



September 11, 2015

Christie Preston  
IRS Reports Clearance Officer  
Internal Revenue Service  
Room 6129  
1111 Constitution Avenue NW.  
Washington, DC 20224

RE Comments on Form 990, *Return of Organization Exempt from Income Tax*, and  
Instructions, Including Schedule A and Schedule B

Dear Ms. Preston:

The Council on Foundations is pleased to submit comments on Form 990, *Return of Organization Exempt from Income Tax*, including Schedules A and B, and the instructions thereto. The Council on Foundations is a nonprofit leadership association of grant making foundations and corporations, and a public charity qualified under Section 501(c)(3) of the Internal Revenue Code. Our members include over 1300 philanthropic organizations and our mission is to provide the opportunity, leadership, and tools needed by these organizations to expand, enhance and sustain their ability to advance the common good.

These comments were developed by the Public Policy and Legal Affairs staff at the Council on Foundations and reviewed and approved by the Council's President and CEO. Council staff have daily contact with our numerous members and these comments are informed by the issues and challenges our members express. We appreciate your consideration of these recommendations and welcome the opportunity to discuss these items with you further. If you have any questions, please feel free to contact me at (703) 879-0715, or [Sue.Santa@cof.org](mailto:Sue.Santa@cof.org); or you may contact Suzanne S. Friday, Senior Counsel and Vice President of Legal Affairs at (703) 879-0705 or [Suzanne.Friday@cof.org](mailto:Suzanne.Friday@cof.org). Below please find our comments and recommendations for the 2015 forms and instructions.

Sincerely,

A handwritten signature in black ink that reads "Sue Santa".

Sue Santa  
Senior Vice President of Public Policy and Legal Affairs

## General Instructions and Glossary:

1. There is currently no definition for "Person" as used in the instructions. We recommend adding a definition for "Person" and an explanation regarding who and what is encompassed under the definition.
2. Please clarify the definitions of "control" and "related organization" in the glossary of the instructions with appropriate examples.
3. With respect to fundraising events that include auctions of donated items, we suggest a clarification in the glossary definition to address certain non-cash items such as gift certificates or vouchers for meals, travel activities, spa services and other similar items. While these items may appear to be services rather than goods, the gift certificate or voucher could also be viewed as an item (a "good") and therefore a non-cash contribution. Allowing for such treatment through a clear glossary definition would be helpful for our members.
4. Because the public support test (Schedule A) is a critical portion of the Form 990, and in fact determines whether an organization files Form 990 or Form 990-PF, it would be helpful if the instructions advised organizations to complete Schedule A as a first step, prior to completing other portions of the Form 990. This would help avoid a situation where a reporting organization substantially completes Form 990, only to find that it does not qualify and therefore must begin again with Form 990-PF. This should also be reflected in General Instruction C with respect to the sequencing list.

## Form 990, Part IV (Checklist of Required Schedules)

1. With respect to Line 10 regarding endowments, a reference to the Glossary definitions for each type of endowment (in addition to the reference to Schedule D) would be helpful. If a reporting organization does not hold any of the endowment funds defined in the Glossary, the inquiry should end and Schedule D would not be required.

## Form 990, Part V (Statement Regarding Other IRS Filings and Tax Compliance)

1. With respect to Line 8 applicable to sponsoring organizations holding donor advised funds, and specifically the instructions that read: "A **sponsoring organization** of a **donor advised fund** must answer "Yes" if any one of its donor advised funds had excess business holdings at any time during the organization's **tax year**. All other organizations should leave this line blank and go to line 9." We regularly see some confusion among our member organizations that qualify as sponsoring organizations holding donor advised funds. Many of these organizations should be answering "no" to this question because they do not have any excess business holdings to report, but instead leave the question blank based on an incorrect reading of the instructions. A clarification in the instructions that state if the organization holds donor advised funds, but has no excess benefits transactions to report, it should answer "no" would alleviate this confusion.
2. With respect to Lines 9 (a) and (b), similar to the comments above, we often see these questions left blank by sponsoring organizations when each should be answered as "no." A clarification in the instructions noting that all sponsoring organizations should answer either "yes" or "no" would alleviate this confusion.

## **Form 990, Part VII (Compensation Chart):**

1. There is some inconsistency in the instructions for this chart. Specifically, incentive compensation paid is to be reported in Schedule J, Part II, Column B(ii), while contributions to nonqualified plans (substantially vested) are to be reported on Schedule J, Part II, Column B(iii). Where a plan may be both an incentive plan and a nonqualified plan, the instructions should direct that if a particular item could qualify as more than one item on the chart, then reporting in accordance with either item on the chart is permissible.

## **Schedule A:**

1. With respect to Part I, Reason for Public Charity Status, there is still some confusion regarding the appropriate selection among Lines 7, 8 and 9 for a reporting organization that normally receives a substantial part of its support from a governmental unit or from the general public described in section 170(b)(1)(A)(vi) (line 7); is a community trust described in section 170(b)(1)(A)(vi) (line 8); and normally receives more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its exempt function, subject to certain exceptions, and no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (line 9). The instructions would benefit from a more detailed explanation, worksheet and/or examples inserted prior to the instructions for line 7, to assist these organizations that could qualify under all three lines, in properly determining the correct line to check. Determining the correct line to check is important as it also determines whether the reporting organization also completes Part II or Part III.
2. With respect to Part II, Line 5, it would be helpful if the instructions noted that contributions from donor advised funds held by a qualifying publicly supported organization are considered contributions from the publicly supported organization and not from an individual who may be the donor advisor to the donor advised fund.
3. With respect to qualification as a publicly supported organization and specifically the test needed to qualify (whether under Part II or Part III), the instructions could be improved to better explain that if an organization does not pass one test, it may still qualify under the alternate test, and it should instruct the organization to review both tests and consider the most appropriate test for qualification as a publicly supported organization.

## **Schedule B:**

1. Schedule B requires a listing of donors as well as grantors. It would be helpful if there were a method to distinguish donors from grantors such as a check box for “Grantor” or “Donor.”
2. Schedule B requires the filing organization to include a FMV of contributed property when reporting noncash contributions. The instructions to Schedule B state “When FMV cannot be readily determined, use an appraised or estimated value.” It would be helpful to clarify whether the reporting organization may rely on an appraisal obtained by a donor/contributor, or whether the reporting organization is required to obtain an appraisal or value estimate independently of that obtained by a donor/contributor.

**(Optional comments not specifically requested)**

**Schedule F:**

1. Schedule F requires reporting of grants or other assistance to particular U.S. organizations or entities for foreign activity, resulting in possible expenditure responsibility requirements in situations where one U.S. public charity makes a grant to another U.S. public charity for use abroad. This appears inconsistent with Treas. Reg. 53.4945-5(A)(6) which provides that with respect to certain earmarked grants, the grant shall not be regarded as a grant to a secondary (foreign) grantee even though the grantor has reason to believe that the secondary grantee would derive benefits from the grant so long as the primary grantee organization exercises control over the selection process and makes the selection completely independently of the grantor. A reference to Treas. Reg. 53.4945-5(A)(6) would help clarify these instructions. Additionally, guidance is requested regarding what factors are to be taken into consideration in determining whether the grant or assistance will be utilized in a foreign activity.
2. With respect to Part IV, Line 1 and specifically the question: “Was the organization a U.S. transferor of property to a foreign corporation during the tax year? It should be clarified in the instructions that the "transfer of property" to a U.S. corporation for these purposes does not include grants as grants are already disclosed on Schedule F, Part II, and a grant is not the type of transfer that triggers a Form 926 filing.