



September 14, 2007

Form 990 Redesign
ATTN: SE:T:EO
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Washington, DC 20224

On behalf of the National Association of College and University Business Officers (NACUBO), and the associations listed below, we submit the following comments on the draft redesign of the Form 990, Return of Organization Exempt from Income Tax. NACUBO is a nonprofit professional organization representing chief financial and administrative officers at more than 2,000 colleges and universities. We are grateful for the opportunity to provide comments on the draft 990, and commend the IRS for their outreach to the regulated community for discussion of the draft and recommendations in advance of the comment deadline.

General Comments on the 990 Redesign

Escalation of Administrative Burden. The IRS has stated that the redesign of the Form 990 is based on three guiding principles: enhancing transparency, promoting tax compliance, and minimizing burden on the filing organization. More than 1,100 of NACUBO's member institutions are independent colleges and universities required to file the annual Form 990. We estimate that many, if not most, of these institutions will need to complete 13 of the 15 new schedules included in the draft. Based on the enormous additional reporting burdens created by the redesign, many large and mid-sized institutions believe that they will need to add one full-time administrative position simply to coordinate data collection and track IRS reporting preparation throughout the year.

Public Disclosure of Proprietary Information. The Service needs to balance its efforts to enhance transparency with prudent consideration of preserving proprietary information of exempt organizations. The redesign of the Form 990 includes a significant increase in the scope of information required to be reported—information not considered when the existing public disclosure regulations were enacted.

Recommendation: The IRS should consider whether summary information can be reported in lieu of specific identifying information when information disclosed for public inspection could adversely affect the filing organization. Protecting the confidentiality of donors, individual investments, manager relationships, and other information does not preclude an organization from publicly disclosing general information about these activities. An alternative

recommendation would be to redact specific schedules from public disclosure, similar to the current provisions regarding Schedule B.

Deadline for Redesign. We understand that the Service is compelled to rush redesign of the form due to the current availability of funds and technical staff to program the new form. It is unfortunate that such pressing administrative needs are driving a substantive project that so dramatically impacts the exempt community. It appears that the time pressure of finalizing the form by the end of the year will undermine the process of determining the best ways to improve the Form 990.

NACUBO has actively engaged our members in reviewing the redesign throughout the ninety day comment period, a relatively short period considering the scope and scale of the proposed changes. We have shared our community's perspectives with the Service at meetings in July and August. We are grateful for the opportunities we had to discuss the redesign with the IRS. However, we are gravely concerned that attempts by the Service to force a meaningful overhaul of the Form 990, the first complete overhaul since 1979, into this compressed timeframe will not yield the best results for a useful annual return going forward many years into the future. Given the vast array of concerns and the myriad comments and suggestions that the IRS is likely to receive, the Service is leaving itself little more than a few weeks during which to analyze the comments and chart the best course for the annual information return that the exempt community will be saddled with for the foreseeable future.

Recommendation: If the IRS is unwilling to depart from the announced schedule for finalization of the redesigned form, we strongly recommend transitional relief for the effective date to allow institutions and organizations sufficient time to make the necessary changes to data collection, systems alterations, and adjust staffing in order to complete the new return. At a minimum, we ask that the new Form 990 not be effective prior to the 2009 tax year (i.e., returns for tax years beginning in 2009).

Space limitations. Space limitations permeate the entire draft of the core form and supporting schedules, particularly given the amount of detailed information that the IRS is requesting. Since this public document is an information return, organizations should be able to provide additional information or attach statements to explain or supplement answers to yes or no questions that could be misunderstood or not easily comparable with other tax-exempt organizations. The IRS goals for increased transparency and disclosure should allow for footnotes or additional statements from an organization describing its policies, procedures and methods for preparation of the 990.

Recommendation: If the Service facilitated the attachment of a wide range of supporting documents, reporting organizations could provide the explanation and details that are needed to give a more complete picture of the institution to the public. The space for attachments in the current system is unacceptable because it does not permit the inclusion of any information via formatted text, tables, .pdf attachments, or any supplemental information.

Dollar Thresholds. Several questions throughout the return have a small or no dollar threshold resulting in a large volume of activity to be reported by large organizations. This reporting

requirement not only blurs the big picture for the reader of the Form 990, it does not allow a large organization to focus on those transactions that are material. Further, providing such a large volume of data in order to comply with the IRS requirements will increase that school's management and general expenses, which is contrary to institutions' constant efforts to lower such costs.

Recommendation: For questions that would be better served utilizing a dollar threshold, we suggest that the IRS adopt a three-tiered approach. The three tiers would be based on whether an organization is small, medium, or large, with the size determined by current-year net assets. For questions employing a threshold, the IRS would give a separate dollar threshold for a small, medium, or large size organization with such thresholds varying in scope depending on the question. The organization would respond according to the question's dollar threshold for its size. The size designation would remain the same throughout the return.

For example, this approach would work well for Schedule I, Part II and Part III which requires the organization to list grants greater than \$5,000. In the current draft form, a large university would need to copy the form several times in order to fully report the information required. However, small and medium sized organizations may not report any information on this form since their grants may fall below the stated dollar level. Under the suggestion above, the instructions would allow dollar thresholds of \$1,000, \$5,000 and \$10,000 for small, medium and large organizations, respectively. With a three-tiered approach, the information reported would be relevant to the size of the organization. This would enhance reporting, add clarity for the reader, and retain the ability for the IRS to utilize a one-size-fits-all form.

Core Form 990, Return of Organization Exempt from Income Tax. We address the parts of the form in the order that they appear in the discussion draft. Items of high priority are indicated with an asterisk (*).

Core Form, Page 1, Part I, Line 8b. We understand the focus on officer compensation, and the prevention of abuse and private inurement. However, the current ratio of officer, director, trustee, and other key employee compensation to program service expense is not a useful metric. We are concerned that this ratio may be misleading to the readers of the Form 990. Part V of the form requires organizations to allocate compensation of officers, directors, and key employees into three categories of functional expense: program service, management and general, and fundraising. Many organizations include a high percentage of their officer compensation in the management and general category.

Recommendation: If a percentage must be employed, divide Line 8a by Line 20, Total Expenses, to yield the ratio of officer, director, and other key employee expenses to total organization expenditures.

***Core Form, Part II, Section A, Compensation.** U.S. Treasury Regulation Section 1.6033-2(a)(2)(ii) permits an organization to report compensation on Form 990 for the annual accounting period or the calendar year ending within the annual accounting period.

Recommendation: The option of reporting compensation for the fiscal year of the organization or the calendar year should continue provided the organization clearly discloses the reporting period and reports on a consistent basis.

***Core Form, Part II, Section A, 3rd and 4th bullets.** In the third bullet point, the IRS requires organizations to “List all of the organization’s former officers, key employees or highest compensated employees who received more than \$100,000 of reportable compensation from the organization and any related organizations.” In the university context, it is quite common for an officer or key employee with an academic background to continue to be employed as a professor or lecturer upon termination of his or her position as an officer or key employee. Under the current form, organizations would be required to continue to report compensation of former officers and key employees indefinitely even though these individuals are no longer being compensated for duties as officers or key employees.

Recommendation: We suggest that the reporting in Part II, Schedule A be limited to compensation received *in an employee’s capacity* as a former officer, key employee or highest compensated employee, similar to the language in the fourth bullet point regarding former directors and trustees.

Core Form, Part II, Section B, Line 3. “For the CEO, Executive Director, Treasurer and CFO listed in Section A, did the process for determining compensation include a review and approval by independent members of the governing body, comparability data, and contemporaneous substantiation of the deliberation and decision?”

Does this question refer to the time of initially hiring the CEO, Executive Director, Treasurer and CFO or each year if such an individual receives an increase in salary? Also, does this question relate to other officers listed in Section A besides the ones noted in the question?

Recommendation: Clarify the instructions to specify which officers are to be included and the timeframe for the information requested.

Core Form, Part II, Section B, Line 5. “During the tax year, did any person who is or was an officer, director, trustee, or key employee within the past five years (a) & (b) have a business or family relationship with any person listed on Section A, (c) have a business relationship with the organization directly or indirectly through ownership of more than 35% in another entity, (d) have a business relationship with the organization through a family member, or (e) serve as an officer, director, trustee, or key employee, partner or member of an entity doing business with the organization?”

As presently written, this question would require an organization to send a conflict of interest questionnaire to all former trustees regardless of whether they received compensation. Continuing to send such individuals a questionnaire past their service time could create a chilling effect on those willing to serve on the board, while adding to the burden placed on the organization to acquire this information.

Recommendation: The 2006 Form 990 requires former officers and trustees to be listed on Part V-B if they received compensation. Accordingly, the 2006 conflict of interest questions, such as numbers 75 (b) and (c), refer only to those former officers and trustees listed on that schedule. We suggest that the redesigned Form 990 limit Line 5 regarding former trustees to only those listed on the form as receiving compensation as a former trustee within the past five years, versus all former trustees within the past five years.

Core Form, Part III, Line 2. “Did the organization make any significant changes to its organizing or governing documents?”

The instructions for this line state the organization must report only “significant changes” to its documents. The instructions further state that the organization must report “any change” to the number, composition or duties of the governing body and of the officers; changes to the policies regarding the conflict of interest, whistleblower and document retention and destruction; and changes to the composition and procedures of the audit committee. These two sentences of the instructions somewhat contradict each other as to what the organization needs to report. Is the list of documents provided by the IRS and noted in the second sentence, intended to serve as examples and the organization is left to determine what is significant; or is *any* such change to the list of documents to be reported?

Recommendation: Clarify the instructions to read that the organization is required to report only “significant changes” per the list provided by the IRS and noted above.

Core Form, Part III, Lines 3a, 4 and 5. If the organization does not yet have one or more of these policies because they are in a governance approval process or another reason, the organization should be given the opportunity to note that the policy is imminent.

Recommended for each: If “no”, does the organization plan to have the policy within the next fiscal year?

Core Form, Part III, Line 3b. “If yes, how many transactions did the organization review under this policy and related procedures during the year?”

1) Does this question relate only to conflicts of interest reported by the individuals identified in Part II, Section A, or does this refer to all employees? 2) For organizations that require every employee to complete a conflict of interest form, does the question relate to the initial review of responses to determine if a transaction is a conflict of interest under the policy, or only those elevated for review by a committee or the governing body? 3) Does this question cover conflicts of interest in relationships as well as transactions? Without clarity to line 3b in answering the aforementioned questions, a large organization that requires all 20,000 employees to respond to a conflict of interest form may have to report a large number of transactions that were reviewed. Such a number may be misleading to the public and reflect negatively on the organization and its employees, as the response does not allow the organization to further report whether the review of the transactions resulted in it being dismissed, rectified, or immaterial.

This question does not consider that a conflict of interest policy may not focus on single transactions, but rather on the total amount of transactions or on business relationships. Further, a conflict of interest policy may require that a trustee or officer recuse himself from voting on a particular matter. In such cases, the transactions would not be reviewed.

Recommendation: The question needs to be rephrased so that it generates a meaningful response understood by its readers, so as to minimize potential misinterpretation.

Core Form, Part III, Line 10. “Did the organization’s governing body review this Form 990 before it was filed?”

The question implies the entire board should review the Form 990 before it was filed. Practically, either the Audit Committee or another similar committee should receive and discuss the form before it is submitted. It is still the responsibility of management to prepare and review the form.

Recommendation: Did a committee of the organization’s governing board discuss this Form 990 before it was filed?

Core Form, Part III, Line 11. “How do you make the following available to the public? Financial Statements.”

Recommendation: Clarify to read: Annual Audited Financial Statements

Core Form, Part IV, Line 1e and 2b. The instructions defining the difference between these two lines should be closer to the generally accepted accounting principles definition for distinguishing whether a grant is a contribution (1e) or an exchange transaction (2b). Government grants are not currently separated according to the definitions shown in the current instructions, although whether or not the primary purpose of the grant provides a service to the general public or not is part of (but not all of) the analysis required when accounting for a grant. Maintaining the current definition could necessitate a new recordkeeping system for many non-profit organizations.

Recommendation (instruction for Line 1e): Enter the total amount of contributions in the form of grants or similar payments from local, state or federal government sources, as well as foreign governments. A grant or other payment from a governmental unit is reported here if it is an unconditional transfer of cash or other assets to the organization in a voluntary nonreciprocal transfer from the governmental unit. (Language excerpted from AICPA Accounting Guide for Not-for-Profit Organizations – Chapter 5: Contributions Received and Agency Transactions – Introduction).

Recommendation (instruction for Line 2b): Enter revenues received in the form of fees or contract payments paid by governmental units for a reciprocal transfer in which each party receives and sacrifices something of approximately equal value. (Language excerpted from AICPA Accounting Guide for Not-for-Profit Organizations – Chapter 5: Contributions Received and Agency Transactions – Exchange Transactions section)

Core Form, Part IV, Lines 2a through 2f. Lines a-c are pre-filled, but do not relate to all exempt organizations.

Recommendation: Lines a - c should be left blank, similar to lines d - f. Or, alternatively, line 2c should be revised to state “Revenue from Program-Related Investments” as opposed to “Revenue from Related Investments.” Also, Tuition and Fees and Revenue from Auxiliary Enterprises should be added since those are the major program revenue activities for all colleges, universities and other educational institutions.

Core Form, Part IV, Lines 10a through 10d, Gain from Investments. Form 990, Part IV, Lines 10a-d require an organization to report sales of securities in column (i) and sales of all other types of investments (e.g., real estate, royalty interests, or partnership interests) and all other non-inventory assets in column (ii). In each column, the organization must enter the gross sales price on line 10a and the cost or other basis (less depreciation) and selling expenses on line 10b. Lines 10c and 10d report realized gain and net realized gain, respectively.

The disclosure of amounts on lines 10a and 10b does not provide meaningful financial information to the IRS or to the public. Further, this information is difficult to extract from an organization’s accounting system and may be misleading to the public. Finally, this breakout is not required for financial statement purposes or for income tax reporting purposes; the calculation is required solely for purposes of Form 990 reporting.

With respect to the presentation of an organization’s financial statements or the financial results of the endowment performance, an organization’s focus is on measuring the value and growth of the endowment at the end of each fiscal year. Separating gain into its realized and unrealized components and allocating cost basis between those two components is not a natural function of an exempt organization’s accounting system. A tax-exempt organization is generally not subject to income tax on its realized gains (except in certain narrowly defined instances which are accounted for separately). In any year, realized gain reflects the sum of gains on numerous transactions, some involving assets in managed accounts in custody of the university and others involving assets held by investment partnerships and other structures in which the university holds an equity interest, often as one of many investors. Each external fund holds a portfolio consisting of numerous portfolio assets, and the way in which the cost basis of each portfolio is allocated and recovered will vary from fund to fund. Estimating the cost basis of realized gains requires a set of assumptions which we believe to be inappropriate and not called for in this context.

Recommendation: We recommend that the IRS eliminate the requirement to breakout gains into gross sales and cost basis and require disclosure of net gain only. We believe that by eliminating this requirement, the IRS will demonstrate adherence to two of its guiding 990 redesign principles, namely presenting information in an improved manner and minimizing the burden on the filing organization by eliminating extraneous reporting requirements.

Core Form, Part V, Line 3. The instructions should be more explicit as to whether payments to non-resident aliens working or studying in the United States are to be included in this amount.

Core Form, Part V, Line 11f. This is another reconciling item from the generally accepted accounting principles presentation of the audited financial statements. Most organizations net all investment management fees into their investment income.

Recommendation: We recommend that the Form 990 allow this same method as opposed to grossing up the investment income in order to break out the expenses separately.

Core Form, Part V, Lines 13 and 16. Most organizations, including colleges and universities track insurance expense as a separate account but all types of insurance are aggregated together.

Recommendation: Split insurance into its own line and delete the references for insurance in the instructions for Lines 13 and 16.

Core Form, Part V, Line 18, Payments of travel or entertainment expenses for any federal, state or local public officials. We understand that this requirement was introduced with the 2006 Form 990, however, we feel it is important to mention in our redesign comments that it will be very difficult for an organization to identify payments to government officials with complete accuracy. Accounts payable systems do not track titles of individuals being paid or reimbursed for expenses so it is not possible to simply run a report for “payments to government officials.” It would be a very manual process of polling departments to learn about payments or reimbursements to government officials and a manual process for reviewing the accounts payable system. In addition, although virtually every expense reimbursement policy requires documentation of participant names and titles when requesting reimbursement for group meals, there is no way to determine if a particular title belongs to a government official. And even if the organization employee seeking reimbursement indicates that part of the reimbursement was to a government official, it is not practical to ask organizations to then allocate a portion of a five-person lunch to determine if reporting is required on the 990.

Recommendation: We suggest this requirement be removed since it is not likely that organizations will be able to provide complete, meaningful information.

***Core Form, Part VII, Line 8a through 8b.** If the joint venture, regardless of ownership or control, is engaged substantially in investment activities generating passive or portfolio income such as interest, dividends, rents, royalties, and capital gain, we suggest that detailed disclosure will be excessively burdensome. Many educational institutions invest in a large number of such entities as part of their investment programs. All income generated by such entities must be disclosed in the appropriate places on the form as it is currently drafted. Information giving the names and proportionate ownership is not meaningful in the context of conduit investment vehicles and could hurt competitive investment opportunities. The investment function is an adjunct to the primary exempt activity but should not generally be regarded as the exempt activity itself. This is an area that calls for consideration of the preservation of proprietary information.

Core Form, Part VII, Line 8c. In the context of investment activities, the management or control of these conduit investment vehicles routinely rests with partners or managers who possess the expertise required. It is appropriate to ask about due diligence in the decisions to make the

investment and safeguard the organization's exempt status which is addressed in questions 11 and 12. It is not clear what the purpose of this question is in the investment context.

Recommendation (lines 8a through 8c): We ask that the Service revise the instructions to clearly exclude passive investments from the scope of these questions, and focus only on active operational joint ventures.

Core Form, Part VII, Line 16. "Does the organization hold assets in term or permanent endowments?" Term and permanent (also called perpetual) endowments are net assets which are funds that are invested for a return.

Recommendation: Reword the question to ask, "Does the organization have term and permanent (perpetual) endowments in net assets?"

***Schedule D, Supplemental Financial Statements -General.** For higher education institutions, the information required to be reported is already available in the institution's audited financial statements. We strongly urge the IRS to remove this onerous requirement forcing institutions to recast audited financial numbers and categories into non-GAAP categories and subcategories. The IRS should strive to facilitate the inclusion of audited financial statements in the Form 990, providing both the Service and the public with information that has been independently audited and is GAAP compliant, thus providing both accountability and consistency across the sector.

***Schedule D, Part I.** Investments-Other Securities (Form 990, Part VI, Line 11). Disclosing every single investment in a security, limited partnership, or fund could result in a long list of names which would not be value added information for the average reader compared to reporting this information by category (e.g. stocks, bonds etc). Additionally, the form contains only five lines for this section and such a list from a large organization would potentially require several copies of this page making the return difficult to read and navigate through by those people interested in knowing more about the organization. In addition, making this information public could jeopardize an institution's investment portfolio by making its strategy known to competing investors.

Recommendation: We suggest reporting of investments by asset category instead of listing every individual investment in this section. Accordingly, investments would be grouped by stocks, bonds, partnerships, other, etc. This would add more clarity and meaning for the reader in order to understand the organization's investments. If the identification of individual investments continues to be required, then this schedule should not be open to public inspection. (Similarly, other parts and schedules of the redesigned Form 990 requiring detailed listing of assets (e.g., Parts II-VI of Schedule D) should be revised to require listing of assets by category).

Schedule D, Parts II, V and VI calls for "Book Value" in column (d) which carries forward to the Balance Sheet. Is "Book Value" limited to the historic cost of the assets summarized? May an institution that carries fair market value use that measurement as its "book value"?

Recommendation: Allow fair market value reporting as an option for balance sheet asset reporting.

Schedule D, Part IV. Investments-Program Related (Form 990, Part VI, Line 14)

1) What if a portion of the proceeds from the same investment is used for programs and institutional support? How would an organization list every single investment in response to this question, since proceeds are not allocated by individual investment, but rather by the total of all investments? 2) If an investment is program related, yet it is also a security, does an organization list it in both Part I and Part IV?

Recommendation: We suggest that the instructions clarify what is required to be reported so that this section can be completed accurately.

Schedule D, Part IX, Line 4 requires the institution to report the aggregate value of its donor advised funds. Often, institutions will require a donor to waive the advisement right on a fixed percentage of the initial funds transferred to that institution. The donor would be able to advise the institution as to its internal use of such funds. It is unclear whether, the amount that is strictly limited to the donee institution's use includible in the Donor Advised Fund value.

Recommendation: Clarify that such amounts do not meet the definition of a Donor Advised Fund.

Schedule D, Part XII. Endowment Funds (Core Form 990, Part VII, Line 6). With regard to reporting the past five years of endowment fund activity, this would reach back to fiscal year ending June 30, 2003, for most organizations. Most organizations report the current year and fiscal year comparatively and such information is readily available. To require that organizations report information reported five years ago, would be extremely burdensome.

Recommendation: To ease the reporting burden, we suggest that a transition period be offered in that the information would be reported for the current year and immediately preceding tax year. Then for each subsequent year, this information could be rolled forward for comparative purposes until five years worth of data are presented.

***Schedule F, Statement of Activities Outside the U.S. – General.** Schedule F imposes a requirement for detailed information not previously required which may be exceedingly time-consuming for many institutions to compile.

Recommendation: Schedule F should have a transition period allowing at least one year after the new 990 effective date to provide time for organizations to prepare for data collection. Further, the information disclosed on this schedule should not be open to public inspection as it may increase the risk for employees and activities in certain countries. As an alternative, totals from Parts I, II and III could be included in Part VII on the 990 if needed to provide the public with scale of the overall activities outside the U.S.

Schedule F, Part I, Line 1. Information on Accounts and Activities Outside the U.S. – Activities per Country. 1) Does this question include passive investment activities conducted through non-U.S. entities? Details of foreign investment transactions are already reported on various IRS forms (e.g., Form 926, "Return by a U.S. Transferor of Property to a Foreign

Corporation, Form 8865, Return of U.S. Person with Respect to Certain Foreign Partnerships, and form TD F 90-22.2, Report of Foreign Bank Accounts, etc.). 2) Does the definition of grants include subcontracts or sub-awards made to organizations outside the U.S.?

Recommendation: 1) The instructions should clarify that this section does not apply to passive investment activities conducted through investments in non-U.S. activities. Additionally, to ease the reporting burden on large organizations, and to report only material transactions, we recommend that the instructions clarify that the \$10,000 threshold for reporting financial accounts applies to Schedule F, similar to Part VII, line 1c of the core Form 990 and Form TD F 90-22.1. 2) Require a minimum duration such as six months or more for an activity before it needs to be reported so that short-term activities would not be reported. 3) Establish a dollar threshold for total expenditures in a country such as \$100,000 for an activity to be reported. 4) As it is a common practice for colleges and universities to have subcontracts and sub-awards related to research activities, the instructions should be clarified to exclude the subcontracts from the definition of grant-making.

Schedule F, Part I, Column F Total Expenditures in Country are unclear. First, it says “enter the total expenditures for activities conducted in each country,” but concludes with “do not report expenditures paid in the U.S. or outside of the listed foreign country, even if they are allocable to the listed activity.”

Recommendation: The two sentences could be joined and edited to say “enter the total expenditures for activities conducted and paid for in each country, but do not report expenditures paid in the U.S. or outside of the listed foreign country, even if they are allocable to the listed activity.” For example, expenditures for employees working in-country but paid from the U.S. would not be included, but expenditures for employees working in-country and paid in-country from a local bank account would be included.

Schedule F, Part I, Line 5a and Schedule I, Part I, Line 2a. “Was any individual or organization that received a grant or assistance related to any person with an interest in the organization, such as a donor, officer, director, trustee, creator, highly compensated employee or member of the selection committee?” Large organizations with several hundred donors and grant recipients are not in a position to track this data with respect to all of their donors. In addition, Line 5b(i) requires the disclosure of donors’ names, when the identity of donors is not generally public information. This could create a disincentive for individuals to make donations, particularly if they have an existing affiliation with the organization.

Recommendation: Change “donors” to “donors listed on Schedule B for the reporting year” and move these questions on Schedules F and I to Schedule B, or another schedule not open to public inspection.

Overall, in order to fully and accurately answer this question the IRS needs to clarify the terms used in this question. Also, in order to reduce the reporting burden, particularly to large organizations, there should be some threshold, similar to the other schedules, such as reporting only amounts in excess of \$5,000.

Schedule F, Part II. Grants and Assistance to Organizations or Entities Outside the U.S. This section should be similar to Part III identifying the types of grant or assistance, city or region and country, number of recipients, amount of grants, etc. rather than identifying each entity paid.

Schedule G, Supplemental Information Regarding Fundraising Activities – General.

For colleges and universities, events comprise only a very small portion of overall fundraising efforts. Currently, there are no campus mechanisms that gather the information requested on the draft schedule.

Recommendation: Only require Schedule G reporting where the gross revenue of an event or game activity of \$10,000 or more is greater than 2 percent of the amount reported on Part IV, line 1h of the Core form.

Schedule G, Part I, Line 1b. “Did the organization have a written or oral agreement with any **individual** (including officers, directors, trustees or key employees...) **or organization** in connection with these or other fundraising activities?” The question is quite broad as it is currently written. “A written or oral agreement with any individual...or organization” pulls in any number of routine operational agreements such as vendor contracts to provide catering services at a fundraising event, etc.

Recommendation: The question would be more meaningful if the Service was more explicit about the types of agreements in which it is most interested and included a dollar threshold over which such arrangements need to be disclosed, so that only significant arrangements are included.

***Schedule H, Hospitals.** We request that non-hospital organizations that maintain limited medical facilities for the benefit of their members, e.g. university health centers operated for the benefit of students, etc. should not be required to complete Schedule H. This requirement imposes significant additional burdens on entities that do not currently report according to the Catholic Health Association community benefit model.

Recommendation: Modify the requirement so that only organizations whose primary purpose is hospital or medical care are required to file Schedule H.

Schedule I, Supplemental Information on Grants, Line 2a. “Was any individual or organization that received a grant or assistance related to any person with an interest in the organization, such as a donor, officer, trustee, creator, highly compensated employee, or member of the selection committee?”

1) Does the term “donor” mean all donors, or only substantial donors? It would be difficult for a large organization with hundreds of donors to know whether a grantee is related by “blood, marriage, adoption, or employment “including employees’ children” to any of its donors. 2) Does the term “assistance” include financial aid to students? 3) Does the term “grant” include payments made for grant subcontracts? 4) In the instructions to this schedule, the example of grants and other distributions includes “allocations.” What does this term mean?

Recommendation: 1) Add clarity and scope to the term “donor” by replacing this term with “substantial donor.” 2) In order to reduce the reporting burden, exclude assistance to students from this reporting requirement. 3) Exclude subcontracts and sub-awards from the term “grants” as noted in Part I above. 4) The instructions need to add clarification to the term “allocations” via a definition or examples. Overall, in order to fully and accurately answer this question the IRS needs to clarify the terms used in this question. Also, in order to reduce the reporting burden, particularly to large organizations, there should be a dollar threshold, similar to the other schedules. However, we would suggest a much higher threshold for large organizations, particularly colleges and universities, due to the volume of these types of transactions.

***Schedule J, Supplemental Compensation Information, Line 1.** “Compensation Detail of Officers, Directors, Trustees, Key Employees and Highly Compensated Employees.”

1) The instructions, indicate that “all” officers, directors, etc... listed in Form 990, Part II, Section A are to be included on this Schedule J. The instructions then give thresholds related to when compensation information is required to be disclosed. Does an organization report all those listed in Form 990, Part II, Section A or just those that meet the thresholds? 2) The instructions indicate that the individuals’ compensation from the organization must be reported on the first row, and compensation from related organizations on the second row. They further state that compensation from other sources must be reported as if it were received directly from the organization. Combining “other sources” of compensation with compensation received by the organization seems misleading. Also to report the same individual on two lines without additional descriptions in the schedule is confusing, particularly to the average reader unless they refer to the instructions.

Recommendation: 1) Clarify in the instructions the individuals from Form 990, Part II that are required to be reported on schedule J. If an organization is required to report only those individuals that meet the thresholds listed in the instructions, then the first bullet indicating that “all” officers, directors, etc... listed in Form 990, Part II, Section A are to be included on this schedule should be eliminated. 2) Clarify the schedule so that the income from the organization and other sources are not lumped together.

Schedule J, Part 1, Column D, Nontaxable Fringe Benefits. The instructions state “Report the value of all fringe benefits (other than expense reimbursements or allowances for expenses incurred directly by the listed person) provided to the listed person that is not included in Box 5 of Form W-2, or Box 7 of Form 1099, issued to the person.”

This broad request is a significant departure from the current requirements on the 2006 Form 990. Per the instructions for the 2006 Form 990, Column (E) should include “both taxable and nontaxable fringe benefits (other than *de minimis* fringe benefits described in section 132 (e)). Include expenses allowances or reimbursements that the recipients must report as income on their separate income tax returns. Examples include amounts for which the recipient did not account to the organization or allowances that were more than the payee spent on serving the organization. Include payments made under indemnification arrangements, the value of the *personal* (emphasis added) use of housing, automobiles or other assets owned or leased by the

organization (or provided for the organization's use without charge), as well as any other taxable and nontaxable fringe benefits.”

Recommendation: Similar to the language in the 2006 instructions, the reporting should exclude reporting of *de minimis* fringe benefits.

Schedule J, Part 1, Column E, Nontaxable Expense Reimbursements. This column requires reporting of “all expenses reimbursements and allowances provided for expenses incurred directly by the listed person that is not included in Box 5 of Form W-2 issued to the person.”

Nontaxable expense reimbursements are substantiated business expense reimbursements paid in accordance with an organization's accountable plan; these expenses are not compensation to the individual. Further, it is unclear whether the Service is only looking for direct expense reimbursements, i.e. check to the employee, or whether the Service is interested in all types of business expense payments to employees, including payments on behalf of an employee by corporate credit card, travel advances, payments to vendors on behalf of an employee, such as travel agencies, etc. An attempt to provide a complete and accurate answer to this question would require an organization to gather a great deal of information from multiple source systems and accounts. In addition, an organization would have to further analyze expense reimbursements to ensure that the reimbursements only for the benefit of the listed individual are included. For example, if an employee uses a corporate credit card while on travel with other employees and pays for travel or meal expenses on behalf of the other employees, the organization would be required to segregate the reimbursements for the other employees in order to clearly identify the expense reimbursements for the benefit of the listed employee alone.

Recommendation: The requirement to include nontaxable expense reimbursement should be deleted. If the Service is not willing to remove this requirement, nontaxable expense reimbursement should be reported in an area separate from true compensation elements.

***Schedule K, Supplemental Information on Tax-Exempt Bonds -General.** Due to the extensive reporting requirements of Schedule K alone, and the requisite time needed by institutions to prepare to fully comply with them, we request that the regulated community receive the revised Schedule K at the same time it is being sent to the IRS forms unit. This would not be for the purpose of sending in more comments, but to give institutions the maximum amount of time to prepare for their initial filing. Other observations:

1) This schedule appears incomplete in that it does not inquire as to whether the organization is clearly aware of and compliant with arbitrage requirements.

Recommendation: Insert questions regarding whether the organization has filed for each bond issue Form 8038-T, Arbitrage Rebate, Reduction and Penalty in Lieu of Arbitrage Rebate, as required, and, if not, whether it met an exception.

2) Schedule K, Parts I and II request much more information about tax-exempt bonds than previously requested by line 64 of the balance sheet under Part IV of the Form 990, and includes an abundance of questions that mirror Form 8038, Information Return and Tax-Exempt Private

Activity Bond Issues, which is filed by the organization when it initially borrows the bond proceeds. The common understanding is that the Form 990 represents the organization's exempt status and typically does not include such detailed questions regarding 'other' exempt statuses, such as accountable plans or tax-exempt bonds. Also, the Internal Revenue Code considers Form 8038 to be confidential, as is the case with most tax filings; however, by providing so much of its information on schedule K which is subject to public inspection, the concern arises whether, in essence, the IRS is subjecting this form to disclosure.

Recommendation: (1) include language that explains in detail the pressing need for such information and (2) to avoid any disclosure conflicts, limit the questions to inquiring whether the information on the Form 8038 has changed, and, if so, how.

Schedule K, Part II, Line 8 on use of proceeds. It would be helpful if the instructions included a definition of the term "working capital expenditures."

***Schedule K, Part III, Lines (2)(a) through 5(b).**

Question 2(a) – "Did the organization enter into a management contract for the financed property? (Y/N)"

Question 2(b) – "If "Yes," did the contract meet the safe harbor under Rev. Proc. 97-13? (Y/N)"

Question 3(a) – "Did the organization enter into a research agreement for the financed property? (Y/N)"

Question 3(b) – "If "Yes," did the contract meet the safe harbor under Rev. Proc. 97-14? (Y/N)"

The design of these questions could, in some circumstances, create a misperception that a given issue is subject to private use when in fact no such private use exists. A management contract or research agreement that does not qualify for the safe harbor under, respectively, Rev. Proc. 97-13 or Rev. Proc. 2007-47 (successor to Rev. Proc. 97-14) does not automatically give rise to private use. Rather, whether private use arises in that case is determined on the basis of "all the facts and circumstances." *See* Treas. Reg. section 1.141-3(b)(4)(i), -3(b)(6)(i). Accordingly, a borrower very well could have a management contract or research agreement that technically does not "meet the safe harbor" but that nonetheless does not constitute private use.

Question 4 – "If "Yes" on lines 2(a) or 3(a), what was the highest percentage of the project that was subject to either a management contract or research agreement?"

We respectfully submit that the question is misdirected in referring to the percentage of the "project." Under current law, private use is calculated on an issue-by-issue, not project-by-project, basis (this could make a significant difference where a single issue finances multiple projects, or conversely where a single issue finances only a portion of a given project).

Question 5(a) – "Did any entity, other than a 501(c)(3) organization or state or local government, use the property during the reporting period for use not described in 2a or 3a above? (Y/N)"

Question 5(b) – "If "Yes," indicate the highest percentage of use."

We respectfully submit that question 5(a) is similarly misdirected. It asks about *all* other "uses" of the property, *regardless of whether or not the uses constitute private use*. There are many

other possible "uses" of bond-financed property that do not give rise to private use – including, for example, use by entities that supply vending machines or that rent facilities for certain short-term periods. Also, question 5(b) is misleading in that it fails to address the private payment test under IRC Section 141 and possible exceptions to private use.

Clearly, taken as a whole, questions 2(a) through 5(b) fail to adequately address the restrictions of private use, and can give the impression to interested parties, such as, bondholders and credit rating agencies, among others, that an issue is guilty of excessive private use when, in fact, it is not.

Recommendation: Insert one question in lieu of questions 2a through 5b that asks whether each bond complies with the private use restrictions as defined under the IRC and supporting authority for the current year.

Schedule M – Non-cash Gifts. Schedule M is required when an organization reports more than \$5,000 in non-cash contribution revenue on the Form 990 Part IV, line 1g. Non-cash includes publicly traded and closely held securities, intellectual property, and tangible real and personal property.

Many, if not most university foundations classify transactions by gift type and payment type. Gift types are generally pledges, pledge payments, outright gifts, and gifts-in-kind. Payment types can be cash/checks, securities, and other assets (generally tangible personal and real property and intangible assets). The reporting of Non-Cash Contributions on Schedule M (triggered by an amount reported on a revenue schedule) requires a mixing and matching of gift types and payment types, and a disconnect between revenue recognition and the transfer of assets. This is especially problematic when securities are included in the definition.

Securities are often used as payments on pledges that have been received and recognized as revenue in prior periods. The payment type is noted when the pledge is paid, and is a reduction of a receivable, rather than revenue. With the new form, it would be at this point there is a “non-cash payment” transaction to report on Schedule M, even though no revenue may have been recorded in that period.

Gifts of tangible personal or real property or intangible assets generally occur without a pledge. Revenue is usually recognized when the asset is transferred. In these cases, the contribution could be reported on Schedule M – and agree with the revenue amount on Form 990 Part IV, line 1g.

Recommendation: Narrow the scope of donations reported in Schedule M to revenue recorded from gifts of tangible personal or real property, or intangible assets. Eliminate the “securities” categories (lines 10-13) from the schedule.

Schedule M, Line 27 – Number of 8283 Forms. Donors are not required to provide an appraisal or complete an 8283 form for gifts to the institution of tangible or intangible property. The appraisal is only required if the donor chooses to take a charitable contribution deduction on

their individual tax return. Gift acknowledgements for gifts of tangible real or personal property or intangible property contain only a description of what was given with no dollar value.

Current software used by institutions do not provide a field for the information requested. Therefore, additional resources will need to be allocated and developed to provide this information.

Recommendation: Eliminate the requirement to report the number of 8283 forms for which the organization completed the *Donee Acknowledgement* section. It will not generate meaningful information.

Schedule M, Method of Valuation – Column C. There may be many methods of valuation within each line in Part I. Instructions say to list all methods, but it will be impossible to determine the portion of the revenue or asset amount that was derived from the various methods.

Recommendation: Revise the question to ask for the primary method used for the majority of items in that category.

Schedule N, Liquidation, Termination, Dissolution or Significant Disposition of Assets.

Certain support organizations may experience significant expansions and contractions in the normal course of operations. For instance, supporting organizations investing for the benefit of the primary exempt organization may routinely experience capital inflows and outflows. These are consistent with investment objectives and the requirements of the supported organization. Where these contractions are temporary and ordinary in nature, disclosure may be warranted, however the proper context of these outflows should be communicated to the reader.

Recommendation: If the contraction is temporary or ordinary in nature, the return should focus on the destination of cash flows from the events. Perhaps the form could include a threshold question that asks if the event is temporary and, if yes, an area to provide additional details about the event, skipping question 9a-e and expanding on the appropriate corporate governance policies – as in Part I question 3.

***Schedule R – Related Organizations.** Form 990, Schedule R requires disclosure of information with respect to related organizations. The information required to be reported on new Schedule R includes information currently required to be reported on the Form 990. In addition, Schedule R requires additional disclosure with respect to directly and indirectly owned/controlled organizations.

While we appreciate that the IRS requires specific information about related organizations, we are concerned that the public disclosure of such information (e.g., identification of specific investments of an organization) will hinder an organization's ability to invest effectively and will adversely impact an organization's relationships with its investment managers. Further, specific investments and investment strategies/styles of an organization are proprietary and should not be subject to public disclosure. The IRS provides certain exceptions to the public disclosure requirement if such disclosure would adversely affect the filing organization:

Upon request of the organization submitting any supporting papers described in subparagraph (A) or (B), the Secretary shall withhold from public inspection any information contained therein which he determines relates to any trade secret, patent, process, style of work or apparatus, of the organization, if he determines that public disclosure of such information would adversely affect the organization. [IRC Section 6104(a)(1)(D)]

Recommendation: The IRS needs to balance its efforts to enhance transparency of reporting organizations with consideration of the need to preserve proprietary information of that organization. The IRS should consider whether summary information can be reported in lieu of specific identifying information when information disclosed for public inspection could adversely affect the filing organization. Protecting the confidentiality of individual investments and manager relationships would not preclude an organization from providing general information to the public regarding investment strategies, asset classes, and portfolio allocations.

We recommend that, similar to information reported on Schedule B, the IRS exempt Schedule R from the public disclosure requirements.

Schedule R, Parts I through IV. Each section requires the filer to report where each entity is “organized.” Does this term refer to the state of incorporation, or the foreign country in which it is located?

Recommendation: The instructions need to be clarified as to the meaning of the term “organized” for U.S. and foreign entities.

Schedule R, Part V, Lines 1(a) through Line 1(p). The instructions request the filer to list certain transactions with related parties that encompass gifts, loans, leasing and/or sharing of facilities, equipment and other transfers of cash and property. The form also provides a schedule for details of the transactions. The instructions for column (d) of the schedule requires a description of the transaction and further gives an example of sharing of one organization’s secretary and prorated reimbursement. To describe this level of detail would unduly burden a large organization.

Recommendation: We suggest that there be thresholds for the transactions to be disclosed in Part V. We recommend a dollar threshold in order for large organizations to focus efforts on material transactions.

Other General Comments

Group Return. Elimination of the consolidated Form 990 for subordinates under a group exemption will create an administrative burden by requiring each subordinate to file a separate Form 990.

Accounting Method Changes. Currently, the IRS requires an organization to separately file a Form 3115, *Application for Change in Accounting Method*, to change its accounting method for tax purposes. For changes that do not qualify for the automatic accounting method change

procedure, the application must be filed within the year of the change, rather than by the due date of the tax return. This often results in a delay in the organization adopting a method for its Form 990 which it is required to implement for its audited financial statements, thereby requiring two separate financial presentations. In addition, the organization must incur a user fee to implement an accounting method change, thereby adding to its administrative expense.

Recommendation: The IRS should permit an organization to change its accounting method without approval from the IRS if: 1) it changes its accounting method to conform to GAAP financial statements and 2) the change has no UBTI impact. The IRS should require an organization to report the change on its Form 990 and to provide an explanation of the change. The requirement to file a Form 3115 should be eliminated for such accounting method changes. Alternatively, such changes should be added to the IRS' list of accounting method changes subject to the automatic approval procedures.

For example, the IRS eliminated the requirement to obtain approval from the IRS with respect to the adoption of SFAS 116. In IRS Notice 96-30 1996-1 C.B. 378, the IRS provides relief from filing Form 3115 to IRC Section 501(c) organizations that change their method of accounting to comply with the provisions of SFAS 116, *Accounting for Contributions Received and Contributions Made*.

Conclusion. Except insofar as it relates to determination of tax liabilities and verification of entitlement to tax-exempt status, the IRS should focus on strengthening the current system of financial reporting by nonprofit institutions. Instead, the Service seems to have proceeded well down the road toward creating a second set of accounting and reporting requirements that is at best duplicative and in many cases inconsistent with information that these institutions are otherwise required to disclose in their audited financial statements. In addition to imposing an immense new administrative burden upon these institutions that diverts additional resources from educational purposes, the disclosures requested by the IRS's proposed form are sure to engender both confusion on the part of those who seek to understand and evaluate the operation of these institutions and mischief on the part of those who seek to characterize their actions unfairly. On top of this, the proposed disclosures of investment strategies and relationships with investment managers may harm or diminish the value of those relationships which may impose an additional financial cost on these institutions.

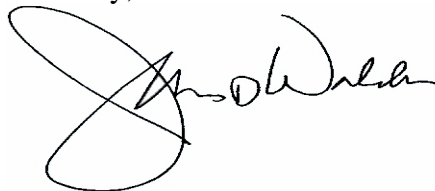
In order to ensure that its efforts add value and increase understanding, rather than merely increasing administrative costs and creating confusion, we urge the IRS to step back from the current time schedule until it develops a comprehensive framework for disclosure by nonprofit organizations that takes into account the existing system of GAAP-driven financial reporting, the potential value of additional disclosures, and the cost to these institutions of making such additional disclosures.

The IRS should continue to engage NACUBO and other exempt stakeholders to gain an understanding of how financial information is generated and collected in colleges and universities, nonprofit hospitals, and other charitable organizations filing Form 990. We welcome the opportunity to continue to work with the Service to help identify solutions.

We reiterate our strong support for postponement of the effective date of any form that is finalized prior to end of this calendar year, until tax year 2009 (returns filed for tax years beginning in 2009).

If you have any questions, please contact me at 202.861.2509 or Mary Bachinger, director, tax policy, at 202.861.2581 or e-mail mary.bachinger@nacubo.org.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Walda". The signature is fluid and cursive, with a large loop at the beginning.

John D. Walda
President and Chief Executive Officer

Cc: Steven T. Miller, Commissioner, Tax Exempt and Governmental Entities
Lois G. Lerner, Director, Exempt Organizations
Clifford J. Gannett, Director, Tax Exempt Bonds

The associations listed below join NACUBO in these comments:

American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
American Indian Higher Education Consortium
APPA: The Association of Higher Education Facilities Officers
Association of American Universities
Association of Catholic Colleges and Universities
Association of Community College Trustees
Association of Jesuit Colleges and Universities
Council for Advancement and Support of Education
Council of Independent Colleges
College and University Professional Association for Human Resources
EDUCAUSE
National Association of Independent Colleges and Universities
National Association of State Universities and Land-Grant Colleges
National Association of Student Financial Aid Administrators
National Collegiate Athletic Association