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September 14, 2007

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

Re: Comments of Alliance For Justice on Redesigned Form 990

Dear Sir or Madam:

Alliance For Justice (“AFJ”) submits these comments in response to the draft redesign of IRS Form 990 released for public comment in IR-2007-117 (June 14, 2007).

AFJ is a national association of environmental, civil rights, mental health, women’s, children’s, and consumer advocacy organizations. Our organizations support legislative and regulatory measures to promote political participation, judicial independence, and greater access to policy processes. We also provide training to numerous nonprofit organizations throughout the country with respect to the rules governing advocacy. While many of the organizations we assist are organized as charitable and educational organizations under section 501(c)(3) of the Internal Revenue Code (“IRC”), a significant number also work with or are affiliated with social welfare and other advocacy organizations organized under IRC § 501(c)(4) and/or IRC § 527.

AFJ supports the Service’s stated goals of enhancing transparency, promoting tax compliance, and minimizing the burden on reporting organizations. We do not believe, however, that these goals are achieved within the draft released for comment, especially with respect to the expanded reporting of lobbying and political activities set forth in the core report and Schedule C. These new reporting requirements will lead to substantial confusion within the nonprofit advocacy community and the general public and will add to the burden placed on reporting organizations. For these reasons we strongly urge the Service to reconsider many of the proposed changes concerning lobbying and political activities and, at a minimum, to delay implementation of these elements until these issues can be satisfactorily resolved.

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The Service Should Not Require Reporting of Lobbying Activities By Non-501(c)(3) Organizations and Should Not Expand Reporting By 501(c)(3) Organizations As Proposed In The Draft

Schedule C, Part II-B: Application to Non-501(c)(3) Organizations

Part II-B of Schedule C for the first time would require organizations other than IRC § 501(c)(3) organizations to report on their lobbying activities. There is no statutory authority for this significant expansion of the reporting obligations of IRC § 501(c)(4) and other IRC § 501(c) organizations, nor is there any tax-administration reason for requiring such organizations to maintain records and report on their lobbying activities. Unlike non-electing IRC § 501(c)(3) organizations, which may engage only in an insubstantial amount of lobbying, there is no limit on how much other IRC § 501(c) organizations may spend on lobbying nor is there any restriction on the kinds of lobbying activities they may undertake. There is, therefore, no reason to burden these organizations with additional record-keeping and reporting obligations.

While IRC § 501(c) organizations, other than non-electing IRC § 501(c)(3) organizations, would not be required to report the amounts of their lobbying expenditures in Part II-B, they would be required to attach a statement describing in detail the activities they conducted to influence legislation. This new requirement will force IRC § 501(c)(4) organizations and other IRC § 501(c) organizations to create and maintain expensive new record-keeping systems. In addition, it is important to note that the disclosure of lobbying activities may burden activities that are protected under the First Amendment to the United States Constitution by disclosing the organizations' tactics and strategies and adding significantly to the cost of these activities. *See, e.g., Gibson v. Florida Legislative Comm.*, 372 U.S. 539, 557 (1963); *Sweezy v. New Hampshire*, 354 U.S. 234, 245 (1957) (Frankfurter, J. concurring); *United States v. Harriss*, 347 U.S. 612 (1954). The likelihood of interfering with protected speech is enhanced in this context where the Service has not, as discussed below, made clear the kinds of activities that must be reported. Given these constitutional concerns, and the absence of any legitimate tax-related reason for the expansion of lobbying reports to non-501(c)(3) organizations, this aspect of the draft should be dropped in all respects.

Schedule C, Instructions - Definition of Terms

The definitions of “Lobbying Activities” and “Legislation” in the general instructions for Schedule C appear to be applicable only to Part II-B of Schedule C, since Parts II-A, III-A and III-B have their own definitions, which may differ from the generic definition applicable to Part II-B.¹ The use of different definitions of “lobbying activities” within the same Schedule and, at least in some cases, for the same organization is bound to create enormous confusion within the nonprofit advocacy community and the general public. Further, the generic definition in the instructions for Schedule C provides virtually no useful guidance to reporting organizations because it fails to address numerous important issues. If, contrary to our strong recommendation in the previous section, the Service continues to apply section II-B to non-501(c)(3) organizations, it should provide a detailed definition of lobbying that provides adequate guidance to reporting organizations and is consistent with the definitions applicable under other Parts of Schedule C.

Schedule C, Part II-B, Line 2a and Related Instruction

The draft instruction for Line 2a of Part II-B of Schedule C states that a non-electing 501(c)(3) organization should answer “Yes” if its lobbying activities were “substantial.” The instruction fails to state, however, what is meant by the term “substantial” or what activities should be included in the definition of “lobbying,” thus leaving organizations without any guidance as to how to respond to this item.

Insofar as Line 2 appears generally to be aimed at organizations that have paid tax under section 4912, this purpose would be better served simply by asking the questions in lines 2b, 2c and 2d, without getting into the difficult definitional questions raised by line 2a, which should be dropped.

Part V, Line 11d of the Core Report Form and Related Instruction

Part V, line 11d of the core report would require all nonprofit organizations for the first time to report separately on certain expenses relating to lobbying as part of the general statement of functional expenses² in the core report. This proposed change raises a number of difficulties.

¹ To provide but one example, whereas the statement in the instruction that “legislation” does not include actions by executive, judicial or administrative bodies, some executive branch actions pertaining to legislation are included in the definition of lobbying activities under section 4911. See Treas. Reg. § 56.4911-2(b)(1)(B)

² In addition to the objections raised in text, we note that “lobbying” would not normally be regarded as a functional expense.

First, since this part of the form applies to all reporting organizations regardless of their tax status, it requires a separate definition of lobbying activities applicable to all 501(c) and 527 organizations. However, no such definition currently exists and the attempt in the draft instructions to create such an all-encompassing definition will lead to significant confusion with respect to existing definitions under sections 501(c)(3), 4911 and 162(e), which have been in place for many years and which are applicable to portions of Schedule C. For example, the draft instruction for line 11d states that the organization should include “amounts for lobbying before federal, state, or local executive, legislative or administrative boards.” Lobbying of executive and administrative agencies, however, is generally not included in the definition of lobbying activities under section 4911, see e.g., Treas. Reg. § 56.4911-2(d)(3) (“legislative body” does not include executive, judicial, or administrative bodies”), and has limited application under section 162(e). See Treas. Reg. § 1.162-29(b)(6). Lobbying of local legislative bodies is also subject to special rules under IRC §§ 162(e)(1)(A) and 6033(e)(1)(A)(ii). See e.g. Treas. Reg. § 1.162-20(c)(5). Use of a generic definition of “lobbying” that includes activities which are not included in more familiar definitions can only lead to confusion on the part of both reporting organizations and the general public.

Second, with the exception of electing IRC § 501(c)(3) organizations, IRC § 501(c) organizations and IRC § 527 organizations are not currently required to maintain separate records of lobbying expenses. The proposed change, along with other changes in Schedule C, will create unnecessary reporting burdens for such organizations.

Third, there is no tax-related reason why nonprofit organizations, including IRC § 501(c)(3) organizations, need to report *separately* on their consulting agreements relating to lobbying. Lobbying is simply another activity by which IRC § 501(c) organizations seek to achieve their exempt purposes, and there is no justification for requiring that lobbying expenses be broken out from other program related expenses such as expenditures and contracts for public education, research, or client services.

In light of these considerations, line 11d should be dropped in its entirety, leaving consulting contracts for lobbying purposes to be included under “other” items in line 11g.³

³ Any independent contractor who receives more than \$100,000 from the organization would also be reported under Part II, Line 10a of the core form, along with a description of the services provided.

II

The Expanded Reporting of Political Activities in the Redesign Relies on Confusing and Inconsistent Definitions Which, In Some Critical Ways, Are Inconsistent With Current Interpretations of the IRC

Schedule C, Part I-A, Line 1 and Related Instruction

Line 1 of Part I-A of Schedule C requires all IRC § 501(c) and IRC § 527 organizations to provide a description of their “direct and indirect political campaign activities”. This generic requirement should be eliminated for a number of reasons.

First, the information sought serves no tax-administration purpose that is not otherwise served by Part I-C of Schedule C, which requires organizations to report on their exempt function activities within the meaning of IRC § 527(e). Part I-C provides the Service with sufficient information to make any tax-related determination with respect to reporting organizations without requiring a detailed description of the organization’s political activities that will add to advocacy organizations’ record-keeping and reporting burdens and could interfere substantially with organizations’ speech and associational activities protected under the First Amendment. *See, e.g., AFL-CIO v. Federal Election Commission*, 333 F.3d 168 (D.C.Cir. 2003).

Second, the instruction’s effort to define the types of activities that must be reported is confusing in the extreme. The term “direct and indirect political campaign activities” is not used anywhere else in the Internal Revenue Code or Regulations⁴ and, for this reason alone, is likely to lead to significant uncertainty and confusion. The draft definition of this new term in the instruction leaves open a number of important questions and creates its own confusion in light of other applicable definitions in this area. For example, the definition does not make clear whether efforts to influence a ballot measure fall within the definition of “political campaign activities,” as they do under many state laws, but not under prior pronouncements by the Service. Under regulations issued by the Service to implement IRC § 527, certain expenditures allowed under federal or state election laws are not

⁴ Line 81a of the current Form 990 uses the term “direct and indirect political expenditures”. Many of our comments regarding the draft of the redesigned Form 990 are based on the experience of nonprofit organizations in attempting to report under the current form.

currently included within the definition of “exempt function expenditures.”⁵ Treas. Reg. § 1.527-6(b)(3). These expenditures include administrative and fundraising expenditures for a separate segregated fund established by the organization, partisan communications to an organization’s members, and certain nonpartisan voter registration and related activities.⁶ See 2 U.S.C. § 441b(b)(2)(A)-(C). Similarly, the regulations defining exempt function expenditures with respect to the tax under IRC § 527(f) currently do not include indirect expenses. See Treas. Reg. § 1.527-6(b)(2). Apart from the confusion caused by the use of a new and unfamiliar definition, if the Service’s intention is to require reporting in Part I-A of political activities that do not fall within the definition of exempt function expenditures for purposes of IRC § 527, then organizations will have to maintain two sets of records - one limited to exempt function expenditures and a second including additional (undefined) categories of activities.

Third, the instruction for this new requirement will, at a minimum, cause enormous confusion regarding an important policy and legal question that has remained unresolved by the Service for many years. Specifically, the instruction states that, for organizations other than section 501(c)(3) organizations, “political campaign activities also include activities that support or oppose candidates for *appointive* federal, state, or local public office or office in a political party.” In Announcement 88-114, 1988-37 I.R.B. 26, the Service sought public comment on the question of whether efforts to influence the selection of individuals to appointive office should constitute exempt function expenditures within the meaning of IRC § 527(e). *See also*, G.C.M. 39694 (January 22, 1988). Alliance for Justice and other organizations filed extensive comments on this question, which has never been resolved by the Service. *See, e.g.*, Judith E. Kindell and John Francis Reilly, “Election Year Issues,” in 2002 Exempt Organizations Continuing

⁵ The term “political campaign activities” will be particularly confusing for IRC § 527 organizations that are required to file Form 990, since those organizations are generally governed by the term “exempt function expenditures,” see IRC §§ 527(i) and (j), and will be unclear as to the meaning of this different terminology. The draft would also require such organizations to maintain two sets of books, one for purposes of filing Form 8872 and another for Form 990. If the Service expects organizations to report under Part I-A of Schedule C activities that are not within the definition of exempt function expenditures under IRC § 527, it should exempt IRC § 527 organizations from this section entirely.

⁶ While the draft Instruction states that the term “political campaign activities” does not include “any activity intended to encourage participation in the electoral process, such as voter registration or voter education, provided that the activity does not directly or indirectly support or oppose any candidate,” the scope of this language is unclear and would not exclude many activities which do not fall within the scope of exempt function activities for purposes of IRC § 527.

Professional Education Technical Instruction Program, 397 n. 27 (“No final determination of this issue has been made.”) If the statement in the draft instruction means that efforts to influence appointive offices will now be treated as exempt function expenditures for purposes of IRC § 527(e) and (f), this is a particularly backhanded way to resolve this long-standing legal and policy question. Such a conclusion would have far-ranging impact on the activities of numerous IRC § 501(c) organizations, and would leave the advocacy community with no guidance concerning a host of subsidiary issues that were highlighted in AFJ’s 1988 comments.⁷ On the other hand, if the Service still has not resolved the question of whether nominations for appointive offices are covered under IRC § 527, but nevertheless intends to include efforts to influence appointive offices within the more general term “political campaign activities,” even this more limited interpretation will lead to enormous confusion within the regulated community. Finally, the instruction provides no explanation for its suggestion that a different rule applies to IRC § 501(c)(3) organizations, adding further to the confusion that will be created and leaving 501(c)(3) organizations without any guidance as to whether they may lobby in support of or opposition to nominees for judicial and executive branch positions.

Schedule C. Part I-A, Line 3 and Related Instruction

Line 3 of Part I-A requires all IRC § 501(c) and IRC § 527 organizations to provide the total number of hours of “volunteer labor” used in political campaign activities. This new requirement should also be eliminated, for the same reasons as Line 1 and for other reasons as well.

First, the burden of tracking the number of hours spent by volunteers on a reporting organization’s political activities, however they may be defined, will be enormous in terms of both cost and effort. Many IRC § 501(c) organizations have hundreds, if not thousands, of volunteers who participate in their advocacy activities. The task of collecting this information from so many people is almost impossible to fathom. The proposed requirement goes well beyond existing accounting requirements for recognition of contributed services, which require the reporting of volunteer services only in very limited circumstances. See FASB, Statement of Financial Accounting Standards No. 116, ¶ 9 (June 1993). There is no similar

⁷ For example, as AFJ pointed out in its 1988 comments, if expenditures for lobbying Congress or other legislative bodies on appointments must also be reported (and taxed) as exempt function expenditures, the question arises whether the exceptions to lobbying expenditures under IRC § 4911 also apply in this context and, if not, then organizations will be required to maintain two sets of records, one for section 4911 purposes and one for section 527(f) purposes.

requirement in the redesigned Form 990 with respect to contributed services for other program activities, and it should not be included here.

Second, requiring volunteers to submit reports on their advocacy activities will very likely deter many from participating at all. Nonprofit advocacy organizations spend enormous amounts in attracting volunteers to participate in their programs, efforts that will be severely hampered if volunteers will be required to file detailed reports on their activities.

Third, the instruction fails to address numerous important issues such as whether volunteers hours for indirect services should be included, when a volunteer is deemed to be acting on behalf of the organization, and the impact of volunteer services on an organization's exemptions and the tax under IRC § 527(f).

Schedule C, Part I-C, General Instruction

The general instruction for Part I-C refers to “political campaign activities,” even though the specific line items in this Part pertain to “exempt function expenditures,” an entirely different term. Furthermore, as explained above, under current law activities in support of or opposition to candidates for appointive federal, state or local public office or office in a political party are not included as exempt function expenditures, as suggested in the instruction; this instruction is not an appropriate place to resolve this long-standing and complex policy and legal issue.

Schedule C, Part I-C, Line 1 and Related Instruction

The draft instruction for Line 1 refers to “political campaign activities,” even though the form refers to “exempt function activities”. This should be corrected in the final version.

Also, Line 1 asks for information relating to the organization's direct expenditures for exempt function activities. We assume that expenditures by a separate segregated fund established by the organization under IRC § 527(f)(3) are not intended to be included in this item and we recommend that the instruction be clarified to make this clear, as is the case in the instructions for Line 81a of the current Form 990.

Schedule C, Part I-C, Line 2 and Related Instruction

The draft instruction for Line 2 also incorrectly uses the term “political campaign activities.”

Line 2 appears to overlap in part with Line 5. Since Line 5 covers transfers to IRC § 527 organizations, it would avoid confusion and simplify the form if Line 2 included only transfers made to other IRC § 501(c) organizations. Furthermore, the instruction for this line should state that the organization should report only those transfers that are earmarked to support exempt function activities by the transferee organization. The reporting organization should not be expected to report unrestricted transfers to other 501(c) organizations, since the reporting organization may have no information concerning and no control over how its funds were spent by the transferee organization.

Schedule C, Part I-C, Line 3 and Related Instruction

As discussed above, the current regulations defining “exempt function expenditures” for purposes of IRC § 527(f) do not include indirect expenditures. Until these terms are defined, the Service should not require reporting of indirect expenditures on this line.⁸

The reference to Form 1120-POL is also likely to lead to significant confusion. First, many IRC § 501(c) organizations are not required to file Form 1120-POL because they do not have political organization taxable income. Second, the due date for Form 1120-POL is two months before the due date for Form 990. We recommend that this reference be deleted and that information relating to Form 1120-POL be obtained under Line 4. More importantly, the Service should explore changing the due date for filing Form 1120-POL at least for IRC § 501(c) organizations required to file Form 990. In our experience, many nonprofit organizations assume that Form 1120-POL is not due until the date for filing Form 990, and organizations that are aware of the correct filing date often are unable to obtain the necessary information for filing until they have begun the process of preparing Form 990. It would simplify the burden on reporting organizations if the two returns were due at the same time.

Schedule C, Part I-C, Line 5 and Related Instruction

The instruction for Line 5 should clarify that it is not seeking information about contributions made directly by individual donors, including an organization’s members, to a separate segregated fund or political action committee. Many IRC § 501(c) organizations solicit voluntary contributions

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The same objection applies to Part VIII, Line 1 of the core Form 990.

to their connected separate segregated funds in accordance with federal or state law. These contributions are deposited directly into the accounts of the separate funds. The instruction for Line 81a of the current Form 990 is clear on this point and it should be included in the instruction for the redesigned form as well.

The instruction should also make clear that the amount reported in column (e) is not an exempt function expenditure by the reporting organization and should not be included in response to Lines 1 or 3.

Schedule F, Part I, Line 3

This item asks whether a filing organization made any grants directly or indirectly to finance political or lobbying activity outside of the U.S. Since grants for lobbying activity are permissible for all types of IRC § 501(c) organizations, while grants for political activity may be improper in some instances, we recommend that the two types of activity not be included in a single question; otherwise, it will be unclear whether a filing organization has made a grant for improper purposes.

Furthermore, it is unclear what is meant by a grant that is made “indirectly” to finance political or lobbying activities.

III

The Service’s Attempt to Influence Internal Governance and Management Policies and Procedures of Nonprofit Organizations Is Without Legal Authority, Will Cause Significant Disruption Within the Nonprofit Community, and Will Mislead the Public and Should Therefore Be Eliminated From the Redesign

_____ Part III of the core Form 990 asks a series of questions pertaining to the governance, management and financial policies and procedures of the reporting organization.⁹ With limited exceptions, these questions address policies and procedures which are not required by federal or state law or regulation. Moreover, while some of these policies and procedures may be useful for some organizations, they are not universally beneficial and may, in some instances, be counterproductive. As many organization managers have recognized, the one-size-fits-all assumptions which underlie Part III are not appropriate, especially for small and medium size organizations.

⁹ Part VII, Lines 11 and 12 of the core form include similar questions and these comments are equally applicable to those new provisions.

While the Service does not explicitly mandate that these policies and procedures be adopted as a condition of exemption, our experience suggests that, independent auditors and other financial advisors frequently require organizations to adopt any policy or procedure highlighted in Form 990 notwithstanding the Service's position that they are optional. IRS examining agents also quickly turn "suggestions" into requirements and insist on reviewing compliance with every policy or procedure mentioned in Form 990.¹⁰ And, finally, the media and the public frequently misconstrue the Service's position, suggesting that organizations are operating improperly when they have not adopted each and every policy or procedure suggested by the Service.

These problems should be sufficient to deter the Service from inserting itself into the area of organizational governance and management. It is also significant that the Service has little or no experience or expertise in determining appropriate mechanisms for nonprofit governance and that Congress itself has refrained from entering into this arena. Finally, the draft instructions contain erroneous, misleading, or confusing statements regarding certain of the specific policies and procedures proposed to be included in this Part:

Line 3. All directors and trustees of nonprofit organizations are subject to fiduciary duties with respect to how they conduct themselves with respect to the organization. While some organizations have found it helpful to adopt separate conflict-of-interest policies, many have concluded that formal written policies and procedures are

¹⁰ The Service's explanation for these new reporting requirements in the Background Paper issued with the Redesigned Draft Form 990 makes clear that the agency is definitely not neutral with respect to the "good government and accountability practices" addressed in Part III. As justification for these reporting requirements, the Service argues that the practices addressed "provide safeguards that the organization's assets will be used consistently with its exempt purposes, a critical tax compliance consideration," and that "a well managed organization is likely to be a tax compliant organization." In our view, and based on our experience working with numerous nonprofit advocacy organizations throughout the country, the practices highlighted in Part III often elevate form over substance and will have little impact on tax compliance. Furthermore, the Service cannot have it both ways - if the policies and procedures highlighted in the redesigned Form 990 are necessary from a tax compliance standpoint, as the Service argues, then examining agents, the media and the public are certainly going to use these standards to measure compliance with organizations' exempt purposes, in effect establishing *de facto* mandates where none actually exist. Finally, as we describe in detail below, the Service's view of what constitutes "good government and accountability practices" is skewed to large, well-funded organizations, conflicts with actual practice by many well-managed, tax-compliant organizations, and may well be counterproductive in many circumstances.

unnecessary, either because the issues normally covered in such policies have not arisen for the organization or because other procedures are in place and have proven to be adequate. Furthermore, there is enormous variety within the nonprofit sector regarding the form of such policies and procedures. The Service should not suggest that there is a single acceptable approach to these issues.

Lines 4 & 5. It is not true that Sarbanes-Oxley “requires” certain tax-exempt organizations to adopt written whistle-blower protection and document retention and destruction policies. That statute prohibits retaliation against whistle-blowers and the destruction of records under certain circumstances. While some nonprofit organizations seek to comply with these requirements by adopting written policies, others have concluded that they are unnecessary, particularly given the substantial effort and cost of adopting full-blown written policies in both areas.

Line 6. While most states require that written minutes be prepared for meetings of governing boards, many states do not require minutes of committee meetings. There is also no definition of the term “related committees.” Is this limited to committees made up entirely of directors or trustees to which the board has delegated specific authority to act on its behalf, or is it intended to include other committees? We know of no legal basis for requiring that minutes be prepared on the schedule set forth ; while some organizations may comply with this requirement, many others do not for perfectly legitimate reasons and there is no basis for concluding that an organization which follows another procedure is not well-managed.

Line 7. There is no legal requirement that organizations adopt written policies and procedures governing the activities of chapters, affiliates and branches, or even that the “operations [of such entities] are consistent with the organization’s.” In reality, the relationships between and among parent organizations and subordinate entities often evolve over time and it may well be counterproductive to the development of an organization to attempt to institute written policies and procedures in this area before the organization is ready to do so.

Line 8. Many organizations, especially smaller ones, are unable to afford the cost of an independent accountant. State laws generally do not require that nonprofit financial statements be reviewed or audited, or they provide exceptions for smaller organizations. Again, the Service’s simplistic, one-size-fits-all approach is misleading and could

be counterproductive by suggesting to organizations that they need to incur these costs.

Line 9. Except in very limited situations, there is no legal requirement that an organization have an audit committee. Some organizations have decided to have their full governing boards review audit reports in lieu of establishing a separate committee to perform this function, while others may delegate this task to a financial or budget committee. The Service has neither the authority nor the expertise to require that all organizations establish separate audit committees.

Line 10. The Service has no basis for suggesting that a reporting organization's governing body should (or must) review Form 990 before it is filed. For many organizations this would require a special meeting, at significant additional expense. Further, the size or make-up of the governing body may make it difficult for it to review the return effectively and efficiently.

Line 11. While the Internal Revenue Code requires nonprofit organizations to make available certain documents to the public,¹¹ it does not require that they disclose organizing or governing documents such as bylaws, their conflict of interest policy, if any, financial statements, or audit reports (including any related management letters). State laws generally do not require disclosure of these documents, and there are legitimate reasons why organizations may elect not to disclose these documents. Moreover, by including documents that must be disclosed to the public by law, such as Form 990 and Form 990-T, in the same question as documents for which there is no such legal obligation, the Service will create confusion with respect to the manner in which organizations must make their Form 990 and 990-T available. Thus, the draft of Line 11 suggests that organizations may make their Form 990 available by "other" means, although the instructions do not indicate what other means would be acceptable compliance with the statutory requirement and the Service's previous guidance on this question does not appear to include such an option.

¹¹ Although Form 990 must be disclosed to the public, the draft of the redesigned Form 990 eliminates current Instruction M, which explains how such disclosure should be made and makes clear that donor information in Schedule B is *not* subject to mandatory disclosure. We recommend that this provision be included in the final version of the redesigned form. If the Service decides not to include current Instruction M, then it should at least add a provision to the Instructions for Part III making clear that Schedule B is not subject to public disclosure.

IV

The Redesign of Form 990 Should Address the Special Problems of Reporting By IRC § 527 Organizations, Particularly Separate Segregated Funds

Form 990 is directed primarily to IRC § 501(c) organizations. When Congress mandated in 2000 that some IRC § 527 organizations begin to file Form 990, the Service elected to use the existing form rather than develop another form in the 990 series for political organizations, which would have been preferable. This decision has led to numerous questions concerning the application of Form 990 to political organizations for which the Service has provided no guidance. The redesign of Form 990 is an appropriate opportunity to address these questions for the first time.¹² In addition, the Service should exempt IRC § 527 organizations from some parts of Form 990 which are of little or no relevance or are duplicative of information provided on Form 1120-POL or Forms 8871/8872.¹³

Section A of Part II of the Core Form and Related Instructions

Many IRC § 527 organizations are established as separate segregated funds (“SSF”) of a related IRC § 501(c) organization. Where the organizing/governing documents of the SSF establish a governing body for the SSF, it is relatively simple to identify the “directors” of the organization, notwithstanding that it is not incorporated. In many instances, however, there may be no organizing or governing documents for the SSF,¹⁴ and decisions about the operations of the SSF may be made by a committee of the related organization, staff of the related organization, or some other informal body. Is the IRC § 527 organization expected to list these individuals as its “directors” or should it list the governing body of the related organization which, as a legal matter, has ultimate authority over the SSF’s programs and operations?

¹² In requiring IRC § 527 organizations to file annual returns, Congress expressly authorized “such modifications as the Secretary considers appropriate to require only information which is necessary for the purposes of carrying out section 527.” IRC § 6033(g)(2)(A).

¹³ IRC § 527 organizations are the only groups required to file Form 990 that are also required to file additional regular reports with the Service. If the Service is serious about wanting to reduce the burden on reporting organizations, eliminating duplicate reporting by political organizations would be a good place to start.

¹⁴ The Service has stated that “Section 527 does not require an organization to have formal organizational documents, such as articles of incorporation.... The regulation specifically states that the organization need not be formally chartered or established as a corporation, trust, or association.....” Rev. Rul. 2003-49 (Q&A 13).

Similarly, if the SSF has registered as a political action committee under federal or state law, it would be required to designate a treasurer and, in some states, a chair. Are these the “officers” of the SSF for purposes of reporting under this section, or are the officers of the related organization to be reported as its officers? Finally, in many organizations, the political director and/or other employees of the related organization serve as the staff for the SSF. Are these individuals to be listed as key employees of the SSF, even though they are paid entirely by the related organization and they may not otherwise fall within the definition of that term.

Section B of Part II of the Core Form and Related Instructions

As with section A of this Part, it is very unclear how IRC § 527 organizations should report under this section. Line 3, for example, may have no application to SSFs, which often do not have a CEO, Executive Director, or CFO in the typical sense of these terms, and the SSFs frequently play no part in the hiring of staff, who are employees of the related organization. Should the SSF answer these questions with respect to the CEO, CFO, etc. of the connected organization or simply put N/A? Moreover, as noted above, many SSFs have no governing body in the usual sense. Lines 5a-e are generally concerned with issues under IRC § 4958 which does not apply to IRC § 527 organizations. Line 10a should be limited to compensation paid directly by the SSF, and should not include compensation paid, and presumably reported, by the related IRC § 501(c) organization.

Part III of the Core Form

IRC § 527 organizations should be exempted from this Part in its entirety. Since SSFs do not have their own governing bodies, it is unclear how lines 1a and 1b should be answered. Similarly, lines 2 through 9 ask about policies and procedures adopted by or applicable to an organization’s governing body. If an SSF responds to these questions by providing information relevant to its connected organization, the responses will be misleading and redundant.

Parts IV and V of the Core Form and Related Instructions

IRC § 527 organizations separately report their revenue and expenditures on Form 8872 according to the requirements set forth in IRC § 527(j). IRC § 527 organizations further report financial information on Form 1120-POL. Under these circumstances, the Service should exempt IRC § 527 organizations from reporting under Parts IV and V of the core form.

As previously noted, the operating expenses for IRC § 527 organizations established as SSFs of related IRC § 501(c) organizations are frequently paid directly by the related organizations. There is no place in Part IV of Form 990 for an SSF to report these expenditures as in-kind contributions, nor is it clear how they are to be reported in Part V, if at all, since they are not paid directly by the SSF.

Schedule B

Since IRC § 527 organizations must report their contributors on Form 8872, they should be exempt from reporting under Schedule B.

Schedule I

Since IRC § 527 organizations already report their contributions to individuals on Form 8872, they should be exempt from reporting these amounts on Schedule I.

Conclusion

The Service's efforts to expand reporting of lobbying and political activities in the draft redesign of Form 990 has not been carefully considered and will result in confusion within the nonprofit community and to the general public. The Service's effort to suggest governing and management "best practices" also raises numerous problems as set forth in these comments. Finally, the Service should exempt IRC § 527 organizations from many of the reporting requirements in the proposed redesign. We urge the Service to reconsider these areas before issuing a final version of the redesigned Form 990.

Sincerely,

A handwritten signature in black ink, appearing to read "Nan Aaron", written in a cursive style.

Nan Aaron