



September 14, 2007

Internal Revenue Service
1111 Constitution Ave., NW
Washington, D.C. 20224
Attn: SE: T: EO

Re: Comments to Draft Redesigned Form 990

Dear Sir/Madam:

Grantmakers Without Borders (“Gw/oB”) submits these comments on the draft redesigned Form 990. Primarily focus is on Schedule F: Statement of Activities Outside the United States.

Background

Gw/oB is a philanthropic network dedicated to international social change philanthropy in the developing world. Gw/oB’s membership, currently numbering 150 entities, includes private foundations, grantmaking public charities, individual donors with a significant commitment to international philanthropy, and philanthropic support organizations. Gw/oB’s members make lifesaving grants to international grassroots organizations that target the root of economic, environmental, and social inequalities within their local communities. Grants range from support to children affected by HIV/AIDS, to reforestation projects in Brazil, to relief for victims of natural disasters.

Comments

The draft redesigned Form 990 includes a number of changes, including a new Schedule F which asks for a statement of activities outside the United States. Gw/oB respects the IRS’s need to monitor exempt organizations and their overseas activities, thereby ensuring that tax exempt funds are used for charitable purposes and not diverted to improper objectives. However, any information gathered by the IRS must be “material” and “necessary for the Service to properly administer the revenue laws.”¹ Gw/oB fears that some questions on Schedule F target information not required by the Internal Revenue Code or imply illegality to legal activities. Furthermore, humanitarian work performed overseas often requires a degree of discretion currently not available to Schedule F filers. While Gw/oB appreciates the IRS’s acknowledgement of the important humanitarian work being performed by tax exempt

¹ GCM 36506, Dec. 8, 1975

organizations around the globe², Gw/oB hopes the IRS will support future activities by addressing the following concerns.

Ambiguity within Schedule F, Question 2 may imply due diligence requirements beyond what is legally required by grantmaking organizations.

Question 2 on Schedule F asks the filer to “[d]escribe the organization’s procedures for selecting grant recipients located outside the United States and monitoring the use of grant funds.” The vague phrasing of Question 2, coupled with the minimal guidance within the instructions, will likely result in answers that confuse and/or supplement genuine legal obligations with the suggested “best practices” released by the Department of the Treasury. This is highly problematic because it affords the much disputed Department of the Treasury’s *Voluntary Best Practices for the U.S.-Based Charities* (“Guidelines”) a quasi-legal status.

Federal tax law requires grantmaking public charities to assure, through adequate discretion and control, that grant funds are used for charitable purposes. The professional standard of care typically involves: a pre-grant inquiry, including the organizational documents of the grantee and a description of the grantee’s current and proposed charitable activities; a written grant agreement documenting the grantee’s commitments to the grantor; and, written reports from the grantee that account for grant expenditures and the grantee’s progress in achieving the grant’s charitable goals.

Beyond federal tax law, penalties exist if charitable funds are diverted to terrorist purposes. Portions of the Patriot Act extend criminal penalties to any grantmaker who knowingly supports terrorism and EO 13224 freezes the assets of any organization who knowingly or inadvertently supports a “Specially Designated National.” Within the law and the EO, no terrorist screening process is mandated for grantmaking organizations. Consequently, the Department of the Treasury released **voluntary** guidelines to help charities protect their charitable funds.

However, many within the charitable sector, including Gw/oB, find the Department of the Treasury’s Guidelines highly problematic. In a letter written by Gw/oB to Treasury Secretary Henry M. Paulson, Gw/oB has asked for the Guidelines to be withdrawn³. The “best practices” suggested within the Guidelines are difficult to apply, destructive to the grantor/grantee relationship, and unlikely to protect funds from terrorist diversions. Nonetheless, many within the sector feel tremendous pressure to adopt the Guidelines, regardless of their impracticability. The redesigned Form 990 should not imply mandatory compliance with the **voluntary** Guidelines. Instead, it should clarify what due diligence is legally required of international grantmakers and limit its questions to what is necessary to enforce the revenue laws.

Gw/oB asks that you revise Question 2, either rephrasing the question to specifically indicate what legal obligations are being referenced or replace Question 2 with the question asked of domestic grantmakers in Schedule I, Part I, Line 1, “[d]oes the organization maintain records to substantiate the amount of the grants or assistance, the grantees’ eligibility for that grants or

² Within rationale for Schedule F, “[t]he Service recognizes the importance of the humanitarian services provided by those organizations that must fill out this schedule.”

³ http://www.internationaldonors.org/news/gwob_letter_122206.pdf

assistance, and the selection criteria used to award the grants or assistance?” Language within the redesigned form should be consistent, regardless if the grantmaker is giving domestically or internationally. Both risk the diversion of charitable funds and both should be held to the same standard.

Inadequate instructions for Schedule F, Question 3 could dissuade grantmaking public charities from making highly impactful international advocacy grants. Furthermore, the legal definition of lobbying can be difficult to apply in international settings. Consequently, additional guidance is needed.

Question 3 on Schedule F asks the filer to disclose if any grants were made directly or indirectly to finance political or lobbying activities outside the United States. No guidance is provided regarding the definitions of political and lobbying activities or instructions on reporting requirements. Consequently, grantmakers could mistakenly answer inaccurately. Additionally, the domestic rules are sometimes difficult to apply because foreign grantees operate in such distinct and varied political environments. International advocacy grants are highly impactful, often improving the lives of the most disenfranchised communities and promoting fundamental human rights in highly oppressive settings. Any ambiguity on Form 990 could dissuade grantmakers from future advocacy grants.

Examples of extraordinary advocacy grants that support legislative campaigns across the globe include: Gw/oB members are working with local partners in Uganda to encourage the adoption of a parliamentary amendment that would recognize the legal rights of Ugandan women and children to their family land; Gw/oB members sponsored the efforts of indigenous women activists to help secure the passage of the United Nations Declaration on the Rights of Indigenous Peoples; and, in Panama, Gw/oB members are supporting community efforts to protect the largest intact tropical rainforest in Central America from a hydroelectric dam. Efforts like these should not be discouraged because of limited legal guidance within the redesigned Form 990.

Gw/oB asks that the legality of advocacy grants be highlighted within the instructions by simply outlining the advocacy laws that apply to grantmaking public charities. For example, a grantmaking public charity may engage in lobbying and support its grantees’ lobbying efforts as long those actions do not constitute a significant amount of the grantmaker’s overall activities. In addition, guidance should be provided to clarify those international circumstances when domestic rules do not easily apply.

Schedule F must be afforded some degree of privacy and confidentiality in order to protect the work and lives of grantees that operate in hostile environments.

Many international grants are given to organizations and individuals that work in socially volatile areas of the world or within intolerant political environments. For example, Haitian human rights activists that denounce government corruption risk physical retaliation, Pakistani organizations that receive organizational support from the United States are sometimes targeted by fundamentalist populations, Indian women rights activists have been killed for their progressive campaigns, and organizations in Uzbekistan and Chechnya face the possibility of

being shut down with violence or government regulations because they support issues in opposition to their government's position.

Many international organizations rely on confidentiality to avoid the abusive practices of an oppressive government or population. Whenever public disclosure is a possibility, the grantee's safety must be a consideration. Unfortunately, Schedule F is a public document. Although Gw/oB respects the public's right to scrutinize the activities of tax exempt organizations, the safety of grantees should trump public disclosure laws. Therefore, we ask that Schedule F be afforded the same censorship that is available to contributors on the current and proposed Schedule B.

Conclusion

Gw/oB appreciates this opportunity to respond to the redesigned Form 990. Important revisions are needed to preserve the vital work of grantmaking public charities that give internationally. Schedule F, Question 2 should be rewritten to conform to that asked of domestic grantmakers, or more clarification should be provided within the instructions, thereby making the filer aware of its legal obligations. The instructions for Schedule F, Question 3 are inadequate and more information is needed regarding legal compliance. Lastly, the operation and safety of many international organizations and their employees depend on confidentiality. This should be respected and Schedule F should be afforded the same censorship available to Schedule B.

Sincerely,

A handwritten signature in black ink, appearing to be 'JH' or similar initials, written in a cursive style.

John Harvey
Executive Director
Grantmakers Without Borders
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