ADVISORY COMMITTEE ON
TAX EXEMPT AND GOVERNMENT ENTITIES
(ACT)

Exempt Organizations:
Form 1023 – Updating It for the Future

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I. Executive Summary

Each year more than 55,000 organizations file Internal Revenue Service (IRS) 1023 forms to seek recognition of exemption under Section 501(c)(3) of the Internal Revenue Code (Code or IRC). Form 1023 is a "one size fits all" form that is used by all filers. These filers include everything from very small, all-volunteer organizations, such as local parent-teacher organizations with annual revenues of less than $10,000, to very large and complex organizations, such as academic medical centers with annual revenues of more than $100 million. Unlike Form 990, there is no "EZ" version of Form 1023.

For more than 50 years, Form 1023 has been the application for organizations seeking recognition of exemption under Section 501(c)(3). The form has evolved significantly through the years. Early versions were just a couple of pages long with no schedules included. Revised in 2006, the current version is 12 pages long, with 14 pages of schedules that apply to certain types of organizations. This revision made the form significantly more complex, but it does not reflect the legislative changes made by the Pension Protection Act of 2006 (PPA). The 2006 version also predated the IRS redesign of Form 990 in 2008, creating some inconsistencies in definitions between the two forms.

This project, undertaken at the suggestion of the IRS, grew out of the ACT's belief that the time is right to review and update Form 1023. An important part of this report addresses how the current form could be updated to meet the objectives of the stakeholders for which it has significance. In addition to the filers and the IRS, these stakeholders include state charity regulators, donors, and the general public, all of which rely on Form 1023 for information about Section 501(c)(3) organizations, and can play an important role in helping to leverage IRS resources by identifying potentially noncompliant organizations.

In deciding on this project, the ACT was mindful that a prior ACT report in 2003 also addressed the IRS exemption process. That report recommended, among other things, that the IRS develop a fully e-fileable Form 1023. We strongly reiterate that recommendation and urge the IRS to chart a course for e-filing Form 1023—Form e-1023. In our view, this will be the best way for the IRS to achieve a higher level of efficiency in the handling and review of 1023 forms. It will help eliminate filing errors, provide an opportunity to include greater educational content in the software, facilitate the eventual availability of an electronic database of 1023 forms for the IRS and on websites such as GuideStar, and further other important public and governmental objectives. Any update of Form 1023 should be undertaken with a view to implementing electronic filing as rapidly as possible.

We recognize that our recommendations will require significant resources in terms of budget and personnel; and we are mindful of the many competing demands that have to be addressed within the IRS. Nevertheless, there is no question that implementing the recommendations in this report will strengthen the ability of TE/GE to regulate Section 501(c)(3) organizations.

The Form 1023 application process is the one and only contact that many organizations have with the IRS. Providing an updated form with enhanced educational content that can be prepared and filed electronically will be of enormous value to the IRS and the organizations it regulates, as well as the other stakeholders and the sector as a whole.

Our specific recommendations are as follows:

1. the IRS should expedite the internal processes and commit the necessary resources (human, financial, and technical) to transform Form 1023 to an interactive Web-based Form e-1023 that can be filed electronically and stored, transmitted, and disseminated in an electronic database format. This information will serve as the electronic gateway for IRS knowledge about tax-exempt organizations;

2. the IRS should redesign Form 1023 with four primary objectives: to make the form (i) **effective** at identifying whether organizations meet the requirements for recognition of exemption; (ii) **consistent** with the structures and definitions of Form 990; (iii) **simple** by using a short core form with supplemental schedules that will ease the filing burden on small and/or less complex organizations; and (iv) **educational** by organizing questions based on substantive exemption requirements and including explanatory information;

3. the IRS should develop more educational tools about Form 1023 including tips for filing Form 1023, and more information about the substantive requirements for recognition of exemption. The development of these tools, coupled with the redesign of Form 1023, should obviate the need for a separate "Form 1023-EZ" for small organizations. The ACT does not recommend the development of such a form;

4. the IRS should coordinate with the Department of the Treasury and the Office of Chief Counsel on the issuance of precedential guidance about tax-compliant alternatives to the creation of new Section 501(c)(3) organizations, such as fiscal sponsorships and donor-advised funds;

5. the IRS should carefully examine recurrent complaints about the Form 1023 filing and review process and take appropriate and expeditious steps to improve the effectiveness, efficiency, and timeliness of that process; and

6. the IRS should expand its use of the Review of Operations (ROO) program (to follow up on Section 501(c)(3) organizations whose 1023 forms indicate potential future compliance issues), and should consult with state charity regulators regarding indicia that may warrant such follow-up.

II. Statement of Problem and Project Objectives

A. Problem

As its name implies, Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, is the form that organizations file to be recognized as tax exempt under Section 501(c)(3). With few exceptions, an organization must file Form 1023 if it wishes to be recognized as tax exempt under Section 501(c)(3).[1] And all of these organizations must file the same form, regardless of their size or complexity.

Form 1023 has been revised a number of times over the years, with the last revision in June 2006, prior to the PPA and the Form 990 redesign. Because the form does not reflect some relevant PPA changes and other recent regulatory developments (e.g., the elimination of the advance ruling process), it is out of date and needs to be updated. Now is a good opportunity to take a holistic look at Form 1023 to see whether the form is meeting its objectives in a balanced way that takes into account the needs and burdens of all stakeholders, including the IRS, organizations seeking recognition of exemption, state charity regulators, donors, and the public.

B. Project Objectives

Form 1023 is an extremely important document to the IRS in carrying out its responsibilities to administer the tax laws. In addition to serving as the tool used by the IRS to determine whether organizations meet the requirements to obtain recognition of exemption under Section 501(c)(3), it is often the one and only point of "hands-on" contact the IRS has with these organizations. The form should be constructed not only to enable the IRS to screen out organizations that do not qualify for exemption, but also to educate qualifying organizations about the rules applicable to Section 501(c)(3) organizations.

In the ACT's view, the vast majority of Form 1023 filers are likely relatively small, all-volunteer organizations that prepare the forms themselves or with the assistance of pro bono lawyers or accountants who have limited experience with the rules under Section 501(c)(3). These organizations must run the gauntlet of questions that often have little relevance to them, and they must do so without sufficient guidance as to how the questions relate to the requirements for obtaining and maintaining tax exemption.

At the same time, some Form 1023 filers are among the most complex Section 501(c)(3) organizations. They are well represented by lawyers and accountants who specialize in the law of tax-exempt organizations. But even these organizations find themselves answering

[1] Churches, certain other religious organizations, and organizations (other than private foundations) with annual gross receipts not exceeding $5,000 are not required to file Form 1023 to be treated as exempt under Section 501(c)(3). I.R.C. § 508(c)(1).

questions that appear to be confusing and repetitive, and they may have little sense as to how these questions relate to the substantive exemption requirements.

In summary, the project objectives are to:

- reexamine Form 1023;
- identify the purposes the form should serve;
- consider possible changes to improve the ability of the form to serve the identified purposes; and
- make recommendations as to how the form should be redesigned to enhance its utility to the relevant stakeholders.

III. Process

The ACT reviewed Form 1023 and its instructions, as well as predecessor versions of the form. The IRS provided historical information about the form, statistical data regarding the number of 1023 forms filed annually, and the aggregate profile of Form 1023 filers. The IRS also provided information on its unsuccessful efforts to develop Cyber-Assistant, a computer-based tool intended to guide users through the Form 1023 preparation process.

The ACT conducted a series of interviews with IRS officials and staff. These interviews focused on issues, challenges, and concerns associated with the Form 1023 filing process including common mistakes made by filing organizations, and challenges associated with the feasibility of transitioning to an electronic Form 1023 filing process.

The ACT interviewed the National Taxpayer Advocate and a senior member of her staff. The National Taxpayer Advocate discussed concerns with respect to Form 1023 -- with particular focus on the challenges faced by small organizations using the form. In addition, the ACT reviewed relevant portions of the National Taxpayer Advocate's Annual Report to Congress for 2011 including her recommendation that the IRS develop a Form 1023-EZ to simplify the filing burden for smaller organizations.[2]

The ACT obtained information from members of the National Association of State Charity Officials (NASCO).[3] A member of the ACT consulted with interested participants[4] from NASCO about general issues concerning Form 1023 including: what types of organizations received Section 501(c)(3) status that should not have earned such status; what changes should be made to the form or to the IRS review process to prevent improper granting of Section 501(c)(3) status; how the form could be better used by the public and regulators to promote transparency and accountability; whether there should be tools such as e-filing available for Form 1023 filers; and whether there should be federal legislation to allow state input or participation in the Form 1023 review process as well as IRS post-determination review of Section 501(c)(3) organizations.

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[2] National Taxpayer Advocate 2011 Annual Report to Congress, vol. 1, at 450 and 563, *available at* http://www.irs.gov/advocate/article/0,,id=252216,00.html.

[3] NASCO is made up of state charity regulators, including Attorneys General, Secretaries of State and Commissioners of Consumer Affairs, whose responsibilities include oversight of tax-exempt entities. That oversight includes administering state registration and reporting requirements, and ensuring that charitable assets are appropriately managed, charitable fiduciaries fulfill their duties of loyalty and care, donor intent is fulfilled, and fraudulent fundraising is remedied. *See* comments, Model Protection of Charitable Assets Act (2011), http://www.law.upenn.edu/bll/archives/ulc/ocaa/MPOCAA_Final_2011.htm.

[4] The ACT gratefully acknowledges the state charity regulators who provided feedback for this project. They included Bob Carlson (MO Attorney General's Office), Elizabeth Grant (OR Attorney General's Office), Therese Harris (IL Attorney General's Office), Belinda Johns (CA Attorney General's Office), Terry Knowles (NH Attorney General's Office), Karin Kunstler Goldman (NY Attorney General's Office), Joseph Kylman (MI Attorney General's Office), Hugh Jones (HI Attorney General's Office), Dena Markowitz (PA Secretary of State's office), Mark Pacella (PA Attorney General's Office), and Ed Shevenock (PA Secretary of State's Office).

In addition, the ACT interviewed 19 practitioners, most of whom have had significant experience with Form 1023. These practitioners represent a wide range of large and small charitable organizations. The group included a law professor who supervises a community development law clinic for law students who file 1023 forms on behalf of new community development organizations. These practitioners answered a series of questions about the current version of Form 1023 and offered views about potential changes to the form.[5]

The ACT interviewed individuals familiar with the design and implementation of databases and the history related to the Urban Institute and GuideStar's use of Form 990.

Finally, the ACT obtained input from members of the American Institute of Certified Public Accountants (AICPA) with respect to their experience filing 1023 forms on behalf of a variety of organizations. AICPA members raised issues and concerns with respect to Form 1023, and also offered suggestions for consideration in the redesign of the form.

A. History of the Form 1023

The Revenue Act of 1950 increased the scrutiny of exempt organizations in the United States, with formal procedures for applying for recognition of tax-exempt status also being introduced around that time. Form 1023 (revised March 1951) originally was a four-page document that requested information similar to some of what is requested on today's form – details about the organization's charitable purpose and activities, lobbying, sources of revenue and transactions with the creator of the organization, contributors to the organization, and certain related individuals. In addition, like today's form, the 1951 version required a statement of revenue and balance sheet, along with organizing documents, bylaws, and copies of leases.

Over the years, the form expanded both the scope and depth of the questions. Changes made to the Code also required additional disclosures on the form. Today's Form 1023 is a 12-page form with 14 pages of schedules that apply to certain types of organizations, and is accompanied by 38 pages of instructions. As with earlier versions of the form, organizations are required to provide organizational documents, details on activities and operations, financial data, and foundation classification. In addition, the form now requires organizations to answer detailed questions regarding governance practices, compensation practices, conflicts of interest, and transactions with insiders.

[5] The ACT gratefully acknowledges the practitioners who provided feedback for this project. They included Betsy Buchalter Adler (Adler and Colvin), Victoria Bjorklund (Simpson Thacher), Jean Carter (Hunton and Williams), Gregory Colvin (Adler and Colvin), Michael Durham (Caplin and Drysdale), Julie Floch (Eisner Amper), J. William Gray (Hunton and Williams), Diara Holmes (Caplin and Drysdale), Thomas Kelly (University of North Carolina School of Law), Andras Kosaras (Arnold & Porter LLP), Kevin Lavin (Arnold & Porter LLP), Suzanne R. McDowell (Steptoe and Johnson), Marcus S. Owens (Caplin and Drysdale), Jennifer Reynoso (Simpson Thacher), David Shevlin (Simpson Thacher), Jack Siegel (Charity Governance), Steven Simpson (Wyrick Robbins), Carolyn O. (Morey) Ward (Ropes & Gray LLP), and Bridget M. Weiss (Arnold & Porter LLP).

B. Number and Profile of Form 1023 Filers

IRS records indicate that in 2011, there were approximately 1.5 million tax-exempt organizations, and, of these, just over one million were exempt under Section 501(c)(3).[6] The 990 forms filed by existing Section 501(c)(3) organizations provide some information about the profile of organizations that file 1023 forms.[7] These organizations are of all sizes—from the very small to the very large. They engage in activities spanning the entire spectrum of human experience including the arts, education, human services, medicine, science, and religion. However, there is one thing they have in common. They all file the same Form 1023.

In 2011, the IRS processed more than 55,000 1023 forms: nearly 50,000 were approved and approximately 200 were denied, and no determination was made on about 5,400.[8] The IRS provides several reasons why it does not make determinations on certain applications including "applications withdrawn by the organization; applications that did not provide the required information; incomplete applications; IRS refusals to rule on applications; applications forwarded to other than the Washington, DC, office; IRS correction disposals; and others."[9]

While there is no granular data about these "no determination" cases, the sheer number of them is difficult to ignore. No doubt, there are many organizations that do not submit complete applications, or that refuse to respond to IRS requests for additional information. We suspect that there may also be some small organizations that simply gave up because they were overwhelmed by the application process. Also, we have no basis for assessing whether there should be concern about the number of cases where the IRS refuses to rule on an application for policy or other reasons unrelated to the completeness of the application.

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[6] *2011 IRS Data Book*, Table 25, *available at* http://www.irs.gov/taxstats/article/0,,id=102174,00.html. (Note that both the 1.5 million and 1.0 million figures cited above understate the true numbers because these figures do not include all churches and certain other types of religious organizations. IRS records are not complete for churches and these other types of religious organizations because they are not required to file the Forms 1023 or annual Forms 990.)

[7] See, *e.g.*, Kennard T. Wing, Katie L. Roeger, and Thomas H. Pollak, *The Nonprofit Sector in Brief: Public Charities, Giving, and Volunteering,* 2010, The Urban Institute, *available at* http://www.urban.org/uploadedpdf/412209-nonprof-public-charities.pdf. *See also* Rob Reich, Lacey Dorn, and Stefanie Sutton, *Anything Goes: Approval of Nonprofit Status by the IRS,* October 2009, Stanford University Center on Philanthropy and Civil Society ("PACS"), at 15, *available at* http://www.stanford.edu/~sdsachs/AnythingGoesPACS1109.pdf (classifying the Section 501(c)(3) organizations approved by the IRS in 2008 by their National Taxonomy of Exempt Entities ("NTEE") Codes).

[8] *2011 IRS Data Book*, Table 24. (Note that the actual Section 501(c)(3) numbers shown in Table 24 for total filings, approvals, denials, and no determinations are 55,319, 49,677, 205, and 5,437, respectively. We have chosen to use approximations to these actual numbers because the numbers in Table 24 include other "case closures" besides Forms 1023. As stated in Footnote 1 to Table 24, the table "[r]eflects all case closures for the Exempt Organizations Determinations function. These include not only initial applications for tax-exempt status, but also other determinations, such as public charity and private foundation status determinations, advance approval of scholarship grant procedures, and group determinations of tax-exempt status." We assume, however, that the vast majority of these case closures do, in fact, relate to the Forms 1023; hence, we have approximated the actual numbers of the Forms 1023 in accordance with that assumption.

[9] *Id.* at note 3.

One thing that is clear from these Form 1023 statistics is the high approval rate.[10] Of the 55,000 cases that were processed in 2011, almost 50,000—some 90%—were approved.[11] This high approval rate may not be as surprising as it appears on first glance. It may just reflect the fact that applicants typically file 1023 forms when they are newly formed; and so there is typically nothing "bad" in the organizations' (very short) history. Also, we assume that most applying organizations indicate on their 1023 forms that they intend to be compliant with all the applicable rules.

C. Current Form 1023 Filing Process

The Form 1023 filing process begins when applicants download a PDF file containing a 12-page paper application form. An applicant completes the form; attaches its articles of incorporation and bylaws; explains its responses to the form's questions; completes any required schedules; and includes a user payment fee. A typical application including the articles, bylaws and other attachments, may run 40-50 pages or more in length. We estimate that approximately 25% of applications are prepared by professionals (i.e., lawyers and accountants).

This paper form is mailed to the Covington, Kentucky, mail processing center, which generates a form letter acknowledging receipt of the application within a few weeks. The application is logged and scanned into the Tax Exempt Determination System (TEDS), which produces an electronic file with limited search capability. IRS personnel enter some information by hand. While the application can be read on the TEDS computer screen, TEDS does not have the ability to integrate with other IRS electronic data systems.[12]

Applications are sent electronically via TEDS to the Cincinnati EO office for processing. All applications go through an initial screening process. Well over half of all Form 1023 applications are closed favorably within a relatively short period of time as a result of the initial screening or after some limited follow-up. For example, in 2011 60% of the applications were closed in less than 90 days, with only about 40% of applications requiring significant full development. In terms of processing time, this is a significant improvement from 2004, when only about one-third of the cases were closed without full development.

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[10] Reich, *supra* note 7 (studying the Form 1023 approval rate over time and performing a detailed analysis of the Section 501(c)(3) organizations approved by the IRS in 2008).

[11] If the "no determination" closings are excluded from the calculation, the approval rate is more than 99%, although many of the "no determination" cases are likely to involve organizations that withdrew their applications rather than face denial.

[12] The role and limitations of TEDS as an interim technology were noted in a 2003 ACT report that addressed the IRS determinations process. The 2003 ACT report stated that "while still not as advanced technologically as it should be, TEDS should improve the tracking of applications and expedite their release to the public until more advanced technology can be acquired and implemented." The 2003 ACT report is discussed below in more detail. *See generally* Second Report of the Advisory Committee on Tax Exempt and Government Entities Public Meeting, May 21, 2003, *available at* http://www.irs.gov/pub/irs-tege/tege_act_rpt2.pdf.

Applications that are not closed as part of the initial screening (40% in 2011) are "graded" based on type of organization, complexity, and other factors. These applications are assigned for full development to determination specialists who, based on their expertise and experience, work on cases at particular grade levels. The availability of a specialist cleared for the appropriate grade level impacts the assignment and review process. In cases where the application raises issues for which there is no established published precedent or for which non-uniformity may exist, EO Determinations refers the application to EO Technical. In EO Technical, the applications are reviewed by tax law specialists, whose job is to interpret and provide guidance on the law and who work closely with IRS Chief Counsel attorneys on the issues.

As of March 2012, EO was assigning applications for review that were received in July 2011—some eight months earlier. The period of time between the filing of an application and the closing of the case can vary significantly. A case that is not closed as part of the initial screening almost surely takes six to eight months to complete, and may take considerably longer—as much as several years—if the case goes to the EO National Office for review.

Listed by the IRS in order by their frequency of occurrence, the current "Top Ten Reasons for Delays" are:

1. incorrect or no user fee;
2. failure to include articles of incorporation and amendments;
3. failure to include bylaws;
4. failure of the appropriate officer to sign the form and indicate his or her title;
5. failure to complete all required pages;
6. failure to complete all required schedules;
7. insufficient information demonstrating how the exempt purpose will be achieved;
8. failure to include the required information for principal officers and directors;
9. failure to include the ending month of the annual accounting period; and
10. insufficient financial data.[13]

[13] See Internal Revenue Service, *Top Ten Reasons for Delays in Processing Exempt Organization Applications*, http://www.irs.gov/charities/article/0,,id=96361,00.html (last visited Mar. 30, 2012).

While all of these "Reasons for Delays" slow down the application process somewhat, it is important to note that most of them do not result in any significant delay, and are dealt with at the screening level, and resolved without the need to assign the application to a determination specialist for full development.

D. IRS Quality Control Process

Quality control and customer satisfaction are important aspects of the Form 1023 filing process. Implementing a strong quality control system helps ensure that applications are processed correctly under the law and consistently across the applicant pool. Monitoring customer satisfaction helps ensure that the customer experience meets reasonable expectations of service. We understand that the IRS implements a detailed quality control process with respect to applications for exemption as well as a process for regularly establishing customer satisfaction. While the IRS was not able to share the results with the ACT, these processes are designed to provide valid and reliable feedback that the IRS uses to access its processes and make enhancements when and if applicable.

E. Review of Operations Process

Another important part of the Form 1023 process is the ROO function, which is used both for routine monitoring and enforcement and to follow up on certain approved 1023 forms to confirm whether the organizations' actual operations were as represented on the exemption applications. The ROO receives referrals of specific organizations for which there are concerns about aspects of their proposed operations but insufficient basis to deny recognition of exemption. As part of its internal quality control and monitoring and enforcement programs, the IRS also designates a random sample of the approved 1023 forms for referral to the ROO for follow-up review.

The ROO unit consists of a dedicated team of specialists who use publicly available information including the 990 forms, websites, and other public sources, to review whether an organization's actual manner of operations is consistent with representations on its Form 1023. If it appears to the ROO unit, based on the publicly available information, that an organization is not operating in conformity with the representations made as part of its exemption application, it may refer the organization for audit.

F. IRS Resources for Form 1023 Filers

The IRS provides information at www.irs.gov to assist organizations applying for tax-exempt status. This includes StayExempt.org (www.stayexempt.org), which is a site designed for Section 501(c)(3) organizations. The site contains educational information for new and existing organizations. The following resources on StayExempt.org relate to the Form 1023 filing process and/or the substantive requirements for recognition of exemption under Section 501(c)(3):

- "Applying for Tax Exemption—An Overview" – a mini-course for new organizations thinking about applying for tax-exempt status. The course provides IRS resources that will make the process easier;

- Life Cycle of an Exempt Organization – explanatory information and links to forms an organization may be required to file during the five stages of its charitable life; and

- Form 1023 Educational Resources.

The Life Cycle of an Exempt Organization webpage, which may be found at http://www.irs.gov/charities/article/0,,id=169727,00.html, contains valuable information on the exemption application process and frequently asked questions that direct users to other resources within the IRS website.

One proposed resource for organizations applying for exemption under Section 501(c)(3)—Cyber-Assistant (CA)—proved unsuccessful. CA was conceived as a Web-based program to provide an applicant with a question-and-answer format and context-specific hints similar to current income tax software programs. When completed, CA generated a paper form with a two-dimensional bar code containing the application's information. This paper form was to be mailed to Covington, where the bar coded information was scanned into the IRS system for processing consistent with the current paper process. The IRS anticipated offering a reduced filing fee for applications prepared with CA based on anticipated higher-quality applications and reduced review time.

Instead of establishing an electronic database as the core of the Form 1023 application process as recommended in the 2003 ACT report, CA sought to bridge the difference between the IRS's current paper processes and the use of an electronic database method. Originally CA was intended to be available in 2007, but its software testing revealed some fundamental problems. The IRS has no current plan to resume development of CA.

G. 2003 ACT Report

In May 2003, the Exempt Organizations Subcommittee of the ACT reported on its project studying the exempt organizations determination process, called Project ASPIRE.[14] The acronym "ASPIRE" stands for:

A - alleviate any application backlog
S - streamline the determinations process
P - prioritize application review
I - improve customer service
R - redirect resources to cases deserving enhanced review
E - enhance quality control

Project ASPIRE was a comprehensive review of the determinations process that was motivated in large part by a desire to streamline that process, thereby enabling the IRS to focus more of its limited resources on compliance rather than determinations.[15] In developing its recommendations for Project ASPIRE, the ACT "sought to take into account both the needs of TE/GE to administer an application review program in an accurate, complete, and impartial manner, and the needs of EO applicants for a determinations program that is accessible, comprehensible, reliable, and timely."[16]

We commend the IRS for implementing some of the recommendations made in 2003 as part of Project ASPIRE. We note, however, that other recommendations have yet to be implemented and some of them—particularly the development of a fully e-fileable Form 1023—are even more urgent today than they were in 2003. We address some of the recommendations made in the Project ASPIRE Report in more detail later in this article.

[14] Second Report of the Advisory Committee on Tax Exempt and Government Entities Public Meeting, May 21, 2003, *supra* note 12.

[15] *Id*. at I-1. In its report, the ACT made a number of recommendations for reforming the determinations process. These included the following, some of which the IRS has accomplished:

- develop a fully interactive Form 1023 (attempted via CA project);
- develop a fully e-fileable Form 1023;
- facilitate development of a Form 1023 database;
- develop a prominent Form 1023 "helpful hints" checklist (accomplished);
- conform the two public support tests;
- eliminate Form 8734 at the end of the advance ruling period (accomplished);
- identify the type of Section 509(a)(3) supporting organization in the Form 1023 and the determination letter (accomplished);
- develop a standard public charity reclassification process (accomplished);
- develop a standard "one-stop" name-change process; and
- link the IRS website to state charity officials' websites (accomplished).

[16] *Id*. at I-5.

IV. Analysis of Changes to Make the Form 1023 More Effective, Consistent, Simple and Educational

A. Overview/Philosophy/Policy of the Form 1023

The ACT believes that Form 1023 should be redesigned to be more **effective**, **consistent**, **simple**, and **educational**. There is inherent tension in some of these goals, e.g., a more effective form may be a less simple one. Hence, the objective must be to strike the proper balance among these four goals, which we discuss in more detail below.

Effective – Form 1023 should be an efficient means of enabling the IRS to initially identify organizations that are, and those that are not, organized for a charitable purpose, as well as those organizations whose operations raise questions as to future compliance and therefore may be appropriate for later follow-up. While there are other values or goals that need to be balanced with effectiveness, we think that this summarizes what an effective Form 1023 should do.

For most organizations, the Form 1023 review process is the only time in a charity's life cycle when the IRS interacts with the organization in an individualized, one-on-one basis. In addition, the interaction between the IRS and an applicant at the Form 1023 stage is particularly important because it is early in the charity's life cycle, when it is easier for the organization to make the necessary changes to ensure future compliance. An effective determinations process should take advantage of this early opportunity to influence new Section 501(c)(3) organizations.

After the organization's application is approved, its normal interaction with the IRS consists of filing its annual Form 990. But because of the large number of 990 forms filed each year, the IRS cannot possibly respond to many organizations in a customized, "hands on" way.

Finally, the ROO process is another important component of an effective determinations process. Although organizations are not aware that they are being evaluated by the ROO, the process may lead to more direct IRS interaction with the organizations in appropriate cases. The ROO enables the IRS to approve certain applications more quickly by providing the IRS with a "safety net." That is, the IRS can follow up on organizations approved for exemption but flagged during the application process to verify whether their actual operations are as represented and in compliance with legal requirements. As we discuss in more detail later in this report, the ACT recommends that the IRS expand the use of the ROO to make it an even more important component of the overall determinations process.

Consistent – We believe that the substance, format, and terminology of Form 1023 and Form 990 should be more consistent, to the extent possible. For example, questions on Form 1023 (and even the order in which they appear on the form) should more closely mirror the

analogous questions on Form 990. And both forms should use consistent terms and definitions, which is currently not the case.

To be clear, we are not recommending that Form 1023 become a kind of a "mini" Form 990, with all its complexity and depth. However, the language used and the "look and feel" of the two forms should be consistent. With each passing year there is more common understanding about the questions asked on the recently redesigned Form 990. It would be helpful to both the IRS and the practitioner community if the questions on Form 1023 were more consistent with those on Form 990 so that some of those common understandings and interpretations could be transferred to the Form 1023 context. Also, making the two forms more consistent would benefit the organizations completing Form 1023. It would give these applying organizations a "preview" of the types of questions they will need to answer every year when they begin filing their 990 forms. It would also make it easier for state charity regulators and the general public to compare an organization's planned activities and structure when seeking exempt status with its actual operations as reported on Form 990.

Simple – Form 1023 is not a simple document. The Paperwork Reduction Act Notice attached to the Form 1023 instructions states that the estimated average time required for recordkeeping, learning about the law or the form, preparing the form, and copying, assembling, and sending the form to the IRS is about 105 hours for the core part of the form. The corresponding time required for the eight schedules varies from about 7 hours to 18 hours. While we take these estimates with a grain of salt, there is no doubt that completing Form 1023 is a time-intensive process.

Of course, an individual's perception about the relative simplicity of the form will depend, in large part, on the individual's personal experience. Most of the practitioners we interviewed were tax professionals experienced with the form. While most of these practitioners believe that the 2006 revisions were a major improvement, they also agree that the form is now more complicated and time-consuming to complete. Nonetheless, most of them do not believe that the form is too burdensome; and some even suggested that the form be expanded to probe into areas such as whether the officers and directors understand the responsibilities of operating a charitable organization.

There can be no doubt, however, that completing Form 1023 is quite daunting to people who are not tax professionals. Setting aside the sheer number of questions on the form, most nonprofessionals probably don't understand the implications of many of the questions. One consequence of making the form more complicated and time-consuming to complete is that it also becomes more expensive for organizations to hire tax professionals to assist with preparation of the form. One practitioner from a large law firm reported that the firm handles fewer 1023 forms on a pro bono basis than in the past, and some potential paying clients now go elsewhere to get assistance in completing the form. Fortunately, there are some reliable

and inexpensive resources available for people completing Form 1023 without professional assistance. Nonetheless, an important policy question is whether completion of Form 1023 should be a "high hurdle" or a "low hurdle" for an organization to obtain recognition of exemption. We discuss this issue further in our third recommendation dealing with small organizations and the consideration of whether there should be a shorter, less-complex "Form 1023-EZ" for such organizations.

Educational – While the primary purpose of Form 1023 is to provide the IRS with the information necessary for it to make a decision on the exempt status of an applicant, there are other important purposes that the form can and should serve. We believe that it is particularly important for the form to serve as an educational tool for new Section 501(c)(3) organizations. The vast majority of practitioners, we spoke with, believe that the thoroughness of the questions on Form 1023 has the salutary effect of forcing the applicant, while still in its "infancy," to think systematically and practically about how it will operate. For example, precisely what activities the organization will engage in, how it will raise funds to support those activities, how much funding it can reasonably expect to raise, and what its budget will be. In effect, Form 1023 requires the applicant to develop something resembling a business plan.

The level of detail on Form 1023 is also helpful in signaling to applicants that they are entering into a complex regulatory environment with a strict set of rules. While most people who establish a new charity are good people and want to do good things, the thoroughness of Form 1023 helps underscore that tax exemption is a privilege that comes with responsibilities.

Related to this idea, several practitioners commented that Form 1023 questions actually function as a compliance tool. For example, through the questions on the form, organizations learn that they need to have organizing documents that include certain language. Said another way, the questions on Form 1023 inform applicants (at least indirectly) of many of the rules that govern exempt organizations. When there is some confusion about the meaning of a particular question on the form, it is likely that there is some rule that the organizers of the charity need to learn more about.

Most of the educational benefits of Form 1023 described above are indirect, i.e., they arise incidentally from the questions that are asked on the form. We recommend that the IRS be more intentional about using the form as an opportunity to educate applicants.[17] As discussed below, this could be done by reorganizing the content and structure of the form and using the instructions to provide better context for the questions. In addition to providing an

[17] The IRS does acknowledge an educational purpose for the Form 1023. *See* IRS Comments to the National Taxpayer Advocate 2011 Annual Report to Congress, vol. 1, *supra* note 2, at 446 ("The Form 1023 also serves an educational purpose because it provides applicants either an introductory or a refresher course on the rules for tax exemption.").

educational benefit to applying organizations, this approach may result in more responsive answers to the questions on the form and facilitate the review process.

B. Specific Recommendations

1. The IRS should expedite the internal processes and commit the necessary resources (human, financial, and technological) to transform Form 1023 into an interactive Web-based Form e-1023 that can be filed electronically and stored, transmitted, and disseminated in an electronic database format. This information will serve as the electronic gateway for IRS knowledge about tax-exempt organizations.

In 2003, as part of Project ASPIRE, the ACT conducted a comprehensive review of the exempt organizations determination process and made recommendations for improvement. The first three recommendations were to:

(1) develop a fully interactive Form 1023;

(2) develop a fully e-fileable Form 1023; and

(3) facilitate development of a Form 1023 database.

The ACT made a simple and straightforward case for these interrelated recommendations. With respect to the development of a fully e-fileable Form 1023, the ACT concluded that this "would save significant time in mailing, processing, assigning, and developing applications."[18] The ACT further noted that this would enable the IRS "to more easily track applications, isolate specific application characteristics and trends, sort applications for data analysis, statistical and compliance purposes, and more efficiently make applications available to the public."[19]

Since the ACT's recommendation to develop a fully e-fileable Form 1023 was made in 2003, some 340,000 organizations have filed for recognition of exemption using Form 1023 in paper form. Although we estimate that as many as 90% of these organizations ultimately received recognition of exemption, the process for many was delayed because their forms had one or more common mistakes requiring IRS follow-up, making the exemption process slower and more costly for the organizations and the IRS alike. And all of the information about the Section 501(c)(3) sector reflected in those 340,000 applications—new developments, current trends, troublesome concerns, etc.—has been and remains largely inaccessible to state charity regulators and the public.

[18] Second Report of the Advisory Committee on Tax Exempt and Government Entities, *supra* note 12, at I-12.
[19] *Id.*

The reasons cited by the ACT in 2003 remain valid today, but the case for development of a Form e-1023 has become not just compelling, but urgent. As the IRS clearly recognizes, we are no longer a paper-based society. The IRS has accepted electronically filed Forms 1040 for more than 20 years, enabling many taxpayers to handle their personal income tax filings on a paperless basis by completing the forms online, e-filing the returns, and storing copies electronically. The use of e-filing for Forms 1040 reduces mistakes, speeds up tax payments and refunds, and reduces the IRS burdens otherwise associated with processing paper returns.

These same advantages—and more—come into play in the context of the tax-exempt sector. Unlike Forms 1040, which are strictly between the IRS and individual taxpayers, Forms 1023 and 990 are required to be available to the public. This public availability promotes accountability and also serves to leverage IRS resources as attention is drawn to noncompliant organizations. The inclusion of Forms 990 on GuideStar has been of significant value in this regard and the inclusion of Forms 1023 could be expected to have a similar benefit. Moreover, research about the sector, using data from those forms, is relied on by funders, policymakers, state charity regulators, and other stakeholders. The transparency and accountability that results from public availability of Forms 1023 and 990 are central tenets of tax policy; and electronic filing can greatly enhance the attainment of these objectives.

The IRS already recognizes the advantages of electronic filing for tax-exempt organizations, as evidenced by its successful implementation of mandatory electronic filing of Forms 990 and 990-PF for many (but not all) filers.[20] The Form 990 electronic filing process, along with the Form 990 redesign made effective in 2008, has resulted in more accurate and complete Form 990 returns, significantly improved the quality of information available to the IRS, and increased the transparency of this information to the public.

Development of a Form e-1023 offers equal or greater promise. The principal benefits of developing a Form e-1023 include the following:

(1) It will effectively and efficiently utilize IRS resources.

Although EO is a small part of the IRS, the 1.5 million exempt organizations regulated by the IRS have a substantial impact on the economy.[21]

[20] Treas. Reg. § 301.6033-4 requires electronic filing of the Form 990 if the organization files at least 250 returns (W-2, 1099, employment tax returns, etc.) during the calendar year ending with or within the tax year and has total assets of $10 million or more at the end of the tax year. The Form 990-PF is required to be electronically filed if the organization meets the 250-returns requirement; there is no asset threshold for private foundation returns. I.R.C. § 6011(e)(2) prevents the IRS from requiring electronic filing for taxpayers that file fewer than 250 returns annually with the IRS.

[21] TE/GE's EO Division currently employs approximately 900 of the IRS's 90,000+ employees.

"Virtually every American interacts with the nonprofit sector in his or her daily life through a broad range of concerns and activities such as health care, education, human services, job training, religion, and cultural pursuits. In addition, federal, state, and local governments rely on nonprofit organizations as key partners in implementing programs and providing services to the public. … **Keys to a healthy nonprofit sector include strengthening governance, enhancing capacity, ensuring financial viability, and improving data quality without overly burdening the sector with unnecessary or duplicative reporting and administrative requirements.**"[22] (Emphasis added.)

"U.S. nonprofit establishments employed nearly 10.7 million paid workers in 2010. This accounts for 10.1 percent of our nation's total private employment and makes the U.S. nonprofit workforce the *third* largest among U.S. industries, behind only retail trade and manufacturing."[23]

The IRS has long recognized the business case and advantages of deploying technology, and currently upgrades its technological capabilities through its Business Services Modernization (BSM). In FY 2011, the IRS submitted an IT budget request of approximately $2.67 billion of which $2.3 billion constituted operations support and $333 million for the BSM efforts.[24] These "efforts focus on building and deploying advanced information technology systems, processes, and tools to improve efficiency and productivity."[25] They are consistent with the recommendations by the Electronic Tax Administration Advisory Committee's "Annual Report to Congress," which persuasively and consistently makes the overall case for the IRS to deploy electronic and Web-based technology.[26]

Transitioning to a Form e-1023 encompasses redesigning the form consistent with our second recommendation below and incorporating the inherent capabilities and efficiencies of a

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[22] *Nonprofit Sector: Increasing Numbers and Key Role in Delivering Federal Services*, United States Government Accountability Office, Testimony Before the Subcommittee on Oversight, Committee on Ways and Means, House of Representatives (statement of Stanley Czerwinski, Director, Strategic Issues, at 13) (July 24, 2007), www.gao.gov/assets/120/117387.pdf (last visited Mar. 27, 2012).

[23] Lester M. Salamon, S. Wojciech Sokolowshi, and Stephanie L. Geller, *Holding the Fort: Nonprofit Employment During a Decade of Turmoil*, The Johns Hopkins Nonprofit Economic Data Project, 2012, at 2, http://ccss.jhu.edu/wp-content/uploads/downloads/2012/01/NED_National_2012.pdf (last visited Mar. 27, 2012).

[24] *IRS Budget 2012: Extending Systematic Reviews of Spending Could Identify More Savings Over Time*, United States Government Accountability Office Report to Congressional Committees, April 2011, at 33, http://www.gao.gov/assets/320/317693.pdf (last visited Apr. 10, 2012). This report notes on page 33 that the "IRS funds one hundred fifty five IT systems. Of these, about 31 are considered 'major', each having an overall life-cycle cost of greater than $50 million or an annual budget of greater than $5 million. The other 124 systems are 'non-major.'" Because a Form e-1023 project has not been subjected to a cost analysis to our knowledge, the ACT is unable to determine whether the development of a Form e-1023 will be considered a "major" or "non-major" project by these standards.

[25] *IRS FY 2013 Budget in Brief*, at 14, http://www.irs.gov/pub/newsroom/budget-in-brief-fy2013.pdf (last visited Apr. 10, 2012). We encourage the IRS to incorporate more information about the nonprofit sector in future reports.

[26] Given the Electronic Tax Administration Advisory Committee's primary focus on broader technology needs, we encourage and welcome its future consideration for deploying electronic and Web-based resources to address the nonprofit sector and related exempt organizations. To read the Committee's reports, see *Electronic Tax Administration Advisory Committee Annual Report To Congress*, Annual Reports for 2009-11, http://www.irs.gov/efile/article/0,,id=213863,00.html (last visited Apr. 6, 2012).

computer database. Because of the statutory bar on the IRS requiring e-filing for taxpayers filing fewer than 250 forms with the IRS, the ACT recommends that the IRS adopt a fee application structure that recognizes the efficiencies and quality control of using a Form e-1023 and encourages voluntary adoption as the sector's preferred method for seeking recognition of exempt status.

We recognize that Form e-1023 will require the significant deployment of assets at a time of significant competition for limited resources. We believe there is a strong and compelling business and tax policy case for investing the resources required now. We recognize, as did the 2003 ACT, the beneficial use of database technology to address the needs of this highly concentrated and impact-leveraged economic sector. We believe it is short-sighted not to begin to develop the efficiencies that Form e-1023 and related processes will provide to the IRS infrastructure.

(2) "Streamlining the EO determinations process would enable EO to increase its focus on compliance, which is essential to the integrity of the tax-exempt sector."[27]

Integrity is a bedrock of the nonprofit sector. Most exempt organizations are formed and operated by individuals who operate lawfully. These organizations maintain compliance through high-tech, high-touch communications that use cost-effective and efficient Internet and Web-based technologies such as the IRS website, the targeted email Exempt Organization Update, and other educational programs, including the Academic Educational Initiative developed by the IRS TE/GE Customer Education and Outreach initiatives. We believe that investing in these proactive compliance resources yields a significant return on IRS resources by improving sector compliance, avoiding IRS use of more expensive compliance assets, and achieving a high level of customer satisfaction.

Others may operate exempt organizations by means or for purposes inconsistent with the requirements of the tax laws, either intentionally or inadvertently. Compliance for these organizations requires the use of more expensive and time-consuming IRS resources such as the ROO, audits, and prosecutorial assets. We believe that development of Form e-1023, embedded with educational resources, will promote greater compliance from the inception of new organizations, lessening the need for more resource-intensive interventions.

During the intervening years since the 2003 ACT report, the IRS has benefited from its ability to fulfill its compliance function by investing in technology. Using a Form e-1023 application will increase and leverage the IRS's progress.

[27] Second Report of the Advisory Committee on Tax Exempt and Government Entities, *supra* note 12, at I-1.

(3) It will promote IRS processing by lessening delays.

Nine of the ten most common reasons for delay are clearly based on failure of an organization to provide required information initially with the Form 1023 application.[28] This lack of information and corresponding delay would be eliminated through electronic filing, which would review the application for completeness before a Form e-1023 application is accepted for filing.[29] Eliminating this delay will enhance productivity and speed up the review process.

The remaining reason for delay is insufficient information demonstrating how the exempt purpose will be achieved.[30] This delay arises primarily in response to the current Part IV Narrative question.[31] The response to this narrative question is at the core of the determination process. The electronic screening process can ensure that a Form e-1023 will not be accepted for filing without this information. It will, of course, not be possible to fully assess the adequacy of this information as part of the e-filing process. But we believe that a well-designed Form e-1023 can provide sufficient pop-up explanations and examples to significantly minimize the need for IRS follow-up with respect to the insufficiency of information. Use of Form e-1023 will thus increase the number of applications that can be approved without the need for follow-up contacts to applicants, enabling the IRS to more efficiently utilize its limited resources.

(4) It will promote compliance through education and lessen filing mistakes.

The interactive component of Form e-1023 may have many of the same features as those intended for the unsuccessful CA tool, with the additional advantage of assisting the applicant in electronically filing an application for recognition of exemption, which was not a goal of CA.[32] In particular, the interactive component of the Form e-1023 would have the features that were described in the Project ASPIRE Report:[33]

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[28] See *Top Ten Reasons for Delays in Processing Exempt Organization Applications*, *supra* note 13.

[29] This verification process could include answering "yes" to the question about attaching the organization's articles and bylaws and confirming electronically that a PDF has been attached in response to that question.

[30] See *Top Ten Reasons for Delays in Processing Exempt Organization Applications*, *supra* note 13.

[31] The current Form 1023 requests the following in "Part IV Narrative Description of Your Activities": "Using an attachment, describe your past, present, and planned activities in a narrative. If you believe that you have already provided some of this information in response to other parts of this application you may summarize that information here and refer to the specific parts of the application for supporting details. You may also attach representative copies of newsletters, brochures, or similar documents for supporting details to this narrative. Remember that if this application is approved, it will be open for public inspection. Therefore, your narrative description of activities should be thorough and accurate. Refer to the instructions for information that must be included in your description."

[32] Because we are recommending the development of a fully electronic Form e-1023 filing system with an interactive component that contains the features conceived as part of the CA tool, we respectfully disagree with the National Taxpayer Advocate's recommendation that the IRS continue its development of the paper-based CA tool. National Taxpayer Advocate 2011 Annual Report to Congress, vol. 1, *supra* note 2, at 450 and 563.

[33] Second Report of the Advisory Committee on Tax Exempt and Government Entities Public Meeting, *supra* note 12, at I-11.

CyberAssistant, the fully interactive Form 1023 posted on the IRS website, could guide an applicant organization through Form 1023, explaining the need for and relevance of particular information, referring and linking to relevant IRS publications, defining essential and unfamiliar terms, and relating coordinated sections of Form 1023 to one another. By providing this background information, CyberAssistant would be able to eliminate "gotcha" aspects of certain Form 1023 questions for novice applicants, and identify circumstances in which an applicant does not qualify for exemption. For example, a "yes" answer to a question about political campaign intervention would result in pop-up advice from CyberAssistant that the organization is disqualified from section 501(c)(3) status, and a suggestion either to eliminate the activity or consider section 501(c)(4) status, with links to appropriate additional information and forms.

A Form e-1023 offers the opportunity to incorporate education about the requirements for exemption into the form itself. As discussed below, we believe that the IRS should use Form 1023 as a vehicle to provide more information about the requirements for obtaining and maintaining exemption. A Form e-1023 will facilitate that process.

Finally, the interactive component of a Form e-1023 filing system will also benefit the IRS. It would certainly improve the quality of the applications received by the IRS, reducing the workload on reviewers, who could process applications more quickly without having to request additional information from applying organizations.

(5) It will promote public transparency and accountability.

Development of a Form e-1023 is essential for the IRS to establish an electronic database of Section 501(c)(3) organizations—and creates an electronic "line of sight" for exempt organizations from their inceptions through their most current 990 forms. An IRS electronic database system will serve as the conduit by which information about these organizations is returned to the public in a usable electronic format. This will provide the public with direct access to the underlying raw data for subsequent electronic analysis and reports without the unnecessary burden or expense of translating this information from a paper to an electronic database format.[34]

[34] This will permit analysis of the individual exempt organizations, as well as sectorwide analysis. Research organizations such as the Urban Institute; Harvard University's Hauser Center for Nonprofits; North Carolina State University Institute for Nonprofits; Duke University's Fuqua School of Business, Center for Advancement of Social Entrepreneurship; and others will have access to rich data resources for study and analysis. Policymakers, regulators, the exempt sector, the public, and the IRS will all derive significant benefits from the resulting research and knowledge. *See, e.g.*, Paul N. Bloom and Catherine H. Clark, *The Challenges of Creating Databases to Support Rigorous Research in Social Entrepreneurship*, Duke University's Fuqua School of Business, Center for Advancement of Social Entrepreneurship, Working Paper (Nov. 2011), http://caseatduke.org/documents/Articles-Research/Bloom-Clark_Database paper_Final(workingpaper).pdf (last visited Mar. 30, 2012).

Disclosure of the Form 1023 application is currently required after recognition of an organization's exempt status, at which time both the IRS and the exempt organization must produce a Form 1023 application and determination letter upon request by any party. Having this information readily available electronically on the IRS website provides the public with a one-stop, Web-based source for information about an organization's status and all publicly available IRS filings consistent with the "Exempt Organizations Select Check" Web page.[35] This provides the opportunity for an ongoing public examination and review of operating organizations that helps the IRS. When coupled with the publicly available Form 990, the IRS can leverage the exempt community, the public, and state charity regulators to enhance its own compliance, educational, and enforcement capabilities.

(6) It will promote cooperation and collaboration with state charity regulators.

State charity regulators support development of Form e-1023 because e-filing will make the form more accessible to them and to the public in a cost-effective format.[36] The current capacity of state charity regulators to take advantage of a Form e-1023 is largely dependent on their ability to accept 990 forms either e-filed directly from organizations or as part of the federal/state data retrieval system. Since most regulators presently lack this capacity, their ability to benefit from e-filing will be subject to the limitations of addressing the additional costs of building necessary IT systems—something that will likely occur over time.

Forms e-1023 and 990 information should be readily and easily available to state charity regulators through the electronic data transfer of information with the choice to access this data made by state entities and others. Such information would help leverage IRS resources by providing an invaluable oversight tool for state charity regulators including enforcement against organizations that may not be operating in accordance with representations, made to the IRS, or the requirements for maintaining exemption, as well as referrals to the IRS for potential ROO reviews or audits.[37]

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[35] *Exempt Organizations Select Check*, http://www.irs.gov/charities/article/0,,id=249767,00.html (last visited Mar. 27, 2012).

[36] See Statement of the National Association of State Charity Officials to the United States Senate, Committee on Finance, *Charity Oversight and Reform: Keeping Bad Things from Happening to Good Charities* (June 22, 2004), *available at* http://finance.senate.gov/imo/media/doc/062204mptest.pdf (supporting the IRS's development of electronic filing for the Forms 990).

[37] Such leveraging of IRS resources would help offset the practical barriers posed by the PPA to meaningful IRS leveraging of state assistance for predetermination inquiries and investigations. While the PPA expanded the categories of information the IRS may disclose to state charity regulators, in order to receive such information state charity regulators are required to maintain it with strict confidentiality. Only California, Hawaii and New York have entered into information-sharing agreements with the IRS, and those states have limited their receipt of information to paper documents to avoid the substantial burdens of maintaining safeguards required for the maintenance of electronic data. The reluctance of other states to enter into such agreements is based, in part, on the cumbersome nature of the safeguard requirements and the resources needed to adhere to them. Thus, the NAAG sent a letter signed by Attorneys General from 43 states (including California, Hawaii and New York) to the Senate Finance Committee on October 28, 2011, urging that Congress amend the provisions of Sections 6103, 6104 and 7213 to enable state charity regulators to more freely use information shared by the IRS. (See **Ex. 1**.) State charity regulators argue that the IRS's

2. The IRS should redesign Form 1023 with four primary objectives: to make the form (i) *effective* at identifying whether organizations meet the requirements for recognition of exemption; (ii) *consistent* with the structures and definitions of Form 990; (iii) *simple* by using a short core form with supplemental schedules to reduce the filing burden on small and/or less-complex organizations; and (iv) *educational* by organizing questions based on substantive exemption requirements and including explanatory information.

The ACT recommends that any redesigned Form 1023 track the legal requirements for exemption under Section 501(c)(3) and be organized, like Form 990, with a core form and schedules to be completed only if relevant. In general, the core Form 1023 should require basic factual information about the applicant including its organizational structure and planned activities and operations—thus demonstrating that it satisfies both the organizational and operational tests. The core form should also ask questions about potential activities that raise legal concerns or are considered "high-risk" activities from a Section 501(c)(3) perspective, with follow-up questions in appropriate schedules.

a. Identifying Information. In any redesigned Form 1023, Part I would generally remain, including Questions 1-12 of the current form that ask for basic information such as name, address, employer identification number (EIN), website, etc. The signature block and user fee information currently in Part XI should be moved to Part I, with the signature line being on page one to help minimize the filing of unsigned forms. The new form should require applicants to check a box indicating that they have determined the correct user fee from the IRS website and enclosed that fee with the application. The IRS's Preparer Tax Identification Number (PTIN) system offers a good model for electronically paying a filing fee.

The instructions for the redesigned Form 1023 should continue to explain how to obtain an EIN, and should provide information about when that EIN should be used, such as when the organization opens bank accounts and on all forms filed with the IRS.

The ACT believes that Part I, Question 11 needs to be clearer. The question currently reads: "Date incorporated if a corporation, or formed, if other than a corporation." Many times an organization starts as an informal arrangement, perhaps an unincorporated association, then it may move into fiscal sponsorship, and, later still, incorporate. Form 1023 instructions should make clear what information should be included in Form 1023 under these circumstances.

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application of understandable safeguards for the protection of confidential federal income tax information is particularly ironic given the inherently public nature of exempt organizations' informational returns, and that release to them of nonpublic IRS information about exempt organizations should not be constrained by the same restrictive safeguards attached to the release of nonpublic information about taxpayers.

The current instructions remind each applicant that its website content should be consistent with the information provided on Form 1023; and the redesigned form should continue to emphasize this point. The IRS should note on Form 1023 that it will review an applicant's website to ensure that the information presented there also complies with the legal requirements under Section 501(c)(3). Form 1023 instructions should also include some examples of information that would raise concerns or generate additional questions from the IRS if present on the applicant's website. Such examples could include the following:

- the applicant states on its Form 1023 that it will not engage in lobbying activities, including grassroots lobbying. But its website provides a tool (or a link to the page of another organization that provides a tool) to "contact your Member of Congress," which allows the user to click on statements regarding pending legislation of interest to the applicant and generate an email to the user's senator and representative asking them to take a particular position on such legislation. By making this tool available directly or through a link, the applicant is engaging in grassroots lobbying, which is inconsistent with the applicant's statement that it will not engage in lobbying activities. Therefore, the IRS will seek additional information to clarify this point;

- the applicant's website includes copies of press releases issued by the organization including one endorsing a candidate for elected office who has been an active supporter of the applicant. Because this violates the prohibition against electoral activity by Section 501(c)(3) organizations, the IRS will deny the application or require that the applicant remove this information from its website and not otherwise engage in such activities in the future; and

- the applicant's website solicits tax-deductible contributions, stating that "all contributions are tax deductible." Because the IRS has not yet recognized the applicant's exemption under Section 501(c)(3), the applicant cannot present itself as having received IRS approval and should state that contributions "may be tax deductible" if its application is approved by the IRS. The IRS may request that the applicant clarify this point on its website before final Section 501(c)(3) approval is granted.

b. Organizational Requirements. To satisfy the organizational test, the governing instruments of the applicant must reflect the following requirements:

(i) It is organized exclusively for Section 501(c)(3) purposes only if its articles of organization limit its activities to furthering its tax-exempt (i.e., charitable or educational) purposes. Treas. Reg. § 1.501(c)(3)-(1)(b).

(ii) It is not considered organized exclusively for charitable purposes if its articles of organization expressly authorize it to devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise, or directly or indirectly participating in, or intervening in, any political campaign. Treas. Reg. § 1.501(c)(3)-1(b)(3).

(iii) It is not organized exclusively for exempt charitable purposes unless its assets are dedicated to an exempt purpose. An organization's assets will not be considered dedicated to an exempt purpose if, upon dissolution, the assets would, by reason of a provision in the organization's articles of organization or by operation of law, be distributed to the organization's members or founders or to an entity that will not use the assets to further exempt purposes. Treas. Reg. § 1.501(c)(3)-1(b)(4).

(iv) In addition, the organization may not be authorized to engage, more than to an insubstantial degree, in activities that are not in furtherance of one or more exempt purposes. Treas. Reg. § 1.501(c)(3)-1(b)(1)(iii).[38]

To collect the necessary information to demonstrate compliance with these requirements and encourage applicants to read the instructions, the second section of the redesigned Form 1023 should include the questions set forth in Parts II and III of the current Form 1023. The current instructions to Form 1023 provide useful background and educational information for applicants on these organizational requirements. To draw attention to this information, it would be helpful to include some very high-level guidance regarding these requirements on Form 1023 itself, and explain that the instructions include additional background and guidance. An e-fileable Form 1023 would include a link to the relevant section of the instructions.

The organizational section should also include other questions that relate to structural or governance-related issues that seem to flow from or be logically connected to these organizational requirements. Therefore, the organizational section of the restructured Form 1023 should ask the applicant if it is a private foundation or public charity, and have separate schedules that ask follow-up questions for each. The current Part VII of the form, "Your History," should be moved to the organizational section, as should Question 15 from Part VIII ("Do you have a close connection with any organizations? If 'Yes,' explain."). Finally, as is currently done on Form 990, Part VI, Section B, Form 1023 should include a series of questions relating to the applicant's policies (conflict of interest, whistleblower, and the like). These questions can be grouped together in the organizational section of Form 1023, as in Form 990, and the IRS can provide an introductory explanation of why these policies are

[38] If the articles of organization authorize nonexempt activities to more than an insubstantial degree, the fact that an organization's actual operations have been exclusively for exempt purposes is not sufficient, and an application for exemption will be denied. Treas. Reg. § 1.501(c)(3)-1(b)(1)(iv).

necessary or helpful for a Section 501(c)(3) organization. If the applicant answers "yes" to any of these questions, the applicant should attach the relevant policy. Following the question about the applicant's conflict-of-interest policy, the IRS should include Questions 5a-c from Part V of the current Form 1023, which request information about the procedures that are followed to ensure that persons who have a conflict of interest will not have influence over the applicant regarding business deals.

c. Operational Requirements. The third section of the redesigned Form 1023 should request information that will enable the IRS to confirm that the applicant is satisfying the operational test imposed on Section 501(c)(3) organizations. Under the operational test:

(i) An organization is considered to operate exclusively for exempt purposes only if it engages primarily in activities that accomplish one or more of its exempt purposes. Treas. Reg. § 1.501(c)(3)-1(c).

(ii) An organization will fail the operational test if more than an insubstantial part of its activities is not in furtherance of an exempt purpose or if its net earnings inure in whole or in part to the benefit of insiders or others. Treas. Reg. § 1.501(c)(3)-1(c).

In the current Form 1023, Part IV, the applicant is asked to provide a narrative description of its past, present, and currently planned activities. Through this narrative description, as well as the financial data provided in Part IX of the current Form 1023, the IRS is able to determine if the applicant has engaged and will likely engage primarily in activities that accomplish one or more of its exempt purposes. These are, in many ways, the key sections of Form 1023. It is important that an applicant understand what is required in these sections. To better ensure that the IRS receives sufficient detail in these sections and that each applicant includes information regarding all its activities, the ACT recommends that the narrative section and the request for financial data be included in this third section and be restructured as follows:

- blank space should be inserted after the request for a narrative description, as was previously included in the pre-2006 Form 1023, to help ensure that an applicant provides a description of its activities. The form should clearly state that the applicant should continue its answer on an attachment, so that the applicant does not think that the level of detail requested by the IRS is limited to the space available on the form;

- the request for a narrative description should include suggested topics to address. For example, the form could explain that an applicant should provide a detailed description of all past, present or currently planned programs

conducted or to be conducted by employees or volunteers or in conjunction with other organizations. Instructing each applicant to attach newsletters and other materials is useful, but the form should also make clear that examples of the applicant's e-mail alerts, website postings and similar materials should also be printed and provided to the IRS as part of the application; and

- to make clear that the description of activities (currently provided in Part IV) should correspond to the financial information (currently included in Part IX), the ACT recommends that the request for financial data be moved to follow the narrative description. The request for financial data should specifically note that the activities described in the narrative description should be reflected in the financial data provided. For example, Form 1023 or its instructions could offer guidance such as "if you state in the narrative description of your activities that you expect to conduct educational seminars, your financial data should reflect the expenses and revenues relating to such seminars."

d. Private Inurement and Private Benefit. A number of questions on Form 1023 request information about potential private inurement or excessive private benefit, which would be a basis for denial of recognition of exemption. These include questions currently in Parts V and VI of Form 1023 about compensation (both direct and indirect), conflicts of interest and contracts with officers and directors. It would be useful to group these questions together in one section, identify them as relating to private inurement and private benefit, and provide a very general overview of the private inurement and private benefit rules, noting that a more detailed explanation of these rules is included in the instructions.

To simplify the form for smaller, volunteer-run organizations, the ACT suggests that a short series of questions be included in the core Form 1023 and more detailed questions regarding compensation of officers, directors, employees and independent contractors be set forth on a schedule. The application, therefore, would ask a series of questions about whether the applicant has paid, or intends to pay within its first three years, compensation to (i) any employees, officers or directors, or (ii) independent contractors or other third parties. Similar questions (such as those currently asked in Part V of Form 1023) would be asked about purchasing goods, services, or assets from, or having leases, loans, contracts, or other arrangements with, any officer, director, trustee, employee, or highly compensated independent contractor.[39] For each question, if the applicant answers "yes," it would be directed to a schedule that provides background information on the requirement that Section

[39] The ACT recommends that the questions that currently ask for information about purchases from or arrangements with "highly compensated" employees should be expanded to ask about such purchases from or arrangements with any employee.

501(c)(3) organizations pay only reasonable compensation and asks detailed questions about the compensation paid or to be paid and how such compensation is or will be set. On the schedule, there would be a series of questions regarding the compensation and other payments made to organization insiders. These questions could include a chart similar to the compensation chart in Part II of Schedule J of Form 990. The schedule on compensation should also include the questions from Part I of Schedule J of the Form 990 (regarding first-class travel, how compensation is set, etc.).

e. Particular Activities. Part VIII of Form 1023 and a number of the schedules ask questions about specific activities that may raise issues for a Section 501(c)(3) organization. We recommend that the core Form 1023 include questions about these activities and that specific follow-up questions be asked in schedules. The current schedules from Form 1023 relating to specific activities or types of entities (i.e., schools, hospitals, entities conducting certain fundraising activities) can key off of questions asked in this section of the core Form 1023, as can other activities. For example, if an applicant is going to engage in publishing, the IRS should ask, in a schedule, a series of follow-up questions relating to publishing. Practitioners have found that if an applicant plans on engaging in certain activities—publishing or providing charitable services outside of the United States, to name just two—unless particular issues (unspecified in the questions or instructions) are addressed in Form 1023 as originally filed, the IRS will ask a series of follow-up questions. We believe that these follow-up questions likely could be avoided if additional questions were asked in a schedule, and the IRS provided educational guidance on the schedule and in the instructions regarding the issues raised by these particular activities. The IRS should, for example, develop a schedule for credit counseling organizations that reflects the provisions of Section 501(q).

f. Additional Issues. Form 1023 should be updated to reflect the elimination of the advance-ruling period for public charity status. Current Schedule B, Section II relating to racially nondiscriminatory policies of schools, colleges, and universities should allow such entities to publish their nondiscrimination policies online, rather than in a newspaper of general circulation. Schedule C, Hospitals and Medical Research Organizations, should be updated to take into account new Section 501(r) requirements. Schedule D relating to supporting organizations should be updated to reflect new PPA requirements.

g. Additional Considerations for a Redesigned Form 1023. In this section, we discuss several other considerations for redesigning Form 1023.

(i) "Do you or will you" questions – There are 46 questions on Form 1023 that begin with the phrase "Do you or will you." Many of the practitioners we spoke with told us that the future tense expressed by the "will you" portion of these questions

creates significant uncertainty. Most organizations are still in their planning stages when they complete Form 1023, so they often struggle with how to answer the "will you" questions and whether they should check "yes" with respect to activities that they might someday conduct, even though there is no current intention to do so. For example, suppose a charity has no current intention of making foreign grants. It might, nonetheless, be reluctant to check "no" on Form 1023 because it may want to do so in the future and doesn't want to be bound by its answer on Form 1023. But if it answers "yes," this typically prompts a substantial number of follow-up questions from the IRS, which the charity may not yet be prepared to answer.

We recognize that information provided on Form 1023 forms a basis for reliance in the event of any later challenge to the organization's tax-exempt status, and so it is generally advantageous for organizations to disclose potential future activities that have some reasonable likelihood of occurrence. It would be helpful, however, if the instructions to Form 1023 provided more specific guidance and clarity on how to interpret these "will you" questions. For example, the IRS could clarify that the "will you" questions are to be interpreted as whether the organization has any "current or specific" plans or proposals to do the activity in question. And the IRS should also emphasize that if the answers given on Form 1023 are made in good faith, then a later change in the organization's plans will not necessarily result in any difficulties, provided that the change is properly reported to the IRS (on Form 990 or otherwise).

(ii) Sample conflict-of-interest form – With respect to Question 5, we believe that the sample conflict-of-interest policy given in Appendix A of the Form 1023 instructions should be substantially revised. It is our impression that some organizations adopt the IRS sample policy without much thought or consideration as to what it means for their particular organization—other than enabling them to answer "yes" to Question 5. And that would be the case with any sample conflict-of-interest policy provided by the IRS. We, however, have concerns about the specific sample policy in the current Form 1023 instructions.

A conflict-of-interest policy is important for several reasons including compliance with IRC Section 4958 relating to excess benefit transactions; and the current sample policy does not adequately address Section 4958 issues. For example, the current sample conflict-of-interest policy applies to "interested persons" (basically, officers and directors) who have a "financial interest" (as defined in the sample policy). But these interested persons are not necessarily the same as "disqualified persons" under Section 4958, leaving a significant gap in the coverage of the policy.

Moreover, some practitioners we spoke with believe that the sample policy was too narrowly focused on common financial conflicts to the exclusion of other types of business-related conflicts of interests. We believe that good corporate governance requires that these and

other types of issues be addressed in a conflict-of-interest policy. We recommend that the IRS review and update the sample conflict-of-interest policy as part of any overall revision of Form 1023.

(iii) Part IX, financial schedules – Some practitioners we interviewed commented that Part IX of the form is too complicated for nonprofessionals to complete. For example, it uses technical tax terms without adequate explanation (e.g., net unrelated business income). On the other hand, some practitioners told us that this part of the form should be more comprehensive and granular like the financial schedules on Form 990. In general, we believe that Form 1023 should be simpler than (but still consistent with) Form 990. In the context of these financial schedules, one reason we favor simplicity over comprehensiveness is that much, if not most, of the financial information provided on Form 1023 will be projections of future revenues and expenses that are necessarily speculative. It is difficult enough for applying organizations to develop good-faith projections of major categories of revenue and expenses (e.g., grants, salaries, and fundraising expenses) on Form 1023. To require them to make reasonable projections of revenues and expenses in very specific categories, similar to those used on Form 990, would be a fruitless and meaningless exercise.

(iv) Part X, private operating foundation status – In Question 4, Form 1023 provides two alternative means for an applying organization to demonstrate that it is a private operating foundation. In the experience of one practitioner, sometimes the narrative alternative is accepted without further inquiry, but in other cases it prompts a lengthy request for additional information. We believe that the form or the instructions should describe in more detail what the IRS is looking for in this narrative alternative. This would permit the applicant to address these issues when it submits the application, thus eliminating the need for the IRS to request additional information from the applying organization.

(v) Review of Form 1023 by the board – A new question should be added to Form 1023 asking whether the organization's governing board has reviewed Form 1023 before submitting it to the IRS. (This is similar to Question 11 from Part VI of Form 990.) This will increase the likelihood that the board is aware of what the organization disclosed to the IRS.

3. The IRS should develop more educational tools about Form 1023, including tips for filing Form 1023, and more information about the substantive requirements for recognition of exemption. The development of these tools, coupled with the redesign of Form 1023, should obviate the need for a separate "Form 1023-EZ" for small organizations. The ACT does not recommend development of such a form.

The ACT seriously considered the merits of developing a separate, shorter Form 1023 (a "Form 1023-EZ") for small organizations applying for recognition of exemption under Section 501(c)(3). For the reasons discussed below, we do not recommend this course of action.[40] We believe that the better approach is to make some structural changes to the current Form 1023 and develop more educational resources focused on the substantive requirements for exemption and Form 1023 itself, both of which will significantly ease the burden on small organizations.

a. Rationale for Not Developing a Form 1023-EZ – One of our stated goals for Form 1023 is that it be simple, and a shorter Form 1023 would almost certainly be simpler for small organizations. But we believe that the value of this increased simplicity would be outweighed by the loss of educational value to the applying organization and the loss of effectiveness to the IRS.

Before discussing the rationale for our recommendation regarding Form 1023-EZ, we first address a consideration that was *not* a basis for our recommendation—that Form 1023 should deter small organizations that are more likely to be formed without the necessary funding and infrastructure in place to survive long term from applying for recognition of exemption. We do not believe that Form 1023 should be a barrier to exemption for these organizations and we frankly suspect that the current form, with its complexity, has that effect. We hold this view while fully acknowledging that there are sometimes beneficial effects when the form does act as a barrier. But as a policy matter, we believe that Form 1023 should address the legal requirements for exemption in an effective, consistent, simple, and educational manner—nothing more, nothing less.

The primary reason we do not recommend the development of a Form 1023-EZ is because Form 1023 serves an important educational purpose for applying organizations. Through its questions, the form forces the applying organization to think somewhat deeply about its activities, finances, and management. The form also signals to the organization that it is entering into a (probably unfamiliar) comprehensive regulatory regime, and working through the questions on the form provides the organization with a great deal of information about compliance with this regime. We agree with the many practitioners we spoke with who believe that the educational benefits of Form 1023 are especially important for small organizations. And we do not believe that a significantly shorter Form 1023 could provide a comparable level of these benefits.

In addition, we think that it would be difficult to design a significantly shorter Form 1023-EZ that would still be effective from the IRS's perspective, i.e., that it would still provide the

[40] On this point, we respectfully disagree with the National Taxpayer Advocate's recommendation to develop a Form 1023-EZ, as discussed in her most recent annual report to Congress. National Taxpayer Advocate 2011 Annual Report to Congress, vol. 1, *supra* note 2, at 450 and 563.

IRS with all the essential information it needs to a make a determination on a small organization's exempt status. While the current Form 1023 clearly needs to be redesigned and streamlined, in the end many of the questions on the current form will still need to be asked (in some form or another) of all organizations, both large and small, although reformatting will reduce the need for smaller organizations to respond to certain questions. It should also be noted that many small exempt organizations will be Form 990-N (e-Postcard) filers. Hence, Form 1023 will be the only opportunity for the IRS to receive any substantive information about such organizations. Thus, it is even more important that 1023 forms filed by small organizations request all the information the IRS needs because there will not be a "second chance" to obtain this information later from a (full) Form 990 or Form 990-EZ.

While there is certainly abuse in both large and small charities, some practitioners and state charity regulators we spoke with noted that some types of small charities are particularly susceptible to abuse. In their view, some small charities seemingly do little more than pay salaries to their founders and insiders. It may also be easier to embezzle from a small charity because it has few or no staff and financial controls are perhaps not as strong as they should be. Moreover, small organizations often lack sufficient reserves to withstand such losses of resources. All these considerations are relevant to the application process for small organizations. The information an organization provides on its Form 1023 can sometimes signal to the IRS a potential for possible abuse, and the IRS can then "flag" that organization for later follow-up. Our concern is that a shorter Form 1023-EZ may be less capable of providing these warning signals.

State charity regulators uniformly oppose a Form 1023-EZ, noting that such a form would make it easier for "scam" charities to obtain Section 501(c)(3) status. They also believe that there is no way at the outset to justify a rationale of exempting small charities from the Form 1023 filing burden, because all applicants, other than perhaps private foundations, begin their existence as small organizations. As one state charity regulator noted: "The application process should be the same for everyone -- no one knows how large and successful a particular organization or cause may be at its earliest beginnings, even if they pledge to 'stay small.'"

Another objection to a Form 1023-EZ for small organizations is the difficulty in determining an appropriate standard for what "small" should mean for this purpose. If, for example, annual gross receipts are used as the threshold requirement for using the shorter Form 1023-EZ, this could frustrate the rationale for having the shorter form. An organization's projected gross receipts on Form 1023 could be substantially smaller than what it actually receives in its first few years. But because its projections were small, the organization would qualify to file the shorter Form 1023-EZ, and thus avoid providing the IRS, on a (full) Form 1023, with a more comprehensive view of this now "un-small" organization. More generally, if

projected annual gross receipts were used as the threshold for Form 1023-EZ, there would be a natural inclination for organizations to understate those projections.

b. Assistance for Small Organizations with the Form 1023 Application Process – Even though we do not recommend development of a Form 1023-EZ, the ACT strongly believes that the IRS needs to provide more assistance to small organizations applying for recognition of exemption. We offer several recommendations in this regard.

(i) Development of an interactive Form e-1023 – The ACT's primary recommendation in this report is that the IRS should expedite the development of an interactive, Web-based "Form e-1023." As discussed above, Form 1023 serves an important educational purpose, especially for small organizations. Moreover, the individuals completing Form 1023 for small organizations are frequently not experienced in the law of exempt organizations. They may be tax professionals who do not specialize in exempt organizations, but in many cases they are untrained volunteers who have never completed a Form 1023 before. Hence, the interactive component of Form e-1023 will be particularly helpful to small organizations.

(ii) Redesign of Form 1023 – We believe that small organizations will benefit greatly from a redesigned form. In particular, the use of more schedules and other design features will eliminate the need for many small organizations to struggle with inapplicable (and thus unnecessarily confusing) questions. For example, if an organization has no intention of having any employees or paying compensation to anyone (as is the case for many small organizations), there should just be a "box" it could check on the form. And many of the questions on Part V of the form, which would be inapplicable in this case, could be moved to a schedule that the organization would not have to complete.

(iii) Additional educational resources − The instructions to Form 1023 should be more user friendly, explaining the rationale for the questions on the form and providing more references and links to other documents on the IRS website, e.g., links to the relevant sections of the Life Cycle of a Public Charity document. (These features should also be integrated into the interactive component of Form e-1023.) As an example, in the Form 1023 instructions for Parts V and VI, or as a lead-in to the questions themselves, the IRS should just state that many of the questions in these two parts relate to private inurement and private benefit, and provide some simple, straightforward explanations of what the concerns are in this area. This context would be very helpful to people who are unfamiliar with these concepts. The IRS may also want to consider providing samples of properly completed forms, although we recognize that there is a risk that some organizations might mimic this information with the goal of becoming merely "paper compliant" in much the same way that organizations have adopted the IRS sample conflict-of-interest form. All

of these measures would be of enormous value to small organizations completing Form 1023; and the IRS would also benefit from having more complete and accurate responses to the questions on the form.

4. The IRS should coordinate with the Department of the Treasury and the Office of Chief Counsel on the issuance of precedential guidance about the use of tax-compliant alternatives to the creation of new Section 501(c)(3) organizations, such as fiscal sponsorships and donor-advised funds.

A concern expressed by some practitioners and state charity regulators is that many organizations may seek recognition of exemption under Section 501(c)(3) without exploring possible alternatives that might be more appropriate in light of their goals and objectives. The number of Section 501(c)(3) organizations that lost exemption as part of the Form 990 automatic revocation process and have not applied to regain exemption reinforces these concerns. Our sense is that many small nonprofit organizations obtain recognition of exemption under Section 501(c)(3) to carry out activities of relatively short-term duration. Examples include organizations created to receive memorial contributions or to raise funds for a specific short-term project—such as providing assistance following a local disaster, or construction of a new playground or dog park.

In these cases, the objective is to establish a vehicle to receive charitable contributions for a specific, time-limited purpose and not to create an organization that is intended to operate into the future. After these small, typically volunteer-run organizations navigate the Form 1023 process and obtain recognition of exemption, they may well run into a variety of tax compliance issues brought on by their lack of infrastructure and resources. These compliance issues may include failure to file the required Form 990-EZ or Form 990-N, failure to issue Forms 1099 or to comply with other federal or state tax requirements, or failure to comply with state charitable solicitation requirements. And, as noted, the organizations may be more vulnerable to fraud or theft because they lack basic internal controls.

There may often be alternative structures that could better serve the needs of these organizations—if only they knew about them. For example, community foundations and other sponsoring charities typically offer donor-advised fund options that may meet the needs of families who want to create a charitable fund to receive memorial donations. They may also act as fiscal sponsors for charitable projects in the community, such as playgrounds or dog parks, as could other like-minded Section 501(c)(3) organizations. Either of these options—setting up a donor-advised fund or a fiscal sponsorship with an existing Section 501(c)(3) organization—offers many advantages. These organizations have the ability to receive charitable contributions for specific projects, the infrastructure to ensure compliance with applicable federal and state laws and adequate internal controls to ensure that the funds will be used for the intended charitable purposes.

The IRS has recognized the value of working through existing charitable organizations rather than creating new ones in the context of disaster assistance. IRS Publication 3833 notes that in the immediate aftermath of a disaster or emergency situation, "those who wish to provide help may overlook existing charities and spend precious time and resources establishing a new charitable organization and applying for tax-exempt status." The publication also observes that "it may be more practical to combine resources with those of an existing charity," or to "see whether an existing charity operating in a related area may be interested in establishing a special program" to address the concern at hand.

We commend the IRS for offering this type of practical advice, which may help minimize the creation of new disaster relief organizations whose purposes can be equally or better served by existing organizations. The ACT believes that the IRS can and should do this in a broader context by including language along the lines of that contained in Publication 3833 in the instructions to Form 1023.

In addition, the IRS should coordinate with Treasury and the Office of Chief Counsel about the issuance of precedential guidance on the appropriate use of fiscal sponsorship arrangements. While our context for this suggestion is to minimize the unnecessary creation of Section 501(c)(3) organizations, we note that such guidance is frankly needed in any event. Although fiscal sponsorship arrangements are often used for large and sometimes complex projects, the only precedential IRS guidance in this area has to be gleaned from a 1966 revenue ruling issued in the context of "American Friends" organizations.[41] This ruling is more than 45 years old, and in the intervening decades fiscal sponsorship arrangements have become a significant part of the Section 501(c)(3) landscape. Most of the guidance in this area comes from a book published at the behest of several Section 501(c)(3) organizations in California that recognized both the potential for abuse and the need for guidance in this area.[42] From a tax compliance perspective, it would be useful for the IRS to issue precedential guidance in the area of fiscal sponsorship, and such guidance could be incorporated into educational information for new organizations about a legally permissible alternative to seeking exemption.

Another useful alternative is the creation of a donor-advised fund as a vehicle to receive charitable donations that will be granted for a charitable purpose. The IRS is currently working on guidance to implement the legislative changes affecting donor-advised funds that were made by the PPA. Such guidance could be a vehicle for confirming that donor-advised funds can be used, in appropriate cases, as alternatives to the creation of new Section 501(c)(3) organizations. The use of a donor-advised fund to hold memorial donations is a

[41] Rev. Rul. 66-79, 1666-1 C.B. 48.
[42] GREGORY L. COLVIN, FISCAL SPONSORSHIP: SIX WAYS TO DO IT RIGHT (2d ed., Study Center Press 2005).

perfect example, and the IRS will have an opportunity to communicate this by including appropriate examples about these types of uses in its donor-advised fund guidance.

The ACT believes that state charity regulators may also be able to play an important role in disseminating this information, and we encourage the IRS to work with state charity regulators to develop coordinated approaches to inform new nonprofit organizations, or persons considering creating them, of legally compliant alternatives to seeking recognition of exemption under Section 501(c)(3).

5. The IRS should carefully examine recurrent complaints about the Form 1023 filing and review process, and take expeditious steps to improve the effectiveness, efficiency, and timeliness of that process.

As noted, the IRS has a well-developed process for ensuring quality control in the processing of 1023 forms and it also regularly assesses customer satisfaction with the filing process. The methods for ensuring quality control and assessing customer satisfaction are designed to gather information that is valid and reliable. The IRS uses such information to assess its procedures and make enhancements as appropriate.

As part of this project, the ACT has received feedback from various sources about the current Form 1023 application process. While this feedback is anecdotal and does not have the same validity and reliability as the data collected by the IRS through its own processes, there are some recurring themes and for that reason we offer it for IRS consideration. In addition to comments received from practitioners, we reviewed comments from the public on Form 1023 that were submitted through the Treasury Department's online Paperwork Reduction Act (PRA) tool. In its pilot project in 2010, the online PRA tool solicited comments on Form 1023 and received some 30 responses. Not surprisingly, many comments related to the length and complexity of the form, and the need for more educational information about how to complete the form. We address these issues in other sections of this report. But the PRA respondents also commented on the broader application process, which is the focus of this section of the report.

Common themes in the comments from practitioners and the PRA respondents are that the Form 1023 review process is too slow, some determination specialists are unresponsive or seem inadequately trained, and some requests for additional information ask for information that was already covered in the application or is unnecessary or duplicative. As noted, these comments are anecdotal and the ACT is obviously not in a position to assess whether these comments are reflective of the larger pool of applicants. We offer them in a constructive fashion, with the recommendation that the IRS consider them carefully with a view toward taking such appropriate corrective action as may be warranted.

While some applications are closed within a short period (as noted, in 2011 some 60% of Form 1023 applications were closed in less than 90 days), too many others are, in the view of practitioners, inexplicably delayed. A particular source of frustration expressed by both the practitioners and PRA respondents is the delay in assigning a reviewer to an application. On its website, the IRS provides some information about this type of delay.[43] For example, some applications requiring further development that were received by the IRS in July 2011 had yet to be assigned reviewers in March 2012—eight months later.[44] The ACT believes that the IRS should regard this level of delay as unacceptable and take steps to address it as quickly as possible.

Moreover, the practitioners told the ACT that applications referred to the Exempt Organizations National Office can take a very long time to process, sometimes several years. While we recognize that some applications involve difficult or novel issues that require significant time to process and coordinate with IRS Chief Counsel, the ACT believes that only in rare and exceptional cases should an application take more than a year to process, and we see no reason for any application to be delayed for several years. The ACT recommends that the IRS establish and implement internal deadlines to process all applications, including those referred to the national office.

Practitioners and the PRA respondents also raised concerns about uneven or inconsistent treatment of applications, i.e., complicated applications being approved quickly while simple applications are delayed, and virtually identical applications being treated differently. This variable treatment was attributed to the experience level of the determination specialist assigned to review the application. While the ACT cannot assess whether that is the case, this is something the IRS should explore and, if appropriate, implement additional training for specialists whose cases seem to take a long time to resolve. Respondents also noted a lack of responsiveness on the part of some determination specialists, e.g., not returning phone calls. One PRA respondent noted that it took two weeks to make contact with a specialist. We suggest that the importance of responsiveness be stressed as part of training sessions.

Finally, both the practitioner and PRA respondents expressed frustration about what they perceived to be unreasonable requests for additional information. Some practitioners note that all too often information requests suggest that the specialists did not read the complete application with care, or that they saw one "trigger" word in the application, e.g., the word "publish," and reflexively sent a set of form follow-up questions. For example, one practitioner told us that it is not uncommon to see a request containing, say, eight questions where the practitioner's response to six or seven of those questions will be simply "see page x of our application." The ACT recognizes that the IRS has a responsibility to seek

[43] See Internal Revenue Service, *Where Is My Exemption Application?*, *available at* http://www.irs.gov/charities/article/0,,id=156733,00.html (last visited Mar. 30, 2012).
[44] *Id*.

additional information as necessary to establish an organization's entitlement to recognition of exemption, and we are not in a position to determine how often requests for additional information may be unnecessary. We recommend that the IRS give careful attention to this feedback and take corrective action, if warranted.

6. The IRS should expand its use of the ROO program to follow up on Section 501(c)(3) organizations whose Forms 1023 indicated potential future compliance issues, and should consult with state charity regulators regarding indicia that may warrant such follow-up.

The IRS uses the ROO process to check on public sources for information about whether organizations are operating in compliance with the requirements for exemption as represented on their applications, and we believe that this is an excellent use of IRS resources. We believe that the ROO is a key part of ensuring an effective Form 1023 review process; and we recommend that the IRS expand the resources dedicated to the ROO in order to help identify, early on, organizations that may not be operating in accordance with representations made to the IRS, as well as the requirements for maintaining exemption.

The state charity regulators we spoke with believe that it would be useful to expand the ROO process to cover organizations that have operating characteristics suggesting potential future compliance issues. State charity regulators have identified certain types of organizations that, in their experience, are more apt to eventually be found out of compliance with the requirements for exemption.[45] They have also identified certain "red flags" that could signal potentially nonqualifying organizations,[46] as well as ways to better predict which applicant organizations may be prone to making misrepresentations, e.g., statements that a charity will be completely run by volunteers. One state charity regulator also suggested that Form 1023 should require signatures of each listed officer and director, since incorporators of sham charities often list phantom board members, including individuals who have not authorized use of their names and indeed are unaware that their names are being used.

We recommend that the IRS work with state charity regulators who may be able to identify categories of organizations that have a higher-than-average track record of engaging in fraudulent activities or impermissible private benefit, and might warrant follow-up through

[45] State charity regulators told the ACT that these organizations often show indicia of private inurement or private benefit after obtaining exemption. These indicia may include certain organizations that claim to provide benefits to badge organizations (fire and police), organizations created by professional fundraisers, organizations that exploit the use of the terms "abused" and "battered," and certain youth sports groups and nursery schools.

[46] These include organizations whose incorporators have a prior history of misconduct, such as an association with a revoked charity, a criminal background, and an affiliation with other charities that have been the subject of enforcement action.

the ROO process.[47] In our view, expanding the use of the ROO for these purposes would help the IRS make more effective use of its limited audit resources.

We believe that the ROO process can and should be used as a check and balance in the exemption process. Organizations seeking recognition of exemption under Section 501(c)(3) often have little, if any, actual operating history, since they often cannot obtain the funds needed to begin operations until they receive recognition of exemption. In some cases this may leave the IRS in an uncomfortable position—it must move forward to recognize or deny exemption based on representations about how an organization will operate, rather than an actual track record. The current IRS approach seems to involve asking many questions about the organization's anticipated operations—even though they have not yet commenced. At times this puts the organization in the unrealistic position of trying to guess what it will do under circumstances that may never occur, and the IRS in the difficult position of trying to assess the organization's credibility in answering questions that may be wholly hypothetical or simply premature. The net effect is often a considerable delay in processing Form 1023 as this back and forth continues.

The ACT believes that the IRS should expand its reliance on the ROO as a check and balance to allow the IRS to move forward with the favorable processing of 1023 forms for organizations representing that they will meet the relevant requirements but lack sufficient operating history to address IRS concerns. With greater use of the ROO process, the exemption can move forward but the IRS will have the assurance of knowing that there will be appropriate follow-up within a relatively short period.

[47] By way of contrast, the IRS delays determination decisions when it believes that further predetermination investigations may demonstrate that applicants are currently engaging in fraudulent activities or impermissible private benefit. State charity regulators would like to collaborate in such investigations and believe that the IRS should be able to consult with them regarding information submitted by Form 1023 applicants and to verify applicants' responses to Form 1023 questions. The public is clearly better served by diligent investigation to prevent wrongful determinations in the first instance than by allowing misconduct to go unchecked until the ROO process and referral for resource-intensive IRS audits.

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V. Recommendations

1. The IRS should expedite the internal processes and commit the necessary resources (human, financial, and technical) to transform Form 1023 to an interactive Web-based Form e-1023 that can be filed electronically and stored, transmitted, and disseminated in an electronic database format. This information will serve as the electronic gateway for IRS knowledge about tax-exempt organizations.

2. The IRS should redesign Form 1023 with four primary objectives: to make the form (i) **effective** at identifying whether organizations meet the requirements for recognition of exemption; (ii) **consistent** with the structures and definitions of Form 990; (iii) **simple** by using a short core form with supplemental schedules to reduce the filing burden on small and/or less-complex organizations; and (iv) **educational** by organizing questions based on substantive exemption requirements and including explanatory information.

3. The IRS should develop more educational tools about Form 1023 including tips for filing Form 1023, and more information about the substantive requirements for recognition of exemption. The development of these tools, coupled with the redesign of Form 1023, should obviate the need for a separate "Form 1023-EZ" for small organizations. The ACT does not recommend the development of such a form.

4. The IRS should coordinate with Treasury and the Office of Chief Counsel on the issuance of precedential guidance about the use of tax-compliant alternatives to the creation of new Section 501(c)(3) organizations, such as fiscal sponsorships and donor-advised funds.

5. The IRS should carefully examine recurrent complaints about the Form 1023 filing and review process and take expedited steps to improve the effectiveness, efficiency and timeliness of that process.

6. The IRS should expand its use of the ROO program to follow up on Section 501(c)(3) organizations whose exemption applications indicated potential future compliance issues, and should consult with state charity regulators regarding indicia that may warrant such follow-up.

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Exhibit 1: National Association of Attorneys General Letter to the Senate Finance Committee Urging that Congress Amend the Provisions of Sections 6103, 6104, and 7213 of the IR Code

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October 28, 2011

The Honorable Max Baucus
Chairman
Committee on Finance
United States Senate

The Honorable Orrin Hatch
Ranking Member
Committee on Finance
United States Senate

via fax

Dear Chairman Baucus and Ranking Member Hatch:

Re: Pension Protection Act of 2006 Provisions Regarding Information Sharing Between the Internal Revenue Service (IRS) and State Charity Regulators (Attorneys General)

I. INTRODUCTION

We write to express our collective desire that Congress amend the provisions of sections 6103, 6104 and 7213 of the Internal Revenue Code (IRC). This request is intended to enhance the effectiveness of state charity regulators as well as the IRS by enabling state regulators to more freely use information shared by the IRS.

II. BACKGROUND INFORMATION

State attorneys general typically have both common law and statutory oversight responsibilities over the charitable assets administered in their respective states including, but not limited to, testamentary and inter vivos trusts and foundations, individual and corporate fiduciaries, unincorporated associations, nonprofit corporations and their professional fundraisers and fundraising consultants. See Ex. A. There is a continuum of common law and statutory authorities that provide state attorneys general with broad regulatory responsibilities over the charitable sector.[1] Indeed, the common law authority vesting state attorneys general with these oversight authorities dates back to the Statute of Charitable Uses in 1601, predating by centuries our own federal tax code. Similarly, secretaries of state and state charity officials in other agencies responsible for consumer protection, licensing, or securities oversight in their respective states are vested with statutory authority over the activities of charitable organizations and their professional fundraising consultants and solicitors.

[1] See STATE ATTORNEYS GENERAL POWERS AND RESPONSIBILITIES (Emily Myers &Lynne Ross, eds., 2007).

Although the specific functions of the IRS and state charity officials are distinct, they share a number of important objectives. While the IRS accomplishes its mission through the enforcement of our federal tax laws and state attorneys general apply state trust, nonprofit corporation, consumer protection, and charitable solicitations laws, the goals of these state and federal regulatory schemes often intersect—both state and federal regulators have material concerns about ensuring against excess compensation, private inurement, waste, fraud, conflicts of interest and other abusive practices. Despite these shared interests, however, a variety of constraints discussed more fully below on the IRS's ability to share "tax return information" with state charity officials frustrate the synergies that would otherwise enhance the effectiveness of the limited enforcement resources available at both the state and federal levels.

It is commonly known that the IRS audits or examines less than one-half of one percent of all charitable organizations exempt under section 501(c)(3) of the Internal Revenue Code. It is also widely accepted that the IRS suffers limited resources to police the sector, in which, according to the National Center for Charitable Statistics, there are 1,127,287 tax exempt 501(c)(3) charities and private foundations administering over $2,495,197,897,281 in charitable assets. Although federal law requires such organizations to make their informational returns (IRS Forms 990,990EZ or 990 PF) available for public inspection and to state charity officials upon request,[2] prior to the Pension Protection Act of 2006, the IRS was precluded from sharing any other tax return information with state charity officials, including any instances in which the IRS may have discovered or received information or complaints concerning violations of state law. Widespread public access to the income, expenses and governance information of the charitable sector already allows the public and state charity officials to be the "eyes and ears" of the IRS by reporting abuses. In truth, the 50 state attorneys general and other state charity officials are on the "front lines" in regulating charities and annually refer many significant cases of abusive practices to the IRS Exempt Organizations Division.

The National Association of State Charity Officials ("NASCO"), which is affiliated with the National Association of Attorneys General ("NAAG"), has long advocated liberalizing the provisions of IRC §§ 6103 and 6104 to allow the IRS to freely share what is considered protected "tax return information" relating to charitable organizations. Such information-sharing would allow state attorneys general and other state charity officials to pursue cases that the IRS may lack the resources or authority to undertake, including the diversion of charitable assets by organizations in their respective jurisdictions where charitable assets are required to be deployed for the benefit of the public-at-large. In June 2004, NASCO testified to this effect before the Senate Finance Committee. *See* http://finance.senate.gov/imo/media/doc/062204mptest.pdf

III. THE PENSION PROTECTION ACT OF 2006

The Pension Protection Act of 2006 (the "Act")[3] was intended to respond to the circumstances described above and allowed the IRS to unilaterally share tax return information with state charity officials and share other such information upon request. Regrettably, section 1224(b)(5) and (6) amended IRC §7213(a)(2) to make it a criminal offense for any state official to disclose

[2] Federal treasury regulations also require private foundations to provide their IRS Forms 990PF to state attorneys general in their state of domicile or registration.
[3] Public Law No. 109-280 (Aug. 17, 2006).

information shared by the IRS under IRC §6104(c)(2). Despite the good faith efforts of the IRS Exempt Organizations Division to implement these amendments,[4] what was intended to facilitate the rigorous oversight of the charitable sector by state charity officials has failed to achieve its intended purpose.

IV. EXPLANATION OF THE PROBLEM

As a result of the Act subjecting information sharing between the IRS and state charity officials to IRC §7213's criminal penalties, the IRS has had to subject state charity officials, including state attorneys general, to the same informational safeguards imposed on the tax and revenue agencies of the 50 states. A copy of the 106-page IRS Publication No. 1075 that describes the multitude of safeguard procedures to which state charity officials must adhere may be found at the following URL: http://www.irs.gov/pub/irs-pdf/p1075.pdf.

These procedures not only create the ethical and legal conflicts described below, they are simply unworkable given the limited resources of state charity officials and should not apply to information regarding the revenue, expenses and governance data of charitable organizations already required to publicly report their financial and operational data. The IRS's understandable safeguards for the protection of confidential federal income tax information should be inapplicable.[5] These safe guards, for example, do not permit state charity officials to enter any shared data through a word processing program on any networked computer for inclusion in a civil complaint without complying with a myriad of security requirements that state charity officials do not have the resources to implement. Consequently, despite years of diligent efforts by state attorneys general to obtain information from the IRS, only three state Attorney General offices—New York, California and Hawaii—have entered into information-sharing agreements with the IRS since the adoption of the Act nearly five years ago.

Even the three states that have entered into information-sharing agreements have had to construct an uncomfortable "fiction" to use the data:

1. When the IRS makes a disclosure to the state charity office, an official reviews the data, logs the receipt of the information, and must place the data in a file secured by a least two barriers (doors, cabinets, etc).

2. In order to take investigatory or enforcement action, however, the state charity official must then rely upon an independent source, such as a telephone directory or advertisement, as the ostensible basis for contacting the subject charitable organization and requesting any recent communication to or from the IRS. Following this sort of procedure does not violate the safeguard provisions at issue because

[4] State attorneys general acknowledge and commend the IRS's earnest efforts to administer these changes, educate state charity officials about the new requirements and make information sharing a reality. The IRS and state charity officials continue to enjoy an open dialogue about ways to improve charitable oversight. The comments expressed herein are in no way intended to criticize the IRS's implementation of the Act. The failure of this experiment is not the IRS's doing.

[5] Other than on unrelated business income, charities are exempt from income tax under IRC § 501(c)(3).

information provided directly by the charitable organization is not subject to IRC §§ 6103, 6104 and 7213.

3. If asked, a state charity official is prohibited from disclosing that the inquiry was premised on the information received from the IRS and must hope that the organization voluntarily produces all relevant information and, if not, issue a subpoena for the information.

In addition to the above, the rules of discovery are generally very broad and require disclosure of the tax return information in many, if not most, state jurisdictions. Although discovery rules are only applicable whenever civil or criminal proceedings are instituted, the fact that such disclosure may be required warrants careful consideration about the propriety of states withholding section 6104 tax return information and/or the fact of an IRS referral. The requirement that states must withhold disclosure of section 6104 tax return information will be especially sensitive whenever that information has prompted the state's inquiry. Most well-represented defendants demand to know all of the details underlying a state's enforcement action and are quick to exploit any suggestion of selective prosecution or prejudice due to a lack of candor concerning the identity, timing, or source of a complaint or the basis for the commencement of the action. Although state attorneys general are permitted to disclose and utilize section 6104 tax return information in judicial and administrative proceedings, discovery often occurs well in advance of such proceedings and the prejudicial effect of withholding such information from defendants until the time of trial is likely to risk court-imposed sanctions prohibiting the use of the information. From a practical standpoint, the discovery process will also result in the disclosure of information to third parties beyond the state's control (witnesses, court reporters, etc.).

Moreover, the security requirements create problems even when the shared information is not used to pursue an investigation or enforcement action. Some states have record retention laws that govern the return or destruction of state records which are likely to conflict with the provisions of section 6103(p)(4). Many states have their own versions of the federal Freedom of Information Act (FOIA) which may be sufficiently broad in scope to encompass the shared section 6104 return information. To the extent that return information under section 6104 is included within the scope of such statutes, states may be obliged to produce the information when requested.

In light of all of the above, states receiving section 6104 tax return information that cannot be used more straightforwardly are confronted with both ethical and legal dilemmas.

We see no reason why IRC notices of refusals to grant tax-exempt status, proposed revocations of exempt status, or proposed deficiency taxes for prohibited transactions under chapters 41 or 42, such as intermediate sanctions, taxes on self-dealing transactions and similar matters involving public charities and foundations, should be subject to the same criminal penalties and security procedures applicable to individual and corporate income tax return information. This is all extremely valuable and important information that allows state charity officials to fulfill their statutory mandate. The safeguard requirements have proven unsuccessful and unworkable,

however, and even the three states that have attempted to "play by the rules" feel as if the information obtained directly from the affected charity is akin to fruit of a poison tree.[6]

As officials that represent state revenue and taxation agencies, we fully appreciate the fundamental public policy reason for the protection of confidential taxpayer return information—to encourage taxpayers to freely and voluntarily report their income and pay their fair share of taxes. Similar considerations should not apply to organizations that are exempt from income tax, that operate with the public subsidy of tax-exempt status, and who must already publicly report their income, expenses, governance data, disqualified person transactions, excess benefit transactions, changes in exempt purpose and governing documents, embezzlements and losses of funds, etc.—information that is then publicly available online at http://www2.guidestar.org.

We urge Congress to remedy this situation by amending the federal laws to allow state attorneys general and other state charity officials to more freely obtain and use information possessed by the IRS to protect and promote the public interest we all share – that is, to ensure that charitable assets are lawfully administered at all levels of government.

Sincerely,

John W. Suthers
Colorado Attorney General

David Louie
Hawaii Attorney General

Luther Strange
Alabama Attorney General

John J. Burns
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Tom Horne
Arizona Attorney General

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George Jepsen
Connecticut Attorney General

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Lenny Rapadas
Guam Attorney General

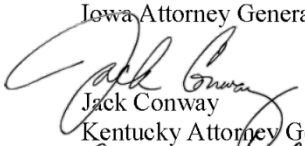
Lawrence Wasden
Idaho Attorney General

Lisa Madigan
Illinois Attorney General

[6] Recently proposed IRS regulations (IRS REG-140108-08) will not address any of the substantive issues presented.

Tom Miller
Iowa Attorney General

Derek Schmidt
Kansas Attorney General



Jack Conway
Kentucky Attorney General

William J. Schneider
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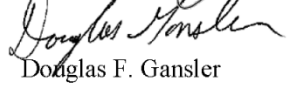

Douglas F. Gansler
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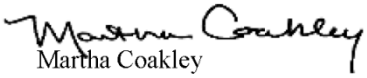

Martha Coakley
Massachusetts Attorney General

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Michigan Attorney General

Lori Swanson
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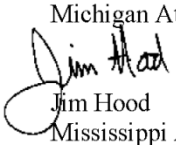
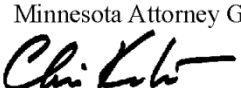


Jim Hood
Mississippi Attorney General



Chris Koster
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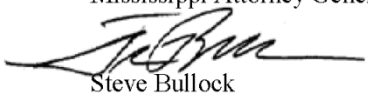

Steve Bullock
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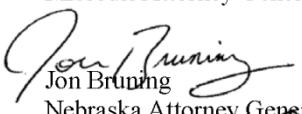
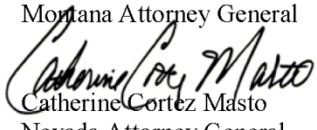
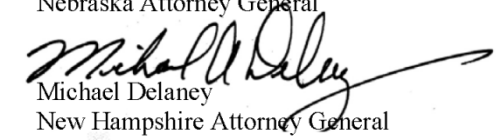


Jon Bruning
Nebraska Attorney General



Catherine Cortez Masto
Nevada Attorney General



Michael Delaney
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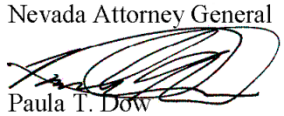

Paula T. Dow
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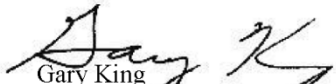

Gary King
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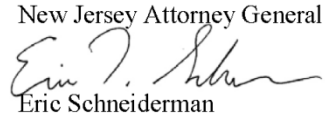

Eric Schneiderman
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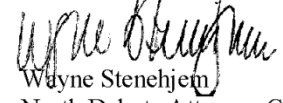

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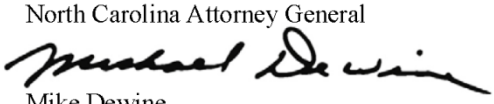

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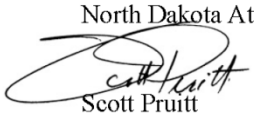

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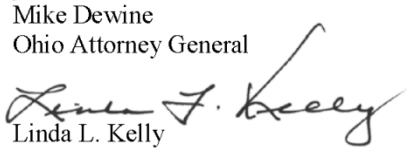

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