



May 7, 2018

Ms. Margaret Von Lienen
Director
Exempt Organizations
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

RE: Comments on Form 990, *Return of Organization Exempt from Income Tax*, and Instructions

Dear Ms. Von Lienen:

The American Institute of CPA's (AICPA) is pleased to provide comments on Form 990, *Return of Organization Exempt from Income Tax*, and the related instructions. Our comments include recommendations for the 2018 forms and instructions, while indicating the importance and urgency of each recommendation.

The comments were developed by the AICPA Exempt Organizations Taxation Technical Resource Panel (TRP) and approved by the AICPA Tax Executive Committee. The Exempt Organizations TRP is comprised of practitioners who serve tax-exempt organizations and are experienced with both the nuances of the form and the challenges that arise for taxpayers in trying to complete it.

The AICPA is the world's largest member association representing the accounting profession with more than 418,000 members in 143 countries and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of these recommendations and welcome the opportunity to discuss these items further. If you have any questions, please feel free to contact me at (408) 924-3508, or annette.nellen@sjsu.edu; Richard J. Locastro, Chair, AICPA Exempt Organizations Taxation Technical Resource Panel at (301) 951-9090, rlocastro@grfcpa.com; or Ogochukwu Eke-Okoro, Senior Manager – AICPA Tax Policy & Advocacy, at (202) 434-9231, or ogo.eke-okoro@aicpa-cima.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Annette Nellen".

Annette Nellen, CPA, CGMA, Esq.
Chair, AICPA Tax Executive Committee

AICPA Comments on Form 990 and Instructions (2018)

GENERAL INSTRUCTIONS

1. Instructions, Section D (Importance: MEDIUM; Urgency: LOW)

The reference to Form 3115, Application for Change in Accounting Method, in section D of the Form 990, instructions, is confusing if the Form 990 is prepared based on accounting methods used for books and records.

Recommendation: To avoid confusion, delete the paragraph for “Accounting method change.”

2. Instructions, Glossary (Importance: HIGH; Urgency: HIGH)

The Form 990 and related instructions use terms that have changed under the tax law.

Recommendation: Delete the following terms and associated definitions from the Glossary in the Instructions to the Form 990 and in all parts of the form and related schedules.

- Endowment
- Permanent (true) endowment
- SFAS 116
- SFAS 117
- Temporarily restricted endowment
- FIN 48

3. Instructions, Glossary (Importance: HIGH; Urgency: HIGH)

We recommend that the IRS (Internal Revenue Service) update the Glossary to define the terms used in Accounting Standards Update (ASU) 2016-14 (ASU 2016-14), Presentation of Financial Statements of Not-for-Profit Entities, issued by the Financial Accounting Standards Board (FASB) as defined in the FASB Accounting Standards Codification (FASB ASC) Master Glossary.

Recommendation: Update the Glossary in the Instructions to Form 990 to define:

ASC 740 Implementation guidance on accounting for uncertainty in income taxes and disclosure.

ASU 2016-14 Accounting Standards Update 2016-14 is codified in FASB Accounting Standards Codification 958, Not-for-Profit Entities (**FASB ASC 958**).

Board-Designated Endowment Fund An endowment fund created by a not-for-profit entity’s governing board by designating a portion of its **net assets without donor restrictions** as unrestricted net assets to be invested to provide income for a

long but not necessarily specified period (sometimes called **quasi-endowment funds**).

Donor-Restricted Endowment Fund An endowment fund created by a donor stipulation (donors include other types of contributors, including makers of certain grants) requiring investment of the gift in perpetuity or for a specified term. Some donors or laws may require that a portion of income, gains, or both be added to the gift and invested subject to similar restrictions.

Donor-Imposed Restriction A donor stipulation (donors include other types of contributors, including makers of certain grants) that specifies a use for a contributed asset that is more specific than broad limits resulting from:

- The nature of the not-for-profit entity¹
- The environment in which it operates; or
- The purposes specified in its articles of incorporation or bylaws or comparable documents for an unincorporated association

Some donors impose restrictions that are temporary in nature, for example, stipulating that resources may be used only after a specified date, for particular programs or services, or to acquire buildings and or equipment. Other donors impose restrictions that are perpetual in nature, for example, stipulating that resources be maintained in perpetuity.

Endowment Fund An established fund of cash, securities, or other assets to provide income for the maintenance of a not-for-profit entity. The use of the assets of the fund may be with or without donor-imposed restrictions. Endowment funds generally are established by donor-restricted gifts and bequests to provide a source of income in perpetuity or for a specified period. Alternatively, a not-for-profit's governing board may earmark a portion of its net assets (see **Quasi-endowment**).

FASB ASC 958 FASB Accounting Standards Codification 958 (**FASB ASC 958**) provides standards for external financial statements certified by an independent accountant for certain types of nonprofit organizations. FASB ASC 958 does not apply to credit unions, voluntary employees' beneficiary associations, supplemental unemployment benefit trusts, section 501(c)(12) cooperatives, and other member benefit or mutual benefit organizations.

While some states may require reporting according to FASB ASC 958, the IRS does not. However, a Form 990 return prepared according to FASB ASC 958 will be acceptable to the IRS.

Net Assets with Donor Restrictions The part of net assets of a not-for-profit entity that is subject to **donor-imposed restrictions**.

¹ As defined in the FASB ASC Master Glossary.

Net Assets without Donor Restrictions The part of net assets of a not-for-profit entity that is not subject to **donor-imposed restrictions**.

Term endowment An endowment fund established to provide income for a specified period.

Quasi-endowment Net assets without donor restrictions designated by an entity's governing board to be invested to provide income for generally a long but not necessarily specified period. A **board-designated endowment**, which results from an internal designation, is generally not donor-restricted and is classified as net assets without donor restrictions. The governing board has the right to decide at any time to expend such funds. Also referred to as a **board-designated endowment**.

4. Page 1, Box G (Importance: MEDIUM; Urgency: MEDIUM)

As part of a diversified portfolio, many large organizations have material amounts of short term investments (i.e., less than one year). Short term investments that turn monthly or quarterly can substantially inflate the gross receipts total in box G, resulting in an amount that appears inconsistent with the rest of the return. The total revenue reported in Form 990, Part I, Line 12 is sufficient. The additional detail, if desired, is still available to users in Part VIII.

Recommendation:

Eliminate the gross receipts entry in Box G.

PARTS IV AND VI

5. Part IV, Line 10 (Importance: HIGH; Urgency: HIGH)

Update the trigger question for Schedule D to reflect the changed classification of net assets under FASB ASC 958, while still recognizing that the focus of the question is on reporting for donor restricted and board designated or quasi-endowments.

Recommendation:

We have provided sample language below.

Did the organization, directly or through a related organization, hold assets in **donor-restricted endowments** (which includes both **term endowments** and those to be held in perpetuity) or in **board-designated (quasi) endowments**?

6. Part IV, Line 10, Instructions (Importance: HIGH; Urgency: HIGH)

Assuming the Form 990 is updated as suggested above for Part IV, Line 10, we suggest that the IRS update the corresponding instructions to reflect FASB ASC 958.

Recommendation:

We have provided sample language below.

Answer “Yes” if the organization, a **related organization**, or an organization formed and maintained exclusively to further one or more exempt purposes of the organization (such as a foundation formed and maintained exclusively to hold **endowment funds** to provide scholarships and other funds for a college or university described within section 501(c)(3)), held assets in **donor restricted endowment funds** or **board-designated (quasi) endowments** at any time during the year, whether or not the organization follows **FASB ASC 958** or reports **endowments funds** in Part X, line 28.

7. Part IV, Lines 27, 28a, 28b, and 28c (Importance: HIGH; Urgency: HIGH)

Beginning in 2014, the definition of “interested persons” was changed in the Schedule L instructions; however, the trigger questions in Form 990, Part IV were not aligned to agree with the new definition. As a result, there are filers of the Form 990 who do not realize that a Schedule L disclosure is necessary.

Recommendation: Update the Form 990 trigger questions and the corresponding instructions. We have provided sample language below.

Form 990, Part IV, Line 27: Did the organization provide a grant or other assistance to a former or current officer, director, trustee, key employee, substantial contributor or employee (or child of an employee) thereof, founder of the organization, a grant selection committee member, or to a 35% controlled entity or employee (or child of an employee) thereof, or family member of any of these persons? (See Schedule L instructions for the complete list of interested persons.) If “Yes,” complete Schedule L, Part III.

Form 990, Part IV, Line 28: Was the organization a party to a business transaction with one of the following parties (see Schedule L instructions for the applicable filing thresholds, conditions, and exceptions)?

Form 990, Part IV, Line 28a: A current or former officer, director, trustee, key employee, substantial contributor, or founder of the organization? If “Yes,” complete Schedule L, Part IV.

Form 990, Part IV, Line 28b: A family member of a current or former officer, director, trustee, key employee, substantial contributor, or founder of the organization? If “Yes,” complete Schedule L, Part IV.

Form 990, Part IV, Line 28c: An entity which is 35% controlled by a current or former officer, director, trustee, key employee, substantial contributor, or founder of the organization (or a family member thereof)? (See the Schedule L instructions for additional details on interested persons and management companies controlled by a former officer, director, trustee, or key employee of the organization that are NOT listed on Part VII of the Form 990). If “Yes,” complete Schedule L, Part IV.

8. Part IV, Line 29 (Importance: HIGH; Urgency: MEDIUM)

The trigger question for Schedule M is outdated.

Recommendation: Update the trigger question for non-cash contributions to 5% of total contributions instead of \$25,000.

9. Part VI, Line 1a (Importance: MEDIUM; Urgency: MEDIUM)

This question consists of multiple questions combined into one. This combination is potentially confusing to a reader of the form. The question asks about the number of voting members at the end of the year, if there are any material differences in voting rights among members of the governing body, or if the governing body has delegated broad authority to an executive or similar committee.

Recommendation: Consider splitting the question into multiple questions, as shown below, to avoid confusing a reader of the form.

1. Enter the number of voting members of the governing body at the end of the year.
2. For the members included on [line above], are there any material differences in voting rights among members of the governing body? If yes, explain in Schedule O.
3. Did the governing body delegate broad authority to an executive committee or similar committee? If yes, explain in Schedule O.

10. Part VI, Line 1b (Importance: HIGH; Urgency: HIGH)

Example 1 for the independent voting board in the instructions to Part VI, Line 1b is outdated due to changes to Schedule L in 2014. The condition of B being an "interested person" due to having a greater than a 5% ownership in a partnership (and thus a subject of Schedule L reporting) was voided by the 2014 (and ensuing) instructions change to the definition of interested persons.

Recommendation: We recommend removing the example or changing it to match the Schedule L disclosure example. Otherwise, the example is misleading to readers.

We have provided suggested replacement language of a corrected Example 1 below:

B is a voting member of the organization's board of directors. B is also a partner with an ownership interest of 37% in a law firm, C, that charged \$120,000 to the organization for legal services in a court case. The transaction between C and the organization must be reported on Schedule L because it is a transaction between the organization and an entity of which B is a more than 35% owner, making B a 35% controlled entity, and the payment from C to the organization exceeds \$100,000. B is not an independent member of the board, because the transaction must be reported on Schedule L. If B owned 30% of the law firm, then the transaction would not affect B's status as an independent member of the organization's board.

PART VII

11. Part VII, Section A Instructions (Importance: HIGH; Urgency: HIGH)

Per the instructions to Part VII, Section A, reportable compensation includes amounts paid to officers, directors, individual trustees and others for independent contractor services reported on Form 1099-MISC, box 7. However, in the case of doctors who serve on the board of an organization and also receive compensation from the organization as an independent contractor (i.e., a doctor who serves on the board of a Health Management Organization (HMO) who sees patients as part of the HMO network), the compensation paid to the doctor is reported on Form 1099-MISC, box 6, not box 7.

Recommendation: Adjust the instructions to Part VII, Section A to indicate that payments received from the filing organization, reported on Form 1099-MISC, box 6, are also reportable compensation.

12. Part VII, Section B Instructions (Importance: HIGH; Urgency: HIGH)

Per the instructions to Part VII, Section B, amounts paid on Form 1099-MISC, box 7 or amounts paid under an agreement are reported on Section B, provided the total amount paid for the year exceeds \$100,000. However, medical providers may receive a Form 1099-MISC with compensation for services reported in box 6, not box 7.

Recommendation: Adjust the instructions to Part VII, Section B to indicate that payments received from the filing organization, reported on Form 1099-MISC, box 6, are also reportable compensation.

PARTS IX, X AND XII

13. Part IX, Line 11e (Importance: MEDIUM; Urgency: MEDIUM)

This line pertains to professional fundraising fees. The form references Part IX, Line 11e. The instructions to the form reference the inclusion of Part IX, Line 16a and Part IX, Lines 5 and 6, if applicable.

Recommendation: For consistency, update the language on the form to include both Part IX, Line 11e and Part IX, Lines 5 and 6, if applicable.

14. Part X, Lines 5, 6 and 22 (Importance: HIGH; Urgency: HIGH)

Beginning in 2014, the definition of “interested persons” was changed in the Schedule L instructions; however, the trigger questions in Form 990, Part X were not aligned to agree to the new definition. As a result, there are filers of the Form 990 who do not realize that a Schedule L disclosure is necessary.

Recommendation: Update the Form 990 trigger questions and the corresponding instructions. We have provided the following sample language:

Form 990, Part X, Line 5: Loans and other receivables from current and former officers, directors, trustees, key employees, and other interested persons as defined in Schedule L. Complete Part II of Schedule L.

Form 990, Part X, Line 22: Loans and other payables from current and former officers, directors, trustees, key employees, disqualified persons and other interested persons as defined in Schedule L. Complete Part II of Schedule L.
Instructions to Part X, Line 5: We recommend striking out “highest compensated employees” and replacing it with “other interested persons as defined in Schedule L.”

15. Part X, Lines 27-34 (Importance: HIGH; Urgency: HIGH)

Update the net assets or fund balances portion of the balance sheet to reflect ASU 2016-14.

Recommendation: The checkbox items for net assets and fund balance reporting should refer to organizations that do or do not follow FASB ASC 958. Revise Part X, Lines 27-34 to reflect FASB ASC 958 as follows:

- Line 27 – Net assets without donor restrictions
- Line 28 – Net assets with donor restrictions
- Lines 30-34 – Renumber as line 29-33

16. Part X, Lines 27-34, Instructions (Importance: HIGH; Urgency: HIGH)

Assuming Form 990 is updated as suggested above for Part X, Lines 27-34, we request that the IRS update the corresponding instructions to reflect ASU 2016-14.

Recommendation: We have provided suggested language below to update the instructions to reflect ASU 2016-14. Also, we recommend that the IRS renumber the instructions for Lines 30-34 as Lines 29-33 to correspond with the change on the form as suggested above.

Net Assets and Fund Balances

FASB Accounting Standards Codification 958 (**FASB ASC 958**) provides standards for external financial statements certified by an independent accountant for certain types of nonprofit organizations. **FASB ASC 958** does not apply to credit unions, voluntary employees' beneficiary associations, supplemental unemployment benefit trusts, section 501(c)(12) cooperatives, and other member benefit or mutual benefit organizations.

While some states may require reporting according to **FASB ASC 958**, the IRS does not. However, a Form 990 return prepared according to **FASB ASC 958** will be acceptable to the IRS.

Organizations that follow FASB ASC 958

If the organization follows **FASB ASC 958**, check the box above line 27, and complete lines 27, 28, 32 and 33. Classify and report net assets in two groups (**net assets without donor restrictions** and **net assets with donor restrictions**) based on the existence or absence of **donor-imposed restrictions** and the nature of those restrictions. Enter the sum of the two classes of net assets on line 32. On line 33, add the amounts on lines 26 and 32 to show total liabilities and net assets. The amount on line 33 must equal the amount on line 16.

FASB ASC 958-205, *Not-for-Profit Entities—Presentation of Financial Statements* (**FASB ASC 958**), addresses reporting of **donor-restricted endowments** and **board-designated (quasi) endowments**. Further, most states have enacted the Uniform Prudent Management of Institutional Funds Act (UPMIFA). If the organization is subject to UPMIFA or **FASB ASC 958**, it may affect the amounts reported on lines 27 through 29.

Line 27. Net assets without donor restrictions

Enter the balance per books of **net assets without donor restrictions**. All funds without donor-imposed restrictions must be reported on line 27, regardless of the existence of any board designations or appropriations.

Line 28. Net assets with donor restrictions

Enter the balance per books of **net assets with donor restrictions**. Donors' restrictions may require that resources be used after a specified date (time restrictions), or that resources be used for a specified purpose (purpose restrictions), or both. Donors may also stipulate that assets, such as land or works of art, be used for a specified purpose, be preserved, and not be sold or donated with stipulations that they be invested to provide a permanent source of income.

Organizations that don't follow FASB ASC 958

If the organization does not follow **FASB ASC 958**, check the box above line 29 and complete lines 29 through 33. Report capital stock, trust principal, or current funds on line 29. Report paid-in capital surplus or land, building, or equipment funds on line 30. Report retained earnings, endowment, accumulated income or other funds on line 31.

Line 33. Total liabilities and net assets/fund balances

Enter the total of line 26 and line 32 on line 33. The amount on line 33 must equal the amount on line 16. The organization must enter a zero or a dollar amount on this line.

17. Part X, Lines 27-34, Instructions (Importance: HIGH; Urgency: HIGH)

Assuming the Form 990 is NOT updated as suggested above for Part X, Lines 27-34, we suggest that the IRS include additional instructions before the instructions to Form 990, Part X, Line 27 for organizations that follow FASB ASC 958.

Recommendation: We have provided suggested language below to add to the instructions for Form 990, Part X.

Organizations that follow FASB ASC 958. If the organization follows **FASB ASC 958**, net assets should be reported in Part X as unrestricted, temporarily restricted or permanently restricted consistent with the organization's footnote disclosures under **FASB ASC 958** based on the following table:

FASB ASC 958 footnote	Report on Part X
Net assets without donor restrictions	Unrestricted net assets
Net assets with donor-imposed restrictions for time or purpose of expenditure	Temporarily restricted net assets
Net assets with donor-imposed restrictions that the resources be held in perpetuity, including and related unappropriated earnings and underwater endowment funds	Permanently restricted net assets

18. Part XII, Line 3 (Importance: MEDIUM; Urgency: MEDIUM)

The instructions related to whether an A-133/now Uniform Guidance audit is required lead a reader to think that the question is looking back to the prior year. For example: 2016 is the initial year of the organization and they received federal awards of \$800,000, which would subject them to an A-133/now Uniform Guidance audit in 2017.

It is not clear if the answer on line 3(a) is “yes” or “no” when preparing the initial 2016 return in 2017. Based on how the instructions read, it seems that the answer is "no" because during the year (2016), the organization was not required to undergo an A-133/now Uniform Guidance audit because the tax year had not ended yet. The audit for the 2016 tax year would have occurred in 2017.

However, if the question is inquiring whether or not an A-133/now Uniform Guidance audit was required for the 2016 tax year (Line 3a) and if the audit was completed (Line 3b), then we suggest that the IRS rephrase the instructions to these lines for clarification.

Recommendation: If the question is looking back to the prior year, consider adding an example, with years, to illustrate how an organization should properly answer this question.

If the question is inquiring about the organization's federal awards received in the tax year (which is already defined) and whether the audit was completed, consider rephrasing the instructions to say:

Line 3a: Answer "Yes," if the organization was required under the Single Audit Act of 1984, as amended in 1996, and Uniform Guidance to undergo an audit or audits because of its receipt of federal contract awards *during its tax year*.

Line 3b: If "Yes" to line 3a, indicate whether the organization has undergone the required audit or audits.

19. Part XII, Line 3 (Importance: HIGH; Urgency: HIGH)

There have been changes to the OMB/Uniform Guidance rules. We suggest revising this question and its instructions to align with the new rules.

Recommendation: The instructions should no longer refer to OMB but rather to the Uniform Guidance. In addition, the single audit threshold has been raised from \$500,000 to \$750,000. Update the instructions to reflect this change.

SCHEDULE A

20. Schedule A, Part II, Line 5 (Importance: MEDIUM; Urgency: MEDIUM)

This line should reflect the portion of total contributions by “each person” included in Line 1 that exceeds 2% of the amount shown on Line 11, Column (f). In determining the total contributions from any one donor, all contributions by the donor and related persons and entities with regard to the donor, are combined and treated as if made from one person (Treas. Reg. § 1.170A-9(f) and Internal Revenue Code (IRC or “Code”) section 4946(a)(1)).² The instructions are not clear about this rule. This rule can mislead a preparer into separating contributions instead of aggregating contributions.

Recommendation: Clarify, in the instructions to Schedule A, Part II, Line 5, that in determining the total contributions from any one donor, all contributions by the donor, related persons and entities with regard to the donor, are combined and treated as if made from one person.

21. Schedule A, Part IV, Line 2 (Importance: MEDIUM; Urgency: MEDIUM)

It is often difficult for entities to understand how to answer this question correctly. The question asks if the filing organization has any supported organization that does not have an IRS determination of status under section 509(a)(1) or (2). If the question is answered “Yes,” the filing organization is then required to explain, in Schedule A, Part VI, how the organization determined that the supported organization was described in section 509(a)(1) or (2). Non-profit organizations generally are not aware that most governmental entities do not have a determination letter because they are not required to have one. Once they understand that they must respond “Yes” because they supported a governmental organization, they are concerned about explaining the “Yes” response.

Recommendation: Provide additional examples of entities that would not have to file a Form 990. This change can be done by updating the question to read:

Did the organization have any supported organization that does not have an IRS determination of status under section 509(a)(1) or (2) *because it is a church, a state university, a state or local government body, or described in Section 4848(b)*? If "Yes," explain in Part VI how the organization determined that the supported organization was described in section 509(a)(1) or (2).

22. Schedule A, Part IV, Line 6 (Importance: MEDIUM; Urgency: MEDIUM)

The words “supported” and “supporting” are used frequently in the instructions to this line. It is sometimes confusing and difficult for organizations to understand the instructions and recognize

² All references herein to “section” or “§” are to the Internal Revenue Code of 1986, as amended, or the Treasury regulations promulgated thereunder.

when an organization is considered a “supporting organization” versus a “supported organization” based on the instructions to Schedule A, Part IV, Line 6.

Recommendation: Add examples to the instructions to illustrate the requirements of the instructions.

23. Schedule A, Part IV, Line 7 (Importance: MEDIUM; Urgency: MEDIUM)

This question asks if the organization provided a grant, loan, compensation or other similar payment to a substantial contributor, a family member of a substantial contributor, or a 35% controlled entity with regard to a substantial contributor. If the organization answers “Yes,” it is instructed to list the payments as excess benefit transactions on Part I of Schedule L. However, there are certain exceptions to the excess benefit transaction regulations that may apply to transactions with substantial contributors and their related parties.

Recommendation: Clarify in the instructions that there is no requirement to report grants, loans, compensation, or other similar payments made to a substantial contributor, a family member of a substantial contributor, or a 35% controlled entity (with regard to a substantial contributor) if they meet the initial contract exception under 26 CFR 53.4958-4(a)(3). If the payment meets the exception, the organization should answer “Yes” and explain, in Schedule A, Part VI, why the loan is not reported as an excess benefit transaction on Schedule L, Part I.

24. Schedule A, Part IV, Line 8 (Importance: MEDIUM; Urgency: MEDIUM)

This question asks if the organization made a loan to a disqualified person (as described in section 4958) not described in Line 7 (see above). If the organization answers “Yes,” it is instructed to list the loan as an excess benefit transaction on Part I of Schedule L. However, there are certain exceptions to the excess benefit transaction regulations that may apply to transactions with disqualified persons.

Recommendation: Clarify in the instructions that there is no requirement to report loans made to disqualified persons (as described in section 4958) if they meet the initial contract exception under 26 CFR 53.4958-4(a)(3). If the loan meets the exception, the organization should answer “Yes” and explain in Schedule A, Part VI, why the loan is not reported as an excess benefit transaction on Schedule L, Part I.

25. Schedule A, Part IV, Lines 9b and 9c (Importance: MEDIUM; Urgency: MEDIUM)

The instructions reference certain concepts (such as disqualified persons, direct or indirect control, ownership interest and controlling interest) which are rooted in the regulations but are not intuitive to a reader of the instructions.

Recommendation: Add examples to help clarify the meaning of these concepts. The examples would promote compliance by helping organizations provide accurate answers to these questions, which provide important information to the IRS.

SCHEDULE D

26. Schedule D, Part V (Importance: HIGH; Urgency: HIGH)

This portion of Schedule D is for reporting of endowment fund activity. The IRS should update Schedule, Part V to reflect the terminology for endowments as reflected in the FASB ASC Master Glossary.

Recommendation: Modify Schedule D, Part V, Line 2c as follows:

Term endowment _____%.

27. Schedule D, Part V, Instructions (Importance: HIGH; Urgency: HIGH)

Assuming that Schedule D, Part V is updated as suggested above, we suggest that the IRS update the corresponding instructions to reflect FASB ASC 958.

Recommendation: We have provided suggested language below to update the Schedule D, Part V instructions to reflect FASB ASC 958.

Part V. Endowment Funds

Complete Part V if the organization answered “Yes” on Form 990, Part IV, Line 10. For Part V, the definitions of **endowment** and **types of endowments** are governed by **FASB ASC 958** and the FASB Master Glossary. Information reported in Part V should pertain to the aggregate of the donor-restricted assets held by the organization, organizations formed and maintained exclusively to further one or more exempt purposes of the organization, and organizations that hold endowment funds for the benefit of the organization.

Term endowment includes endowment funds established by donor-restricted gifts that are maintained to provide a source of income for either a specified period of time or until a specific event occurs.

Permanent endowments are endowment funds that are established by donor-restricted gifts and are maintained to provide a permanent source of income, with the stipulation that principal must be invested and kept intact in perpetuity, while only the income generated can be used by the organization.

Board-designated endowments or quasi-endowments result from an internal designation and are generally not donor-restricted and are classified as net assets without donor restrictions. The governing board has the right to decide at any time to expend such funds.

Line 1a. Enter the beginning-of-year balances of the organization's **endowment** funds for the current year and prior year. The amounts entered should agree with the organization's total **permanent endowment, term endowment, and board or quasi-endowment** funds at the beginning of the current year and prior year.

Line 2. On lines 2a through 2c, enter the estimated percentage of the organization's total endowment funds at the current year end (as reported in line 1g, column (a)) held in (a) board designated or **quasi-endowment** funds, (b) **permanent endowment** funds, or (c) **term endowment** funds. The total of these three percentages should equal 100%.

28. Schedule D, Part V, Instructions (Importance: HIGH; Urgency: HIGH)

Assuming the Schedule D, Part V is NOT updated as suggested above, we suggest adding an additional paragraph to the instruction for Schedule D, Part V, Line 2 for organizations that follow FASB ASC 958.

Recommendation: We have provided suggested language below to update Schedule D, Part V, Line 2.

If the organization follows **FASB ASC 958**, amounts should be reported on Lines 2a, 2b, and 2c consistent with the organization's footnote disclosure under **FASB ASC 958**.

SCHEDULE I

29. Schedule I, Part II, Line 1, Instructions (Importance: HIGH; Urgency: HIGH)

A portion of the Schedule I, Part II, Line 1 instructions contradicts the Form 990, Part IV, Line 21 trigger question. The contradictory portion of the Part II instructions states that "a "Yes" response means that the organization reported more than \$5,000 on Form 990, Part IX, Line 1, column (A)." The trigger question instruction states, however, "answer "Yes" if the organization reported on Part IX, Column (A), Line 1, more than \$5,000 of grants and other assistance to any domestic organization, or to any domestic government. For instance, answer "No" if the organization made a \$4,000 grant to each of two domestic organizations and no other grants."

Recommendation: Update the instructions for Schedule I, Part II, Line 1 to reflect a consistency with the instructions for the trigger question in Form 990, Part IV, Line 21.

SCHEDULE J

30. Schedule J, Part I, Line 4b, Instructions (Importance: MEDIUM; Urgency: MEDIUM)

The last sentence of the instructions for Schedule J, Part I, Line 4b is sometimes misunderstood by readers. Some readers interpret the instructions to mean that both section 457(b) and split-dollar life insurance plans are not supplemental nonqualified retirement plans. However, only section 457(b) plans should fall outside of the definition.

Recommendation: Rearrange the wording of the last sentence of the instructions for Schedule J, Part I, Line 4b by moving the statement indicating the section 457(b) plan is not a supplemental nonqualified retirement plan, to after the split-dollar life insurance information. We suggest this language: “For this purpose, include as a supplemental nonqualified retirement plan, a plan described in section 457(f) and a split-dollar life insurance plan. Do not include a plan described in section 457(b).”

SCHEDULE K

31. Schedule K and Form 990, Part X, Line 20 (Importance: HIGH; Urgency: HIGH)

The Schedule K instructions indicate that related organizations should report the liability for a bond issuance only once on Form 990 and on Schedule K. There is ambiguity, however, because the Schedule K instructions do not specify where to report the liability on the Form 990. It is not clear if affiliated members of an obligated group are permitted to report their allocable share of a tax-exempt bond liability as an “Other Liability” on Form 990, Part X, Line 25 when the parent organization, as a member of the obligated group, reports the bond issuance on Schedule K and a corresponding tax-exempt bond liability on Form 990, Part X, Line 20.

Recommendation: Update the Schedule K instructions to indicate that in the case of an affiliated group, either the parent or the subsidiaries can report the tax-exempt bond liability on Part X, Line 20. We recommend changing the instructions to say that if the parent reports the liability on Line 20, the subsidiaries can report their allocable portion of the tax-exempt bond liability on Part X, Line 25 as an “Other Liability.”

As an alternative, we recommend changing the instructions to say that the tax-exempt bond liability is only reported on either the parent or subsidiary returns, regardless of whether it is reported on Part X, Line 20 as a tax-exempt bond liability or on Part X, Line 25 as an “Other Liability.” The organization(s) not reporting the liability are permitted to increase their net assets listed on Part X to allow total assets to equal total liabilities plus total capital.

32. Schedule K, Part III (Importance: MEDIUM; Urgency: LOW)

A new revenue procedure was issued in 2017 that provides details on safe harbor conditions in which a management contract does not result in private business use of property for tax-exempt bonds.

Recommendation: In the 2017 Schedule K instructions, consider adding the Revenue Procedure 2017-13 citation and guidance for management contracts entered into after January 17, 2017.

SCHEDULE L

33. Schedule L Instructions (Importance: LOW; Urgency: LOW)

Beginning in 2014, creators and founders are considered interested persons for the purposes of Schedule L. However, the Schedule L instructions do not define who qualifies as a creator or a founder. It is not clear if individuals who were involved in establishing the organization, such as attorneys or other persons motivated to set up the organization, qualify as a creator or founder. If such individuals qualify as founders, organizations that have been in existence for many years may have difficulty obtaining this information since it is not always readily available.

Recommendation: Provide a definition for individuals who are considered creators or founders. Organizations that have been in existence for a long period of time are sometimes unable to determine who qualifies as a creator or founder. Therefore, we suggest adding, in the Schedule L instructions, a new example of reasonable efforts, which takes into account the difficulty of going back numerous years, potentially decades, to determine which individuals or entities qualify as creators or founders. For example, if the organization reviews all versions of its governing documents it has on hand, as well as publicly available information to determine who their creators and founders are, such actions should meet the reasonable efforts standard.