

# Panel on the Nonprofit Sector

Convened by INDEPENDENT SECTOR

## Work Group Recommendations to the Panel on the Nonprofit Sector Posted for Public Comment January 24, 2005

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### #1: Certification of IRS Information Returns

#### I. Transparency and Financial Accountability Work Group Recommendations

##### A. Statement of Problem

The IRS currently requires that an authorized officer of the organization<sup>1</sup> sign Form 990 returns certifying under penalties of perjury that the return and accompanying schedules and statements are true, correct, and complete. Anyone paid to prepare the return must also sign it. Currently, the CEO or the highest ranking officer may, but is not required to, sign the Form 990 series return.

##### B. Recommendations

The principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions should be required to sign each annual information return (the Form 990 series) declaring under penalty of perjury that (1) the signing officer has examined the return, including accompanying schedules and statements; and (2) to the best of the officer's knowledge and belief, the information included in the return is true, correct, and complete.

##### C. Rationale

In the interest of public accountability, a corporation's chief executive officer should be required to sign the Forms 990, attesting to the accuracy and completeness of the contents.

The Work Group recommended adding CFOs to the certification requirement, in the belief that the CFO or person performing similar functions is most able to provide reasonable assurance that the return is accurate and complete and that it complies with federal tax law.

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<sup>1</sup> For a corporation or association, this officer may be the president, vice president, treasurer, assistant treasurer, chief accounting officer or other corporate or association officer, such as a tax officer. A receiver, trustee, or assignee must sign any return he or she files for a corporation or association. For a trust, the authorized trustee must sign.

Note: These recommendations have not yet been reviewed by the Panel on the Nonprofit Sector. They will be part of the deliberations by the Panel as it prepares its interim report.

## **D. Other Considerations**

Guidance should be made available to managers and trustees of charitable organizations on the procedures that need to be in place to have “reasonable assurance” that the Form 990 is accurate.

## **II. Expert Advisory Group Comments**

The Expert Advisory Group agrees with the Work Group’s recommendation, but noted that many charitable organizations do not have a CFO and most organizations in the form of a trust do not have a CEO and may not have officers. Therefore, the Expert Advisory Group recommends that the IRS should require that the Form 990 series returns be signed, under penalties of perjury, by the chief executive officer, the chief financial officer, or the highest ranking officer, or, if the legal form is a trust, a trustee of the organization.

The Expert Advisory Group refers the Panel to comments made under Issue #3, Penalties for Inaccurate or Incomplete Returns, that suspension rather than revocation of tax-exempt status is a more reasonable remedy for failure to comply with IRS requirements. The Expert Advisory Group requests that the Work Group specifically address penalties that should be imposed on organizations for failure to meet the certification requirement.