

Form 990 Policy Series

The attached Memorandum is a part of the *Form 990 Policy Series*, developed by a group of lawyers, all members of the California bar and practicing nonprofit law (the “Form 990 Policy Series Group”). The *Form 990 Policy Series* includes Memoranda containing rationales and procedures for legal counsel to use in advising their clients on drafting and adopting appropriate policies responding to the new Form 990 as well as form policies and/or questionnaires.

The members of the Form 990 Policy Series Group with respect to the attached Memorandum (posted July, 2011) were as follows: Joel S. Corwin, Co-Chair; Barbara Rosen, Co-Chair; Elizabeth Bluestein; Lani Meanley Collins; the late Gerald A. Laster; Henry Lesser; Nancy McGlamery; Louis Michelson; Joy P. Paeske; Alicia Plerhoples; Lisa A. Runquist; Robert Siemer; Myron Steeves; Patrick Sternal; and Martin J. Trupiano. The views expressed in the Memoranda do not necessarily reflect the views of the law firms or employers at which these lawyers practice or any individual member of the Group.

The date at the top of the attached Memorandum is the date that the Memorandum was finalized, and the Memorandum may not reflect changes in law or practice since that date.

**FORM 990 POLICY SERIES
MEMORANDUM**

Re: Public Availability/Disclosure of Documents
Form 990, Part VI, Section C, Lines 18 - 20 (Form 990 Policy Series Memo #12)

Date: September 14, 2010

NOTE ON THE SCOPE OF THIS MATERIAL

This material is designed to provide general guidance about an aspect of nonprofit corporate governance in the specific and limited context of the governance questions contained in the new IRS Form 990 (published by the IRS in 2008 and applicable to 990 filers based on a 2009-2011 filing year phase-in period depending on the size of the nonprofit). It is intended to provide some general guidance on the establishment of processes and/or policies to address a specific governance question in the Form. The subject matter of that question implicates a broad array of legal and practical issues ranging far beyond the immediate subject matter of the question itself. This material may address some of those issues but does NOT attempt to review them comprehensively and is NOT intended to be relied on for guidance on how they should be addressed in any specific situation.

Whether or not a nonprofit organization adopts a specific governance process or policy (or modifies an existing one), either in response to the disclosure requirements of the new IRS Form 990 or to change its governance practices for other reasons is a matter to be carefully considered by that organization, with input from its board and advisors and evaluation of its specific circumstances. The IRS has explicitly stated that adoption of the policies and practices about which the new Form 990 asks is not mandatory, although the IRS has also indicated that it attaches significance to the manner in which all tax-exempt nonprofit organizations govern themselves. The inclusion of a sample policy in this material is not intended to suggest that the policy is appropriate for every nonprofit organization nor that, if a policy on that topic is determined to be appropriate, the formulation in the sample necessarily fits the needs of an individual nonprofit organization. A customized approach, with outside professional advice, is recommended. Accordingly, this material is intended as general information for legal practitioners advising nonprofit organizations as to their governance and does not constitute legal advice for any particular nonprofit organization.

Although the subject matter of this material may have relevance to nonprofit organizations that are not required to file informational tax returns with the IRS or are permitted to file on an IRS form other than Form 990, the focus of this material is 990 filers. While this material is meant to apply to Form 990 filers who are exempt under Section 501(c) of the Internal Revenue Code, certain portions of this material may be applicable only to Section 501(c)(3) organizations. In addition, although this material may be of assistance with respect to nonprofit organizations that are not subject to oversight under California law, there may be portions of this material that are relevant only to nonprofits organized under, or (by reason of their California-related activities) otherwise subject to, California law and, except as specifically discussed in this material, the laws of other States are not addressed.

1. Summary

For exempt organizations, some documents must be made available to the public upon request. Other documents are not required to be disclosed to anyone other than to members of the governing body. The questions for the organization are (1) what documents must it disclose and (2) to what extent does it want to make other documents and financial information available to the public. Part VI, Section C, Lines 18 – 20 of the new Form 990 asks questions that could lead an organization to disclose more than it

needs to disclose without thinking through whether it really is in the best interests of the organization to make the information public.

2. Rationale for Adoption of the Policy

The IRS believes it has a role to play in helping organizations serve the public better through enhanced governance practices, and it believes that transparency and accountability are key governance practices. Accordingly, the new Form 990 asks the organization to describe whether certain documents are made available to the public, including its governing documents, conflict of interest policy, and financial statements, and to state the name, physical address and telephone number of the person who possesses the books and records of the organization. See Part VI, Section C, lines 18, 19 and 20. The IRS believes that poor governance often leads to poor tax compliance. Some have said failure to adopt such policies may lead to a higher likelihood of an audit of an organization's Form 990.

A. Federal Law

There is no federal requirement to make the *current governing documents, conflict of interest policy, and financial statements (other than what is reported in the Form 990 and, for certain organizations, in the 990-T) available to the public. Organizations must make their application for exemption (Form 1023 or Form 1024) available to the public, with all the attachments.* To the extent the attachments to the Form 1023 or 1024 included the articles, bylaws and conflict of interest policy in effect at the time of the filing of the application for exemption, those documents, as part of the application for exemption filing, must be maintained and available for public review for as long as the organization is in existence.

The instructions to the new Form 990 state that any changes to the articles and bylaws must be described on Schedule O. However, the instructions state that, with the exception of an amendment to the articles of incorporation that states a new name for the organization, copies of any amendments to the articles or bylaws are not to be filed with the Form 990.

B. California Law

Under California law, although the articles of incorporation and all amendments thereto are public documents and available from the Secretary of State, the organization is not required to make them otherwise available for public inspection. "Public inspection" means inspection by someone who is not a "member" of the organization (a "statutory member") as that term is defined by the California Corporations Code. If the organization has statutory members, statutory members have the right to inspect and copy the articles and bylaws. See California Corporations Code Sections 5160 and 7160.

The California Nonprofit Integrity Act requires all charities that receive or accrue in any fiscal year gross revenue of \$2 million or more (not including funds from

governmental entities which require an accounting of such funds) to prepare audited annual financial statements as referred to in California Government Code Section 12586. No matter what the gross revenues, any audited financial statements must be made available for public inspection in one of the permitted ways for making the Form 990 available. See Government Code Section 12586 and Frequently Asked Questions (FAQs) on the California Attorney General's Registry of Charitable Trusts website (ag.ca.gov/charities/faq.php). However, the bylaws, policies and procedures and unaudited financial statements are not required to be made available for public inspection.

This Memorandum addresses only those documents specifically asked about in lines 18 and 19 of Section C of Part VI of the 990. It does not address other documents required by, for example, the Brown Act or corporate law.

Since all the documents asked about in the Form 990 do not have to be made available to the public, that leaves the organization with the question of how much transparency is appropriate for it. Does it want to make its current governing documents, policies and financial statements available to the public to the extent it is not already required to do so, and if so, to what extent and how?

3. Background of Requirements/Sources for the Policy

A. Documents That Must be Made Available to the Public

The public has the right to inspect (distinguished from a right to copy) the application for tax exemption and the annual information return in all events, without charge, at the organization's principal, district and regional offices during regular business hours. Each information return shall be made available for a period of three years beginning as of the date the return is required to be filed, including extensions. In addition, the public has the right to a copy of the application for tax exemption and annual information returns, without charge other than a reasonable fee for reproduction and actual postage costs, if the organization has not made them "widely available." During the period between when a Form 990 is filed with the IRS and when it is available on GuideStar (www.guidestar.org), the organization must make it available either upon request or by posting it on its or another's website. If the organization has made them widely available, then the organization is not required to comply with a request for a copy. Internal Revenue Code Section 6104(d), and Treasury Regulation 301.6104(d)-1. There also is an exception for an organization subject to a harassment campaign. Treas. Reg. 301.6104(d)-3. Note that the names and addresses of contributors may be redacted if Schedule B is made available to the public.

The term "application for tax exemption" includes any prescribed application form (1023 or 1024), all documents and statements the IRS requires filed with the form, a statement or other supporting document submitted by the organization in support of the application, and any letter or other documentation issued by the IRS concerning the application, including a list of questions from the IRS and the determination letter.

“Supporting documentation” includes the Articles of Incorporation and all amendments thereto and the Bylaws that accompanied the Form 1023 or Form 1024. There are exceptions. For example, the organization need not disclose any application filed before July 15, 1987 (unless the organization had a copy of the application on July 15, 1987) or the names and addresses of contributors to the organization (except another tax-exempt organization or private foundation).

An organization makes its application for tax exemption and/or an annual information return widely available if the organization does both of the following, pursuant to Treas. Reg. 301.6104(d)-2:

1. Makes them available by posting them on a World Wide Web page that the tax-exempt organization establishes and maintains or by having the document posted, as part of a database of similar documents of other tax-exempt organizations, on a World Wide Web page established and maintained by another entity. In either case, the WWW page through which it is available must clearly inform readers that the document is available and provide instructions for downloading it. In addition, the posting format must allow the document when accessed, downloaded, viewed and printed, to exactly reproduce the image of the application for tax exemption or annual information return as it was originally filed with the IRS, except for any information permitted by statute to be withheld from public disclosure. Any person with access to the internet must be able to access, download, view and print the document without special computer hardware or software required for that format (other than software available to the public without a fee) and without payment of a fee to the tax exempt organization or other entity maintaining the WWW page. The entity maintaining the page must have procedures in place for ensuring the reliability and accuracy of the document posted and must take reasonable precautions to prevent alteration, destruction or accidental loss of the document posted on the page. In the event the document posted is altered, destroyed or lost, the entity must correct or replace the document.
2. Notifies any individual requesting a copy where the documents are available (including the address on the WWW, if applicable). If the request is made in person, notice of the location must be given immediately. If made in writing, notice shall be provided within 7 days of receiving the request.

To the extent information must be disclosed in the new Form 990 annual information return, that information must be made available for public inspection, as explained above, under Internal Revenue Code Section 6104 and the regulations with respect to that section. For example, the instructions to the new Form 990 state that if the name of the organization has changed, a copy of the amended articles is to be attached to the Form 990. In addition, any other amendments to the articles and any amendments to the bylaws must be described in Schedule O. A portion of the

instructions for the Form 990 regarding amendments to the articles and bylaws is attached in the Appendix to this Memorandum.

B. Documents That Need Not be Made Available for Public Inspection

With the exception of the documents listed above, no other documents listed in Questions 18 and 19 of Section C of Part VI of the Form 990 must be made available for public inspection. This raises some interesting questions. For example, if the conflict of interest policy was included with the application for tax exemption, the policy as submitted is subject to public inspection, but any changes made to that policy later are not subject to public inspection, unless the revised document was submitted to the IRS in support of the application for tax exemption. The same applies to the bylaws; the public may see the original bylaws submitted or any amendments made and submitted in support of the application for tax exemption, but the public has no right to inspect or obtain a copy of the current bylaws. Although the public has no right to a copy of the current bylaws, the substance of any changes to the bylaws that are made after the organization becomes subject to the new Form 990 will be available to the public by way of the required description of those changes in Schedule O (see relevant portion of the instructions to the new Form 990 quoted in the Appendix to this Memorandum).

The Articles of Incorporation and all amendments are public documents by virtue of their filing with the Secretary of State, but the organization has no obligation to make them available for public inspection or to make a copy of them on request.

C. Form 990 and Instructions

In an attempt to be brief, Lines 18 – 20 of Section C, Part VI, of the Form 990 are not models of clarity. For example, they ask more than one question in the same sentence. The questions cannot always be answered using the options given in the 990. As a result, the organization may need to annotate the 990 to accurately answer the questions or explain the answers in Schedule O. Quoted below from the Form 990 are Lines 18 – 20:

- “18. Section 6104 requires an organization to make its Forms 1023 (or 1024 if applicable), 990, and 990-T (501(c)(3)s only) available for public inspection. Indicate how you make these available. Check all that apply.
Own website ___ Another’s website ___ Upon request ___
- “19. Describe in Schedule O whether (and if so, how), the organization makes its governing documents, conflict of interest policy, and financial statements available to the public.
- “20. State the name, physical address, and telephone number of the person who possesses the books and records of the organization:
_____”

Line 18 asks about the Form 1023 (1024), 990, and 990-T as a group; however, there may be a different answer for each of these Forms. For example, the 990 may be

available for inspection on GuideStar, but the organization may post the Form 1023 on its own website, and only 501(c)(3)s must make their 990-Ts available to the public.

Appendix D of the instructions to the Form 990 explains the public disclosure requirements summarized above. Appendix D of the Instructions is attached in full in the Appendix to this Memorandum.

D. Form 990 Filing Tips and FAQs – Governance – May 29, 2009

In its May 29, 2009, “Exempt Organizations Update,” the Internal Revenue Service asked and answered the following question:

Are all the policies and practices described in Part VI required by the Internal Revenue Code? If not, what happens if an organization reports that it does not have such policies in place?

In general, the policies and practices described in Part VI are not required by the Internal Revenue Code. However, organizations are required by the Code to make publicly available some of the items described in Question 18 of Part VI. This includes the Forms 990 of all organizations for their three most recent tax years; the Form 1023 or 1024 of all organizations that filed such forms on or after July 15, 1987, or had a copy on such date; and the Forms 990-T of a section 501(c)(3) organization for its three most recent tax years, if such forms were filed after August 17, 2006. The IRS will use the information reported in Part VI, along with other information reported on the form, to assess noncompliance and the risk of noncompliance with federal tax law for individual organizations and across the broader exempt sector.

4. Considerations and Procedures for Implementation of the Policy

Although the IRS acknowledges that only certain items must be made available to the public, transparency and accountability are very important concepts to the IRS and may be important to the organization’s donors, members and others.

Whether or not to make available the governing documents, conflict of interest policy and financial statements is a policy to be set by the board, and should be reviewed by the board on an annual basis. A calendaring system should be implemented so that the date will not be missed by what may be at that time a predominately new board. The reasoning behind the policy as adopted should be maintained in a file that will be available in the future to the committee that will review the policy and make recommendations to the then board so no time is lost in trying to understand why the policy was adopted as drafted.

Each item asked about in the Form 990 should be carefully considered and a decision made with respect to each of the following: governing documents (articles of incorporation, amendments to the articles of incorporation, and bylaws and amendments

to the bylaws); conflict of interest policy; and financial statements. With respect to the financial statements, are they required to be made available under applicable state law, and if not, does the organization believe making them available is desirable, and if so, then for what period, for example, quarterly, semi-annually or annually, and how far back should they be made available? Should the financials be audited, reviewed or compiled? Should the report to management be included in what is made available to the public?

Remember, these decisions are made in the context of a fish bowl, because whatever decision is made will become public knowledge when the Form 990 is posted on GuideStar, and earlier if requested before it is posted. Donors, watchdog organizations, and funders use GuideStar more and more to review Form 990s to make decisions regarding funding, donations, and/or targeting the organization for public comment. Accordingly, whatever the decision, the organization should consider adding an explanation for the decision on Schedule O of the 990, possibly including reasons for not making available to the public those items that will not be made available.

Prior to adoption, it should be determined where the policy should be placed in the organization's documentation. Alternatives may include, for example, in an employee manual, in the bylaws, in a board policies and procedures manual, or as a stand-alone item. The manner in which the policy must or will be adopted – such as by the board of directors (recommended), by the members, or both – should also be determined. In every case, the policy must be disseminated to those that need to know, for example, employees, directors, members and volunteers. Finally, the organization should adopt a policy that it has carefully thought through, including the reasonably foreseeable ramifications, that it is confident it can follow, and that will benefit the organization and the public that it serves. It well could be worse to adopt a policy that is not carefully tailored for the organization or that is not followed than to have no policy at all.

5. Sample Policy or Policies

Sample Policy for an Organization Willing to Make Available More Than What is Required. If your organization only wants to make available what is required, then omit the “optional” lines. Italics are information for the drafter and should be removed from the final policy.

1. The following documents will be made available to the public through [the organization's website and upon request] (*Note – two sources are not necessary [(1) website and (2) upon request]; only need to specify one source*):

- a. Articles of incorporation and all amendments (*optional*);
- b. Bylaws and all amendments (*optional*);
- c. Conflict of interest policy (*optional*);

- d. Form 1023 (1024) and all attachments; and
- e. Audited financial statements (*See the description of what must be disclosed in Section 2.B of this Memorandum above*).

2. The Form 990s are available on GuideStar. Before being posted on GuideStar, the Form 990 will be made available either upon request and reimbursement of copy costs or by other means allowable under the applicable Treasury Regulations.

The financial statements will not be made available to the public, other than as reported on the annual Form 990. The financial statements are unaudited and are for reporting purposes to the board only. The financial statements represent the current understanding of the financial picture at that snapshot in time, and as such are reviewed by the board of directors. Without an independent audit or review of the financial statements and the information from which they are prepared, the corporation believes that it would be unwise to make them available to the public. The information set forth in the Form 990 has at least received the advice of the organization's independent accountant in its preparation, and to that extent, is a better picture of the organization's financial condition than the informal financial statements presented to the board during the year.

APPENDIX

EXCERPTS FROM THOSE PORTIONS OF THE INSTRUCTIONS TO FORM 990 ABOUT PUBLIC AVAILABILITY AND DISCLOSURE OF DOCUMENTS CAN BE FOUND ON THE FOLLOWING PAGES.

3. The two persons are each a director, trustee, officer, or greater than 10% owner in the same business or investment entity (but not in the same tax-exempt organization).

Ownership is measured by stock ownership (either voting power or value) of a corporation, profits or capital interest in a partnership or limited liability company, membership interest in a nonprofit organization, or beneficial interest in a trust. Ownership includes indirect ownership (for example, ownership in an entity that has ownership in the entity in question); there may be ownership through multiple tiers of entities.

Privileged relationship exception. For purposes of line 2, a “business relationship” does not include a relationship between an attorney and client, a medical professional (including psychologist) and patient, or a priest/clergy and penitent/communicant.

Example 1. B is an officer of the organization, and C is a member of the organization’s governing body. B is C’s sister’s spouse. The organization must report that B and C have a family relationship.

Example 2. D and E are officers of the organization. D is also a partner in an accounting firm with 300 partners (with a $\frac{1}{300}$ interest in the firm’s profits and capital) but is not an officer, director, trustee, or key employee of the accounting firm. D’s accounting firm provides services to E in the ordinary course of the accounting firm’s business, on terms generally offered to the public, and receives \$100,000 in fees during the year. The relationship between D and E is not a reportable business relationship, either because (1) it is in the ordinary course of business on terms generally offered to the public, or (2) D does not hold a greater-than-35% interest in the accounting firm’s profits or capital.

Example 3. F and G are trustees of the organization. F is the owner and CEO of an automobile dealership. G purchased a \$45,000 car from the dealership during the organization’s tax year in the ordinary course of the dealership’s business, on terms generally offered to the public. The relationship between F and G is not a reportable business relationship because the transaction was in the ordinary course of business on terms generally offered to the public.

Example 4. H and J are members of the organization’s board of directors. Both are CEOs of publicly traded corporations and serve on each other’s boards. The relationship between H and J is a reportable business relationship because each is a director or officer in the same business entity.

Example 5. K is a key employee of the organization, and L is on its board of directors. L is a greater-than-35% partner of a law firm that charged \$60,000 during the organization’s tax year for legal services provided to K that were worth \$600,000 at the law firm’s ordinary rates. Thus, the ordinary course of business exception does not apply. However, the relationship between K and L is not a reportable business relationship, because of the privileged relationship of attorney and client.

Reasonable effort. The organization is not required to provide information about a family or business relationship between two **officers, directors, trustees, or key employees** if it is unable to secure the information after making a **reasonable effort** to obtain it. An example of a reasonable effort would be for the organization to distribute a questionnaire annually to each such person that includes the name, title, date, and signature of each person reporting information and contains the pertinent instructions and definitions for line 2.

Line 3. Answer “Yes” if at any time during the organization’s tax year the organization used a management company or other person to perform any management duties customarily performed by or under the direct supervision of **officers, directors, trustees, or key employees**. Such management duties include, but are not limited to, hiring, firing, and supervising personnel, planning or executing budgets or financial operations, or supervising exempt operations or unrelated trades or businesses of the organization. Management duties do not include administrative services (such as payroll processing) that do not involve significant managerial decision-making. Management duties also do not

include investment management unless the filing organization conducts investment management services for others.

Line 4. The organization must report significant changes to its organizing or enabling document by which it was created (articles of incorporation, association, or organization; trust instrument; constitution; or similar document), and to its rules governing its affairs commonly known as bylaws (or regulations, operating agreement, or similar document). Report changes made since the prior Form 990 was filed, or that were not reported on any prior Form 990. Do not report changes to policies described or established outside of the organizing or enabling document and bylaws (or similar documents), such as adoption of, or change to, a policy adopted by resolution of the **governing body** that does not entail a change to the organizing document or bylaws.

Examples of significant changes to the organizing or enabling document or bylaws include changes to:

- The organization’s exempt purposes or mission;
- The number, composition, qualifications, authority, or duties of the governing body’s voting members;
- The number, composition, qualifications, authority, or duties of the organization’s **officers or key employees**;
- The role of the stockholders or membership in governance;
- The distribution of assets upon dissolution;
- The provisions to amend the organizing or enabling document or bylaws;
- The quorum, voting rights, or voting approval requirements of the governing body members or the organization’s stockholders or membership;
- The policies or procedures contained within the organizing documents or bylaws regarding **compensation** of officers, directors, trustees, or key employees, conflicts of interest, whistleblowers, or document retention and destruction; and
- The composition or procedures contained within the organizing document or bylaws of an audit committee.

Example. Organization X has a written conflicts of interest policy that is not contained within the organizing document or bylaws. The policy is changed by board resolution. The policy change does not need to be reported on line 4.

Examples of insignificant changes made to organizing or enabling documents or bylaws that are not required to be reported here include changes to the organization’s registered agent with the state and to the required or permitted number or frequency of governing body or member meetings.

Describe significant changes on Schedule O (Form 990), but do not attach a copy of the amendments or amended document to Form 990 (or recite the entire amended document verbatim), unless such amended documents reflect a change in the organization’s name. See the instructions for *Item B* under *Heading, Items A–M*, regarding attachments required in the event of a change in the organization’s name.



An organization must report significant changes to its organizational documents in Form 990, Part VI, rather than in a letter to EO Determinations. EO

Determinations no longer issues letters confirming the tax-exempt status of organizations that report significant changes to their organizational documents, though it will, on request, issue an affirmation letter confirming an organization’s name change. If an exempt organization becomes a different legal entity, such as by changing its legal structure from a trust to a corporation or by dissolving in one state and incorporating in another, then a new exemption application is required to establish that the new legal entity qualifies for exemption.

Line 5. Answer “Yes” if the organization became aware during the organization’s **tax year** of a material diversion of its assets, whether or not the diversion occurred during the year. If “Yes,” explain the nature of the diversion, amounts or property involved, corrective actions taken to address the matter, and pertinent circumstances on Schedule O (Form 990), although the person or persons who diverted the assets should not be identified by name.

A *diversion of assets* includes any unauthorized conversion or use of the organization’s assets other than for the

Internal Revenue Service
Mail Stop 6716
Ogden, UT 84201

The IRS cannot disclose portions of an exemption application relating to any trade secrets, etc. Additionally, the IRS generally cannot disclose the names and addresses of contributors. See the Instructions for Schedule B (Form 990, 990-EZ, or 990-PF) for more information about the disclosure of that schedule.

Notice 2008-49, 2008-20 I.R.B. 979, provides interim guidance regarding the requirement that section 501(c)(3) organizations and the IRS make available for public inspection Form 990-T.

Forms 990 or 990-EZ can only be requested for section 527 organizations for tax years beginning after June 30, 2000.

A return, report, notice, or exemption application can be inspected at an IRS office free of charge. Copies of these items can also be obtained through the organization as discussed in the following section.

Through the Organization

Public inspection and distribution of certain returns of unrelated business income. Section 501(c)(3) organizations that are required to file Form 990-T after August 17, 2006, must make Form 990-T available for public inspection under section 6104(d)(1)(A)(ii).

Public inspection and distribution of returns and reports for a political organization. Section 527 political organizations required to file Form 990 or 990-EZ must, in general, make their Forms 8871, 8872, 990, or 990-EZ available for public inspection in the same manner as annual information returns of section 501(c) organizations and 4947(a)(1) nonexempt charitable trusts are made available. See the public inspection rules for tax-exempt organizations, later. Generally, Form 8871 and Form 8872 are available for inspection and printing at www.irs.gov under the *Charities & Nonprofits* tab.

 **TIP** Note that a section 527 political organization (and an organization filing Form 990-PF) must disclose their Schedule B (Form 990, 990-EZ, or 990-PF). See the Instructions for Schedule B. The penalties discussed in General Instructions also apply to section 527 political organizations (Rev. Rul. 2003-49, 2003-201 I.R.B. 903).

Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations. Under Regulations sections 301.6104(d)-1 through 3, a tax-exempt organization must:

- Make its application for recognition of exemption and its annual information returns available for public inspection without charge at its principal, regional

and district offices during regular business hours;

- Make each annual information return available for a period of 3 years beginning on the date the return is required to be filed (determined with regard to any extension of time for filing) or is actually filed, whichever is later; and
- Provide a copy without charge (for Form 990-T, this requirement applies only to Forms 990-T filed after August 17, 2006), other than a reasonable fee for reproduction and actual postage costs, of all or any part of any application or return required to be made available for public inspection to any individual who makes a request for such copy in person or in writing (except as provided in Regulations sections 301.6104(d)-2 and 3).

Definitions

Tax-exempt organization is any organization that is described in section 501(c) or (d) and is exempt from taxation under section 501(a). The term tax-exempt organization also includes any section 4947(a)(1) nonexempt charitable trust or nonexempt private foundation that is subject to the reporting requirements of section 6033.

Application for tax exemption includes:

- Any prescribed application form (such as Form 1023 or Form 1024),
- All documents and statements the IRS requires an applicant to file with the form,
- Any statement or other supporting document submitted in support of the application, and
- Any letter or other document issued by the IRS concerning the application.

Application for tax exemption does not include:

- Any application for tax exemption filed before July 15, 1987, unless the organization filing the application had a copy of the application on July 15, 1987;
- In the case of a tax-exempt organization other than a private foundation, the name and address of any contributor to the organization; or
- Any material that is not available for public inspection under section 6104.



If there is no prescribed application form, see Regulations section 301.6104(d)-1(b)(3)(ii).

Annual information return includes:

- An exact copy of the Form 990 or Form 990-EZ filed by a tax-exempt organization as required by section 6033.
- Any amended return the organization files with the IRS after the date the original return is filed.
- An exact copy of Form 990-T if one is filed by a 501(c)(3) organization.

The copy must include all information furnished to the IRS on Form 990, 990-EZ, or 990-T as well as all schedules, attachments and supporting documents, except for the name and address of any contributor to the organization. See the Instructions for Schedule B (Form 990, 990-EZ, or 990-PF). However, schedules, attachments, and supporting documents

Appendix D. Public Inspection of Returns

Some members of the public rely on Form 990, or 990-EZ, as the primary or sole source of information about a particular organization. How the public perceives an organization in such cases may be determined by the information presented on its returns.

An organization's completed Form 990 or 990-EZ is available for public inspection as required by section 6104. Schedule B (Form 990, 990-EZ, or 990-PF), Schedule of Contributors, is open for public inspection for section 527 organizations filing Form 990 or 990-EZ. For other organizations that file Form 990 or 990-EZ, parts of Schedule B can be open to public inspection. Form 990-T filed after August 17, 2006, by a section 501(c)(3) organization to report any unrelated business income, is also available for public inspection and disclosure.

Through the IRS

Use Form 4506-A to request:

- A copy of an exempt or political organization's return, report, notice, or exemption application; or
- An inspection of a return, report, notice, or exemption application at an IRS office.

The IRS can provide copies of exempt organization returns on a compact disc (CD). Requesters can order the complete set (all Forms 990 and 990-EZ or all Forms 990-PF filed for a year) or a partial set by state or by month. For more information on the cost and how to order CD-ROMs, call the TE/GE Customer Account Services toll-free number (1-877-829-5500) or write to the IRS:

filed with Form 990-T that do not relate to the imposition of unrelated business income tax are not required to be made available for public inspection and copying. See Notice 2008-49, 2008-20 I.R.B. 979.

Annual returns more than 3 years old. An annual information return does not include any return after the expiration of 3 years from the date the return is required to be filed (including any extension of time that has been granted for filing such return) or is actually filed, whichever is later.

If an organization files an amended return, however, the amended return must be made available for a period of 3 years beginning on the date it is filed with the IRS.

Local or subordinate organizations. For rules relating to annual information returns of local or subordinate organizations, see Regulations section 301.6104(d)-1(f)(2).

Regional or district offices. A regional or district office is any office of a tax-exempt organization, other than its principal office, that has paid employees, whether part-time or full-time, whose aggregate number of paid hours a week are normally at least 120.

A site is not considered a regional or district office, however, if:

- The only services provided at the site further exempt purposes (such as day care, health care or scientific or medical research); and
- The site does not serve as an office for management staff, other than managers who are involved solely in managing the exempt function activities at the site.

Special Rules Relating to Public Inspection

Permissible conditions on public inspection. A tax-exempt organization:

- Can have an employee present in the room during an inspection,

- Must allow the individual conducting the inspection to take notes freely during the inspection, and
- Must allow the individual to photocopy the document at no charge, if the individual provides photocopying equipment at the place of inspection.

Organizations that do not maintain permanent offices. A tax-exempt organization with no permanent office:

- Must make its application for tax exemption and its annual information returns available for inspection at a reasonable location of its choice;
- Must permit public inspection within a reasonable amount of time after receiving a request for inspection (normally not more than 2 weeks) and at a reasonable time of day;
- Can mail, within 2 weeks of receiving the request, a copy of its application for tax exemption and annual information returns to the requester instead of allowing an inspection; and
- Can charge the requester for copying and actual postage costs only if the requester consents to the charge.

An organization that has a permanent office, but has no office hours, or very limited hours during certain times of the year, must make its documents available during those periods when office hours are limited, or not available, as though it were an organization without a permanent office.

Special Rules Relating to Copies

Time and place for providing copies in response to requests made in person. A tax-exempt organization must:

- Provide copies of required documents under section 6104(d) in response to a request made in person at its principal, regional and district offices during regular business hours, and

- Provide such copies to a requester on the day the request is made, except for unusual circumstances (see below).

Unusual circumstances. In the case of an in-person request, where unusual circumstances exist so that fulfilling the request on the same business day causes an unreasonable burden to the tax-exempt organization, the organization must provide the copies no later than the next business day following the day that the unusual circumstances cease to exist, or the 5th business day after the date of the request, whichever occurs first.

Unusual circumstances include:

- Requests received that exceed the organization's daily capacity to make copies;
- Requests received shortly before the end of regular business hours that require an extensive amount of copying; or
- Requests received on a day when the organization's managerial staff capable of fulfilling the request is conducting special duties, such as student registration or attending an off-site meeting or convention, rather than its regular administrative duties.

Agents for providing copies. For rules relating to use of agents to provide copies, see Regulations sections 301.6104(d)-1(d)(1)(iii) and 1(d)(2)(ii)(C).

Request for copies in writing. A tax-exempt organization must honor a written request for a copy of documents (or the requested part) required under section 6104(d) if the request:

1. Is addressed to, and delivered by mail, electronic mail, facsimile, or a private delivery service, as defined in section 7502(f), to a principal, regional, or district office of the organization; and
2. Sets forth the address to which the copy of the documents should be sent.

Time and Manner of Fulfilling Written Requests.

| IF the organization... | THEN the organization... |
|--|--|
| Receives a written request for a copy, | Must mail the copy of the requested documents (or the requested parts) within 30 days from the date it receives the request. |
| Mails the copy of the requested document, | Is deemed to have provided the copy on the postmark date or private delivery mark (if sent by certified or registered mail, the date of registration or the date of the postmark on the sender's receipt). |
| Requires payment in advance, | Is required to provide the copies within 30 days from the date it receives payment. |
| Receives a request or payment by mail, | Is deemed to have received it 7 days after the date of the postmark, absent evidence to the contrary. |
| Receives a request transmitted by electronic mail or facsimile, | Is deemed to have received it the day the request is transmitted successfully. |
| Receives a written request without payment or with an insufficient payment, when payment in advance is required, | Must notify the requester of the prepayment policy and the amount due within 7 days from the date of the request's receipt. |
| Receives consent from an individual making a request, | Can provide a copy of the requested document exclusively by electronic mail (the material is provided on the date the organization successfully transmits the electronic mail). |

Request for a copy of parts of a document. A tax-exempt organization must fulfill a request for a copy of the organization's entire application for tax exemption or annual information return or any specific part or schedule of its application or return. A request for a copy of less than the entire application or less than the entire return must specifically identify the requested part or schedule.

Fees for copies. A tax-exempt organization can charge a reasonable fee for providing copies. Before the organization provides the documents, it can require that the individual requesting copies of the documents pay the fee. If the organization has provided an individual making a request with notice of the fee, and the individual does not pay the fee within 30 days, or if the individual pays the fee by check and the check does not clear upon deposit, the organization can disregard the request.

Form of payment a. Request made in person. If a tax-exempt organization charges a fee for copying, it must accept payment by cash and money order for requests made in person. The organization can accept other forms of payment, such as credit cards and personal checks.

b. Request made in writing. If a tax-exempt organization charges a fee for copying and postage, it must accept payment by certified check, money order, and either personal check or credit card for requests made in writing. The organization can accept other forms of payment.

Avoidance of unexpected fees. Where a tax-exempt organization does not require prepayment and a requester does not enclose payment with a request, an organization must receive consent from a requester before providing copies for which the fee charged for copying and postage exceeds \$20.

Documents to be provided by regional and district offices. Except as otherwise provided, a regional or district office of a tax-exempt organization must satisfy the same rules as the principal office with respect to allowing public inspection and providing copies of its application for tax exemption and annual information returns.

A regional or district office is not required, however, to make its annual information return available for inspection or to provide copies until 30 days after the date the return is required to be filed (including any extension of time that is granted for filing such return) or is actually filed, whichever is later.

Documents Provided by Local and Subordinate Organizations

Applications for tax exemption. Except as otherwise provided, a tax-exempt organization that did not file its own application for tax exemption

(because it is a local or subordinate organization covered by a group exemption letter) must, upon request, make available for public inspection, or provide copies of, the application submitted to the IRS by the central or parent organization to obtain the group exemption letter and those documents which were submitted by the central or parent organization to include the local or subordinate organization in the group exemption letter.

However, if the central or parent organization submits to the IRS a list or directory of local or subordinate organizations covered by the group exemption letter, the local or subordinate organization is required to provide only the application for the group exemption ruling and the pages of the list or directory that specifically refer to it. The local or subordinate organization must permit public inspection, or comply with a request for copies made in person, within a reasonable amount of time (normally not more than 2 weeks) after receiving a request made in person for public inspection or copies and at a reasonable time of day. See Regulations section 301.6104(d)-1(f) for further information.

Annual information returns. A local or subordinate organization that does not file its own annual information return (because it is affiliated with a central or parent organization that files a group return) must, upon request, make available for public inspection, or provide copies of, the group returns filed by the central or parent organization.

However, if the group return includes separate schedules with respect to each local or subordinate organization included in the group return, the local or subordinate organization receiving the request can omit any schedules relating only to other organizations included in the group return.

The local or subordinate organization must permit public inspection, or comply with a request for copies made in person, within a reasonable amount of time (normally not more than 2 weeks) after receiving a request made in person for public inspection or copies and at a reasonable time of day.

In a case where the requester seeks inspection, the local or subordinate organization can mail a copy of the applicable documents to the requester within the same time period instead of allowing an inspection. In such a case, the organization can charge the requester for copying and actual postage costs only if the requester consents to the charge.

If the local or subordinate organization receives a written request for a copy of its annual information return, it must fulfill the request by providing a copy of the group return in the time and manner specified in *Request for copies in writing* on page 62.

The requester has the option of requesting from the central or parent organization, at its principal office, inspection or copies of group returns filed

by the central or parent organization. The central or parent organization must fulfill such requests in the time and manner specified in *Special Rules Relating to Public Inspection and Special Rules Relating to Copies* on page 62.

Failure to comply. If an organization fails to comply with the requirements specified in this paragraph, the penalty provisions of sections 6652(c)(1)(C), 6652(c)(1)(D), and 6685 apply.

Making Applications and Returns Widely Available

A tax-exempt organization is not required to comply with a request for a copy of its application for tax exemption or an annual information return if the organization has made the requested document widely available (see below).

An organization that makes its application for tax exemption and/or annual information return widely available must nevertheless make the document available for public inspection as required under Regulations section 301.6104(d)-1(a).

A tax-exempt organization makes its application for tax exemption and/or an annual information return widely available if the organization complies with the Internet posting requirements and the notice requirements given below.

Internet posting. A tax-exempt organization can make its application for tax exemption and/or an annual information return widely available by posting the document on a World Wide Web page that the tax-exempt organization establishes and maintains, or by having the document posted, as part of a database of similar documents of other tax-exempt organizations, on a World Wide Web page established and maintained by another entity. The document will be considered widely available only if:

- The World Wide Web page through which it is available clearly informs readers that the document is available and provides instructions for downloading it;
- The document is posted in a format that, when accessed, downloaded, viewed and printed in hard copy, exactly reproduces the image of the application for tax exemption or annual information return as it was originally filed with the IRS, except for any information permitted by statute to be withheld from public disclosure; and
- Any individual with access to the Internet can access, download, view and print the document without special computer hardware or software required for that format (other than software that is readily available to members of the public without payment of any fee) and without payment of a fee to the tax-exempt organization or to another entity maintaining the World Wide Web page.

Reliability and accuracy. In order for the document to be widely available through an Internet posting, the entity maintaining the World Wide Web page

must have procedures for ensuring the reliability and accuracy of the document that it posts on the page and must take reasonable precautions to prevent alteration, destruction or accidental loss of the document when posted on its page. In the event that a posted document is altered, destroyed or lost, the entity must correct or replace the document.

Notice requirement. If a tax-exempt organization has made its application for tax exemption and/or an annual information return widely available, it must notify any individual requesting a copy where the documents are available (including the address on the World Wide Web, if applicable). If the request is made in person, the organization must provide such notice to the individual immediately. If the request is made in writing, the notice must be provided within 7 days of receiving the request.

Tax-Exempt Organization Subject to Harassment Campaign

If the Director, EO Examination (or designee) determines that the organization is being harassed, a tax-exempt organization is not required to comply with any request for copies that it reasonably believes is part of a harassment campaign.

Whether a group of requests constitutes a harassment campaign depends on the relevant facts and circumstances such as:

- a sudden increase in requests;
- an extraordinary number of requests by form letters or similarly worded correspondence;
- hostile requests;
- evidence showing bad faith or deterrence of the organization's exempt purpose;
- prior provision of the requested documents to the purported harassing group; and
- a demonstration that the organization routinely provides copies of its documents upon request.

A tax-exempt organization can disregard any request for copies of all or part of any document beyond the first two received within any 30-day period or the first four received within any 1-year period from the same individual or the same address, regardless of whether the Director, EO Examination (or designee) has determined that the organization is subject to a harassment campaign.

A tax-exempt organization can apply for a determination that it is the subject of a harassment campaign and that compliance with requests that are part of the campaign would not be in the public interest by submitting a signed application to the Director, EO Examination (or designee) for the area where the organization's principal office is located.

In addition, the organization can suspend compliance with any request it reasonably believes to be part of the harassment campaign until it receives a response to its application for a

harassment campaign determination. However, if the Director, EO Examination (or designee) determines that the organization did not have a reasonable basis for requesting a determination that it was subject to a harassment campaign or reasonable belief that a request was part of the campaign, the officer, director, trustee, employee, or other responsible individual of the organization remains liable for any penalties for not providing the copies in a timely fashion. See Regulations section 301.6104(d)-3.