

Jack B. Siegel
Charity Governance Consulting LLC
3400 North Lake Shore Drive
Chicago, Illinois 60657
Tele: 773-325-2124
E-mail: jbsiegel@charitygovernance.com
Web Site: <http://www.charitygovernance.com>

VIA E-MAIL TRANSMISSION

July 29, 2007

Lois G. Lerner
Director of the Exempt Organizations Division of the IRS

Ronald J. Schultz
Senior Technical Advisory to the Commissioner of TE/GE

Catherine E. Livingston
Deputy Associate Chief Counsel (Exempt Organizations)

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

Dear Ms. Lerner, Mr. Schultz, and Ms. Livingston:

I am providing you with a second set of comments regarding the proposed revisions to the Form 990. I submitted my first set of comments in a letter dated June 17, 2007.¹

I am glad to see that many organizations are taking the process seriously and offering comments. In view of the constructive partnership that has evolved between interested constituencies and the Internal Revenue Service (the Service), I would highly recommend that you schedule public hearings shortly following the close of the comment period. My expectation would be that the Service would provide its initial reactions to recurring comments, with the opportunity for interested parties to respond, resulting in a dialogue that would inevitably improve the end result.

In this second letter, I intend to address the following issues in the order indicated: (i) transmission letter to Office of Management and Budget; (ii) mandated GAAP reporting; (iii) design principles for the Form 990 instructions; (iv) removing clutter and repetition from the Form 990 instructions; (v) specific examples of violations of design principles in the proposed

¹ If the Service decides to post comment letters on the Web or otherwise publish them, I would appreciate my June 17th and this letter being grouped together, if that is possible.

revisions to the Form 990 instructions; (vi) specific substantive comments regarding the proposed revisions to the Form 990 instructions; and (vii) additional and revised comments regarding the proposed Form 990 Core Form and schedules.

My first comment letter focused on the forms, but I occasionally found that to adequately comment on the forms I had to examine the interplay between the forms and the instructions. In focusing on the instructions for this letter, I once again examined the interplay between the forms and instructions. Some of my comments therefore include additional comments regarding the forms.

A. TRANSMISSION LETTER TO THE OFFICE OF MANAGEMENT AND BUDGET

I certainly am no authority on the administrative review process that the Office of Management and Budget (OMB) conducts on proposed forms produced by federal agencies. It is my understanding that OMB will be conducting a review of the revised Form 990 and the instructions before they are released.

Assuming I am correct, I hope the Service will point out to OMB in the transmittal letter that the Form 990 is not the typical tax return, but also functions as a public disclosure document. Consequently, the Service should caution OMB against asking for reductions in the number of required disclosures on the grounds that certain disclosures are unrelated to the determination of tax or the enforcement of internal revenue laws. If OMB resists disclosure, the Service should remind OMB that the SEC routinely receives hundreds if not thousands of pages in disclosures from corporations and other entities that are subject to the federal security law reporting requirements. The focus of those laws is on full and meaningful disclosure. That is also one of the purposes that Congress has assigned to the Form 990.

B. MANDATED GAAP REPORTING

Before proceeding to my more specific substantive comments, I want to emphasize the importance of Generally Accepted Principles (GAAP) to the Form 990 disclosure process. GAAP provides a uniform, clearly articulated, and widely understood set of rules for disclosing financial information. GAAP also has the advantage of having addressed a number of unique aspects of nonprofit accounting, meaning that GAAP establishes conventions for dealing with a number of quirky issues. Moreover, when financial statements are audited by independent certified public accountants, as is generally the case with larger organizations, we know that the information has been reviewed on fairness and materiality grounds. Consequently, except to the extent required by the tax on unrelated business income, those organizations that prepare their financial statements on a GAAP-compliant basis should be required to do so for purposes of Form 990 reporting.

Given the importance of GAAP, both the forms and the instructions should clearly and consistently state that GAAP-compliant reporting is required. The instructions also should eliminate all options that permit organizations to report on a GAAP-compliant basis or some other one (except in the case of UBIT).

Finally, I would go so far as to mandate GAAP-compliant Form 990 reporting for all organizations filing Form 990. After all, every organization that is subject to reporting must produce a set of numbers one way or another, so why not require everyone to report information using the same standards?

C. DESIGN PRINCIPLES FOR THE FORM 990 INSTRUCTIONS.

The instructions to the Form 990 are critical from the standpoint of assuring that each organization reports data using comparable definitions and standards. If some users find the instructions opaque because of their style and format, those users are more likely to guess as to what is being asked for, resulting in reporting inconsistencies. By and large, those inconsistencies defeat Congressional intent that the Form 990 serve as a disclosure document.

At this time, it is not possible to fully assess whether the proposed revisions to the Form 990 instructions satisfy the objective of producing consistency in reporting because the instructions are not formatted. It is clear that the instructions for the current Form 990 (2006) are difficult to use. That is not surprising because those instructions evolved over many years, resulting in a patchwork feel to them. When Congress enacted a new revision, the Service responded with ad hoc changes to the instructions rather than a total rewrite.

In formulating the revision to the instructions, the Service should keep the following two design principles in mind: The instructions should:

- **Be as brief as possible.** The focus should be on assuring that preparers know exactly what information is being requested rather than educating users about the law and ancillary requirements. This means removing (and separately setting out in the Glossary) lengthy definitions, as well as avoiding discussions of the same issue in different locations.
- **Make information readily accessible.** To accomplish this, the Service will have to develop a well-thought out taxonomy and greatly improve the layout to provide visual cues. The Service should avoid the current stylebook used in writing tax publications.

In short, it is time for the Service to take the same leap that Apple recently took when it transformed the archetypical cell phone by introducing the revolutionary iPhone.

D. REMOVING CLUTTER AND REPETITION (THE HORCRUXES) FROM THE FORM 990 INSTRUCTIONS.

The Service will only be able to satisfy the objectives of complete and comparable reporting if it rewrites and redesigns the instructions from the ground up. Here are several specific suggestions that will aid that redesign:

1. **ONE SET OF INSTRUCTIONS.** To facilitate downloading the instructions, the Service should compile the instructions for the Core Form and the schedules in one booklet rather than creating a separate set of instructions for each schedule. In fact, the

Service should consider one consolidated packet that contains all the forms and all the instructions.

2. **DISCUSS ONCE.** Beginning with Page 8 of the current Form 990 (2006), the instructions discuss many issues in more than one place. This double referencing is both unhelpful to users and detrimental in terms of assuring that all organizations are reporting comparable information. All information pertaining to a schedule or a line should be in one location. Users should not have to look for a line reference and then wonder whether somewhere else earlier in the instructions additional guidance is provided.
3. **LINE NUMBERING.** To facilitate references and electronic searches, the Service should adopt a reference scheme that permits users to easily access the information about particular lines to the Core Form and the various schedules. Referring simply to Line 10 is unhelpful because the reference could be Line 10 of any number of parts or schedules. The Service should consider adopting the following referencing convention:
 - a. **CONSECUTIVE NUMBERING.** Schedule line numbering should be consecutive, without restarting at “1” for each schedule part.
 - b. **TAXONOMY.** The instructions should refer to line numbers using a combination of the schedule reference and the line number. Under the envisioned approach, the instructions would refer to Line 10 of Schedule A as Line A-10. If the Service rejects the recommendation regarding consecutive numbering, then the reference for Line 10 of Part I of Schedule A would be Line A-I-10. Obviously the Service could choose another convention. For example, Line A.I.10 is a viable alternative. The critical goal should be a taxonomy permitting users to enter a line number in the Acrobat search engine that retrieves references in the instructions to the specific line for which the user is seeking guidance.

HEADERS. The Service should use headers to further assist readers in quickly finding information. For example, the header for the page that covers Lines 1 through 10 of Part I of Schedule A would appear as follows:

Schedule A, Supplementary Information	Part I, Lines 1-10
---------------------------------------	--------------------

4. **APPENDIX.** The instructions should adopt the same approach that was adopted in the design of the Core Form and schedules. There should be a core set of instructions that is applicable to all organizations, with an appendix. That appendix should list each type of tax-exempt organization (by Code section), with all special instructions relating to a particular type of organization discussed together. This would eliminate the need for users to skip over inapplicable information, with the added advantage of highlighting in one place the special considerations that apply to particular types of organizations.

INDEX. The instructions should contain a comprehensive index.

E. SPECIFIC EXAMPLES OF VIOLATIONS OF DESIGN PRINCIPLES IN THE PROPOSED REVISIONS TO THE FORM 990 INSTRUCTIONS.

I will not list every violation of my design principles in this section, but I will try to provide sufficient examples to make my overarching point: Good design matters. I will begin with some general comments, and then proceed in serial order through the proposed revisions to the instructions.

1. **ELIMINATE TIPS.** All tips should be deleted. Tips are an implicit acknowledgement that the instructions are not well designed.
2. **USE STYLES.** The instructions should use a combination of indentation, outline numbering, and font faces to visually provide cues to the user as to how each level relates to the instructions as a whole. Page 3 of the proposed instructions provides a perfect example of bad design. It includes the following headings: (i) *General Instructions*; (ii) *A. Who Must File*; (iii) *TIP*; and (iv) *501(c)(15) Organizations*. These headings are relatively indistinguishable in terms of how they relate to each other. Is *501(c)(15)* part of *Who Must File* or is it a separate set of instructions applicable to Code section 501(c)(15) organizations? The user cannot tell with just a glance.
3. **USE THE GLOSSARY AND AN APPENDIX.** Once again, page 3 of the proposed instructions provides an excellent example of why an appendix would be useful. The vast majority of users have no interest in the filing requirements that apply to Code section 501(c)(15) organizations. Moreover, these tax-exempt insurance companies are likely to be represented by knowledgeable lawyers and accountants who already know the filing requirements. Yet, at least a page of *General Instructions* is devoted to Code section 501(c)(15) entities. A simple reference to an appendix that included highly specialized information pertaining to these entities would speed users through the instructions, making it more likely that they would read the instructions in their entirety, or at least not skip over the wrong parts.

Page 4 of the proposed revisions to the instructions poses a similar problem. At least half a page is devoted to the definition for a *qualified state or local political organization*. Why not place this in the Glossary, with an appropriate signal that this is a defined term?

Page 6 of the proposed instructions offers a similar opportunity. The vast majority of users know the Code section that refers to their organization. This chart has no utility, particularly if the Service adopts the suggested appendix.

4. **PAGE 11. PUBLIC INTEREST LAW FIRMS.** This discussion should be moved to the suggested appendix.
5. **PAGE 12. RECORDKEEPING.** This either should be split out as a separate section, or eliminated. My preference would be to eliminate it because it does not support the

- objectives of complete and comparable information. At the same time, I can certainly see the argument that it does support the audit function. Possibly a new section at the end of the instructions discussing audits would be a good location for this information.
6. **PAGE 12. COMPLETING ALL LINES.** This is a perfect example of needless repetition. This topic is covered in more detail in Section H, *Failure to File Penalties*. Why not change the title of Section H to *Completing the Form*, and merge the requirement that all lines be completed with a discussion of the penalties?
 7. **PAGE 12. ASSEMBLING THE FORM 990.** This is an important discussion. It should be set out as a separate section. This should probably appear earlier in the instructions.
 8. **PAGE 14. COMPLETING THE FORM 990 HEADING.** At this point, the proposed revisions to the instructions have moved from general comments to specific ones addressing individual lines on the Form 990. Greater clarity and accessibility could easily be achieved by using headers and roman numerals—I. *General Instructions*; II. *Completing the Heading of Form 990*; etc. If the section referred to as *Heading* is to be so referenced, the Form 990 should follow the parts convention, indicating in black background and white typeface where the *Heading* is.
 9. **PAGE 8. ACCOUNTING PERIODS AND METHODS.** This was explained in great detail in Section D to *General Instructions*. All organizations must provide this information, so the longer explanation in *General Instructions* should be moved to this point in the proposed revisions.
 10. **PAGE 15. ITEM H, ENTER THE AMOUNT OF GROSS RECEIPTS.** *General Instruction B* does not define gross receipts. This portion of the form will be completed by all organizations. Consequently, this should be the one place in the form where *gross receipts* are defined unless the Service decides to place greater reliance on the Glossary through a cross reference the Glossary. Whichever approach the Service takes, the instruction should be clear that gross receipts are determined before deduction for fundraising fees and commissions.
 11. **PAGE 15. ITEM I, ACCOUNTING METHOD.** Once again, this portion of the form is completed by all organizations, making it more useful to place the entire *Accounting Methods* discussion currently located in the *General Discussion* here.
 12. **PAGE 27. LINE 11C, NET INCOME FROM FUNDRAISING EVENTS.** Define the term *bingo* in the Glossary.
 13. **PAGE 45. CAUTION.** Although I understand why the Service has added the cautionary note about UBIT and estimated taxes, this is nevertheless extraneous commentary. The instructions are already long enough. All content that does not facilitate the completion of the Core Form and the schedules should be eliminated. The IRS has any number of publications that address UBIT. These publications are

the appropriate place to address estimated taxes. Every extra bit of information makes it more likely that a user who does not know the specific requirements for completing Form 990 will stop reading, rely on intuition, or just guess.

More important, this cautionary instruction reflects what I suspect to be an erroneous assumption: Users who do not understand the basic obligations imposed on organizations read the instructions from front to back. I suspect most users don't take such a rational approach, meaning that this cautionary note serves only to make navigation through the instructions more difficult for users who rely on the instructions.

14. **PAGE 45. LINES 11A AND 11B, DISCLOSURE REQUIREMENTS FOR CHARITABLE CONTRIBUTIONS.** See comment 13 above. It is equally applicable here. A cross reference to Publication 1771 would be sufficient.
15. **INSTRUCTIONS TO SCHEDULE A. PRIVATE FOUNDATION STATUS.** The instructions should be rewritten to provide far greater reliance on references to the appropriate regulations. In my experience, those performing the calculations required for this schedule will (should) be reviewing the Treasury Regulations rather than an abbreviated summary of those regulations. Any attempt to summarize those regulations is futile. It will likely result in reporting errors in cases when the preparer does not consult the regulatory language.
16. **INSTRUCTIONS TO SCHEDULE C. POLITICAL CAMPAIGN AND LOBBYING ACTIVITY.** The instructions do nothing more than parrot statutory definitions. As is true for the instructions relating to Schedule A, these instructions should make liberal cross references to the appropriate regulations in order to eliminate a succession of mind-numbing definitions. I find it highly doubtful that users actually read what quickly becomes boilerplate language. Most of this content should be moved to the Glossary, with appropriate cross references.
17. **INSTRUCTIONS TO SCHEDULE G. SUPPLEMENTAL INFORMATION REGARDING FUNDRAISING ACTIVITIES. PAGE 2. PART III-GAMING.** Page 26 of the core instructions contains a laundry list of activities that constitute gaming. Why is that list repeated here? The term *gaming* should be defined in the Glossary, with the text of the instructions referring to the Glossary when warranted.
18. **INSTRUCTIONS TO SCHEDULE G. SUPPLEMENTAL INFORMATION REGARDING FUNDRAISING ACTIVITIES. PAGE 2. PART III-BINGO, PULL-TABS/INSTANT BINGO.** See 17 above.

INSTRUCTIONS TO SCHEDULE G. SUPPLEMENTAL INFORMATION REGARDING FUNDRAISING ACTIVITIES. Much of the discussion involving withholding and occupation or stamp taxes could be eliminated with a simple reference to the appropriate publications.

F. SPECIFIC SUBSTANTIVE COMMENTS REGARDING THE PROPOSED REVISIONS TO THE FORM 990 INSTRUCTIONS.

Clearly the Service should focus on the design of the instructions to the Form 990, but there are also issues in terms of substance. I have purposely placed my comments on design first because I suspect that instruction design is an afterthought, receiving short shrift—that is not meant as a criticism, but an acknowledgment of the way things work.

My comments on the substance of the proposed revisions to the instructions are equally important, and now follow.

1. **PAGE 9. STATE REPORTING.** This instruction, which permits organizations to file the Form 990 using the accounting rules required by a particular state, reaches the wrong result. If a state wants to deviate from the accounting rules used to prepare the Form 990 or the Form 990's presentation, it should feel free to do so for purposes of its own filing requirements by providing for a supplemental disclosure describing the deviation from the Form 990. However, given the Form 990's status as a disclosure document, the Form 990 must foster consistent reporting by all organizations across the nation regardless of their state of incorporation or states in which they are required to file reports because of solicitation or other activities. To allow otherwise is to effectively introduce up to 51 sets of accounting rules into the Form 990 disclosure process, making comparisons meaningless. Moreover, requiring organizations to compile a reconciliation between state and GAAP conventions is of no benefit to users if the reconciliation is not required to be filed with the Form 990. More importantly, users should not have to standardized Form 990 data using such reconciliations. Requiring users to standardize data prevents efficient use of electronic databases.
2. **PAGE 15. ITEM M, STATE OF LEGAL DOMICILE.** Referring to the state of incorporation for a corporation makes sense. It also makes sense to refer to the state of formation in the case of limited liability companies because there is a state filing requirement that must be satisfied before the limited liability comes into existence. In the case of trusts, however, the place of formation is not necessarily the state in which the trust documents were signed (formation). Often the legal domicile turns on where the trust is administered, which can be different than the location of the trust's assets or trustee. To avoid inconsistencies caused by variations in state law, the better approach is to ask where the trust is administered. In the case of unincorporated associations, the better approach is to ask for the state in which a majority of the members reside.
3. **PAGE 14. ITEM B, CHECKBOXES.** If the Service is eliminating the requirement that there be attachments, how can an organization comply with the requirement that the information be attached to the Form 990?
4. **PAGE 15. ITEM D, EMPLOYER IDENTIFICATION NUMBER.** The IRS should consider addressing the question of which EIN to use at the time EINs are applied for rather than at the time the Form 990 is filed.

5. **PAGE 15. PART II, SECTION A—REPORTABLE COMPENSATION.** This portion of the form provides very important and useful information. A number of changes should be made to the instructions.
- a. **AFFIRMATIVE STATEMENT THAT NO ONE MAKES OVER \$100,000.** The form requires that the compensation for the five highest paid employees (other than officers, directors, and key employees) be reported only to the extent that individual compensation exceeds \$100,000. Some organizations have refused to complete this portion of the existing form (with its \$50,000 threshold). In the case of organizations that do not have any employees (other than officers, directors, and key employees) who receive compensation in excess of the compensation threshold, there should be a requirement that they affirmatively state so. Users will then have a better idea whether what would otherwise be a blank space is blank because the organization has no employees with reportable compensation or because the organization simply refused to answer the question. As a matter of course, the Service should immediately begin assessing penalties if this section is left blank, with a computer-generated letter showing accrued penalties being sent to the organization, accompanied by a demand for payment.
 - b. **GAMING THE RETURN BY MANIPULATING THE DEFINITION FOR KEY EMPLOYEES.** There is no generally understood definition for the term *key employee*. Moreover, the Glossary does not contain one. Given the relatively well-developed definitions in Code section 4958, why not replace “officers, directors, and key employees” with the concept of disqualified persons (to the extent they hold these positions) reflected in Treasury Regulation section 53.4958-3? That change would better align the return with the Service’s audit efforts. Moreover, organizations wanting to game the return would be unable to argue that what are arguably key employees (subject to reporting even if the compensation is below \$100,000) are non-key employees (whose compensation must exceed \$100,000 before reporting is required).
 - c. **ELIMINATE \$100,000 THRESHOLD.** The Service should require all organizations to report the compensation of the five highest paid employees regardless of their level of compensation. The regulations under Code section 4958 encourage organizations and their governing bodies to rely on comparables in setting compensation. The Form 990 is a low-cost source for comparables for those organizations who are willing to take some time to search GuideStar for similarly situated organizations. Moreover, I know of at least one commercial firm that compiles and sells Form 990 electronic databases which are used by organizations in assessing compensation issues. Any minimum threshold results in the elimination of data that is potentially valuable to organizations and their boards in satisfying the rebuttable presumption under Code section 4958 and complying with legal duties imposed by state law.
 - d. **SET THE \$100,000 THRESHOLD AT A MORE APPROPRIATE NUMBER IF A THRESHOLD IS RETAINED.** The \$100,000 number appears to represent a “quick and dirty” estimate of the level of compensation that warrants disclosure. If a

threshold is retained, why not link it to the amount set out in Treasury Regulation section 53.4958-(d)(3)? Once again, this better aligns the form and the associated instructions with the Service's audit function. Moreover, it provides for an annual inflation adjustment.

6. **PAGE 20. PART III, LINE 2. SIGNIFICANT CHANGES IN POLICIES.** In some cases, the examples of what is significant are too broad. Specifically, requesting organization to report any change in the duties of officers is too broad of a request. As currently defined in the Glossary, the term *officers* is far more encompassing than those officers required under state nonprofit corporation law statutes (traditionally, the president, secretary, and treasurer). The duties of various operational officers (executive director, CFO, COO, chief information officer, chief curator, chief physician, and chief of risk management, just to name a few major positions) frequently change. A more appropriate request would be to ask for a description of any major restructuring in the organizational hierarchy.

The request for changes in officer compensation also appears to be too broad to be useful and is somewhat redundant. Specifically, Part II of the Core Form and Schedule J already require specific dollar amounts to be disclosed, so changes in dollar amounts will be apparent by comparing returns for successive years. More important would be a discussion of changes in the benchmarks that govern incentive compensation and changes in the philosophy used to determine base compensation. In short, by asking mores specific questions, this question might generate more useful information.

7. **PAGE 20. PART IV, STATEMENT OF REVENUE. OVERARCHING CONSIDERATION.** The instructions should provide that when the organization prepares its financial statements on a GAAP-compliant basis, the data entered for the statement of revenue should be based on the organization's GAAP financial statements.
8. **PAGE 21. PART IV, LINE 1. CONTRIBUTIONS, GIFTS, GRANTS, AND OTHER SIMILAR AMOUNTS.** A few examples would be helpful.
9. **PAGE 21. PART IV, LINE 1. CONTRIBUTIONS, GIFTS, GRANTS, AND OTHER SIMILAR AMOUNTS.** The instructions should mandate reporting consistent with GAAP, rather than providing organizations with an option to use a methodology outside of GAAP.
10. **PAGE 21. PART IV, LINE 1B. CONTRIBUTIONS FROM OUTSIDE FUNDRAISERS OR COMMERCIAL CO-VENTURES.** The instructions should indicate that this number is determined before reduction for fundraising fees and commissions.
11. **PAGE 22. PART IV, LINE 1D. RELATED ORGANIZATIONS.** This instruction is unclear. It appears that payments between related organizations for overhead, fundraising, or administration and management services are excluded. Several examples clarifying the instruction would be helpful.

12. **PAGE 22. PART IV, LINE 1E. ALL OTHER CONTRIBUTIONS, GIFTS, AND SIMILAR AMOUNTS.** The Service should consider explicitly excluding what SFAS 136 refers to as agency transactions. This could be accomplished through several examples, together with appropriate reference to SFAS 136. At the same time, the Service should add a line requiring disclosure of the nature and amount of agency transactions.
13. **PAGE 23. PART IV, LINE 2B. FEES AND CONTRACTS FROM GOVERNMENT AGENCIES.** Once again, the Service should at least consider a review of SFAS 136, which attempts to distinguish between different categories of payments, including those from government entities. There would seem to be little reason not to rely more explicitly on SFAS 136 in dealing with the distinctions between contributions, fees for services, and agency transactions. Doing so would more closely align financial reporting practices with reporting practices for purposes of Form 990. This is probably a case where a deviation from GAAP is warranted to the extent that the definition of a charitable contribution under Code section 170 differs from the GAAP definition for a contribution.
14. **PAGE 23. PART IV, LINE 3. MEMBERSHIP DUES AND ASSESSMENTS.** Trying to ascertain what portion of a payment is a contribution and what portion is for membership benefits is an exercise in metaphysics. For example, a \$75 membership to a museum might entitle the member to one-year of free admission and a 20% discount at the museum's bookstore. In that case, the distinction between contribution and benefit will depend largely on each member's usage. Under Code section 170(f)(8) and Treasury Regulation section 1.170A-13(f)(8), all \$75 is deductible as a contribution, raising the question why the instruction doesn't explicitly adopt that position for contributions of \$75 or less. A good case can be made that the rule should be extended to all contributions providing benefits of the type referred to in the regulation. Once again, the overarching consideration should be consistency in reporting by similarly situated organizations. At a minimum, the Service should require affected organizations to disclose the basis of their allocations as part of a supplemental schedule. As noted, all Tips should be eliminated as such and then integrated into the text.
15. **PAGE 25. PART IV, LINE 11A. GROSS INCOME FROM FUNDRAISING EVENTS.** The second example at the bottom of Page 26 is a bad one. It implies that the contribution need not be reduced for the value of the dinner. The better example would be to state that the admission price is \$250, the value of the dinner is \$100, and the value of the mug is \$5. The gross income from the event would be \$250, reported on Line 11a, with \$150 shown in the Line 11a parenthetical and Line 1c.
16. **PAGE 28. PART V. IN GENERAL.** The organization should be required to attach a description of the allocation methodology. This assures that members of the media, the public, and researchers can make appropriate adjustments in data so as to facilitate comparisons between organizations. Requiring that the organization need only retain this information is inconsistent with transparency and full disclosure.

17. **PAGE 28. PART V. CAUTION.** Separate state disclosure requirements should be ignored when preparing the Form 990. As noted, the Form 990's utility will be greatly diminished if state law controls how accounting data is reported.
18. **PAGE 29. PART V. COMBINED EDUCATIONAL CAMPAIGN AND FUNDRAISING SOLICITATIONS.** Information is requested regarding joint cost allocations following Line 44 of Part II of the current Form 990 (2006). The corresponding instructions are more detailed than the portion of the proposed revisions that address joint cost allocations. The equivalent of Line 44 should be added to the proposed revision to Form 990, with the instructions appropriately expanded.
19. **PAGE 30. PART V. EXAMPLE.** This example is anything but clear.
20. **PAGE 32. PART V, LINE 5. COMPENSATION OF CURRENT OFFICERS, DIRECTORS, AND KEY EMPLOYEES.** Consistent with earlier comments, compensation included on this line should represent compensation paid to disqualified persons, as such term is defined by Treasury Regulation section 53.4958-3.
21. **PAGE 32. PART V, LINE 6. COMPENSATION, NOT INCLUDED ABOVE, TO DISQUALIFIED PERSONS.** Here the Code section 4958 intermediate sanctions are introduced into the instructions. Distinguishing between disqualified persons and key employees is not a meaningful distinction because there will be significant overlap. Lines 5, 6 and 7 should be left in place. However, the three lines should be redefined as follows: (Line 5) compensation of current directors; (Line 6) compensation to disqualified employees (as defined in under Code section 4958(f)(1) and persons described in Code section 4958(c)(3)(B) other than current directors); and (Line 7) other salaries and wages.
22. **PAGE 32. PART V, LINE 8. PENSION PLAN CONTRIBUTIONS.** Separating out pension plan contributions provides useful information. However, Lines 5, 6, and 7 implicitly acknowledge that users want a breakdown of current wage compensation based on the level of influence the individuals exert over the organization. Assuming that is a useful breakdown, that same breakdown should be reflected for pension plan contributions.
23. **PAGE 32. PART V, LINE 9. OTHER EMPLOYEE BENEFITS.** For the reasons set out in 21 and 22 above, this information should be separately reported for each recipient category set out in Lines 5, 6, and 7 of Part V.
24. **PAGE 33. PART V, LINE 11F. INVESTMENT MANAGEMENT FEES.** This line clearly reflects cash payments by the organization to investment managers. It is unclear how hedge fund and partnership allocations (splits) are handled. Presumably, the organization would be required to include a 2% annual management fee taken by a hedge fund manager at the hedge fund level. It is not at all clear whether a 20% carried interest is included in this amount, and if so, how and when it is included. Given the increasing reliance on hedge fund and partnership investments by exempt organizations, the instructions should provide more clarity.

25. **PAGE 34. PART V, LINE 12. ADVERTISING EXPENSES.** It is unclear what an in-house fundraising expense is. Is this the cost of raising funds from the organization's employees, or is it the cost of fundraising campaigns developed in-house, but seeking funds from external funding sources?
26. **PAGE 34. PART V, LINE 13. OTHER EXPENSES.** This line should be broken into subcategories (for an example, see Lines 11a through 11g). In particular, telecommunication expenses and insurance costs can be material.
27. **PAGE 34. PART V, LINE 17. TRAVEL.** This expense category should be split into three subcategories that track the classification scheme reflected in Lines 5, 6 and 7 of Part V.
28. **PAGE 35. PART V, LINE 18. PAYMENTS OF TRAVEL OR ENTERTAINMENT EXPENSES FOR ANY FEDERAL, STATE OR LOCAL PUBLIC OFFICIALS.** The form and instructions should provide for a supplemental attachment disclosing each official (and any family or staff members) who were the beneficiaries of travel or entertainment expenses paid for by the exempt organization. The attachment should also disclose the purpose of travel or entertainment (e.g. to give a university commencement speech, discuss public policy, or promote trade with a foreign country). There have been a number of recent media reports of expenditures by Code section 501(c)(3) organizations for private plane and other travel by elected officials. See, for example, Paul Pringle, *Nonprofit Subsidizes Schwarzenegger Travel Frills*, L.A. TIMES (July 5, 2007). It is apparent that the media is having difficulty obtaining this important information.
29. **PAGE 35. PART V, LINE 19. CONFERENCES, CONVENTIONS, AND MEETINGS.** This instruction should provide that expenses covered by Line 18 should not be included here. For example, a politician might be asked to be the keynote speaker at a conference sponsored by an exempt organization. Reimbursement of the politician's travel expenses and any legally permitted honorarium should be reported on Line 18 rather than Line 19.
30. **PAGE 35. PART V, LINE 21. PAYMENTS TO AFFILIATES.** The instructions require far more clarity and a more workable aggregation rule than is currently present.
 - a. **COMMON ACCOUNTING OR PAYMENT SYSTEMS.** Large hospitals and universities may be comprised of multiple entities that use common payment and accounting systems for internal control purposes. Although accounting and payments may be centralized, each entity bears the actual cost of its transactions. In these instances, there literally could be tens of thousands of inter-organizational payments, all tracked with sophisticated accounting software. No one outside of the organization needs or cares to see all of this detail reported on the Form 990 or in financial statements. It is the practice of the accountants to use eliminations to discard all this information when preparing financial statements. Just the end result or substance of these transactions is reported. For example, Subsidiary A may have its entire payroll processed by Common Entity, with Common Entity taking the funds out of Subsidiary A's bank account to

cover the payroll. In this case, the Service, the media, charity watchdogs, and the public are interested in Subsidiary A's payroll expense, not the intercompany transfers. The instructions should clearly state that the intercompany payments generated by these sorts of arrangements are disregarded for purposes of Line 21.

- b. **PAYMENTS TO AFFILIATES.** The public should be interested in payments by local affiliates to national organizations operating in what are termed *federated systems*. Line 21 is intended to capture those payments. However, the instruction do not indicate whether those expenses should then be categorized as program service expenses, management and general expenses, or fundraising expenses. From the standpoint of traditional efficiency metrics, organizations have an incentive to classify these payments as program service expenses. The instructions should adopt a rule that specifies how these expenses are allocated when the payments to the national organization are not specifically attributable to the individual categories. Possibly these expenses should be allocated between the three expense categories in the same proportion as all other expenses incurred by the local entity so that organizations cannot game the metrics. Whatever the method of allocation, it should be defined so that meaningful comparisons between entities can be made. Organizations should be required to disclose the payees by name and explain the relationships.
- c. **TIP.** First, the tip should be eliminated, with its content being integrated into the text of the instruction. More important, organizations should not be given the option of reporting payments to affiliated or national organizations that do not represent membership dues on Line 21 or Line 1. This jeopardizes the ability of people to make meaningful comparisons of data for different organizations.

31. PAGE 36. PART V, LINE 22. DEPRECIATION, DEPLETION, AND AMORTIZATION.

Giving organizations a choice between using MACRS or GAAP for purposes of calculating depreciation is unacceptable because it makes comparisons between different organizations meaningless. All organizations should be required to use MACRS or all organizations should be required to use GAAP. Admittedly, mandating a uniform system would be much easier to implement if the Service were writing on a clean slate. Unfortunately, now mandating that one depreciation system be used by all organizations would require the group of organizations that currently use the other system to adopt a change of accounting method. Possibly, the Service could avoid that result by simply requiring one system to be used by all organizations for all assets placed in service after a specified date. The sector would then have a transition period, with the data becoming more uniform with the passage of time.

But for UBIT, my preference would be for mandating the use of GAAP for reporting depreciation. As a practical matter, cost recovery information is for the most part meaningless because it often bears little relation to actual economic obsolescence.

If the Service decides to permit organizations to continue to choose between the different systems, it should at least require each organization to disclose the system that it is using to calculate depreciation (i.e., MACRS or GAAP).

The Service should also establish a rule that applies when two organizations using different systems merge. The FASB is currently considering a major change in the rules that apply to accounting for mergers of nonprofit entities. As I understand the proposal, it would eliminate pooling accounting. This could have the effect of distorting subsequent calculations of depreciation. Although it is not clear how such changes should be addressed for purposes of the Form 990, the Service should be considering the potential impact.

32. **PAGE 36. PART VI, BALANCE SHEET. OVERARCHING CONSIDERATION.** The instructions should provide that when the organization prepares its financial statements on a GAAP-compliant basis, the data entered for the balance sheet should be based on the organization's GAAP financial statements.

33. **PAGE 37. PART VI, LINE 3. PLEDGES AND GRANTS RECEIVABLE, NET.** Organizations that prepare their financial statements in accordance with GAAP should not be given a choice to report pledges on a basis other than that required by SFAS 116.

The gross number should be reported, with a separate allowance for write-offs. Pledges are charitable assets. Boards should not adopt a policy of simply writing off all unpaid pledges before undertaking any collection efforts. To do so arguably violates the board's duty of care. The Form 990 should not obfuscate inappropriate policies.

34. **PAGE 37, PART VI, LINE 4. ACCOUNTS RECEIVABLE, NET.** Accounts receivable should be reported both gross and net of doubtful accounts.

35. **PAGE 38. PART VI, LINE 9. PREPAID EXPENSES AND DEFERRED CHARGES.** The instructions should provide examples that explain the distinction between prepaid expenses and deferred charges.

36. **PAGE 38. PART VI, LINE 10. INVESTMENTS IN PUBLICLY TRADED SECURITIES.** On occasion, an exempt entity will invest in a partnership or other pass-through entity that in turn invests in publicly-traded securities. Are these securities included on Line 10 or Line 11? The instructions should be clear on this point

37. **PAGE 38. PART VI, LINE 11. INVESTMENTS—OTHER SECURITIES.** The investments reported on this line should be broken out into the following subcategories: (i) hedge funds; (ii) other partnerships; and (iii) interests in split-interest arrangements. As a general proposition, the Service should be careful to make sure it has captured information for all material and meaningful breakdowns before using the terms *Other* or *Miscellaneous* to capture remaining catchall amounts.

38. **PAGE 38. PART VI, LINE 14. PROGRAM-RELATED INVESTMENTS.** Program-related investments could include such items as loans to students or low-income individuals, or an interest in a corporation that operates a restaurant employing low-income individuals. Some of these investments could take the form of interests in pass-

- through entities. The instructions should clarify whether, and if so, when these investments should be reported on Line 14 or Line 11. The instructions to Line 11 should provide appropriate cross reference to the instructions for Line 14. Probably the best way to characterize the distinction between Lines 11 and 14 is to distinguish between investments that are held principally for the production of income (endowment) and those that further the organization's exempt function other than providing income. That distinction should be better reflected in the instructions.
39. **PAGE 38. PART VI, LINE 15A. PROGRAM-RELATED—LAND, BUILDINGS, AND EQUIPMENT.** An organization might hold these assets through a single-member limited liability company. The instructions should discuss whether the land, building, and equipment are reported here or whether the interest in the limited liability company is included in Lines 13 or 14. As a general matter, the forms and the instructions are inadequate in addressing how investments in affiliated entities are handled. Given the increasing sophistication of exempt entities when it comes to the use of affiliated entities, both the forms and the instructions should reflect a well-thought out approach to this difficult issue.
40. **PAGE 39. PART VI, LINE 22. ESCROW ACCOUNT LIABILITY.** If an organization is a trustee of and/or beneficiary under a split-interest arrangement, the organization might be viewed as having an offsetting liability to an individual or entity that has a beneficial interest in the split-interest arrangement. See, American Institute of Certified Public Accountants, AICPA Audit and Accounting Guide for Not-For-Profit Organizations, Chapter 6 (May 1, 2007). The instructions should clarify whether the offset is included here.
41. **PAGE 39. PART VI, LINE 23. PAYMENTS TO CURRENT AND FORMER OFFICERS, DIRECTORS.** So there is no ambiguity, the instructions should specifically refer to the individuals listed in Part II of the Core Form.
42. **PAGE 39. PART VI, LINE 24. MORTGAGES AND NOTES PAYABLES TO UNRELATED THIRD PARTIES.** The reference to "investment or other real property" is confusing. Is investment limited to real property investment property, or does it include investments in securities? Based on the subsequent references to particular lines, the term includes securities. Less ambiguous language (investment property) should be adopted.
43. **PAGE 39. PART VI. LIABILITIES.** Deferred compensation outside of a qualified plan is a liability, yet there is no specific line for this compensation. A separate liability should be reported for this liability. There should be clear instructions about how underfunded qualified pension liabilities are to be handled. At a minimum, there should be a disclosure of the underfunding and the amount. Even if the organization has no legal obligation to correct the underfunding, it may need to do so in order to maintain good relations with its workforce.

44. **PAGE 40. PART VI, LINE 28. UNRESTRICTED NET ASSETS.** The instructions should specifically provide that board-designated endowment is classified as an unrestricted asset.
45. **PAGE 40. PART VI, LINES 31 THROUGH 33. ORGANIZATIONS THAT DON'T FOLLOW SFAS 117.** The instructions should provide greater detail and examples. The notion of the typical tax-exempt organization having outstanding stock is counter-intuitive. This may be due to my lack of my specific knowledge, but I can't recall seeing this information on any return I have ever reviewed. Is this aimed at the membership social club, with initiation dues?
46. **PAGE 42. PART VI, LINE 7B. RELATED ENTITIES.** There should be a discussion of what constitutes "related" for purposes of this question. Are covered relationships limited to an ownership interest (e.g., stock or limited partnership interest), or do covered relationships include relationships created through membership and overlapping boards, as well as relationships created through support requirements?
- Schedule R and the corresponding instructions rely on a detailed definition to spell out covered relationships between organizations. That definition should be transferred to the Glossary, with the instructions making reference to that definition when and as needed.
47. **PAGE 42. PART VI, LINE 8. SUBSTANTIAL PART.** It is not clear what constitutes "a substantial part." Instead of using an ambiguous term, the instructions should use percentages. Taxpayers who want to comply with requirements should not have to guess.
48. **PAGE 42. PART VI, LINE 8B. LESS THAN 50%.** Is this a typo? What about entities where control is greater than 50%?
49. **PAGE 41. PART VIII. STATEMENTS REGARDING OTHER IRS FILINGS.** Reference to the Glossary should not be a Tip.
50. **PAGE 44. PART VII. LOBBYING. QUESTION 2 OF THE CORE FORM.** There is no instruction regarding Line 2 and the definition of lobbying. Does the definition for lobbying include activities described in the exceptions in Code section 4911(b)(2)?
51. **PAGE 45. PART VII. LINE 12. SOLICITATIONS OF NONDEDUCTIBLE CONTRIBUTIONS.** Much of the commentary in this instruction is extraneous. A cross reference to Code section 6113 and Notice 88-120 should suffice. Having said that, I understand that the Service is using this commentary in an effort to educate, so I suspect there will be no changes. Nevertheless, it is not clear that the last paragraph regarding organizations that qualify under Code section 170(c) to receive contributions should automatically check "No," as the instructions indicate. There have been instances where Code section 501(c)(3) organizations have solicited contributions to assist specific victims of disasters and their survivors. The beneficiaries may not constitute a charitable class because a small group of

- specifically named individuals generally is not considered an indefinite group. In other words, it is possible for a Code section 501(c)(3) organizations to solicit non-deductible contributions.
52. **PAGE 46. PART IX, LINE 1. STATEMENT OF PROGRAM SERVICE ACCOMPLISHMENTS.** The form and the instruction should also request information about changed purposes. Although purposes and activities should be aligned, the law draws a distinction between the two. Compare Treasury Regulation section 1.501(c)(3)-1(b)(1) with Treasury Regulation section 1.501(c)(3)-1(c)(1).
53. **PAGE 46. PART IX, LINE 2. MOST SIGNIFICANT ACCOMPLISHMENT.** What is the Service going to do when some organizations provide more than one accomplishment, refusing to pick the “most significant” one? If the Service wants only one, the instructions should clearly reflect that fact.
54. **PAGE 46. PART IX, LINES 3A THROUGH 3C. PROGRAM SERVICE ACCOMPLISHMENTS.** The focus on clients served, days of care, therapy sessions, or publications issued really misses the distinction between outputs and outcomes measurement. A food bank can serve a lot more people if it distributes food that is inexpensive but high in starch and fat. Many of its clients, however, will have shorter remaining life spans if they eat that food. A literacy center can teach 1,000 adults to read at the 1st grade level, or with the same dollars, it can teach 100 adults to read at the 10th grade level. A homeless shelter can train 1,000 homeless people for minimum wage jobs, but do nothing to improve work ethic. As a consequence, 990 of those people could be back out on the streets two months after going through the training. On the other hand, that same shelter could train 50 homeless people and address work ethic and other relevant factors, with all 50 still employed two years after completing the training. In short, the sort of data the Service is asking for is superficial. It often provides the wrong incentives for charities and misleads donors. This aspect of the question should be dropped. At some point, donors who are really concerned about outcomes must kick the tires by visiting the operation or asking questions. If the question remains, supplemental disclosure through attachments should be encouraged and facilitated.
55. **PAGE 47. PART IX. DONATED SERVICES.** Some guidance should be provided about how those volunteer services are valued. The Service should make reference to OMB Circular A-110 or other appropriate source for a methodology so that valuation methods are consistent across organizations.
56. **INSTRUCTIONS TO SCHEDULE D, SUPPLEMENTAL FINANCIAL STATEMENTS. PART III. INVESTMENTS—OTHER.** The instructions should make clear that museum collections are excluded from this number if the collection is not reported as an asset for financial statement purposes. In other words, GAAP should be followed.
57. **INSTRUCTIONS TO SCHEDULE D, SUPPLEMENTAL FINANCIAL STATEMENTS. PART VI. OTHER ASSETS.** See 56 above.

58. **INSTRUCTIONS TO SCHEDULE D, SUPPLEMENTAL FINANCIAL STATEMENTS. PAGE 6. PART IX. DONOR ADVISED FUNDS, COLUMN B.** Taxpayers are asked to list separate funds or accounts other than donor advised funds. The Service should provide several examples illustrating what it has in mind. Is the Service focused on restricted gifts such as scholarship funds, fiscal agencies, or some other specific type of arrangement?

59. **INSTRUCTIONS TO SCHEDULE D, SUPPLEMENTAL FINANCIAL STATEMENTS. RECONCILIATION OF REVENUE PER AUDITED FINANCIAL STATEMENTS.** The instructions need to be far more explicit in the level of detail required. In my experience, the reconciliations are often vague and do not permit someone to reconstruct the audited financial statements using the Form 990 balance sheet and income statement information with the aid of the reconciliation. Each material difference between GAAP and tax should be explained, with a description of the difference, its effect on the statements, and the amount involved.

More fundamentally, the Service could eliminate the need for this sort of reconciliation by requiring all data included on the return to be from GAAP-compliant financial statements when such statements are readily available. The Form 990 is largely an information return rather than a return that examines the tax base as determined under the Code. Consequently, there is little, if any, reason for deviating from GAAP.

60. **INSTRUCTIONS TO SCHEDULE G, SUPPLEMENTAL INFORMATION REGARDING FUNDRAISING ACTIVITIES. PAGE 2. LINE 3.** Why is authorization to solicit the appropriate trigger? The question and instructions should ask for all states in which the organization does solicit (although Internet solicitation per se should probably be disregarded because of the uncertainty in the law that currently exists).

61. **INSTRUCTIONS TO SCHEDULE J, SUPPLEMENTAL COMPENSATION INFORMATION. OVERARCHING COMMENT.** Consistent with my prior comments, the focus on key employees should be replaced with appropriate references to disqualified persons, as defined by Code section 4958.

62. **INSTRUCTIONS TO SCHEDULE J, SUPPLEMENTAL COMPENSATION INFORMATION. PAGE 3. LINE 1. COMPENSATION DETAIL.** The instructions should only require organizations to use reasonable efforts to obtain information from related parties. It is conceivable that related parties may refuse to release the information. The Service's current approach assumes the organization is in a position to force release of information.

63. **INSTRUCTIONS TO SCHEDULE J, SUPPLEMENTAL COMPENSATION INFORMATION. PAGES 9 TO 11.** The template is extremely helpful.

64. **INSTRUCTIONS TO SCHEDULE L, SUPPLEMENTAL INFORMATION ON LOANS. OVERARCHING COMMENT.** Consistent with my prior comments, the focus on key

employees should be replaced with appropriate references to disqualified persons, as defined by Code section 4958.

65. **INSTRUCTIONS TO SCHEDULE M, NON-CASH CONTRIBUTIONS, OVERARCHING COMMENT REGARDING DETAIL.** The instructions should be far more specific in terms of the information and level of detail that is being requested, particularly in case of Books and Publications (Line 4), Clothing (Line 5), Household Goods (Line 6), and Securities—Publicly Traded (Line 10).

At first, it appears that the Service is requesting aggregates for gifts within each category. Yet, this is not entirely clear, particularly because of the reference to single shares of stock in the discussion of publicly traded securities, which suggests that the Service wants each gift (100 shares of XYZ stock listed), rather than the aggregation of all gifts of stock. The Service should correct this lack of clarity with several examples. Here are two hypotheticals that attempt to clarify my concerns:

Hypothetical 1: Donor 1 gives Charity 100 shares of Publicly Traded Stock 1 valued at \$20,000. Donor 2 gives Charity 400 shares of Publicly Traded Stock 2 valued at \$100,000. Is the revenue reported on Form 990, Part IV, Line 1g \$120,000 for purposes of completing Schedule M, Part I, Column b, Line 10? Or does the Service want an attachment showing each contribution?

Hypothetical 2: Charity collects donated books throughout the year for sale at its annual book sale. Donor 1 gives Charity a box of 100 books, valued at \$50. Donor 2 gives Charity one book valued at \$10,000. Is the revenue reported on Form 990, Part IV, Line 1g is \$10,050 for purposes of completing the Schedule M, Part I, Column b, Line 10? Or does the Service want a supplemental schedule showing each contribution?

In Hypothetical 2, the books donated by Donor 1 are based on a valuation convention that values paperback books are valued at .50 cents each. The book donated by Donor 2 is valued based on a qualified appraisal. Must Charity list two categories of book contributions for Line 4 of Schedule M, which would require the use of an attachment?

66. **INSTRUCTIONS TO SCHEDULE M, NON-CASH CONTRIBUTIONS, OVERARCHING COMMENT REGARDING SPLIT-INTEREST TRUSTS.** How is this information to be reported when the gift takes the form a split-interest arrangement?
67. **INSTRUCTIONS TO SCHEDULE M, NON-CASH CONTRIBUTIONS. PAGE 6. LINES 23-26—OTHER.** Organizations should not have to collect or track information regarding gifts of clothing and households goods that were not in *good used or better condition*, particularly in the case of items that do not exceed \$500 in value and for which a qualified appraisal was not obtained. I assume many of these items are discarded because they have little if any value.

68. **INSTRUCTIONS TO SCHEDULE N, LIQUIDATION, TERMINATION, DISSOLUTION, OR SIGNIFICANT DISPOSITION OF ASSETS. OVERARCHING COMMENT.** Consistent with my prior comments, the focus on key employees should be replaced with appropriate references to disqualified persons, as defined by Code section 4958.
69. **INSTRUCTIONS TO SCHEDULE N, LIQUIDATION, TERMINATION, DISSOLUTION, OR SIGNIFICANT DISPOSITION OF ASSETS. LINE 1(C).** The instructions should make clear that unless the value of an asset is otherwise known, or there are other legal requirements requiring a valuation, that it is not necessary to obtain an appraisal or valuation simply for the purpose of completing Schedule N.

G. ADDITIONAL COMMENTS REGARDING FORMS.

I previously commented on the forms in my earlier letter. I offer the following additional comments:

1. **WHAT SHOULD BE IN THE SUMMARY.** The Service should not be surprised if it receives a number of comment letters suggesting that the entire Summary to the Core Form be eliminated. While I certainly share the some of the concerns of those who will make that suggestion, I have no doubt that the Summary is here to stay. With that in mind, I offer the following suggestions and modifications to the existing version of the Summary:
 - a. **ELIMINATE PERFORMANCE METRICS IN THE SUMMARY TO THE CORE FORM.** I am now even more convinced that the Service should drop the metrics (Lines 8b, 19b, 25, and 26) from the Summary to the Core Form. The Form 990 should adopt the disclosure model reflected in federal securities laws. Required disclosures should be non-judgmental. In other words, organizations should be required to disclose raw data. The Service should then leave it to individual users as to how they want to massage, manipulate, and analyze the disclosed data. The SEC doesn't tell security analysts what discount rates to use, whether a 10 or 15 earnings per share number is the norm, whether a quick ratio is more informative than a defensive interval ratio, or what capital asset pricing model to use. Similarly, the Service should leave it to each Form 990 user to arrive at his or her own conclusions about what metrics are most telling. What is the trendy metric today may well be discredited a year or two from now.
 - b. **PART IX OF THE CORE FORM. STATEMENT OF PROGRAM SERVICE ACCOMPLISHMENTS.** Others have agreed with my observation that Line 2 of Part I of the Core Form does not provide sufficient space for organizations to describe their activities. Some commentators are concerned that members of the public and media will only review the Summary, failing to examine Part IX. Given that concern, it might be best to eliminate Line 2 and insert an appropriate cross reference to Part IX.
 - c. **POSSIBLE ADDITIONS TO THE SUMMARY.** If the Summary remains, I believe there are several pieces of information that will be far more relevant to users.

Specifically, the Service should add questions to elicit the following information in the Summary:

- i. **Existence of an Audit.** The summary should ask whether the organization's financial statements are audited by an independent public accountant, and if so, whether the resulting audit opinion is unqualified.
 - ii. **GAAP-Compliant Information.** The Summary should ask whether the organization's financial statements are GAAP-compliant and whether the information reported in the Form 990 is based on those statements.
 - iii. **Financial Fraud or Embezzlement.** In keeping with my June 17th comments, I would like to see a question asking whether the organization has been the subject of any fraud or embezzlement during the last year.
2. **PART VII, LINE 3. CREDIT COUNSELING, DEBT MANAGEMENT ACTIVITIES.** The question asked by Line 3 regarding credit counseling agencies should be deleted. Yes, that is the Service's latest crusade and rightfully so, but can't that be handled through activity codes? This is a question that applies to a very limited number of organizations, meaning that the vast majority of organizations should not have to deal with the issue.
3. **SCHEDULE R, RELATED ORGANIZATIONS.** Additional columns should be added asking the amount of the entity's taxable income and whether that taxable income would be considered UBI if conducted by the exempt organization. There will likely be objections to mandatory disclosure of this information on privacy grounds. I will leave to Chief Counsel to evaluate those issues. In fact, I suspect that issue is already present in the question asking for total income and end-of-year assets in Parts III and IV of Schedule R. However, I don't see that as an issue in the case of the question regarding the hypothetical nature of the income.

I would also like to see ownership interests in subsidiaries and other organizations separately reported on the balance sheet in Part VI of the Core Form rather than concealed through inclusion on Lines 11, 13, 14, or 16 of Part VI.

4. **THE GLOSSARY.** The Service should give serious consideration to greatly expanding the Glossary, and then using it for all EO publications. That would help shorten all publications and assure needed consistency. This can probably wait until the Form 990 revision project is finalized.

H. CONCLUSIONS

Although much of the attention regarding the Form 990 revision project has centered on the revised Forms, I hope that my letter demonstrates why the instructions are equally as important and why the Service needs to give serious consideration to formatting, brevity, and accessibility when it converts the current draft document into printed instructions. For many organizations, the clarity and accessibility to the information in the instructions will be what determines whether the information reported is both useful and meaningful.

As is obvious, the revision of the Form 990 and the accompanying instructions is a massive project. As I understand process, the Service plans to issue a revised proposal once it considers and incorporates the comments it receives. At the time that the revision to the proposal is issued, I hope the Service will also issue a redlined copy so that interested parties can better track the changes.

I do not plan to provide the Service with additional comments at this time. If I can be of service in answering any questions, please feel free to contact me. Once again, thank you for permitting me to have input into this important process.

Sincerely yours,

Jack B. Siegel
Principal, Charity Governance Consulting LLC