

From: [Kressel, Chris](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC: [Torgerson, Paul;](#)
Subject: Form 990 Comments
Date: Friday, September 14, 2007 3:09:11 PM
Attachments: [Form 990 Comments 091407.pdf](#)

Attached are Form 990 Comments from Paul Torgerson. The original letter has been mailed. Thank you.

<<Form 990 Comments 091407.pdf>>

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September 14, 2007

Via E-Mail and U.S. Mail

Lois G. Lerner
Director, Exempt Organizations
Internal Revenue Service
Tax Exempt/Government Entities

Ronald J. Shultz
Senior Technical Advisor
Internal Revenue Service
Tax Exempt/Government Entities

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

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

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

This letter is in response to your request for comments on the new Form 990 discussion draft. I, for one, am grateful for the effort to update the form, believing, as you indicated, that the current form is of limited utility given the change in context since the form was first developed. Having said that, I believe the new form has its own limitations, particularly with respect to large diversified tax-exempt organizations. These comments are some initial reactions, rooted in experiences with large health care and educational organizations.

Part I Summary

1. In today's healthcare environment, many tax-exempt organizations have multi-billion dollar activities, mingling all aspects of the healthcare continuum. I know of many organizations that combine urban, suburban, rural and academic health care components, hospitals, clinics, laboratories, pharmacies, and imaging, for example, in a single entity. The permutations of business are limitless and it is often of little value to attempt to compare one

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such diversified entity with another, as each emphasizes difference strengths. All unique features within the institution are masked or lost in the aggregation. By way of example, a diversified health care organization made up largely of hospital activities would have dramatically different characteristics from those of an entity focused on long-term care. Obviously, suggesting that the summary data allows useful comparisons among organizations may be erroneous in those cases. I believe readers should be cautioned about that possible limitation in the summary presentation. Unique characteristics of entities, such as where within a complicated structure fund raising activities take place, can completely skew the importance of information, such as the “percentage of contributions” statistic in line 19b. Without context, a reader could easily reach erroneous conclusions from the summary data.

Suggestion:

The comparison might be more useful if it included a table in connection with line 2 that shows an estimate of the percentage of the total (e.g. revenues) derived from identified major service lines and activities, such as

Hospital (revenues related to services billed to patients as hospital services)	X percent
Clinic (revenues related to services billed to patients as clinic services)	Y percent
Home health and hospice	Z percent
Long-term care	A percent
Schools and education programs (revenues from tuition)	B percent
Etc.	
Contributions and grants	C percent
Investment	D percent
Other activities	

Perhaps a list of activity codes could be supplied from which the filer would select its substantial activities.

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The table could require listing of any segment that contributes more than, say, 5% of total revenue.

2. As difficult as it is sometimes to compare large diversified organizations in a meaningful way, it is also difficult to compare large integrated organizations with organizations using a holding company structure. One organization operating in a single operating entity may be quite similar to a system of organizations operating under a parent holding company umbrella. Your summary approach would enable a comparison only of the operating company with the parent holding company (which itself may have relatively few assets and personnel). That comparison may be of little utility and, in those cases, your summary approach in my view would not meet its objectives.

Suggestion:

I believe summary information would be more meaningful if it were presented for the highest level entity on a fully consolidated basis. If the entity is filing its own 990, but its financial information is included in a consolidated financial statement, the consolidated information should be presented in the summary, not separate entity information. Alternatively, for separate entities that participate in consolidated financial reporting, perhaps an additional summary for the consolidated format could be required.

For organizations that are part of a consolidated group for financial reporting purposes (and, accordingly, highly related), I believe you should also offer an election to file a single consolidated 990. The table suggested under 1. above could be used to show the make-up of the consolidated enterprise.

3. Regardless what approach is used for the summary data, and whether or not consolidated reporting is permitted, some of the terms used require further definition. For example, line 8a requires total compensation for officers, directors, key employees, etc., yet there are not standard definitions for these terms. Some organizations liberally use titles, such as divisional president or vice president, while others use non-officer terminology for the same roles. Under particular state laws, divisional roles may not be officers at all, even though officer titles are used for the positions. Other common healthcare terminology, like executive director, for example, does not fit officer terminology in many states' corporate law. Even the revised definitions for these terms in the glossary do not provide sufficient guidance for the cut off for reporting purposes.

Also, since the compensation comes from Part V, line 5, column (B), pay from related entities will not be included, such that the varying organizational forms chosen by large integrated organizations will despoil any useful comparability. Organizations that use many

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entities in their structures will have many “officer” personnel, while organizations that use “divisional” structures may have very few officer personnel. Those receiving pay from multiple sources within related group will be compared with organizations in which all the compensation is from a single entity.

Suggestion:

The IRS should use a more objective measure for reporting this information. As an example, the question might seek the compensation, including all compensation from related parties, of the 25 highest paid individuals within the organization and its related parties, plus, if not included in that list, the president and the CFO of the organization. I suggest limiting the list further by using a dollar threshold for reporting (e.g. employees with reportable compensation in excess of a “highly compensated” threshold.)

4. Organizational structure diminishes the usefulness of the revenue and expense summary data, and ratios, as well. Most large organizations conduct fund raising activities in entities that are separate from many other components of the system. It may be meaningless that an organization has no revenue from fundraising and grants (line 11) because that activity is conducted in a separate, related entity whose data is shown on a different 990. Again, at the summary level, it may be that consolidated data (not separate entity data) would be more useful to achieve transparency and comparability goals.

Part II Section A Compensation

1. The table will miss, in many cases, situations in which an organization contracts with a third party to provide executive services as an independent contractor. For example, many hospitals retain hospital management companies to supply CEO services and other executive level services. The management companies themselves are not related organizations. In many cases, the independent contractor amount would not be large enough to merit inclusion in the list of the top five independent contract or service organization in Part II Section B line 10a.

Instructions

The instructions indicate that for a person who is an officer or employee on the chart, reportable compensation is only the amount in Box 5 of W-2. Other compensation, including Box 7 Form 1099 information is used to determine whether the total exceeds \$100,000, but the 1099 information is not required to be shown on the chart. I believe it is possible that an employee of an organization could receive W-2 income from one entity and 1099 income from a related “pass through” organization and, consequently, could have both W-2 and 1099 income.

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The form should show all reportable compensation from the entity and related organizations whether reported on form W-2 or 1099.

It isn't at all clear how a shared services company would be treated in the proposed charting system. For example, in a multi-hospital system, more than one hospital could be the owners of an LLC retained by all the hospitals to provide management services. The employees of the LLC would receive a W-2 reporting their compensation, but because the LLC is a disregarded entity, each of the hospitals reports its share of the management costs on its own 990. The instructions seem to suggest that each hospital would report the full W-2 amount, instead of the portion attributable to it with the balance shown as a compensation from a related organization. The allocation approach seems more appropriate.

Column F might be more useful if it requested, in addition to the year end amounts, the highest amount of loans outstanding at any time during the year.

Part II Section B

1. Line 3. I believe the instructions should provide some guidance for organizations where the defined roles are split among more than one person (e.g. all persons sharing the senior executive responsibilities should be listed.) For example, it is not uncommon for an organization to have a "Chairman and CEO" and a "President", with the president performing some, but not all, of the day-to-day senior executive duties.

2. For column E, the notion that amounts less than \$10,000 from related organizations (instructions page 17 of 47) could be ignored is misplaced, in my view. It will only encourage multi-part organizations to split compensation among the constituent entities and enable exclusion of the compensation allocated to smaller components. There does not appear to be a compelling reason to exclude compensation paid from any related organization.

3. Column E instructions require showing the W-2 amount for "the calendar year ending with or within the organization's tax year." This approach leads to some odd results given that related organizations can have different tax years. If reporting organization 1 has a December 31, 2007 year end and a related reporting organization 2 has a November 30, 2007 year end, the 990 of the first would report compensation for 2007 and apparently show compensation from related organizations for calendar year 2007, while organization 2 would show compensation information for 2006 and compensation from related organizations for 2006 as well. While the anomaly seems unavoidable, it is not clear how the resulting information will be very useful.

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Part III Governance

1. The number of members of the governing body is fairly meaningless without other context. As defined, the term also includes people who cannot vote. I would think the number of members with voting rights would be more useful, but still not a very important number without knowing much more. Asking for information about the number implies that the number has some importance.

2. 3b strikes me as a weak question that produces little useful information. Is it really useful to know whether one organization reviewed 20 transactions and another 40? Most conflict policies require annual disclosure of relationships for review by the board. It would not be uncommon, for example, for the community banker to be on the local hospital board and that the organization have some kind of an account at the bank. Moreover, if another local business person is on both the bank board and the hospital (or united way) board, is the bank's relationship with the exempt entity one conflict transaction or two. If the banker and business person abstained (and neither was present when the relationship was considered by the board), did the board consider the transaction under its conflict policy or simply comply with its policy to avoid a conflict situation? How many "transactions did the board review" in considering the disclosures made by the board members and taking action with both conflicted members not participating? A better question might be, "Did the board comply with its conflict interest policy during the year?" or "Did any transactions take place during the year which violated the organizations conflict of interest policy?"

Schedule H

Part 1, lines 1-10. Some states have imposed taxes on health care services. The taxes are remitted by the hospitals and clinics to fund state subsidies for the uninsured. Other organizations pay real estate taxes on clinic and other non-hospital buildings. The form should include a line item for taxes paid by an entity to federal, state or local governments. Also the idea in column (a) that one could simply count the programs seems out of place. For example, does an entity that runs three hospitals have three programs or one? Does it matter?

Part 1, line 13b. The form does not seem to contemplate integrated organizations with more than one hospital in a single entity. A single entity operating urban, suburban and rural hospitals in the same entity could be expected to operate several different charity care policies in the various settings.

Part II Section A. The distinction between insured and uninsured in columns (e) and (f) is vague. Is an individual with only a catastrophic coverage with a high attachment point considered insured for all purposes?

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Part III. Management Companies and Joint Ventures. The section appears to overlook the idea of direct or indirect ownership. A physician may not have any ownership interest, but may own an interest in another entity that holds the ownership interest. Also, it does not appear that taxable nonprofit entities are covered.

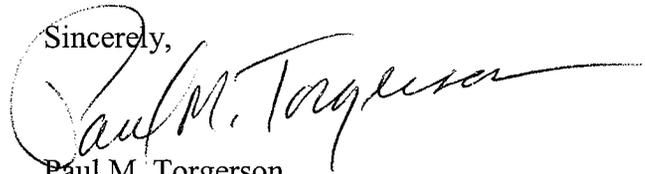
Part IV. This information would make more sense if it were associated with the individual facility in the list in Part V. Each of the facilities listed in Part V might have its own emergency department and its own unique operating characteristics. The question in line 3 should be part of each facilities' information instead in Part V.

Schedule J. Line 1. I think discretionary bonus information should be separate from incentive plan compensation (i.e. (B)(ii) should be split into two columns). I think column (C) should be broken into two parts, current year accruals and growth in value of deferred amounts. (B) should have an additional column for "cash payments made out of previously reported accruals of deferred compensation."

Again, a more objective cut-off definition to determine who to list would be helpful, such as including a reportable compensation threshold.

The reference beneath the bold print in Line 1 should be to form 990, Part II, not part III.

Again, thank you for tackling this challenging project.

Sincerely,

Paul M. Torgerson

From: [Debbie Ernsberger](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: RE: Comments on Proposed Form 990
Date: Friday, September 14, 2007 3:09:30 PM
Attachments: [IRS Comments-September 14.pdf](#)

Please see the attachment regarding comments for consideration prior to the finalization of the proposed Form 990.

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September 14, 2007

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Form 990 Redesign, SE:T:EO
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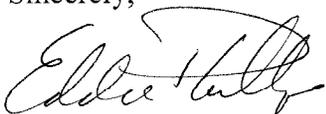
RE: Comments on Proposed Form 990

We sincerely appreciate the great effort the Internal Revenue Service (IRS) has extended into the redesigned Form 990 and related schedules. We present the following comments for consideration prior to the finalization of the proposed Form 990.

1. We firmly believe the proposed deadline is too soon for many charitable organizations to implement the internal changes needed in order to gather some of the requested information. We believe the proposed implementation date for Schedule H is especially early.
2. How will the proposed Form 990 impact efilings? Consideration should be given for ease of attachments and sufficient time for software vendors to implement necessary changes.
3. We are concerned with the summary information provided on page one as it relates to compensation. This “snapshot” could potentially be misleading without appropriate interpretation and comparison guidelines.
4. Charitable organizations should not be limited to a two line description of the organization’s mission (on page one of the redesigned form). Significant user value would be derived if a more comprehensive description of the filer’s charitable mission is allowed.
5. The glossary of Part II includes retirement benefits in the definition of compensation and Part II, Line 9 instructions indicate to disregard payments from a deferred compensation trust or plan sponsored by the organization. We respectfully request clarification of these instructions.
6. We request additional clarification as to the definition of program related investments as listed in Part IV and Part VI.
7. We request Part VII, Line 8a contain an explicit definition of “substantial.”
8. We understood that much of the initiative to redesign Form 990 was to ensure the Statement of Program Service Accomplishments was much more detailed and apparent to the reader of the form. Why is this information reflected on the last page of the core form? We recommend inclusion of this information closer to page one to emphasize charitable purposes.

9. Part IX reflects an asterisk after "(A) Direct Revenue." To what is the asterisk referencing?
10. With regards to Schedule A, Reason for Public Charity Status, Line 11f, will an organization be required to have a determination letter regarding the specific type of supporting organization? We respectfully request clarification.
11. We believe the Schedule H disclosure should include the unreimbursed costs of Medicare. Medicare patients continue to be served by charitable organizations despite disproportionate cost/reimbursement ratios. If Medicare patients were not served, these patients would become obligations of the government in a similar manner to Medicaid patients, who are counted.
12. We respectfully request that the instructions for Schedule H contain greater clarification, illustration and definitions to ensure consistency among charitable organizations. We also believe greater clarity should be provided for non-hospital entities that the government expects will be required to file Schedule H.
13. Schedule H, Line 12a asks whether the organization prepares an annual community benefit report but does not request the detail contained therein. We recommend that charitable organizations include as an attachment to Form 990 to provide complete disclosure.
14. Schedule H, Facility Information, needs clarification as to whether single member limited liability companies delivering care as part of a supporting organization should be separately disclosed.
15. Schedule J, column D requires nontaxable benefits be disclosed for officers, directors, trustees, key employees, and highly compensated employees. The instructions indicate that nontaxable fringe benefits include de minimis fringes. According to IRS regulations, de minimis fringe benefits are generally considered administratively burdensome to track. Consideration should be given to eliminating this disclosure.
16. Schedule K, Supplemental Information on Tax Exempt Bonds, contains a question as it relates to compensation of third parties and whether they were selected through a formal process. We request a clear definition as to the meaning of formal selection process.

Sincerely,



W. Edward Phillips, CPA
Shareholder

From: [Robert Sorrells](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: BDO Seidman Form 990 Draft Comments
Date: Friday, September 14, 2007 3:39:50 PM
Attachments: [BDO Form 990 Comments 9_14_07.pdf](#)

IRS Form 990 Draft Design Team:

The attached pdf document contains BDO Seidman, LLP's comments on the draft form 990. Please inform me if there are any difficulties in opening this file.

Sincerely,
R. Michael Sorrells

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September 13, 2007

Form 990 Redesign
Internal Revenue Service
SE:T:EO
111 Constitution Avenue NW
Washington DC 200274
Via email: Form990Revision@irs.gov

Dear Form 990 Redesign Staff:

BDO Seidman, LLP provides accounting, tax and consulting services to approximately two thousand tax exempt organizations in the United States. Our comments on the draft Form 990 are based upon knowledge of our client base, our experience with tax issues and compliance, and in many cases, the feedback of our clients on the draft document.

We applaud the Internal Revenue Service for embarking on this project. The current Form 990 is a document that has been modified so many times through the years that it no longer provides meaningful information in a way that is understandable to readers who don't have significant experience with the form. Likewise, we feel that the IRS' guiding principles of enhancing transparency, promoting tax compliance and minimizing the burden on filing organizations represent the correct approach to this project. However, we feel that the draft form falls short of these goals in several ways. We will list our major concerns both with some general comments and then more specifically with part-by-part analysis.

General Comments:

Explanations: Many parts of the form either ask questions or require provision of information that easily leads the reader to a conclusion that the organization is a "good" organization or one that is falling short even though much of this specific information is nowhere required by statute or regulation. The provision of ratios and the good governance questions are examples of this. Leaving aside the issue of whether or not the IRS should really be gathering some of this data, we feel much of this information can be misleading. There can be many legitimate circumstances that lead to a "no" answer or a "bad" looking ratio. However, there is no opportunity for an organization to explain why it answered a question or provided information that on the surface may have a negative connotation. Thus, if these questions and information remain in the final Form 990, we strongly recommend that there an option to provide explanations incorporated within the form. This could be done by providing a box on each page or schedule for such explanations or perhaps adding a new schedule for explanations. If a schedule were added, there could be a box to check on each page of the return saying that additional, important explanations relating to this page were on Schedule X. This is especially important for the ever increasing number of organizations that will be filing electronic returns since it is difficult to provide additional information that is referenced to a particular page or section of the return in the electronic format.



Filing Threshold: For many years the filing threshold for filing Form 990 or 990-EZ has remained at \$25,000. With the obvious inflation over the many decades that this threshold has been in effect, the result is that smaller and smaller organizations are having to file Form 990/ 990-EZ. This is a burden on very small, often volunteer run organizations. We recommend raising this threshold to a higher level, perhaps \$50,000, to lessen this burden. Additionally, we recommend raising the threshold for filing the 990-EZ to a higher level, perhaps \$200,000 in gross receipts and \$500,000 in assets. Both of these changes would provide significant relief of compliance burden and address the effect of inflation on these thresholds.

Although not mentioned in the draft Form 990, we are aware that there has been discussion concerning the elimination of the Form 990-EZ. We do feel that some form of simplified filing should be available to smaller organizations. This could be in the format of an entirely different form (like the current 990-EZ) or utilizing the revised Form 990 with specific instructions that would not require such organizations to complete significant portions of the form.

Timing of implementation: The IRS has stated that it wishes to have the final revised form in effect for the 2008 filing year. Due to the increased amount of information required of many organizations, particularly large organizations, we recommend that this be delayed until the 2009 filing year. Many of our clients have told us that once they understand the additional requirements, they will have to redesign significant parts of their accounting systems to capture some of the information required. In keeping with the spirit of minimizing burden, they should not be rushed in having to make such significant changes.

Omission of Group Return Information: The current Form 990 provides the opportunity for a subordinate group to file a group return. The boxes which allow for this group filing have been omitted from the draft form. Unless there are plans for a different version of Form 990 for such returns, it appears that the option of filing a group return has been at least considered for elimination. Many national organizations have very large subordinate groups, sometimes comprised of more than a hundred local chapters. The group return allows the parent organization to accumulate financial information from all the chapters, combine it, and file one return. By elimination of the group return, all chapters meeting the minimum filing threshold would have to file their own Form 990. This would be a huge additional burden, especially since many local chapters of national organizations are run by volunteers without the experience to properly prepare Form 990. We recommend that the option of filing a group return be retained in the revised form.



Specific Comments:

Part I Summary: In general, we feel that provision of this “snapshot” of an organization is a welcome addition to the Form 990. However, some of the information requested can be misleading and lead the reader to a conclusion about an organization that may not be accurate: Specifically:

- Line 4: Number of “independent” members in governing body. This carries the connotation that lack of independent members in a governing body is not a good thing. However, in the case of trade associations, for example, it is typical for all members of the governing body to not be independent due to the fact that they benefit from the organization. This should not be a negative for a trade association, since its exempt purpose is to benefit a specific trade or line of business. We recommend that this line be removed from the revised form.
- Lines 6 & 7: Compensated employees over \$100,000 and highest compensation amount. There are many legitimate reasons, including size of the organization and specific skills required, that can cause an organization to have either a large number of employees over \$100,000 or a highly compensated chief executive. Requiring this information does not take any of these factors into consideration. We recommend that these lines be eliminated from the form.
- Line 8a: Percentage ratio of officer, director and key employee compensation to program service expense. This is a ratio that certainly will vary from organization to organization often because of how programs are carried out or the nature of programs and is not necessarily a measure of any kind of organizational efficiency and should not be used for comparison of organizations. Thus, we recommend this be eliminated.
- Other percentage ratios. These all have the potential to be misleading. In a particular year, there can be very good reasons for fundraising or management/general expenses to be a much higher percentage than normal. When only one year is presented, the reader could be convinced that a particular organization is very inefficient when, for example, it was in start up mode or in the middle of a capital campaign. There are also reasons for one type of organization to have typically differing ratios than another, thus making this kind of comparison risky. We recommend these ratios be eliminated.
- If the above items are not eliminated from the final Form 990, we certainly recommend that, at the least, the page contain some way for an organization to explain any item requiring clarification (see general recommendations)

Part II, Compensation Information:

- City and state of residence. The current Form 990 allows an organization to use the organization address for individuals required to be listed. Since this is a public document, we feel that residence information is an invasion of privacy and may discourage individuals from serving on nonprofit boards. We recommend allowing use of the organization’s address for this purpose.



- Section B, Line 3: Procedure for establishing compensation for certain individuals. This question implies that the “rebuttable presumption of reasonableness” criteria included in the 4958 regulations is a requirement under the law for all organizations when in fact it is only a safe harbor for 501(c)(3) and 501(c)(4) organizations and does not apply at all to other exempt organizations. Thus, a “no” answer here carries a bad connotation with no ability for the organization to explain. Additionally, the question goes further than the regulations in that it does not allow for the initial contract exception contained in the regulations. We recommend that this line be eliminated or made applicable only to 501(c)(3) and 501(c)(4) organizations. If this line is kept in the final form, there should be an opportunity for the organization to explain its answer and the question should contain the initial contract exception from the 4958 regulations.

Part III, Governance, Management, and Financial Reporting: This section is composed almost entirely of yes/no questions concerning various governance and management functions. As in other sections previously discussed, “no” answers would seem to indicate that the organization was less than adequate in the various areas discussed. Since most of the items discussed here are not included in statute or regulations, we don’t feel it is appropriate for an organization to have to disclose such items in this format. We recommend a few alternatives: Replace most of these questions with questions requiring narrative answers. This way the reader would be able to make his/her own conclusions about the governance and management of the organization. Alternatively, if the “yes/no” format is maintained, allow the organization to provide explanations as previously discussed in our comments. Additionally, instead of a checklist about which documents are made available for public inspection, a question asking the organization to describe which documents are available and how they are made available would be much preferable and less connotative.

Part IX, Statement of Program Services Accomplishments: The revised form requests the organization to describe its most significant program accomplishment during the year. Since many organizations have a number of significant programs which may have major significance, we do not see the relevance of this narrative. We recommend that this section simply revert to the format of the current form and list the four largest programs by expenditure.

Schedule A, Public Support Schedules: We feel that this schedule is a significant improvement from the current public support schedule included in Schedule A. Separating the two support tests and including the various subtractions within the schedule itself makes a complex calculation much easier to understand.

Schedule C, Political Campaign and Lobbying Activities; Part I-C, line 5 asks for organizations to report all payments to 527 organizations including payments “received and promptly directly delivered to a separate political organization such as a separate segregated fund or a political action committee”. This information is duplicative in that this information is reported in much detail to the Federal Election Commission and



generally to state authorities. FEC filings as well as most state election filings are public documents and available for inspection.

Schedule F: Foreign Activities: This schedule is one that will be applicable to many larger organizations since international operations are so common currently for both charitable and non-charitable organizations. Completion of this section will require much additional recordkeeping and data for many organizations who do not currently track grants and other payments in the formats required. While we certainly understand the issue of charitable dollars being subverted for support terrorist organizations, we feel that this is an issue for charitable organization and should not be applicable to all tax exempt organizations. Thus, we recommend that this section only be made applicable to 501(c)(3) organizations.

Additionally, there are safety and security concerns that could result from disclosure details about organization personnel that in certain sensitive foreign locations. Thus, we recommend that detailed information in these areas be eliminated from the final Form 990. Alternatively, this information could be allowed to be redacted in publicly disclosed versions of the form similar to donor information on Schedule B in the current form.

Schedule H, Hospitals: This schedule requests very detailed information from hospitals which will add significantly to the administrative burden of these organizations. The issues related to tax exempt health organizations are quite complex and not necessarily subject to “snapshot” interpretation and ratio analysis. We feel that the information on this form may lead to some conclusions about tax exempt health organizations that are based upon a less than complete picture. We recommend that this schedule be eliminated from the revised Form 990. If the IRS and Congress require this kind of information from tax exempt hospitals, the IRS could certainly conduct a survey/study project requesting this kind of information (as was recently done with regards to executive compensation).

Schedule J, Supplemental Compensation Information: The compensation schedule has a column (E) requiring disclosure of non-taxable expense reimbursements. We do not understand the necessity of disclosing payments to an individual which enable that person to carry out the business of the organization and are not part of that person’s compensation. A reader could draw the likely incorrect conclusion that a large number in this column would mean that the organization was overcompensating its executive. There are very legitimate reasons for some organizations to have large amounts for reimbursed expenses while others would not. For example, an international organization with programs all over the world would certainly be expected to have an executive director who traveled extensively and had correspondingly large expenses while a large local organization executive director without significant travel would have much lower reimbursed expenses. Additionally, the capture and tracking of this information adds to the administrative burden of the organization. We recommend deleting Column (E) on the final form.



We are also concerned about question 3 which asks about payments or reimbursements for first-class travel, club dues or use of personal residence. While we are aware of potential for abuse in these areas, there are certainly legitimate reasons for payments or reimbursements for such payments (e.g., an international organization may have a policy to reimburse for first-class travel on flights of more than 15 hours, a policy that hardly seems unreasonable). Secondly, these payments may have been included in the individual's taxable income—certainly not a bad thing. However, many organizations will be forced to answer “no” and look like they are doing something wrong when it is likely that they are not. We recommend that this question be eliminated from the final form or alternatively that the organization be given the opportunity to explain its answer.

Conclusion:

While we agree that the Form 990 should contain meaningful information about an organization which allows the user to make informed conclusions about the organization while meeting IRS and state compliance requirements, many of the proposed changes appear to lead the reader to certain conclusions about an organization without an opportunity for the organization to explain itself. Thus, the draft form should be amended so organizations have the opportunity to more fairly present information about themselves. Organizations vary tremendously and should be given the opportunity to express that on Form 990.

We are pleased to submit these comments and hope that you will give them consideration. If we can provide any further clarification on these comments, please do not hesitate to contact us.

Sincerely,
(On Behalf of the BDO Seidman Nonprofit Tax Consulting Group)

R. Michael Sorrells, CPA
National Director Nonprofit Tax Services
BDO Seidman, LLP

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From: [Ken Cerini](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comments on proposed new 990
Date: Friday, September 14, 2007 3:41:36 PM
Attachments: [image001.jpg](#)
[image004.jpg](#)
[Proposed 990.doc](#)
[image002.jpg](#)
[image003.gif](#)
[image005.jpg](#)

Please find attached our comments on the new 990. Please confirm receipt.

Ken Cerini

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September 11, 2007

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

Re: Draft Form 990 Redesign Comments

Dear Sir/Madam:

We represent nearly 100 nonprofit organizations in the New York Metropolitan area, and through our affiliation with several umbrella agencies, we have spoken to many others. We have requested from our clients and nonprofit associates concerns that they have surrounding the draft proposed form 990 which is scheduled to go into affect for the 2008 tax year (to be filed in 2009). We have summarized the major concerns within this letter.

- 1) The most significant concern is the timing of the new form. The proposed form contains many new questions which may require organizations to capture information that they have not necessarily needed to capture in the past. Many organizations believe that an implementation date of 2008, when the form is still in draft and may change due to comments provided, is somewhat aggressive. By the time the form is finalized and disseminated in its final form, there is a good possibility that the year would have already started making it difficult to gather necessary information. We request that the implementation date be postponed for 1 year to provide agencies with ample time to understand the new form and its added responsibilities.
- 2) The emphasis of the new form appears to be different from that of previous 990's. In the past, the focus on an organizations operations and program service were principally the first parts of the 990. This gave potential donors and interested parties insight into the accomplishments and benefits nonprofit organizations were providing to the community. The proposed form relegates the program service accomplishments to page 10 of the form. While we all concur that transparency and compensation issues are important, we contend that the real significance of the nonprofit community is what organizations do to improve the community and world we live in; enriching, helping, saving, healing,

enlightening, protecting, and caring. It is how an organization fulfills its mission and delivers benefit to the community and people it serves that should be the initial focus of the 990.

- 3) The proposed 990 has a focus on corporate governance. While we understand that the questions in part III are strictly “yes” and “no” questions for information purposes, a no answer will connote poor controls or policies. Smaller organizations, under \$1,000,000 in revenue, might incur added administrative costs trying to implement and maintain certain of these “best practice” governance issues.
- 4) In addition, there are several specific lines within the form:
 - a. Part 1, Line 2 – No explanation as to where program codes should be obtained.
 - b. Part 1, Line 8b – What is the significance of dividing key employee compensation by program expense. Key employee salaries are often also included in management and general and fundraising expenses. This doesn’t seem to depict a meaningful relationship.
 - c. Part II, Line 1 – How is key employee defined. Different organizations will interpret differently without definitive clarification.
 - d. Part II, Line 3 – Intermediate sanction rules require compensation review for all employees making in excess of approximately \$95,000. Do Boards now need to do compensation reviews of CEO, Executive Director, Treasurer, and CFO regardless of their compensation?
 - e. Part III, Line 3b - What constitutes a review under the conflict of interest policy?
 - f. Part III, Line 10 – While we understand that having the Executive Board review the form 990 before it is filed is a good practice, there may be instances where this could cause significant delays in filing (i.e. Boards that meet quarterly).
 - g. Part IX, Lines 3a through 3c – The instructions require program accomplishment descriptions with outcome measurements, and it specifically states “do not provide an attachment.” The 5 lines provided for each program is not sufficient, in many cases, to outline the benefits and accomplishments of the program. As such, attachments are definitively needed in order to truly reflect the annual accomplishments of many organizations.
 - h. Part IX, Lines 3a through 3c – In the past, direct revenue was never provided. While in most cases, direct revenue is easy to determine (i.e. specific grants, fees for service, restricted donations), there are other times when funding can cross over multiple programs. How should this be reflected?
 - i. Schedule D, Part VIII, Lines 5 and 6 – Many small conservation entities have limited staff, each with many roles. It may be difficult for them to accurately track time spent in monitoring and enforcing easements.

We appreciate your consideration in this matter. Should you have any questions or require any clarification, please do not hesitate to call me at (631) 582-1600 x203.

Thank you for your consideration in this.

Sincerely,

Kenneth Cerini, CPA, CFP
Partner