

# Panel on the Nonprofit Sector

Convened by INDEPENDENT SECTOR

## Work Group Recommendations to the Panel on the Nonprofit Sector Posted for Public Comment January 26, 2005

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### #5: Notification Requirement

#### I. Small Organizations Work Group Recommendations

##### A. Statement of Problem

There are approximately 500,000 charities in the United States that today operate under federal tax exemption but which do not annually file an information return (Form 990) with the federal government. Some are exempt from filing because they are religious organizations or they fall below the minimum income threshold for which reporting is required. Others have become inactive with no notice given to the federal government. The Internal Revenue Service is therefore unable to confirm the existence of these organizations and whether they continue to operate for their intended public purpose.

##### B. Recommendations

All charitable organizations, except those that are required to file a Form 990, Form 990-EZ, or Form 990-PF and/or those exempt from federal filing requirements because of their status as religious organizations, should be required to annually file a one-page form with the IRS, and/or the appropriate state regulatory official, disclosing:

- the organization's name and any name under which such organization operates or does business;
- the organization's mailing address, telephone number, email address, and/or website;
- the organization's taxpayer identification number;
- the name and address of a principal officer of the organization;
- a statement of the organization's mission and a summary of its activities during the preceding year; and
- total revenues and expenditures for the year.

The notification form would be required to be disclosed to the public on the same basis as the Form 990. Failure to file the required notification form for three consecutive years would result in suspension of the organization's exempt status. This recommendation is similar, but not identical, to a proposal in Section 407 of the CARE Act of 2003 (S.437).

Some members of the Work Group further recommend that this notification form include the names of the organization's board of directors, the source of the organization's funds, and disclosure of whether the organization currently engages in a limited number of governance and accountability best practices (based on questions included on the new

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.

Form 1023 Application for Recognition of Exemption) through a checklist-style series of yes/no questions.

### **C. Rationale**

This notification requirement would assist the Internal Revenue Service in providing for the public more accurate information on the charitable organizations that are exempt from federal income taxes and that are eligible to receive tax-deductible contributions.

The addition of a checklist of governance and accountability “best practices” would assist small organizations in identifying voluntary practices that would improve their governance and management practices. Although concern was expressed by some members of the work group that even a “one pager” filing requirement places an additional burden on small organizations not now required to file, the work group believes that this burden is outweighed by the benefits to the public, to regulators, and, potentially, to the organizations themselves (due to the capacity building nature of the best practices questions).

Some members of the Work Group question the wisdom of this notification requirement, noting that the current non-filing rule for organizations with annual receipts below \$25,000 is a de minimus exception of long-standing. Achieving broad compliance with this reporting requirement would require effort from government oversight officials and private technical assistance providers that is better expended on other charitable organization compliance issues.

### **D. Other Considerations**

The Work Group believes that thresholds for required filings of Forms 999/990-EZ should be reviewed and raised to reflect current economic standards, and plans to address this issue in Phase II of the Panel process.

The Work Group expressed concern that by asking for annual confirmation of some of the best practice issues covered on the 1023 form, the government is collecting information on practices which, while not required by law, could come to have the force of law, and thus failure to demonstrate such practices could be used against an organization.

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

The new filing requirement should be incorporated into the Form 990 series (i.e., Form 990-EZ) to ensure that it is available for electronic filing and the Expert Advisory Group strongly encourages that e-filing become mandatory for this Form to ease compliance and enforcement. These forms could then be made available through public databases such as GuideStar.

The filing requirement should be consistent with the current requirements for recognition as a tax-exempt organization under section 501(c)(3), that is, organizations (other than religious organizations and their integrated auxiliaries) whose annual gross receipts are \$5,000 or higher (rather than the statement “all charitable organizations”). The Expert Advisory Group recommends that the Work Group address the question of whether religious organizations and their integrated auxiliaries should be exempt from this notification requirement.

The penalty for non-compliance with this reporting requirement should be suspension, not revocation, of exemption under section 501(c)(3). When an organization’s status is suspended, the organization is no longer eligible to receive tax-deductible contributions. Revocation of status is unduly harsh as it would be very difficult and expensive for organizations to have their tax-exempt status reinstated, even if non-compliance with this requirement had been inadvertent. The Expert Advisory Group noted that initially compliance rates could be very low given the lack of current, correct contact information on the IRS databases for these organizations and the difficulty of contacting organizations whose forwarding address information with the Postal Service has passed the six-month expiration point.

The goal of this recommendation should be to identify whether organizations that have been granted tax-exemption under section 501(c)(3) are still operating under the purposes for which they were granted tax-exemption. While the Expert Advisory Group recognizes the laudable intent of requesting additional information about the governance and management practices of small organizations, it believes that adding such questions on the Form would complicate the process of compliance and enforcement without adding comparable benefits for the public or the organization.