



Internal Revenue Service
Draft Form 990 Instructions, SE:T:EO
1111 Constitution Ave. NW
Washington, DC 20224

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Comments on Draft Instructions for the 2008 IRS Form 990

OMB Watch is a nonprofit, charitable organization that promotes government accountability and citizen participation at the national level. In our work, we encourage nonprofit organizations to participate in governmental decision-making, through advocacy, lobbying activities, and nonpartisan voter engagement. We filed comments on the draft 2008 Form 990 because we promote a transparent and accountable nonprofit sector and governmental policies that avoid unnecessary reporting burdens for nonprofits.

The Center for Lobbying in the Public Interest (CLPI) is a national, nonpartisan organization that promotes, supports, and protects nonprofit advocacy and lobbying in order to advance the mission of charitable organizations and to strengthen our democracy. CLPI filed comments on the draft 2008 Form 990, because we believe that advocacy is a core function of nonprofits in our democracy and civil society. The IRS must simplify and facilitate the ability of nonprofits to lobby and engage in nonpartisan voting and other activities within clearly defined legal parameters.

OMB Watch and CLPI appreciate the opportunity to comment on the draft instructions, which are crucial to accurate reporting and appropriate IRS enforcement.

Our comments mostly focus on the instructions for Schedule C, since that relates to civic participation through lobbying and political activities. This does not mean our comments on Schedule C comprise all of our views. In addition, the fact that we do not comment on other issues does not imply support or opposition to them.

Summary of Comments

1. *To improve organization and navigation, we recommend a Table of Contents to make finding sections easier*

2. *The lack of any definition for "substantial lobbying" makes it difficult for 501(c)(3) organizations that do not use the expenditure test to measure their lobbying activities and to answer the question in Part II-B2(a).*
3. *The question regarding volunteer hours for political activities should be limited to a "yes" or "no" or an estimate of the number of volunteers.*
4. *Specific suggestions for Schedule C Part I-A and Part II A and B to clarify the instructions and result in more accurate reporting.*
5. *In the core form the term "legislative liaison" in Part IX 11(d) should be defined or dropped.*

Comments in Detail

1. Organization and Navigation

We recommend a Table of Contents for Schedule C instructions to make it easier to find individual sections. There are 21 pages of instructions for Schedule C, which is only one of 16 potential schedules Form 990 filers must complete. With no table of contents, substantial time is needed to wade through the instructions to find individual sections. The line-by-line instructions do not begin until page 8. A short Table of Contents at the beginning would make using the instructions much easier.

2. The "substantial part" definition problem

Part II-B Line 2a-d asks charities to identify whether their lobbying activities "cause the organization to be not described in section 501(c)(3)?" In OMB Watch's comments on the draft form we said, "This is an unfair question, since these organizations have no clear definitions or thresholds to make this judgment." The draft instructions do nothing to clarify how this question should be answered. However, lines b-d asks for information about penalties for excessive lobbying, implying that the IRS has made a determination that an organization's lobbying has been "substantial."

The instructions should make it clear that the only organizations that should answer "Yes" are those that the IRS already has determined to have engaged in substantial lobbying. Otherwise, the question has great potential to create confusion and result in unnecessary IRS investigations because:

- The instructions do not provide any definition of "substantial" lobbying, either on the Line instructions at page 13, or in the definitions section. The IRS should harmonize its definitions of lobbying under the substantial part test and the expenditure test.
 - The majority of 501(c)(3) organizations that file Form 990 do not elect to use Form 5768 and the expenditure test, making this question a widespread problem.
3. *The question regarding volunteer hours for political activities should be limited to a "yes" or "no" or an estimate of the number of volunteers.*

Part I-A(3) asks all organizations that engage in political campaign activities to list their volunteer hours. The instructions say "any reasonable method may be used to estimate this amount." While this may help avoid onerous reporting that would discourage volunteers from participating in civic, union, association or political organizations, the information that results is not likely to be useful for IRS enforcement purposes.

For example, a large organization with a national membership base may report 5,000 volunteer hours, which may be insubstantial in the context of its overall operations. At the same time, a smaller organization may have a dedicated corps of volunteers that also put in 5,000 hours of time. How does the IRS interpret this information for regulatory purposes? Assuming the goal is to determine whether 501(c)(4) organizations have made electoral activity their primary purpose, it appears the IRS is placing undue weight on the number of hours volunteered.

4. Specific suggestions for Schedule C Part I-A and Part II A and B to clarify the instructions and to facilitate more accurate reporting.

The following revisions to the instructions are intended to provide greater clarity and avoid reporting errors:

- Definition of terms on p. 3: Lobbying Activities. The definition should note the exceptions to the definition of lobbying so that activities such as nonpartisan analysis and research or testifying at the request of a committee chair are not reported as lobbying.
- Part II-A Definitions p. 6 Affiliated Groups. At the end of the first paragraph there is an incomplete reference to an annual revenue procedure.
- Part I-A p. 8 Note. At the end of the Note paragraph the following sentence should be inserted: "Nonpartisan activities that encourage participation in the electoral process should not be reported here."
- Part I-B introductory paragraph. Add "If no excise tax has been imposed put down "0" and answer "No."
- Part II-A Line 1(4) p. 14. There is an incomplete reference to an annual revenue procedure.

5. In the core form the term "legislative liaison" in Part IX 11(d) should be defined or dropped.

We appreciate removal of executive branch lobbying from the instructions for Part IX 11(d). This will provide more consistent data and prevent 501(c)(3) organizations from having to track two different sets of lobbying-related expenses. However, the phrase "legislative liaison services" remains in the definition of what is to be reported. As OMB Watch said in our earlier comments, "IRS rules do not define "legislative liaison services." The instructions should either remove the reference to legislative liaison services or define it in a manner consistent with 501(c)(3) regulations.

We appreciate the instructions and example in the introduction to this section. They adequately clarify how expenditures for non-employee lobbying are to be broken down into functional expenses.

Conclusion

The new Form 990 and instructions should improve accountability and transparency of nonprofit operations. They should ease the burden of compliance and reporting by nonprofits. By doing so, the IRS will improve both and help the public to understand nonprofit activities. We urge you to adopt our recommendations to help produce the best possible form and instructions, as they are likely to be in use for years to come.

Yours truly,

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