



American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

June 30, 2016

Ms. Tamera Ripperda
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. Ripperda:

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 2016 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 412,000 members in 144 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 (801) 523-1051, or tlewis@sisna.com; or you may contact Betsy Krisher, Chair, AICPA Exempt Organizations Taxation Technical Resource Panel, at (412) 535-5503, or bkrisher@md-cpas.com; or Ogochukwu Anokwute, Lead Technical Manager-AICPA Tax Policy & Advocacy, at (202) 434-9231, or [oanokwute@aicpa.org](mailto: oanokwute@aicpa.org).

Sincerely,

Troy K. Lewis, CPA, CGMA
Chair, AICPA Tax Executive Committee

AICPA's Comments on Form 990 and Instructions (June 2016)

GENERAL INSTRUCTIONS

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

The definition of reasonable efforts no longer aligns with the changes made in Schedule L in 2014.

Recommendation: Consider making the following change to the definition: “A reasonable amount of effort in information gathering that the organization is expected to undertake in order to provide information requested on the Form 990. See the specific instructions for Part VI, lines 1b and 2; Part VII, Section A (compensation from related organizations); and Schedule L (Form 990 or 990-EZ), ~~Parts III and IV~~, for examples of reasonable efforts.”

Delete the reference to Parts III and IV as indicated.

PARTS I, IV AND VI

2. Part I, Line 16a (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 as well as Part IX, Lines 5 and 6.

Recommendation: For consistency, update the language on the form to include both Part IX, Line 16a as well as Part IX, Lines 5 and 6.

3. Part IV, Line 10 (Importance: MEDIUM; Urgency: LOW)

The Part IV, Line 10 trigger question to Schedule D, Part V is potentially misleading. It may lead organizations to believe that it is necessary to consolidate the endowments of the organization and related organizations and report the consolidated amount on Schedule D, Part V. For example, the supporting organization to a large community foundation (the supported organization) could potentially report the community foundation's endowment in its Schedule D along with its own.

Recommendation: Update the instructions to Part IV, Line 10, to clarify that the reporting organization should not consolidate the endowments of the organization and related organizations and report the consolidated amount on Schedule D, Part V.

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

Beginning in 2014, the Schedule L instructions changed the definition of “interested persons” however, the trigger questions in the Form 990, Parts IV have not been aligned to agree to the new definition. As a result there may be filers of the Form 990 that do not realize that a Schedule L disclosure is necessary.

Recommendation: Update the Form 990 with the proper 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 thereof, founder of the organization, a grant selection committee member, or to a 35% controlled entity 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 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, 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, 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, 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.

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

This question consists of multiple questions combined into one. This 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.

PART VII

6. 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.

7. 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 VIII, X AND XII

8. Part VIII, Line 1 (Importance: HIGH; Urgency: HIGH)

There are organizations who, for unaudited or audited purposes, do not report temporarily and permanently restricted contributions on their Statement of Activities but rather as an adjustment to their net assets. These organizations believe that temporarily and permanently restricted contributions are not revenue, and do not report them as such, because they are unable to spend

the funds and will only report them as revenue when they are released from restrictions. The effect of not reporting these contributions on the Statement of Activities is misleading, causes a timing issue of reporting donor contributions to the organization, and could possibly create a large adjustment to the net assets on Part XI in order for their net assets to reconcile.

Recommendation: Clarify, either on the form in Part VIII or in the glossary to the definition of “contributions,” that contributions include unrestricted, temporarily restricted, and permanently restricted contributions received during the tax year.

The clarification could say: include all contributions received during the tax year whether unrestricted, temporarily restricted, or permanently restricted.

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

Beginning in 2014, the Schedule L instructions changed the definition of “interested persons” however, the trigger questions in the Form 990, Parts X have not been aligned to agree to the new definition. As a result there may be filers of the Form 990 that do not realize that a Schedule L disclosure is necessary.

Recommendation: Update the Form 990 with the proper 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.”

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

The instructions related to whether an A-133 audit is required leads a reader to believe that the question is looking back one year. For example: 2015 is the initial year of the organization and it received federal awards of \$800,000 which would subject it to an A-133 audit in 2016.

When preparing the initial 2015 return in 2016, should the filer answer Line 3a “Yes” or “No”? Based on how the instructions read, it appears the response is “No” because during the year (2015), the organization was not required to undergo an A-133 audit due to the fact that the tax year had not ended. In addition, the audit for the 2015 tax year would have occurred in 2016.

However, if the question is inquiring whether or not an A-133 was required for the 2015 tax year (Line 3a) and if the audit was completed (Line 3b), then the instructions should clarify this question.

Recommendation: If the question is looking back one 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 ~~during the year~~ the organization was required under the Single Audit Act of 1984, as amended in 1996, and OMB Circular A-133 to undergo an audit or audits because of its receipt of federal contract awards *during its tax year.* (Add this wording)

Line 3b: If “Yes” to line 3a, indicate whether the organization has undergone the required audit or audits. ~~Answer “Yes,” if the audit was completed or in progress during the organizations tax year.~~ (Update the instructions by deleting the items crossed out above)

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

There have been changes to the OMB rules. Revise 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

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

It is often difficult for entities to understand the correct answer to this question. The question asks if the filing organization has any supported organization that does not have an Internal Revenue Service (IRS) determination of status under Internal Revenue Code (IRC or “Code”) section 509(a)(1) or (2).¹ If answered “Yes,” the filing organization is 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 do not understand that most governmental entities do not have a determination letter because they are not required to have it.

¹ All references herein to “section” or “§” are to the Internal Revenue Code of 1986, as amended, or the Treasury regulations promulgated thereunder.

Once they understand that they have to 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).

13. 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 section 4946(a)(1)). 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 and related persons and entities with regard to the donee, are combined and treated as if made from one person.

14. 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 difficult for organizations to understand the instructions.

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

15. 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.

16. 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” explain in Schedule A, Part VI, why the loan is not reported as an excess benefit transaction on Schedule L, Part I.

17. 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 C

18. Schedule C, Part III-A, Line 1, Instructions (Importance: LOW; Urgency: LOW)

There is a typo regarding the amount of annual dues paid. In the current instructions, there is an error showing \$160.

Recommendation: Update the instructions to the correct amount of \$111. For the 2016 instructions, revise Line 1, #4 to say:

Section 501(c)(4) and section 501(c)(5) organizations that receive more than 90% (0.9) of their annual dues from:

- a. Persons,
- b. Families, or

c. Entities,
who each paid annual dues of ~~\$160~~ \$111 or less in 2015 (adjusted annually for inflation). See Rev. Proc. 2014-61, 2014-47 IRB 860, section 3.38 at http://www.irs.gov/irb/2014-47_IRB/index.html (or latest annual update).

SCHEDULE J

19. 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, when in actuality, only the section 457(b) plan 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. It could read: “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

20. 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 because the Schedule K instructions do not specify where to report the liability on the Form 990. If a parent organization, as a member of an obligated group, reports a bond issuance on Schedule K and a corresponding tax-exempt bond liability on Form 990, Part X, Line 20, are the affiliated members of the obligated group permitted to report their allocable share of the tax-exempt bond liability as an “Other Liability” on Form 990, Part X, Line 25?

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. Change 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, change 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 so total assets equal total liabilities plus total capital.

21. Schedule L Instructions (Importance: HIGH; Urgency: HIGH)

Starting in 2014, creators and founders are now 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. Do 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 this is the case, organizations that have been in existence for many years may have difficulty in 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 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.