



September 14, 2007

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Form 990 Redesign, ATTN: SE:T:EO

Re: Comments on Proposed Revisions to IRS Form 990

OMB Watch is a nonprofit, charitable organization that promotes government accountability and citizen participation at the national level. As part of our work, we work closely with nonprofit organizations across the country and encourage their participation in governmental decision-making, which includes advocacy, lobbying activities, and nonpartisan voter participation. We advocate for governmental policies that reduce the burden for nonprofits to engage in public policy and help to make nonprofit sector activities more transparent and accountable. It is for these reasons we appreciate the opportunity to comment on proposed changes to IRS Form 990. These changes will have an impact on organizations like ours that must complete Form 990 every year, and also members of the public that must rely on Form 990 as a source of information on the nonprofit sector and individual organizations.

Our comments are supportive of the IRS' goals of enhancing transparency for the IRS and the public, promoting compliance with IRS rules and minimizing the burden on nonprofits. We focus on the sections that relate to civic participation through nonprofit organizations, especially 501(c)(3) organizations. The fact that we do not comment on other issues does not imply support or opposition to the proposals.

In summary, we recommend that the IRS:

1. Drop the requirement to report lobbying expenses for non-employees as called for in Core Form Part V Line 11(d). The IRS has not justified why it would impose new ways of allocating lobbying costs when it already collects detailed information through Schedule C. If IRS does not agree to this suggestion, it must revise the overly broad definition of lobbying in Core Form Part V Line 11(d) to be consistent with the tax code definition of lobbying.
2. Separate Schedule C into two parts: one for 501(c)(3) organizations on lobbying activities, and another for other types of nonprofits that covers both political campaign and lobbying activities. Additionally, the IRS should make definitions in the instructions for the Core

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Form and Schedule C internally consistent with regard to definitions of direct and indirect political campaign activities so that is clear in all parts that nonpartisan voter activities are not to be reported.

3. Drop the Schedule C requirement to report volunteer hours for political campaign activities. The IRS provides no justification for seeking such information.
4. Drop the requirement for certain charities to identify whether their lobbying activities have resulted in exceeding the substantial part test. Given there is no clear definition of when an organization exceeds the substantial part test, Part II-B Line 2a of Schedule C is an unfair and inappropriate question.
5. Clarify definitions of affiliated and related organizations in Schedule C so that the public has a better understanding of money that may be transferred from one affiliated group to another as well as who is undertaking lobbying activities.
6. Include a separate box in the Core Form header for "doing business as" names so that such names are fully searchable.
7. Take the time necessary to produce a useful and truly improved Form 990, and not let the schedule be driven by other factors. Based on feedback from this draft, we encourage IRS to provide another draft of the Form 990 for public comment.

Our detailed comments are below:

1. Disclosure of Non-Employee Lobbying Expenses in Core Form Part V Line 11(d)

Core form Part V Line 11(d) requires reporting of lobbying expenses for non-employees, and, for 501(c)(3) and 501(c)(4) organizations, a breakdown of this cost into three categories: program service expenses, management and general expenses, and fundraising expenses.

OMB Watch sees no reason to require such disclosure given nonprofits must provide detailed disclosure through Schedule C if they lobby. Moreover, most nonprofits do not currently record lobbying expenses in the functional categories used in Part V. As a result, this requirement will force nonprofits to keep additional records on lobbying activities to categorize whether they are program, general and management, or fundraising expenses. Not only does this impose an unnecessary burden on nonprofits, it is unclear how to allocate such expenses.

For example, when OMB Watch lobbies to protect our organization's right to lobby, is that a management and general expense? Or is it a program service expense? And if we promote the work we are doing and it generates contributions, does it need to be allocated to a fundraising expense? There is no guidance about how nonprofits should break down these expenses and we can see no useful purpose the proposed breakdown would serve.

Additionally, we are deeply concerned about what data IRS seeks on "lobbying." On page 33, the draft instructions say, "Enter amounts of lobbying *and legislative liaison services*. Include amounts for lobbying before federal, state or local *executive*, legislative or *administrative bodies*." (emphasis added) This expansive definition of lobbying is inconsistent with the tax code and IRS regulations governing 501(c)(3) organizations. First, IRS rules do not define "legislative liaison services." Furthermore, this is inconsistent with the data on lobbying activities provided in Schedule C. As a

result, any information collected will not provide consistent or useful information to the public. But the larger problem is that these activities are outside the IRS definitions of lobbying. There is no reason for the IRS to collect the information, because it does not have a regulatory purpose.

For 501(c)(3) organizations, advocacy before the executive branch and administrative bodies is not considered lobbying under the tax code or IRS regulations, unless the executive is being asked to take action with respect to legislation, such as use of the veto power. As a result, 501(c)(3) organizations do not track this information and should not be required to report it. The IRS should not have an interest in collecting this information, since there are no limitations on how much administrative advocacy nonprofits can engage in. Requiring this information on Form 990 would impose a significant new tracking and reporting burden on nonprofits without a legitimate regulatory purpose.

Because the definition of lobbying here is broader than required by law, the information would be inconsistent with what is reported about lobbying in Schedule C. On page 4 of the Schedule C instructions, the IRS says lobbying "does not include actions by executive, judicial or administrative bodies." This definition is consistent with IRS regulations, but inconsistent with what is being sought in Part V of the Core Form.

Again, we strongly urge the IRS to remove lobbying disclosure from Part V of the Core Form. If IRS is not willing to do so, it must provide a definition of lobbying that is limited to legislative activity as defined in Schedule C and not require a breakdown of lobbying consultant costs into functional expense categories for 501(c)(3) and 501(c)(4) organizations.

2. Separate Schedule C into Two Parts

Proposed Schedule C is a trap for the unwary. Mixing lobbying and political campaign activities in one form is likely to cause substantial confusion, especially when the form does not clarify what direct and indirect political campaign activities are. 501(c)(3) organizations are prohibited from engaging in electioneering activities – supporting or opposing a candidate for elected office. Thus, it is unclear what charities would need to report on various parts of the proposed Schedule C. The likely result is that permissible nonpartisan voter education and mobilization activities will be reported here, generating unnecessary burdensome disclosure. The information is inappropriate for regulatory purposes and would only likely lead to IRS investigations that waste time and energy for all concerned.

The public is also likely to be confused by this combined schedule. Many of us in the nonprofit sector find it hard enough to explain the differences between different types of nonprofit organizations. We often note that charities cannot be engaged in electioneering activities. Yet this form will lead some in the news media and the general public to be confused about the role charities play.

The best solution is to create two separate schedules: one for 501(c)(3) organizations that deals with lobbying activities, and another for all other nonprofits that addresses political campaign activities and lobbying activities.

If the IRS does not separate the proposed Schedule C, it should change the instructions at the top of the form, which says "501(c)(3) organizations: complete Parts I-A and B. Do not complete Part I-C." Part I-A deals with "direct and indirect political campaign activities;" Part I-B deals with excise

taxes. Instead, the top of the form should say, "501(c)(3) organizations: complete only Part I-B. Do not complete Parts I-A and I-C."

Additionally, the header description by Part I-A should be changed to follow the same language used in the header description by Part I-C: "To be completed by all organizations exempt under 501(c), except section 501(c)(3): (See Schedule C instructions for details.)" We would also encourage the IRS to add: "501(c)(3) organizations are prohibited from intervening in elections for or against candidates for office." This statement should also be in the Core Form Part VIII Line 1.

In the last sentence on pages 3 and 4 of the instructions for Schedule C, the IRS states that nonpartisan electoral activity should not be reported here. We suggest this sentence be moved to the top of the paragraph. The Schedule and the instructions should be as clear as possible that nonprofit organizations are not required to report on nonpartisan voter education and mobilization activities.

3. Drop the Schedule C Part I-A Line 1 requirement to report volunteer hours for political activities.

Part I-A Line 1 of proposed Schedule C asks for the number of volunteer hours engaged in direct and indirect political campaign activities. This requirement has no regulatory basis that we can see, is impractical if not impossible to comply with, and would discourage civic participation by forcing nonprofits and their volunteers to keep time sheets.

We recommend that this line be dropped, since it does not provide information relevant to any IRS enforcement powers. If it is not dropped, it should be changed to a simple "yes" or "no" question, such as, "Did the organization use volunteers for direct and indirect political campaign activities?"

4. Eliminate Schedule C Part II-B Line 2a

The IRS proposes to ask 501(c)(3) organizations that have not chosen to use the expenditure test under IRC 501(h) whether or not their lobbying activities make them ineligible for continued exempt status under 501(c)(3). This is an unfair question, since these organizations have no clear definitions or thresholds to make this judgment. Their lobbying is only limited by the vague statutory language that says "no substantial part" of their activities should be attempts to influence legislation. The instructions provide no guidance on what the IRS considers substantial.

This question should be eliminated. If, on the basis of information provided in Part II-B Line 1, the IRS believes there is a question of whether or not the organization has exceeded this undefined lobbying limit, it should conduct an examination and make a determination.

The question could be replaced by one that says, "Has the organization been found to have engaged in substantial lobbying?" Then it could go on to ask for reporting of tax incurred under Section 4912 and filing of Form 4720 as it does in Lines 2b-d. This would provide useful information to the public.

5. Clarify Definitions of Affiliated and Related Organizations and Provide More Information About Such Relationships

Proposed Schedule C Part II-A asks if the filing organization belongs to an affiliated group, and a follow-up question asks if the filer is an affiliated group, does it have "limited control." Pages 6-7 of

the instructions provide a clear definition of Affiliated Groups and Limited Control. Even with these definitions, the instructions are murky about how to complete Part II-A. Does this refer to a national organization with chapters at the state or local level, to 501(c)(3) organizations with related 501(c)(4) organizations or both? Is it practical to ask an organization with a national affiliation to include total expenses for the entire network of groups?

In addition, the instructions for this section tell filers to attach a schedule with information on the affiliates. We are concerned that this information will not be captured by a search engine that provides the public with Form 990 information. As a result, at least key items should be included on the Schedule C itself. In particular, the name and employee identification number should be on the Schedule C.

The Core Form asks for information about affiliates or related organizations in two places: Part III Line 7 and Part V Line 21. The instructions do not have any information defining affiliates or related organizations for Part III Line 7. The instructions for Part V Line 21 also lack definitions, and as a result are confusing. Is the use of "affiliates" in the Core Form the same or different than the use of "affiliated groups" in Schedule C?

In addition, the core form does not have a place where the identity of affiliated organizations is reported. We think this is a mistake.

It is important to avoid the appearance of impropriety for interlocking or affiliated groups, such as with 501(c)(3) and 501(c)(4) organizations. To ensure greater transparency and accountability, it is important for the public to be able to identify transactions between related affiliations. Thus, the Form 990 should be strengthened in ways that help the public understand any transfer of funds within such organizations, and if lobbying by one organization has a benefit to the other.

6. Include a Separate Box in the Core Form Header for the Organization "doing business as"

The instructions for the Core Form header Item C instruct filers to give the legal name of the organization, as well as any "doing business as" (d/b/a) name. We suggest a separate box be used for d/b/a names, so that the information can be picked up in an electronic search.

Our organization is an example. We are incorporated as the "Focus Project, Inc." but do business as "OMB Watch." If a member of the public wishes to find our Form 990 through an electronic search using "OMB Watch," he or she is not likely to be successful today. Under the proposed Core Form, it would be equally difficult, as we would report on one line "Focus Project, Inc. d/b/a OMB Watch." While some electronic search mechanisms would catch "OMB Watch" a more sure-footed way is to require a separate line or box for d/b/a.


7. Take the Time Needed to Get it Right

The IRS is proposing to implement changes to Form 990 on an expedited schedule. According to news reports, this is driven by the IRS technology staff schedule. This puts the cart before the horse. Form 990 has not been changed since 1979, and it may be another 25 years or more before it is revised again. If nonprofits and the public are going to have to live with the new Form 990 for a long time, the IRS should take the time necessary to produce a useful and truly improved Form 990.

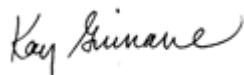
We suggest that the IRS provide a new draft of the Form 990 based on comments the agency receives from this proposal. The second draft should allow for public comment before moving to finalize the form.

Thank you for considering OMB Watch's comments. If you would like further information, please do not hesitate to call.

Sincerely,

Handwritten signature of Gary D. Bass in cursive script.

Gary D. Bass
Executive Director

Handwritten signature of Kay Guinane in cursive script.

Kay Guinane
Director, Nonprofit Speech Rights