



September 14, 2007

Lois Lerner
Director, Exempt Organizations Division
Internal Revenue Service
Form 990 Redesign, ATTN: SE:T:EO
1111 Constitution Ave., N.W.
Washington, DC 20224

Dear Ms. Lerner:

We thank the Internal Revenue Service (the “IRS,” the “Service,” or the “Agency”) for the opportunity to share our thoughts on the draft revised Form 990.

GuideStar is the leading provider of information about the nation’s exempt organizations. Americans visited our Web site nearly 8 million times last year to obtain information about nonprofit organizations. GuideStar’s users include a wide range of people inside and outside the nonprofit sector: individual donors, nonprofit leaders, grantmakers, government officials, academic researchers, journalists, and individuals and companies that provide services to nonprofits and donors.

Every year we answer thousands of questions about Form 990. Some users find it helpful in making wiser and more informed decisions, but many find it confusing and complicated. We frequently explain to national reporters how to reconcile apparent discrepancies between financial information presented on the Form 990 with audited financial statements, provide numerous training sessions for nonprofits about their disclosure obligations and the importance of the Form 990, and discuss the returns’ strengths and weaknesses with academic researchers and Congressional staff. People rely on GuideStar not only for access to 990s but also for our expertise on interpreting them. The comments below reflect this unique perspective.

IRS Goals in Modernizing the Form 990: Enhance Transparency, Promote Tax Compliance, and Minimize Burdens on Filing Organizations

We applaud the IRS’s three guiding principles in redesigning the form — to enhance transparency, promote tax compliance, and minimize burdens on filing organizations — and appreciate the fact that the IRS is addressing critical areas for reform. We are pleased that through these comments, we are able to assist the IRS in creating a new Form 990 that meets these goals. Rather than provide a line-by-line review, we wish to offer a broad analysis to guide the Service as it considers alternatives for the final version of the redesigned form. We cannot overemphasize the importance of the task that the IRS is embarking on; it is critical for federal tax administration that returns be accurate, complete, and filed in a timely manner.

The Form 990 serves several important roles. First and foremost, the form, as an information return, enables the IRS to gather information for tax compliance purposes. Indeed,

as the Service noted in its Background Paper accompanying the redesigned draft Form 990, the IRS uses the form “as the primary tax compliance tool for tax-exempt organizations.”¹ In the words of the IRS, “The purpose of information returns . . . is to provide information necessary for the Service to properly administer the revenue laws.”² Accordingly, the guiding principal should be that information requested should, in fact, assist the agency with ascertaining tax compliance. Assuring this tax compliance is also a vital way of protecting the hundreds of thousands of nonprofit organizations that strive to follow the IRS guidelines while pursuing their public service missions. Many of the nonprofit abuses that have been publicized were the result of violations of the tax code and insufficient oversight resources, not shortcomings of the Form 990.

The redesigned Form 990, however, goes beyond information required by the Internal Revenue Code or the underlying regulations. Although tax-exempt organizations should certainly be cognizant of best practices, what an organization does with regard to them is a business judgment matter for the organization — and its donors — rather than an issue for tax administration. Devoting space on the Form 990 to immaterial information diverts attention from true issues of tax compliance.

Many states also use the Form 990 to satisfy state tax reporting requirements and to monitor tax-exempt organizations. In addition, because the Form 990 is a public document, it provides important information to the public, the media, and others about the missions, programs, and finances of individual tax-exempt organizations as well as the tax-exempt sector as a whole. Because of the form’s vital role, it is essential that organizations are able to complete it accurately and that the IRS, the public, and others are able to use it effectively.

We applaud the IRS’s efforts to modernize the Form 990. As a result of both significant changes to the tax-exempt sector and piecemeal revisions to the form over the years, however, the Form 990 has become increasingly difficult for organizations to complete as well as for the public to decipher. Tax-exempt organizations, state regulators, researchers, and other sophisticated users of the return consistently remark that the 990 provides an incomplete and often inaccurate reflection of the filing organization, even when it is completed appropriately.

IRS efforts to improve the completeness and accuracy of the current return are hampered by well-known issues: imprecise questions, insufficient instructions, and inadequate funding to develop the necessary processes and procedures to access all of the information on the return. Furthermore, the IRS regrettably suffers from insufficient compliance personnel to perform follow-up on incomplete or inaccurate returns.

It is for these reasons that GuideStar recommends that the IRS concentrate its collection activities on gathering only the most important items from nonprofit organizations and performing this task at the highest quality levels. Collecting even more data than currently is

¹ Internal Revenue Service, Tax-Exempt & Government Entities Division, *Background Paper: Redesigned Draft Form 990* at 1 (2007) (emphasis added).

² G.C.M. 36506.

gathered may only result in additional data that are inaccurate and incomplete. If that occurs, the new Form 990 will not provide better service to the public or the nonprofit community.

It is also important to put the Form 990 into context. The Form 990 is not the only means or manner in which nonprofits make public disclosures about their work. There is a competitive marketplace of donor choice in which nonprofits operate. Donors exercise considerable control over the behaviors of nonprofit organizations. The power to give, or not to give, places significant control in the hands of donors to extract information they need to support the causes that they are interested in. To ignore the power of this marketplace to discipline nonprofits and to encourage appropriate transparency is to miss the fundamental changes taking place because of the growth and power of the Internet. The Form 990 is an important tax report but should not be seen to shoulder the burden of being the primary source of information about nonprofits.

There will always be a long list of information requests that some would like to add to the Form 990 in the name of transparency and protecting donors. We take a different approach, one that seeks to harness the power of donor choice, the power of the Internet, and encourage voluntary efforts for nonprofits to share information.

We should guard against saddling the Form 990 with extraneous disclosures that do not aid in efficient tax administration. Complexity adds both time and cost to completing the form and may not provide the IRS with an accurate return. Finding the appropriate balance is necessary for the Service to accomplish the redesign of the Form 990 and to achieve its three stated goals.

Extensive Discussion with the Nonprofit Sector and Data on Compliance Trends Are Necessary to Achieve the IRS's Goals

A return that requests substantial amounts of information but that is frequently inaccurate or incomplete does not serve the IRS's core mission to enforce federal tax laws consistently and fairly. We understand that the Service takes the view that there is a narrow window of time within which the Service can make changes to the Form 990. It is vitally important, however, that any revised return and related instructions be sufficiently clear, simple, and precise in order to improve significantly the accuracy and completeness of each filed return.

We understand the desire of the IRS to advance this form in a timely fashion. The extensive comments that the IRS has received so far, however, are only a small sampling of the questions, concerns, and competing demands that the Service faces as it seeks to modernize the Form 990. Because of these complexities and the sincere desire of most nonprofit organizations to support the modernization of the form, we urge the Service to find ways to introduce the new form over a period of years and for organizations of varying sizes.

The rich and complex nature of the tax-exempt sector requires extensive discussion to ensure that the goals articulated by the Service are met. The lack of clarity about what the Service intends to do regarding the filings of Forms 990-EZ raises fundamental questions about

the potential burden on filers. The Service should address this outstanding question as promptly as possible. Many commentators have raised serious questions about filing thresholds and implementation schedules for the various schedules in the proposed new form. Comments from labor unions, fraternal organizations, and chambers of commerce raise important questions about whether one form can fit all filers.

Data exist that can aid the Service in further study of compliance issues. GuideStar has worked with the Service in the past and with other federal agencies such as the Government Accountability Office to inform policy analysis and tax compliance. We urge the Service to use data to make better decisions in modernizing the Form 990.

Enhancing Transparency: Summary Page Should Help Provide a “Realistic Picture” of an Organization

Given our role in the tax-exempt sector, we routinely hear from the public that the current Form 990 is confusing and difficult to understand. The chief complaint by our users is the lack of timeliness of the disclosures made on the form. On average, the form is filed some eight months following the close of an organization’s fiscal year. Many organizations take two extensions and file their respective returns as much as ten and one-half months following the close of their fiscal years. The redesign of the Form 990 does not address this critical flaw in the current system, and we fear that the complexity of the proposed revision will add to the delay in filings and public disclosure.

We have also learned that individuals and organizations make donation decisions and render evaluations of nonprofits based on one or two lines on the form. As a result, not only must the Form 990 be easy to understand but, in the words of the Service, it must also provide a “realistic picture of the organization and its operations.”³

The proposed form, however, does not provide a realistic picture of an organization. Certain questions elicit information that, to the untrained eye, is unhelpful, misleading, or both. For example, Part I of the form, also known as the Summary Page, asks each organization to compute ratios regarding compensation, revenues, assets, and fundraising. These ratios lack the necessary context to be meaningful or useful to the public. Moreover, rather than being informative, they are misleading; these ratios give individuals a false sense that they understand an organization’s operations and can lead them to make incorrect inferences about the organization.

Similarly, although information regarding compensation is necessary for tax administration, highlighting the dollar amounts by themselves on the Summary Page suggests that the amounts have meaning outside the context in which they are earned. Further, the Summary Page only provides space for approximately three words to describe the filing organization’s most significant activities. There is a real danger that the public and the media

³ IRS, *Background Paper* at 2.

will incorrectly infer that organizations with lower compensation data or lesser operating ratios are more effective than those with higher figures.

These features of the redesigned form are examples where the IRS has attempted to increase transparency but has inadvertently done so in an ultimately unproductive manner. We respectfully suggest that the Service strive to request information in such a way as not to be misleading to the public, the media, or others who wish to learn more about individual tax-exempt organizations or the tax-exempt sector as a whole.

We recommend that the Service give more opportunity for each filing organization to describe its program service accomplishments as a key aspect of the Summary Page. We would also urge the Service to return the more detailed information on Program Service Accomplishments to Page 2 of the revised form. In our experience, donors most want to see what nonprofits do. The current draft misses this essential point, highlighting inputs and ratios (without proper context) and giving only passing reference to nonprofits' outputs and outcomes.

We urge the Service to keep its focus on providing a realistic picture of the filing organization. Toward that end we offer the following:

Summary Page — In addition to the comments on the Summary Page that we have offered above, we recommend that the Service consider requiring nonprofits to supply two years of basic financial information on the form's Summary Page. This approach will provide the basic users with trend line information, allow for a realistic picture for comparisons, and provide the user with information with which to evaluate changes in the nonprofit. It will be important for the Service to allow filers to include explanations that provide additional information and necessary context to explain unusual circumstances that occur between years. The goal should be to provide a realistic snapshot and to provide filers with an opportunity to add context where appropriate.

Main Form, Part II — Although the "Position" check box is a welcome addition to the reporting of compensation, the lack of a "Title" data field is problematic. For many nonprofit organizations, the Form 990 is a major source of comparable compensation information for positions other than CEO, CFO, etc. Not providing a "Title" field will make such comparisons impossible. Also, operating under the commonsense rule that filers will find a way to misinterpret any form, it is likely that in many cases employees with titles such as "President" or "Comptroller" will be indicated as "Other" in the position check box, rather than under "CEO or Executive Director" or "CFO or Treasurer," respectively.

Main Form, Part V — Our experience is that the allocations between program, fundraising, and administrative costs are not consistently reported and therefore are not reliable data points for comparative purposes. The totals in the functional expenses are extremely valuable data. It is our understanding that the allocations of expenses for program, administration, and fundraising were added to the Form 990 at the request of state charity officials in 1979, when the Form 990 was last revised, and that these fields are not necessary for tax compliance purposes. We suggest that the Service eliminate the reporting of allocations of

functional expenses on the new Form. In its place, the Service can require reporting based on more than one year to show trends in reported expenses. The allocation of costs to program, fundraising, and administrative areas adds cost to completing the form but does not provide accurate and reliable data. The states that require this information can best obtain it from audited financial statements that they also require. In audited financial statements, trained professionals who are independent of management perform tests to ascertain the reliability of these allocations. If these data are necessary, they should be reliable. Audited financial statements, and not an information tax return, are best suited to collecting these data.

Main Form, Part IV — The proposed breakdown of contributions, gifts, and grants is welcome. Many different types of users would find it useful if line 1f were further detailed to include grants from private foundations, donor-advised funds, and other.

Main Form, Part IX — In a perfect world, it would be fascinating to be able to compare the direct revenues generated by program services with the expenses incurred. In the real world, however, most organizations would find it very difficult to report this information in a reliable way. The likely outcomes are (1) organizations will do the best they can, but the information they provide will not be very good; (2) organizations will narrow and restrict what they report as program service accomplishments in order to connect them more easily to revenue generated; or (3) organizations will go to a great deal of trouble and expense to change their systems to report this information faithfully.

Main Form, Part X — The Signature Block raises concerns for some filers and their paid preparers. Although it is material who authorizes the filing of the Form 990 and who has been paid to prepare the return, the actual signatures are not material public disclosure. Additionally, the requirement for disclosure of the preparer's SSN or TPIN has raised concerns among paid preparers who have inadvertently listed their Social Security Numbers on the form. Although the instructions are clear, it is noteworthy that even paid preparers who are faced with too many choices will make disclosures that are not required. Separating the disclosure of who authorized and who was paid to prepare the form from the actual signatures will balance the privacy concerns of some filers with necessary tax compliance requirements.

Minimizing Burdens on Filing Organizations

We strongly support the Service's efforts to modernize the form, as a simpler Form 990 will not only minimize the burden on filing organizations but will also give the IRS and the public a more accurate picture of individual tax-exempt organizations and the sector as a whole. We believe, however, that the IRS could do more to simplify the form. For example, GuideStar's own auditors estimate that in the first year of the new form's use, we, along with our auditors, will spend 50 to 100 percent more time in compiling information and completing the redesigned form, with an attendant increase in cost. Based on these estimates, we are projecting that it may cost GuideStar as much as \$5,000 more to complete the proposed Form 990. Although costs will vary for each organization, new compliance costs will place a major financial burden on nonprofit organizations, with little quantifiable benefit and the prospect of no

better quality data. We respectfully suggest that in finalizing this form, the IRS consider whether it could be further simplified to reduce the burdens imposed on tax-exempt organizations.

The current Form 990 can be difficult for tax-exempt organizations to complete because the questions do not always relate directly to an organization's activities or its auditing requirements. According to the IRS, one of the most common complaints about the existing form is that many of the questions and instructions are unclear.⁴ If an organization does not properly complete the form, the IRS and the public will have an inaccurate or inadequate picture of the organization. One study of the tax-exempt sector found serious, widespread errors and underreporting on the current Form 990 and attributed these errors in part to confusion about how to complete the return.⁵ For organizations that engage in many common activities, such as holding fundraising events and making grants, the draft Form 990 will require substantially more information arrayed in new categories. Such a significant increase in the amount of required information is likely to exacerbate confusion unless the questions and instructions are subject to extensive vetting by those who have to complete the form. We urge the IRS to permit such a discussion to occur, rather than let itself be driven by internal scheduling concerns. The potential impact on the tax-exempt sector is too significant for hasty action.

The Service should consider other ways to minimize the burden on filers. We suggest the Service consider:

- Raising the filing threshold for 990-N filers from \$25,000 to \$50,000, as the Tax Payer Advocate and others have recommended. Indexing the filing thresholds and making periodic adjustments will balance the need to gather information from filers against the burden providing additional information will impose on small, community-based organizations.
- Some changes to the 990-N to address the needs of state charity officials. The IRS should, however, establish 990-N filing requirements that meet federal goals, as our federal system permits state regulators to require additional filings at the state level. Overall, the decision to require additional information is a matter for state legislators and is best left to individual states to determine as appropriate.
- Changes to the Form 990-EZ that are based on elements of the Core Form and Schedules A and B. The filing threshold for 990-EZs should be raised from \$100,000 to \$500,000. The Service needs to balance the need to gather relevant data against the burdens of filing timely, accurate, and complete information for organizations with total revenues from \$50,000 to \$500,000. Our federal system permits state regulators to require additional reporting by these organizations if state legislatures determine that additional information is needed from organizations of this size.

⁴ IRS, *Background Paper* at 2.

⁵ *Form 990 Reporting Errors*, Philanthropy Matters, Vol. 2, Issue 2, at 14, 14-15 (2006).

- Focusing on the 100,000 organizations with total revenues greater than \$500,000. For this group of filers, the Service should carefully stagger the reporting of many of the new schedules to provide time for changes in record keeping, which are a significant driver of the increased costs of compliance.

Conclusion

Because the Form 990 is a critical document for both tax compliance and public disclosure, the IRS should ensure that it has taken the time to evaluate thoroughly the redesigned form and the impact it will have on the tax-exempt sector. In the past, the IRS has encountered difficulties when it has rushed to release new features. For instance, the Service did not plan for the continued public disclosure of e-filed Forms 990 and, as a result, forms that were e-filed in 2004 were not publicly available until May 2007. We are concerned that if the Service pushes too quickly to release a final version of the redesigned Form 990, the agency may not serve itself, exempt organizations, or the public well.

Tax-exempt organizations will need time to prepare for new reporting obligations, including establishing new processes to track and report information that the new form requires. If the organizations do not have time to prepare adequately, they may not be able to complete the form accurately or on time. Accordingly, we recommend that the Service take all reasonable steps to minimize the new compliance costs as it implements the new Form 990.

Thank you very much for your time and consideration. If you have any questions or concerns, please do not hesitate to contact me at (757) 229-4631.

Sincerely,



Robert Ottenhoff
President and Chief Executive Officer