency”* which *“means providing the IRS and its Stakeholders with a realistic picture of the organization and its operations, along with the basis for comparing the organization to similar organizations”*. Again, we very much agree with this principle.

United Way of America believes that good stewardship and full transparency is vital to the success of all non-profit organizations. This means that we must seek to provide more than just financial information. It means tying the financial information to results using a “cost/benefit” or “return on investment” approach to reporting.

Just like our counterparts in the for-profit sector, we should seek to be judged based on both the quality and the cost of our product. Thus, to judge fairly, the public should be provided information on quality and cost in equal proportion and that information should be organized in a manner that aids users of the Form 990 to keep a balanced focus.



For these reasons, United Way of America deems the highest priority for Form 990 Redesign to be the placement of the “Statement of Program Service Accomplishments” section as Part I of the Core Form and having that section place a greater emphasis on providing both qualitative and quantitative performance information.

United Way of America believes that information including both impact and results should be the first thing that users see in an informational return so that they are focused on what the organization has delivered on its mission before they focus on the data.

By placing this information at the very end of the Core Form 990 (in the draft Form 990 this is now Part IX), it is more likely that users will fail to view the financial information in the context of what the organization has accomplished.

There often are legitimate reasons for certain expenses to be as high (or low) as they are and those reasons are usually based on the organization’s mission (e.g. some programs require higher administrative investment than others to be successful). If one looks at things like the administrative cost ratio or executive compensation without considering the reasons for the costs to be the way they are, the perspective on the value of investing in the organization is easily skewed.

Line 1& 2 are good pieces of information but they are not enough. ***We therefore recommend that Part IX become Part I and the rest of the information in the draft Part I - Summary should become Part II.***

#### Line 8

We are uncertain as to the value to be gained by comparing officer compensation with program expenditures. To our knowledge it is not a comparison that is commonly used as a measure of performance because it will vary greatly with the size of the organization and its purpose. Some programs are very labor intensive due to the nature of the program (for example: an organization that does psychological counseling and has only a few staff will likely utilize its officers as counselors and not allocate a portion of their time to program, thus it would have a higher ratio than an organization that has many diverse programs and a large number of staff). Thus, displaying such a ratio on the Form 990 may create confusion among readers, causing them to think that a high ratio is unwarranted. ***We therefore recommend that the IRS reconsider including this ratio on form 990.***



## Lines 11-16

It appears that the draft form 990 would have us combine both “direct and indirect” revenue in the revenue lines where previously they were separately identified. We believe that this means organizations should report based on the definition of revenue we received in an earlier communication with the IRS. The definition we were given is that revenue is not necessarily defined under the GAAP rules on Form 990 but rather revenue should represent the “activity” of the organization. Thus, when a Federated Fundraising organization receives a gift that is defined under GAAP as an “agency transaction” (and therefore not revenue for GAAP financials) it should be included in revenue on line 12 because it does represent activity of the organization (they solicit the funds, they participate in the process of collection and distribution of the funds, etc.) *If our interpretation is correct, we recommend that the IRS include in the instructions specific guidance on what the definition of “revenue” is for Form 990.*

## Lines 11 – 21 (Percentages columns)

The percentages to be used in the Revenue & Expense sections do not appear to be the commonly used formulas in the sector and thus the analysis will be of limited value to the user. *We recommend requiring display of the “raw” data only and letting the user calculate the percentages that are relevant to their needs.* IRS may wish to encourage, by way of the instructions, that organizations include an attachment that takes the data displayed and presents such ratios as are commonly used in the organization’s particular sector with three year comparative calculations.

For example, among United Ways we measure “Administrative Cost” using a standardized ratio, based on the current IRS Form 990, as follows:

Line 14 (Mgmt & General) + Line 15 (Fundraising) + Line 16 (Payments to Affiliates)

/ (Divided by)

Line 12 (Total Revenue)

We then benchmark this rate nationally (current average for the 1,300+ United Ways in the United States is about 13%) and encourage our members to compare their individual rates to their peers to assure that they are operating as efficiently as they should. We believe that including such ratio analysis as an attachment to the 990 would assist both the IRS & its Stakeholders in understanding the key measures of organizational efficiency.



## Lines 25 – 26

We note that in the Gaming and Fundraising section, the fundraising calculation will produce a different number than the one displayed on line 19b because one is a subset of the other. ***We believe that this may be confusing to the reader so it should be eliminated or included in Schedule G.***

## CORE FORM 990 PART II – Compensation

In general we very much like the way this section is laid out however we feel that there are a number of things that should be outlined better in the instructions such as:

### Thresholds

We believe that moving the threshold for five highest paid employees from \$50,000 to \$100,000 is too arbitrary of a change. While we agree that the \$50,000 threshold is too low in today's economy, doubling it sets it too high given the large number of new, smaller organizations that have entered the non-profit sector in recent years. A threshold that is too high limits the value of Form 990 as a tool for monitoring the fiscal responsibility of a smaller or younger organization. It is important that there be significant disclosure of salary information in the non-profit sector overall, and a threshold that is too high diminishes the value of Form 990 as a monitoring tool. ***Therefore, we recommend the IRS consider establishing a threshold of "10% of total revenue or \$100,000, whichever is less".***

### Definition of "Key Employee"

The instructions for the current Form 990 include a definition of a "key employee", and based upon that definition, we have encouraged our members to generally include the CEO & CFO in Part V. In as much as those two roles are now specifically enumerated on the face of the form, ***we recommend that there again be a definition of "key employee", as there was in the old instructions.***

### Column A

We believe that the requirement to include the residence address (city/state) of board members and key employees on this public form will have a detrimental effect on the non-profit sector. We realize that only the city and state are required, but given that information it is relatively easy to find a particular person's street address from telephone books, the internet, etc., providing this information presents a privacy concern and personal safety risk that must be considered.



This problem will be most acute for organizations with activities that are considered ‘controversial’ by large numbers of people (for example: Planned Parenthood, National Rifle Association, Universities with animal research laboratories, etc.) but could extend to others for a variety of reasons. Federated Fundraising Organizations (FFO) are particularly vulnerable to controversy because they often allow donors to “designate” a particular agency to receive the gift. In such cases the FFO is only an agent to the transaction (e.g. no endorsement is made or implied) but yet they often become the target of public outrage due to the misconception that the FFO is ‘supportive’ of the recipient agency.

We therefore are convinced that this requirement will cause qualified potential Board Members to refuse to serve and quality potential staff members to refuse employment, thus the non-profit sector will be all the poorer. Those who do serve may be tempted to give false addresses in order to protect themselves and their families from becoming the target of harassment or even personal harm. It is sad that this kind of risk exists, but we know that it does so it must be considered by anyone agreeing to serve on a board or accepting employment and it is something that organizations must seek to mitigate where ever possible.

We assume that the IRS believes providing residence information is necessary in order to assure that the public can make contact with an organization’s decision makers and help hold the organization accountable. However, in most cases it is easier to reach a person through the organization’s office or at their place of employment than it is by knowing only the home city and state.

***We therefore recommend that the IRS continue to allow organizations to list either the Organization’s address, the Employer’s address, or a Home address, at the discretion of the individual.*** This will assure that many worthy volunteers do not refuse to serve on boards, and that qualified staff will continue to take jobs with nonprofit organizations.

#### Column B

Many organizations have as a key role within the organization that of Chief Operating Officer (COO) or Chief Administrative Officer (CAO) and they generally fit the existing description of a “key employee”. Because this position is so prevalent, ***we recommend the IRS consider adding a column between the CEO and CFO columns for this position to be specifically identified as well.***

***Secondly, the instructions for this column should include a definition of the category “key” employee just as the current form defines that role.***



Third, we do not see the value in creating a threshold for listing compensation of former key employees. If listing all the compensation of current key employees with any threshold is of value to users of Form 990, then it seems that listing all the compensation of former key employees for the year would be equally of value. ***We recommend removing the threshold for this one class so that all persons who have been in a key staff position during the reporting period are reported on the same basis.***

Lastly, we note that the instructions indicate that we are to report compensation of former key employees who worked for us during the last five years. ***We find the wording of this requirement to be confusing and recommend that the IRS clarify it.*** We believe that your intent was to require reporting for persons who fit the following criteria:

- Any person who held a “key” employee position within the organization at any time in the last 5 years **and**
- Received some form of compensation in the current year, regardless of whether or not they are currently on the employment rolls of the organization (ie: they may still be employed with the organization but no longer serve in a “key” employee role)

#### Column E

In order to eliminate the potential for “hiding” excess compensation paying via various related organizations, ***we recommend that the \$10,000 threshold be eliminated and that 990 require payment of all compensation.***

#### Additional Column

The current version of Form 990 includes a column for reporting the average number of hours worked during the year but the revised version no longer requires any information relative to hours worked. ***We believe it would be of great value to provide the total number of hours worked for key employees*** as it allows the reader to calculate the hourly rate for these people, which is a very relevant measure of compensation. Comparisons based solely on the gross dollar value of compensation are of little value due to the varying amount of time worked by different people. Displaying the total hours worked will also allow readers to determine the portion of the year worked by former employees and compare their compensation on a consistent basis with current staff.



### Line 2 - Total number of staff over \$100,000

We view this as a valuable item of information but it is likely to be missed by both preparers and users, due to its location at the very bottom of the page. ***We recommend that it be placed at the top of the page as item #1 and that the threshold be set at 10% of total revenue or \$100,000, whichever is less.***

### Line 3

Answering this question in the affirmative would require investment in a significant amount of work and cost for an organization. As a result, many smaller organizations do not engage in such an elaborate process. In our opinion, asking this question would however cause many small organizations to consider investing precious funds in a process that ultimately is of little value to their mission and likewise may not represent good stewardship of donated funds. ***Therefore, we recommend that IRS establish a threshold for making question three required such that small organizations would be exempted from preparing that part of the form and at the same time indicate to users of Form 990 that not having adopted such a process should not be considered a weakness of the small organizations.***

### Lines 3-5

Because asking these questions will likely cause readers to wonder if this should be required of all organizations, ***we recommend that the IRS indicate in the instructions whether or not the answers to 3-5 have enforcement implications*** or if they are there as a public information issue only. Doing so will help to clarify for preparers how to determine if additional information should be included as an attachment to describe why the organization does or does not engage in such activities.

### Line 8

The proposed threshold for reporting of \$250,000 seems to be too high if the organization is small and may not be high enough if the organization is very large. ***We recommend the IRS consider establishing a threshold based on a percentage of revenue rather than an arbitrary dollar amount.*** Such a threshold would be more versatile and likely draw attention to disproportionately high compensation.



## Line 10a

Similar to our comment on the threshold for the five highest paid employees, we believe that moving the threshold for five highest paid independent contractors from \$50,000 to \$100,000 is too arbitrary of a change. While we agree that the \$50,000 threshold is too low in today's economy, doubling it sets it too high given the large number of new, smaller organizations that have entered the non-profit sector in recent years. A threshold that is too high limits the value of Form 990 as a tool for monitoring the fiscal responsibility of a smaller or younger organization. It is important that there be significant disclosure of contractor information in the non-profit sector overall and a threshold that is too high diminishes the value of Form 990 as a monitoring tool. ***Therefore, we recommend the IRS consider establishing a threshold of "10% of total revenue or \$100,000, whichever is less".***

## CORE FORM 990 PART III – Statements Regarding Governance

We find the terms "members" and "independent members" that are used in lines 1a and 1b respectively to be inconsistent with the terms used to describe the various types of board members. We believe that the intent of IRS here is to separately identify those individuals serving on a board that are compensated (e.g. staff members, consultants, etc.) versus uncompensated (e.g. volunteers). If that is the case, we recommend that IRS use the terms compensated and uncompensated. If we misunderstand the IRS purpose for asking the question ***we recommend that the instructions include a more succinct definition of the differences between the two types of "members".***

## CORE FORM 990 PART IV – Statement of Revenue

### Line 1a

The instructions for line 1a indicate that organizations who are the indirect recipients of funds through a Federated Fundraising Organization (like a United Way) should report such revenue on this line. However it is unclear from the instructions if this is also where the Federated Fundraising Organization is to report the proceeds from its campaigns, whether designated to another organization or as an unrestricted contribution to the FFO itself. The definitions of types of contributions provided in the instructions do not appear to address where to record contributions that are "direct" contributions to the FFO because they only talk about "indirect" contributions received from a FFO. Therefore, ***we recommend that at a minimum the IRS add clear language to the instructions indicating that FFAs should report all contributions (unrestricted and designated) on line 1a.***



Better still would be to have two lines, one indicating contributions to a FFO that the FFO raised themselves and one indicating the contributions to a FFO or other organization that were raised by someone else. It is important to note that in today's global economy, companies often operate in multiple municipalities served by multiple FFOs but prefer to run a single, company-wide fundraising effort. Thus, it is not uncommon for one FFO to raise money that is designated to another FFO. Having two separate lines to report the different kinds of contributions will maintain a level of clarity that has long been part of form 990.

### Line 1g

The instructions for this line indicate that Schedule M is required if non-cash contributions exceed \$5,000. We believe that this threshold may be too low for organizations that run an active in-kind program as part of a multi-million dollar organization. For example, it is not uncommon for a United Way to operate an in-kind program that handles less than a \$100,000 worth of merchandise annually but at the same time has total revenue in excess of \$10 million. In such a case, the organization would incur a significant administrative cost to track contribution quantities and values while the activity represents less than 1% of the organization's total contributions. ***We therefore recommend that the IRS consider setting a threshold of 5% of total revenue or \$5,000, whichever is greater.*** Doing so would assure that items reported here will represent material activities of the organization.

### Lines 2a – 2g

The instructions contain a "caution" regarding the need to provide business codes that explain the exempt purpose of each type of revenue but they do not include an explanation as to why this is important information. ***We recommend that the instructions include wording similar to the corresponding section in the instructions for the current Form 990*** to improve the preparer's understanding of what types of revenue are subject to Unrelated Business Income Tax and thus need to be reported on Form 990-T

## CORE FORM 990 PART V – Statement of Functional Expenses

### Line 1

The instructions clearly state that what is to be reported here are grants made at the organization's own discretion. It goes on to state that "United Way and similar federated fundraising organizations should report grants to member or participating agencies on line 1" also. It is unclear to us if this statement is intended to include distributions made to agencies that were specifically



“designated” by the donor. The GAAP term for such a distribution is an “agency transaction” and is treated as a “restricted” contribution, in other words, the organization acts as an agent for another organization and lacks discretion over the recipient of the gift.

If it is the intent of the IRS that such transactions be included in Line 1, *we recommend that the instructions clearly state that United Ways and similar federated fundraising organizations include distributions of “designated” contributions* or perhaps indicate that they report here all distributions to other agencies, whether the distribution is at their discretion or not.

### Line 13

The instructions for this line state that it is to include “... insurance (other than property or occupancy-related insurance which is reported on line 16)”. We believe that insurance is not generally considered an office expense and readers of the form 990 would not be inclined to look for it there. Most, if not all non-profits, carry some form of Directors & Officers liability insurance and several other types of insurance can add up to significant premiums. *We therefore recommend that IRS add a separate line for insurance other than what is reported on line 16.*

### Line 21

In the instructions for the current Form 990 there is a definition of an affiliate relationship that includes three key components:

- An element of control
- Mandatory payments between organizations
- A historic and continuing relationship

Based on this definition, local United Way organizations are affiliates of the national organization (United Way of America) and we have thus directed our members to report the dues they pay to the national organization on line 16.

The instructions for the Revised Draft Form 990 do not include such a definition of affiliate relationship and thus we are unsure if the dues paid to the national organization should still fall into the category of payments to affiliates. We suspect that this is simply an oversight on the part of the IRS but *we recommend that if the IRS still maintains the above definition of affiliate relationships, that the definition be included in the instructions.*



## CORE FORM 990 PART VI – Balance Sheet

We are happy to see that the Net Assets section (lines 28 – 30) has been broken out into the three classes under GAAP. This will allow users to better understand the changes in Total Net Assets from year to year. It is an important point because multi-year funding can create a negative impression when it causes deficits in subsequent years. This presentation will clarify what is changing and help readers understand the Net Assets section of the financial reports.

### Lines 12a & 15a

It is difficult to see what the difference would be between these two lines so *we recommend the IRS include in the instructions for these two lines the definitions included in Schedule D* or at least a reference to the instructions for Schedule D.

Also, use of the term “program” is confusing in this context. *We recommend IRS consider using the term “non-investment property” on line 15a.*

## CORE FORM 990 PART VII – Statements Regarding General Activities

Because asking these questions will likely cause readers to wonder if this should be required of all organizations, *we recommend that the IRS indicate in the instructions whether or not the answers have enforcement implications* or if they are there as a public information issue only. Doing so will help to clarify for preparers how to determine if additional information should be included as an attachment to describe why the organization does or does not engage in such activities.

### Line 13

It would seem that a “yes” answer to this question would be rare, so *we recommend that the IRS include in the instructions an example of the circumstances under which an organization might rightly answer yes.* Such guidance will serve to prevent organizations from seeking to file 1041 in lieu of 990 when it may not be appropriate.

## CORE FORM 990 PART VIII – Statements Regarding IRS Filings

Because asking these questions will likely cause readers to wonder if this should be required of all organizations, *we recommend that the IRS indicate in the instructions whether or not the answers have enforcement implications* or if they



are there as a public information issue only. Doing so will help to clarify for preparers how to determine if additional information should be included as an attachment to describe why the organization does or does not engage in such activities.

### **CORE FORM 990 PART IX – Statement of Program Service Accomplishments**

As we noted from the beginning of this response, we believe that the IRS’s positioning of this section further back in the Form 990 runs contrary to our consistent recommendations over the last few years. In the for profit sector, performance is generally judged by the public based upon the annual report. In those reports, the first thing that is presented is a written summary of what the organization has been able to accomplish relative to their mission and a series of key metrics are usually presented with a narrative that assists the reader in understanding the full financial statements that follow.

This format of presentation of financial information has long been considered the ideal approach to communicating financial information. It tempers the reader’s reaction to the myriad of numbers found in financial reports by putting them in a context that justifies why the numbers are what they are. Without that context, it is more likely that inexperienced readers will react negatively to amounts that they perceive to be “high” but in the right context, the reader understands that the specific cost may well be appropriate.

Because the public garners its information about non-profits primarily from the Form 990, it is important to have the Form 990 present information in a format that creates the proper context for the reader. By putting the “Statement of Program Service Accomplishments” first in Form 990, the organization has the opportunity to set the context for the financial information that follows. Such a narrative naturally should include any number of “key” metrics that assist the reader in understanding what the financial reports that follow say about the organization’s efficiency and success at delivering on its mission promise. Readers of Form 990 can then factor this information into their thinking when attempting to determine whether or not the organization is worthy of their support. Without the narrative and metrics, inexperienced readers of Form 990 may be misled by any number of external factors and end up making unfounded assumptions regarding the value and contribution of the organization to the community good.

***Therefore, we recommend that in order to make the Form 990 most valuable to users, what is Part IX in the Draft Revised Form 990 should be moved to become Part I.***



## Line 1

This question asks if any “significant” changes occurred in the organization’s activities. It is unclear to us what the importance of this question would be, but if it remains, we believe that the term “significant” is too vague without some type of definition in the instructions. Significance after all can very much be in the eye of the beholder (e.g. it is a very subjective term) so ***providing some form of benchmark with which to gauge significance is imperative.***

## Schedule A Part I – Reason for Public Charity Status

Questions 7 & 8 describe similar organizations and as a result it seems that organizations may be prone to make mistakes in determining which category to check. ***We suggest that the IRS redraft the questions to add clarity*** and/or provide examples of what types of organizations fit into each category in the instructions.

## Schedule A Part II – Support Schedule

The instructions for this section in the current Form 990 indicate clearly that the schedule is to be prepared on a “Cash” basis. However, neither the Draft Revised Form 990 nor the proposed instructions indicate whether the revised schedule is to be prepared on a “Cash” basis or “Accrual” basis. ***We recommend that the instructions be clear as to the allowable basis. We further request that the IRS consider allowing “Accrual” basis as an option*** as it will better align this schedule with the rest of the form’s numbers and make reporting in this schedule far easier (and less time consuming) for organizations that keep their books on an accrual basis.

## Schedule B Part I – Contributors

### Column D

We realize that this is not a change from the current form 990 but we feel compelled to point out that this column does not seem to be comprehensive (e.g. some contributions reported will not fit into any of the three categories given) which has the potential to create confusion on the part of preparers and readers of the form. For example, which category should be checked when a gift comes directly from a corporate entity? If the IRS intends such contributions to be classified as a “Person” based on the fact that a Corporation is a “legal person”, then what if the contribution comes from a Sub-S corporation or a Limited Partnership? ***We recommend that the IRS either add an additional category for “other” or include clear instructions*** that will address for preparers and readers what is reported where.



An additional observation is that there are often contributions received from a single donor that would fit into multiple categories. For example, in a Federated Fundraising Campaign, contributions received from a single employer may include “cash” contributions which would appear to need to be reported as coming from a “person” and pledges for contributions that would clearly be reported as coming from “payroll”. It is unclear how the organization would report such a contribution. Would the organization be required to split the contribution and report it on multiple lines or would they report it all on a single line and check multiple boxes? ***We therefore recommend that the IRS include clear instructions on how to report contributions that apparently fit multiple categories.***

### **Schedule B Part II – Noncash Property**

It is our assumption that contributions made in the form of marketable securities should be reported on this page. However, if the organization immediately converts the security to cash (for which many have standing policies), would that change the classification of such a gift? Because this type of contribution is often the subject of debate in non-profit circles, ***we recommend that the IRS consider adding clear guidance in the instructions on the handling of marketable security gifts specifically.***

### **Schedule D – Supplemental Financial Statements**

#### **Parts I, III, & IV, Column C**

Organizations report value on financial statements based on market value because the accounting profession believes that reporting market value most accurately reflects the organization’s financial position. We note that reporting at cost is an option for this schedule and fear that offering the option will result in a loss of transparency and consistency between similar organizations, thus limiting the usefulness of Form 990. ***We recommend that unless a particularly salient reason exists for allowing organizations to report these values at cost, the IRS should eliminate that option.***

#### **Part XII – Endowment Funds**

Given that this is a new schedule, we believe that requiring organizations to report summary activity for the prior four years in addition to the current year represents an undue reporting burden for organizations with only minimal benefit to the reader. We recommend that in the first year that the new Form 990 is used, the requirement should be to report only the current and prior year activity. Then in subsequent years, require an additional year each year until five years of information is reported. This



will ease the reporting burden on organizations during the transition to the new form with minimal negative impact.

Additionally, since endowments are established for a variety of reasons, we believe that transparency can be enhanced if readers of Form 990 understand the purpose of the endowment. ***Therefore, we recommend that the IRS consider an additional line in this section where the organization can explain the purpose and/or restrictions.***

### **Schedule G – Fundraising Activities**

We share the concerns of the IRS about professional fundraisers who receive a high proportion of contribution revenues, but it is not clear that the information requested on Part I will provide sufficient information for regulators or the public to distinguish between reasonable and questionable arrangements with outside fundraisers.

For example:

- Line 1a asks organizations to indicate whether they engaged in various solicitation techniques, but the inclusion of “grants from governments or organizations” is confusing because these are funding sources rather than solicitation techniques.
- The question on Part I, line 2, focuses solely on those fundraisers who have a direct relationship to an officer, director, or key employee of the organization, but the question is confusing as stated and refers the filer back to the core form to provide additional information.

We are aware that Independent Sector (IS) is currently examining this area in order to make a recommendation on how this schedule can be improved. Because United Way of America is working with IS on their own response to the IRS, ***we offer our full support to the Independent Sector’s recommendations on Schedule G.***

### **Schedule I – Grants and Other Assistance**

GAAP refers to contributions received that are restricted by the donor to be transferred to another organization as “agent transactions” and therefore are considered neither revenue nor expense on audited financial statements. As we understand the regulations for the current Form 990, we are to record such activity as revenue and expense on Form 990. Assuming IRS plans to continue to require recording such transfers as expense (a position we strongly support), would such transfers be



reported on this schedule? If so, ***we recommend that the IRS say so in the instructions.***

It is important to note that Federated Fundraising Organizations generally have many transfers every year that are considered agency transactions (for example, because Combined Federal Campaigns are considered to be 100% agency transactions, every distribution would be subject to specific reporting on this schedule). If the IRS intends for agency transactions to be reported on this schedule, ***we would request that the IRS consider allowing Federated Fundraising Agencies to report such transactions in natural groupings rather than individually.***

For example, the organization could report the sum total of all agency transactions on a single line or grouped according to type of organization (e.g. Health and Human Services, Environmental, Animal Rights, etc.). Such customized rules would make completing this schedule less time consuming for organizations and less voluminous for the IRS to contend with. IRS could look to the US Office of Personnel Management (OPM), Combined Federal Campaign Division for assistance in determining what the groupings of organizations by type might consist of given OPM's experience with such classifications.

If these customized rules are not allowed, the amount of information requested would place a burden to FFOs and likely add administrative costs at a time when FFOs are rightfully challenged by our constituents to deliver their core mission in a most effective and efficient manner.

Secondly, it is not clear from the instructions whether this schedule should be prepared on a cash or accrual basis. ***We recommend that the IRS include clear guidance on the basis to be used in the instructions.***

## Part II

It is unclear why a threshold of \$5,000 is being established for reporting on grants made. If the purpose is to limit the number of items reported, it is important to note that Federated Fundraising Organizations may well have hundreds of grants in excess of the threshold. ***We therefore recommend the IRS consider raising the threshold to a value that would effectively reduce the number to a more manageable quantity while at the same time affording the transparency desired.*** Based on the experience of United Ways, that level could better be set at approximately \$15,000 - \$20,000.



## Part II Column B

While Federated Fundraising Agencies go to great lengths to gather information on the agencies they fund, it is not always possible to garner an Employer Identification Number for every agency receiving funding (especially when it comes to pass through payments classified by GAAP as agency transactions). Thus we object to a requirement that such information be provided on Form 990. It will add a tremendous administrative burden to such organizations with little substantial benefit to users.

If the IRS' intention is to simply ask for that information when available and there is no penalty to the organization for failing to provide it, it may make the new requirement more manageable but would still represent a significant increase in time and administrative cost for organizations. Therefore, ***we recommend that the IRS remove this column from the schedule.***

## Schedule J – Compensation Information

### Questions 4 & 5

It is unclear to us why the IRS believes asking these questions will be useful to readers of Form 990. These questions tend to focus an undue amount of attention on what is considered to be a legitimate business practice that unfortunately carries a negative connotation. Thus, ***we would recommend removing these questions from Schedule J.***

However, if the IRS deems it valuable information that should be added to the new Form 990, we then recommend that the wording be changed to something like “does the organization maintain an incentive compensation plan”. If the organization answers yes, space should be provided on the form for the organization to give an explanation of the basic tenets of the plan.

Taking this approach will give the organization the benefit of the doubt that such a plan is appropriate while at the same time providing users of Form 990 with the information necessary to determine if the plan represents an appropriate use of donated funds.

## Schedule M – Non-Cash Contributions

Similar to our comments on Schedule B Part II – Non-cash Property, it is our assumption that contributions made in the form of marketable securities should be reported on this schedule. However, if the organization immediately converts the security to cash (for which many have standing policies), would that change the



classification of such a gift? Because this type of contribution is often the subject of debate in non-profit circles, ***we recommend that the IRS consider adding clear guidance in the instructions on the handling of marketable security gifts specifically.***

Additionally, as we indicated in our comments on the Core Form 990, part IV above, we wonder if setting a threshold of \$5,000 is appropriate. For large organizations, non-cash contributions of \$5,000 may be immaterial. ***We therefore reiterate our recommendation that the IRS consider setting a threshold of 5% of total revenue or \$5,000 whichever is greater.*** Doing so would assure that items reported here will represent material activities of the organization.

### **Comment & Implementation Periods**

A massive re-design effort presents many challenges for both the IRS and the filing community. United Way of America, like Independent Sector and many other organizations, has joined the IRS in working to inform exempt organizations about the proposed changes. Despite these efforts, many organizations are still unaware of the proposed changes. Even once organizations and their professional advisors are aware of the revised Draft, they may lack the where-with-all to invest the many hours necessary to analyze and understand the changes such that they can offer alternatives that will help to achieve the goals of the re-design.

Like the IRS, United Way is eager to move forward with an improved Form 990 but we realize that organizations must have sufficient time to understand and implement the significant changes that will be required. The full value of Form 990 can only be achieved if we prepare Form 990 on a consistent basis. Thus, organizations like us will need time to create new guidance & training for members and affiliates to assure that they make the necessary changes in their record keeping systems.

We believe that it will serve the non-profit sector best if, after the Service has had a reasonable amount of time to review comments from the field, they take the time necessary to make further improvements to the Core Form, the Schedules, and the accompanying instructions. While in some areas this may even require additional comment periods, we believe the investment will be worth the effort.

Thus, ***we join with Independent Sector in recommending that the IRS delay implementation of the Revised Form 990 until reports are due for Fiscal Year 2009 activities.*** Doing so will allow IRS sufficient time to properly respond to the comments received and allow the non-profit sector sufficient time to properly prepare



for the transition. All of us have too much invested in the revision of Form 990 to rush to implementation at this defining moment.

## **Conclusion**

This letter represents the view of United Way of America and its approximately 1,300 member organizations nationwide. It reflects those issues that we believe are of most direct importance to Federated Fundraising Organizations like us.

It is also important to note that United Way of America has been actively involved with Independent Sector in drafting their comments to the IRS which represent the interests of the non-profit sector as a whole. Accordingly we confirm that, with the exception of where our recommendations contradict those made by Independent Sector, we concur with and support the recommendations of the Independent Sector.

United Way of America again thanks the Internal Revenue Service for affording us this opportunity to provide comments and recommendations aimed at making the revised Form 990 most useful to all constituencies. We would welcome the opportunity to participate in any future discussions about the form as IRS continues to review and modify it.

If the IRS would like to discuss any of our responses in greater detail, please contact Kenneth C. Euwema, Vice President of Membership Accountability, United Way of America.

Sincerely,

A handwritten signature in black ink that reads "Kenneth C. Euwema".

Kenneth C. Euwema, for  
The United Way of America Financial Issues Committee



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United Way of Western Connecticut  
Danbury, Connecticut

**Benton Clark**  
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**From:** [FNJSMP](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:** [Pat Heck](#)  
[Dean Zerbe; jjd](#)  
[ridpath FNJSMP](#)  
**Subject:** Comments by The Drake Group on the Draft of a Redesigned IRS Form 990  
**Date:** Sunday, September 09, 2007 8:08:44 PM  
**Attachments:** [Splitt TDG Comments Form 990 Redesign 091007.doc](#)

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The attached MS Word doc. file contains:

1. A copy of 090507 e-mail letter covering an appended commentary by The Drake Group on the Draft of a Redesigned IRS Form 990 and
2. The Drake Group commentary with a more detailed ACKNOWLEDGEMENT section and corrected typographical errors.

Respectfully submitted,

Dr. Frank G. Splitt  
Member, The Drake Group  
<http://thedrakegroup.org/splittessays.html>  
[Former McCormick Faculty Fellow](#)  
McCormick School of Engineering and Applied Science  
Northwestern University

Copies to: Messrs. Patrick Heck and Dean Zerbe, Senate Finance Committee, Dr. James Duderstadt, President Emeritus and University Professor of Science and Engineering at the University of Michigan, and Dr. B. David Ridpath, Executive Director, The Drake Group

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

The appended commentary is in response to your request for public comment on the discussion draft of a redesigned Form 990, Return of Organization Exempt from Income Tax, filed by many public charities and other exempt organizations. These comments, presented on behalf of The Drake Group (TDG), are focused on the tax-exempt National Collegiate Athletic Association (NCAA) and its member institutions.

TDG believes that an IRS implementation of the recommendations contained in the commentary will not only increase tax revenues, but also help restore academic and financial integrity in colleges and universities supporting big-time sports programs, especially football and men's basketball.

Respectfully submitted,

Dr. Frank G. Splitt  
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Dr. James Duderstadt, President Emeritus and University Professor of Science and Engineering  
at the University of Michigan, and Dr. B. David Ridpath, Executive Director, The Drake Group

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## **Comments by The Drake Group on the Draft of a Redesigned IRS Form 990**

**BACKGROUND** -- The mission of The Drake Group (TDG), <http://www.thedrakegroup.org/>, is to help faculty and staff defend academic integrity in the face of the burgeoning college sport industry whose uncontrolled growth is partially fueled by the governments' favorable tax policy re the NCAA and its member schools.

The increasing commercialization of big-time (NCAA D-1A) intercollegiate athletics and its negative impact on America's higher education enterprise has become evermore apparent to academic leaders, elected public officials, the sports press, and to a growing fraction of the public. After a century of ineffective efforts to reform college sports, there is a growing concern over out-of-control commercialization that is driven by the college-sports entertainment industry to further its financial interests – exploiting college sports and its participating athletes while limiting access to higher education by real students.

There is also concern about compromised academic integrity and the distracting influence of overly commercialized college sports on school officials, on America's youth, and on the nation's diminishing prospects as a leader in the 21<sup>st</sup> century's global economy.

A revised IRS Form 990 has the potential to fully expose the NCAA cartel's Achilles' Heel – the extremely weak, if any, educational basis for the current financial structure of big-time college sports. This would not only force very major reform, but provide unassailable “cover” for reform-minded university presidents and governing boards as well. However, it is likely that the cartel would stage a “no-holds-barred fight” to save the millions of dollars in benefits stemming from its current tax-exempt status by arguing that its affiliation with the educational mission of its member colleges and universities is direct rather than tangential at best.

**TDG AND CONGRESS** – After TDG’s 2004 work with Congresswoman Jan Schakowsky’s staff, prior to her Extended Remarks for the Congressional Record,<sup>1</sup> TDG worked closely with the staffs of the Oversight Subcommittee of the House Committee on Ways and Means and the Senate Finance Committee to reveal the brutal truth about big-time college sports that is often obfuscated by myths, misrepresentations, and misinformation promulgated by ardent defenders of the status quo. This work helped contribute to:

1. A sharply-worded letter from the House Committee Chairman Bill Thomas to NCAA President Myles Brand– seeking justification for the NCAA’s tax-exempt status as an institution of higher education, specifically asking Brand to explain why, given the NCAA’s similarity with pro sports entities in its dealings with media rights and other big-money issues, it should continue to be tax-exempt, and
2. The December 5, 2006, meeting of the Senate Finance Committee that, among other things, probed the NCAA’s response to the Thomas letter via testimony from Dr. James Duderstadt, Emeritus President, University of Michigan.

Details on these congressional efforts as well as historical perspectives that help get at the truth about big-time college sports can be found in a recent article in *The Montana Professor*.<sup>2</sup>

In his most recent book,<sup>3</sup> Duderstadt, wrote: “While they (faculty) deplore the exploitation of student athletes and the corruption of academic values, they feel helpless to challenge the status quo in the face of pressures from coaches, athletic directors, and boosters – not to mention the benign neglect by presidents and trustees.” This statement preceded Duderstadt’s conclusion that “it is time for Congress to step in, at least in a limited way, to challenge several of the current anomalies in federal tax policy that actually fuel the commercial juggernaut of big-time college sports.”

**THE REVISED IRS FORM 990** -- It is our understanding that the discussion draft constitutes a significant redesign of Form 990 and that the IRS anticipates using the revised form for the 2008 tax year. We also understand that the redesign of Form 990 is based on three guiding principles:

1. **Enhancing transparency** means providing the IRS and its stakeholders with a realistic picture of the organization and its operations, along with the basis for comparing the organization to similar organizations.
2. **Promoting compliance** means the form must accurately reflect the organization’s operations and use of assets, so the IRS may efficiently assess the risk of noncompliance.
3. **Minimizing the burden on filing organizations** means asking questions in a manner that makes it relatively easy to fill out the form, and that do not impose unwarranted additional recordkeeping or information gathering burdens to obtain and substantiate the reported information.

## TDG COMMENTS

**1. General** – Although TDG agrees with the guiding principles for the revised Form 990, we believe that the revisions should be amended since the proposed Form 990 does not ask for the level of disclosure that TDG and the Congress are seeking as well as what the IRS ought to have. TDG has focused its recommendations to the U. S. Congress on the need for greater transparency and reporting that could be required of NCAA sports programs at colleges and universities. We have argued that this transparency and reporting would provide supporters, the general public, present and future students and their parents, the media, and policymakers with a much better understanding of “what is really going on” at the NCAA and their sports programs at big-time colleges and universities.

**2. The FERPA Factor** – The IRS needs be mindful of the fact that the NCAA and its member schools use the Family Educational Rights and Privacy Act (FERPA) to shield academic corruption from public view.<sup>4</sup> This corruption not only allows them to sustain their phony ‘student-athlete’ ruse with its derivative tax-exempt status, but also to recruit, sign, and roster academically unqualified blue-chip athletes requisite to fielding professional-level teams for their college sports entertainment businesses. Thus, the recommendations provided herein are rooted in the compelling need to require the NCAA and its member institutions to provide tangible evidence that their athletes function as real students.

**3. The NCAA’S Student-Athlete** – Without facts obtained by independent parties, disclosure, and external oversight, the NCAA cannot know that athletes are really students receiving a bona fide, rather than a “pretend” college education. Since the NCAA lacks verifiable evidence – indicating that athletes are progressing on accredited-degree tracks – there appears to be no rational basis for the NCAA to use the term ‘student-athlete’ when referring to college athletes who are, in effect, full-time employees of their schools. The NCAA’s use of the term may very well represent a false claim in violation of laws governing truth in advertising.

Robert and Amy McCormick, from the Michigan State University College of Law, argue in a *Washington Law Review* article that grant-in-aid athletes in revenue-generating sports at NCAA Division I institutions are not “student-athletes” as the NCAA asserts, but are, instead, “employees” under the National Labor Relations Act.<sup>5</sup>

In many, if not most, instances, college athletes’ participate in an alternative educational experience that is not part of the school’s serious academic life, but rather a customized pseudo-academic experience engineered by academic support center staff members who work at the behest of the school’s athletic department to maintain the eligibility of the school’s athletes.

Recent and ongoing research strongly suggests prevalence clustering of entertainment-sport college athletes, especially minority athletes, in such alternative educational programs.<sup>6,7</sup> In addition to such pseudo majors, the phenomenon of “one and done” athletes, who utilize college sport as a short-term stepping-stone to a professional sport career, contributes to a lessening of universities’ academic standards and a marked deviation from educational missions.

Just like the NCAA, the Congress and the IRS, must take the word of school administrators that athletes are really students on track to receive a bona fide, rather than a “pretend” college education. The fact that the NCAA has never endorsed proposals for academic disclosure by its member institutions, seems to indicate that NCAA officials do not want to have public evidence that could prove embarrassing to their cartel’s business interests.

**4. Transparency/Disclosure** – It seems clear that the Congress and the IRS want transparency on the nature of a tax-exempt organization that would reveal whether or not it warrants this status. The issue here is whether or not intercollegiate athletics is an integral part of the educational mission which is indeed exempt. The way universities can establish their claim to their being integral to the educational mission is through transparency in the athletes' experience and their progress as legitimate students.

Other than the new Schedule J, there appears to be nothing in the proposed form regarding specific disclosures on college athletic programs. In fact, Schedule E, which is the schedule filled out by "private schools" exempt under 501(c)(3), has not changed at all. As mentioned previously, the proposed Form 990 does not ask for the level of disclosure that TDG and (we believe) the

Congress are seeking as well as what the IRS ought to have. Even if it did, public universities could probably evade such disclosure because many, if not most or all of them, would not file a Form 990. This appears to be a major problem since public universities usually are not required to file Form 990s, because they are part of state government, not a private entity exempt under 501(c)(3). It would probably take a separate law enacted by Congress to require public universities to file a Form 990.

**5. Compensation** – The proposed revisions to Form 990 do require far more detail regarding compensation of officers, directors and "key employees" (generally defined as someone who has management-like responsibilities for "a discrete segment or activity of the organization that represents a substantial portion of the activities, assets income or expenses of the organization. . ." on new Schedule J. The new definition of "key employee" which is now essentially the same as the definition for "excess benefit transactions" in Section 4958 of the Code, is likely to include NCAA Div. I-A football and basketball head coaches, so the IRS will likely get to know somewhat more about their compensation packages than it does now, but only for organizations required to file a Form 990

Also, the Form 990 and Form 990T should be amended to include questions about the "total compensation arising out of the connection to the non-profit". For example, coaches and others are paid a small salary by the university-relatively – but they receive much larger compensation from other sources that would not be available to them "but for" their position at the university. Accordingly, the Form 990 does not reflect the compensation that the institution is legally liable to provide. The form should show the highest paid people irrespective of the position they hold.

**6. Contingent Benefits** – Currently, quid-pro-quo contributions – payments that are required in order to receive benefits from nonprofit organizations – are eligible to be claimed as a charitable contribution, for example, seat "taxes" for premium seats or lease fees for luxury skyboxes. The large income stream stemming from the skybox boom has been assisted in large part by a 1999 IRS ruling that allows boosters to deduct most of the donations they make to lease skyboxes ... donations estimated to account for billions of dollars to Division I universities.

**7. Unrelated Business Income** – The commercial connections and government subsidies to college sports are well documented. For example, Andrew Zimbalist provides the story behind the gutting of the law pertaining to Unrelated Business Income Tax (UBIT) ... law that was written to provide for the taxation of the activities of a tax-exempt organization that are not substantially related to the exempt purpose for which it was formed.<sup>8</sup> It is understood that public universities were made subject to the UBIT provisions by special rule.

A good sense of the magnitude and ubiquitous nature of the very powerful legal and lobbying forces at the command of the NCAA cartel can be obtained from the story of the cartel's

suppression of the 1977 UBIT case brought against Texas Christian University by the Dallas office of the IRS.<sup>9</sup>

## RECOMMENDATIONS

TDG believes that implementation of the following recommendations by the IRS will not only increase tax revenues, but also help restore academic and financial integrity in colleges and universities supporting big-time sports programs, especially football and men's basketball. The recommendations and the appended explanatory notes are based on the appended references.<sup>1-3, 5-13</sup>

TDG recommends that the IRS:

1. *Advise the NCAA and its member institutions that:*

a) *The need to vastly improve their transparency and reporting is a very serious matter and that their tax-exempt status will be conditioned on full disclosure*

b) *Their operations will be subject to IRS and congressional oversight as well to severe penalties (in addition to the loss of their tax-exempt status) for noncompliance.*<sup>14</sup>

2. *Eliminate what appear to be clear violations of fundamental tax principles such as the loopholes that were inserted in the tax laws to enable practices such as tax deductions for contingent fees on seat tickets and skybox lease payments.*

3. *Be more rigorous in assessing the UBIT status of the revenues received by organizations, such as the NCAA, that are largely tangential to the educational mission of colleges and universities.*

Furthermore, TDG recommends that the IRS amend the revised Form 990 and schedules to request the NCAA and its member institutions to:

1. *Provide evidence that their athletes are maintained as an integral part of the institution's student body*

Over the years, the NCAA has made a number of rule changes that have emphasized athletics over academics so as to move their D-1A football and men's basketball programs to professional levels.<sup>15</sup>

2. *Provide evidence that their athletes attend regular whole-period classes*

Attending class is a public act; disclosing the names of courses and professors while not releasing students' grades provides the appropriate balance between a student's right to privacy and the public's right to know the conduct of faculty, administrators and governing board members. The purpose of transparency is to focus on the conduct of faculty, administrators and governing board members, not on student conduct.

Transparency would require disclosure of courses taken by the school's football and basketball team players as well as cohorts representing 50% of the players with the most playing time, the average grades for the athletes and the average grades for all students in those courses, the names of advisors and professors who teach those courses, and whole-period class attendance records for the athletes.

It is suggested that interpretive wording be added to FERPA's student privacy provisions to make abundantly clear that this legislation does not prohibit release of information on the academic performance of individual athletic teams in whole or in part, so long as the data do not identify individual team members.

3. *Provide evidence that their athletes are on accredited degree tracks and are held to the same academic standards of performance as all other students*

The schools should be required to:

a) Name the Department of Education's National Advisory Committee on Institutional Quality and Integrity (NACIQI) approved accrediting organization responsible for accrediting the tracks, especially for the general studies and other 'diploma-mill-like' degree tracks commonly engineered for athletes by their school's academic support center staff, and

b) Relocate and divest control of academic counseling and support services for athletes by athletic departments. Such services must be the same for all students and in no way under the influence of the athletic department.

4. *Provide evidence that their athletes realize a 2.0 grade-point average, quarter-by-quarter or semester-by-semester to gain and maintain eligibility for participation in athletic events, with the grades and academic records certified by the school's chief academic officer*

It is reasonable to expect that a legitimate student have no less than a "C" average. The school's chief academic officer should be held personally accountable for academic corruption.

5. *Employ a standard uniform system of accounting in their athletic departments that is subject to public financial audits*

Convenience accounting and budgeting practices will continue to be used by the NCAA cartel to deceive and confuse faculty, the public, the Congress and the IRS about athletic department financials unless and until schools are forced to employ a uniform system of accounting that includes total capital expenditures, depreciation, and total staff costs from all sources, as well as be subject to public financial audits. The threat of Sarbanes-Oxley would certainly bring the NCAA and its member institutions to sharp attention.

Frank G. Splitt  
September 10, 2007

## **ACKNOWLEDGEMENTS**

The author gratefully acknowledges insights and contributions from:

**John Columbo** -- Professor of Law, University of Illinois at Urbana Champaign -- teaching primarily in the tax field with special focus on tax-exempt organizations,

**James Duderstadt** -- President Emeritus and University Professor of Science and Engineering at the University of Michigan,

**Jon Ericson** -- Former Provost and Ellis & Nelle Levitt Professor Emeritus Drake University and a founding member of The Drake Group,

**John Gerdy** -- Author and Visiting Professor in Sports Administration at Ohio University, a former professional basketball player as well as a legislative assistant at the NCAA and the Associate Commissioner of the Southeastern Conference,

**David Ridpath** -- Assistant Professor of Sport Administration, Division of Sport Administration, Ohio University and the Executive Director of The Drake Group,

**Allen Sack** -- Director of the Management of Sports Industries Program at the University of New Haven and a founding member of The Drake Group,

**Richard Southwell** -- Director, College Sport Research Institute, Assistant Professor, Sport & Leisure Commerce, University of Memphis and a Director of The Drake Group,s

**Andrew Zimbalist** -- Professor, Economics Department at Smith College of Economics, Smith College, and noted author in the realm of sports business.

## **APPENDIX – REFERENCES AND EXPLANATORY NOTES**

<sup>1</sup> Schakowsky, Janice D. "Call for attention to the work of Dr. Frank Splitt," Congressional Record, Extension of Remarks, March 17, 2005, – p 9, [http://thedrakegroup.org/Splitt\\_Essays.pdf](http://thedrakegroup.org/Splitt_Essays.pdf).

<sup>2</sup> Splitt, Frank G., "The U.S. Congress: New Hope for Constructive Engagement with the NCAA and Intercollegiate Athletics", *The Montana Professor*, Spring 2007, <http://mtprof.msun.edu/Spr2007/splitt.html>

<sup>3</sup> Duderstadt, James J., *The View from the Helm: Leading the American University During an Era of Change*, p. 326, University of Michigan Press, Ann Arbor, Michigan, 2007

<sup>4</sup> FERPA is part of the Federal General Provisions Concerning Education (GEPA), a set of unfunded conditions on the receipt of federal education funds. It is commonly referred to as the Buckley Amendment to GEPA. See Matthew R. Salzwedel & Jon Ericson, "Cleaning Up Buckley: How the Family Educational Rights and Privacy Act Shields Academic Corruption in College Athletics," *Wisconsin Law Review*, Volume 2003, Number 6, 1053-1113. Supplementary recommendations relative to FERPA that will ensure academic integrity of institutions of higher education follow:

- a) Under Department of Education guidelines, "Directory Information" shall be amended to insert "courses, including the name of the professor" following "major field of study."
- b) Institutions shall make public academic records of members of student groups sufficient in number to protect the privacy of individual students, students' courses including the grade, name of the professor and course GPA. The records shall be in the listed in order of grades received, i.e., courses in which the student received an A, courses in which the student received a B, and so forth.

<sup>5</sup> McCormick, Robert A. and Amy C., "The Myth of the Student-Athlete: The College Athlete as Employee," *Washington Law Review*, Vol. 81, pp. 71-157, 2006, Available at SSRN: <http://ssrn.com/abstract=893059>

<sup>6</sup> College Sport Research Institute, "Study of 2006 NCAA Division I men's basketball tournament players' majors," Memphis, TN, 2007

<sup>7</sup> Finley, P. S. and Fountain, J. J., "Academic stacking of athletes on low-performing Division I football teams," Paper presented at the annual meeting of The Drake Group, Cleveland, OH, March 2007.

<sup>8</sup> Zimbalist, Andrew, *Unpaid Professionals: Commercialism and Conflict in Big-Time College Sports*, Princeton University Press, 1999; See pp. 128 and 129 in the Paperback Edition, 2001.

<sup>9</sup> Sack, Allen L and Staurowsky, Ellen J., *College Athletes for Hire: The Evolution and Legacy of the NCAA's Amateur Myth*, Praeger Publishers, 1998.

<sup>10</sup> Splitt, Frank G., "Are Big-Time College Sports Good for America?"  
[http://www.thedrakegroup.org/Splitt\\_Good\\_for\\_America.pdf](http://www.thedrakegroup.org/Splitt_Good_for_America.pdf)

<sup>11</sup> \_\_\_\_\_, "The U. S. Congress, Higher Education, and College Sports Reform"  
[http://thedrakegroup.org/Splitt\\_The\\_Interface.pdf](http://thedrakegroup.org/Splitt_The_Interface.pdf)

<sup>12</sup> \_\_\_\_\_, "The Congressional Challenge to the NCAA Cartel's Tax-Exempt Status"  
[http://thedrakegroup.org/Splitt\\_Congressional\\_Challenge.pdf](http://thedrakegroup.org/Splitt_Congressional_Challenge.pdf)

<sup>13</sup> \_\_\_\_\_, "Don't Overlook the Congress for Serious College Sports Reform"  
[http://thedrakegroup.org/Splitt\\_Dont\\_Overlook.pdf](http://thedrakegroup.org/Splitt_Dont_Overlook.pdf)

<sup>14</sup> Conditioning the continuation of the NCAA's tax-exempt status on their meeting specific reporting requirements such as outlined herein and plugging the tax loopholes that help subsidize the college sports arms race will provide a strong message as to the seriousness of the revised Form 990 and its schedules.

Self assessment and reporting by colleges and universities, as well as weak enforcement by the NCAA, and even weaker penalties for infractions, provide an enormous incentive for schools to scheme and cheat. Failure to implement and comply with the the IRS reporting requirements should put the NCAA and/or individual institutions at risk of losing their tax-exempt status. Once implemented, evidence of a continuation of existing patterns of fraud, continued efforts by universities and colleges to circumvent the intent of these measures, or, retaliation against whistleblowers, should garner severe penalties. In addition to the loss of their IRS tax-exempt status, penalties reflecting contempt of Congress should be of such severity as to make the risk of noncompliance not even worth thinking about.

<sup>15</sup> The NCAA has resisted providing college athletes meaningful opportunities to function as real students by not agreeing to:

- a) Restore first-year ineligibility for freshmen with expansion to include transfer athletes;
- b) Reduce the number of athletic events that infringe on student class time, with class attendance made a priority over athletics participation—including game scheduling that won't force athletes to miss classes;
- c) Restore multiyear athletic scholarships—five-year scholarships that can't be revoked because of injury or poor performance (currently, an athletic scholarship is an agreement between athlete and coach/athletic department, renewed based on ATHLETIC performance), or, replace athletic scholarships with need-based scholarships – agreements between a student and the institution based on ACADEMIC performance. If the scholarship is need based, it will be awarded by the institution – just as the institution awards all other need-based aid – in that case, it does not need to be a five year award as the student will continue to receive his or her need-based aid, even if they leave the team. A strong case for switching to need-based aid as the only way to break the cycle of sponsoring professional teams on college campuses is made by John Gerdy in his most recent book, *Air Ball: American Education's Failed Experiment with Elite Athletics*; and
- d) Require athletes to honor the terms of their multiyear athletic scholarship with appropriate penalties to the school and athlete for broken commitments such as 'one and out' to the NBA.

###

**From:** [DInserra](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Comments on Draft of Redesigned Form 990  
**Date:** Sunday, September 09, 2007 11:32:28 AM  
**Attachments:**

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I attended the IRS Tax Forum at the end of August in NYC which covered the draft revisions to the Form 990.

I simply wish to emphasize two points:

One, the threshold should not be increased to \$50,000 for those that are required just to send an e-postcard. Not for Profits and Tax Exempts (especially Public Charities) are a popular entity today for various reasons, and, with respect to the Proposed Tax Gap and the fact that these Tax Exempts are using Other People's Money and competing with For Profit businesses that are required to file at all thresholds, they should not be permitted to not be held accountable to an amount as high as \$50,000, a dollar amount that represents more than the average annual salary today. Keep it at the \$25,000 threshold as I believe it might be found that there is noncompliance, from above \$25,000 to \$50,000, at this threshold if it was studied.

Second, "Part III" of the draft of the core Form 990, entitled, "Statements Regarding Governance, Management, and Financial Reporting" is key to determining the integrity and the "Tone at the Top" of whether "transparency" for the Tax Exempt is Management's Goal; however, my observation is that the IRS should ask one other question: "Whether members of the governing body (primarily the three key positions: President, Vice President, & Treasurer) have taken training courses instructing them on their duties and responsibilities as a fiduciary to the Tax Exempt Organization filing the Form 990. A simple "yes" or "no" would suffice. And, if the answer is "Yes," have they maintained their training certificates on file with the Tax Exempt Organization? If they have not taken a course, are any of these Key Officers planning to attend, within one year, a fiduciary training course for Tax Exempts of which the IRS should highly recommend, on the revised Form 990, that these officers do so.

Otherwise, I believe the redesigned Form 990 is long called for with respect to today's environment of promoting transparency in Not for Profits and Tax

Exempts.

Doreen M. Inserra, CPA, CGFM  
Doreen M. Inserra, CPA, P.C.  
42 Joel Place  
Staten Island, NY 10306  
Tel: 718-979-5163

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**From:** [Ken Bowman](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:** [Jim Clarke, ASAE Public Policy;](#)  
**Subject:** Updating the 990 Form  
**Date:** Saturday, September 08, 2007 12:22:59 PM  
**Attachments:**

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Good Morning!

I am a member of ASAE and I agree with the recent letter that they forwarded on to your agency voicing our concerns over the re-design of the 990 form. I, like the ASAE, believe that the 990 form needs to be updated and I applaud the initiative, but it needs to be an effective and useful update. The major concern that I have is that the new form appears to be more geared towards charitable organizations as opposed to trade groups. And, since our business is totally with trade organizations, many of the questions and sections on the new 990 simply do not apply. I feel that both the IRS, the ASAE and other interested parties -- who actually have association experience -- should sit down and review each section on the new 990 with an eye to getting practical and meaningful information needed by the IRS from this redesigned form. As I read the form and the objections that have been raised by ASAE, it becomes very apparent that the authors of this redesign are painting all non-profits with the same brush. And, I can tell you that being in this business over 30 years, there are very significant differences between charitable and trade organizations..not to mention the other non-profit groups.

I would suggest that rather than rush to get this done with all of the problems that are in this new form, that the IRS step back, get more involvement from the non-profit industry and try to get what needs to be accomplished correctly. I don't buy the idea that there is a small window of opportunity to achieve this so this needs to be done immediately. This feels more like a smokescreen. I understand that the government is not supposed to do things with a practical intent and understanding but in this case, I feel we all would be better served if we worked these kinks out now as opposed to later....and you know, that this will happen if this redesign moves forward without remedying the issues raised, causing us all to spend more time and money repairing it.

Sincerely,

Ken Bowman  
President  
Robstan Group, Inc  
14 W 3rd  
Kansas City, MO 64105

**From:** [LLT4K](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Group filing under 25,000  
**Date:** Friday, September 07, 2007 6:04:23 PM  
**Attachments:**

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I think most sub groups are set up for one specific purpose and once the goal is achieved it has no other function. I think filing separately is not necessary and we can state the purpose and move on.

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[\\_\\_\\_\\_\\_](#)      [\\_\\_\\_\\_\\_](#)

**From:** [Eve Borenstein \(BAM Law\)](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** FW: 10 AM East Coast Time/ Borenstein personal  
comments  
**Date:** Friday, September 07, 2007 5:18:22 PM  
**Attachments:** [Borenstein Comments 09072007.doc](#)

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I had earlier today sent this to the big 3, but forgot to include the mailbox here.  
Whoever is reading this, hello!!! Eve

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**VIA E-MAIL TRANSMISSION**

September 7, 2007

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

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

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

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

In this writing, I provide lengthy comments on the draft Redesign of the Form 990 released by the Service on June 14, 2007. This undertaking by your offices is a massive one, and the depth and breadth of feedback you have sought (and are in the process of receiving) is admirable. It is clear that it will take a "Super human" effort by you and your staff, on the timeframe your offices have committed to, to synthesize the many cogent comments and critiques coming in and accordingly revise the draft. I know I speak for many who have taken on your request for comments, in saying that it would (and in my case has) taken at least a hundred hours to stand 'outside the box' and both digest the draft Redesign's elements and aspects, and then attempt to craft improvements, posit alternatives, and overall elucidate one's suggestions. In reflecting on that reality, I have no choice but to **urge** you to honor the comments process and similarly take time to digest the alternatives and concrete suggestions that really only can be (and are) coming forth now, in the last month of the three month comment period. My fear, which I suspect is shared by many commentators, is that there simply is not enough time for the Redesign Project to be 'gotten right' between now and early December. I wish you well in your attempts to do so, and know that we all share a goal of the Redesigned 990 being one that can perform well, and last well, over the next decade(s).

***Background of the Commentator***

I am an exempt organizations tax practitioner of twenty years plus experience. Having started my career in 1985 post-law school graduation with a (then) Big 8 accounting firm's tax department, my tax compliance work has always appreciated, and in many cases revolved upon, Form 990 completion and accuracy. Since initiating my own law practice full-time in 1989, my professional work has been divided into thirds: one-third representing many extremely small (less than \$1 million budget) and small (\$1 million - \$2 million budget) exempt organizations on compliance needs (typically IRS correspondence, IRS examination audits, and proper tax disclosures related to

fundraising, lobbying, etc.), one-third on tax planning for exempt organizations, predominantly assisting those of medium-size (\$2 million - \$10 million budget), and one-third on teaching and in serving on professional committees. In the latter arena, I annually teach on the Form 990, largely to the CPA community, having developed in 1991 (and to this day annually updating) a course which I only offer under my instruction: an all-day, 8 CPE credit course on Form 990 preparation. This course has been offered by a total of 19 State CPA Societies; and over the last ten years I have taught it over two or more Form years in each of 10 states<sup>1</sup>, with an average per-class attendance of 30. I have also been active to participate in many efforts of the American Bar Association's Tax Section, my home State of Minnesota's Bar Association, various *ad hoc* groups (including the Minnesota Nonprofit Accountability Collaborative), and various sector associations, to bring practical and cogent exempt organizations tax compliance information to the exempt sector and to professionals serving the sector.

### ***Introduction to My Comments Overall***

The draft Redesign of the Form 990 comes with two major changes:

1) a summary page that is *appropriately* intended to provide key “snapshots” of the filer’s activities, financial information, and governance. Having this type of “quick look” front page is an improvement over the existing Form 990, and almost all commentators familiar with the Form’s complexity have embraced this concept as a helpful addition.

2) a revised format (and inputs) for the presentation of remunerative compensation/benefits provided to the individuals who manage the filing exempt organization. The draft Redesign would locate information that is now sought in multiple parts of the Form 990<sup>2</sup> to two specific arenas – Part II and, for filers whose managing individuals and “richly” rewarded, Schedule J. The intended ‘simplification’ sought via the redesign of these arenas is laudable.

Each of these changes, however, incorporate or employ somewhat surprising and significant ‘achilles heels’. With respect to the first arena of major change, it is clear that the exempt community, as well as many in the community serving exempt organizations’ compliance needs, are extremely troubled by several of the chosen ‘highlights’ that the draft Redesign would place on Part I. With respect to the second arena, the proposed Part II (and its triggers to Schedule J) improves the existing Form 990 by segregating and combining management compensation disclosures to one Part and flow-over Schedule. However, the inputs the draft Redesign has chosen will yield a dramatic reduction in transparency and information compared to that provided by the existing Form 990,

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<sup>1</sup> Alaska, Arizona, Georgia, Iowa, Louisiana, Massachusetts, Minnesota, North Carolina, Rhode Island, and Wisconsin.

<sup>2</sup> Part V-A (and V-B), Part IV’s lines 50 and 63, and with respect to 501(c)(3) public charities, Schedule A’s Part I and Part III, Question 2. Th

resulting in an unwelcome and significant loss of information for the public<sup>3</sup> and researchers on the salaries and benefits paid in the exempt sector. Following this introductory section, I make suggestions both as to what would be more appropriate (and less problematic) 'highlights' to snapshot on the summary page and suggest retaining certain aspects of the present Form 990's approach to detailing compensation.

Unavoidably, my suggestions often critique the draft's choices, sometimes harshly, especially with regards to the draft Redesign's Part I. Please note that the severity of my critique is unique to that Part. You will find here many discussion pages on Part I, covering subjects that have already been iterated in by other commentators. While it is thus the case that many of the criticisms I make here (on the draft Redesign's Part I) replicate those noted by others, my intention is to further illuminate and state the case for what information requests *should* replace those which I and others find faulty. To this end, I offer as background and context four points:

First, I believe that there is overwhelming support for a summary page that introduces the filer to a reader of the return through representation of what the organization "exists to do" (i.e., exempt purpose), summarizes the activities that the filer actually "did" in the filing year, and demonstrates certain dimensions of inputs to the organization's "capacity". It is laudable that the IRS has posited having such a summary page that can present such aspects of the filer's information.

Second, both the understanding and appreciation that the exempt organization sector now has regarding Forms 990 as a wider "regulatory tool" and "public relations vehicle" it has become over the course of the last four to five years need be honored, since same informs how filers struggle to complete the Form. Public charities, 501(c)(4) advocacy organizations who 'charitably solicit' within the meaning of State or local law, and some 501(c)(6) organizations, have learned an important lesson over the last four to five years: that they can no longer deny that their Form 990 filings are potentially (if not in fact), being looked at by their employees, competitors, watch-dog groups, and newspaper reporters. Today, when one might hear the province of the Form 990 described as one populated by the CPA's who prepare them, the State offices collecting reports on 'charitably soliciting' organizations, and the understaffed EO Division of the IRS' TE/GE Operating Division, it clearly is an anachronistic view. Filers are increasingly wary of a regulatory force called the "court of public opinion" and 501(c)(3) nonprivate foundations and 501(c)(4) organizations<sup>4</sup> with budgets excess of \$1 million dollars are now more likely than not to know its presence and fear its disfavor. Even for the majority of those in the exempt filing community with budgets less than \$1 million per year, Form 990 public access is often appreciated.

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<sup>3</sup> Including those working in the exempt sector, who are likely most often to access this information, both as a source of setting salary requests for their own employment, as well as in making whistleblower reports when dissonance exists between what is represented on a filing and their knowledge of actual practice!

<sup>4</sup> Combined, these two sub-groups represent more than 90% of Form 990/990-EZ filers.

Furthermore, those still ignorant of that reality are every day likely to learn of it as the desired transparency of the exempt sector that is in part informed by that Form are in discussion via newspaper (and blog) headlines (and accompanying stories). As these reports are discussed in work places around the country, the exempt sector's Board members and management employees are exposed to them. I cannot overstate the effect of Congress' ongoing hearings since June 2004, the increased number of news stories since that same time describing local charity or other-exempt organization scandals or alleged improprieties, publicity given to testimony and press releases by then-IRS Commissioner Mark Everson and TE/GE Commissioner Steve Miller, and the impact of the IRS' EO Division's well-timed and well-placed release of educational information and exam initiatives, on the understanding that the sector and those providing technical assistance to it have, related to their need to properly complete the Form 990 and appreciate its public relations ramifications.

Third, as the IRS' representatives have widely acknowledged in the course of releasing the draft Redesign, the Form 990 as it presently exists is a disaster. Its 'layout', with questions/lines in which information on one issue is now sought in multiple Parts, is incredibly complicated and sometimes contradictory. Furthermore, the hodge-podge of ill-defined lines/questions (and accompanying Instructions, or lack thereof) defies understanding by even the most sophisticated and studious practitioners of its preparation. Having said that, it is still the case (and perhaps a direct consequence of that disaster) that most exempt organizations focus especially on the sensitivity of their disclosures in three areas of the Form 990: programmatic undertakings (activities), membership on the Board or in Officers' or Key Employees' positions (and attendant remunerative compensation/benefits), and inputs of certain financial information (e.g., bottom-line results, contributed income and program service income). For 501(c)(3) public charities, a fourth area appreciated by filers is the disclosure of amounts of remunerative compensation/benefits provided to "high 5 [but non-Key] employees".

Fourth, the sum-total of the preceding three points mandates that the IRS need be extremely cautious to ensure that the Redesign does not require the exempt sector to "change [preparation] horses in the middle of the stream". While I have emphasized that the Form 990 has been given much more serious respect by the sector in the last four-five years, it is over a longer period of time, at least ten years, that proper completion of the Form 990 (and the challenges to that preparation) has been both a goal and need that filers and 990 preparers have been aware of. The proposed passage and enactment of the so-called *intermediate sanctions* excise tax scheme<sup>5</sup> in 1996 initiated a march forward lead both by professionals serving the charitable sector as well as by the nonprofit sector's own representatives (e.g., Council on Foundations, Independent Sector, various State Councils of Nonprofits) to have the need for completeness and accuracy on the Form 990 given its attendant due. In the course of that march, vast challenges have been noted, and in turn those have lead to a learning curve being achieved. Many, if not most, filers have come to understand *what* is required in their properly providing information

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<sup>5</sup> Internal Revenue Code (hereinafter, "Code") Section 4958.

necessary to a “complete and accurate” Form 990<sup>6</sup>. That learning curve has gone far to meeting an important goal shared by the sector and the IRS: consistency amongst filers in what data is included and how it is tabulated. The exempt sector, largely through its own efforts<sup>7</sup>, has been moving to achieve consistency in applying the existing Form 990’s definitions and Instructions. The IRS need be cogent of (and honor) the desire and accomplishment that filers at present bring to comply with the information requests that the existing Form 990 makes. Avoiding any undue complications in the path that filers have traversed to provide accurate information in response to the current Form 990’s sought inputs should be one of the highest imperatives in making a Redesigned 990 a reality. Failure to do so is almost certain to lead to confusion and inconsistent information, leaving the filing sector and readers of the 990 to retrace a path of learning that, until it is mastered, will see the presentation of data on Redesigned 990’s that is neither transferable (for comparative purposes) nor illuminative of the individual filer’s circumstances.

With those four points as a base, my critique and suggestions (the latter emphasized via bold typeface in the Discussion section) on the draft Redesign’s Part I follow.

### *Summary of Suggested Changes to Part I*

**Part I, Line 1: detail filer’s specific exempt purpose(s) including the individualized address they apply to such purposes (e.g., “briefly describe the organization’s 501(c) exempt purpose(s)”)**

**Part I, Line 2: details key *programmatic activities* the organization conducted (or prepared to conduct were implementation not yet effected) during the filing year (line’s label should reference relevant Part where these are further enumerated, i.e., “see Part IX for further details”; label could state, “briefly summarize the specific programs conducted during the filing year”). Omit entry of “Activity Codes” here (retained in relevant Part).**

**Part I, Lines 3, 4: details number of *voting* members of the governing body, and independent *voting* members of the governing body, respectively.**

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<sup>6</sup> As one example, ten years ago it was common for all but a CEO/Executive Director to be inputted as the *sole* “key employee” included on Part V of the Form 990; for 501(c)(3) organizations, that left all other employees to be tested for populating the “high 5 (over \$50,000 in compensation)” on the Schedule A. Today it is the case that the employees other than the CEO/Executive Director are appreciated as potentially populating Part V. It has also been appreciated by the sector that compensation of ‘over \$50,000’ for the Schedule A is to be measured not just by salary, but also by the filer’s contributions to those individuals’ benefit plans.

<sup>7</sup> I note, not with any dissatisfaction or criticism, that TE/GE’s many worthy EO Division education efforts over the last several years have NOT included any whole-scale Form 990 preparation information.

**Part I, Line 5a:** same (i.e., no change)

**Part I, Line 5b:** states the number of hours of service employees provided during the year in 'full-time equivalents' (i.e., total hours divided by 2080 assuming organization has 40 hour work week)

**Part I, Line 5c:** states the number of hours of service volunteers provided during the year in 'full-time equivalents' (ditto 5b's parenthetical)

**Part I, Lines 6, 7, 8:** detail, respectively:

6) the total amount of employee remuneration paid during the filing year;

7) the total amount of remuneration the filer provided to individuals reportable on Part II; and

8) the total amount of remuneration organizations *related* to the filer provided to individuals reportable on Part II.

**Part I, Line 9:** details total gross receipts reported as subject to unrelated business income tax on the Form 990-T (relevant line). mit Lines 9a/9b.

**Lines 11-16/17-21 (not including Line 19b):** omit "% of Total" column. Add columns before "Amount" column for each of the two prior years.

**Line 19b, 25, 26:**

Delete in entirety.

## *Discussion*

### **Part I (Page 1) "Summary of Activities and Governance" (lines 1-10)**

#### **Line 1:**

I applaud the placement of this line's inquiry. It makes sense to start the Form 990 with an explication of the filer's basis for tax-exemption, i.e., the *exempt purpose they exist to serve* (rather than "mission" as the draft Redesign has posited) and I accordingly urge that **the Form here should have the filer detail their overall exempt purpose(s) and the individualized address they apply to such purposes.** "Exempt purpose" umbrellas are set by law within each subsection of Internal Revenue Code Section 501(c) (witness the eight enumerated categories under Section 501(c)(3)). Having a filer state both their overall and specific/individualized nature of their exempt purpose(s) (e.g., a filer might note "*education* of the public about the need for, and practices, necessary to ensure, food safety" or "*professional association* furthering the dentistry profession") states the case for what the organization intends to conduct and accomplish in accord with the basis of their exempt qualification.

#### **Line 2, significant activities:**

It makes sense to have a filer enunciate, immediately after stating their specific *exempt purpose* on Line 1, and I accordingly urge that **the Form should here have a listing of the key *programmatic activities* the organization conducted (or prepared to conduct**

**were implementation not yet effected) during the filing year** (e.g., a filer might note, “publication of a quarterly journal, on national food safety practices and challenges” and “conducting an annual convention for home science high school teachers and food science professionals addressing food safety”; similarly, the dentists’ professional association could note “public policy advocate ). As noted in my introductory notes above, I find the exempt sector to be extremely aware that their Form 990 filings could be or in fact are accessed by the “court of public opinion”. Not only do filers understand that information disclosed on that Part serves to inform readers/users of their 990’s what program activities or accomplishments the filer achieved or engaged in (including, for groups planning a program not yet initiated, what implementation preparations were undertaken) during the year the Form covers, but they “get” that the current Form 990’s Part III (Statement of Program Service Accomplishments) asks for input that is really the only “plain English” on the Form and that what is presented here, in turn, provides important narrative context to the entirety of the remainder of the filing.

**Line 2, summary of significant activities in relationship to Part IX:**

The draft Redesign fails to accord appropriate primacy to program explication. Such a result is puzzling, especially in spite of the fact that the need to accord primacy and priority to Part III of the existing Form 990 was amplified in two ways by changes made on the 2005 Form 990. Those changes gave Part III its own page (and accordingly, more ‘lines’), and moved to prominence – as a header to that Part – the previous (to the 2005 Form) ‘buried’ message which trumpets the importance of program narration performed at that Part. That header states:

for many readers, [Form 990 may be] the primary or sole source of information about a particular organization. How the public perceives an organization in such cases may be determined by the information presented on its return. Therefore, please make sure the return is complete and accurate and **fully describes, in Part III, the organization’s programs and accomplishments.**

*emphasis added*

The Form should have the draft Redesign’s Line 2 text (and space devoted to input by the filer, as well as Part IX’s placement) reorganized to effect the continued fostering of primacy to the filer’s narration, quantitatively, of program activities and/or accomplishments. Accordingly, the summary page’s **Line 2 should provide a shorthand enunciation (rather than a title) of the top three key arenas in which program operations occurred. The text should, in addition, explicitly direct readers to turn to the relevant Part of the 990 in which full explication of these programs’ conduct is reported.** [As noted later (and as so many others are urging), I strongly recommend that “program service” ‘activities’ and ‘accomplishments’ be placed into a redesigned 990’s Parts as Part II.] Such ‘roadmapping’ directive here at the summary page will enhance transparency of the filer’s report, as well as the overall utility of the Form 990 to readers.

The basis for the above observations is as follows:

Program activities and accomplishments are one of the three overarching keys by which an exempt entity establishes continued qualification for exemption<sup>8</sup>. A description of the filer's conduct of programs (and their output) provides a crucial understanding to readers of the return (and to regulators coming in upon examination) as to what ends management has applied its responsibility to direct operations and safeguard resources. I understand that many examination agents may not have found the existing Form's recording of program service accomplishments helpful in their field work, but such perception reflects prior practice that agents have evidenced while the old practice of "full blown audits" was still going. IRS' FYE 9302004 was really the last full year in which agents would have been performing mostly (if not all) "full blown audits", and those would have been looking at Form 990 filings for years begun in 2002 (if not earlier). Thus, IRS agents' experiences in reviewing the existing 990's "Program Service Accomplishment" Part relate to completion practices that have been bettered in the last four-five years. Regardless of the practice of filer completion that the IRS' agents may believe to be ubiquitous, it is still the case that examining agents start audits asking the exempt organization "what activities they conduct". This information is obviously necessary from a transparency and accountability perspective; accordingly, its "snapshot" belongs on the summary page, and weight and length need be provided for explication in the Redesigned 990's "core form's" Parts.

**Use of Activity Codes at Line 2:**

I appreciate the usefulness to the regulatory community (and researchers) of having the filer include the "NTEE Code(s)" that describe their specific activities. However, those Codes are *not* understandable by the lay public. Indeed, the overwhelming majority of exempt filers (regardless of budget size) do not at present know what NTEE Code(s) their activities fall under. While setting out exempt purpose and a summary of undertaken activities on the summary page is laudable, elevating these new inputs to the front (summary) page is unnecessary and rushed. Undoubtedly, organizations will have some learning curve in configuring accurate-to-their-present-programmatic-undertakings the correct NTEE Codes, and I can foresee organizations choosing with imprecision Codes at the outset and only later finding that those choices were inaccurate. With such Codes on the summary page, it will appear that filers are changing their activities frequently or perhaps too-often. I strongly recommend that NTEE Code input only be made at the relevant Part (within the draft Redesign's order, that would be at Part IX) and thus not included on the summary page.

**Lines 3 and 4 (number of members of the governing body and number of independent members of the governing body):**

These lines reprise similar info to what was first sought on the existing Form 990's (via the 2005 and 2006 versions) questions 75a and 75b. Line 3 (carried over from the draft Redesign's Part III, 1a) may afford readers and regulators a window to note that an

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<sup>8</sup> The other two would be (in layperson's terms): a) operating without private inurement (as is required of most 501(c)-subsection entities) and in the case of 501(c)(3) entities, no more than incidental private benefit; and b) having exempt purpose activities be the primary purpose (in the case of 501(c)(3)'s) or primary activity (in the case of non-501(c)(3) entities).

organization may be working with a voting Board that is “too large” (i.e., unwieldy in number). (Note that I have chosen, and support, that the number of members of the governing body reported by the filer should reflect only those members who have legal authority as evidenced by their being empowered to effect actions of the entity by exercise of voting privileges.) The reiteration on the summary page of the total number of members of the governing body is a helpful “snapshot” item for the front page of the Form<sup>9</sup>.

Line 4 (carried over from the draft Redesign's Part III, 1b), *when compared to Line 3*, may afford a flag that a filer might afford “private benefit” and/or displays insufficient capacity to ensure no private inurement is provided to those who are themselves on the governing body or ‘related to’ those on the governing body. While I initially questioned the utility of having the filer's numerical response to Part III, 1b reported on the summary page (as that number by itself is not at all reflective of the capacity of those who ARE independent to ensure that the filer operates without more than incidental private benefit and with no private inurement), I understand that this “snapshot” item (in comparison to the Part III, 1a number brought to Line 3) may demonstrate that a Board might fail (in certain transactions) from fielding a number of independent members in line with the minimum number required by State law for governing bodies. While giving prominence to these *paired* numerical counts may arouse undue suspicions in many instances, that reality is something that the governing body needs manage, regardless of whether the suspicion is informed by Part I or Part III presentation on the Form 990.

One further note here: it is imperative that the glossary's definition of “independent members of the governing body” be harmonized with the definitions of “disqualified persons” in Code Section 4958. A key gap between the two is that the draft Redesign as would fail to reach relationships created by (or a condition of) being related to another as an “in-law”. This is the case as the definition omits from its list of who is NOT independent spouses of a sibling or spouses of a child of any individual who is employed by or receives compensation or other material benefits from the organization. Two other common arenas of personal relationship are also omitted from the glossary's definition which the “court of public opinion” (and many conflict of interest policies) do not countenance as “independent”: spouses of parents as well as so-called “domestic partners”<sup>10</sup>. Having individuals in such shoes be counted as “independent” for Form 990

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<sup>9</sup> Culling the intended overall number of individuals populating the filer's governing body from the presentation of everyone required to be listed as current TDOKE's (trustees, directors, officers, and key employees), former TDOKE's, and “Highly Comp'd Employees” in Part II may well be difficult for all but the most careful reader to discern from a meticulously prepared filing; and many users of the Form will not ‘know’ that this information is stand-alone sought.

<sup>10</sup> First, members of the governing body who are spouses of a parent of an individual who is employed by, or receives compensation or other material benefits from, the organization can hardly be considered “independent”; second concerns those who are “domestic partners” of individuals employed by, or receiving compensation or other material benefits from the organization. With respect to the latter, the writer urges the federal government acknowledge that spousal status exists not just by legal marriage recognized for federal tax law purposes (be it sanctioned by a marriage license or deemed to be a common-law marriage), but also under multiple States' recognition of same-sex “civil unions” (e.g., NJ's expressly grants the same

reporting purposes, especially if the filer does not under their own conflict-of-interest policy, is specious.

**Lines 5 – 8 (snapshots related to employees/compensation of employees)**

**Line 5:**

In addition to having filers report on Line 5 their total number of employees (an entry that is also made at Part VIII, line 9a), **the Form should also have the filer detail here (Line 5b?), the amount of service those employees provided, measured in units of annual ‘full-time equivalents’.** Such dual reporting would provide a fairer and fuller picture. (For example, an organization with four full-time year round employees, who adds 10 workers full-time for 10 weeks in the summer, would reflect total staffing of six full-time equivalents – that total number of six ‘full-time equivalents’ gives appropriate context to the magnitude of compensation reported.)

**The Form should also have an additional entry (Line 5c?) for filers to report the total number of volunteers it has accessed during the filing year, measured (as above) in annual ‘full-time equivalent’ units.** For the many organizations (particularly the extremely small, a category I use for those with budgets of under \$1 million) who utilize volunteers heavily in their program and management, it is imperative that the picture their summary page provides details the reality of individuals’ service, both unpaid and paid. Detailing the organization’s accessing of efforts provided by volunteers whose efforts would of course come without *in lieu* of paid staff ‘full-time equivalents’ fuller picture of the organization’s need for, and access to, individuals’ efforts and performance.

**Lines 6 and 7 / Concern re measure of compensation in Part II-A overall:**

It is a mistake for the draft Redesign to measure the report of compensation provided to individuals *solely by their medicare-tax-reportable (per W-2) remuneration.* The exempt sector has been providing, and those to whom it is accountable have come to expect, a full and fair picture of compensation paid to Trustees/Directors, Officers, and Key Employees measured by the dual reporting of both wages paid/incurred and contributions to employee benefit plans (as well as deferred compensation paid or intended). Such reporting has been the standard for more than three decades!

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rights and responsibilities to parties in such status as it would to those who engage in “marriage”) that have been afforded by judicial decision or legislative enactment.

Both categories here are often employed in exempt organization conflict-of-interest policies. Re the latter, IRS and Treasury could embrace a definition of “family relationship” that included domestic-partners-in-fact as recognized by State or local law, or (even more radically), when same were employed in the filer’s conflict of interest policy to designate another as the intended life partner of an individual or who is otherwise identified as being related to that individual through intended long term ties of love, affection, responsibility, and commitment common to those undertaken in marriages recognized by the State, regardless of whether such relationship is defined by or otherwise recognized by any governmental authority.

More to the point, over the last decade, with the advent of the 'guidestar' website, employees, partisans, and pundits of charitable organizations have become accustomed to accessing this information (compensation + benefits) on their bosses, competitors, neighbors, etc. Publicity of the Form 990's 'public inspection' requirements has furthered the reach of those with such inquisitive interest in what exempt organizations' Trustees/Directors, Officers, and Key Employees ("TDOKE's") are paid to now be accessing the relevant section (existing Form 990's Part V, V-A) on 990's of 501(c)(6), 501(c)(4), and even 501(c)(19) filers. Such familiarity – and expectation of access – would be thwarted by the draft Redesign's reduction in provided information (on the Core Form) to one number from the W-2. I believe it is imperative that the measure of compensation the Form 990 uses with respect to reporting of TDOKE's **continues to provide compensation and benefits (substantially similar or identical to the existing 990's Part V's columns (C) and (D))**. The draft Redesign's new methodology [W-2 tax-reportable amounts] will neither improve transparency nor accountability, but instead may well thwart such goals.

Moving on: the requested information at Lines 6 and 7 (to provide "the number of individuals receiving compensation in excess of \$100,000" (from Part II, Line 2) and the Line 7 entry for the "highest compensation amount reported in Part II[-A/between both the filer and its related organizations") would yield what transparency or accountability overall? As Jody Blazek's comments note:

. . . the disclosure – on the front page – of the number of individuals receiving compensation in excess of \$100,000, plus the reportable compensation of the highest paid person, smacks of sensationalism. Focusing attention on the single person who has the highest compensation could be misleading for a number of reasons. His or her tenure with the organization could be longer than others, for example. A better version of his or her comp can be provided when it is viewed in relation to other highly paid persons displayed on [Part II and/or] Schedule J.

I add to the Blazek critique that Line 6 continues a damaging trend that the exempt sector is struggling with: that of having 'indices' or 'metrics' stated (and potentially applied by the reader) with absolutely no context. Picking a remuneration number and then asking on the front page of the return how many people rather than positions are paid higher than such amount creates yet another 'indice' that exempt organizations will now have to address; more than not, such address will be required because of the distorted results that inquirers will find or infer. [For example, take a small organization with a small number of staff, most paid less than \$50,000, but the Executive Director's position pays \$120,000 in salary and benefits per annum; the E.D.'s position is filled for three months by an individual who retires, and s/he at retirement receives payout of prior deferred compensation so that their total remuneration exceeds \$100,000 in the year; the incoming E.D. other the course of his/her nine months of service receives \$100,000 in salary and benefits – perhaps a moving allowance was provided. The organization's stakeholders expect the organization to remunerate the E.D. at the >\$100,000 level, but the Line 6 report on that year would state 2 people now being paid such amount. Questions (and suspicions) are generated.] While I, like others, fully support the notion that accountability and transparency require organizations to provide full reporting of key

individuals' remuneration on the relevant Part (now Part II), having a "summary count" result at Line 6 yields no improvements – or meaning – to transparency.

**My suggestion is** (with Part II's measures adjusted to *continue to meet the sector's and reviewers' expectations to see salary paid plus benefits provided (including deferred compensation) disclosed on the Form* as described above), **that the summary page provide inputs that allow readers to see three aspects of remuneration the organization is providing for services:**

- 1) the total amount of employee remuneration paid during the filing year;**
- 2) the total amount of remuneration the filer provided to individuals reportable on Part II; and**
- 3) the total amount of remuneration organizations *related* to the filer provided to individuals reportable on Part II.**

**Line 8:**

This line's first subpart (at 8a) reports the dollar amount of salary expense provided to the filing year's current fiduciaries (i.e., those serving as trustees, directors, officers, key employees – again, I shall refer to these parties by the acronym, "TDOKE") FOR PROGRAM SERVICE FUNCTION (in other words, picking up V's Column B input for Part V-line 5). The second subpart (at 8b) here than asks for that number to be expressed as a percentage of all expenses paid or incurred in the year FOR PROGRAM SERVICE FUNCTION. To what end is this result sought? What does it illuminate? If Trustees/Directors, Officers and Key Employees services are allocable in a larger or lesser part to program-service versus management/general or fundraising what is to be inferred? In my opinion, it is undeniably the case that the percentage result inputted at 8b will be ultimately meaningless for all users, including tax compliance administrators and the public.

**Line 9:**

Line 9b's 'ask' for the dollar amount of "UBTI" (unrelated business taxable income) that has been calculated upon the filer's Form 990-T upon the filing year may well be of interest to the public (obviously this information is already available to federal tax authorities!) Pairing this number with the amount of gross revenues analyzed in Part IV as coming from filer's activities that are susceptible to such tax liability is unfortunate and will only yield concern that filer's are *unfairly* avoiding tax burdens when they reduce gross revenues by allowed (and thus deducted) expenses against that revenue. A more useful inquiry would be stating total gross receipts the filer report on their Form 990-T. **I suggest replacing Lines 9a/9b with an inquiry as to the total gross receipts reported as subject to unrelated business income tax on the Form 990-T (relevant line).**

**Lines 11-16/17-21 (not including Line 19b):**

The summarized categories of inflows and their total, while fully expounded at the draft's Part IV, are helpfully 'summarized' on page 1. They provide context regarding the filer's access to, and expenditure of, resources in the filing year. While the percentage column for Revenues (i.e., Lines 11-16) mirrors a calculation that readers of returns sometimes

perform and apparently find meaningful, **more useful for overall context, utility, and transparency, would be for filers to report the filing year's and each of the two prior years revenue in-flows**. Requiring filers to provide a percentage calculation (with respect to Revenues) might save time for those who may want to use those measures but it provides no additionally helpful information.

(Also, and somewhat tangentially, I also note that “true” members dues might more accurately in the 21st Century be reflected/reported as a subcategory of Program Service Revenue at Part IV, Line 2x.)

As to having percentages reported against Expenses (i.e., Lines 17-19a), I am perturbed – indeed this is something that the entire charitable sector should find offensive – that the IRS and Treasury would ratify and perpetuate the myth that expressing expenditures percentage-wise by function establishes or indicates valid metrics. Such measures have been, falsely, used in comparing organizations. Their probative or evaluative utility as to ‘value’ of any one organization alone is suspect as well.

The requirement by states that these percentages be reported comes from the old (and ruled unconstitutional!) practice whereby state legislatures would not allow charitable entities to solicit their state's citizens if the groups were not ‘good enough’, the measure of ‘good’ reflected by a percentage of “program expenses” against total revenues, or total expenses. In spite of such standards having been outlawed, both federal and state agencies have applied such percentages in their gatekeeping of who may solicit government employees in payroll combined campaigns (e.g., the Combined Federal Campaign that federal employees may contribute to applies as a ‘standard’ that program expenses must be at a minimum of 75% of all expenses). These facile ‘lines in the sand’ afford their partisans with ease of use (the measures are both lazy and simplistic) at a cost of being unfair and inaccurate. It is the case that “charity watch-dog” groups have historically used such percentages as a touchstone for communications to donors, but they are well aware – and emphasize<sup>11</sup> -- that their adoption of a specific ‘line in the

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<sup>11</sup> BBB Wise Giving Alliance's explanation that the percentage standards they use are not monolithic is prominently emphasized in their explication of the overall standards. See [www.give.org/standards/newcbbbstds.asp](http://www.give.org/standards/newcbbbstds.asp) (as of September 4, 2007): An organization that does not meet Standards 8, 9 and/or 10 may provide evidence to demonstrate that its use of funds is reasonable. **The higher fund raising and administrative costs of a newly created organization, donor restrictions on the use of funds, exceptional bequests, a stigma associated with a cause and environmental or political events beyond an organization's control are among factors which may result in expenditures that are reasonable although they do not meet the financial measures cited in these standards.** *Emphasis added.*

Similarly, the Charities Review Council in Minnesota ([www.smartgivers.org](http://www.smartgivers.org)), states the philosophy behind their ‘financial standards use of funds’ percentage measure:

A charity should use its resources in a responsible, effective and efficient manner to achieve results in furtherance of its mission. The Council believes that the ration of program expenses to total expenses is an indicator of such use. Donors should reasonably expect that substantially more than half of their contributions and the organization's expenses be used for program

sand' percentage is not fair to be applied on one year alone, nor without opportunity to explain an organization's specific circumstances. Charity watch-dog groups are, indeed, slowly moving away from such touchstones. (Ironically, it is the case that their speed in doing so has been limited by donor's reliance on the so-called minimum "standards" that these groups have in the first place sold to their constituencies.)

Providing bifurcated columns at Lines 17, 18, and 19a to record such percentages is a huge mistake in that giving primacy to such percentages on the Form 990 will bolster the assumption many have that such expenses reflect 'how much' program an organization conducts (as compared to its management or fundraising activities). Expenditure disbursements certainly do not measure activity level (or effectiveness of what was procured in exchange for the dollars). Since the Form 990 does not include volunteered services (as dollars flowing in or out), organizations who rely on such services in program delivery find themselves constantly disadvantaged in not being able to achieve 'higher' program expenditure percentages. The notion that a certain percentage "should" go to program comes with the concomitant expectation that dollars "should not" go to management or fundraising, a notion that is harmful. It makes sense for organizations to spend dollars on management in order to have appropriate governance by the board, administrative capacity, and other strengthening inputs bolstering organizational accountability; indeed, Congressional hearings over the last four years have urged the sector to do so! Besides management expense, it is the case that in the start-up phase of organizations, or at specific other points in their life-cycles, more dollars will need be spent on fundraising. I hope that other commentators will expand a discussion of the artificial nature of these percentages and further critique how these have been assumed to correlate to valid baselines.

For all these reasons, providing a column at Lines 17, 18, and 19a to express dollars spent on a percentage basis is a huge mistake that perpetuates unnecessary, anachronistic, and harmful application of such percentages as 'standards'. Given the regulatory community's current demand for more sufficient muster of resources to appropriate governance, IRS and Treasury should be at the forefront in rejecting the employ of facile ratios of where dollars "go". **Instead of the percentage column, and as with the Revenue section, there should be columns for the filer to report their expenditures on the prior one or two years.**

**Line 19b, 25, 26:**

**Delete in entirety.** Appropriate address of the filer's fundraising practices and results (and gaming operations, if any) should be left to specific Parts of the Core Form and Schedules. Line 19b would employ a "new" percentage that brings attendant problems and appears at best to be based on a questionable rationale. Requiring 501(c)(3) and 501(c)(4) organizations to highlight their fundraising expenditures from Part V, line 24, and then provide a ratio of those expenses to all contributions received creates one more artificial result that readers will assume has meaning. Such a result is especially unfair to

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services. Management and fundraising expenses should be reasonable in relation to the results of the organization **and reasonable over time.** *Emphasis added.*

the organizations that expend resources in procuring volunteered resources. Since volunteered services are not monetized and included as a revenue inflow on the Form 990, solicitation of such support incurs hard dollar expenditures against which no contribution income results. Lines 25 and 26 have been well critiqued by others, affording me the opportunity to be uncharacteristically silent.

*Closing*

I have already discussed with the Project staff notes that I made in providing input for Schedule A comments that will be coming with the submission that the Section of Taxation of the American Bar Association is making.

In my upcoming second send, I will be providing short comments on:

Part II and Schedule J

Fundraising and Gaming Schedules

Definition of "related organization" (Schedule R and impact on Schedule J)

Revenue improvements (chief amongst those, a plea to add a Line 1 subpart for "membership dues/fees equivalent to contributions")

I thank you again for your attention to this submission. Please feel free to contact me at 612.822.2677 (or [eve@taxexemptlaw.org](mailto:eve@taxexemptlaw.org))

Sincerely,

Eve Rose Borenstein

*Borenstein and McVeigh Law Office, LLC*

*2836 Lyndale Avenue South*

*Minneapolis, MN 55408*

**From:** [Andrea Bower](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Form 990 redesign  
**Date:** Friday, September 07, 2007 4:21:10 PM  
**Attachments:** [AMCI IRS Comment SIGNED LETTER Sept 07.doc](#)

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100 North 20<sup>th</sup> Street, 4<sup>th</sup> Floor  
Philadelphia, PA 19103-1443

September 7, 2007

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

To Whom It May Concern:

The AMC Institute, on behalf of its 160 association management company members, submits the following comments on the June 14, 2007 draft redesigned Form 990, *Return of Organization Exempt from Income Tax*.

### **The AMC Institute**

The AMC Institute is a Section 501(c)(6) association whose membership consists of association management companies, commonly referred to as "AMCs." An AMC is a for-profit business that provides professional management and administrative services to nonprofit organizations, primarily trade associations and professional societies. The AMC business model is based on the concepts of shared resources, including personnel, and bringing the talent to bear based on the needs of the association client. The typical AMC applies shared resources across a variety of association clients by applying infrastructure and staff skilled in operations, strategic planning, meeting planning, education and training, codes and standards, government and public relations, marketing, website development and other functions.

There are many benefits to exempt organizations that utilize AMCs, including:

- Allowing association leaders to concentrate on policy issues instead of administrative tasks;
- Advising volunteer leaders on best practices and appropriate governance procedures;
- Providing an affordable, high degree of professionalism, management expertise and technology through the concept of shared resources;
- Customizing staff activity to meet association needs;
- Maintaining continuity of business operation during changes in leadership and staff; and

- Providing cost-effective solutions to personnel, equipment, facilities, and budget considerations.

Collectively, AMC Institute members serve over 3,000 associations and other nonprofit, exempt organizations.

### **Comments on the Draft Redesigned Form 990**

The redesign and enhancement of the Form 990 is an important activity that the AMC Institute strongly supports. Our comments are intended to promote, rather than impede, the Internal Revenue Service's efforts in this regard and are consistent with the principles identified by the IRS as guiding this initiative - enhancing transparency, promoting tax compliance, and minimizing the burden on the filing organization.

#### **A. Reporting of Management Company Fees:**

Part III, Section B, items 5, 5e, and 5f

Part V, item 11a

Our first comment is that we strongly urge the IRS to maintain the approach adopted in the draft redesign for the reporting of fees paid to management companies and, in particular, for reflecting the relationship between an individual who is officer, director, or trustee of the exempt organization and also serves as in an officer, director, owner or similar capacity for a management company doing business with the exempt organization.

Without question one of the most significant aspects of the proposed redesigned Form 990 is the resolution of a problem that has persisted since at least 2000. This is the possibility that a key employee of an exempt organization could attempt to avoid reporting his or her compensation on the Form 990 by setting up a bogus, for-profit entity and becoming an "employee" of that entity. The IRS initially proposed to address this kind of scheme by adding a new instruction to the 2000 Form 990 requiring exempt organizations to characterize the fee paid to a management company as the "compensation" of the individual management company employee who serves as an officer or director of the exempt organization.

Following complaints from the AMC and association communities that such an approach was fundamentally flawed, the IRS issued Announcement 2001-33, which, in addition to seeking comment on the instruction, allowed exempt organizations to list the name of the management company in Part V of the Form 990 (rather than the management company employee), along with the management fee.

But now the draft redesign has adopted an alternative approach that is decidedly preferable. Pursuant to item 5 of Part III, Section B, if there is any person who is (or was) an officer, director, or trustee of the exempt organization within the past five years, and,

pursuant to section 5e, is also an officer, director, owner, key employee, or similar insider of any entity doing business with the exempt organization, such person's name must be disclosed in section 5f along with the any fee paid by the exempt organization to the entity. This effectively prevents use of a bogus, separate entity to hide compensation.

Further, the statement in the draft instructions that the information to be reported in item 5f "concerns only the relationship between the organization and the entity that is doing business with the organization" and therefore "compensation or other payments from such entity to the organization's listed persons" is not to be reported, conclusively resolves the issue of the proper interplay between reporting management company fees and listing management company personnel who serve as officials of the exempt organization.

Finally, the reporting of fees paid to management companies is now addressed in a direct and unequivocal manner: they are to be disclosed in Part V, item 11a, "Fees for services (non-employee) Management."

We strongly recommend that the IRS maintain these provisions and not make any changes or adjustments. Comments submitted by others recommending that the IRS regress on this issue, and in particular advocate a return to the approach reflected in the old Form 990 instruction, are, frankly, uninformed and ill-advised.

### **B. Filing Threshold**

The IRS is proposing to increase the filing threshold for the Form 990 from \$25,000 in annual gross revenue to \$100,000 and total assets of \$250,000 or more at the end of the year.. While this is favorable and logical, the AMC Institute recommends that this be increased to \$500,000 in gross revenue and total assets of \$250,000 or more at the end of the year. for Section 501(c)(6) trade associations and for Section 501(c)(3) professional membership societies.

There is of course a clear distinction between bona fide membership organizations and charitable organizations, and they should not be treated as being identical for reporting purposes. The reasons for enhancing the reporting requirements of charitable organizations, such as through this redesign of the Form 990, are: (a) to protect charitable donors, and (b) to prevent misuse of charitable assets. These concerns do not apply to true industry/professional membership organizations. Indeed, it is no coincidence that almost all, if not in fact all, scandals and other calumny in recent, or even not-so-recent, memory in the exempt sector involved organizations other than trade associations and professional societies.

One consistent observation of those seeking greater accountability in the exempt organization sector is that charities lack members, who are analogous to shareholders. As recently articulated by one author, "the overwhelming majority of nonprofit corporations do not have voting members ... [and this] ... lack of voting members significantly

contributes to an accountability vacuum that plagues nonprofit boards.”<sup>1</sup> Significantly, trade associations and professional membership societies do not share this problem; they have active, voting members who elect, and can remove, the board of directors.

Trade associations are easily distinguishable based on their section 501(c)(6) tax classification. For professional societies exempt under section 501(c)(3), simple but strict criteria could be established to ensure they are, in fact, member-controlled.<sup>2</sup>

While we understand that the IRS has stated publicly that it will not prepare a separate Form 990 for trade associations and other membership organizations, the revenue threshold is a simple and easy opportunity to finally recognize the distinction between these kinds of exempt organizations and charitable organizations.

Equally important is the strain this revised Form 990 will place on smaller associations, which make up a large percentage of AMC clients. Without question, the increased costs associated with gathering, organizing, and reporting the information mandated by the Form 990 will be significant once this revised Form becomes effective. Detailed allocations for activities such as Board and committee meetings, fundraising, and international operations are prime examples of new, time-consuming obligations. These and other requirements will further burden smaller associations already struggling with existing mandates, such as tracking and allocating time and expenses to legislative and unrelated business activities. And of course this follows closely the sharp increase in audit fees that all exempt organizations have experienced due to the changes in audit practices in the wake of the Sarbanes-Oxley Act.

### **C. Miscellaneous Items**

#### **Part III, Question 9**

This question asks: “Does the organization have an audit committee?” Our concern is that this question suggests that an organization must have an audit committee in order to conform to best practices. In fact, the establishment of such a committee is not called for by good governance principles. Certainly there should be some “body” that performs the functions of an audit committee, but this can just as easily be accomplished by an executive committee or a finance committee. Therefore, we suggest that this question be changed, for example, to say: “Does the organization have an audit committee or a body that performs the functions of an audit committee?”

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<sup>1</sup> *What's Good For The Goose Is Not Good For The Gander: Sarbanes-Oxley-Style Nonprofit Reforms*, 105 Mich. L. Rev. 1981, 1986 (June 2007).

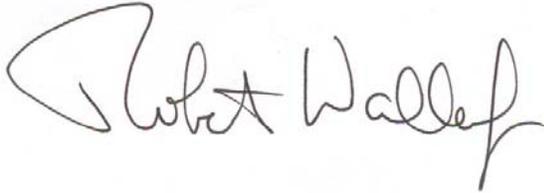
<sup>2</sup> An example of a definition of a professional society might be: “An organization consisting of individuals who have occupations and/or advanced degrees in a similar, recognized profession or discipline; are required to pay regular dues; and who enjoy the full rights of participating in the organization, including the right to elect, and remove, at least a majority of the governing body.”

Part III, Question 10

This question asks: “Did the organization’s governing body review this Form 990 before it was filed?” We respectfully disagree with the suggestion that a best practice is for boards to review the Form 990. Indeed, we are unaware of a single association board that reviews the Form 990 in the normal course of business, nor are we aware of any authority on nonprofit governance advocating this practice. In fact, likely very few for-profit companies review their tax returns; even the Sarbanes-Oxley Act does not require or even encourage this exercise. Further, having a board review the Form 990 would be hugely time consuming and entirely unnecessary. An association that employs comprehensive financial oversight according to existing best practices will ensure sound financial management. Imposing the additional burden of reviewing the organization’s tax return will take up valuable time of boards without adding substantive protection for the organization.

Thank you again for this opportunity to submit comments regarding the draft redesigned Form 990.

Sincerely,

A handwritten signature in black ink that reads "Robert Waller, Jr." The signature is written in a cursive style with a large, sweeping initial 'R'.

Robert Waller, Jr., CAE  
President  
AMC Institute

**From:** [Williams, Angela](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** YMCA of the USA comments on the proposed revisions to the Form 990  
**Date:** Friday, September 07, 2007 12:36:01 PM  
**Attachments:** [Comments to IRS on Proposed Form 990-07-9-7.PDF](#)

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Dear Commissioner Miller,

Attached please find the comments of the National Council of Young Men's Christian Associations of the United States of America (YMCA of the USA). On behalf of the YMCA of the USA, we thank you for your consideration of our comments.

Regards,  
Angela F. Williams

Angela F. Williams  
Senior Vice President & General Counsel  
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The information in this email message is from the Office of General Counsel of the YMCA of the USA. This information may be privileged, confidential, and protected from disclosure. If you are not the intended recipient, you may not use, copy, or share this information (including any attachments) in any form with any person. If you believe you received this information by mistake, please delete the message and notify us at the telephone or e-mail address above. This information is designed to provide general information to you on the topic. It is not the rendering of any legal or professional services, and is not a substitute for professional services. If legal or professional advice is required, the services of a professional in your state should be sought. Thank you.



We build strong kids,  
strong families,  
strong communities.

September 7, 2007

Steven T. Miller  
Assistant Commissioner, Tax-exempt and Governmental Entities  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

Re: Form 990 Revisions

Dear Commissioner Miller:

On behalf of the nearly 1,000 YMCAs that are members of the National Council of Young Men's Christian Associations of the United States of America (YMCA of the USA), and are all Form 990 filers, I am pleased to submit the attached comments on the proposed revisions to the Form.

We commend the Service on your commitment to improving the Form 990, and we very much appreciate the opportunity to comment on the proposed changes.

Sincerely,

Neil J. Nicoll  
President and CEO  
YMCA of the USA

**YMCA of the USA** • 101 North Wacker Drive • Chicago, Illinois 60606  
312-977-0031 • toll-free: 800-872-9622 • fax: 312-977-9063 • [www.ymca.net](http://www.ymca.net)

**YMCA mission:** To put Christian principles into practice through programs that build healthy spirit, mind and body for all.

**COMMENTS BY THE  
NATIONAL COUNCIL OF YOUNG MEN'S CHRISTIAN ASSOCIATIONS OF THE UNITED STATES OF AMERICA  
ON THE PROPOSED FORM 990**

**SEPTEMBER 7, 2007**

**Introduction**

The National Council of Young Men's Christian Associations of the United States of America ("the YMCA of the USA," or "the YMCA") is submitting these comments on behalf of America's nearly 1000 independent local YMCAs. These comments are based on intensive review of the proposed Form 990 by a task force comprising representatives from a diverse set of local YMCAs and from the YMCA of the USA staff. Task force members are listed in Attachment A.

The YMCA applauds the Service's major commitment of resources to improving the Form 990 and to making the transition to a system for electronic filing of Form 990 returns. Taken together, these two developments will tremendously increase the quality and accessibility of information available both to federal and state charity regulators and to the many external constituencies actively interested in the operation of America's charities. We urge the Service to buttress these initiatives with both an aggressive educational effort to assist the great majority of charities committed to fulfilling fully and conscientiously their reporting obligations, and an aggressive enforcement effort to require full disclosure by the small minority of charities that will persist in filing inaccurate and/or incomplete returns.

The YMCA has participated actively in the formulation of Independent Sector's comprehensive comments on the proposed Form 990, and we fully support the views expressed therein.

**In these separate comments, we will focus on four areas of particular importance to YMCAs:**

- **The need to give greater prominence to, and provide more space for, describing multiple program service accomplishments;**
- **The need to revise Part IV and the accompanying instructions to allow charities with multiple sources of program service revenue to describe those revenue sources more completely and accurately than the proposed Part IV would allow;**
- **The importance of deleting the potentially misleading expense ratios and revenue and expense percentages contained in Part I of the proposed return; and**
- **The need for an appropriate effective date and transition rules.**

## **Background Information on the YMCA**

Nationwide, YMCAs serve over 20 million Americans. Those we serve are half children and youth and half adults, half male and half female and represent all income levels and ethnicities. YMCAs have a presence in 10,000 communities, have aggregate budgets in excess of \$4 billion and are supported by more than 600,000 volunteers. Local YMCAs are as diverse as the communities they serve. The smallest have budgets of under \$1 million. The largest have budgets in excess of \$100 million and staffs that number in the thousands.

For nearly 160 years, YMCAs have been meeting the most pressing challenges of the communities they serve. The challenges have changed over time, and the YMCA has continually provided innovative responses. Today, a new set of issues is calling the YMCA to act. Our nation's lifestyle health choices are contributing to increased rates of disease and reduced quality of life. Families are finding it difficult to balance their work, family and civic life. Youth, regardless of family income, are not receiving the support they need to develop positive skills and values that can guide them throughout their life.

Our current strategic plan defines our goal for the next five years as follows:

America's YMCAs commit to extend our charitable heritage by directly engaging 25 million children and adults from all segments of our communities in achieving health of spirit, mind, and body by 2012.

More specifically, our commitment to our communities and to the individuals we serve is that:

- Every child and youth will deepen positive values, their commitment to service and their motivation to learn;
- Every family will build strong bonds, achieve greater work/life balance and become more engaged with their communities; and
- Every individual will strengthen their spiritual, mental and physical well-being.

Central to all of these goals is helping those we serve strengthen the personal relationships that connect them to family, friends and their broader community. Reflecting this focus on relationship building, the concept of membership is central to the way we work. Most individuals and families first come to the YMCA for a specific program or activity, but our goal is to make this first contact the beginning of a long-term relationship that progressively deepens both individuals' relationship to the YMCA community and their commitment to our human development mission. We speak of that relationship growing "from casual, to connected, to committed." Our persistent pursuit of this goal for the past century and a half has woven YMCAs deeply into the fabric of communities all across America.

YMCAs' commitment to meeting the broad and ever changing human development needs of our communities has led us to develop a comparably broad range of programs for

persons of all ages. The breadth of our program offerings is reflected in the Program section of our national resources website for local YMCAs, which lists the following broad program categories:

- Aquatics & Scuba
- Arts & Humanities
- Camping
- Child Care
- Family Strengthening
- Health & Well-being
- Older Adults
- Service Learning & Civic Engagement
- Sports & Recreation
- Volunteer Development
- Youth & Teens

Needless to say, clearly explaining YMCAs' multi-faceted mission and programs is a continuing challenge, and, as discussed below, it is a challenge that significantly informs our comments on the proposed Form 990.

### **YMCAs' Commitment to Transparency and Accountability**

YMCAs are volunteer-based organizations that cannot operate without strong continuing volunteer and financial support from our communities. Nor will parents trust us with their children and teens unless they have solid confidence in our integrity. Likewise, our many government, nonprofit and business partnerships would not long survive if our partners came to doubt our programmatic and fiscal responsibility.

For all of these reasons, YMCAs recognize that we must be highly transparent in all aspects of our operations and strictly accountable to our many internal and external constituencies.

### **Our Comments on the Proposed Form 990**

In this spirit, we strongly support the Service's efforts to improve the Form 990, and we offer the following recommendations that we believe will make the Form 990 a significantly more effective reporting tool not only for YMCAs but also for many other multi-service charitable organizations.

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

The first and most important thing the public needs to understand about YMCAs and other charities is what we do to serve our communities. Accordingly, we join with the many other groups who are recommending that the proposed Form 990 be revised to give greater prominence to, and provide more space for, describing program service activities. To achieve this goal, we recommend the following specific changes:

1. **Move the statement of program service accomplishments to the beginning of the return.** Specifically, we recommend that proposed Part IX be moved up to become Part II of the return, immediately following the initial summary.
2. **Give organizations the option to rank program service activities based on reasonable criteria other than program expenditures.** Relative program expenditures are not always the best gauge of the relative importance or impact of various program areas. For example, because of their heavy reliance on volunteer coaches, YMCA youth sports programs have a reach significantly greater than their relative budget size might suggest. Similarly, for YMCA day and resident camp programs, where campers may interact with YMCA staff upwards of 40 hours a week, participant hours (i.e., the number of participants multiplied by the number of hours each participant spends in the program) may be the most important measure of total impact. We therefore recommend that organizations be given the option of ranking programs based on other appropriate criteria such as relative number of participants or relative participant hours.
3. **Reallocate space to increase from three to at least five the number of program service activities that can be described on the face of the return.** Given the breadth of our program offerings, YMCAs face a major challenge in clearly communicating the full range of what we do. As noted above, many YMCAs offer six to eight quite distinct types of programs. Providing room on the return to describe only three program areas will thus prevent many YMCAs from describing important components of their overall community service effort.

We recommend below that the instructions take a much more affirmative stance on the use of supplementary schedules. However, to the maximum extent possible, the return itself should provide organizations with the opportunity to describe the full range of their program activities. Accordingly, we recommend that the space on this portion of the return be reallocated to increase to at least five the number of program areas that can be described on the return.

If, as we recommend, this section becomes Part II, we recommend that it also be allocated the full second page of the return. By eliminating the need for this Part to share a page with the final signature block of the return, as well as by eliminating Line 2 as recommended below, there should be ample space to increase the number of program areas that can be described on the face of the return.

4. **Allow organizations to use a schedule to provide additional information on their core program service activities, as well as to describe additional activities that cannot be listed on the face of the return.** We fully support the proposed instruction's requirement that organizations present the specified data about their core program areas in the space provided on the face of the return. On the other hand, conscientious organizations may want to provide additional information about their core program activities – for example, an evaluation report assessing their programs' effectiveness – and the instructions should make clear that they are permitted to do so. Likewise, the instructions should more affirmatively encourage organizations with more program areas

than can be described on the return itself to provide a comparable description of these additional programs on an attachment to the return. Finally, we strongly urge the IRS to incorporate into the electronic filing system the capacity to accommodate PDF copies of documents submitted as attachments to the return.

5. **Add to the instructions a clear explanation of the Activity Codes to be used in describing each program service activity, and provide an appropriate list of codes.** The proposed instructions provide no guidance on the Activity Codes to be used to describe the programs listed under Line 3 (and also on Part I, Line 2). We join Independent Sector in recommending the use of a refined version of the National Taxonomy of Exempt Entities coding system. Further, to avoid confusion, the instructions should explicitly state that Unrelated Business Activity Codes **should not** be used for this purpose.
6. **Affirmatively encourage organizations to report the estimated dollar value of the time donated by volunteers in support of each program area.** In 2001, an estimated 89 million individuals provided volunteer service to charitable organizations. This volunteer service was equivalent to more than 9 million full-time employees, and had an estimated dollar value of \$239 billion (roughly equivalent to the total value of individuals' financial contributions). Any description of the charitable sector or of individual charities that fails to capture this critical source of support is seriously incomplete.

We strongly urge the Service to place greater emphasis on reporting of the value of volunteer services, both in this Part and in the Part IV Statement of Revenue (see below). Specifically with respect to Part IX, we recommend that the instructions much more affirmatively encourage organizations to report the value of volunteer services that support each program area described on the return.
7. **Eliminate Line 2 asking organizations to identify their most significant program service accomplishment for the year.** For organizations like YMCAs, singling out a particular program service accomplishment as "most important" is both arbitrary and misleading. The goal of this Part should be to communicate a clear and balanced picture of an organization's overall programs. By focusing inordinate attention on one program, Line 2 works strongly against achieving this objective. It should, therefore, be dropped.
8. **Move Line 1 to the end of this Part.** As just noted, the most important function of this portion of the return is to provide a complete picture of what an organization did during the year to advance its mission. Describing how the current year's program service activities differed from prior years, while obviously a useful question from a compliance perspective, is clearly of secondary importance. This question should, therefore, be placed at the end, rather than the beginning, of this portion of the return.
9. **Include an allocable share of overhead expenses in reporting program expenses.** For two reasons, the program expenses reported in Line 3, column (B), should include not

only direct program expenses but also an allocable share of Management and General Expenses.

First, including an appropriate share of Management and General Expenses provides the correct measure of the total cost of delivering the various program services described on Line 3. These costs are no less real for being indirect, and excluding them significantly understates the real cost of these services.

Second, the juxtaposition in Columns (A) and (B) of program revenues and program costs suggests that a comparison of these two columns will show the extent to which an organization is realizing a surplus or a deficit on the particular programs described. But this comparison is highly misleading unless the expense column includes overhead as well as direct costs.

#### **Part IV: Statement of Revenue**

As noted above, a central challenge to YMCAs is explaining clearly the broad range of programs that we offer, and how these programs are financed. The following recommended changes in Part IV will greatly increase our ability to provide a clear and complete explanation of how we support our programs, including our significant reliance on volunteers.

- 1. Provide room on Line 2 to list a larger number of separate sources of program service revenue.** As emphasized above, YMCAs may offer as many as 6 to 8 distinct categories of programs, with many of these categories comprising multiple programs. Most of these programs, in turn, produce distinct streams of program service revenue. If Part IV, Line 2 is to allow organizations to provide a clear and complete picture of their various types of program revenue, the return must provide room to list significantly more than the 3 types of program revenue (Lines 2d-f ) allowed by the current version of proposed return. Further, the instructions should make clear that organizations may attach a schedule if the return does not provide sufficient space for them to list separately each significant type of program service revenue. Forcing organizations to aggregate significant and disparate revenue sources in an “other program revenue” category will significantly reduce the usefulness of the information reported on this portion of the return.
- 2. Make clear that the UBIT Business Codes are required only with respect to unrelated business activities.** The proposed instructions state that an organization must list a business code from the Codes for Unrelated Business Activity for each type of program service revenue listed on Line 2. Clearly, however, these codes are entirely inappropriate to describe revenue from programs directly related to accomplishing an organization’s charitable purpose (e.g., program fees for YMCA swimming lessons, youth sports programs or summer camps). The instructions should be revised to make clear that a UBIT business code is required only for those program activities that generate unrelated business income, i.e., income reported in Column (C).

- 3. Add a Line for the Estimated Value of Volunteer Time.** As discussed above, any description of the sources of support that sustain America's charities that omits the value of volunteer services is seriously incomplete. This reality is reflected in FASB Statement 116, in which the Financial Accounting Standards Board affirmatively requires nonprofits to recognize as revenue the value of certain types of volunteer services, and then goes on to encourage organizations to report as an addendum to their revenue statement the value of all other volunteer services. FASB 116, secs. 9 and 10. In other words, FASB encourages organizations to disclose on their financial statements the value of all volunteer services, either as recognized revenue in the case of services described in FASB 116, sec. 9, or in an addendum to the revenue statement in the case of all other volunteer services.

We believe that the Form 990 should provide the same affirmative encouragement for the reporting of the dollar value of volunteer services. Further, we believe that it is important that this estimate be reported in the context of the organization's revenue statement (i.e., as part of Part IV of the return) rather than in an entirely separate part of the return as on the 2006 Form 990 (See Part VII, Line 83 of the 2006 Form 990). For example, the value of volunteer services that are required to be recognized under FASB 116, sec. 9, could be reported on Part IV, Line 1, and the value of other volunteer services could be reported on a new Line 15 at end of Part IV. Under this approach, only the value of volunteer services required to be recognized by FASB 116 would be included in Total Revenue as reported on Part IV, Line 14. However, consistent with FASB 116, sec. 10, the value of all other volunteer services would be reported on the return to provide a more complete explanation of the organization's overall sources of support.

### **Part I: Delete the Reporting of Expense Percentages and Ratios**

We join with Independent Sector and the many others who are recommending that proposed Part I be amended to delete the column on Lines 11-15 and 17-19 showing the percentage of total revenues and expenses represented by each of these line items, as well as the so-called "efficiency ratios" on Lines 8(b), 19(b), and 24(b). For the reasons discussed in detail in Independent Sector's comments, the implication that these percentages and ratios are useful in evaluating and comparing the efficiency and effectiveness of various charities is fundamentally flawed. Thus, in our judgment, these proposed changes would have the clearly unintended consequence of distorting rather than clarifying public understanding of charities' operations and effectiveness.

### **Effective Date and Transition Rules**

- 1. Require that the new return be used for tax years beginning in 2009.** Considering the volume of comments the Service is receiving on the proposed Form 990, it seems unlikely that the Service will be able to finalize the new return until well into 2008. Further, once the Service releases the new return, many organizations will need a significant amount of time to design and implement the new internal information systems required to collect the data required by the new return. We therefore strongly

recommend that the Service use the existing Form 990 for tax years beginning in 2008 and introduce the new Form 990 for tax years beginning in 2009.

2. **Provide appropriate transition and reliance rules for reporting of board and staff relationships under Part II, Section B.** The 5 year “look-back” requirement of Part II, Section B presents particular data-collection challenges and, in our judgment, should be phased in under a special transition rule.

To ensure appropriate community representation, many YMCAs in major metropolitan areas have large boards – in some cases with more than 50 members. Likewise, in smaller communities, it is quite common that many current and former board members have family and/or business relationships with other current or former board members. In both cases, it would be quite burdensome for YMCAs to collect from all individuals who have been board members during the past 5 years all of the information required to complete Part II, Section B.

To alleviate this burden, we recommend that this 5-year look-back reporting be phased in beginning with individuals who are directors, officers, or key employees as of the date the Service releases the final version of the new return. This would allow organizations the opportunity to explain this new requirement to their current board members and staff and then to apply the look-back requirement only as current members rotate off the board and current key employees leave the organization.

Further, we recommend that the instructions explicitly state that an organization is required only to make a reasonable effort to obtain the information required to complete Part II, Section B, and that an organization is entitled to rely on information provided by current and former board members and staff, and does not have an obligation independently to verify the accuracy or completeness of that information.

### **Conclusion**

We very much appreciate the Service’s consideration of these comments, submitted on behalf of nearly 1,000 Form 990 filers. As we said at the outset, we commend the Service’s commitment to revising the Form 990 to make it a more useful tool to inform the Service and the public about the operations of America’s charities. We also urge the Service to consider carefully these and the many other thoughtful comments being submitted by charities. The Form 990 is a powerful document; with every change there is the potential for unintended consequences. We have noted above the potential of some of the proposed changes to distort rather than enhance public understanding of charities’ operations. We hope that you will carefully weigh these risks before finalizing the new Form 990.

If you would like additional information with respect to any of our recommendations, please contact Angela F. Williams, General Counsel, YMCA of the USA, at 312-419-8415 or [angela.williams@ymca.net](mailto:angela.williams@ymca.net).

## Attachment A

### Members of the YMCA of the USA Form 990 Task Force

Robert Boisture, Attorney, Caplin & Drysdale  
Karyn Boston, Associate General Counsel, YMCA of the USA  
Kevin Bush, YMCA of the USA Management Consultant  
Dennis Croxen, Director of Management Consulting, YMCA of the USA  
Catherine Duchon, YMCA of the USA National Board Member/CEO, Ann Arbor YMCA  
Monica Elenbaas, Senior VP, Advancement, YMCA of the USA  
Richard Foot, YMCA of the USA Management Consultant  
Laura Fortson, Director, Human Resources and Talent Management, YMCA of the USA  
Stephen Hambright, Director, YMCA of the USA Consulting  
Frederick Hauser, YMCA of the USA National Board Member  
Kristin Hurdle, Senior Manager, Government Relations and Policy, YMCA of the USA  
Joan Lovell, Associate General Counsel, YMCA of the USA  
John Preis, President/CEO, YMCA Retirement Fund  
Audrey Tayse-Haynes, Chief Government Affairs Officer  
Carol Schmidt, Senior Consultant Association Financial Development, YMCA of the USA  
Joyce Kirchofer, Assistant Vice President-Acctn, YMCA of Orange County  
Christy Leuders, Senior Vice President/CFO, YMCA of Greater Seattle  
Jim Mellor, Chief Financial Officer, YMCA of the USA  
Nancy Owens, Controller, YMCA of the USA  
Susan Rittscher, Interim Director, YMCA University  
Stacy Saunders, Manager, Consulting Services, YMCA of the USA  
Paul Sullivan, CFO, YMCA of San Diego County  
Jean Tom, Senior VP-Finance, YMCA of Central Ohio  
Richard Wallis, Senior Management Consultant, YMCA of the USA  
Angela Williams, General Counsel, YMCA of the USA

**From:** [Aj2aj8484](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:** [Aj2aj8484](#)  
**Subject:** Comments on Form 990 from Alexis H. Johnson  
**Date:** Friday, September 07, 2007 10:56:02 AM  
**Attachments:**

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**Dear Service and Commissioner and all interested persons:**

My comments will be brief, and will key on some of the comments of the President of **Guidestar**.

**Guidestar** President Ottenhoff's comments are pasted in below. **Guidestar** provides a useful service to the public.

Historically, I have testified before Senator Grassley's subcommittee on matters appertaining to charity, tax exempts, and Form 990's.

The context of the comments was the investigation (state and federal of **St. Paul's School** – which still conducts its charity mission augmented by a letter dated February 12, 2004, that provides direct oversight and which, among other things, commands timely filing of a Form 990 on November 15. You are certainly aware of this and are (politely) held to know in any event.

My comment here, in contrast to Mr. Ottenhoff's comments, is that detail matters for the public and readers in Form 990 contexts. More is better.

In areas of charitable investment (endowment investment disclosure) and in areas of compensation (excess benefits), all disclosure should be detailed (true and accurate) and timely.

Amounts paid to all professional consultants (all lawyers, all accountants, all investment brokers and agents, etc.) should be laid out in detail on a schedule with amounts paid and amounts of contingent expenses or liability listed.

President Ottenhoff complains (in some senses rightly) that the additional compliance cost will be @\$5000.00 per charity across the sector. My observation, based on experience in troubled charity reporting, is that \$5000.00 is: 1) a guess; 2) could likely be controlled by good auditors and preparers; and, 3) **a very small price** to pay in contrast to "the cost of concealment" or the cost of failed disclosure

on Form 990's to charities and to the public -- as we all saw notably in all aspects of the troubles at **St. Paul's School**. Tiny charities perhaps should be exempted in some areas; but, they should not be the "standard" for arguments on why to diminish oversight and checks and balances and stringency on sophisticated charities that have shown that oversight is sorely needed and ought to increase.

Demand detail. Demand timely filing. Ratchet Schedule J (and some others) up as hard as you can -- then, ratchet more.

Thank you. Best always,

Alexis H. Johnson, Esq.  
Flagstaff AZ

## **From the President's Office, September 2007**

Dear Friend:

There are less than two weeks left to file your comments with the IRS about the proposed changes to the Form 990.

Here at GuideStar, we are putting the finishing touches on our own comments before submitting them next week. We applaud the IRS for undertaking the difficult task of revamping the 990 and commend the service for the countless hours of work it has put into revising the form. In a sense, this is a historic moment: it is the first time since 1979 that the 990 has been completely overhauled. In the intervening 28 years the sector has changed dramatically. It's much larger, more diverse, under more pressure from clients and supporters, and subject to greater scrutiny from the general public.

We believe the new Form 990 should result in nonprofit reporting that is complete, accurate, and filed in a timely manner. Unfortunately, the current draft would require more information from many organizations filing it, and GuideStar believes it will likely result in more information that is inaccurate and incomplete. The complexity of the new form is likely to result in organizations requesting more extensions to file it and is likely to increase compliance costs for many groups.

GuideStar's comments are based on our role as a provider of nonprofit data—only

some of it from the 990—to a broad array of millions of users, including individuals, board members, media, and service providers, as well as highly sophisticated nonprofit experts. From our perspective, the data found in the 990 are often confusing and misleading. Plus, the 990 is only one way people learn about a nonprofit organization, since there is a growing marketplace of voluntary disclosures.

Rather than providing a line-by-line analysis, our comments focus on the larger picture and present four key points:

1. **Less Is More.**

Form 990 should be simplified, and the highest priority should be placed on collecting data that are useful, complete, accurate, and timely.

2. **Minimize the Burden on Filers.**

The costs of compliance with the proposed form need to be balanced against the utility and accuracy of the information gathered. The proposed form's increased complexity will also work against improving the timeliness of the returns. GuideStar's own auditors have told us the cost of preparation will soar 50 to 100 percent in the first year of the proposed new form, or nearly \$5,000. Multiplied across the entire sector, we think this is an unreasonable burden to impose on the nonprofit sector.

3. **Help Decision Makers.**

As a public disclosure form, the Form 990 (and the Summary Page) must present an accurate picture of the finances and activities of a nonprofit; the current draft does not meet this objective. In fact, it creates an inaccurate picture by presenting financial ratios and compensation data out of context.

4. **Don't Rush.**

Changing the 990 will affect the sector for years to come. GuideStar urges the IRS to take the time to gather the data needed to create the most effective return possible.

Utility, accuracy, and timeliness can only be achieved in consultation with the organizations that file the 990 and the diverse audiences that use it. Many have already shared their feedback on the proposed form. The service should take further advantage of nonprofits' and the public's sincere desire to help the IRS achieve its goals.

What do you think? What will the new 990 mean to your organization? I'd like to hear your comments and suggestions.

Sincerely,  
Bob Ottenhoff  
President and CEO

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**From:** [Sheila Girard](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Concerns for workers  
**Date:** Friday, September 07, 2007 9:36:57 AM  
**Attachments:**

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Greetings!

As I read the underlying theory for changes to the Form 990, I was encouraged that steps were being taken. However, when I was made aware that Schedule F would require the public disclosure of specific and detailed information about work in foreign countries, I was shocked at the lack of thought about how this would affect workers in countries that are hostile towards the "Christian" worker. Many of our workers provide humanitarian relief that would not be available to very needy people around the world. We also provide English language learning and many other services which are much needed as the world becomes more globalized.

However, in light of such massive and detailed disclosure requirements, I would personally not want to go to a country that has historically been hostile towards Christian work regardless of the benefits nor would I want to have our workers continue to go to these countries for fear of reprisals against them.

The individuals who are solicited for contributions are informed of exactly what we do and where. These individuals can and do make an informed decision regarding where and how their funds are used.

In an effort to be "transparent" you have unintentionally put many, many Christian workers in extreme danger!

Perhaps a better solution would be to require the information for the sake of IRS compliance but not make it public information that people who are hostile towards the US and Christian workers could use to personally identify and persecute workers who are simply trying through their Christian convictions to help others.

Thank you...

**From:** [a ellis](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Transparency  
**Date:** Friday, September 07, 2007 12:37:40 AM  
**Attachments:**

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To whom this may concern:

The Houston Chronicle has had an article about Form 990 Revision and the IRS. I support the IRS trying to have more transparency for non profits and the tax exempt organizations. Every non-profit should be required to be transparent. We the American tax payers pay more taxes because of the tax exempt organizations, which is not fair. Every non-profit including the churches should be required to be transparent without exception.

Transparency is good in all forms of government. Mayor Bill White has been improving the transparency in Houston Government.

Thank you for taking this into consideration.

Sincerely,

Alice Ellis  
Houston

**From:** [Benjamin Locke](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Form 990  
**Date:** Thursday, September 06, 2007 8:23:46 PM  
**Attachments:**

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Dear IRS:

I want to support the writers who have requested a higher threshold for filing the 990 form over the 990-EZ. I have been the conductor (independent outside contractor status) for a community orchestra in a largely rural county in Ohio. The board consists entirely of unpaid volunteers. About two years ago, for the first time in the organization's 42-year history, the net proceeds of the orchestra have exceeded \$25K, requiring our volunteer treasurer to fill out the long form. Every meeting he complains about the fact that this threshold was not indexed for inflation. EVERY meeting. I sympathize with him, especially since he has to nag me incessantly to provide certain information needed to fill out this form accurately, and I, being a financial-form-impaired artist, am sometimes not as promptly helpful as I should be. I am hoping that your attention to this matter will shorten our monthly meetings as well as to improve my personal relationship with the treasurer.

Thank you,

Ben Locke

**From:** [JON ERICSON](#)

**To:** [\\*TE/GE-EO-F990-Revision;](#)

**CC:**

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**Subject:** Complement to Comments by The Drake Group on the Draft of a Redesigned IRS Form 990

**Date:** Thursday, September 06, 2007 5:16:10 PM

**Attachments:** [Knight Comm Summit.doc](#)

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Please consider the attachment as a complement to The Drake Group position paper.

Without transparency, efforts to clean up college sports will continue to fail.

Thank you,

Jon Ericson  
Former Provost and  
Ellis & Nelle Levitt Professor Emeritus  
Drake University  
Des Moines, IA

## **Lickspittle or Spoilsport, . . . or is there a way out?**

While they (faculty) deplore the exploitation of student athletes and the corruption of academic values, they feel helpless to challenge the status quo in the face of pressures from coaches, athletic directors, and boosters – not to mention the benign neglect by presidents and trustees.

James J. Duderstadt, *The View from the Helm: Leading the American University During an Era of Change*

I cannot quite understand the lack of faculty . . . outrage, . . . about this thing, because [their] rhetoric is at least as high flowing as any president's rhetoric about the needs of what a university ought to be, and yet, . . . I've never seen a more passive group of people in the face of what is . . . systematic corruption. Why?

Hodding Carter III, former president of the Knight Foundation and member of the Knight Commission on Intercollegiate Athletics

Here is why [and the way out]:

### **Children in a Flower Field**

*Jon Ericson*

The Knight Commission on Intercollegiate Athletics has announced a “Faculty Summit” for October 15. The purpose of the summit is “to discuss what college faculty members really think about college sports, issues affecting academics and athletics, and what can be done to spur more faculty engagement.”

*Spur more faculty engagement?* Let's see, . . . spur: “to jerk, push with the foot, . . . anything that urges, impels, incites; stimulus to action.” The Summiteers should support truth-telling: They should support making public aggregate academic records, without names of students; but with names of professors, their courses with course GPAs. Disclosure is the mother of all spurs. And to address the academic corruption in college sports, the only meaningful one.

Alas, it will not be. The Summiteers will be like children in a flower field:

Nobody ever really wants a scandal cleared up. Uncleared-up, a scandal is like radio—it allows the imagination to rove like a child in a flower field, . . . When the candid spoilsport steps forward to tell it like it actually was, the imaginations’s freedom is curtailed. The audience grows vengeful. Carnage ensues.\*

Take Michigan. Watching educated grown men and women in an endless spitting match of “Are too;” “Am not” is akin to watching a train wreck. I refer to former Michigan football star and now Stanford football coach Jim Harbaugh stating that football players at Michigan receive less than a real Michigan education.

President Mary Sue Coleman could demonstrate what a Michigan education for athletes is by releasing the academic records of the football players for the past ten years [numbers sufficient to protect the privacy of individual students]. No, she couldn’t. She has lots of company: No president can.

For example, when several Drake University faculty brought a recommendation for disclosure to the Faculty Senate, Drake president David Maxwell “offered his concern as to how the posting of a student’s course schedule and its process will be viewed by the outside world, including prospective students.” In other words, it is way too risky to let prospective students and their parents see what goes on behind the closed doors for a university that depends on student enrollment.

So, with a single comment, Jim Harbaugh goes from football hero to spoilsport; he is attacked personally and must be cast out:

It is curious to note how much more lenient society is to the cheat than to the spoil-sport. This is because the spoil-sport shatters the play-world itself. . . He robs play of its illusion. . . . Therefore he must be cast out, for he threatens the existence of the play-community.\*\*

Is there any hope then, to face the problem of academic impropriety in college athletics? Only one: disclosure. As Harbaugh and efforts by whistleblowers have demonstrated, there is no reward for the individual faculty member to take seriously the role of guardian of the curriculum. So an overwhelming number of faculty become members of the silent majority. Disclosure is their friend. Without disclosure, faculty members who want to end the corruption—and its concomitant poison, cynicism—have to fight the system, have to be an adversary, have to be a whistleblower ("disloyal," "not a team player," "hurting the university," "against athletics"). For those faculty who are tired of the corruption, who are embarrassed by the few who allow themselves—and thus the university—to be a part of the exploitation, who see the cynicism that the corruption produces, disclosure is an ally—a friend of the helpless.

At the opening session of the second Knight Commission on Intercollegiate Athletics, former Knight Foundation president Creed Black stated, "The time has come to face reality." Commission members, predominately college presidents, didn't and haven't. Individual faculty members can't. The cost of being a spoilsport is high. The only way to face reality is by adopting disclosure.

In *Bright College Years: Inside the American Campus Today*, Anne Matthews says, "Higher education is a remarkably unwatched industry. . . . Trust us, the campus has always said, we command secrets, we know best." Then she asks, "What's going on in there?"

Well, what *is* going on in there? Does the public have a right to know? Do alumni? Do prospective students and their parents?

There is an instructive scene in Pete Dexter's *Paris Trout* where the white lawyer questions the uneducated black woman:

"Our contention, Mrs. McNutt," Seagraves said, "is going to be that Thomas came up off that chair and cursed Mr. Trout for everything in the catalog and then came in after the shooting and removed the gun. Is that the truth?"

She and Paris Trout stared at each other then, until Seagraves walked between them.

"No sir," she said. "I told the truth about it. You can make it look any which way now, but I told how it happened."

Seagraves said, "That's what we called the jury for, to decide."

She turned then, looking directly at them. "They don't decide what happened," she said. "It's already done. All they decide is if they gone do something about it."

They—The Summiteers—know. The only question is whether they are going to do something about it.

\*Roger Rosenblatt. \*\*Johan Huizinga.

Jon Ericson appeared before the Knight Commission on October 18, 2000.

**From:** [Michael Peitz](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:** [Jim Boesch \(E-mail\);](#)  
**Subject:** Revision to Form 990  
**Date:** Thursday, September 06, 2007 1:57:21 PM  
**Attachments:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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September 6, 2007

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

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

Educational Theatre Association is a 501(c)(3), non-profit, charitable organization. In response to your request for public comment regarding the draft revised Form 990 and accompanying schedules, Educational Theatre Association respectfully submits the following comments.

**General Objectives.** It is the opinion of Educational Theatre Association

that the draft revised Form 990 poses significant concerns for nonprofit organizations that are required to file the form. While the objectives of redesigning Form 990 in order to enhance transparency, promote compliance, and minimize the burden of filing are worthwhile, the proposed changes will in many ways result in the opposite of these objectives. Educational Theatre Association has particular concerns about several areas of focus on the new form, including the meaningfulness of the ratio of fundraising activity as a percentage of total revenues, the definition of key employees, and requests for detailed information on governance. It is unlikely that these additional requirements will actually increase transparency, but rather they will just cause confusion because of information being out of context, lack of meaningful ratios and inadequate definitions. In addition, it is very likely that the expanded form will increase the record-keeping and information-gathering burdens of organizations. These increased requirements may actually promote greater noncompliance as organizations struggle to keep up with an ever-growing regulatory burden that diverts valuable time and resources away from purposes and programs.

**Part I, Summary.** Although having a Summary section is a useful approach to Form 990 redesign, the information presented in this section needs to be meaningful and contextually accurate. The current draft summary page, however, appears to be more of a collection of disparate facts, rather than an overall cohesive picture of the reporting organization. In addition, the summary page includes compensation and fundraising expense ratios that are both meaningless and misleading.

1. Questions 3 and 4 ask for total governing body members and total "independent" governing body members. Frankly, the term "independent member of a governing body" as contrasted with other governing body members is somewhat meaningless. Every member of a Board of Trustees is involved in governance and policy of the organization in one form or another. Does this mean that they are not independent? Can any member of the governing body be considered independent?

2. Question 6 asks for the number of persons receiving compensation

of more than \$100,000, but this does not serve a useful purpose if that dollar amount is used. While compensation of \$100,000 is significant, it is common for CEO's to have compensation greater than this amount. The presumed purpose of the question would be better met by an amount that is more likely to be excessive under ordinary circumstances, and by an amount that is indexed each year for inflation.

3. Question 7 asks for the highest compensation amount reported in Part II, but this seems redundant and misleading. If its purpose is to highlight the highest compensation on the summary page, the information will likely be misinterpreted because it is completely out of context from the organization's size, mission, revenues, and programs. The compensation of the highest compensated employee is already required in Part II of the form, where there is more information for considering the appropriateness of the compensation in context.

4. Questions 8b, 19b, and 24b calculate percentage ratios that purport to measure certain organizational efficiencies. The use of ratios in general by their very nature they are of limited utility and are prone to manipulation. The ratios presented on the summary page are arbitrary. They are neither accepted nor used in the non-profit field. Furthermore, because of the vast diversity of organizations required to file Form 990, any attempt to use these ratios to compare one organization with another, or one segment of the non-profit community with another, would yield highly misleading and unreliable results. For example:

a. An organization's fundraising efforts are not necessarily constant from year to year. A fundraising campaign may have high startup expenses compared with the contributions actually received in the first fiscal year of the campaign. In the next fiscal year the contributions might be significantly higher than expenses. In the third fiscal year the contributions might taper off. The ratio would be misleading in all three years, and could be used by a potential donor to avoid contributing to it.

b. The executive compensation ratio provides no useful information whatsoever, as it fails take into account organization size and complexity. Without the proper context, the ratio is misleading and could be damaging to the organization.

Potential donors and funding organizations, as well as the media, will not receive an accurate picture of a non-profit organization by using the misleading ratios required in the Summary section of the proposed Form 990, and this will only damage non-profit organizations and the people they serve.

**Part II and Schedule J, Compensation.** Educational Theatre Association supports the concept of transparency, including disclosure of compensation for officers, directors, and key employees. However, it is concerned about the extensive compensation reporting required in the new Form 990. Specific concerns are as follows:

1. The expansion of the definition of key employee to include “a person who manages a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expense of the organization” is problematic and overly inclusive. In practice, these program managers and department heads do not have the same authority as a Board member or CEO. Including their compensation will serve no real purpose, other than providing additional potential for misinterpretation and damaging information. The definition for key employee currently included in the Form 990 instructions would seem to adequately meet the need for transparency. This would exclude program managers and department heads who do not have responsibilities or authority similar to those of officers, directors or trustees.

2. Likewise, expansion of compensation reporting for the five highest paid employees is inappropriate because in a small organization it would include lower-paid staff with limited control over the organization’s operations. This request should at least include a dollar amount cutoff on the low end.

3. Educational Theatre Association is concerned about the privacy implications that would result from disclosure of the city and state of residence for every person listed in Part II, Section A of the new Form 990. Because the Form 990 is available to anyone, the disclosure of this information could lead to privacy invasion and identity theft. Disclosure of an individual's state of residence along with the organization's address provides a meaningful disclosure with far less potential for invasion of privacy.

4. Question 3 in Section B of Part II 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. Ordinarily, an organization's Board of Trustees hires and compensates the CEO or Executive Director, but not the Chief Financial Officer or Finance Director. The CFO is usually hired and compensated by the CEO or Executive Director. Because the stated positions are lumped together in the same question, most organizations would need to answer "no" to this question. Even when the governing body uses an accepted process for reviewing and approving CEO compensation, it could not answer the question in a way that was not misleading and damaging. If this question is needed at all, it is suggested that a checkbox be provided for each position separately, with a N/A option if the position does not exist at a particular organization.

5. On Schedule J, as part of executive compensation reporting, information is requested regarding nontaxable expense reimbursements (Column E). These amounts are merely reimbursements for documented business expenditures and are not of benefit to the employee. The information is not related to executive compensation and provides no meaningful information. If the purpose of the question is to provide non-salary taxable compensation information, then the question needs to be clarified. Otherwise, the information will be misconstrued as compensation to individual employees and the

amounts will be incorrectly included in Column F totals.

**Part III, Governance.** Although good governance is important, the questions in Part III regarding governance do not relate directly to the general purposes of Form 990 reporting and seem to be an extension of IRS authority. The questions in this section do not allow for appropriately different practices by diverse types of organizations, they do not accurately reflect a complete governance picture of an organization, and they are easily open to misinterpretation. There is one item of particular concern. Although board treasurers often review Form 990, it is not the usual practice for an organization's governing body to review it, nor should it be necessary as long as organization management is accurately following a Board's directives in accordance with good governance. In addition, not all documents listed in Question 11 are required to be disclosed, and a "no" answer could have unintended negative implications.

**Administrative Burden.** Overall, the proposed Form 990 adds to the burden of non-profit organizations, despite the stated purpose of the IRS to lessen this burden. The proposed Form 990 will result in organizations taking additional time away from programs to gather information, and also result in the organization paying additional administrative costs that could be used for programs. This will be especially burdensome for smaller organizations whose staff and resources are limited.

In summary, while Educational Theatre Association believes that transparency, compliance, and reduced regulatory burdens benefit both nonprofit organizations and the general public, it does not believe that the current draft revised Form 990 effectively addresses these principles.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Peitz". The signature is written in a cursive, flowing style.

Michael J. Peitz, CAE  
Executive Director



**From:** [Hatton, Mindy](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:** [Ashford, Deborah T.;](#)  
**Subject:** RE: Comments of the American Hospital Association on IRS Draft Form 990 and Schedules  
**Date:** Thursday, September 06, 2007 1:34:49 PM  
**Attachments:** [AHA Final Comments on IRS Form 990 and Schedules 9-6-07.doc](#)

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The comments of the American Hospital Association on IRS draft Form 990 and Schedules (other than H) are attached.

[Melinda Reid Hatton](#)  
[Senior Vice President & General Counsel](#)  
[American Hospital Association](#)  
[325 7th Street N.W. Suite 700](#)  
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September 6, 2007

By Electronic Filing

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

***RE: COMMENTS ON DRAFT REDESIGNED FORM 990 AND SCHEDULES***

On behalf of our nearly 5,000 member hospitals, health care systems, networks and other providers of care, and our 37,000 individual members, the American Hospital Association (AHA) appreciates the opportunity to submit comments on the draft redesigned Form 990 (core form) and new draft schedules. The AHA submitted its comments on Schedule H to the Internal Revenue Service (IRS) in a separate letter.

We appreciate the work that the IRS has put into the new form and schedules and your willingness to hear comments from the hospital community. We particularly appreciate the efforts of IRS officials who participated in our conference call about the draft redesigned Form 990 and numerous schedules.

In the wake of such an ambitious effort by the IRS, it is not surprising that the tax-exempt hospital community has numerous concerns about the draft redesigned Form 990 and many of the new schedules. We believe that the IRS should address these concerns before asking hospitals to file the Form or schedules.

Our concerns can be summarized as follows:

- The filing deadline is far too short and should be extended to tax year 2010 for Form 990 and all schedules.
- Form 990 and other schedules are rife with questions that require substantial revision before the goals the IRS set for itself can be achieved. Schedule K, Supplemental Information on Tax Exempt Bonds, is particularly problematic.

We recognize that until the questions are revised and coupled with improved instructions, it is not possible to identify all the issues that hospitals may face in implementing the new Form 990 and schedules. However, we have tried to identify as many issues as possible that we believe the IRS needs to address to assist in your process.



## **THE CORE FORM AND SCHEDULES NEED SUBSTANTIAL REVISION**

Below is our initial list of comments on the core form and other schedules based on the preliminary review of our members. Many large hospitals and hospital systems will need to fill out as many as 14 schedules, and most will have to fill out at least 8-10. This is an enormous, expensive and time-consuming undertaking for tax-exempt hospitals.

Significant revisions and refinements must be made to the core form, schedules and instructions. We think it is critical that exempt organizations be given an opportunity to review the revised set of forms, schedules and instructions in their entirety, with another 90-day review period following the re-draft. The IRS should release the second draft with instructions in 2008, and provide another 90-day review period, with a final form release by December 31, 2008.

It would be a disservice to the entire tax-exempt sector – hospitals in particular – to undertake the first major overhaul of the Form 990 in 25 years without adequate time for review and input. A rushed implementation schedule will inevitably require revisions and modifications that will be costly both to exempt organizations and the IRS, and that will not result in the desired transparency.

### **1. Core Form**

- The IRS asked for comments on whether “the IRS should preclude group rulings”. We understand this request was intended to elicit comments on whether hospitals and other organizations that have a “group exemption” should continue to be allowed to file a group return. Some hospital systems have received group exemptions. If group returns are eliminated, this would result in a significant burden that subverts the underlying group exemption.
- Part I (Summary), Line 6 requires an organization to enter the number of individuals receiving compensation in excess of \$100,000. This question provides information of limited use to the IRS since large organizations will likely have a larger number of individuals receiving such compensation and small organizations will likely have a smaller number.
- Part I (Summary), Line 7 requires an organization to enter the highest compensation amount reported on Part II, Section A (relating to reportable compensation paid to officers, directors, trustees, key employees, highly compensated employees and independent contractors). Requiring disclosure of the highest compensation amount paid on the summary page of the core form could mislead viewers when read outside of the context of the fuller disclosure required in Part II and Schedule J.
- Part I, Lines 8a and 8b require an organization to calculate total officer, director, trustee and other key employee compensation and then to calculate a percentage by comparing total executive compensation to total program expenses. This comparison metric

provides a misleading picture of an organization's operations and should be eliminated from the form.

- Part I, Lines 19a and 19b require an organization to calculate fundraising expenses as a percentage of total contributions and grants. This percentage does not provide helpful information about an organization's operations. Notwithstanding its limited use, organizations should be given an opportunity to explain this percentage.
- Part I, Line 24b requires an organization to calculate total expenses as a percentage of net assets. This percentage is not helpful to understanding an organization's overall operations.
- Part II (Compensation and Other Financial Arrangements with Officers, Directors, Trustees, Key Employees, Highly Compensated Employees, and Independent Contractors), Section A requires information on key employees, which term is defined in part based on the disqualified person concept from the Section 4958 intermediate sanction regulations to include a "person who manages a discrete segment or activity of the organization that represents a substantial part of the activities, assets, income or expenses of the organization, as compared to the organization as a whole." Consideration should be given to defining "substantial part" or including examples in the instructions or glossary to help large organizations determine employees who would fall under the broadened definition. Hospitals could have hundreds of "key employees" if this definition is not clear.
- Part II, Section A requires an organization to list the city and state of residence of each listed individual or organization. For hospitals and health care organizations in rural areas, providing this information could be tantamount to providing an individual's home address.
- Part II, Section A requires an organization to include reportable compensation from "related organizations" for purposes of reporting the compensation of former (within the last five years) directors, trustees, officers and key employees or highest compensated employees. It seems overly burdensome for a large filing organization to be required to track all former directors, trustees, officers, key employees or highest compensated employees over a five-year period when they have had no need to do so in the past. Combining this requirement with a need to survey all related organizations to determine whether any individual in this group is being paid compensation by such related organization requires efforts beyond the value the information would provide. Information on former directors, trustees, officers, key employees or highest compensated employees should look to current year only.
- Part II, Section A requires an organization to use the compensation figures as reported on Forms W-2 or 1099. For hospitals whose tax year is not the calendar year, Forms W-2 and 1099 reporting will result in compensation data that is much more dated than the compensation data currently required. For example, if a hospital's fiscal year ends on

June 30, the hospital would file its return on November 15, with compensation data as of December 31 of the prior year.

- Part II, Section B, Lines 5a-f require an organization to report the family and business relationships of officers, directors, trustees or key employees during a five-year look-back period. Hospital and health care organizations often have boards of directors with as many as 30 members, and hundreds of contracts. The collection and maintenance of documentation required to respond to these questions will create excessive new burdens for organizations, especially for organizations with large boards of directors. Moreover, the instructions should clarify the duties of organizations to collect such information going forward.
- Part II, Section B, Line 9 requires an organization to report whether any persons listed in Part A receive compensation from any source other than the filing organization or a related organization for services rendered to the organization. In its current form, this question requires organizations to have or acquire access to information that they may not otherwise have. This question should be clarified to address the extent to which an organization is required to seek information regarding such compensation arrangements. Also, if a listed person owns a company that is paid reasonable compensation to perform services, but the person does not receive any payment other than in his capacity as owner of the organization, what amount, if any, gets reported?
- Part III (Statements Regarding Governance, Management, and Financial Reporting), Line 2 requires an organization to report any significant changes to its organizing or governing documents. The IRS should clarify that this question would only cover changes to articles of incorporation and bylaws and not other policies of the organization.
- Part III, Line 3b requires an organization to report the number of “transactions” the organization reviewed under its conflict of interest policy. The instructions or glossary should be revised to include a definition for “transactions.” Because responding with a zero or a very high number would create a misleadingly negative connotation, and because any numerical response will have a different meaning depending on the organization and its policy, the question should be revised to ask whether the organization engaged in any transactions that were subject to the policy but were not reviewed under the policy.
- Part III, Line 10 asks whether an organization’s governing body reviewed the Form 990 before it was filed. This requirement is overly burdensome, particularly for large hospital systems, which may have dozens of hospitals and related entities for which returns are being filed. The draft form does not provide a definition of “review,” which should be added to the instructions or glossary. It is unclear whether an organization can simply provide the Form 990 to its governing body or whether it needs to receive some kind of certification that each member of its governing body has in fact reviewed the form. The instructions should clarify that review by the finance or an equivalent committee of an organization’s governing body or the governing body of its parent organization is

sufficient if the governing body delegates this function. In clarifying what is meant by “review,” the IRS also should consider that boards of directors of public companies are not required to review or certify tax filings under the Sarbanes-Oxley Act.

- Part III, Line 11 asks an organization to indicate where documents are made available to the public. There is no explanation for why this is being asked.
- Part IV (Statements Regarding General Activities), Line 1d requires an organization to report the total amount of contributions received from related organizations. The instructions include as examples of related organizations, “a parent organization or affiliates at the local, state, or regional level.” The example is confusing and the instructions should instead use the definition of related organizations from the glossary. Moreover, it is unclear whether all payments to related organizations (except for payments that clearly belong under membership dues, rentals, or sales) should be treated as contributions since there is no corresponding line item under “program service revenue” or “other revenue.”
- Part IV, Lines 2a – 2g require an organization to enter a corresponding business code from the *Codes for Unrelated Business Activity* from the 2006 Instructions for Form 990-T for the various line items of “program service revenue.” The business codes on 990-T are not broad enough to reflect accurately program service revenue.
- Part IV, Line 1c requires an organization to report contributions from fundraising events. Although the instructions use an example to show that gross income from other than contributions is to be reported on Line 11a, a reference at Line 1c to such amounts reported on Line 11a would be helpful.
- Part V (Statement of Functional Expense), Line 3 requires an organization to report expenses associated with grants and other assistance to governments, organizations, and individuals outside of the U.S. This question does not provide a reference to Schedule F or the threshold for filing Schedule F. These references should be added.
- Part VII (Statements Regarding General Activities), Line 6a requires an organization to report whether it had any tax-exempt bonds outstanding at any time during the year. The instructions should clarify whether this question is intended to encompass bond financing where the 501(c)(3) organization is not the issuer of the bonds but rather the borrower of proceeds of government-issued bonds.
- Part VII, Lines 8a (and the applicable instructions) requires an organization to report whether it conducted all or a *substantial* part of its exempt activities through or using a partnership, LLC or corporation and the aggregate exempt activities conducted through or by such entities involved a *substantial* portion of the organization’s capital expenditures or operating budget, or a discrete segment or activities of the organization that represent a *substantial* portion of the organization’s assets, income, or expenses as compared to the organization as a whole. Neither the instructions nor the glossary provide a definition,

percentage or amount for the term “substantial.” It is also unclear whether Lines 8a-8c would apply to passive investments of endowment or reserve funds in partnerships or publicly traded corporations.

- Part VII, Lines 11 and 12 require an organization to report whether it has a written policy or procedure for reviewing the organization’s investments and safeguarding its exempt status with respect to transactions and arrangements with related organizations. To the extent the IRS intends to develop sample written policies, IRS should solicit input from members of the tax-exempt sector with respect to the content and form of such written policies.
- Part IX (Statement of Program Service Accomplishments), Lines 3a – 3c require an organization to describe its exempt purpose achievements for each of its three largest program services. This question should be moved to Part I of the form, as it is a key question. Organizations should be allowed as much additional space as necessary to describe more than three key activities. As drafted, 3d also directs organizations to attach a schedule listing other program services.

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

- Part 1, Line 11f requires an organization to respond whether it has a “written determination from the IRS that it is a Type I, II or III supporting organization.” Since most supporting organizations do not have written determinations from the IRS, the question as written is misleading and unfair because the IRS did not actually issue such determinations until this year. The question should allow an IRS determination or “a written opinion of counsel.”
- Part 1, Line 11h, column (vii) requires an organization to report the amount of monetary support provided by the supporting organization to the supported organization(s). This question disadvantages supporting organizations such as parent holding companies within a health care system that do not pay out monetary grants or other support payments because they are functionally integrated or otherwise undertake activities in support of their supported organizations. The question should be revised to include the value of non-monetary support.

## **3. Schedule C (Political Campaign and Lobbying Activities)**

- Part II-B requires reporting by an exempt organization, including reporting on (b) paid staff or management and for (h) seminars, conventions, speeches, lectures or any other means. It is not clear precisely what the IRS is attempting to capture under (h) and that the category needs to be so broad. Also, instead of asking for precise amounts, the IRS should ask for a range of hours, number of employees or other proxies for amounts that

would provide the IRS with useful information while making the category less burdensome.

#### **4. Schedule D (Supplemental Financial Statements)**

- Parts I and III: Passive investments should be excluded from this schedule, and the listing of securities individually is extremely burdensome.
- Part VII (Other Liabilities) requires organizations to describe and list the book value of any other liabilities, including federal income tax liabilities, not reportable in the defined categories on Part VI (Balance Sheet) of the core form. Part VII also requires organizations to provide the text of the footnote to the organization's financial statements that report the organization's liability for uncertain tax positions under FIN 48. Disclosing the text of footnotes relating to uncertain tax positions in isolation could be misleading. Organizations should be given the opportunity to explain such footnotes or to attach their entire financial statement.
- Part XII (Endowment Funds) requires an organization that holds assets in term or permanent endowment funds to provide information for the past five years on fund balances, contributions, investment earnings or losses, program expenditures and administrative expenditures. The reporting burden associated with this question seems to outweigh the usefulness of this information. The five-year look-back period should be reduced or eliminated pending adoption by the IRS of reasonable standards.

#### **5. Schedule F (Statement of Activities Outside the U.S.)**

- It is unclear whether Schedule F requires that "captive insurance" activities be reported. Since any organization with captive insurance activity is required to complete IRS Form 5471, such reporting should be referenced here, or the organization should be specifically exempted from reporting again on this form.
- Schedule F requires the separate reporting of grants outside the U.S. from grants to domestic organizations and individuals. Many hospitals and health care organizations do not maintain records and reports in a format that would permit them to gather all of the information required to be reported on Schedule F. The required amount of recordkeeping and reporting could discourage organizations from making grants, particularly small ones, to foreign organizations or individuals. Moreover, the data required to be reported on the schedule could potentially threaten the safety and security of organizations and individual grant recipients, therefore Schedule F should not be open to public disclosure.
- It is unclear whether the activities of foreign affiliates of U.S. organizations are covered by Schedule F.

- Part I (General Information on Accounts and Activities Outside the United States), Line 2 requires an organization to describe its procedures for selecting grant recipients located outside the U.S. and monitoring the use of grant funds. The disclosure of an organization's grantmaking procedures is intrusive for a public document. This question should be similar to Schedule I, which simply asks whether the organization maintains records to substantiate its grant making process.
- Part II (Grants and Other Assistance to Organizations or Entities Outside the United States), Lines 2-3 require an organization to report the number of foreign 501(c)(3) organization grant recipients and the total number of other organizations or entities. This information seems misleading given that most foreign organizations are not formally recognized as 501(c)(3) organizations by the U.S., and the regulatory structure for charitable organizations in many countries is not easily comparable to U.S. requirements.
- Part II, line 1, column (g) requires that non-cash gifts be reported, and that the fair market value be the basis for the reporting. Hospitals should be exempted from reporting gifts of equipment and supplies since there are many such transfers of fully depreciated items.
- Part III (Grants and Other Assistance to Individuals Outside the United States) requires an organization to report grants of more than \$5,000 to individuals outside the U.S. Part II (Grants and Other Assistance to Organizations or Entities Outside the United States) requires organizations to check a box if no one recipient received more than \$5,000. Part III should include a similar check-the-box statement to clarify the guidance set forth in the instructions, i.e., that organizations are not required to complete Part III if no one recipient received more than \$5,000.

## **6. Statement G (Supplemental Information Regarding Fundraising Activities)**

- Schedule G requires an organization to report supplemental information regarding its fundraising activities. The IRS should clarify how organizations should report fundraising activities by related entities, which is a common occurrence within a health system.

## **7. Schedule J (Supplemental Compensation Information)**

- Schedule J requires an organization to report supplemental compensation information with respect to listed persons from Part II of the core form. There still seems to be confusion about who gets reported on Schedule J, so the instructions should further clarify the individuals for whom such information must be reported.
- Line 1, column (C) requires an organization to report non-qualified deferred compensation. The instructions should clarify, or the schedule itself should eliminate,

double-reporting of nonqualified compensation. This occurs when the amounts of unpaid, unvested deferred compensation are reported when awarded and again when they are vested. Eliminating the double reporting will give a more accurate picture of yearly compensation. The double reporting of deferred compensation is a problem under the current Form 990 and the IRS should take this opportunity to correct the confusion. This question also must address how compensation should be reported if the organization is reporting on an accrual basis.

- Line 1, column (D) requires an organization to report the amount of non-taxable fringe benefits provided to the listed persons in column (A). The instructions seem to even require reporting of de minimis fringe benefits, which by definition under the Internal Revenue Code are “so small as to make accounting for it unreasonable or administratively impracticable.” The instructions should follow the current Form 990, which allows de minimis fringe benefits to be excluded. The instructions or the compensation matrix also should include examples of nontaxable fringe benefits that physicians would typically be issued as part of providing services at a hospital, e.g., pagers, cell phones and other similar items, or this requirement should be eliminated.
- Line 1, Column (E) requires an organization to report the amount of all expense reimbursements, and allowances provided for expenses, that are not included on a recipient’s W-2. It is completely misleading to report such amounts on Schedule J, which is intended to disclose compensation amounts. Expense reimbursements under accountable plans that do not result in income to the recipient should not have to be reported on Schedule J.
- Lines 4 and 5 require an organization to report whether it paid compensation determined in whole or in part by the revenues or net earnings of the organization or a related organization. The instructions should clarify the types of compensation arrangements that would and would not be deemed to be determined in whole or in part by the revenues or net earnings of hospitals or health care organizations.

## **8. Schedule K (Supplemental Information on Tax Exempt Bonds)**

We are particularly concerned about Schedule K; a number of hospitals have described the burden associated with this schedule as akin to a full-scale audit, costing, potentially, millions of dollars.

- Schedule K requires an organization to report supplemental information for each outstanding bond issue with an aggregate principal amount in excess of \$100,000 on the last day of the taxable year. Due to the scope of information required for reportable tax-exempt bonds, the IRS should delay implementation of Schedule K (along with all of the Form 990) until 2010 so that organizations will have sufficient time to complete the analyses required for reporting the new information on the schedule. Also, since the schedule asks for information regarding all bonds outstanding on the last day of the

taxable year, no matter how long ago the bonds were issued, organizations may not have all of the requested information because there was no notice at the time the bonds were issued that the organization would be required to report such information to the IRS. Accordingly, the IRS should provide a "grandfather" provision under which information is required to be reported only for bonds issued after the date that the redesigned Form 990 was made public. Also, in light of the IRS' recently announced post-issuance compliance check program, the IRS should consider delaying finalization of this Schedule until the IRS has analyzed the responses to the questionnaires being sent out as part of the program.

- Part I requires extensive information for each outstanding tax-exempt bond issue with a principal amount greater than \$100,000 on the last day of the tax year. This section is enormously burdensome and needs to be streamlined. First, the IRS should recognize that much of the information requested here is already available through Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues, which is filed when the bonds are issued. The new schedule should be reconciled with the reporting already required to eliminate redundancy and burden. Part I, columns F and G, in particular, represent a particular burden for hospitals. For example, for bonds with large principal amounts that funded multiple projects, including buildings and equipment, requiring information on the date that a particular project was placed into service is very difficult and burdensome to provide.
- Part II requires the provision of information on bond proceeds. The instructions for this section should make it clear that when an organization is dealing with a refunding issue it is not necessary to report how the proceeds of the prior issue were spent. Alternatively, the instructions should reduce the burden associated with reporting this information by, for example, limiting how far an organization must go back when a bond is used to refund a prior issue. In addition, the current IRS regulations permit an organization that funds projects with a mixture of equity and bond proceeds to wait 18 months after facilities are placed into service to allocate the sources of those funds to particular costs. That means, at the time an organization may be required to file this schedule, there may not be a final allocation. The instructions for the form should reconcile this inconsistency in favor of delayed reporting.
- Part III requires an organization to report information about private use of tax-exempt bonds. The instructions should clarify that aggregate reporting for private business use is contemplated and the IRS should consider permitting organizations to report private business use as not exceeding a stated de minimis percentage. And, Part III could be streamlined if it allowed organizations to limit the reporting of contracts to those that do not meet the "safe harbors" described in Revenue Procedures 97-13 or 97-14. Question 4 should be re-written, as it does not take into consideration that a hospital may be meeting such "safe harbor" requirements, which would make the percentage computation unnecessary. Also, question 5a, requesting information about all other "use" by other than a 501(c)(3) organization or state or local government is overly broad, as it would presumably include use that is not treated as private use, such as incidental use or use on

the same basis as the general public. Additionally, questions 4 and 5 could result in misleading answers, as they fail to anticipate that these percentages may change from year to year and that the proper measure of usage would be the entire term of the bond.

- Part IV requires an organization to report information about the compensation of third parties who provide services related to bond issuances and whether such parties were selected using a “formal selection process.” The instructions should clarify what is meant by a “formal selection process” and should permit organizations to rely on selections that involved advice of bond counsel and/or a qualified underwriter with a reasonable review of qualifications. In addition, a threshold amount for reportable transactions should be added.

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

Part III requires an organization to report grants and other assistance to individuals in the U.S., if the grant amount is \$5,000 or more. This threshold should be increased substantially for large organizations like hospitals. The instructions and the schedule should clarify whether, consistent with the instructions to Schedule F, Part III, organizations need not complete Part III if no individual received more than the new threshold.

#### **10. Schedule L (Supplemental Information on Loans)**

Schedule L requires an organization to report details on loans to and from officers, directors, trustees, key employees, *highly* compensated employees and disqualified persons. The schedule and instructions should reference “*highest* compensated employees” from Part II of the core form, which is also the defined term in the glossary. The use of the expression “*highly* compensated employee” is unnecessarily confusing in this context.

#### **11. Schedule M (Non-Cash Contributions)**

The threshold for completing this schedule should be increased to at least \$20,000.

#### **12. Schedule N (Liquidation, Termination, dissolution or Significant Disposition of Assets)**

- Clarification is needed as to whether transfers to a wholly owned limited liability company that is disregarded as separate from the tax-exempt filing organization need to be reported.

- Clarification is needed as to whether transfers for “full and adequate consideration” that are excluded from the definition of “substantial contraction” still need to be reported as a disposition of net assets.

### 13. Schedule R (Related Organizations)

The following comments relate to Part V – Transactions with Related Organizations.

- For multi-hospital systems, Schedule R is extremely burdensome. At a minimum, the definition of “related” needs further review and consideration, as there are many definitions of the term that might have been used.
- Part V requires an organization to report whether it engaged in certain transactions or transfers with related organizations, including related 501(c)(3) organizations. The instructions carve out transactions between 501(c)(3) organizations where the only transactions between the organizations were gifts or grants. This instruction should be revised to allow transfers that are gifts and grants to be excluded, even where the organizations have other transactions such as leasing or services arrangements.
- The definition of “transfer” in the instructions should be revised as follows: A transfer includes any conveyance of funds or property, whether or not for consideration, *except for gifts or grants between related 501(c)(3) organizations.*
- The compliance burden from this section is of great concern to our members. Tax-exempt organizations within a health system typically have numerous arrangements involving the performance of services, leasing or sharing of facilities, equipment or employees, cost reimbursement etc. By way of example, a typical 501(c)(3) health system could have hundreds of transactions to report under Part V. The AHA understands that certain questions on this schedule are in response to Section 1205 of the Pension Protection Act (PPA), but the information on transactions between related 501(c)(3) organizations should be limited to transfers that could result in UBIT under the controlled entity rule of Section 512(b)(13). Other transactions between related 501(c)(3) organizations do not raise compliance, exemption, tax or other concerns and should not need to be reported.
- Schedule R goes beyond what is required under the PPA, which at least limits reporting of transfers among “controlling and controlled” organizations. By defining “related” as including brother/sister organizations controlled by the same person or persons, Schedule R requires any exempt entity within a health care system to include all transfers between it and any other entity within the system, which completely expands the already overly broad disclosure required by the PPA. These requirements are completely unworkable in the health system setting and, again, result in the reporting of transactions that do not raise compliance, exemption, tax or other concerns.

- The instructions for column (C) require the amount involved in each transaction to be reported, which is defined as the fair market value of the services, cash and other assets provided by the organization or the fair market value received, whichever is higher. This instruction seems to require even related 501(c)(3) organizations that have cost reimbursement arrangements to determine the fair market value for these arrangements, which creates a significant valuation burden for arrangements that should not even need to be reported.

We appreciate the opportunity to submit comments; we especially appreciate the IRS' effort to reach out to the hospital community and better understand its concerns. We welcome the opportunity to work with the IRS to improve the core form and schedules. Please contact me at (202) 626-2336 or [for further assistance](#).

Sincerely,

A handwritten signature in black ink, appearing to read "Melinda Reid Hatton". The signature is fluid and cursive, with a large initial "M" and "H".

Melinda Reid Hatton  
Senior Vice President and General Counsel

**From:** [Jim Welch](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** NEW 990 FORM  
**Date:** Thursday, September 06, 2007 10:35:35 AM  
**Attachments:**

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Dear Sirs/Mesdames:

The IRS has stated that one of the guiding principles of the redesign of form 990 is to “minimize the burden on the filing organization”. The proposed filing requirement totally ignores this guiding principle when it comes to small tax-exempts. Small organizations continue to need a 990-EZ form to ease the filing burden.

The IRS “Background Paper”, as part of the discussion draft it released, discusses the diversity of tax-exempts, and sets forth reasons for the new form. It notes the largest 1% of public charities holds 61% of the assets and derives 66% of the revenues. Large organizations often have complex compensation arrangements and intricate related party issues. The vast majority of all tax-exempts are small.

The redesigned form is an improvement for those larger organizations. I believe transparency is enhanced, and the initial questions help to identify the complexity of the entity’s operations. These questions are indeed necessary for all organizations. But, requiring an organization, with revenues of \$25,000 (the current threshold) to file a 10 page form 990 is using a “sledgehammer to kill a fly” approach. It may be effective, but not very efficient!

Please include a 990-EZ form for small tax-exempts!

James T. Welch, CPA  
McClain, Smith & Wenz, PC  
6905 Rochester Rd.  
Troy, MI 48085  
248-879-8400

"Education is when you read the fine print. Experience is what you get if you don't."  
- *Pete Seeger*

**Confidential:** The information contained in this message is strictly confidential, and is intended only for the use of the addressee listed above. If you are not the

**From:** [Horowitz, Gary](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Question Regarding Redesigned Form 990: Key Employee  
**Date:** Wednesday, September 05, 2007 2:51:30 PM  
**Attachments:** [GHorowit\\_Signature.gif](#)

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Under the Draft Form 990 Redesign - Glossary (June 14, 2007), the term "employee, key" is defined, in part, to include "a person who manages a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income or expenses of the organization, as compared to the organization as a whole." However, the Glossary does not define the word "substantial." Can you provide guidance as to the meaning of "substantial" in this context? Thank you.

Regards,

Gary Horowitz



**Gary I. Horowitz**  
Attorney At Law  
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**From:** [FNJSMP@aol.com](mailto:FNJSMP@aol.com)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)

**CC:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Subject:** Comments by The Drake Group on the Draft of a Redesigned IRS Form 990

**Date:** Wednesday, September 05, 2007 2:44:36 PM

**Attachments:**

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

The appended commentary is in response to your request for public comment on the discussion draft of a redesigned Form 990, Return of Organization Exempt from Income Tax, filed by many public charities and other exempt organizations. These comments, presented on behalf of The Drake Group (TDG), are focused on the tax-exempt National Collegiate Athletic Association (NCAA) and its member institutions.

TDG believes that an IRS implementation of the recommendations contained in the commentary will not only increase tax revenues, but also help restore academic and financial integrity in colleges and universities supporting big-time sports programs, especially football and men's basketball.

Respectfully submitted,

Dr. Frank G. Splitt  
[fnjsmp@aol.com](mailto:fnjsmp@aol.com)  
Member, The Drake Group  
<http://thedrakegroup.org/splittessays.html>  
Former McCormick Faculty Fellow  
McCormick School of Engineering and Applied Science  
Northwestern University

Copies to: Messrs. Patrick Heck and Dean Zerbe, Senate Finance Committee,  
Dr. James Duderstadt, President Emeritus and University Professor of Science and

Engineering at the University of Michigan, and Dr. B. David Ridpath, Executive Director, The Drake Group

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## **Comments by The Drake Group on the Draft of a Redesigned IRS Form 990**

**BACKGROUND** -- The mission of The Drake Group (TDG), <http://www.thedrakegroup.org/>, is to help faculty and staff defend academic integrity in the face of the burgeoning college sport industry whose uncontrolled growth is partially fueled by the governments' favorable tax policy re the NCAA and its member schools.

The increasing commercialization of big-time (NCAA D-1A) intercollegiate athletics and its negative impact on America's higher education enterprise has become evermore apparent to academic leaders, elected public officials, the sports press, and to a growing fraction of the public. After a century of ineffective efforts to reform college sports, there is a growing concern over out-of-control commercialization that is driven by the college-sports entertainment industry to further its financial interests – exploiting college sports and its participating athletes while limiting access to higher education by real students.

There is also concern about compromised academic integrity and the distracting influence of overly commercialized college sports on school officials, on America's youth, and on the nation's diminishing prospects as a leader in the 21<sup>st</sup> century's global economy.

A revised IRS Form 990 has the potential to fully expose the NCAA cartel's Achilles' Heel – the extremely weak, if any, educational basis for the current financial structure of big-time college sports. This would not only force very major reform, but provide unassailable “cover” for reform-minded university presidents and governing boards as well. However, it is likely that the cartel would stage a “no-holds-barred fight” to save the millions of dollars in benefits stemming from its current tax-exempt status by arguing that its affiliation with the educational mission of its member colleges and universities is direct rather than tangential at best.

**TDG AND CONGRESS** – After TDG's 2004 work with Congresswoman Jan Schakowsky's staff, prior to her Extended Remarks for the Congressional Record,<sup>1</sup> TDG worked in 2005 and 2006 closely with the staffs of the Oversight Subcommittee of the House Committee on Ways and Means and the Senate Finance Committee to reveal the brutal truth about big-time college sports that is often obfuscated by myths, misrepresentations, and misinformation promulgated by

ardent defenders of the status quo. This work helped contribute to:

1. A sharply-worded letter from the House Committee Chairman Bill Thomas to NCAA President Myles Brand– seeking justification for the NCAA’s tax-exempt status as an institution of higher education, specifically asking Brand to explain why, given the NCAA’s similarity with pro sports entities in its dealings with media rights and other big-money issues, it should continue to be tax-exempt, and
2. The December 5, 2006, meeting of the Senate Finance Committee that, among other things, probed the NCAA’s response to the Thomas letter via testimony from Dr. James Duderstadt, Emeritus President, University of Michigan.

Details on these congressional efforts as well as historical perspectives that help get at the truth about big-time college sports can be found in a recent article in *The Montana Professor*.<sup>2</sup>

In his most recent book,<sup>3</sup> Duderstadt, wrote: “While they (faculty) deplore the exploitation of student athletes and the corruption of academic values, they feel helpless to challenge the status quo in the face of pressures from coaches, athletic directors, and boosters – not to mention the benign neglect by presidents and trustees.” This statement preceded Duderstadt’s conclusion that “it is time for Congress to step in, at least in a limited way, to challenge several of the current anomalies in federal tax policy that actually fuel the commercial juggernaut of big-time college sports.”

**THE REVISED IRS FORM 990** -- It is our understanding that the discussion draft constitutes a significant redesign of Form 990 and that the IRS anticipates using the revised form for the 2008 tax year. We also understand that the redesign of Form 990 is based on three guiding principles:

1. ***Enhancing transparency*** means providing the IRS and its stakeholders with a realistic picture of the organization and its operations, along with the basis for comparing the organization to similar organizations.
2. ***Promoting compliance*** means the form must accurately reflect the organization’s operations and use of assets, so the IRS may efficiently assess the risk of noncompliance.
3. ***Minimizing the burden on filing organizations*** means asking questions in a manner that makes it relatively easy to fill out the form, and that do not impose unwarranted additional recordkeeping or information gathering burdens to obtain and substantiate the reported information.

## **TDG COMMENTS**

**1. *General*** – Although TDG agrees with the guiding principles for the revised Form 990, we believe that the revisions should be amended since the proposed Form 990 does not ask for the level of disclosure that TDG and the Congress are seeking as well as what the IRS ought to have. TDG has focused its recommendations to the U. S. Congress on the need for greater transparency and reporting that could be required of NCAA sports programs at colleges and universities. We have argued that this transparency and reporting would provide supporters, the general public, present and future students and their parents, the media, and policymakers with a much better understanding of “what is really going on” at the NCAA and their sports programs at big-time colleges and universities.

**2. *The FERPA Factor*** – The IRS needs be mindful of the fact that the NCAA and its member schools use the Family Educational Rights and Privacy Act (FERPA) to shield academic corruption from public view.<sup>4</sup> This corruption not only allows them to sustain their phony ‘student-athlete’ ruse with its derivative tax-exempt status, but also to recruit, sign, and roster academically unqualified blue-chip athletes requisite to fielding professional-level teams for their college sports entertainment businesses. Thus, the recommendations provided herein are rooted in the compelling need to require the NCAA and its member institutions to provide tangible evidence that their athletes function as real students.

**3. *The NCAA’s Student-Athlete*** – Without facts obtained by independent parties, disclosure, and external oversight, the NCAA cannot know that athletes are really students receiving a bona fide, rather than a “pretend” college education. Since the NCAA lacks verifiable evidence – indicating that athletes are progressing on accredited-degree tracks – there appears to be no rational basis for the NCAA to use the term ‘student-athlete’ when referring to college athletes who are, in effect, full-time employees of their schools. The NCAA’s use of the term may very well represent a false claim in violation of laws governing truth in advertising.

In many, if not most, instances, college athletes’ participate in an alternative educational experience that is not part of the school’s serious academic life, but rather a customized pseudo-academic experience engineered by academic support center staff members who work at the behest of the school’s athletic department to maintain the eligibility of the school’s athletes.

Recent and ongoing research strongly suggests prevalence clustering of entertainment-sport college athletes, especially minority athletes, in such alternative educational programs.<sup>5, 6</sup> In addition to such pseudo majors, the phenomenon of

“one and done” athletes, who utilize college sport as a short-term stepping-stone to a professional sport career, contributes to a lessening of universities’ academic standards and a marked deviation from educational missions.

Robert and Amy McCormick, from the Michigan State University College of Law, argue in a *Washington Law Review* article that grant-in-aid athletes in revenue-generating sports at NCAA Division I institutions are not "student-athletes" as the NCAA asserts, but are, instead, "employees" under the National Labor Relations Act.<sup>7</sup>

Just like the NCAA, the Congress and the IRS, must take the word of school administrators that athletes are really students on track to receive a bona fide, rather than a “pretend” college education. The fact that the NCAA has never endorsed proposals for academic disclosure by its member institutions, seems to indicate that NCAA officials do not want to have public evidence that could prove embarrassing to their cartel’s business interests.

**4. *Transparency/Disclosure*** – It seems clear that the Congress and the IRS wants transparency on the nature of a tax-exempt organization that would reveal whether or not it warrants this status. The issue here is whether or not intercollegiate athletics is an integral part of the educational mission which is indeed exempt. The way universities can establish their claim to their being integral to the educational mission is through transparency in the athletes’ experience and their progress as legitimate students.

Other than the new Schedule J, there appears to be nothing in the proposed form regarding specific disclosures on college athletic programs. In fact, Schedule E, which is the schedule filled out by “private schools” exempt under 501(c)(3), has not changed at all. As mentioned previously, the proposed Form 990 does not ask for the level of disclosure that TDG and (we believe) the Congress are seeking as well as what the IRS ought to have. Even if it did, public universities could probably evade such disclosure because many, if not most or all of them, would not file a Form 990. This appears to be a major problem since public universities usually are not required to file Form 990s, because they are part of state government, not a private entity exempt under 501(c)(3). It would probably take a separate law enacted by Congress to require public universities to file a Form 990.

**5. *Compensation*** – The proposed revisions to Form 990 do require far more detail regarding compensation of officers, directors and “key employees” (generally defined as someone who has management-like responsibilities for “a discrete segment or activity of the organization that represents a substantial portion of the activities, assets income or expenses of the

organization. . .” on new Schedule J. The new definition of “key employee” which is now essentially the same as the definition for “excess benefit transactions” in Section 4958 of the Code, is likely to include NCAA Div. I-A football and basketball head coaches, so the IRS will likely get to know somewhat more about their compensation packages than it does now, but only for organizations required to file a Form 990

Also, the Form 990 and Form 990T should be amended to include questions about the “total compensation arising out of the connection to the non-profit”. For example, coaches and others are paid a small salary by the university-relatively – but they receive much larger compensation from other sources that would not be available to them “but for” their position at the university. Accordingly, the Form 990 does not reflect the compensation that the institution is legally liable to provide. The form should show the highest paid people irrespective of the position they hold.

**6. *Contingent Benefits*** – Currently, quid-pro-quo contributions – payments that are required in order to receive benefits from nonprofit organizations – are eligible to be claimed as a charitable contribution, for example, seat “taxes” for premium seats or lease fees for luxury skyboxes. The large income stream stemming from the skybox boom has been assisted in large part by a 1999 IRS ruling that allows boosters to deduct most of the donations they make to lease skyboxes ... donations estimated to account for billions of dollars to Division I universities.

**7. *Unrelated Business Income*** – The commercial connections and government subsidies to college sports are well documented. For example, Andrew Zimbalist provides the story behind the gutting of the law pertaining to Unrelated Business Income Tax (UBIT) ... law that was written to provide for the taxation of the activities of a tax-exempt organization that are not substantially related to the exempt purpose for which it was formed.<sup>8</sup> It is understood that public universities were made subject to the UBIT provisions by special rule.

A good sense of the magnitude and ubiquitous nature of the very powerful legal and lobbying forces at the command of the NCAA cartel can be obtained from the story of the cartel’s suppression of the 1977 UBIT case brought against Texas Christian University by the Dallas office of the IRS.<sup>9</sup>

## **RECOMMENDATIONS**

TDG believes that implementation of the following recommendations by the IRS will not only increase tax revenues, but also help restore academic and financial integrity in colleges and universities supporting big-time sports programs, especially football and men’s basketball.

The recommendations and the appended explanatory notes are based on the

appended references.<sup>1-3, 5-13</sup>

TDG recommends that the IRS:

*1. Advise the NCAA and its member institutions that:*

*a) The need to vastly improve their transparency and reporting is a very serious matter and that their tax-exempt status will be conditioned on full disclosure*

*b) Their operations will be subject to IRS and congressional oversight as well to severe penalties (in addition to the loss of their tax-exempt status) for noncompliance.<sup>14</sup>*

*2. Eliminate what appear to clear violations of fundamental tax principles such as the loopholes that were inserted in the tax laws to enable practices such as tax deductions for contingent fees on seat tickets and skybox lease payments.*

*3. Be more rigorous in assessing the UBIT status of the revenues received by organizations, such as the NCAA, that are largely tangential to the educational mission of colleges and universities.*

Furthermore, TDG recommends that the IRS amend the revised Form 990 and schedules to request the NCAA and its member institutions to:

*1. Provide evidence that their athletes are maintained as an integral part of the institution's student body*

Over the years, the NCAA has made a number of rule changes that have emphasized athletics over academics so as to move their D-1A football and men's basketball programs to professional levels.<sup>15</sup>

*2. Provide evidence that their athletes attend regular whole-period classes*

Attending class is a public act; disclosing the names of courses and professors while not releasing students' grades provides the appropriate balance between a student's right to privacy and the public's right to know the conduct of faculty, administrators and governing board members. The purpose of transparency is to focus on the conduct of faculty, administrators and governing board members, not on student conduct.

Transparency would require disclosure of courses taken by the school's football and basketball team players as well as cohorts representing 50% of the players with the most playing time, the average grades for the athletes and the average grades for all students in those courses, the names of advisors and professors who teach

those courses, and whole-period class attendance records for the athletes.

It is suggested that interpretive wording be added to FERPA's student privacy provisions to make abundantly clear that this legislation does not prohibit release of information on the academic performance of individual athletic teams in whole or in part, so long as the data do not identify individual team members.

*3. Provide evidence that their athletes are on accredited degree tracks and are held to the same academic standards of performance as all other students*

The schools should be required to:

a) Name the Department of Education's National Advisory Committee on Institutional Quality and Integrity (NACIQI) approved accrediting organization responsible for accrediting the tracks, especially for the general studies and other 'diploma-mill-like' degree tracks commonly engineered for athletes by their school's academic support center staff, and

b) Relocate and divest control of academic counseling and support services for athletes by athletic departments. Such services must be the same for all students and in no way under the influence of the athletic department.

*4. Provide evidence that their athletes realize a 2.0 grade-point average, quarter-by-quarter or semester-by-semester to gain and maintain eligibility for participation in athletic events, with the grades and academic records certified by the school's chief academic officer*

It is reasonable to expect that a legitimate student have no less than a "C" average. The school's chief academic officer should be held personally accountable for academic corruption.

*5. Employ a standard uniform system of accounting in their athletic departments that is subject to public financial audits*

Convenience accounting and budgeting practices will continue to be used by the NCAA cartel to deceive and confuse faculty, the public, the Congress and the IRS about athletic department financials unless and until schools are forced to employ a uniform system of accounting that includes total capital expenditures, depreciation, and total staff costs from all sources, as well as be subject to public financial audits. The threat of Sarbanes-Oxley would certainly bring the NCAA and its member institutions to sharp attention.

Frank G. Splitt  
September 5, 2007

## **ACKNOWLEDGEMENTS**

The author gratefully acknowledges insights and contributions from: John Columbo,

James Duderstadt, Jon Ericson, John Gerdy, David Ridpath, Allen Sack, Richard Southwell, and Andrew Zimbalist.

## **APPENDIX – REFERENCES And Explanatory NOTES**

1

Schakowsky, Janice D. "Call for attention to the work of Dr. Frank Splitt," Congressional Record, Extension of Remarks, March 17, 2005, – p 9, [http://thedrakegroup.org/Splitt\\_Essays.pdf](http://thedrakegroup.org/Splitt_Essays.pdf).

2

Splitt, Frank G., "The U.S. Congress: New Hope for Constructive Engagement with the NCAA and Intercollegiate Athletics", *The Montana Professor*, Spring 2007, <http://mtprof.msun.edu/Spr2007/splitt.html>

3

Duderstadt, James J., *The View from the Helm: Leading the American University During an Era of Change*, p. 326, University of Michigan Press, Ann Arbor, Michigan, 2007

4

FERPA is part of the Federal General Provisions Concerning Education (GEPA), a set of unfunded conditions on the receipt of federal education funds. It is commonly referred to as the Buckley Amendment to GEPA. See Matthew R. Salzwedel & Jon Ericson, "Cleaning Up Buckley: How the Family Educational Rights and Privacy Act Shields Academic Corruption in College Athletics," *Wisconsin Law Review*, Volume 2003, Number 6, 1053-1113. Supplementary recommendations relative to FERPA that will ensure academic integrity of institutions of higher education follow:

a) Under Department of Education guidelines, "Directory Information" shall be amended to insert "courses, including the name of the professor" following "major field of study."

b) Institutions shall make public academic records of members of student groups sufficient in number to protect the privacy of individual students, students' courses including the grade, name of the professor and course GPA. The records shall be in the listed in order of grades received, i.e., courses in which the student received an A, courses in which the student received a B, and so forth.

5

College Sport Research Institute, "Study of 2006 NCAA Division I men's basketball tournament players' majors," Memphis, TN, 2007

6 Finley, P. S. and Fountain, J. J., "Academic stacking of athletes on low-performing Division I football teams," Paper presented at the annual meeting of The Drake Group, Cleveland, OH, March 2007.

7 McCormick, Robert A. and Amy C., "The Myth of the Student-Athlete: The College Athlete as Employee," *Washington Law Review*, Vol. 81, pp. 71-157, 2006, Available at SSRN: <http://ssrn.com/abstract=893059>

8 Zimbalist, Andrew, *Unpaid Professionals: Commercialism and Conflict in Big-Time College Sports*, Princeton University Press, 1999; See pp. 128 and 129 in the Paperback Edition, 2001.

9 Sack, Allen L and Staurowsky, Ellen J., *College Athletes for Hire: The Evolution and Legacy of the NCAA's Amateur Myth*, Praeger Publishers, 1998.

10 Splitt, Frank G., "Are Big-Time College Sports Good for America?" [http://www.thedrakegroup.org/Splitt\\_Good\\_for\\_America.pdf](http://www.thedrakegroup.org/Splitt_Good_for_America.pdf)

11 \_\_\_\_\_, "The U. S. Congress, Higher Education, and College Sports Reform" [http://thedrakegroup.org/Splitt\\_The\\_Interface.pdf](http://thedrakegroup.org/Splitt_The_Interface.pdf)

12 \_\_\_\_\_, "The Congressional Challenge to the NCAA Cartel's Tax-Exempt Status" [http://thedrakegroup.org/Splitt\\_Congressional\\_Challenge.pdf](http://thedrakegroup.org/Splitt_Congressional_Challenge.pdf)

13 \_\_\_\_\_, "Don't Overlook the Congress for Serious College Sports Reform" [http://thedrakegroup.org/Splitt\\_Dont\\_Overlook.pdf](http://thedrakegroup.org/Splitt_Dont_Overlook.pdf)

14 Conditioning the continuation of the NCAA's tax-exempt status on their meeting specific reporting requirements such as outlined herein and plugging the tax loopholes that help subsidize the college sports arms race will provide a strong message as to the seriousness of the revised Form 990 and its schedules.

Self assessment and reporting by colleges and universities, as well as weak enforcement by the NCAA, and even weaker penalties for infractions, provide an enormous incentive for schools to scheme and cheat. Failure to implement and comply with the the IRS reporting requirements should put the NCAA and/or

individual institutions at risk of losing their tax-exempt status. Once implemented, evidence of a continuation of existing patterns of fraud, continued efforts by universities and colleges to circumvent the intent of these measures, or, retaliation against whistleblowers, should garner severe penalties. In addition to the loss of their IRS tax-exempt status, penalties reflecting contempt of Congress should be of such severity as to make the risk of noncompliance not even worth thinking about.

15

The NCAA has resisted providing college athletes meaningful opportunities to function as real students by not agreeing to:

- a) Restore first-year ineligibility for freshmen with expansion to include transfer athletes;
- b) Reduce the number of athletic events that infringe on student class time, with class attendance made a priority over athletics participation—including game scheduling that won't force athletes to miss classes;
- c) Restore multiyear athletic scholarships—five-year scholarships that can't be revoked because of injury or poor performance (currently, an athletic scholarship is an agreement between athlete and coach/athletic department, renewed based on ATHLETIC performance), or, replace athletic scholarships with need-based scholarships – agreements between a student and the institution based on ACADEMIC performance. If the scholarship is need based, it will be awarded by the institution – just as the institution awards all other need-based aid – in that case, it does not need to be a five year award as the student will continue to receive his or her need-based aid, even if they leave the team. A strong case for switching to need-based aid as the only way to break the cycle of sponsoring professional teams on college campuses is made by John Gerdy in his most recent book, *Air Ball: American Education's Failed Experiment with Elite Athletics*; and
- d) Require athletes to honor the terms of their multiyear athletic scholarship with appropriate penalties to the school and athlete for broken commitments such as 'one and out' to the NBA.

###

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

**From:** [Alan Fiermonte](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:** [bmaloney astahq; travdim; dzim](#)  
**Subject:** IRS 990 Draft Redesigned Form - comments  
**Date:** Wednesday, September 05, 2007 12:33:01 PM  
**Attachments:**

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Dear IRS Form 990 Redesign Staff:

As a concerned shareholder member of a very large non-profit association (19,000+ members), the American Society of X, ***I fully support \_\_\_\_\_ redesigns that enhance transparency and increase details and visibility, especially in, but not limited to, areas related to executive compensation and highly compensated staff.***

I support increased “detailing” and transparency to counter the following conditions:

- 1) **Non-profit association unwillingness and/or hesitancy to voluntarily release ANY financial or executive compensation data on an annual basis to its members.** In this example, X does NOT release any financial data unless a shareholder member writes to the General Counsel of the association and cites a not-so-readily-known NY State Corporation law that compels X to release the IRS 990 and its consolidated financial statements. For almost ALL X member shareholders, IRS 990 data remains somewhat of a mystery and secret. More transparency and detail may serve to make more members interested in the data and thus likely to request it annually...or may compel the association to be less likely to benignly hide the data in the first place and just to release it to all member-shareholders without needing to be asked while citing law.
- 2) **Dismal trade reporting on non-profit association finances and compensation.** In this example, trade reports on X’s finances and executive compensation have just been non-existent in recent years. More detail and transparency will make more trade reporters interested in such information, since reporters like detail. This reporting is healthy for overall industry visibility and for member-shareholder financial oversight, especially needed in large trade associations covering huge economic enterprises that impact thousands of members and millions of American consumers.
- 3) **Hard to uncover financial mis-management.** In this example, X's

executive compensation for its top three(3) executives FY 2005 is approximately \$640,000...which is roughly 12% of X's overall revenue for that fiscal year.

And yet X has been in deficit spending for four straight years 2002 \$ - 800,000; 2003 \$ -621,000; 2004 \$ -1,100,000; and 2005 \$ -600,000 2006 data is not yet available. The more detail and transparency, the more likely member-shareholders are to be able to identify, analyze, and respond to potential financial management or executive compensation issues that relate.

Overall, sunshine breeds accountability. Please stay the course and open up more windows to more details and, thus, create more visibility for non-profit association constituents and members that expect more openness and accountability from their associations than they receiving.

Thank you for your consideration of this important matter.

Alan Fiermonte

Founder, Owner, President

**down2earth adventures**, LLC

415 West 10<sup>th</sup> Ave.

Conshohocken, PA 19428-1415

Office 610-832-0404

Cell 610-564-7500

**From:** [Judy Mangum](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Form 990 Revisions  
**Date:** Wednesday, September 05, 2007 9:08:25 AM  
**Attachments:**

---

Dear Sir or Madam,

As a member of the American Society of Association Executives, I concur with the letter that has been sent to the IRS from John Graham, CEO of ASAE.

The proposed new format of the 990 seems unnecessarily burdensome, especially for a relatively small association such as our's. While I think the current format certainly needs to be revised to make it more user friendly, both for the individual completing the form and for the intended readers of the form, the proposed format does not appear to reach this goal. Rather, it appears to make the form more complicated and time-consuming to complete and difficult to understand than it already is. I applaud the IRS for trying to make changes in a timely manner but feel that the direction that is currently being taken will not ultimately result in an improved informational document. Please take the time necessary so that in the end your goals are achieved in a reasonable manner.

Judy Mangum  
Director of Finance & Administration  
American College of Osteopathic Surgeons  
123 N. Henry St.  
Alexandria, VA 22314  
703-684-0416 ext 104

Please note my new email address: [jmangum@facos.org](mailto:jmangum@facos.org)

**From:** [Christine Cales](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Information regarding grantmaking foundations  
**Date:** Tuesday, September 04, 2007 9:09:12 PM  
**Attachments:**

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To whom it may concern,

Thank you for accepting comments regarding the proposed revisions to tax form 990. As a grantwriter working for a private university, I believe the 990 form filed by foundations provides critical information in the process of researching the grantmaking interests and process as well as the financial position of individual foundations. This is especially critical when dealing with the thousands of US foundations that do not maintain websites and other published materials.

I have reviewed the proposed new form and am grateful that grantmaking organizations are being asked to provide expanded information about the types of grants they have made. However, I was unable to locate the information that has previously been provided in Part XV Supplementary Information such as if the organization makes contributions only to preselected charities (while frustrating, this can be useful information); the name, address, and telephone number to who applications should be addressed (this may be different from the primary address and principal officer listed on page 1); form in which applications should be submitted and information and materials that should be included; submission deadlines; and restrictions/limitations on awards. Although sometimes limited in detail, the answers to these questions provide critical information to prospective applicants. It is my hope that this and other critical information about how prospective applicants can relate to grantmaking foundations will still be made available through the 990 form. While I appreciate that organizations will be asked to state their mission on the 990 form, that may not provide the same type of information.

Thank you for your time and best wishes in undertaking these changes,

Christine Cales

**From:** [Taylor Fernley](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Form 990 Revision  
**Date:** Tuesday, September 04, 2007 4:10:47 PM  
**Attachments:** [0976\\_001.pdf](#)

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To Whom It May Concern,

Attached is our response to the Form 990 Revision.

<<0976\_001.pdf>>

*G.A. Taylor Fernley, President & CEO*

***Fernley & Fernley, Inc.***

100 North 20th Street, 4th Floor

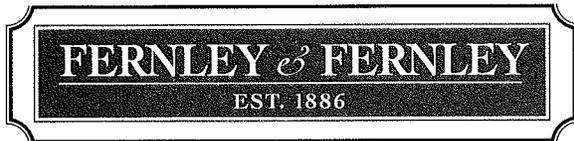
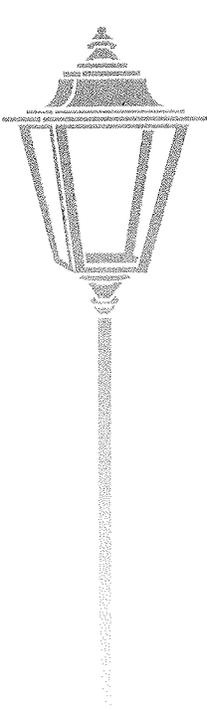
Philadelphia, PA 19103

Phone: 215-564-3484 x 2200

Fax: 215-564-2175

Email: \_\_\_\_\_

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(215) 564-3484 • Fax: (215) 564-2175  
[www.fernley.com](http://www.fernley.com)

September 5, 2007

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

To Whom It May Concern:

We appreciate the opportunity to comment today on the draft redesign on Form 990, *Return of Organization Exempt from Income Tax*.

Before we begin, a little background. Fernley & Fernley (F&F) is the longest established association firm in the country with our roots dating back to 1886. We provide professional management services to over 30+ national and international trade and medical organizations. Among our list of services include financial management, meeting planning, marketing, and membership administrations. Clients range from 10 to over 1,000 members with budget sizes up to \$5 million. Each of our clients are governed by a volunteer Board of Directors strongly supported by their professional management staff.

First and foremost, IRS should be commended on its effort to update and reorganize the Form 990. Quite a daunting task!! Suffice to say, we are appreciative of the complexities of this task and the level of effort necessary to achieve success. We support fully your approach of transparency and disclosure.

Great confusion has existed in the past with respect to the listing of the names of management company personnel on the Form 990 in conjunction with the fee paid to the professional association management company. Exempt organizations that use firms like F&F of course have no employees... their staffs are employees of the management company. The concern has been the possibility that an executive employed by exempt organization could avoid reporting part or all of his/ her compensation by setting a bogus for-profit entity and becoming an "employee" of that entity. You addressed this issue in part and on a temporary basis through the announcement 2001-33.

To our good fortune, such an approach will not be able to happen in the future (see item 5 of part III, section B of the revised draft). It prevents use of a bogus, separate entity to hide compensation. Moreover, the statement in the draft instructions that the information to be reported in item 5F is not to include the compensation paid to the individual by the entity doing business with the exempt organization, we believe removes any doubt on this

issue and finally resolves the question of the connection between reporting management company fees and the listing of management company personnel who serve as officers, etc. of the exempt organization.

Factoring in the above, F&F strongly and respectfully urges IRS NOT to make any additional changes to these items. On behalf of our company and our industry, we thank you for this opportunity to share our thoughts on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "G. A. Taylor Fernley". The signature is written in a cursive, flowing style.

G. A. Taylor Fernley  
President and C.E.O.

**From:** [Carol Davis](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:** [George Gates;](#)  
**Subject:** Form 990 Redesign Comments  
**Date:** Tuesday, September 04, 2007 2:21:19 PM  
**Attachments:** [IRS 990 Comments.pdf](#)

---

Please find attached our comments in the proposed redesign of the Form 990.

Carol Davis  
Controller  
Project Concern International  
5151 Murphy Canyon Road, Suite 320  
San Diego, CA 92123 USA  
Telephone (858) 279-9690 ext. 339  
FAX (858) 694-0294



September 4, 2007

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

Electronic delivery: [Form990Revision@irs.gov](mailto:Form990Revision@irs.gov)

RE: Draft Designed Form 990

To Whom It May Concern:

This letter is to provide comments to the Internal Revenue Service about the proposed revisions to the Form 990 and attachments.

Project Concern International (PCI) is a health and development organization that works in communities around the world to prevent disease, provide economic opportunities and create long-term change by helping people to help themselves. Motivated by our concern for the world's most vulnerable children, families, and communities, PCI envisions a future where abundant resources are shared, communities are able to provide for the health and well being of their members, and children and families can achieve lives of hope, good health, and self-sufficiency.

Please find below our comments about the proposed revisions:

1. Form 990, Part 1: There is insufficient space to list the organization's three most significant activities.
2. Form 990, Part I, item 8b: Calculating compensation as a percent of program service expenses will result in percentages that are not comparable between organizations doing most of their work in the US, and organizations working in developing countries where local employees are paid on a much lower pay scale than employees with similar responsibilities in the US.
3. Form 990, Part I, line 19b: The numerator and denominator for this calculation could be mismatched. Contributions and grants includes government grants. Guidance regarding accounting for costs associated with obtaining government grants is inconsistent. Per IRS guidelines, research grant (usually government) solicitation costs are included in program services and other government grant solicitation costs are included in fundraising. Per OMB Circulars, such costs are included in G&A.

It would be helpful if the IRS changed their guidance with this redesign to make costs related to soliciting restricted funds charged to G&A to conform to how most nonprofit organizations, especially those receiving USG funding, are accounting for their costs (termed bid and proposal costs). The rationale is that soliciting government funding is an activity much more rooted in technical program design and new program development—an activity similar to R&D—than in traditional unrestricted fundraising activities like individual solicitations, direct mail, and special events.

4. Form 990, Part I, line 26: This presentation is misleading. Column ii heading description is “expenses,” but information obtained from the Schedule G reference is the amount paid to a fundraiser.

The IRS appears to be inconsistent in how it wants to present special event financial outcomes on this cover sheet, on Part IV, line 11a, and in Schedule G, Part II. The inconsistencies are on both revenue (with or without the contribution part of payments) and expenses (fundraising consultants only or all related expenses). I believe that the intuitive and most commonly used way to analyze special event financial outcomes is to look at all direct payments for the event (including both the contribution and donor benefit parts) and all direct expenses.

The immateriality of this section—compared to the entire scope of an organization--doesn't appear consistent with the intent of the cover sheet.

5. Form 990, Part IIA: We appreciated the ability to identify components of total reportable compensation especially for expatriates who often receive taxable housing and dependent education reimbursements while living abroad in amounts in excess of 100% of base pay. This new presentation will obscure that detail.
6. Form 990, Part II, Column B: I didn't see a definition of individual versus institutional Board member in the form or the instructions, but perhaps I missed it.
7. Form 990, Part II, 10a: It has always been unclear to me whether we should report in the Form 990 independent contractors who are individuals only, or include partnerships (CPA, attorneys) and/or vendors (corporate). I didn't see guidance on this issue in the instructions.
8. Form 990, Part III, line 1a and b. Redundant with cover page.

9. Form 990, Part III, line 2: Guidance on the form about which document changes to address here appear clear to me: certificate of incorporation and by-laws. However the items described in the instructions would require us to disclose changes in our employment and accounting policy manuals, of which we make many nearly every year. Was that your intent?
10. Form 990, Part III, line 10: Was it the IRS intent that every Board member would review the Form 990 prior to submission? This guidance seems unworkable and might encourage micromanagement. Perhaps asking whether a member of the Board, Finance, or Audit Committee has reviewed the Form 990 prior to submission would be more feasible.
11. Form 990, Part III, line 11: Is it the intent of the IRS that the nonprofit organization would make interim financial statements widely available to the public? It is possible that this would tilt the balance between transparency and efficiency too far on the side of transparency.
12. Form 990, Part IV, line 1b and c: Our board members organize events at their homes or their companies for which we are the beneficiary. It's not clear to me whether these events would be considered outside fundraising or fundraising events.
13. Form 990, Part IV: Is it the intent of the IRS that the contributions section be distinguished from the program service and other revenue sections using guidance consistent with FASB 116? The two examples given in the instructions under line 2b are not consistent with how FASB 116 is being applied.
14. Form 990, Part V, line 9: Note that we record events related to employee morale to our meetings line item rather than employee benefits. The rationale is that they are to create a general positive employment climate rather than to provide quantifiable benefits to individual employees.
15. Form 990, Part V, Line 13: It appears that the instruction for this line is advising that we charge conference printing to conferences rather than to printing. Please note that we would charge printing to the printing line item, with a cost center indication that the printing was for a conference.
16. Form 990, Part V, line 12: The instructions include the words, "Amounts for the organization's in-house fundraising campaigns." Perhaps this wording could be more precise; most organizations would charge costs related to fundraising to the fundraising activity, but using natural expense line items—not advertising.

17. Form 990, Part VII, line 7: The instructions on the form for this question are not immediately apparent and refer to a different set of regulations. There is no guidance for this question in the instructions. Was it your intent not to provide the user with assistance on this question?
18. Form 990, Part VII, line 16: A community foundation holds endowment assets on our behalf. Because of the wording, “Does the organization hold assets...,” I’m not clear whether our endowment would be covered by this question, and the instructions do not clarify the matter.
19. Form 990, Part IX, question 2: This question requires the financial management team to make this subjective judgment which could be perceived as devaluing all the other great accomplishments of the organization during the year. Perhaps the question could be phrased in a way that allows an organization to describe its own accomplishments in a way that is consistent with the organizational culture and mission and not quite as competitive.
20. Schedule D, Part XII: The income from our endowment funds is unrestricted. Did you intend for the unrestricted spending to be reflected in the “administrative expenses” line? Or is “administrative expenses” related to administration of the endowment? The instructions do not provide guidance.
21. Schedule D, Part V: Five lines is insufficient space for us to list all of our land, buildings and equipment in 9 countries and 30 offices. Did you intend for each line to describe a type of asset: land, buildings, equipment, other? If so, perhaps the form or instructions could make that explicit.
22. Schedule F, Part 1, column b: Did you mean to say “and” rather than “or”?
23. Schedule F, Part II: We have two questions on this part:
  - a. Should only those sub-grantees who are US-based be described in Part II? And we insert the number of non-US-based sub-grantees on line 3?
  - b. If the answer to the above question in yes, then the scope of this question is reasonable. However, if the answer is that all foreign sub-grantees should also be included, then this question will be very difficult to complete. Clearly most foreign organizations will not be recognized by the IRS and have EINs. We have over 100 currently active sub-grants, most of which are more than \$5,000. Each of those sub-grants is paid out in installments; some of the payments are made using different mechanisms. Due diligence is performed over each of our sub-grantees in our field offices; however, compiling this information will be very time consuming. How will it maintain a balance between transparency, compliance, and minimizing the burden on filers?

24. Schedule F, Part III: Should this section include amounts paid for cash for work (a way of creating income and speeding recovery after disasters)? Should it include amounts lent to peer lending groups through micro-credit programs?

As we need to make copies of these forms when we have more items than the space on the form, perhaps you could split parts II and III into two pages. Completing these two parts will be very complex.

25. Schedule G, Part I, question 1a: As “grants from governments” is not an activity, and the process of obtaining government grants is very different from other activities traditionally thought of as “fundraising” I’d suggest you delete this line from Part I, question 1a..
26. Schedule G, Part I, question 1b: Can you be more specific than “Did the organization have a written or oral agreement with any individual...”? Do you mean an agreement for the individual raise funds on our behalf? In California, we have two classifications in the legal code: fundraising counsel and commercial fundraiser. You might want to make a similar distinction because, presumably, your goal is not to catch all professional development advisors in this net, but rather the individuals who solicit funds on behalf of nonprofits.
27. Schedule G, Part II, Line 7: The reference to Labor Costs and Wages in the instructions is unclear, as there is no such line in the actual form.
28. Schedule G, Part III, Line 16: As this entire section is about gaming, might not you remove the term “special events” from this question? Its inclusion muddies the intent of this entire section.
29. Schedule J, Part 1: On the top line of the form, did you mean to say Form 990, Part II rather than Part III?
30. Schedule J, Part 1, column D: The request that we include non-taxable benefits for listed employees is surprising. We currently record all these expenses across our various expense line items, not in benefits by employee. Is it your intent that we include the office supplies these employees use? Phone calls they make? Mileage reimbursements for meetings they attend? Travel reimbursements under accountable plans? Health insurance premiums? It is possible that this question would tilt the balance between transparency and minimizing burden too far on the side of transparency.

Instructions for who to include on Schedule J are confusing.

31. Schedule J, questions 4 and 5: Compensation evaluation of top management should take the organization's financial results into account. If people answer these questions correctly, you're going to be highlighting the organizations that are properly managed, not the organizations that are improperly managed.
32. Schedule J, Line 6: I don't understand the form or instructions for Line 6.
33. Schedule M: Disclosing the number of items of food donated to the organization will be very time consuming and result in a meaningless number. Perhaps metrics would be more useful. We receive USG commodities from USAID and USDA in large quantities.
34. Schedule R, Part I: I believe the definition of disregarded entities indicates that they are included in the reporting organization's financial statements. We record the assets of our field offices as the assets of the corporation. We record revenue related to the programs they operate as revenue of the program, whether the funds are received in the US or in the field office. So answering E and F would be difficult. And these entities, all being locally registered in the countries where we operate, will not have EINs.

Thank you for the opportunity to provide you these comments on your proposed Form 990 revisions.

Sincerely,



Carol Davis  
Controller

**From:** [Doug Hall](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Comments  
**Date:** Monday, September 03, 2007 11:40:23 AM  
**Attachments:**

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Form 990, Part III, Question 10 – should be changed to read “Did a representative of the organization’s governing body review the Form 990 before it was filed?”

The way the question is currently worded, implies that every member of the Board of Directors reviewed the Form 990. This is impractical and unrealistic. It should be completely acceptable for the Board to designate one individual such as the President, Treasurer or a member of the Board who is a CPA to review the Form 990 on behalf of the Board. In my opinion, to expect otherwise and imply that this is not acceptable, is wrong.

Respectfully submitted,

**Douglas A. Hall, CPA**  
2309-B First Landing Lane  
Virginia Beach, VA 23451  
Phone: (757) 412-2750  
Email: [dhallcpa@cox.net](mailto:dhallcpa@cox.net)

**From:** [Steve Drake](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Form 990 Redesign  
**Date:** Monday, September 03, 2007 10:20:08 AM  
**Attachments:** [image001.wmz](#)  
[oledata.mso](#)  
[image003.gif](#)

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

**Drake & Company**, an accredited association management company (AMC), is a C Corporation incorporated in the State of Missouri. We have been in continuous operation since 1992. We have a staff of 19 and serve as the contracted staff and headquarters for eight trade associations, professional societies and charitable foundations. One of our clients was founded in 1897; another started in 2006.

We applaud the IRS for its diligent work to overhaul the Form 990 and to increase transparency of non-profits.

We are pleased that the new 990 does not confuse the fees paid to management companies with the compensation paid by AMC's to their employees, and, in particular, that the statement in the current Form 990 instructions regarding listing the management fee as the compensation of the AMC representative who works for the association, has been dropped altogether.

We believe that Part II, Section B of the revised 990 (questions 5a, 5e, and

5f) clearly and adequately addresses and ensures disclosure of the fact that an officer, director, or other "insider" of the association also serves in a leadership or ownership position with a third party doing business with the association, including an association management company.

We urge the IRS not to make any further changes that might compel the disclosure of an AMC employee's personal salary on the Form 990, which is of course public, or attributes any part of the management fee to the AMC employee.

Thank you for your attention to our comments.

Sincerely,

[Steve Drake](#)

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16020 Swingley Ridge Road, Suite 300

Chesterfield, MO 63017

Phone: 636/449-5050

FAX: 636/449-5051

**From:** [Blumenthal, Robert](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Form 990 revisions  
**Date:** Sunday, September 02, 2007 3:08:28 PM  
**Attachments:**

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My response of August 8 had an incorrect web link. Here is the correct version:

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

[http://www.popecenter.org/clarion\\_call/article.html?id=1879](http://www.popecenter.org/clarion_call/article.html?id=1879) <[http://www.popecenter.org/clarion\\_call/article.html?id=1879](http://www.popecenter.org/clarion_call/article.html?id=1879)>

Here is the text of the article:

Two leading members of the Senate Finance Committee, Sen. Max Baucus (D-Mont.) and Sen. Charles Grassley (R-Iowa), are trying to increase transparency in the financial reporting by nonprofit organizations. Many of the reforms the senators propose - outlined in a May 29 letter to Treasury Secretary Hank Paulsen -- would have a profound effect upon the kind of financial information that colleges and universities are required to disclose to the public.

Colleges and universities are required to file Form 990 annually with the IRS (available to the public through GuideStar <<http://www.guidestar.org/>> ). Baucus and Grassley propose a major overhaul of Form 990. They contend that the current form does not adequately encompass information regarding large, complex nonprofits such as universities. They call for more detailed reporting tailored to the specifics of these

institutions and for making their financial reporting more transparent.

A major area of concern for the senators is endowments. They want nonprofit institutions to answer the following questions:

- \* What is the size of the endowment of the institution, and what definition of endowment is being used to arrive at the figure being reported?
- \* What is the amount and percentage of the endowment being spent?
- \* What are endowment funds being spent on?
- \* What endowment funds are earmarked for specific purposes and what are those purposes?
- \* How are endowment funds being invested?
- \* What are the costs of the management of the endowment?

The current Form 990 provides very little insight into these questions, and the situation is made all the more opaque by the fact that there isn't even a uniform definition of "endowment."

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

The senators are to be commended for their efforts to bring about greater openness with regard to nonprofits, and the reforms they propose will increase transparency in the financial operations of colleges and universities. I believe, however, that their reforms do not go far enough. In their letter outlining the reforms to Treasury Secretary Henry Paulson, the senators say that it is time to "open the blinds." While a step in the right direction, their proposals would still leave the blinds partially closed, excluding much important light from the eyes of the public.

We should require from colleges and universities -- institutions which enjoy tax-exempt status and which are supported by tax dollars in a myriad of ways -- the same level of transparency with regard to financial matters that we require from public companies, a point made by the two senators. Publicly traded companies are required to disclose their audited financial statements, together with the auditor's notes to those statements. In order to be eligible for federal student aid funds, colleges and universities are required to

produce and file a set of audited financial statements with the Department of Education annually. But, unlike the financial statements that publicly traded companies must file, there is no requirement that the financials of a college or university be made public.

All the public gets to see is the Form 990, a very poor substitute. The balance sheet and income statement portions of that form are sketchy at best and are not presented in standard accounting format. Moreover, the 990 includes neither a cash flow statement nor the auditor's notes. In order to guarantee the same level of transparency that currently exists with regard to public companies, Form 990 should be modified to require that a college or university include its audited financial statements, complete with the auditor's notes accompanying them.

Moreover, Form 990 should be made available to the public as soon as possible. Currently, it is not unusual for a college or university to post its Form 990 more than a year after the end of the relevant fiscal year. Public companies are required to furnish financial information in a timely manner. Colleges and universities should do so as well. These institutions should be required to annually furnish the necessary financial information within two months of the end of their fiscal year. Extended delay in providing information is not compatible with transparency.

The senators' call for a uniform definition of endowment is also crucial. For colleges and universities, the term "endowment" can mean whatever the school's governing board wants it to mean. Institutions are free to decide which of their assets to count as endowment and are free to change this determination whenever they choose. In some cases, "endowment" refers only to invested funds which generate income but whose principal cannot be spent. In other cases, it also includes funds designated by the board as "funds functioning as endowment" or "quasi-endowment funds." These are funds labeled by the governing board as endowment, but which may be spent at any time at the discretion of the board. Thus, not only is there no consistency from one institution to the next, but there is also no guarantee of consistency within a single institution from one year to the next.

As long as the concept of endowment remains fuzzy, it will be impossible for the public to evaluate the effectiveness of any nonprofit entity. We need to have a clear definition.

The tax-exempt status enjoyed by colleges and universities is a privilege that should carry certain responsibilities with it. Among those responsibilities should be the requirement to provide, in a timely fashion and on a regular basis, a transparent picture of the financial position and operations of the institution. With that information, parents, donors, and public officials will be better able to evaluate the school's activities.

Robert A. Blumenthal  
Professor of Mathematics  
Oglethorpe University

contact info: [http://www.oglethorpe.edu/faculty/~r\\_blumenthal/](http://www.oglethorpe.edu/faculty/~r_blumenthal/)

**From:** [Kevin Yeager](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:** [Jim Phillippe; Ross Matlack; Tom  
Tope;](#)  
**Subject:** Form 990 Revision Comments  
**Date:** Friday, August 31, 2007 1:50:33 PM  
**Attachments:** [IRS.990.comment.letter.aug31.07.doc](#)

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Please see the attached document for the comments from Holzer Health Systems.

Kevin R. Yeager, CFO  
Holzer Health Systems  
100 Jackson Pike  
Gallipolis, OH 45631  
740-446-5060  
[kyeager@holzer.org](mailto:kyeager@holzer.org)

August 31, 2007

By Electronic Filing

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

Re: Comments on Proposed Revisions to Form 990

On behalf of Holzer Health Systems, I am submitting our comments on proposed revisions to the Form 990. Holzer Health Systems is a 501(c)(3) not-for-profit health system that owns and operates two hospitals, a skilled nursing facility, two assisted living facilities and provides many greatly needed healthcare services to our communities, which are located in Southeastern Ohio.

Some of our concerns are summarized as follows:

- The filing deadline is too short. Changing our accounting and recordkeeping systems will take significant time, effort and expense. Please consider extending the date until at least tax year 2010.
- The Schedule H does not appear to meet the IRS' own goals. In fact, it appears to change the community benefit standards. Consider revising the Schedule H to focus on the five pillars of community benefit that hospitals provide under the current standards.
- Consider the elimination of the many questions that do not directly relate to the community benefit standard.
- Consider including Medicare & Medicaid losses as a documented part of community benefit. If hospitals did participate in the Medicare and Medicaid programs, there would be a significant loss of healthcare services to the communities that need them most.
- Consider including bad debts as a documented part of community benefit. Most healthcare bad debts are not a reflection of the providers' inability to

effectively run their business; rather, they are a reflection of the community's economic conditions and the reticence of many people who would otherwise qualify to apply for charity care.

- Consider including "community building" activities once again as documented community benefit.
- Consider permitting healthcare providers to include other, non-quantifiable community benefits on the form in a "free form" area since there are many unique things being done to benefit each individual community that most likely do not fit into the boxes on the form.

Thank you for considering our comments prior to finalizing the revised Form 990 and the related schedules. If you have any questions or comments, please do not hesitate to contact me at the address/phone/e-mail above.

Sincerely,

*Kevin R. Yeager*

Kevin R. Yeager, CFO

**From:** [Tim Miner](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:**  
**Subject:** Form 990 Redesign  
**Date:** Friday, August 31, 2007 12:02:00 PM  
**Attachments:**

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September 4, 2007  
Southern Michigan Regional Ambulance Service  
24 Wright Street  
Coldwater, MI 49036

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

I am commenting on the proposed changes to the 990 form, specifically Schedule H. As proposed, the addition of Schedule H would be an extraordinary burden for ambulance providers, and is beyond the realistic capacity of our organization and virtually every non-profit ambulance provider.

Numerous hospitals are sending in comments requesting delay until 2010, to allow them to put in processes to capture the data the IRS is requesting. Compared to hospitals and other large health care agencies, ambulance services are small and do not have the resources or financial sophistication the IRS is proposing be reported. The IRS should exclude ambulance services from Schedule H until a time that a process is developed that is realistic for ambulance providers to measure and report.

Many non-profit ambulance services do not have their own full time finance or accounting person; many organizations contract out this function because they cannot afford a full time person. Many non-profit ambulance services are small and often located in rural areas, and still rely on volunteer labor to staff their ambulances. We do not

have the accounting and finance systems that would allow them to capture data as hospitals do. We would be burdened with significant additional costs to purchase new computer software as well as hiring of new staff to meet this proposed demand.

Unlike some hospitals that have been in the news media, non-profit ambulance services are making only marginal excess revenues. The GAO just released a report earlier this summer that Medicare payments were 17% below the cost of providing the service in rural areas. Our entire service area is rural; we cover the entire county, a population of only 45,000 people. We don't have the expertise or capability of gathering the financial details you are proposing we report. We also don't have the financial resources to comply with the proposed regulation.

If the IRS feels it must justify the non-profit, tax exempt status of ambulance services, then a much more simplified format needs to be developed. I urge you to exempt ambulance services from the requirement of filing Schedule H. It is an unrealistic expectation for organizations of our size and capability.

Sincerely,

Tim Miner  
Operations Manager

**From:** [Audrey R. Alvarado](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:** [Pattara Theresa;](#)  
**Subject:** NCNA Form 990 Comments FINAL.doc  
**Date:** Friday, August 31, 2007 11:07:14 AM  
**Attachments:** [NCNA Form 990 Comments FINAL.doc](#)

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**Comments from the National Council of Nonprofit Associations and its  
State Association Network to the Internal Revenue Service  
Regarding Proposed Changes to Form 990**

August 31, 2007

IRS

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

Email – [Form990Revision@irs.gov](mailto:Form990Revision@irs.gov)

To - Form 990 Redesign Team:

The following comments are submitted on behalf of the National Council of Nonprofit Associations (NCNA) and its state association members. NCNA is a network of state and regional nonprofit associations serving over 20,000 organizations in 41 states and the District of Columbia. These organizations are predominately small –with annual budgets less than \$1 million – and grassroots-based. NCNA links local organizations to a national audience through state associations and helps these small and midsize nonprofits manage and lead more effectively; collaborate and exchange solutions; engage in critical policy issues affecting the sector; and achieve greater impact in their communities. One of the critical functions of the work of state associations is to ensure that nonprofits in their state are in compliance with all federal and state laws and regulations, including reporting requirements and none more important than IRS Form 990. The following comments were developed from direct experience and knowledge obtained by working with small and midsize nonprofit organizations and the state associations' desire to represent the perspective and interests of these organizations.

We appreciate the opportunity provided by IRS work to comment on the revision of Form 990. We agree that this form is one of the most critical information sources we have on the nonprofit sector in our country. The operating principles applied to our review were:

- To further advance accountability and transparency of the entire nonprofit sector.
- To submit comments that are in the spirit of helping IRS capture information that is useful, relevant, and informative.
- To ensure effective and best practices for the nonprofit sector are fostered through the types of information provided in Form 990.
- To reduce reporting burdens on small and midsize nonprofits, which represent the largest number of charities in the United States.

We recognize the temptation to try to use Form 990 for a variety of purposes, resulting in an ambitious attempt to get as much information as possible. During our review process we remained mindful of the primary function and purpose of Form 990 and the redesign principles that the IRS used throughout its revision process, which included: enhance transparency; promote compliance with IRS rules and regulations; and minimize the burden on filing organizations.

## General Comments

1. We recommend extending the time frame for implementation. We believe it will be difficult to implement the new draft form considering the significant changes in the accounting systems that will be required to accommodate new line items for Statement of Functional Expenses and the Statement of Revenues, not to mention changes in the schedules that link to the core financial statements. We agree with the general recommendation from the field that the IRS provide a second draft of the revised form and instructions for review and amendment with a one-year delay in the implementation from fiscal year 2008 to fiscal year 2009. This delay will provide opportunity to spread the word throughout the nonprofit world and to adjust the training and technical assistance information currently offered by state associations and other management support organizations. This concern is exacerbated two additional issues. There is a shortage of qualified accountants that understand the complexities of nonprofit accounting. In addition, in the case of small nonprofits with small budgets and limited access to accounting services, we cannot overemphasize the difficulties they will face in changing accounting systems for a 2008 filing date.
2. We recommend using the Nonprofit Taxonomy for Exempt Entities (NTEE) categories that currently exist as opposed to creating new ones for the purposes of filing. In reference to activity codes, the National Center for Charitable Statistics (NCCS) has developed the Nonprofit Program Activity codes, an offshoot of the widely used NTEE system, for classifying programs. (The full list is available at <http://nccsdataweb.urban.org/PubApps/nteeSearch.php?gQry=all-core&codeType=NPC>.) We strongly encourage the IRS to either use these codes or

work with NCCS and others to modify them to meet IRS needs. This will both save the IRS time and money and ensure a system that has been carefully constructed to meet IRS and the nonprofit sector's needs.

3. We recommend the following thresholds for reporting –
  - \$50,000 or less - new IRS reporting postcard 990 N (current requirement for organizations with less than \$25,000 in revenue)
  - \$50,000 and over – New Form 990

Through this recommendation we encourage the discontinuation of Form 990 EZ. If this is in fact the case, we further recommend that the nonprofits are required to complete only a portion of the revised Form 990 and a limited number of relevant schedules. (See recommendation #7).

There are two primary reasons for this recommendation. First, the state association network is concerned that increasing the threshold over \$50,000 will limit the information that will be available about smaller organizations. It is estimated that over 40% of nonprofit organizations have revenues less than \$100,000 and the loss of information from these organizations will hamper the ability of state associations and other management support organizations to fully understand the scope and breadth of the sector they are trying to serve.

Second, many state regulators require nonprofits to file Form 990 as part of their state reporting requirements. The lack of consistency in state and federal reporting thresholds will add further confusion to requirements for the smaller organizations. It does not make sense for an organization to file Form 990s in their state and this same information is not available in the IRS national database for information and comparative purposes.

4. We agree with maintaining the reporting period that corresponds to the organization's fiscal year. We recognize that compensation for officers, directors, trustees and other employees (or contractors) would be taken from Form W-2 or Form 1099 based on a calendar year. We recognize that two problems arise in doing this – the information will be older because it would be from the prior calendar year and the percentages the organizations will now be asked to calculate will mix salary information from the past calendar year with revenue and expense information from their most recent fiscal year.
5. We recommend that the option for group returns be retained. As proposed the new Form 990 captures more detailed information and has clearer definitions about related organizations. This additional information should increase transparency and accountability of these types of arrangements. We offer specific definitions to assist

in clearly identifying such relationships (see comments under Core Form – Instructions below).

6. We recommend that the ratios listed on page 1 should be moved to Schedule A. If this is not possible, we recommend moving the list of organizational accomplishments (Part IX) to the front page of the core form, following the financial information. This will allow the information to be consistent with the presentation outlined on page 1 of the core form.
7. We recommend that a “you must file schedule x” matrix be presented on the instruction sheet informing filers of what schedules organizations of various types must file. This will inform the majority of filers who do not meet certain conditions that they will only file one or two schedules; thus drawing their attention to the most pressing questions and line items.

## **Specific Comments on the Core Form and Schedules**

### **Heading of Form 990**

Item F – Name and address of principal officer should be the address of the organization as opposed to the home address of the principal officer for privacy reasons.

Item K – Include legal structure and if the organization is membership-based.

Item L – Year of formation does not have instructions, does this mean year of incorporation of the organization? This may be confusing since many organizations begin their operation before formal incorporation.

### **Part I- Summary Page**

A general recommendation is to relocate governance related questions other than those regarding total employees (Lines 3 to 9 but not 5) to Part III Statement Regarding Governance, Management, and Financial Reporting and the gaming and fundraising lines (Part I, lines 25 and 26) to Part IV – Statement of Revenue.

Line 1 – This question might be better phrased as “The organization’s mission statement” as opposed to describe the organization’s mission.

Line 2 – A standardized practice of coding program service areas does not currently exist so creating a new categorization system will take some time to incorporate across the sector. Several years ago, NCCS developed the Nonprofit Program Activity codes, an offshoot of the widely used NTEE system, for classifying programs. (The full list is available at <http://nccsdataweb.urban.org/PubApps/nteeSearch.php?gQry=all->

[core&codeType=NPC.](#)) We strongly encourage the IRS to either use these codes or work with NCCS to modify them to meet IRS needs. This will both save the IRS time and money and ensure a system that has been tailored to meet a broad array of practitioner and researcher needs.

Line 3 - The number of governing board members often changes during the course of a reporting year. Organizations should be asked to “provide the number of board members your organization had at the end of the reporting period.”

Line 5 – This should be clear in the instructions that employees that received W-2 should be included in the total number. This would normally include part-time staff and exclude volunteers.

Line 8b – The computation of compensation for directors and key employees allocated to program expenses as a percentage of total program expenses will provide a misleading picture of the operations of organizations with a limited number of paid staff and of organizations that are primarily service providers for whom personnel costs represent a high percentage of program expenditures. This figure, without further explanation, can be non-informative and subject to serious misinterpretation. We suggest removing this calculation or using total compensation divided by total expenses (column A instead of B).

Line 11 – The categories that comprise this line item are extremely diverse and will vary widely across nonprofits. They include contributions from individuals, government grants (contributions), federated campaigns, and commercial co-ventures. Reporting organizations should have clear definitions of how to identify and accurately report their source of revenue to ensure comparative reporting data.

Lines 11-20 - The utility of the ratios can be misleading. To counter this we suggest moving the Part IX to the front page to provide a more accurate picture of the nonprofit’s activities and accomplishments in the context of the ratios and to be more consistent with the presentation as outlined on page 1 of the core form.

Line 19b - The calculation of fundraising expenses against contributions and grants (line 11) does not present the full picture. The current method of assessing fundraising and general management ratios includes all revenue sources and not just contributions and grants. This new approach would not provide comparative data from previous years’ ratios.

We have a general concern about including the ratios on the first page of the Form and recommend that the percentage calculations be dropped from the Summary Page. Including these percentages on the Summary Page implies that there is a “correct” percentage for each calculation, that is, a lower percentage of fundraising expense as a

percentage of either total expenses or total contributions and grants is presumably an indicator of a more efficient or effective organization. Instead, a high percentage of fundraising expenses as compared to contributions or expenses could be caused by the launch of a new fundraising initiative while a low percentage of fundraising expenses as compared to contributions could simply reflect one or more unusually large gifts. A more accurate efficiency ratio might be to examine fundraising costs as a percentage of expenses or contributions over a period of years. Alternatively, we suggest adding a check box for organizations to indicate whether they are new (less than three years old) or undertook a new fundraising campaign or endowment campaign, as these situations can help explain a higher than usual fundraising to program ratio.

We further recommend that Lines 24 and 25 information about gross revenues, expenses, and the net return to the organization from gaming activities and from fundraising events other than gaming (drawn from the new Schedule G - Supplemental Information Regarding Fundraising Activities) not be included on the core Form. The Statement of Revenue asks for net income from fundraising events under "other revenue" and asks organizations to complete Schedule G if they receive \$10,000 or more in gross income from fundraising events. There is no link on the draft form between contributions from fundraising events (line 1c) to gross income from fundraising events (line 11), which states that contributions reported on line 1c should not be included in gross income. In place of Lines 24 and 25 we recommend placing the information about program accomplishments listed in Part IX.

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

Section A – Include statement "in this reporting period" for salaries of highly compensated employees and independent contractors. Privacy concerns have been raised about including city/state of board members. To counter concerns that some organizations may have we suggest offering organizations the option of listing the organization's address as opposed to the individual board members' home addresses or at a minimum require only state and not city of residence.

We are in agreement with increasing the threshold for reporting details of compensation to \$100,000 from the current \$50,000 for "five highest compensated employees (other than an officer, director, trustee or key employees)." Given the confusion this section has had in the field, it must be clearly stated that all reporting organizations must report their top five key employees' compensation regardless of amount. This will be an area of confusion since the current form asks to list employees who were compensated \$50,000 or more and does not stipulate "regardless of compensation." There have been additional concerns that small staffed organizations that have five or less staff will list

their entire staff. We recommend that "Key Employees" be defined more precisely in the Core Form instructions and in the glossary.

It should be further clarified for all categories that compensation excludes reimbursement for expenses, such as mileage, child care, and travel) and fringe benefits.

One item that was eliminated from the current Form 990 is number of hours work per week. We suggest that this item be retained.

Column A - The members of the governing body should be listed first and any other roles performed by the members of the governing body should be indicated by checking the appropriate box. Additionally, we recommend stipulating that "trustee or director" means member of the current governing body and that if there are multiple governing bodies performing specifically limited functions, the members of all such bodies must be listed here as well. Additionally, we recommend that the definition of "officer" be clarified in the instructions and glossary to include or exclude volunteer board officers. The same case exists for CFO and treasurer. Some organizations will have a staff member serving as CFO and a board member (officer) serving as Treasurer. Combining the titles in the same column will be confusing for many reporting organizations.

We suggest that Part II not require listing "former" members of the governing body who perform no current services for the organization nor should individuals such as an "emeritus" director or as a member of an advisory council or other body be required to be named in Part II Section A. The instructions suggest defining a "former member" in the following way: "Check the former box only if the organization reported (or should have reported) an individual as an officer, director, trustee, key employee, or highest compensated employee on any of the organization's **prior five** Forms 990, 990 EX or 990 PF." In this case, information would be duplicative from previously filed reports. However, the naming of former officers, directors, trustees, key employees or highest compensated employees may be required of organizations that should have reported but did not report in the prior five years.

Column D – Clarify how the numbers are linked to form 1099 or W-2 for purposes of reporting compensation. Clear distinctions should be made from fringe and other benefits and included as part of total compensation.

Line 2 – Make it clear that the total should include those already named under Part II Section 1b as well as those not named/listed.

The instruction should require that the "additional pages" that are permitted when necessary for Part II must be photocopies of this page 2 of the Form; that the last line of each page before the last should be used to say "continued on an additional page" and that the totals on lines 1b and 2 should be shown only on the last of the additional pages.

Section B – See specific recommendations for defining business relationships at the end of these recommendations.

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

As an official IRS form any question asked in Form 990 implies a legal mandate both to the filer and the reader. Some of the questions asked in Part III are not legal requirements but suggested good practices. There must be clear introductory language on the core form under Part III that stipulates that some of the items noted are not legally required and are commonly accepted practices and further explanation that not all of the good practices listed are necessary or appropriate for every organization. Rearrange the questions so Line 2 and Line 11 come first (legally required) and the others follow as suggested good practices.

Lines 1a and 1b – The definition of "independent" (see glossary of "20XX Instructions for Form 990) is defined as a person –

- Who is not compensated as an employee of the organization;
- Who does not receive compensation or other payments from the organization as an independent contractor (other than reimbursement of expenses or reasonable compensation for services provided in the capacity of serving as a member of the governing body;
- Who does not receive, directly or indirectly, material financial benefits from the organization except, if applicable, as a member of the charitable class served by the organization; and
- Who is not a spouse, sibling, parent, or child of any individual who is employed by, or receives compensation or other material benefits from the organization.

The glossary defines "governing body" as a group of persons having ultimate authority over and responsibility for the governance of the organization under the organization's governing documents or applicable state law (e.g., the board of directors of a corporation, the co-trustees of a trust) in a capacity other than as owners, shareholders, or members of the organization; it further defines a "member of a governing body" as a person who serves on the governing body, including a director, trustee, or co-trustee, regardless of whether the person has voting power.

Line 2 -- The instruction say that a change in "the number of...the governing body" must be reported as a significant change and briefly summarized in Part III Line 2. Since many organizations state a range for the number of members of the governing body in their governing documents, this instruction should make clear that reporting is required only when the required number is changed -- not when there are changes in the number of

sitting directors due to commonly occurring changes, such as elections, resignations. Although the new form does not require attachments for such significant governance by-law or legal changes the organization would have filed such changes with IRS. A check off noting that the reporting was done would be sufficient and not require additional attachments.

Lines 3, 4 and 5 – While we agree with BoardSource’s comments and strongly encourage nonprofits to establish whistleblower and document retention and destruction policies, the Sarbanes-Oxley Act does not mandates written policies. There is confusion in the field about the applicability of Sarbanes-Oxley, and reference to these provisions as legal requirements in the Form 990 will further add to this confusion. It can be stated that it is a federal crime for any entity to retaliate against whistleblowers and to destroy documents if the organization is under investigation.

Line 3b – Although we agree with the intent of this question, the wording is confusing and subject to wide interpretation and we further question the value of the information. We recommend eliminating the question altogether or asking “if all board and key staff members disclosed, in writing, any conflicts of interests with related organizations and individuals that they had during the reporting period.”

Line 6 -- The instructions define "contemporaneous" ambiguously. We recommend the following definition "within four months of the conclusion of the meeting or prior to the date of the next meeting of the governing body, whichever comes first." Such minutes should focus exclusively on the board governing body and not committee meetings.

Line 7 – There are currently no instructions for line 7 and we recommend that they be added to include a statement that “excludes those entities that are separately incorporated from the reporting organization.” In the instructions the terms "fiscal sponsorship" or "fiscal agent" arrangements should indicate that such arrangements create "affiliates" in the sense of this line. The instructions should state that fiscal sponsorship or agency arrangements should be considered equivalent to "affiliates" and that the question on line 7b should be answered with respect to such arrangements.

Line 8 – The question “indicate whether an independent accountant provides any of the following services” should have an additional option, “preparer”, to avoid the ambiguity that results if the "No" column is checked on line 8 and none of the three current boxes is marked. The instructions should further clarify that an audit is not legally required at the federal level except under certain circumstances (check with state law).

Line 9 -- The instructions should provide a description of the minimum duties of an audit committee or refer to a source for such a description. The mere presence of such a committee is insufficient (see response in Part III Line 3b.)

Line 10 – We suggest expanding and clarifying this question to ask "Did the organization's responsible governing body review and approve this Form 990 before it was filed?" The responsible governing body would include the audit or finance committee or in some cases the entire governing body. There are timeline restrictions and heavy fines associated with filing a Form 990 late. Requiring the entire governing body to review prior to submission would create an unnecessary burden on the organization and if relevant, the professional firm preparing their Form 990.

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

Instructions for Column (C) and (D) – Is the Tip offered on page 21 of 47 correct? It states "...an amount column (A) for lines 2 and 13" but probably means "an amount column (C) for lines 2 and 13?" It would appear that if any amount is noted on column (C) then codes of unrelated business activity would apply to it not for the total column (A).

A definition of what Unrelated Business Income Taxes are or a list where to find out more information – IRS Publication 598 – is needed in the instructions. The "TIP" listed does not provide sufficient details to fully answer the question.

1c. Fundraising events – We recommend that this question and the relevant instructions be reworded. We recommend that Line 1c include all revenue from fundraising events and then have calculation lines to separate out contributions from other revenue and expenses. Then those amounts for non-contribution revenue and expenses could be used to complete the line 11. Clear instructions should include income from fundraising events are gross and not net, which will be consistent with the current practice of the state regulators. [see related comment onLine 11c]

1d. Related organizations – we offer the following clarifying definition for related organizations as well as a means of classifying the income from such related organizations-

Related Organizations - A for profit or nonprofit organization is related to another organization if it has one or more of the following relationships to the other organization:

- Parent—an organization that *controls* the organization
- Subsidiary—an organization controlled by the other organization
- Brother/Sister—an organization controlled by the same person or persons that *control* the other organization, other than a parent/subsidiary relationship
- Supporting/Supported—an organization that is a 509(a)(3) supporting organization of the other organization (or a supported organization, if the organization is a supporting organization)

Organizations are not related simply because an organization pays membership dues if membership confers benefit to the member and/or the member has voting rights in the organization.

1e. Government grants in this line item are non-restricted and not tied to delivery of service as opposed to a contractual grant (see line 2a and 2b). This must be clarified in the instructions and the line item. Grants in this case would not be linked to the delivery of a specific service. It is highly unusual for organizations to receive government grants that are not linked to providing service, so providing a precise explanation for what this line item covers versus a government contract will be important for the reporting organization to accurately reflect the source of revenue.

1g. We recommend adding the language "Attach Schedule M if over \$5,000" and clarifying language to assist with the valuation of noncash contributions. It would be advisable to develop a valuation model as a useful publication for the sector's use.

We recommend adding additional line items that are consistent with funding sources that nonprofits are likely to receive. These include - foundation, individual, corporate donations as separate line items as opposed to including all of these likely sources under 1f (all other contributions). Also include new line items for "registration fees for events/meetings/training" and "other related program fees".

Line 2 a and 2b – The instructions should be clear and distinguish government support from that listed in Part IV Line 1e. Program services require delivery of service for the grant, contract, or in the form of a voucher. Also, include new item under line 2 for program service revenue paid by the client or client's family. The broad "program service revenue" category should encourage nonprofits to note (in the blank lines) types of fees they receive for program services that are not part of 2a-2c.

Line 11b – We recommend that fundraising expenses be linked to the practice of deducting the expense associated with an event or product (quid pro quo). We suggest the addition of two clarifying questions in item "11 b less direct expense" –

11b1 – Direct benefits to participant (such as fair market value of meal or golf tournament costs deducted from contribution amount as stated in contribution acknowledgement letter)

11b2 – Other direct expenses.

Line 14 – Should read "add lines 1h, 2g, 3-8, 9d, 10d, 11c, 12c, and 13e."

We recommend adding a new line for unrealized gains and losses. The lack of an explicit unrealized gain or loss line is particularly problematic as unrealized gains and losses are

reported inconsistently in the current Form. This information is not required on the Form and is not included in - "other changes in net assets" (Part I Line 20); other investment income (Part I Line 7) or other revenue (Part I Line 11). The new instructions tell you where not to report unrealized gains and losses (Part IV, Lines 8 or 10a) but not where you should report such gains/losses.

The proposed revenue schedule eliminates (and perhaps should not) the reconciliation to the changes in net assets (Part I Lines 18 to 21 in the current form). So, the schedule does not show that revenues - expenses = net income and net income +/- other changes in net assets = changes in net assets. A number of nonprofits presently report other changes in net assets and now there is no place to record these changes or incorrectly used the net assets line. There are times (such as changes in prior year's balances) when an organization would like to make it clear to the reader of the financial statements that something other than current year revenues and expenses changed net assets.

The form could do more to help the reader's understand the difference between restricted vs. unrestricted revenues. We recommend adding a section to Part IV that asks any nonprofit that has adopted SFAS 117 to reconcile as follows:

Line a: Total Unrestricted Revenues (excluding net assets released from restrictions)

Line b: Total Temporarily Restricted Revenues (excluding net assets released from restrictions)

Line c: Total Permanently Restricted Revenues

Line d (sum of Lines a to c): Total Revenues

Organizations can separately disclose the amount of temporarily restricted net assets released from restrictions accrual vs. cash revenues and to disclose a separate figure which is the total gross receipts directly under total revenues.

Another issue is how to account for pro bono contributions from consultants. We did not find a reference to this in the instructions or glossary. See notes below on Schedule M for on this concern.

## **Part V – Statement of Functional Expenses**

A general comment is to use line items that correspond with Uniform Chart of Accounts (UCOA) outlined in *"Unified Financial Reporting System for Not-for-Profit Organizations: A Comprehensive Guide to Unifying GAAP, IRS Form 990, and Other Financial Reports Using a Unified Chart of Accounts"* (Sumariwalla, R.D. and Levis, W.C. Jossey-Bass, 2000) that many in the nonprofit sector have adopted. This will encourage consistency in reporting and link more directly with accounting systems organizations have in place.

Line 5- Should those organizations who responded to Part II link to this Line and if so, what total amount should be noted Part II Section A Column D? Should this total subtract those listed as “former”.

Line 12 – The new line item for advertising can be confusing, particularly in reference to program and fundraising expenses. The definitions outlined in the UCOA book (see reference noted above) would provide a useful description for classifications.

Line 13 - The previous categories (old Part II, Lines 34, 35, and 38) for telephone, postage and shipping, and printing and publications should be retained and not lumped into an overall “office expenses”. In addition, the instructions should clearly specify whether printing of brochures and other fundraising materials should be reported under advertising and include more examples of how an organization would determine whether particular printing costs (such as printing of an annual report) would be considered to be of a general nature or advertising. We also question why internet site-link costs would be considered to be advertising, whereas other costs involved in developing and maintaining a website are included in information technology.

Line 22 – Is there a standard method of assessing depreciation that IRS recommends?

We recommend the entire text of the panel on the current Form 990 (bottom of page 2) regarding “Joint Costs” with respect to the discussion of joint fundraising expenses be included in the new Form 990 without change. The information in the panel is useful for assessing the credibility of the organization's presentations of its costs of fundraising.

Also please note that the bottom of Page 29 of the Instructions says “See Glossary” for an explanation of AICPA Statement of Position 98-2, but it is not located in the Glossary.

Line 24 – We recommend a new question 24b that asks “is any part of compensation determined by a ratio to revenue received? Yes No”

## **Part VI – Balance Sheet**

The new balance sheet adds detailed segregation of investments. The subcategories regarding investments in the balance sheet itself is overly detailed compared to the disclosures on other accounts on the balance sheet. It would be beneficial to retain the distinction between financial investments and fixed assets. It would be much more helpful to the users to let them know what portions of each are permanently restricted.

The new form does not add current vs. noncurrent asset and liability distinctions. This distinction is a “classified” balance sheet and is required in for-profit reporting. The breakdown between current and long term assets and between current and long term liabilities provides valuable information to determine the liquidity of an organization and may be useful information to include in this section.

## **Part VII – Statement Regarding General Activities**

Lines 6a-6d – The instructions do not clearly define the situations that apply. There are no instructions for lines 6c-6d. See recommendations for “suggested format” that immediately follows.

Line 11 – Does the question “...organization have a written policy or procedures to review the organizations investments or participation in disregarded entities, joint ventures, or other affiliated organizations (exempt or non exempt)” refer to a general investment policy?

Suggested Format - Many of the questions are not relevant to many small and midsize nonprofit organizations. The questions should be grouped into logical categories and each group should be preceded by a question of the general form “Did the organization engage in any of the following - If “no” skip to line XX.” Since the activities are specific to certain types of nonprofits the use of “general activities” is misleading. It should read “Statement Regarding Special Activities.”

## **Part VIII – Statement Regarding Other IRS Filings**

Line 1 – Refer those who answer yes to Schedule C Part I. Make sure the instructions are clear that activities under this category are prohibited for 501(c)(3) organizations. Provide current definitions in the instructions for what constitutes political activities.

Line 2 – Refer those who answer yes to Schedule C Part II-A. Make sure the instructions include definitions of lobbying, direct and indirect. Provide current definitions in the instructions for what constitutes political activities in addition to the glossary.

Line 3 – We recommend that organizations that provide a range of financial literacy programs at no cost to the participants be excluded from filing Schedule D since the questions are not applicable to their operations.

Line 8c – Clarify that reporting organizations would note “no” if they are partners with highly regulated state and/or federal bodies such as the case with organizations working with property management companies affiliated with HUD or other governmental entities.

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

Several years ago, NCCS developed the Nonprofit Program Activity codes, an offshoot of the widely used NTEE system, for classifying programs. (The full list is available at <http://nccsdataweb.urban.org/PubApps/nteeSearch.php?gOry=all-core&codeType=NPC>.) We strongly encourage the IRS to either use these codes or work with NCCS and others to modify them to meet IRS needs. This will both save the IRS

time and money and ensure a system that has been tailored to meet a broad array of practitioner and researcher needs.

We also suggest moving the Part IX to the front page to provide a more accurate picture of the nonprofit's activities and accomplishments in the context of the ratios and be more consistent with the presentation as outlined on page 1 of the core form. Additionally, we recommend that organizations be given the option to provide attachments as needed to fully reveal their organization's accomplishments.

### **Part X – Signature Block**

Keep Part X on a separate page to facilitate removal of the signature and any confidential information (e.g., a Social Security Number) that a user may inadvertently include here. This arrangement will reduce the risk of inadvertent disclosures by Guidestar or others engaged in the public display of Form 990s.

However, an even more utilitarian change would be having the Redesigned 990 omit the SSN/PTIN/EIN 'paid preparer' blocks as these are not required to be completed for Form 990 (or substitute 990-EZ) filings made by 501(c) exempt organizations. Those blocks are only called for when the Form 990 is filed as the required return for a nonexempt 4947(a)(1) charitable trust who uses a 990 filing in lieu of a Form 1041 (in other words, not for 501(c) exempt filers). The current case is that all too often, paid preparers (including many knowledgeable exempt organizations tax attorneys) mistakenly fill out this information. Having the signing block separately set out for 4947(a)(1) filers that acknowledges that their making of the Form 990 is a "tax" filing (not an annual information return) when made in lieu of Form 1041 and that then requires this additional information of paid preparers. Having 600k+ filers who are 501(c) and 527 exempt entities safeguarded by not having to "know" the Instruction that allows them to properly keep those blocks blank would be of great benefit in this day and age of privacy concerns.

### **Schedule A: Supplementary Information for 501(c)(3) Organizations**

Part I –The instructions refer the organization to the organizing documents to ascertain which reason they received their 501(c) status. It may be helpful to note that the overwhelming number of nonprofits are included under number 9.

Part II and III - We are in agreement that Schedule A Part II should replace the current Form 8734 (advance ruling period).

We are concerned that the line items of public and total support do not correspond directly to the items in Part IV (Statement of Revenues). Instructions should outline

which line items in core form Part IV correspond to the line items in Schedule A Parts II and III.

Part III – Line 2 should include “registrations” since many nonprofits hold meetings, conferences and training sessions that would be included in this line item.

The instructions on “unusual grants”: are unclear. The reporting format shown on 10 of 13 of the instructions include the name of the donor. The instructions are to file the information on an unknown specified schedule without the donor’s name. Information provided should be more informative and consistent.

### **Schedule B: Schedule of Contributors – no change from 2006 990 Form**

What is missing on this schedule, and not found in any other section except for totals on Part IV Lines 1e and Lines 2a and 2b, are government grants. Where should they be listed?

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

One major concern is the combination of political campaign work, clearly prohibited for 501(c)(3) organizations, with lobbying, which is permitted for such organizations. The combination on the same schedule is likely to cause confusion and misinterpretation, not to mention imply a linkage between the two activities that does not exist.

Part I-A Line 1 – Rewrite question as “Provide a description of the filing organization’s political campaign activities on behalf of or in opposition to candidates for public office.”

Part I-A Line 2- There are two significant concerns with the question. First, tracking the exact number of volunteer hours will be difficult and requires significant administrative time and costs. Second, assessing how volunteer hours be counted. We recommend using the Lobbying Disclosure Act (LDA) requirement to be consistent with other reporting requirements. Doing so could provide a double-check on an organization’s use of volunteers. This requires organizations to make a good faith estimate on blocks of hours rather than provide a definitive count of hours.

It would be helpful to have more guidance for organizations that do not elect section 501(h) and provide information/definition of lobbying for non-electors (top of page 12 of instructions).

### **Schedule D: Supplemental Financial Statements – 15 parts**

The form could do more to help the readers understand the difference between restricted versus unrestricted revenues. You should additional space for the detail of the “other expenses” line items.

#### **Schedule E: Private Schools**

No Comments.

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

We are concerned about the security of grant recipients whose identity will be disclosed if Schedule F, Part II is made a public document. We recommend that the informaton not be disclosed to the public. Although Schedule F does not request the address of grant recipients, with the name of the organization and the city, the organization’s security can easily be compromised. This could put the staff of organizations at risk of reprisal by opposition groups or even intolerant government.s

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

If an organization does not file this Schedule, it can not fill out the summary on the core form Part I Line 25 and 26. The triggers for completing Schedule G are provided in Part IV – Statement of Revenue (line 11a) and Part V – Statement of Functional Expenses (line 11e). The IRS estimates that 25% of filers will be required to file Schedule G . We recommend that this section should be renamed the as “Fundraising/Gaming Activities” .

#### **Schedule H: Hospitals**

No Comments.

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

No Comments.

#### **Schedule J: Supplemental Compensation Information**

We support the efforts to clearly define the term “compensation” as it is currently unclear exactly what is covered. For example, does it include salary and fringe/related benefits? Is the information transferred from 1099 or W-2’s? Remove nontaxable expense reimbursement from the total (Column F) since it is misleading and should not be calculated as part of total compensation when it is for legitimate business related reimbursement. We question why this should be included in total compensation altogether.

Questions 2-6 – Five “yes/no” questions apply to all board members, officers, and employees, not just those highly-compensated individuals listed on this Schedule, yet they will only be answered by those who must complete Schedule J. Would it be more appropriate to list any of these questions on the core form?

Question 5: “...did the organization pay or accrue any compensation determined in whole or in part by the net earnings of the organization? Related organization?” Given that the only individuals listed on Schedule J are those listed on Part II Section A individuals that have such arrangements might be missed because they are not listed on Part II. We recommend disclosure of any such arrangements regardless of listing on Part II Section A.

In addition, the instructions should clearly state that it does not include general practice of assessing key employees’ performance and subsequent salary increased based upon achieving the organization’s revenue goals, in addition to other performance measures. This is a standard practice in most organizations and should not be confused with contingent financial compensation arrangements, which this questions seems to be addressing.

Given that only 5% of organizations will be required to file Schedule J, the matrix on page 9 (of 11) of the instructions would be useful information for those organizations filling out Part II Section A of the core form.

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

No Comments.

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

No Comments.

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

This new schedule will add significantly to the reporting burden for small organizations whose primary fundraising activities involve auctions or yard sales. The \$5,000 cap should be retained if the filing levels for the Core Form is raised to \$50,000. We recommend \$10,000 or less for all those smaller donations that don’t require an 8283 form or appraisals.

A helpful valuation model publication would ensure that organizations are using the same definitions and process to assess non-cash value distinct from Publication 561 – Determining the Value of Donated Property.

We suggest using the process similar to the vehicle donation program. If the non-cash donation is used by the organization it should not be considered non-cash contribution for the purposes of valuation model. These contributions are usually in the form of items that are used by the organization for staff or client use with no plan to “resell” the items.

Another issue that we draw to your attention is the utilization of pro bono contributions from consultants as critical source of non-monetary support that many organizations receive in a variety of areas (such as legal, financial, planning). The nonprofit sector as a whole would benefit from a rule and form change for the following reasons:

- (1) If consultants could be recognized as making a contribution at a dollar value it would reduce their tax liability and this in turn would encourage more consultants to provide pro bono services; and
- (2) In a real way, when organizations receive this value from pro bono services, the value of the organization increases both in terms of the value of the services they provide and in the enhanced organizational effectiveness.

If a rule change were made there could be a maximum amount of pro bono contributions that would be recognized by the IRS.

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

No Comments.

#### **Schedule R: Related Organizations**

Additional Comments and Recommendations for Changes for the Instructions and Glossary

#### **Core Form - Instructions**

Re-title the section currently identified as "H. Failure to File Penalties" as "H. Penalties for Failure to File and for Filing Incomplete Returns."

#### **Business relationship**

The definitions in the instructions are not clearly presented and can be subject to misinterpretation. We suggest the following definitions to ensure consistent interpretation of the terms.

Business relationships between persons (where person means an individual, organization or any other legal entity) include any one or more of the following relationships that occurred during the reporting period:

- 1) One person was employed by a sole proprietorship or by an organization or other legal entity where the employee had a relationship as a trustee, director, officer, key employee, or greater-than-35% owner.
- 2) One person was involved with another in one or more contracts of sale, lease, license, loan, performance of services, or other business transactions involving transfers of cash or property valued in excess of \$5000 in the aggregate during the reporting period. Also included are transactions with an organization with which the person was associated as a trustee, director, officer, key employee, or greater-than-35% owner.
- 3) Two persons were common owners in a business or investment entity in which they, individually or together, possessed a greater-than-35% ownership interest and each held an interest greater than 2%.
- 4) The person was the founder of a legal entity and maintains an association with that legal entity through business transactions involving cash or property valued in excess of \$5000 in the aggregate during the reporting period.

Ownership is measured by stock ownership (either voting power or value) of a corporation, profits or capital interest in a partnership or limited liability company, or beneficial interest in a trust. Ownership includes indirect ownership (e.g., ownership in an entity that has ownership in the entity in question); there may be ownership through multiple tiers of entities.

Payment of membership dues is not considered a business relationship if membership confers benefit to the member and/or the member has voting rights in the organization.

#### **Control (for related organization test)**

A nonprofit organization or a for-profit organization “controls” a taxable organization (including pass through entities) when the nonprofit or for profit organization:

- Owns more than 50% of the stock (by voting power or value) of a taxable corporation,
- Owns more than 50% of the profits or capital interest in a taxable partnership,
- Owns more than 50% of the profits or capital of a limited liability company, regardless of whether the entity is treated as a corporation or a partnership for federal tax purposes or for designation of the: interests as a stock; membership interests; or otherwise under state law,

- Is a managing partner or managing member in a partnership or limited liability company,
- Is a general partner in a limited partnership
- Is the sole member of a disregarded entity, or
- Owns more than 50% of the beneficial interest in a trust.

See Regulations sections 301.7701-2, 3 and 4 for more information on classification of corporations, partnerships, disregarded entities, and trusts.

A nonprofit organization or for profit organization “controls” a tax-exempt organizations, when the nonprofit or for profit organization:

- Has the power to appoint a majority of the organization’s directors or trustees, or
- Where a majority of the controlled entity’s directors or trustees are trustees, directors, officers, employees, or agents of the controlling organization.

Control may be indirect. In other words, if the organization controls Organization A that in turn controls (under the definition of control above) Organization B, the organization will be treated as controlling Organization B. There may be multiple levels of controlled organizations.

An organization that has member chapters or affiliates is not considered to control the members, unless the relationship between the organization and its members meets the above definition of control.

NOTE: This definition does not apply to determine whether a person is a member of a governing body.

### **Related organization**

A for profit or nonprofit organization is related to another organization if it has one or more of the following relationships to the other organization:

- Parent—an organization that *controls* the organization
- Subsidiary—an organization controlled by the other organization
- Brother/Sister—an organization controlled by the same person or persons that *control* the other organization, other than a parent/subsidiary relationship
- Supporting/Supported—an organization that is a 509(a)(3) supporting organization of the other organization (or a supported organization, if the organization is a supporting organization)

Organizations are not related where an organization pays membership dues if membership confers benefit to the member and/or the member has voting rights in the organization.

Respectfully submitted on behalf of –

National Council of Nonprofit Associations  
Arkansas Coalition for Excellence  
California Association of Nonprofits  
Connecticut Association of Nonprofits  
Donors Forum of Chicago  
Maine Association of Nonprofits  
Massachusetts Council of Human Service Providers  
Michigan Nonprofit Association  
Mississippi Center for Nonprofits  
Nonprofit Coordinating Committee of New York  
North Carolina Center *for* Nonprofits  
Ohio Association of Nonprofit Organizations

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