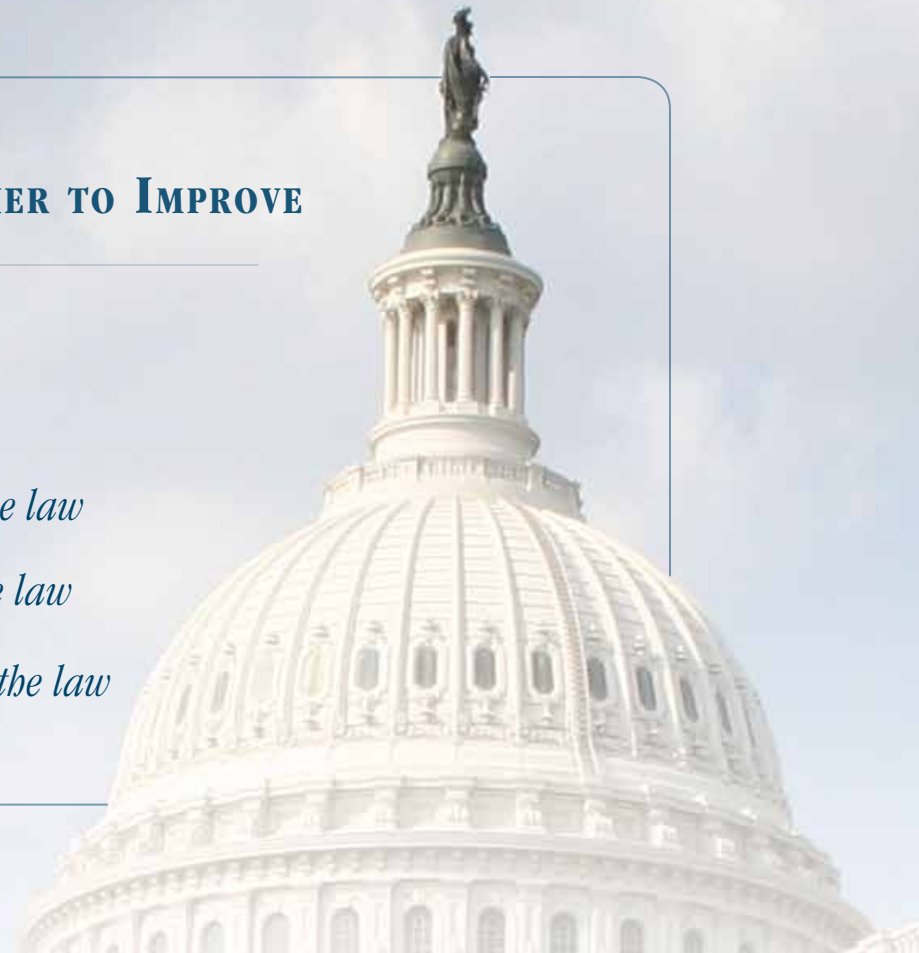
Enhancing Accountability

For The Religious And Broader Nonprofit Sector



Working Together to Improve

Self-regulation

Donor engagement

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Education about the law

Certain elements of the law

A Report to Senator Charles Grassley

with Recommendations for

Religious and Charitable Organizations,

The Giving Public,

The Internal Revenue Service and Treasury Department,

and Congress

COMMISSION ON ACCOUNTABILITY AND POLICY FOR RELIGIOUS ORGANIZATIONS

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The term “Grassley Staff Report” as used in the accompanying Report refers to the 61-page memorandum dated January 6, 2011 to Senator Charles E. Grassley from members of his staff. The memorandum is available at ReligiousPolicyCommission.org/GrassleyStaffReport.

All references to the Internal Revenue Code are to the Internal Revenue Code of 1986, as amended, unless otherwise noted.

Extensive additional information about the Commission’s work and related documents are available at ReligiousPolicyCommission.org.

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A Message from the Chairman

The vast majority of religious and other nonprofit organizations in America operate with a genuine commitment to financial integrity and appropriate accountability. Occasionally, we see a few exceptions. When a religious or other nonprofit organization spends money in a manner that may reasonably be perceived by the public as benefiting its leaders in lavish, extravagant, excessive, or unreasonable ways, several bad things happen. Such conduct damages the organization's credibility and mission. It impairs the credibility of other similar organizations. And it raises the risk that legislators and regulators will pursue more burdensome legislation or regulation for the entire nonprofit sector in an effort to stop the offensive conduct.

In an effort to discourage such conduct, Senator Charles Grassley asked ECFA to lead an effort to provide input on key policy issues related to financial accountability in the religious and broader nonprofit sector. He specifically asked ECFA to seek solutions that rely on self-regulation and not on new burdensome legislation. ECFA, in turn, formed the Commission on Accountability and Policy for Religious Organizations, an unprecedented effort that involves the robust engagement of leaders from a diverse cross-section of the religious and broader nonprofit sector.

The Commission's Panel of Religious Sector Representatives includes leaders from virtually every major faith group in America. The Panel of Legal Experts includes top attorneys experienced in the areas of exempt organization law and constitutional law, with a specific concentration in the arena of religious freedom. The Panel of Nonprofit Sector Representatives includes leaders from some of the most respected organizations providing thought leadership and guidance to the U.S. nonprofit sector. And the Commission itself is composed of some of the most respected religious and nonprofit leaders in the country—leaders known for their experience, wisdom, and integrity.

When the 80 leaders comprising the Commission and its Panels were first assembled, we had no idea what degree of consensus or discord might result from the process. After a highly transparent process that involved multiple meetings of the Commission and Panels, media communications, public input, position papers, presentations at national conferences, and a virtual town hall meeting, the Commission has developed the accompanying recommendations with an extraordinarily high degree of agreement among those participating. Along the way, many of us have developed new friendships across faith lines and in sectors other than our own.

Religious freedom is one of the most sacred freedoms we enjoy in the United States and it must be preserved. Religious and other nonprofit organizations positively impact our society in virtually every aspect of life, and their good work is immeasurable. We cannot allow the behavior of a few outliers in the religious and nonprofit sector to threaten the freedoms of those who are not the problem—those who are doing the good work. The number of organizations that engage in egregious financial misconduct is miniscule in comparison to the sector as a whole.

Given the immeasurable positive impact of America's religious and other nonprofit organizations on the lives of people all over the world, federal policy should continue to encourage the public to financially support such organizations and it should not burden them with harsh or excessive legislation or regulation.

While self-regulation is a key element of addressing concerns about misconduct, critics of self-regulation rightfully point out that noncompliant outliers have little interest in self-regulation. That's where effective administration of existing law must come in, together with education about the law. For example, if a nonprofit organization provides its leaders with excessive compensation and benefits, federal tax laws already exist that subject the leaders to very substantial penalties and require that they return the excess to the organization. The Internal Revenue Service is responsible for enforcing those laws and educating the public about them. State laws and regulations also address proper conduct by nonprofit organizations and their leaders.

But there is another key element essential to striking the appropriate balance in addressing such concerns—an element largely missing from the current dialogue surrounding self-regulation. That element is donor engagement. Donors have a duty to appropriately engage in the giving process and to make informed giving decisions. When donors engage, the organizations they support tend to have a higher level of interest in self-regulation and accountability.

This Commission's work demonstrates that cooperation across faith lines and across different sectors for the public good is a realistic and achievable goal. By working together to improve self-regulation, donor engagement, administration of the law, education about the law, and certain elements of the law itself, we can make real progress toward enhanced financial accountability in the religious and broader nonprofit sector.

Michael E. Batts
Commission Chairman

Executive Compensation and Excess Benefit Transactions

Introduction and Background

Prior to 1996, if a nonprofit 501(c)(3) organization[1] paid excessive compensation to its leaders or otherwise allowed its earnings to inure to the benefit of private individuals, the IRS had only one enforcement tool available—revoking the organization's tax-exempt status. While revocation was appropriate in the case of egregious violations, the measure was viewed as inappropriately harsh in many situations. Revocation was also often viewed as improperly penalizing the organization (and, indirectly, the people who benefit from its charitable, religious, or educational mission) rather than the individuals who received the prohibited benefits or those who approved them. Further, revocation of the exempt status of a large organization with multiple chapters and affiliates would have had far-reaching, undesirable effects. For example, if the CEO of a reputable, national organization with several hundred million dollars of revenue and hundreds of local chapters were found to have received excess compensation in the amount of $100,000, the "nuclear" option of revoking the organization's exemption would have been unpalatable. The law provided no penalty for the CEO who received the excess benefit or for the organizational leaders who may have knowingly approved it.

In an effort to provide the IRS with more appropriate and effective options for administration of the law in such circumstances, Congress adopted "intermediate sanctions" as part of the Taxpayer Bill of Rights 2 in 1996. Now found in Section 4958 of the Internal Revenue Code, the intermediate sanctions law imposes excise tax penalties on the individuals who receive an excess benefit from a 501(c)(3) or 501(c)(4) organization, as well as on organizational leaders who knowingly approve excess benefits.[2]

An "excess benefit transaction" occurs when a 501(c)(3) organization makes a payment or provides an economic benefit to an organizational leader where the payment or the value of the benefit exceeds the value of what the organization receives from the leader in exchange (including performance of services).[3] Excessive or unreasonable compensation is an example of an excess benefit transaction. The amount by which a payment or benefit exceeds the value of what the organization receives in exchange is referred to as the "excess benefit amount."

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[1] References in this Report to 501(c)(3) organizations and nonprofit organizations, together with references to excess benefit transactions, are provided in the context of 501(c)(3) public charities such as churches, educational institutions, hospitals, and other publicly-supported 501(c)(3) organizations. Separate rules apply to 501(c)(3) private foundations.

[2] I.R.C. § 4958(a)–(b).

[3] *Id.* § 4958(c)(1).

The legislative history of the intermediate sanctions law reflects the intent of Congress that an organization may establish a "rebuttable presumption" that compensation or other benefits provided by an organization are reasonable and not excessive. To establish the presumption, an organization must meet specific criteria outlined in the legislative history. When an organization establishes the presumption, it shifts the burden of proof with respect to the reasonableness of a compensation arrangement from the organization and its leaders to the IRS. The Congressional Committee Report related to the legislation reflects the intent of Congress that the Treasury Secretary develop Regulations providing guidance for establishing the rebuttable presumption.[4] Such Regulations have since been adopted.[5]

Under current law, if a nonprofit leader (referred to in the law as a "disqualified person") receives an excess benefit, a two-tier penalty structure applies to that leader. First, a penalty of 25% of the excess benefit amount applies.[6] Additionally, the leader must "correct" the excess benefit (generally by returning the value of the excess benefit to the nonprofit organization) within a specified timeframe. In the event that the excess benefit is not corrected in a timely manner, a second-tier penalty, equal to 200% of the excess benefit amount, applies to the leader individually.[7]

Also under current law, nonprofit officers, board members, or their equivalent (referred to in the law as "organization managers") who knowingly approve an excess benefit transaction are individually subject to excise tax penalties as well—10% of the excess benefit amount,[8] up to $20,000 for each excess benefit transaction.[9]

The measure of protection afforded by following the requirements for establishing a presumption of reasonableness is a source of comfort for nonprofit board members and executive management alike. The rebuttable presumption requirements, or their underlying principles, are followed widely, especially by larger nonprofit organizations.[10]

The Grassley Staff Report cites instances in which compensation studies performed by compensation consultants for large religious organizations utilize comparability information from the for-profit sector in addition to data from the religious nonprofit sector. The report also states:

> In compensation studies prepared for organizations other than churches, staff has noted that compensation consultants often make comparisons to organizations that are difficult to justify as being comparable when considering, among other things,

4 H.R. Rep. No. 104-506, at 56–57 (1996).
5 Treas. Reg. § 53.4958-6.
6 I.R.C. § 4958(a)(1).
7 *Id.* § 4958(b).
8 *Id.* § 4958(a)(2).
9 *Id.* § 4958(d)(2).
10 *See, e.g.,* Internal Revenue Serv., Final Report: Hospital Compliance Project 122, 145 (2009), *available at* http://www.irs.gov/pub/irs-tege/frepthospproj.pdf.

> revenues, number of employees, geographic location and activities. Yet directors, trustees and others responsible for approving compensation packages rarely question the analysis conducted by the compensation consultants.[11]

The Grassley Staff Report also raises a question as to whether the law should be amended to require the governing documents (e.g., articles of incorporation) of 501(c)(3) organizations (other than private foundations) to prohibit excess benefit transactions as a condition of exemption.

The Grassley Staff Report contains specific recommendations to:

- eliminate the rebuttable presumption protection for nonprofit board members and executives;
- change the law to provide that nonprofit leaders may demonstrate that they have met "minimum standards of due diligence" only if they meet the criteria that, under current law, establish a rebuttable presumption of reasonableness (in other words, meeting the criteria to establish a rebuttable presumption of reasonableness as provided under current law would not establish such a presumption if the staff's recommendations were adopted; rather, it would establish that an organization's leaders have met "minimum standards of due diligence");
- impose excise tax penalties on organization managers (e.g., board members) if they have "reason to know" they approved an excess benefit transaction. A board member would be deemed to have "reason to know" if the "minimum standards of due diligence" described above were not met (the proposed change would replace the current standard that applies excise tax penalties to board members who "knowingly" approve an excess benefit transaction);
- impose excise tax penalties on the nonprofit organization itself in the event it engages in an excess benefit transaction; and,
- develop guidelines for compensation studies, including when a comparison to for-profit organizations is appropriate, and to require public disclosure of the studies and data used to determine compensation.

Relevant Portion of Grassley Staff Report: Pages 36–44

Questions

- Should the rebuttable presumption protection for nonprofit board members and leaders be eliminated?

[11] Grassley Staff Report 44 (2011).

- Should the law be changed to provide that nonprofit leaders may demonstrate that they have met "minimum standards of due diligence" only if they meet the criteria that, under current law, establish a rebuttable presumption of reasonableness?
- Should excise tax penalties be assessed on organization managers (e.g., board members) in circumstances where they have "reason to know" they approved an excess benefit transaction, and where a board member would be deemed to have reason to know if the minimum standards of due diligence described above are not met?
- Should excise tax penalties be imposed on a nonprofit organization itself in the event it engages in an excess benefit transaction?
- Should guidelines be developed for compensation studies, including when a comparison to for-profit organizations is appropriate?
- Should public disclosure be required of the studies and data used by nonprofit organizations to establish compensation for their leaders?
- Should the law be amended to require the governing documents of 501(c)(3) organizations (other than private foundations) to prohibit excess benefit transactions as a condition of exemption?

Recommendations

Religious and Charitable Organizations

1. Regardless of the provisions of the Internal Revenue Code and related Regulations, the governing bodies of nonprofit organizations should ensure that the compensation (including benefits) paid to organizational leaders is clearly reasonable under the circumstances. When a nonprofit organization provides compensation and benefits that are perceived by the public as excessive, the credibility of the organization and its leadership is undermined, as is the credibility of the entire nonprofit sector. Additionally, such instances serve to increase the threat of more burdensome legislation and regulation that would adversely impact the sector as a whole.
2. Nonprofit organizations should adopt appropriately robust policies that provide clear and practical guidance for establishing reasonable compensation for their leaders, that properly address conflicts of interest, and that guide them in avoiding excess benefit transactions. Nonprofit organizations should make their policies for setting the compensation of their top leaders and their conflicts-of-interest policies available to donors upon request as a demonstration of appropriate accountability.
3. When a nonprofit organization engages a compensation consultant to assist it in obtaining appropriate data as to comparability for executive compensation, the

members of the body reviewing the study should exercise prudence and diligence to ensure that the data provided by the consultant is for similarly situated organizations and functionally comparable positions, and to ensure that other appropriate factors relevant to comparability are considered.

4. Nonprofit organizations should, as a best practice, require the total compensation of their top paid leader to be disclosed to or approved by the full governing body of the organization.

5. We recommend that one or more independent organizations conduct adequate confidential and secure compensation surveys of the largest religious organizations exempt from filing Form 990. The resulting compiled information should be made publicly available in order to provide large religious organizations with more and better comparability data.

6. Religious organizations exempt from filing Form 990—particularly the largest of such organizations—should actively participate in appropriately managed salary surveys in order to facilitate the availability of more and better comparability data.

IRS/Treasury

1. To the extent that the Treasury Department has authority to amend the Regulations under Section 4958, we make the same recommendations to the Treasury Department related to the rebuttable presumption of reasonableness as provided below for Congress: the protection afforded by the presumption should be preserved.

2. The IRS and/or Treasury Department should develop guidelines in the form of Regulations or other authoritative guidance establishing when it is appropriate for a 501(c)(3) organization to utilize data from the for-profit sector in establishing the rebuttable presumption. The process for developing such guidelines should involve ample opportunity for input from the religious and broader nonprofit sector.

3. The IRS should not require public disclosure, as part of Form 990 or otherwise, of the details of compensation studies and the related compensation data used in establishing compensation for nonprofit organization leaders. However, Form 990 could be revised to require filing organizations to disclose whether data from the for-profit sector was relied upon as comparability data by the organization in setting compensation for its leaders.

Congress

1. The law should not be amended to repeal the rebuttable presumption of reasonableness that affords a reasonable measure of protection to nonprofit leaders pursuant to Section 4958 and the related Regulations.

2. If, and only if, reliable empirical data supports the premise that nonprofit organizations frequently abuse the rebuttable presumption of reasonableness by improperly using non-comparable data from the for-profit sector in an attempt to establish the presumption, we note that a solution may be to modify the rebuttable presumption standards to require that comparability data for purposes of the presumption come exclusively from the nonprofit sector. If such a modification is made, nonprofit organizations would still be permitted to properly utilize data from the for-profit sector in supporting their position that compensation is reasonable, albeit without the presumption of reasonableness provided for in the Regulations.

3. Excise tax penalties should not be imposed on individual organization managers (e.g., board members) for approving an excess benefit transaction unless they do so knowingly.

4. Excise tax penalties should not be imposed on a nonprofit organization itself in connection with an excess benefit transaction.

5. The law should not be amended to require the governing documents of 501(c)(3) organizations to prohibit excess benefit transactions as a condition of exemption.

Basis for Recommendations

Compensation of nonprofit organizational leaders (referred to in the law as "disqualified persons") is limited to that which is reasonable.[12] Reasonable compensation is "the amount that would ordinarily be paid for like services by like enterprises (whether taxable or tax-exempt) under like circumstances."[13] In connection with the adoption of intermediate sanctions in 1996, the House Committee Report provided the following insights regarding nonprofit executive compensation and the rebuttable presumption of reasonableness:

> Existing tax-law standards . . . apply in determining reasonableness of compensation and fair market value. In applying such standards, the Committee intends that the parties to a transaction are entitled to rely on a rebuttable presumption of reasonableness with respect to a compensation arrangement with a disqualified person if such arrangement was approved by a board of directors or trustees (or committee thereof) that: (1) was composed entirely of individuals unrelated to and not subject to the control of the disqualified person(s) involved in the arrangement; (2) obtained and relied upon appropriate data as to comparability (e.g., compensation levels paid by similarly situated organizations, both taxable and tax-exempt, for functionally comparable positions; the location of the organization, including the availability of similar specialties in the geographic area; independent compensation surveys by nationally recognized independent firms; or actual written offers from

[12] Treas. Reg. § 53.4958-4(a)(1).
[13] *Id.* § 53.4958-4(b)(1)(ii)(A).

> similar institutions competing for the services of the disqualified person); and (3) adequately documented the basis for its determination (e.g., the record includes an evaluation of the individual whose compensation was being established and the basis for determining that the individual's compensation was reasonable in light of that evaluation and data). If these three criteria are satisfied, penalty excise taxes could be imposed under the proposal only if the IRS develops sufficient contrary evidence to rebut the probative value of the evidence put forth by the parties to the transaction (e.g., the IRS could establish that the compensation data relied upon by the parties was not for functionally comparable positions or that the disqualified person, in fact, did not substantially perform the responsibilities of such position). . . . The Secretary of the Treasury and IRS are instructed to issue guidance in connection with the reasonableness standard that incorporates this presumption.[14]

Pursuant to the instruction by Congress described in the Committee report, Treasury Regulations were adopted to provide guidance for the presumption. To establish a rebuttable presumption of reasonableness in connection with a nonprofit leader's compensation, the following criteria must be met:[15]

- The compensation arrangement must be approved in advance by an authorized body of the organization composed entirely of individuals who do not have a conflict of interest with respect to the compensation arrangement.
- The authorized body must obtain and rely upon appropriate data as to comparability prior to making its determination.
- The authorized body must adequately document the basis for its determination concurrently with making it.[16]

If the three requirements described above are satisfied, then the Internal Revenue Service may rebut the presumption that the compensation is reasonable only if it develops sufficient contrary evidence to overcome the evidence provided by the comparability data upon which the authorized body relied.[17] Concerns raised by some related to nonprofit executive compensation center around the apparent perception that nonprofit executive compensation is frequently excessive and that current law is ineffective in addressing the problem. Particular concern is expressed about the perception that some organizational leaders are abusively using the rebuttable presumption protection to justify unreasonable compensation by using comparability data that is not truly comparable.

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[14] H.R. Rep. No. 104-506, at 56–57 (1996) (footnotes omitted).
[15] The ensuing description is a summary and paraphrase. See the Regulations for a precise description of the requirements.
[16] Treas. Reg. § 53.4958-6(a)(1)–(3).
[17] *Id.* § 53.4958-6(b).

After careful analysis and consideration, we see no evidence that nonprofit executive compensation is frequently excessive or that current law is inadequate to address concerns about excessive compensation. A recent study by the Economic Research Institute analyzed executive compensation using 2009 IRS Form 990 data from more than 96,000 nonprofits.[18] The study noted:

> Looking at charities by size, 40% of the organizations filing Forms 990 in 2009 have less than $100,000 in annual revenues, and only about 2% of them have any paid staff at all. Organizations with greater than $1 million in annual revenue show greater than 60% with paid staff, but these only account for roughly 14% of all nonprofit organizations. When we focus on the highest paid CEOs—those that are paid more than two [standard deviations] than expected—that is, about 3% of these organizations, we are now only looking at about half of 1% of all nonprofit organizations.[19]

We do believe that consistent and effective administration and enforcement of the law are necessary to support a healthy environment of compliance. In his testimony before the Oversight Subcommittee of the House Ways and Means Committee related to 501(c)(3) exempt organization compliance issues, IRS Deputy Commissioner Steven T. Miller gave the following response to Congressman John Lewis when asked about the IRS's ability to effectively do its job with limited resources in the area of tax-exempt organization administration: "Do I believe we're missing something? I don't believe so."[20]

As part of the Commission's research and analysis, Commission leaders met with leadership of the IRS Exempt Organizations Division. In our communications with IRS leadership, we specifically asked about the rebuttable presumption protection in the law and whether it creates a practically insurmountable obstacle to challenging the reasonableness of compensation. We were assured it does not—that when the IRS identifies compensation levels it considers excessive, it addresses them.

A recent report by the IRS related to executive compensation in connection with a hospital compliance project supports the same conclusion:

> The compensation paid to the identified highly paid individuals was reviewed to determine whether the section 4958 excise tax should be assessed. In the case of the 85% of hospitals that met the rebuttable presumption, the burden of proof was on the IRS to show that compensation was not reasonable. This review included analysis of compensation data and surveys available to the IRS in addition to the

[18] Christopher S. Chasteen & Linda M. Lampkin, Econ. Research Inst., Improved Transparency for Charity Executive Pay: A Review of Form 990 Data 3 (2012), *available at* www.erieri.com/PDF/CharityExecutivePay.pdf.
[19] *Id.* at 6.
[20] *Oversight of Tax-Exempt Organizations: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways & Means* (July 25, 2012) (recorded statement of Steven T. Miller, Deputy Commissioner, Services & Enforcement, Internal Revenue Service), http://thomas.loc.gov/video/house-committee/hswm/24236107.

> comparables used by the organizations in setting compensation. The IRS determined that no excess benefit tax should be assessed in these instances. The IRS may assess 4958 excess [sic] tax in certain other case(s), but to prevent potential identification of examined hospitals, specific details cannot be provided.[21]

The IRS hospital compensation report reflects the wide reliance by nonprofit organizations—especially larger ones—on the rebuttable presumption and provides evidence that utilization of the rebuttable presumption results in compensation levels that are reasonable.

We are aware of no reliable, objective evidence that the IRS is practically unable or unwilling to address instances of excessive compensation of nonprofit executives when they are identified.

The legislative history related to the rebuttable presumption speaks specifically to the IRS's ability to overcome the presumption in cases where it can demonstrate that the data relied upon by the authorized body is not truly comparable:

> If these three criteria are satisfied, penalty excise taxes could be imposed under the proposal only if the IRS develops sufficient contrary evidence to rebut the probative value of the evidence put forth by the parties to the transaction *(e.g., the IRS could establish that the compensation data relied upon by the parties was not for functionally comparable positions or that the disqualified person, in fact, did not substantially perform the responsibilities of such position)*.[22]

We are not aware of a pattern of occurrences in which the IRS has unsuccessfully challenged the reasonableness of nonprofit executive compensation where the facts indicate that the compensation was clearly excessive or that the comparability data relied upon by the organization was for positions that were clearly not functionally comparable. In other words, if a nonprofit organization relies upon data that is truly not comparable to support its payment of excessive compensation, the IRS can, does, and should challenge its reliance on the data and impose appropriate penalties.

Additionally, if, but only if, valid empirical data were to support the premise that nonprofit organizations frequently abuse the presumption by improperly using non-comparable data from the for-profit sector in an attempt to establish the presumption, we note that a solution may be to modify the rebuttable presumption standards to require that comparability data for purposes of the presumption come exclusively from the nonprofit sector. If such a modification were made, nonprofit organizations would still be permitted to properly utilize data from the for-profit sector in supporting their position that compensation is reasonable, albeit without the presumption of reasonableness provided for in the Regulations.

[21] Internal Revenue Serv., *supra* note 10, at 145–46.
[22] H.R. Rep. No. 104-506, at 57 (1996) (emphasis added).

A recent survey of 451 nonprofit organizations by BoardSource on nonprofit executive compensation found that only 4% of organizations surveyed use data from the for-profit sector in setting executive compensation.[23] Form 990 could be revised to require filing organizations to disclose whether they relied upon comparability data from the for-profit sector in setting compensation for their top leaders.

As mentioned in the introduction and background, the rebuttable presumption protection is relied upon widely in the nonprofit sector—especially by larger organizations. The layer of protection it affords is not absolute, but it does provide nonprofit leaders—particularly volunteer board members—with a degree of comfort that their decisions, if made reasonably and in good faith, will not result in substantial penalties for themselves or the organization's other leaders.

Eliminating the rebuttable presumption and lowering the threshold for imposing penalties on board members would not likely have the desired effect. Instead, it would likely have the undesired effect of significantly reducing the population of competent, independent, volunteer board members willing to serve nonprofit organizations. Without the rebuttable presumption, the IRS could simply challenge an executive's compensation as unreasonable, and the burden of proof would be on the organization and the executive, regardless of the diligence exercised by its board in establishing the compensation. Additionally, if the "knowing" standard were reduced to a "reason to know" standard for penalizing individual board members, nonprofit board members would be on the edges of their seats in anxiety regarding whether they could be deemed to have "reason to know" any arrangement with an organization leader constitutes an excess benefit transaction. Such risks would only serve as a repellent to excellent, independent board candidates.

The current Regulations do not require absolute knowledge that an excess benefit transaction has occurred. Rather, they reflect a careful balancing of the need to avoid government second-guessing of good-faith decisions with the need to require accountability of board members. Specifically, a director is subject to penalty if he or she:

a. knows enough facts so that, based solely upon those facts, such transaction would be an excess benefit transaction;

b. is aware that such a transaction may be an excess benefit transaction under federal tax law; and

c. knows the transaction is an excess benefit transaction, or negligently fails to make reasonable attempts to ascertain whether it is.[24]

The requirements to establish the presumption are somewhat technical, and inadvertent slip-ups in following them are easily possible. For example, an organization might inadvertently

[23] BoardSource, Research Brief: Results of the 2012 Nonprofit Executive Compensation Survey 2–3 (2012), *available at* www.boardsource.org/dl.asp?document_id=1304.
[24] *See* Treas. Reg. § 53.4958-1(d)(4)(i)(A)–(C).

fail to document its executive compensation decision within the timeframe required by the Regulations. Under current law, such a mistake might result in failure to establish the presumption. Under the change suggested in the Grassley Staff Report, the result would be that the board members failed to exercise "minimum due diligence" and thus are deemed to have "reason to know" if the compensation is ultimately determined to be excessive. Such a result would be harsh and inequitable.

In addition to repelling excellent, independent board candidates, the proposed measures would likely have the counterproductive result of encouraging the utilization by nonprofit organizations of more non-independent board members. With fewer high-caliber, independent individuals willing to volunteer their services as board members, nonprofit organizations would likely be forced to look within their own ranks and relationships for people willing to serve. Alternatively, nonprofit organizations may be inclined to compensate their board members in recognition of the additional risks they face. Such a result would not be helpful to the cause of encouraging board member independence.

We are not aware of any basis for concluding that the current excise tax penalty structure is inadequate as a deterrent for excess benefit transactions. In addition to the penalties that may be imposed on organization managers, the current penalty structure applies a first-tier penalty of 25% of the excess benefit amount, plus a requirement that the excess benefit be "corrected" within a specified period of time.[25] Failure to timely correct the excess benefit results in a second-tier penalty of 200% of the excess benefit amount.[26]

Suppose, as an example, that a nonprofit executive were found to have received compensation from an organization exceeding that which is reasonable by $100,000 (the excess benefit amount). The executive would be subject to a penalty of $25,000 and would be required to correct the excess benefit by repaying the $100,000 to the organization (plus interest) within the time period specified in the Regulations. In the event the executive does not make the correction in a timely manner, a penalty of $200,000 would apply. We believe the current penalty structure serves as a significant deterrent.

Given the fact that we believe the current penalty structure is adequate, we do not see the need for additional penalties on the organization itself in the event of an excess benefit transaction. Further, the idea of imposing penalties on the organization runs counter to congressional intent as established in the correction requirement under current law. The purpose of the correction requirement is "to place the organization in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards . . . ."[27] Imposing penalties on the organization in the event of an excess benefit transaction would contravene the objective of correction under current law. The correction requirement under current law seeks

[25] I.R.C. § 4958(a)(1).
[26] *Id.* § 4958(b).
[27] *Id.* § 4958(f)(6).

to restore the organization's financial condition to what it would have been had the impropriety not occurred. Imposing penalties on the organization itself would then take funds intended for the beneficiaries of the organization's work and turn them over to the federal government.

Finally, with respect to the prospect of imposing penalties on the organization, we note that some excess benefit transactions are not initially known or agreed to by anyone other than the person receiving the excess benefit. For example, embezzlement of funds by a disqualified person would constitute an "automatic" excess benefit transaction. It would seem counterproductive to impose a penalty on the organization in connection with an embezzlement of its funds on top of the loss it has already sustained.

It may be helpful for the IRS and/or Treasury Department to develop guidelines in the form of Regulations or other authoritative guidance establishing when it is appropriate for a 501(c)(3) organization to utilize data from the for-profit sector in establishing the rebuttable presumption. The process for developing such guidelines should involve ample opportunity for input from the religious and broader nonprofit sector. In doing so, however, the guidance should not attempt to regulate comparability within the religious sector, where individuality makes it impossible to generalize.

How, for example, would the government determine how much value to place on a minister's services? Different faith groups have widely divergent views on compensation, and this complicates any attempt to make comparisons across positions. Is a Muslim imam comparable to a Jewish rabbi? Is a televangelist who reaches millions of listeners providing more or less value than the bishop responsible for supervising dozens of local parishes or the member of a religious order who writes books under a vow of poverty? The answers would depend on each religious organization's beliefs about the relative importance of proselytizing, congregational care, and education. And what about training—should clergy with a seminary degree be paid a higher salary than those without, even in churches that do not believe in seminary as a precondition for ordination?

If most churches place a high value on one attribute and a low value on another, is another church required to reach the same conclusion because that is what the "comparables" support, regardless of its own beliefs? Attempting to address such questions would quickly ensnare the government in a quagmire of constitutional concerns.

We recommend against requiring public disclosure of compensation studies and the related compensation data used in establishing compensation for nonprofit organization leaders to the extent such studies and data are not already public. Disclosure of privately commissioned compensation studies and the underlying data would have a chilling effect on the availability of such data. Additionally, public disclosure would potentially violate the intellectual property rights associated with the studies. Some organizations spend significant resources to gather and compile survey data in a useful manner. It is reasonable that

such organizations would want to recoup their costs for doing so by charging an appropriate fee for access. A requirement to publicly disclose the data would undermine the ability of organizations to recoup their costs, and would have the likely undesirable effect of reducing the availability of such data.

Finally, we recommend against requiring organizations to include in their governing documents a prohibition of excess benefit transactions as a condition of tax-exempt status. Section 501(c)(3) currently provides that no part of the net earnings of an organization described therein may inure to the benefit of any private shareholder or individual (the so-called "private inurement" prohibition). Requiring an organization to include in its organizing documents a provision prohibiting conduct where such conduct does not preclude exemption would be confusing and not helpful in administration of the law. Such a requirement would also create a substantial burden for the IRS and exempt organizations as it would represent a change to very long-standing requirements for organizational documents of exempt organizations. Applications for recognition of exemption would be impeded by the back-and-forth communications between the IRS and applicants that would inevitably result from such a change to the law until the change is widely known. Even if applied only on a prospective basis, the administration of such a change in the law would constitute a substantial burden and unnecessary use of resources for both the IRS and the nonprofit sector.

Clergy Housing Exclusion

Introduction and Background

The income tax exclusion for clergy housing was established by Congress in 1921. Originally, it excluded from a minister's taxable income the rental value of a home provided by a religious organization. In 1954, Congress amended the law to exclude from a minister's taxable income a housing allowance paid to the minister to the extent that he or she uses the allowance to provide his or her own home.

With the passage of the Clergy Housing Allowance Clarification Act of 2002, Congress clarified its intent by amending the law to provide that the exclusion is also limited to the fair rental value of the minister's housing. The 2002 legislation was approved by a vote of 408 to 0 in the U.S. House of Representatives and was approved in the U.S. Senate by unanimous consent. In other words, no member of Congress voted against the legislation. President George W. Bush signed the legislation shortly after passage by Congress. In support of this legislation, Senator Max Baucus of Montana observed that:

> This section of the Code is similar to one for employer-provided housing for other taxpayers. The one for clergy is much simpler, in order to minimize the involvement of the Government in the affairs of churches, that is, to keep the separation between Church and State.[28]

The Grassley Staff Report expresses concern that a small number of ministers live in employer-provided homes with high values or receive allowances to live in high-value homes.

On another front, the validity of the clergy housing exclusion is being challenged in federal court by parties who claim it violates constitutional provisions.

Additionally, observations have been made that some religious organizations consider significant portions of their workforce to be ministers. Accordingly, they treat them as ministers for income tax purposes, which may include providing housing or a housing allowance. Observers have expressed concerns that practices in this area by some organizations may be abusive.

Relevant Portion of Grassley Staff Report: Pages 10–16

[28] 148 Cong. Rec. S2957 (daily ed. Apr. 18, 2002) (statement of Sen. Max Baucus).

Questions

- Should the clergy housing exclusion be limited to a specific dollar amount?[29]
- To withstand further constitutional scrutiny, should the law related to the clergy housing exclusion be amended to broaden its applicability?
- Should the clergy housing exclusion be limited to a more select group of individuals?

Recommendations

Religious and Charitable Organizations

1. For the good of our country's moral fabric, religious organizations and their leaders must represent the best examples of faith and good moral conduct in all areas of financial activity. The vast majority of them do. Religious organizations and their leaders most certainly should not attempt to skirt the law for financial gain. Operating on the high road of integrity includes making reasonable and appropriate determinations as to who is a minister consistent with the polity of each religious organization and making appropriate decisions regarding clergy housing or related allowances. For a religious organization or its leaders to intentionally abuse the law is shameful and damaging to its mission and to the religious community as a whole. On the other hand, when individual organizations and leaders set their bar high—and even raise the bar—it inspires others to do the same. We encourage all religious organizations and their leaders to help raise the bar of reasonable and ethical conduct in this area.

IRS/Treasury

1. Given the dual tax status of many members of the clergy (e.g., the common circumstance in which a minister is an employee for income tax purposes but subject to the self-employment tax for Social Security purposes), and the fact that the clergy housing exclusion applies to income tax but not to Social Security tax, much confusion exists among members of the clergy regarding the applicability of the exclusion under current tax law. Accordingly, the IRS should improve the tax forms, worksheets, and educational guidance for members of the clergy in connection with the clergy housing exclusion.

[29] The Grassley Staff Report also raised a question, in light of a Tax Court decision for which appeals had not been exhausted at the time, as to whether the exclusion for a clergy housing allowance should be limited to a single home. Subsequent to the issuance of the Grassley Staff Report, an appeals court decision and denial of certiorari by the U.S. Supreme Court rendered the issue moot, having effectively clarified that the exclusion is limited to a single home. Comm'r v. Driscoll, 669 F.3d 1309 (11th Cir. 2012), *cert. denied*, 81 U.S.L.W. 3167 (U.S. Oct. 1, 2012) (No. 12-153). Accordingly, the Commission has not addressed that question in this Report.

We recommend the following specific improvements:

a. Clergy housing allowances paid pursuant to Section 107(2) should be required to be reported by paying organizations on Form W-2 or Form 1099, whichever is applicable. The amount should be reported for information purposes in a manner so as not to imply that it is subject to income tax.

b. A good-faith estimate of the value of an organization-provided parsonage pursuant to Section 107(1) should be required to be reported by larger religious organizations[30] on Form W-2 or Form 1099 (whichever is applicable) by the organization providing the housing. The amount should be reported for information purposes in a manner so as not to imply that it is subject to income tax.

c. The IRS should develop helpful, understandable forms or worksheets for use by clergy to address issues uniquely related to the housing exclusion in preparing Form 1040, including the following:

    1) determining the portion, if any, of a housing allowance that is not exempt under Section 107(2) (for example, if the amount designated as a housing allowance by a religious organization exceeds the amount spent by the minister in providing a home, the minister is required to report the excess as taxable income, even though it is not reported by the payer as such on Form W-2 or Form 1099);

    2) determining the portion, if any, of a minister's unreimbursed business expenses that are not deductible pursuant to Section 265, as applied in *Deason, Dalan, and McFarland*;[31] and

    3) determining the gross amount (before applicable expenses) of the housing allowance or the rental value of an organization-provided parsonage, if any, that is subject to self-employment tax and reportable on Schedule SE.

2. In recognition of the recent unanimous Supreme Court ruling in *Hosanna-Tabor*,[32] great deference should be given by the IRS to determinations made by religious organizations, pursuant to their sincerely-held religious beliefs, as to who is a minister for their organizations.

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[30] The Commission recommends that religious organizations that are required to file fewer than 25 Forms W-2 and fewer than 25 Forms 1099 in a particular tax year be excepted from the requirement to report the estimated rental value of parsonages on Forms W-2 and 1099. We encourage smaller organizations, as a best practice, to report that information if they have the practical means to determine the estimated fair rental value.

[31] *See* Deason v. Comm'r, 41 T.C. 465 (1964); Dalan v. Comm'r, 55 T.C.M. (CCH) 370 (1988); McFarland v. Comm'r, 64 T.C.M. (CCH) 374 (1992). These cases address the fact that business expenses are not deductible to the extent that they are allocable to income that is tax-exempt due to the clergy housing exclusion.

[32] Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC, 132 S. Ct. 694 (2012).

Congress

1. Congress should not apply a dollar limit to the clergy housing exclusion under Section 107 of the Internal Revenue Code because, as described further below, attempting to do so would create more challenges than it would solve.

2. In recognition of the recent unanimous Supreme Court ruling in *Hosanna-Tabor*,[33] great deference should be given by Congress to determinations made by religious organizations, pursuant to their sincerely-held religious beliefs, as to who is a minister for their organizations. Congress should not attempt to limit the clergy housing exclusion to a more select group of individuals.

3. Congress should not expand the clergy housing exclusion in an attempt to protect its constitutionality.

Basis for Recommendations

Two substantive limitations on the amount of the clergy housing exclusion already exist in federal law that limit the exclusion's value. First, federal tax law prohibits excessive compensation for leaders of tax-exempt organizations described in Section 501(c)(3), including religious organizations.[34] For this purpose, "compensation" includes benefits such as housing, whether taxable or not.[35]

Accordingly, the clergy housing exclusion is already limited by law in that total compensation is limited to that which is reasonable. Reasonable compensation is "the amount that would ordinarily be paid for like services by like enterprises (whether taxable or tax-exempt) under like circumstances."[36]

The second limitation on the clergy housing exclusion that exists under current federal tax law is narrower because the law provides that the exclusion may not exceed the lower of the fair rental value of the housing provided (including furnishings and utilities) or the actual amount spent providing a home.[37] In his 2002 Senate testimony supporting the addition of the fair rental value limitation to the clergy housing exclusion, Senator Max Baucus observed that these limitations impose reasonableness:

> It is good tax policy to keep a reasonable limit on the amount of [the clergy housing exclusion], as the IRS has done for decades. And it is good policy to make our intent crystal clear so that government involvement with religious affairs is kept to a minimum. This bill will do both.[38]

[33] *Id.*
[34] I.R.C. § 4958(c)(1)(A).
[35] Treas. Reg. § 53.4958-4(b)(1)(ii)(B)(3).
[36] *Id.* § 53.4958-4(b)(1)(ii)(A).
[37] I.R.C. § 107(2).
[38] 148 Cong. Rec. S2957 (daily ed. Apr. 18, 2002) (statement of Sen. Max Baucus).

After careful analysis, the Commission determined that imposing yet another limitation on the clergy housing exclusion in the form of a dollar-based cap would create more challenges than it would solve. In other words, the cure would likely be worse than the presumed disease. We identified the following significant challenges associated with imposing a dollar-based cap:

1. The amount of a cap or limit would be arbitrary.
2. There is no "one-size-fits-all" limit. A single cap or limit would be inequitable to ministers who live in higher-cost areas of the country.
3. A geographically-variable cap would be complex and difficult for taxpayers to apply and for the IRS to administer.
4. Some clergy members are required, due to the location of their houses of worship (and, in some cases, due to the requirements of their religion), to live in high-cost locales. For example, in certain faith groups, clergy are required to live within a specific distance of the house of worship and are required to walk to the house of worship for services. In circumstances where such houses of worship happen to be based in high-cost locales, the members of the clergy, by virtue of their religious doctrine, are required to live within the same locale. Furthermore, regardless of whether a member of the clergy is required by doctrine to live within a specific distance of the house of worship, the mere fact that a house of worship exists in a high-cost locale limits the practical ability of a member of the clergy to choose lower-cost housing in proximity to the house of worship.
5. Some houses of worship own clergy residences that were purchased long ago or were donated and have high values today even though they did not have a high cost to the organization. We do not believe that a religious organization's good stewardship (buying a parsonage at what was a reasonable price in prior years) or its wise use of a donated parsonage should result in extra taxes on its clergy.
6. Imposing a cap at a level high enough to accommodate the various real-life scenarios described above (wherein the housing value or cost may be high for appropriate reasons) would likely result in the unintended and incorrect perception that any clergy housing value or allowance within the cap is permissible and/or excludible. In other words, it would likely cause houses of worship and clergy to gravitate upward toward the cap.

Additionally, the Commission noted that another similar housing exclusion in the Internal Revenue Code, the employer-provided housing exclusion under Section 119, does not have a dollar-based cap. We see no valid federal policy reason that a tax benefit for clergy housing should have a dollar-based cap when the exclusion in Section 119 for employee housing typically associated with taxable corporations and business operates without such a limit.

In its recent ruling in *Hosanna-Tabor*, the U.S. Supreme Court unanimously reaffirmed its clear support for the authority and freedom of a religious organization to determine who qualifies as a minister, free from interference from the federal government.[39] Appropriate respect must be given to such a decision, and we note especially that the Court's ruling was unanimous. Based on the principles espoused by the Court and enumerated in the First Amendment, we believe great deference should be given by Congress and the IRS to the sincerely-held religious beliefs of religious organizations as to who is a minister for their organizations. Congress should not attempt to limit the clergy housing exclusion to "a more select group of individuals"—the term used in the Grassley Staff Report. We believe that any effort to amend the law to restrict the clergy housing exclusion to a more select group of individuals is likely to be insufficiently sensitive to the variety of religious practices in America and will result in a rule that infringes upon the constitutional rights of religious organizations to select their ministers and to govern themselves free from government interference.

An effort by Congress to expand the clergy housing exclusion in an attempt to protect its constitutionality could be counterproductive. Legal experts advised the Commission that there is good reason to believe the clergy housing exclusion can withstand a legal challenge to its constitutionality. Further, we are concerned that expanding the exclusion to include one or more additional categories of taxpayers, in addition to being costly, could actually enhance the risk to the law's constitutionality. The stated motivation for such an expansion would presumably be concern that the law in its present form is unconstitutional—rather than a genuine desire to add a new category of taxpayers to receive the exclusion.

As stated above, the dual tax status of many members of the clergy results in much confusion regarding the applicability of the exclusion under current tax law. For example, even though a minister may be an employee of a religious organization for income tax purposes, members of the clergy are subject to self-employment tax for Social Security purposes.[40] Further, even though the value of using a parsonage provided to a minister by a house of worship is exempt from the minister's income tax, it is subject to self-employment tax. The same is true for a clergy housing allowance. Additionally, a minister may not be entitled to exclude from taxable income the entire amount of a housing allowance paid to him or her due to the limitations on the exclusion described above.

Further complicating the tax compliance requirements for ministers is the fact that unreimbursed business expenses are not fully deductible for income tax purposes if the minister is entitled to the clergy housing exclusion. However, the limitation on business expense deductibility that applies for income tax purposes does not apply in determining net income from self-employment.

[39] Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC, 132 S. Ct. 694, 704–06 (2012).
[40] This is true unless they have elected out of self-employment coverage with respect to earnings as a minister by filing Form 4361.

For the reasons cited above and more, tax compliance for members of the clergy is no simple task. While the IRS has published some helpful guidance addressing these issues (particularly Publication 517, *Social Security and Other Information for Members of the Clergy and Religious Workers*), we believe members of the clergy would benefit substantially from new, very well-written, well-designed, separate, practical guidance related to the tax issues uniquely involving the clergy housing exclusion. Such additional guidance should be directly integrated into the forms, worksheets, and instructions of Form 1040.

Additionally, we believe that consistency in the practice of reporting clergy housing amounts on Form W-2 or Form 1099 will significantly enhance compliance with the law by clergy. It is generally essential for ministers to know the amount of a housing allowance and/or the fair rental value of organization-provided housing to properly report both their income and Social Security tax obligations:

1. Income tax. In the case of a housing allowance, a minister must compare the amount of the allowance to both the fair rental value of his or her home (with furnishings and utilities) and the amount spent providing the home in order to determine if the full amount of the allowance may be excluded for income tax purposes.

2. Self-employment tax. The minister must know the amount of a housing allowance in order to properly report it as income for self-employment tax purposes, unless he or she has elected out of Social Security coverage with respect to his or her ministerial income by filing Form 4361.

   Additionally, for organization-provided housing, clergy must know the estimated fair rental value of the home in order to properly report it as income for self-employment tax purposes, unless he or she has elected out of Social Security coverage as stated above.

Further, reporting the amount of allowances or housing provided to a minister helps the minister and the employing organization alike by providing information about the minister's total compensation, which is subject to the reasonableness standard under federal tax law.[41]

[41] *See* I.R.C. § 4958(c)(1)(A) and related Regulations.

Churches, Accountability, and Donor Engagement

Introduction and Background

Form 990 is the annual information return that nonprofit organizations file with the IRS, providing details about their finances, governance, and activities.[42] In its current state, Form 990 (including the Schedule A required for 501(c)(3) organizations) is a 16-page form that requires an estimated 211 hours per year for compilation of information and completion.[43] As many as 15 additional schedules may be required to be included with Form 990, depending on the specific nature of the filing organization's activities, some of which require dozens of additional hours to complete.[44] Once filed with the IRS, Form 990 (or its abbreviated version for smaller organizations, Form 990-EZ) is made publicly available on the Internet with minimal redactions.[45]

Under current law and ever since Congress required annual federal information returns for nonprofit organizations in 1943, religious organizations classified as churches and certain other church-related organizations have been statutorily exempt from filing such returns.[46] The information return filing requirement was established in response to reports that some tax-exempt organizations were engaged in commercial activities competing with taxable organizations. Concern about such activity eventually led Congress to assess a tax on otherwise tax-exempt organizations when they generate income from an "unrelated business" activity.

Income from unrelated business activities is reported on Form 990-T. Churches are not exempt from filing Form 990-T if they have more than $1,000 in gross receipts from an unrelated business activity in any tax year. Form 990-T is also subject to public disclosure requirements.

Nonprofit organizations desiring tax exemption under Section 501(c)(3) are generally required to apply to the IRS for recognition of exemption by filing Form 1023. Churches

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[42] Private foundations file a variation of the form: Form 990-PF.

[43] *See* Internal Revenue Serv., Instructions for Form 990 Return of Organization Exempt from Income Tax 46 (2011), *available at* www.irs.gov/pub/irs-pdf/i990.pdf. The hours estimate is provided in the Paperwork Reduction Act Notice in the instructions and includes recordkeeping; learning about the law or the form; preparing the form; and copying, assembling, and sending the form to the IRS.

[44] *Id.*

[45] GuideStar, a nonprofit organization, provides a public service by obtaining copies of the 990s from the IRS shortly after they are filed and posting them on GuideStar's website at www.guidestar.org.

[46] As used in this section of the Report, the terms "church" and "churches" are used inclusively to refer to houses of worship and religious organizations of all faiths that are exempt from filing Form 990 pursuant to the Internal Revenue Code and Treasury Regulations currently in effect.

and certain church-affiliated entities are exempt from the application requirement and are not required to obtain an IRS determination letter as a condition of exemption.

Churches are generally required to file federal payroll tax returns and certain federal information returns, including Forms 941, W-2, W-3, 1099, and 1096, generally related to payments to employees and vendors.

The Grassley Staff Report expresses concerns about the exemption for churches from the Form 990 and Form 1023 filing requirements and raises related questions.

Relevant Portion of Grassley Staff Report: Pages 16–34

Questions

- Should new entities that claim to be churches be required to notify the IRS of intent to claim church status?
  - Should such a notification requirement apply only if the entity plans to solicit contributions from the public?
- Under what circumstances would it be feasible to require churches to file Form 990 or an annual "e-postcard" without violating constitutional principles?

Recommendations

Religious and Charitable Organizations

1. Churches should be appropriately accountable to their members, congregants, and financial supporters. Churches and their leaders should consider public reaction and damage caused by activities, transactions, or arrangements that the public perceives as lavish, extravagant, excessive, or unreasonable. Churches and their leaders should not engage in abusive financial activities, nor should they improperly exploit the exemption from filing Form 990, because doing so undermines the credibility of their organizations and the religious community as a whole. Abuses also result in threats to the important tax exemptions and benefits that are available to religious organizations. Churches should, as a best practice, establish appropriate measures to verifiably demonstrate (through independent accreditation by a bona fide accrediting organization, denominational oversight, or by other appropriate methods) to their members, congregants, and financial supporters that they have adequate and proper oversight regarding financial activities and that they do not engage in or tolerate abusive activities.

The Giving Public

1. Financial supporters (donors) of religious or other nonprofit organizations should be appropriately engaged in the process and should take the necessary actions to

make informed giving decisions. A donor should seek or request from a church such information about its financial and other activities as the donor believes appropriate. A donor should evaluate the information available about a church's activities and/or its response, or lack of response, to requests for information in making a wise giving decision. Put simply, our message to donors is "Know the organizations you support."

IRS/Treasury

1. The IRS and Treasury Department should rectify the matter of identifying an appropriate "high-level Treasury official" for the purpose of properly administering the Church Audit Procedures Act (Code Section 7611).

Congress

1. Congress should never pass legislation requiring churches to file Form 990 or any similar information return or form with the federal government. To require such a filing would not only place a substantial and unnecessary burden on churches and the government, it would also raise significant constitutional concerns. New churches should not have registration or notification requirements beyond those that already exist.

Basis for Recommendations

Inextricably woven into the fabric of our country from its inception is the freedom of religious organizations to exercise their religion without government interference. That right is not one that the First Amendment granted. Rather, it is an inalienable right "endowed by our Creator" and recognized in the First Amendment to the United States Constitution. From the Old North Church, used by Paul Revere to warn of British advancement; to Plymouth Church, the "grand central depot" of the underground railroad; to Martin Luther King's Ebenezer Baptist Church, a nucleus of the civil rights movement; to many congregations today, churches not only have held a special place in American history, they have proven central to protecting the freedoms for which our country stands. It is no wonder that our country's founders saw the preeminent need to clearly affirm religious freedom in the Constitution.

Like the now-famous churches named above, churches may engage in activities that some find offensive or that are counter-cultural. The fact that some may take offense over a particular church's practices does not justify eroding the freedom from government interference that is so central and inherent in our country's framework.

The U.S. Supreme Court has ruled that the First Amendment's Establishment Clause prohibits "excessive entanglement" between the church and the government. The Court has ruled that "detailed monitoring and close administrative contact" are elements of excessive entanglement.[47] Requiring churches to file detailed information returns such as

[47] Aguilar v. Felton, 473 U.S. 402, 414 (1985).

the Form 990 with the federal government would raise serious constitutional questions.[48] In addition to the significant constitutional concerns, requiring churches to file detailed information returns with the federal government would not be in the best interests of the free exercise of religion in America, and it would create a significant burden on both the religious sector and the federal government.

At the very least, Congress and the Treasury Department should maintain the current exceptions from the Form 990 filing requirements for certain religious organizations.[49] When establishing these filing exemptions, Congress and the Treasury Department wisely decided not to impose any discriminating criteria (e.g., whether the organization provides voting rights for its members or is subject to denominational or third-party oversight) as a condition. Applying and administering discriminating criteria for a filing exception would ensnare the government in a constitutionally problematic quagmire of inherently religious judgments, and would require probing into the depths of each religious organization's structure, governance, and practices to determine whether the criteria are met.

Such entanglement would also be problematic in that it would result in favoring some churches over others based on their governing structure, operations, and administration. Such an approach would also impose inappropriate pressures for churches to conform their religious structures to the government's preferred model, which would clearly be problematic.

While Congress already applies a variety of neutral tax rules to churches and requires churches with unrelated business income to file Form 990-T, these rules require only limited disclosure of particular aspects of a church's activities, "narrowly drawn to specific regulatory objectives," of the kind that courts have previously accepted.[50]

Form 990 is a classic example of a government information collection device with "self-perpetuating and self-expanding propensities."[51] From relatively humble beginnings, it now boasts numerous schedules and a set of instructions over an inch thick when printed. The completed Form 990 for a large institution can be hundreds of pages long. Besides requiring exhaustive financial information, many Form 990 questions now require organizations to disclose significant information about their governance procedures and policies, governing documents, relationships with their organizational leaders and with third parties, and much more.

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[48] *See, e.g.,* Sharon L. Worthing, Note, *The Internal Revenue Service as a Monitor of Church Institutions: The Excessive Entanglement Problem,* 45 Fordham L. Rev. 929 (1977).
[49] I.R.C. § 6033(a)(3)(A); Treas. Reg. § 1.6033-2(g)(1)(i).
[50] *See* Church of Scientology Flag Serv. Org. v. City of Clearwater, 2 F.3d 1514, 1535 (11th Cir. 1993).
[51] Lemon v. Kurtzman, 403 U.S. 602, 624 (1971); Surinach v. Pesquera de Busquets, 604 F.2d 73, 78 (1st Cir. 1979).

Part I of Form 990 includes inquiries into the following:

- Number of independent voting members of the governing body
- Number of non-independent voting members of the governing body
- Number of employees
- Number of volunteers
- Total unrelated business income
- Revenue in the form of contributions and grants
- Program service revenue
- Investment income
- Expenses in the form of grants
- Benefits to or for members
- Salaries
- Fundraising fees

Part III of Form 990 asks the filing organization to describe its:

- Mission
- Largest (in terms of expenses) three "Program Service Accomplishments"
- Total expenses

Part IV of Form 990, entitled "Governance, Management, and Disclosure," is a detailed inquiry into the filer's governance and management.

Part VII of Form 990 requires reporting on:

- Compensation of officers
- Compensation of directors
- Compensation of trustees
- Compensation of key employees
- Highest compensated employees
- Compensation of independent contractors

Schedule B of Form 990 requires the filing organization to provide to the IRS the identity of its largest donors and the value of their contributions to the organization.

To say that Form 990 requires detailed reporting about an organization's activities is a significant understatement. Even the summary provided above does not begin to adequately describe the depth and breadth of the inquiries on Form 990.

These problems will not be cured simply by limiting the filing requirement to an "e-postcard." Given the broad discretion the IRS has historically had to modify tax returns, any reporting mechanism would have the same tendency to expand as has Form 990. Furthermore, the IRS currently provides for the automatic termination of tax-exempt status for any tax-exempt organization that fails to file Form 990 (including the "e-postcard") for three consecutive years.[52] Imposing a filing requirement on churches will inevitably result in automatic revocation of exemption for many bona fide churches. In effect, such a requirement would create a new condition of tax exemption for churches, and accordingly, would entangle the government in the establishment of religion.

As a practical matter, imposing a filing requirement on all churches would unnecessarily burden the overwhelming majority of churches, particularly those that are already financially challenged, as well as the IRS Exempt Organizations Office, which would be required to process hundreds of thousands of returns from small, local churches that have never been required to file in the past—and that have no taxable revenues justifying such an imposition by the government.

As an illustration of the special care Congress has exercised with respect to churches, Senator Charles Grassley introduced legislation (now law) known as the "Church Audit Procedures Act" (CAPA) found in Section 7611 of the Internal Revenue Code. CAPA strikes an appropriate balance between allowing the IRS to address potential misconduct by a church and preventing the IRS from "going on a fishing expedition" into a church's activities and records.

CAPA permits the IRS to initiate a church inquiry or examination so long as certain criteria are met. The criteria for a church tax inquiry include a requirement that a "high-level Treasury official" must determine, based on written evidence, that the church is not exempt, that it has a liability for unrelated business income tax, or that it has otherwise engaged in taxable activities.[53] Subsequent to a national restructuring of its operations, the IRS designated a particular official as its "high-level Treasury official" with authority to make the required determination. However, in recent litigation, a federal court ruled that the official designated by the IRS did not meet the statutory definition of a high-level Treasury official.[54] The IRS has not yet rectified the issue, and reports suggest that the

[52] I.R.C. § 6033(j).
[53] I.R.C. § 7611(a)(2).
[54] United States v. Living Word Christian Center, No. 08-mc-37, slip op. at 7 (D. Minn. Jan. 30, 2009) (concluding the Director of Exempt Organizations, Examination is not "an appropriate high-level Treasury official" within the meaning of Code Section 7611).

IRS has ceased inquiries and examinations of churches until the matter is resolved.[55] For proper administration of federal tax law, the IRS and Treasury Department should resolve the matter as soon as is feasible.

CAPA honors an important constitutional principle when it allows the IRS to examine the records of churches only to the extent necessary to determine tax due, and only once there is a reasonable belief that tax may be owed. It should be recognized that requiring a church to file with the government and/or make public the vast range of information included on Form 990 is at least as intrusive as requiring the church to provide such information to the IRS in an examination. Of course, such public disclosure cannot be justified as necessary for the IRS to determine the amount of tax due. Further, public disclosure can have adverse consequences far removed from tax administration, such as provoking hostility toward a church that funds unpopular causes or simply subjecting the church to public criticism for activities that seem strange or offensive to those not of the faith.

As the U.S. Supreme Court has unanimously stated, the First Amendment "gives special solicitude" to the rights of religious organizations.[56] Those rights should be protected, defended, and preserved.

Under existing law and practice, new corporations, partnerships, and other entities including churches and other nonprofits, are required to file Form SS-4 to obtain a federal employer identification number (EIN). All such entities are required to have a federal EIN in order to open a bank account in the United States, and a bank account is essential for conducting financial activities. The current version of Form SS-4 requires the filing organization to indicate its "type of entity" (Question 9a), and one of the choices is "church or church-controlled organization."

Because a new church is effectively required to file Form SS-4 in order to conduct financial activities within the U.S. banking system, and the SS-4 is designed to require an entity claiming to be a church or a church-controlled organization to so indicate, there is no need for any additional registration or notice requirement. Imposing any additional registration or notice requirements would create an unnecessary and excessive burden on both churches and the IRS, and would raise significant constitutional concerns.

Ultimately, the federal government is not, and should not be, the arbiter of appropriate accountability for churches in America. Rather, individual church officials and their organizations are ultimately accountable first and foremost to their God or their faith, and secondarily to their denominations, congregations, members, donors, directors, internal supervisory bodies, or other stakeholders in accordance with their particular religious tenets. In a practical sense, they are also dependent on the financial support and

[55] *Church Tax Audits Not Moving for Lack of Final Rules,* Bloomberg BNA (Oct. 22, 2012), http://www.bna.com/church-tax-audits-n17179870390/.
[56] Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC, 132 S. Ct. 694, 706 (2012).

participation of their donors and adherents. Healthy engagement by those who provide financial support provides a powerful incentive toward self-regulation and is arguably one of the most effective methods of addressing the practices of the few religious leaders who otherwise would have little interest in self-regulation.

As mentioned in our recommendations, churches should verifiably demonstrate their commitment to proper oversight and accountability. Freedom of religion requires, however, that they be free to choose oversight and accountability measures that fit their own religious polity and doctrine. Independent accreditation by a bona fide accrediting organization is one option for voluntarily demonstrating such a commitment. Robust and meaningful financial oversight by a denominational organization is another method for churches that are part of a hierarchical structure. Independent religious groups unaffiliated with any larger organization may choose to be governed by independent board members, obtain outside audits or legal reviews, create internal checks and balances such as special committees empowered to review the organization's affairs or to approve certain decisions, or pursue other options. The methods for achieving and verifiably demonstrating accountability are as varied as the religious communities they are meant to protect. Whatever the method, churches should be able to articulate to their adherents, members, congregants, supporters, and other stakeholders how they demonstrate proper oversight and accountability.

While we recognize that the proper role of adherents, members, congregants, supporters, and other individual stakeholders of a church is itself often a matter of religious belief, we encourage all such individuals to take advantage of whatever opportunities are available within their faith groups to inform themselves about an organization's affairs and its measures for ensuring proper oversight and accountability. These stakeholders, especially those who provide financial support (donors), should evaluate the information available about a religious organization's activities and/or its response, or lack of response, to requests for information. Even when they do not have formal power to force disclosure or initiate accountability measures, their concern is often a powerful force for improvement. We encourage all constituents and financial supporters of religious organizations to take an active interest in the accountability mechanisms of those organizations, in a manner appropriate given their role and the religious doctrines of each organization. We encourage those who read this report to help us get the word out in as many ways as possible to the giving public: "Know the organizations you support."

IRS Advisory Committee for Religious Organizations

Introduction and Background

The IRS sponsors several advisory committees to facilitate education and communication between the IRS and various segments of the public. One of the existing committees is the IRS Advisory Committee on Tax Exempt and Government Entities, the purpose of which is to facilitate understanding and communication between the IRS and the nonprofit and governmental sectors. The Grassley Staff Report suggests that an additional advisory committee may be beneficial—one focused exclusively on issues related to the religious community. Due to the fact that religious organizations often have concerns about federal policy issues in areas other than taxation (e.g., employment practices, religious freedoms, etc.), the Grassley Staff Report suggests that the proposed IRS advisory committee could involve representatives from other agencies of the federal government in addition to the IRS.

Relevant Portion of Grassley Staff Report: Page 10

Question

- Should an additional IRS advisory committee be established to facilitate communication and education between religious organizations and the IRS?

Recommendations

Religious and Charitable Organizations

1. Religious organizations should engage meaningfully in the input process when opportunities are presented by the IRS or Treasury Department, and they should provide practical examples and insights. Only through such input will the views of religious organizations be made known, resulting in better outcomes.

IRS/Treasury

1. The IRS should not establish an additional advisory committee for religious organizations.

2. The IRS and Treasury Department should, however, more thoroughly address the unique federal tax issues of the religious community and provide more helpful and educational guidance in key areas of the tax law. Guidance should be issued in draft

form in a manner that permits input from the religious community. Any such guidance should be appropriately respectful of constitutionally-protected religious freedoms. Separately, we have provided recommendations for improved guidance in specific topical areas.

Basis for Recommendations

The Commission has a strong interest in maintaining open channels of communication between the IRS and religious organizations, and we agree with the Grassley Staff Report that steps should be taken to reduce distrust between religious organizations and the government. While the concept of an advisory committee may seem like an effective way of improving communications, the Commission believes that the risks associated with the creation and maintenance of such a committee outweigh the potential benefits.

Specifically, any process the IRS adopts for selecting representatives to serve on the advisory committee may actually harm its relationship with particular religious groups who may feel underrepresented on the committee, and almost certainly would create the perception of favoritism—probably toward well-represented majority groups—contrary to the Establishment Clause of the First Amendment. We are also concerned that the IRS would be tempted to overestimate the extent to which the recommendations of its selected group would reflect the views of all religious organizations in the United States.

The Grassley Staff Report suggests that a new IRS advisory committee for religious organizations could cut across agency lines and involve representatives from other federal agencies (e.g., the Federal Election Commission, the Federal Communications Commission, and the Federal Trade Commission). We question whether such an approach is feasible and whether a committee so composed would have a clear focus.

The IRS should instead focus on improving communications with religious organizations by increasing outreach efforts. Specifically, communications could be significantly improved through open requests by the IRS for public comment in connection with publication of proposed educational guidance relevant and helpful to religious organizations. Religious organizations, in turn, should avail themselves of opportunities to respond to such requests and should provide practical examples and insights.

Independent Accreditation and ECFA's Model

Introduction and Background

Founded in 1979, ECFA is an independent organization that accredits Christian churches and nonprofits with demonstrated adherence to specific standards related to good governance, financial integrity, and accountability.

ECFA was created in the midst of controversy surrounding the financial practices of some religious organizations and legislative proposals that would attempt to regulate the solicitation activities of certain organizations under federal law. The founders of ECFA joined together to form an organization that served two primary purposes:

1. providing an independent, robust, and rigorous process whereby responsible Christian organizations could demonstrate adherence to high standards and become accredited; and
2. demonstrating best practices for other organizations in the religious and broader nonprofit sector.

ECFA's model has been studied and regarded as effective by numerous observers over the years, both in the United States and internationally. Entities that have studied ECFA's model include various nonprofit groups as well as members of the U.S. Congress and government regulatory agencies, both foreign and domestic.

ECFA has a track record of more than 30 years in which it has consistently demonstrated diligence and commitment to endorsing and maintaining the highest standards of conduct among its members. While some denominational organizations have entities and structures that provide varying degrees of financial oversight, ECFA is the only independent, nondenominational, religious organization in the United States that has a substantive and reputable independent accreditation model.

Key elements of ECFA's model include the following unique attributes:

- Accreditation is offered on a pass/fail basis. ECFA does not rate organizations. ECFA believes there are inherent flaws in any ratings system that attempts to apply a uniform assessment method to a highly diverse group of organizations. In fact, ECFA considers such ratings systems to be harmful to many excellent organizations that, for legitimate reasons, may not fit the particular model of a ratings system.

- In addition to requiring an organization to follow Christian doctrine, ECFA's standards cover:
  - Effective governance
  - Financial oversight
  - Proper use of resources
  - Compliance with applicable law
  - Financial disclosure
  - Conflicts of interest
  - Ethics in fundraising practices
- Accredited organizations are required to meet all of the standards at all times. In other words, an organization cannot be accredited or maintain accreditation if it fails to comply with any of the standards.
- Accreditation is a voluntary demonstration of self-regulation by organizations that obtain it. Consequently, accredited organizations tend to exercise a very strong commitment to compliance.
- ECFA maintains a robust process for monitoring compliance by accredited organizations. In addition to the rigorous initial and annual membership review process, ECFA employs a cadre of highly trained field reviewers who conduct periodic, detailed inspections of the practices of accredited organizations.
- ECFA follows a "redemptive" approach to addressing compliance by accredited organizations. For most violations identified, ECFA requires an organization to verifiably take corrective and/or remedial action and affords it a reasonable opportunity to do so. ECFA believes that bringing organizations back into compliance is a more desirable objective than would be accomplished by harsh sanctions such as immediate termination.
- In the event of egregious violations or failure by an organization to comply with ECFA's requirements for corrective action, an organization's accreditation is suspended or terminated. Suspensions and terminations are published, including decisions by organizations to terminate their own membership while under compliance review.
- ECFA currently accredits more than 1,700 organizations with total annual revenues of approximately $20 billion.

The Grassley Staff Report addresses the possibility of replicating ECFA's accreditation model in other settings.

Relevant Portion of Grassley Staff Report: Pages 33–34

Question

- Could ECFA's model be replicated for churches, religious organizations, and other nonprofits not within the scope of ECFA's charter?

Recommendations

Religious and Charitable Organizations

1. Secular nonprofit organizations and faith groups not within the scope of ECFA's charter should consider the possibility of utilizing or forming independent accreditation organizations similar to ECFA that rigorously address good governance, accountability, and financial integrity.

2. Denominational and associational organizations should evaluate the effectiveness of their systems for accountability and ensure that their congregations and member organizations have adequate oversight in the areas of accountability and financial integrity.

3. Independent religious organizations that are not part of a larger structure such as a denomination or association with robust accountability practices and that choose not to pursue independent accreditation should adopt other practices that verifiably demonstrate to their donors and other stakeholders their commitment to accountability and financial integrity.

Basis for Recommendations

Religious and other nonprofit organizations should provide the giving public with demonstrable evidence of their commitment to good governance, accountability, and financial integrity. Demonstration of such a commitment can take various forms. Denominational organizations and associations sometimes offer models for financial oversight for their member organizations. The substance and rigor of such models vary widely, however. Limited options exist for independent accreditation of secular charities.[57]

The Commission believes that accreditation by an independent organization with a robust and rigorous compliance model is a highly effective means of verifiably demonstrating to the giving public a commitment to financial integrity and best practices.

Independent religious organizations that are not part of a larger structure such as a denomination or association with robust accountability practices and that choose not to

[57] The Better Business Bureau's Wise Giving Alliance is the most well-known organization that independently accredits secular organizations (and some religious organizations). While its accreditation program has some similarities to that of ECFA, there are a number of distinctions.

pursue independent accreditation should adopt other practices that verifiably demonstrate to their donors and other stakeholders their commitment to accountability and financial integrity.

Regardless of whether the oversight and accountability comes in the form of a denominational structure, an association, independent accreditation, or in some other form, any model for applying oversight must be meaningful, robust, rigorous, and appropriately independent in order to be effective. Otherwise, the credibility of the process is little more than that of the ubiquitous "Who's Who" credentials that can be obtained by anyone willing to sign up. On a similar note, organizations should steer clear of so-called accreditation organizations that are, in essence, shams—organizations that falsely claim to operate meaningful, robust, rigorous, and independent accreditation programs. Use of such organizations would be damaging not only to the credibility of the organization itself, but also to the credibility of the bona fide accreditation process.

Given the fact that, under its charter, ECFA's accreditation is available only to Christian organizations that conform to certain requirements as to governing structure and doctrine, the Commission recommends that secular nonprofit organizations and faith groups not covered by ECFA's charter consider utilizing or forming independent accreditation organizations that rigorously address good governance, accountability, and financial integrity. ECFA's model has proven to be solid and it has stood the test of significant time. The Commission believes that other faith groups interested in forming independent accreditation organizations would be well-served to study ECFA's model.

A stronger system of voluntary self-regulation in the nonprofit sector will serve to improve trust in the sector by those who support it as well as those who regulate it. Additionally, as more organizations pursue verifiable self-regulation through independent accreditation or otherwise, the giving public will increasingly come to expect it as a condition of providing financial support.

Religious Organization Examinations and Third-Party Oversight

Introduction and Background

In addressing self-regulation in the religious sector and its impact on administration of the law by the IRS, the Grassley Staff Report raises certain questions regarding the possible roles of an IRS advisory committee and third-party oversight organizations.

Relevant Portion of Grassley Staff Report: Pages 16–34

Questions

- What role could the proposed IRS advisory committee (addressed separately in this report) serve in assisting the IRS with examination selection criteria and education/outreach efforts?
- Could the IRS consider denominational or third-party (e.g., ECFA) oversight when determining criteria for selecting churches for audit?

Recommendation

IRS/Treasury

1. In our separate recommendations related to the question of whether the IRS should form a new advisory committee focused on religious organizations, we recommend against the formation of such a committee. We recommend against the adoption of any formal IRS policy or practice that would involve an advisory committee or any third-party organization in the process used by the IRS to select religious organizations for examination.

Basis for Recommendation

As we noted in our separate recommendations related to the question of whether the IRS should form a new advisory committee focused on religious organizations, any process the IRS adopts for selecting representatives to serve on an advisory committee may actually harm its relationship with particular religious groups who feel underrepresented on the committee, and could create the perception of favoritism that the Establishment Clause seeks to avoid. This perception of favoritism may be especially strong if representatives on an IRS advisory committee are viewed as having some

authority to shape or direct IRS examinations of other religious organizations with which they may not see eye-to-eye.

The IRS would encourage similar perceptions of favoritism if it selected religious organizations for audit based on their organizational or governing structure or their willingness to participate in particular third-party oversight organizations. Issues of affiliation with other religious groups are themselves questions of religious belief and practice, as are decisions about organizational and governing structure. Any effort on the part of the IRS to compel, or even persuade, religious organizations to adopt particular organizational structures, or to participate in oversight by third parties in order to decrease the likelihood of an IRS examination, would not only cause great tension between religious organizations and the IRS, it would raise First Amendment concerns that the IRS prefers certain religious groups over others. For these reasons, we recommend against the adoption of any formal IRS policy or practice that would involve an advisory committee or any third-party organization in the process used by the IRS to select religious organizations for examination.

Examinations of Church Leaders

Introduction and Background

Current Treasury Regulations require application of the Church Audit Procedures Act (CAPA), codified in Section 7611, in conducting an inquiry or examination of a possible excess benefit transaction between a church and one or more of its leaders (referred to in the Internal Revenue Code and Regulations as "disqualified persons").[58] A disqualified person is generally a person who is "in a position to exercise substantial influence over the affairs of [a tax-exempt] organization."[59] The term also encompasses certain parties and entities related to a disqualified person.[60]

In order to ascertain whether an excess benefit transaction has occurred between a church and a disqualified person, the IRS would be required to obtain information and documentation from the church itself in almost all cases. The records and books of a church are generally protected by CAPA, which requires the IRS to carefully follow specific procedures in connection with a church inquiry or examination.

Additionally, as noted elsewhere in this Report, churches may establish a rebuttable presumption of reasonableness for a transaction with a disqualified person by following the procedures described in the Regulations related to Section 4958 of the Code.[61]

The Grassley Staff Report raises a question regarding the protection afforded church leaders under the Regulations.

Relevant Portion of Grassley Staff Report: Pages 34–36

Question

- Should audit protection be removed for church leaders in connection with possible penalty taxes arising from excess benefits provided by a church?

[58] Treas. Reg. § 53.4958-8(b).
[59] I.R.C. § 4958(f)(1)(A).
[60] *Id.* § 4958(f)(1)(B)–(F).
[61] Treas. Reg. § 53.4958-6.

Recommendation

IRS/Treasury

1. The audit protection provided in the Treasury Regulations with respect to church leaders and excess benefit transactions should be preserved.

Basis for Recommendation

Code Section 7611 allows the IRS to investigate or challenge a church's exempt status or examine church records only after satisfying a number of procedural hurdles. The statute and its predecessor were "intended to protect churches from unnecessary tax audits in the interest of not interfering with the internal financial matters of churches."[62] Under this statute, the IRS cannot intrude on a church's internal affairs through an examination unless it reasonably suspects a tax compliance issue, and even then, only so far as is necessary to determine tax compliance, with protections in place if the government makes unwarranted requests for sensitive church documents.

This protection against unnecessary intrusion currently applies to government investigation into church tax liabilities and also to the related imposition of a penalty excise tax on church leaders under Code Section 4958 (for instance, because their compensation from the church is questioned as to reasonability).[63] Some have proposed removing the protection of Code Section 7611 where the IRS is seeking to tax the church leader under Code Section 4958 instead of the church. Accordingly, the IRS would be able to examine sensitive church documents, and open examinations of church compensation practices, free from the restrictions of Code Section 7611.

Such an approach would eviscerate the protections of Code Section 7611 and should be rejected. An audit of a church leader's transactions with his or her church is essentially an audit of the reasonableness of the church's compensation practices with respect to that leader, and inevitably raises the same kinds of entanglement concerns as an audit of the church itself: close scrutiny of internal procedures for setting compensation, review of minutes and other confidential documents, IRS interviews of key decision-makers, etc.

Senator Grassley, who actively supported the enactment of Code Section 7611, noted that the law was "drafted to be certain churches are protected from unfounded examinations" by making sure a high-level official experienced in making policy

[62] Joint Comm. on Internal Revenue Taxation, 91st Cong., General Explanation of the Tax Reform Act of 1969, at 67 (1970).
[63] Treas. Reg. § 53.4958-8(b).

decisions makes the ultimate judgment that intrusion in church affairs is warranted.[64] As the Supreme Court has consistently recognized, interference with the employment relationship between a church and its spiritual leaders represents a serious intrusion upon church autonomy under both the Free Exercise Clause and the Establishment Clause.[65] Thus, a government determination that a church's assessment of the value of the leader's religious service was incorrect is exactly the kind of sensitive judgment that calls for the protections of Code Section 7611.

[64] *See* 130 Cong. Rec. 9152 (Apr. 12, 1984) (statement of Sen. Charles Grassley).

[65] Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC, 132 S. Ct. 694, 702–06 (2012); *see also* NLRB v. Catholic Bishop of Chicago, 440 U.S. 490, 502 (1979) (refusing to construe the law as granting the NLRB authority to regulate religious schools' contracts with teachers, given the strong risks of entanglement arising from government interference in religious employment controversies); Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696, 724–25 (1976) (government has no power to intervene in internal decisions about who will and will not hold the office of bishop).

Love Offerings

Introduction and Background

The term "love offering" is a colloquial expression that has evolved within the diverse history and traditions of America's Christian communities over the last two hundred years. The expression long predates the enactment of the U.S. Internal Revenue Code. While it is occasionally used in literature, the phrase does not appear in the Internal Revenue Code or in any related Treasury Regulations, and it seldom appears in court cases. A Google search reveals a common use of the expression, but no website can authoritatively define it except in the context of diverse circumstances. Thus, the term seems to have no generally accepted definition. It typically derives meaning from the context in which it is used. Members of the clergy receive money and other things of value from various sources and in various contexts. Federal tax law is clear that payments received for services rendered are taxable income, unless a specific exclusion in the law applies. However, gifts received by an individual are not generally subject to income tax. Federal tax law generally provides that payments by an employer to an employee are not excludible gifts.[66]

Questions arise when members of the clergy receive payments from sources other than organizations for which they provide services. Sometimes, such payments may be made by an individual who delivers the payments to a minister in person—in connection with a birthday, another special event, or for some other reason. In other circumstances, religious organizations facilitate the collection of funds for a minister. For example, a religious organization may collect funds during a worship service and then turn them over to the minister without any processing by the organization and without depositing the funds into its own accounts. When such collections are made, givers are often instructed to make checks payable to the minister. In other circumstances, a religious organization may take a collection for the benefit of a particular minister wherein it does process the funds received, deposits them into the accounts of the organization, and then remits the amount collected to the minister. And these are only a few of the common ways in which ministers receive payments. Any or all of these types of payments or collection activities may be referred to as "love offerings."

Significant ignorance, misinformation, and confusion exist with respect to whether payments received by a member of the clergy in various scenarios represent taxable income to the minister. The same is true with respect to whether givers are entitled to a charitable contribution deduction for their payments in various scenarios.

[66] I.R.C. § 102(c).

Some ministers and taxpayers have the mistaken impression that there is 100% correlation between deductibility by the giver and taxability to the receiver. Stated another way, a common misperception exists that if the giver cannot deduct the payment as a charitable contribution (e.g., because the payment is made directly to the minister and not to a religious organization), then the payment is not taxable to the minister. To understand the folly of such a perception, one only needs to consider a simple example such as a wedding ceremony, after which the father of the bride makes a payment to the minister for officiating. The payment is not deductible by the father as a charitable contribution, but it represents taxable income to the minister because it is remuneration for services rendered.

Under federal tax law, as applied and interpreted by the courts, a nontaxable gift is a payment made out of "detached and disinterested generosity."[67] The courts have further concluded that in determining whether a payment represents a nontaxable gift "[w]hat controls is the intention with which payment, however voluntary, has been made."[68] The fact that the parties (including, specifically, the giver) might label a payment as a "gift" does not control its tax treatment.

It is not difficult to surmise why ignorance, confusion, and misinformation exists. In order to determine whether a payment represents taxable remuneration or a nontaxable gift, a religious leader who receives such payments must assess the intent of the giver but cannot rely on the giver's stated intent. Federal tax law should not put taxpayers in the position of feeling as if they must be clairvoyant in order to determine the amount of their income that is taxable.

Relevant Portion of Grassley Staff Report: Pages 44–47

Questions

- Should payments commonly referred to as "love offerings" be taxable to the recipient when a religious organization facilitates their collection?
    - Should the tax treatment vary based on whether or not the recipient is a "disqualified person"?

Recommendations

Religious and Charitable Organizations

1. Religious organizations should carefully assess their roles in facilitating payments by individuals to or for the benefit of leaders of their organizations and in reporting taxable payments to the leaders of their organizations, to help ensure that their leaders are knowledgeable about, and compliant with, applicable tax law.

[67] Comm'r v. Duberstein, 363 U.S. 278, 285 (1960).
[68] *Id.* at 286.

2. When afforded the opportunity, religious organizations should provide the IRS and/or the Treasury Department with numerous real-world examples of circumstances in which payments commonly referred to as "love offerings" are made, received, and distributed.

The Giving Public

1. Donors should carefully evaluate the tax treatment of payments made to or for the benefit of individual religious leaders. Donors should ensure that amounts deducted as charitable contributions on their individual tax returns qualify for such treatment.

IRS/Treasury

1. The religious community would benefit greatly from a higher degree of clarity in the guidance surrounding payments commonly referred to as "love offerings." We recommend that the IRS and/or the Treasury Department provide clear and authoritative guidance to religious organizations, their leaders, and their donors regarding the tax treatment of payments made directly by individuals to leaders of religious organizations and the tax treatment of payments by individuals that benefit leaders of religious organizations in circumstances where religious organizations facilitate the payments. The guidance would be most helpful if it addressed both deductibility by donors and taxability to religious organization leaders. Multiple clear, real-world examples would be essential. We recommend that the IRS/Treasury issue the guidance in proposed form with a substantial opportunity for the religious community to provide comments. In fact, it would be most helpful if the IRS and/or Treasury Department reached out to religious leaders prior to drafting guidance for initial input and for real-world examples. When the guidance is final, we recommend that it be well-publicized and included in IRS Publication 517, *Social Security and Other Information for Members of the Clergy and Religious Workers*, Publication 1828, *Tax Guide for Churches and Religious Organizations*, and Publication 526, *Charitable Contributions*.

Basis for Recommendations

The introduction and background provided above adequately describes the need for better guidance and clarity in the area of "love offerings." The law on this subject is rather well-settled. Application of the law, however, is often not simple, which is why we are not suggesting a change in the law, but rather clear guidance in its application.

We would caution that in providing guidance, the IRS and/or Treasury Department should provide ample opportunity for input from religious organizations and the public prior to issuing final guidance. Awareness of the variety of practices followed by religious organizations, their leaders, and their supporters will help the IRS and Treasury Department in development of clear and practical guidance.

The Commission initially considered recommending that the guidance provide that payments are taxable to the recipient when their collection is facilitated by an organization for which the recipient has provided, does provide, or is expected to provide services. Such an approach, however, is not without problems. For example, assume that a religious missionary organization has thousands of missionaries on remote foreign fields and has special logistical systems for getting supplies and materials to its missionaries. Assume that a family member of one of the missionaries wishes to send some personal goods to the missionary and asks the organization for help with the delivery. Use of the missionary organization's logistical systems is the only practical means of delivering the goods to the missionary's remote location. In such a real-world example, even though the missionary organization "facilitated" collection and delivery of the goods, and even though the missionary provides services to the missionary organization, it would not be appropriate to consider the personal goods sent by a family member to constitute taxable income to the missionary. Accordingly, we reiterate the need for careful consideration and input from the religious community.

Public Disclosure of Highly Sensitive Information

Introduction and Background

IRS Form 990 is the annual information return that nonprofit organizations file with the IRS providing information about their finances, governance, and activities. Once filed with the IRS, Form 990 (or its abbreviated version for smaller organizations, Form 990-EZ) is made publicly available on the Internet. GuideStar, a nonprofit organization, provides a public service by obtaining copies of the 990s from the IRS shortly after they are filed and posting them on GuideStar's website at www.guidestar.org. Current federal law requires that the Form 990, as filed, be made public with the exception that identifying information about donors is redacted from copies made available by the IRS and may be redacted by filing organizations from copies they provide to the public.[69] Form 990 was revised in 2008 by the IRS, and the current version of the form includes schedules that require the filing organization to provide information about its international grants and its direct charitable, religious, educational, or similar activities conducted in other countries.

When the IRS released its first draft of the revised 2008 Form 990, it would have required filing organizations to provide specific information about the nature of their activities in specific countries and the locations where activities are conducted. Many nonprofit organizations expressed serious concerns that requiring such information in a publicly available document would put people and organizations at risk. Organizations providing humanitarian or religious aid in hostile environments often depend on being able to do so discreetly in order to protect their workers and constituents. As a result of the numerous concerns expressed, the IRS modified the 2008 Form 990 and its instructions so that it does not require highly detailed information about foreign activities that could put people in harm's way.

The IRS recently requested public input on the same issue—whether such information should be required in Form 990.[70] It is not clear why the IRS considered it necessary to reconsider such a serious issue that seemingly had been definitively addressed previously.

In the course of the Commission's deliberations and interaction with members of the Commission's Panels, the Commission became aware that similar concerns exist about other types of highly sensitive information required to be disclosed in Form 990—in some cases related to domestic activities. For example, we learned from a representative of

[69] Such information may not be redacted by private foundations in Form 990-PF, a variation of Form 990 that applies uniquely to private foundations.
[70] I.R.S. Announcement 2011-36, 2011-26 I.R.B. 933, 935.

GuideStar that it commonly receives requests from nonprofit organizations that operate shelters for victims of domestic violence in the United States to redact information from their Forms 990 where such information could reveal the locations of the shelters. Victims of domestic abuse commonly need the protection afforded by temporary residence in an undisclosed location. If their location were discovered, the results could be tragic.

Form 1023 is the application that nonprofit organizations file with the IRS seeking recognition of tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. Form 1023, like Form 990, is subject to public disclosure as a matter of federal tax law with minimal redactions and can contain highly sensitive information similar to that in Form 990.

Relevant Portion of Grassley Staff Report: N/A – This issue was identified by the Commission in keeping with Senator Grassley's request that we raise issues other than those raised in the Grassley Staff Report that we believe warrant attention as a matter of federal tax policy for religious organizations.

Question

- Should the law prohibit public disclosure by the IRS of highly sensitive information in an organization's Form 990 or Form 1023 where such disclosure could put people or the organization at significant risk?

Recommendations

Religious and Charitable Organizations

1. A nonprofit organization that applies for recognition of exemption by filing Form 1023 or that files Form 990 series information returns[71] should make good-faith determinations regarding any highly sensitive information that should be redacted from public copies of those forms for the safety and protection of the organization, its workers, or others. Filing organizations should not abuse any provision in the law that prohibits the IRS from publicly disclosing such information.

IRS/Treasury

1. We recommend that the IRS modify Forms 1023 and 990 series information returns and their instructions to permit a filing organization to clearly identify, in good faith, highly sensitive information that should be redacted from public disclosure. We recommend that the IRS create a new schedule for Form 990 series information returns and Form 1023 (e.g., "Schedule X"), along with related instructions, and that a filing organization be permitted to respond to any question

[71] References to "Form 990 series information returns" in the recommendations are intended to include all variations of Form 990, including, but not limited to, Form 990, Form 990-EZ, and Form 990-PF.

in the forms—where the organization has made a good-faith determination that public disclosure of the information would threaten the safety of the organization, the organization's property, or any person or entity working with or served by the organization, wherever located—by stating "See Schedule X" and including the required information on Schedule X. Schedule X should be a free-form disclosure schedule. The instructions to the forms should require an organization utilizing Schedule X to disclose to the IRS on Schedule X the justification for avoiding public disclosure. The IRS should give appropriate deference to good-faith determinations by filing organizations of their assessment of risk. However, reasonable anti-abuse rules should apply. Schedule X should be redacted entirely from public inspection copies of Forms 1023 and 990.

Congress

1. In the interest of the safety and well-being of religious and charitable workers and the people they serve, we request that Congress adopt legislation prohibiting public disclosure by the IRS of highly sensitive information in Forms 1023 and 990 series information returns that could threaten the safety of the organization, the organization's property, or any person or entity working with or served by the organization, wherever located. The law should require the IRS to permit a filing organization to identify in good faith the highly sensitive information to be redacted, subject to reasonable anti-abuse provisions.

Basis for Recommendations

Under current federal law, information provided by a nonprofit organization on Form 1023 or Form 990 is required to be made public, with the very limited exceptions that certain "trade secret, patent, process, style of work, or apparatus" information may be redacted from public inspection copies of Form 1023[72] and donor-identifying information may be redacted from public inspection copies of Form 990.[73] In other words, if the information is provided on Form 1023 or Form 990, the IRS and the filing organization have no choice but to make the information publicly available.[74] The IRS provides copies of filed Forms 990 to GuideStar, who in turn posts them on a readily available website for public access (www.guidestar.org).

Anyone in the world with Internet service, including those who would seek to harm those performing legitimate religious or charitable work or the people they serve, can instantly access information about a filing organization's activities via Form 990. Certain highly sensitive information in the wrong hands could be disastrous to the filing organizations and the people involved in their religious or charitable work.

[72] I.R.C. § 6104(a)(1)(D).
[73] *Id.* § 6104(d)(3)(A).
[74] Subject to the very limited exceptions noted in the previous sentence.

In 2008, Form 990 was modified to include a new Schedule F, which requires filing organizations to report their activities outside the United States separately, and to track such activities separately by geographic region. It also requires disclosure of grants to foreign grantees, although at least temporarily the form allows filing organizations to omit names and addresses of specific grantees.

While expanded reporting for international activities is no doubt interesting and informative in some cases, it is not clear that it is directly relevant to tax administration. For example, does it make a difference from a tax administration standpoint whether an organization is carrying out its religious or charitable activities in the country of Georgia or the state of Georgia? In her recent testimony before the Oversight Subcommittee of the House Ways and Means Committee, attorney Eve Borenstein, expert on the Form 990, summarized a similar observation thusly:

> This is one arena of reporting in which the benefits of the reported information do not presently outweigh the burden of compiling and gathering the information. The information collected by the IRS on Schedule F is unlikely to be of assistance to the IRS or other federal agencies with respect to combatting terrorism and/or promoting exempt organizations tax compliance. Its completion is not only a burden but a disincentive for organizations to conduct programming or participate in activities with connection to non-U.S. jurisdictions. For all the aforementioned reasons, this Schedule should be eliminated or its scope substantially reduced.[75]

The matter of forced public disclosure of highly sensitive information is not simply a tax policy issue—it is, more importantly, a life-safety issue. While the issue is relevant with respect to international activities, it is not solely so. Individuals in the U.S could also be endangered by public disclosure of certain information. As mentioned in the introduction and background, we learned from a representative of GuideStar that it commonly receives requests from nonprofit organizations that operate shelters for victims of domestic violence in the United States to redact information from their Form 990 where such information could reveal the locations of the shelters. Victims of domestic abuse commonly need the protection afforded by temporary residence in an undisclosed location. If their location were discovered, the results could be tragic.

Public disclosure of highly sensitive information not only places an organization's workers at risk, it can lead to similar problems for the organization's affiliates, grantees, and others with whom it works. Even where individuals' safety is not directly at risk, such disclosures may complicate the organization's in-country relationships, or they may impact negotiations with foreign governments (which, unlike our government, may have

[75] *Operations and Oversight of Tax-Exempt Organizations: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways & Means,* 112th Cong. 13 (2012) (statement of Eve Borenstein, Partner, Borenstein and McVeigh Law Office, LLC, Principal, Eve Rose Borenstein, LLC), *available at* http://waysandmeans.house.gov/uploadedfiles/borenstein_testimony_7.25.pdf.

firmly entrenched religious establishments) for visas or for other sorts of permits under local law. We believe a sensible means should exist to avoid public disclosure in these contexts, just as there is for other highly sensitive information such as the identities of individual donors.

The law should require filing organizations to make good-faith determinations as to what constitutes highly sensitive information. The IRS should apply appropriate deference to an organization's judgment, but reasonable anti-abuse rules should apply. Also, filing organizations should be required to disclose to the IRS the basis for the position that the specific information is highly sensitive.

Logistically, we believe the objective could best be accomplished with the use of a separate schedule (e.g., "Schedule X"). As suggested above, we recommend that the IRS modify Forms 1023 and 990 series information returns and their instructions to permit a filing organization to clearly identify, in good faith, highly sensitive information that should be redacted from public disclosure. We recommend that the IRS create a new schedule for Form 990 series information returns and Form 1023 (e.g., "Schedule X"), along with related instructions, and that a filing organization be permitted to respond to any question in the forms—where the organization has made a good-faith determination that public disclosure of the information would threaten the safety of the organization, the organization's property, or any person or entity working with or served by the organization, wherever located—by stating "See Schedule X" and including the required information on Schedule X. Schedule X should be a free-form disclosure schedule.

Using a separate schedule allows filers to provide the information to the IRS while providing a simple means for redacting it from public disclosure.

Some suggest that disclosure about the international activities of nonprofits is helpful in identifying organizations that may be supporting terrorist activities. We question the validity of such an assumption, as did attorney Eve Borenstein in her testimony before the Oversight Subcommittee referred to above (in which she was referred to as "the queen of the 990"). We are doubtful, for example, that organizations engaged in illegal terrorist activity would be inclined to comply with Form 990 instructions to disclose information related to such activities. Whether true or not, utilization of the "Schedule X" approach permits the government to obtain information it needs for bona fide reasons while shielding the filing organization and its constituents from the dangers of public disclosure.

Commission on Accountability and Policy for Religious Organizations

Mr. Michael Batts, Commission Chairman, is a CPA and the president and managing partner of Batts Morrison Wales & Lee, an accounting firm dedicated exclusively to serving nonprofit organizations across the United States. He is a member of the ECFA board and its former chairman. Mr. Batts has more than 25 years of experience serving nonprofit organizations. He is a national speaker and author, having written three books and numerous professional articles on matters related to the nonprofit sector. Mr. Batts was recently inducted by the National Association of Church Business Administration into its Hall of Fame in recognition of his significant professional contributions to the church community.

Mr. Dan Busby is the president of ECFA. He served as controller with the University Hospitals in Kansas City, as the founding partner of a CPA firm in Kansas City, and the chief financial officer of The Wesleyan Church denominational offices in Indianapolis. Serving with ECFA since 1998, Mr. Busby became the president in 2009. He has been Zondervan's church and nonprofit tax and finance author since 1990, and is a noted speaker across the United States.

Rev. Luis Cortés, Jr., is the founder of Esperanza, Philadelphia, one of the largest Hispanic evangelical networks in the nation. A national leader of Hispanic concerns, he has provided technical assistance to over 450 Hispanic nonprofits with funding over $11 million. He founded The National Hispanic Prayer Breakfast in Washington, DC and was a founding board member of United Bank, the first African American-owned bank in Pennsylvania. He serves on the board of the Federal Home Loan Bank of Pittsburgh (an SEC corporation and a GSE), for which he also previously served as vice chairman; the boards of the Cancer Treatment Center, northeast region; and The American Bible Society.

Mr. Mark Davis is the executive pastor and CFO of Calvary Chapel Fort Lauderdale. He has served there for the past 24 years and has had the privilege of carrying out the mission of the church as it has grown to be one of the top ten largest churches in the United States. Mr. Davis has served on numerous boards including 4KIDS of South Florida, the Christian Community Foundation, Sheridan House Ministries, Taylor University, and the Standards Committee of ECFA.

Mr. Stephen Douglass is the president of Campus Crusade for Christ (Cru), Orlando, which is one of the largest nonprofit organizations in the United States. Campus Crusade (Cru) exists to help fulfill the Great Commission by winning, building, and sending in the power of the Holy Spirit and helping the body of Christ do evangelism and discipleship. Mr. Douglass is also an author, speaker, and radio host.

Mr. Richard Hammar is an attorney, CPA, general counsel for the Assemblies of God in Springfield, Missouri, and best-selling author specializing in legal and tax issues for churches and clergy. Mr. Hammar has written over 100 books, and is a noted national speaker on church-related topics. He is a former ECFA board member.

Mr. Mark Holbrook is the president and CEO of the Evangelical Christian Credit Union, Brea, California, a $3.2 billion (assets under management) financial cooperative serving the banking needs of ministries across the United States and missionaries around the world. Mr. Holbrook has served on several nonprofit ministry boards and currently serves as ECFA's board chair.

Dr. Joel Hunter is senior pastor of Northland, A Church Distributed, in Longwood, Florida, a pioneering congregation of 15,000 that uses technology to connect people in worship around the globe. Dr. Hunter is also a member of the board of the National Association of Evangelicals and the World Evangelical Alliance. He served during the inaugural year on the U.S. President's Advisory Council on Faith-based and Neighborhood Partnerships.

Mr. Lauren Libby is president of TWR, Cary, North Carolina. Mr. Libby co-founded Educational Communications in Colorado Springs, which comprises 15 radio stations and 28 translators. He formerly served at The Navigators in various senior executive posts. Mr. Libby is a member of the boards of Northwestern College, NRB, and ECFA, and a former ECFA Standards Committee chair.

Dr. Jo Anne Lyon is the general superintendent of The Wesleyan Church, Indianapolis, Indiana, and a member of the ECFA board. She was previously the founder and CEO of World Hope International, Alexandria, Virginia, a faith-based relief and development organization alleviating suffering and injustice in 30 countries.

Rev. William Townes, Jr., a CPA, is vice president for convention finance for the Executive Committee of the Southern Baptist Convention (SBC), Nashville, where he provides oversight of the financial operation of the Executive Committee and the organization of the annual SBC meeting. Previously, Rev. Townes served as the chief financial officer for the Georgia Baptist Convention and chief development officer for the North American Mission Board, Atlanta.

Dr. Kenneth Ulmer is senior pastor and teacher of Faithful Central Bible Church, Inglewood, California. He ministers under the favor of God and is a nationally known speaker and author. Dr. Ulmer is also the former president of The King's University as well as a founding board member, adjunct professor, and dean of The King's University at Oxford, an annual summer session held at Oxford University.

Dr. Dolphus Weary is president of the Rural Education and Leadership (R.E.A.L.) Christian Foundation, Richland, Mississippi. He is a noted author and speaker on racial reconciliation issues. Previously, he served 27 years with Mendenhall Ministries, a multi-faceted Christian community development ministry, which was used as a model to launch the now Christian Community Development Association (CCDA); and then 10 years as the executive director/president of Mission Mississippi, a statewide movement encouraging the Body of Christ in Mississippi to work at eliminating racism. He serves on a number of national and local boards, including Belhaven University and InterVarsity Christian Fellowship. He is a former ECFA board member.

Mr. David Wills is president of the National Christian Foundation, Alpharetta, Georgia, serving over 9,000 families by providing giving solutions and tools to maximize resources for Kingdom purposes. An attorney, Mr. Wills is a member of the boards of ECFA, Generous Giving, Hope for the Heart, ProVision Foundation, and the Cathy Family Foundations (Chick-Fil-A). He is the co-author of two books and a frequent lecturer.

Panel of Religious Sector Representatives

Mr. Ed Anderson, CPA, is senior vice president and CFO of Compassion International, Inc. in Colorado Springs. Compassion International is one of the world's largest Christian child development organizations, serving more than 1.2 million children in 26 of the world's poorest countries. Leading the finance function of Compassion International for over 30 years, Mr. Anderson has launched successful non-governmental organizations in seven international locations. He is also a member of the ECFA Standards Committee.

Mr. Mike Buster earned his bachelor's degree from Ouachita Baptist University and his master's degree from Southwestern Baptist Theological Seminary. For the past 23 years he has been on staff at Prestonwood Baptist Church, Plano, Texas, and serves as the executive pastor. He has served as adjunct professor at three Southern Baptist theological seminaries. Mr. Buster also serves on the board of trustees for GuideStone Funds, Ouachita Baptist University, Amazon Outreach, and Bridge Builders Ministry.

Dr. Paul Cedar serves as the chairman/CEO of the Mission America Coalition/The US Lausanne Committee that includes over 500 national ministry leaders. Dr. Cedar has served as the president of the Evangelical Free Church of America for six years. He has served as chairman of the Lausanne Committee for World Evangelization and is a member of the National Prayer Committee and the board of the U.S. Center for World Missions and on the advisory boards of a number of strategic ministries. Dr. Cedar is the author of eight books. He has served as pastor in several churches, adjunct professor or visiting professor at five U.S. theological seminaries, and has lectured at colleges and theological seminaries in other parts of the world.

Mr. Danny de Armas is the senior associate pastor at First Baptist Church Orlando, where he leads the staff and oversees the ministry programs and business functions of the church. He earned his bachelor's degree in education at the University of Central Florida and his master of divinity degree from New Orleans Baptist Theological Seminary.

Ms. Deirdre Dessingue serves as associate general counsel for the United States Conference of Catholic Bishops, where she specializes in the law of tax-exempt organizations. Ms. Dessingue received both her undergraduate and law degrees from the Catholic University of America in Washington, DC. She was with the Exempt Organizations Division of the IRS National Office for five years. From 2001 to 2005, she served as a member of the IRS Advisory Committee on Tax Exempt and Government Entities (ACT). For ten years, she served as co-chair of the Religious Organizations Subcommittee of the American Bar Association (ABA) Tax Section's Exempt Organizations Committee. Ms. Dessingue is admitted to the bar in the District of Columbia and in New Jersey. She is a frequent speaker and writer on topics relating to the tax exemption of churches and religious organizations.

Mr. Nathan J. Diament is the director of public policy for the Union of Orthodox Jewish Congregations of America in Washington, DC. He is an honors graduate of Yeshiva University and the Harvard Law School. Diament has worked closely with members of both political parties to craft legislation addressing religious liberty issues, education reform, tax and fiscal issues, and more. In 2009, Mr. Diament was appointed by President Obama to serve as one of 25 members of the President's Faith Advisory Council.

Bishop Henry Fernandez is an author, entrepreneur, and the senior pastor of The Faith Center in Fort Lauderdale, with more than 10,000 members. He is the founder/chancellor of the University of Fort Lauderdale. He is a visionary who developed his business and financial acumen in the corporate arena and is now committed to helping people reach their full potential.

Mr. J. Daniel Gary is administrative counsel for the General Council on Finance and Administration (GCFA) of The United Methodist Church in Nashville. As part of his work for GCFA, he provides guidance on a wide variety of legal issues affecting churches, including charitable giving, legislative and political campaign activities, and clergy compensation. Mr. Gary received his Ph.D. in mathematics from the University of Illinois and his J.D. from the Washington and Lee University School of Law.

Major George E. Hood serves at The Salvation Army National Headquarters, Washington, DC, as the National Community Relations & Development Secretary. In this role, he holds administrative responsibility for marketing communications, public relations, government relations, and corporate relations for The Salvation Army in the United States. Major Hood's background includes over 30 years of nonprofit leadership and an additional 15 years in corporate marketing and business administration. He holds a master in management from Indiana Wesleyan University.

Mr. Jon A. Laria, CPA, is CFO of OneHope in Pompano Beach, Florida. As the CFO of international religious organizations for the past 15 years, he has developed policies and procedures that ensure compliance on clergy housing allowance, political activism, executive compensation, and ministerial tax status. At conferences Mr. Laria has equipped thousands of church leaders in accounting, budgeting, and compliance matters. He also has extensive experience auditing publicly-held companies and restoring and/or maintaining compliance with SEC reporting requirements. He has served on the boards of various public and nonprofit organizations and authored the book "Win Your War Against Debt."

Sr. Georgette Lehmuth, OSF (Franciscan Sister of Our Lady of Perpetual Help), has served as president and CEO of the National Catholic Development Conference (NCDC) in Hempstead, New York for eleven years. NCDC is an association of about 400 religious charitable institutions, promoting ethical, accountable professional fundraising in the context of ministry. She worked collaboratively regarding regulatory and tax issues, as well as with the U.S. Postal Service. She has spoken at various conferences both in the United States and abroad regarding ethical, accountable fundraising. For the seventh time, she has received recognition by the Nonprofit Times as one of the Top 50 Persons of Power and Influence in the nonprofit community.

Mr. Robert Lipps is an attorney and CPA and has served large religious organizations for over 25 years as board member, general counsel, and CFO. As the Area Senior Vice President with Arthur J. Gallagher & Co. in San Francisco, Mr. Lipps leads a practice group focusing on strategic risk management and insurance solutions for mid- to large-size nonprofit and religious organizations. He has worked with many of the nation's largest religious nonprofit organizations.

Dr. Ingrid Mattson is professor of Islamic Studies and director of the Macdonald Center for the Study of Islam and Christian-Muslim Relations at Hartford Seminary in Hartford, Connecticut. Her research focuses on Islamic ethics and law in society. Dr. Mattson earned her Ph.D. in Islamic studies from the University of Chicago in 1999. Among her publications is The Story of the Qur'an: Its History and Place in Muslim Life. From 2006 to 2010 she served as president of the Islamic Society of North America (ISNA); she previously served two terms as vice president, and she is the first woman to serve in either position.

Mr. Simeon May has been the chief executive officer for the National Association of Church Business Administration since 1998. He is an ordained minister, a CPA, a Certified Church Administrator, and a Certified Association Executive. Mr. May has been a member of the First Baptist Church of Richardson, Texas, since 1976, and served the church as its minister of business administration for almost 15 years.

Dr. Uma Mysorekar is president of the Hindu Temple Society of North America. She has initiated numerous programs to bring the community together including spiritual and cultural activities. She has also initiated interfaith meetings to bring about awareness of Hinduism and has spoken at numerous functions to educate people on Hinduism. She is charged with responsibility for daily affairs, temple expansion, communication, and the implementation of programs that address the psychological and emotional issues facing children growing up within two diverse cultures.

Mr. Paul D. Nelson served as ECFA's president from 1994 to 2006, and was honored with the designation of President Emeritus. He was named "Nonprofit Executive of the Year" in 1996 by The Nonprofit Times for ECFA's leadership in bringing about a successful settlement to the Foundation for New Era Philanthropy scandal. In 2005, he was recognized as one of the Times "Top 50 Power and Influence" honorees. From 2004 to 2007, he served as a member of the Panel on the Nonprofit Sector, convened by Independent Sector. Mr. Nelson currently serves on the boards of World Vision U.S. and Focus on the Family.

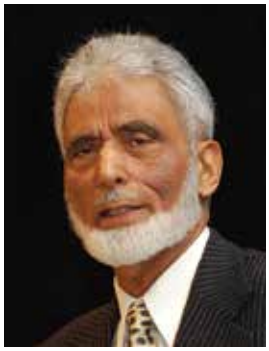
Mr. Peter Rathbun is the general counsel of American Bible Society in New York City. A graduate of Georgetown University Law Center, Mr. Rathbun has counseled nonprofit religious organizations for over 20 years, first in private practice and now in-house. Prior to law school, he spent 15 years in corporate information technology management in California.

Rabbi David Saperstein has served as director of the Religious Action Center of Reform Judaism for more than three decades. Rabbi Saperstein has headed several national religious coalitions and serves on the boards of numerous national organizations, including the NAACP, People For the American Way, National Religious Partnership on the Environment, and the World Bank's World Faith Development Dialogue. In 1999, he was elected as the first chair of the U.S. Commission on International Religious Freedom, and in 2009 he was appointed by President Obama as a member of the first White House Council on Faith-Based and Neighborhood Partnerships. Also an attorney, Rabbi Saperstein teaches seminars in both First Amendment Church-State Law and in Jewish Law at Georgetown University Law School.

Rabbi Julie Schonfeld started her career as a congregational rabbi on the Upper West Side of Manhattan. She began working for the Rabbinical Assembly in New York City, spearheading projects on rabbinic development and women in the rabbinate, before becoming the executive vice-president of the Rabbinical Assembly (RA), the international association of Conservative/Masorti rabbis, in 2009. The Rabbinical Assembly offers rabbinic support, programming, mentorship, and works on major projects including liturgical publications, public policy, social justice, and professional development. Most recently, she was named one of the Forward 50; Newsweek named her one of the 50 most influential rabbis in 2011; and she was appointed to President Obama's Council for Faith-Based and Neighborhood Partnerships.

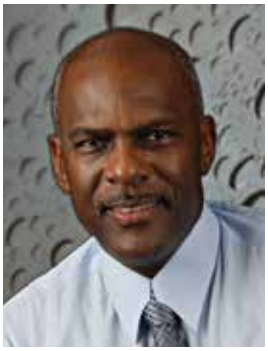
Ms. Sherre Stephens is the director of executive services at GuideStone Financial Resources in Dallas. Ms. Stephens focuses primarily on retirement and compensation strategies for executives and key leadership of organizations and large churches. She works extensively with church plans, executive deferred compensation arrangements, and ministers' tax issues. She often speaks to employee benefit professionals on these topics and writes for a number of publications.

Dr. Siva Subramanian is the co-founder of Sri Siva Vishnu Temple, the Association of Hindu Jain Temples of Metropolitan Washington, DC, and the Council on Hindu Temples of North America, as well as serving as first vice president of Interfaith Organization. He is also a board member of Hindu American Seva Charities and a founding board member of Hindu American Community Services Inc. Dr. Subramanian is also a professor of Pediatrics and Obstetrics and Gynecology, and is the Chief of Neonatology at Medstar Georgetown University Hospital (MGUH), Washington, DC. He is published extensively, has taught Religious Traditions in Health Care, and served on the Dean's Council on Bioethics and as senior ethicist at MGUH. Dr. Subramanian is a faculty associate at Kennedy Institute of Ethics and past chairman of the Hospital Ethics Committee and Pediatric Ethics Committee.



Dr. Sayyid M. Syeed is the national director for Interfaith and Community Alliances at the Islamic Society of North America (ISNA), Washington, DC, the oldest and the largest American Islamic organization. Previously, he served for 12 years as secretary general (CEO) of ISNA, a national umbrella of some 300 Islamic organizations. In that capacity, in the wake of 9/11, Dr. Syeed worked closely with the U.S. Treasury Department to promote best practices and transparency in the Muslim organizations in the United States.

Mr. Thomas E. Wetmore has been associate general counsel for the world headquarters of the Seventh-day Adventist Church in Silver Spring, Maryland, since 1984. He received a J.D. from George Washington University in 1984. Licensed to practice in Maryland, the District of Columbia, and Florida, he has been an active member since 1989 of the ABA Tax Section, Exempt Organizations Committee and is currently co-chair of the Religious Organizations Subcommittee. His practice areas are tax, employee benefits, contracts, corporate, and general nonprofit law.



Mr. Jerry Luren White is the chief financial officer for Mt. Zion Baptist Church in Nashville. Mt. Zion has more than 25,000 members, with Bishop Joseph W. Walker, III, as senior pastor. Mr. White has a degree in accounting from Southern University and an MBA from Texas A&M University. He is a Certified Public Accountant and a Certified Internal Auditor with over 35 years of accounting and finance experience, including an international assignment in Frankfurt, Germany.

Mr. Steven Woolf serves as senior tax policy counsel in the Washington, DC office of the Jewish Federations of North America (JFNA). In his position, Mr. Woolf fulfills the role of chief advocate and lobbyist on legislative proposals, administrative regulations, and public policy issues before Congress and the Executive Branch regarding nonprofit tax issues. He works closely with endowment and planned giving colleagues at JFNA and in the over 150 Jewish Federations throughout North America. Mr. Woolf spent most of his career working in the National Tax Office of the Big Four accounting firm, PricewaterhouseCoopers and its predecessor, Coopers & Lybrand. He represented clients on tax, legislative, and regulatory issues before Congress and the Treasury Department, and obtained numerous tax rulings from the Internal Revenue Service. He received his J.D. from American University.

Panel of Nonprofit Sector Representatives

Ms. Linda Crompton is the CEO of DC-based BoardSource, formerly the National Center for Nonprofit Boards, known as the premier voice of nonprofit governance in the country. BoardSource has a 23 year history of educating and inspiring those who serve on boards to create high impact, effective nonprofits. Formerly, Ms. Crompton was the president of Investor Responsibility Research Center, as well as the founder of Citizens Bank of Canada. She holds an MBA from the University of Kent Canterbury (UK), an MA from the University of British Columbia (CAN), and a BA from Simon Fraser University (CAN).

Ms. Linda Czipo is executive director of the Center for Non-Profits, New Jersey's state association of nonprofits, which strengthens the state's nonprofit community through advocacy, public education, legal and management assistance, and member services. Her nonprofit sector experience spans over 25 years. Ms. Czipo is a public policy committee member and past board treasurer of the National Council of Nonprofits and a member of the New Jersey Commission on National and Community Service.

Mr. David Evans is U.S. president and global executive officer of the international relief and development organization Food for the Hungry (FH). He is based in FH's Washington, DC office. In this role, he serves on a four-person global executive leadership team that oversees and directs FH's worldwide operations. His specific areas of responsibility include oversight for all international programs implemented by FH, grant funding from the United States and other northern governments, private resource development in the United States and abroad, and U.S. strategic partnerships.

Mr. Renny Fagan joined the Colorado Nonprofit Association in Denver in March 2009. The Colorado Nonprofit Association provides capacity building resources and technical assistance to almost 1,400 members and advocates on behalf of the entire nonprofit sector. Previously, Mr. Fagan served as the state director for U.S. Senator Ken Salazar, a Colorado Deputy Attorney General, Director of the Colorado Department of Revenue, and began his public service as a state legislator. He earned degrees from Northwestern University School of Law and the University of Chicago.

Mr. Matthew Hamill oversees the National Association of College and University Business Officers' (NACUBO) policy, research, govervnment, and public relations activities from their Washington, DC office. Before joining NACUBO, he held positions at a variety of nonprofit organizations, including The Institute for Higher Education Policy, Independent Sector, and the National Association of Independent Colleges and Universities. Mr. Hamill served as district representative for Rep. Matthew F. McHugh (NY) and as legislative director for Rep. Robert T. Matsui (CA).

Mr. Kyle H. Hybl currently serves as trustee, senior vice president, and general counsel for El Pomar Foundation in Colorado Springs. He is also past chairman of the Board of Regents of the University of Colorado System. Mr. Hybl serves as chairman of the Police Foundation of Colorado Springs and is on the board of directors for the Air Force Academy Foundation, Goodwill Industries Foundation, and Colorado Springs World Arena. He also serves on the Board of Regents of The Fund for American Studies and the Alliance for Charitable Reform steering group. Mr. Hybl is a former Air Force Captain and Judge Advocate. He is a graduate of the University of Colorado, Boulder, where he received both his Bachelor of Arts and Juris Doctor degrees.

Ms. Margaret Linnane is the executive director of the Rollins College Philanthropy & Nonprofit Leadership Center located in Winter Park, Florida. She has full administrative responsibility for the college's multi-purpose resource center dedicated to providing a broad range of education programs, seminars, and services for volunteer and staff leadership of nonprofit organizations. Prior to joining the Philanthropy Center in 2004, Ms. Linnane served as executive director of the Second Harvest Food Bank of Central Florida in Orlando for 18 years.

Dr. William C. McGinly has 35 years of nonprofit management experience and is president and CEO of the Association for Healthcare Philanthropy (AHP), representing 5,000 executives raising funds for nonprofit health care providers. Dr. McGinly, who has been named for the past 13 consecutive years in the NonProfit Times Power & Influence Top 50, is a former board member for the Center on Philanthropy at Indiana University Indianapolis, a past chairman of the Greater Washington Society of Association Executives (GWSAE), an active member of the American Society of Association Executives (ASAE), an I/D/E/A/ Fellow, a Certified Association Executive (CAE), and received his doctorate in administration from American University.

Mr. Chuck McLean is responsible for conducting research for GuideStar, Williamsburg, Virginia, and customers interested in nonprofit sector data. He also works to identify new data sources and ways to present data effectively to GuideStar users. He has 15 years of experience as a teacher and researcher in various institutions of higher education. A graduate of Christopher Newport University, Mr. McLean also received an M.S. degree in mathematics from the College of William and Mary.

Mr. Justin Pollock is principal and founder of OrgForward, a nonprofit consultancy working with nonprofit agencies and capacity builders to develop strategies that encourage organizational sustainability. His practice focuses on strengthening the confluence of organizational leadership, programming, finance, and infrastructure. Prior to launching OrgForward, Justin served as COO for Maryland Nonprofits where he was responsible for the overall programming, finance, human resources, and membership activities. He brings a diverse set of experiences to his presentations as an educator and organizational consultant. He has more than 20 years of experience in the education and nonprofit fields with an extensive background in the areas of leadership development, organizational management, group process facilitation, curriculum development, teambuilding, and adult education. Justin holds a dual B.A. in Organizational Theory and Environmental Studies from Pitzer College and an M.Ed. in curriculum and teacher education from Stanford University.

Ms. Pat Read works with nonprofits and foundations in developing and implementing policy advocacy strategies, fundraising and earned income programs, and board governance. Ms. Read has over 25 years of experience in the nonprofit and philanthropic community, having served as senior vice president for public policy at Independent Sector, project director of the Panel on the Nonprofit Sector, executive director of the Colorado Nonprofit Association, and vice president for program services at The Foundation Center.

Dr. Patrick M. Rooney is executive director of the Center on Philanthropy at Indiana University in Indianapolis, and a nationally recognized expert and speaker on philanthropy. He is frequently quoted by national news media and has served on several national advisory committees. As the Center's director of research, he built it into one of the nation's premier research organizations, leading research projects for organizations such as Giving USA Foundation, Bank of America, American Express, Google, and United Way Worldwide.

Mr. William A. Schambra is the director of the Hudson Institute's Bradley Center for Philanthropy and Civic Renewal in Washington, DC. Prior to joining the Hudson Institute in January of 2003, he was director of programs at the Bradley Foundation in Milwaukee. Before joining Bradley in 1992, Mr. Schambra served as a senior advisor to and chief speechwriter for Attorney General Edwin Meese III, Director of the Office of Personnel Management Constance Horner, and Secretary of Health and Human Services Louis Sullivan. He was also director of Social Policy Programs for the American Enterprise Institute, and co-director of AEI's "A Decade of Study of the Constitution." He was appointed by President Reagan to the National Historical Publications and Records Commission, and by President George W. Bush to the board of directors of the Corporation for National and Community Service. Mr. Schambra has written extensively on the Constitution, the theory and practice of civic revitalization, and civil society.

Ms. Kelly Shipp Simone is the deputy general counsel at the Council on Foundations in Arlington, Virginia, a membership organization that supports grant-makers in various aspects of foundation management. She provides legal information to private foundations and public charities. Ms. Simone has authored several publications for foundations including "Top 10 Ways Private Foundations Can Influence Public Policy." She also works closely with the Community Foundations National Standards Board on issues related to the National Standards for U.S. Community Foundations™ accreditation program.

Ms. Sandra Swirski is an attorney with more than two decades of experience in public policy. Ms. Swirski has advised two senior U.S. senators, was an executive at a Fortune 10 company, has advised multinational clients at a premier professional services company, and has founded two public policy/government affairs firms in Washington, DC, including Urban Swirski & Associates. Currently her practice focuses on advising Fortune 500 executives and leaders of nonprofit organizations on public policy and government affairs issues.

Ms. Christy L. Tharp is the chief financial officer for Feed The Children (FTC), Oklahoma City, one of the ten largest international charities in the United States. She is responsible for financial reporting and management, and serves as a key management leader providing professional and ethical guidance to maintain integrity and uphold the expectations of regulatory agencies and donors. Ms. Tharp also has eight years' experience with the international public accounting firm of Deloitte & Touche, LLP, where she was an audit manager, serving many different industries including a large client base of nonprofit organizations.

Mr. David L. Thompson is the vice president of public policy at the National Council of Nonprofits in Washington, DC, the nation's largest nonprofit network representing over 25,000 charitable nonprofit organizations through their state associations. He previously served as director of government affairs at Independent Sector and as senior counsel and policy director to the Senate Health, Education, Labor and Pensions Committee. Mr. Thompson began his career in private law practice, specializing in labor and employment law. He holds a bachelor's degree from Emory University and a law degree from the University of Georgia.

Mr. Robert Zachritz is the senior director at World Vision U.S. for Advocacy and Government Relations. Prior to joining World Vision in 2003, Mr. Zachritz worked for almost 15 years within the U.S. Congress for both Republican and Democratic members of Congress. He received a bachelor of arts in international relations from Michigan State University and a master of arts in international trade/business from George Mason University. He has studied overseas at Cambridge University in England and in Moscow, Russia. Mr. Zachritz has traveled to nearly 40 countries—mostly on humanitarian business in Africa, Asia, Latin America, and the Middle East.

Panel of Legal Experts

Mr. Timothy Belz is a lawyer in private practice in St. Louis. During the last 20 years, he has handled dozens of cases concentrating on the constitutional rights of individuals and organizations, especially First Amendment rights of free speech and religious freedom. Mr. Belz is a 1972 graduate of Covenant College and a 1976 graduate, with high honors, of the University of Iowa Law School, where he graduated Order of the Coif.

Mr. Thomas C. Berg, James L. Oberstar Professor of Law and Public Policy at the University of St. Thomas in Minneapolis, is an expert on religious liberty and church-state interactions. He has written four books and nearly 100 articles on law-religion issues; has written more than 30 briefs in religion cases in the U.S. Supreme Court and lower courts; and has testified several times before Congress and state legislatures. Before entering academia, he represented nonprofit organizations, among other clients, at the Mayer Brown law firm in Chicago.

Mr. John Butler specializes in serving exempt organizations. Areas of focus include tax exemption, unrelated business income, benefit plans, compensation, minister and missionary taxation, and charitable solicitations. He has been with CapinCrouse, LLP, Greenwood, Indiana, since 1994. Prior to association with CapinCrouse, Mr. Butler had a private law practice and served with Campus Crusade for Christ as in-house legal counsel (the last three years as legal department director). Mr. Butler received both B.A. and J.D. degrees from the University of Georgia.

Mr. Todd Chasteen specializes in nonprofit law as corporate counsel with Samaritan's Purse, a Christian international crisis relief agency based in Boone, North Carolina. He was a member of the Advisory Committee on Self-Regulation of the Charitable Sector and the Government Oversight and Self-Regulation Work Group for the Panel on the Nonprofit Sector, which provided recommendations on nonprofit best practices to the United States Senate Finance Committee. He also served on the ECFA Legislative Committee and the TRUST Coalition reviewing nonprofit issues.

Mrs. Erika E. Cole is the managing attorney for The Law Offices of Erika E. Cole, LLC, a law firm located in Owings Mills, Maryland, which serves church and ministry clients. Mrs. Cole represents many churches of over 10,000 members, as well as smaller congregations. She is also the founder of The Church Compliance Conference, an annual event designed to inform and inspire pastors and leaders about legal compliance matters. She has served as an adjunct professor at Loyola College (MBA Program) and the University of Baltimore School of Law, and is a sought-after speaker in church law matters.

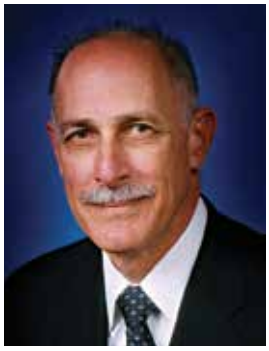
Dr. James A. Davids is a graduate of Calvin College and Duke University School of Law. Upon graduation from Duke, Mr. Davids practiced law in Chicago for 25 years before going to Washington, DC to serve in the U.S. Department of Justice. From 2001 to 2003, Mr. Davids served as the deputy director of the Department of Justice's Task Force for the Faith-Based & Community Initiative. Since 2003, he has taught constitutional law at Regent University's School of Government in Virginia Beach, Virginia.

Mr. Derek Gaubatz is a recognized expert in religious liberty law and currently serves in Richmond, Virginia, as general counsel of the International Mission Board (IMB) of the Southern Baptist Convention. Prior to joining the IMB, Mr. Gaubatz served for several years as the Director of Litigation of The Becket Fund for Religious Liberty. He is a graduate of Stanford Law School.

Dr. David Gibbs, Jr., is the founder and president of the Christian Law Association, a nationwide ministry that provides legal assistance to churches, pastors, and Christians free of charge. Dr. Gibbs is the author of seven books and has served with the Christian Law Association for over 40 years. During his years of service, he has appealed and argued before 15 different State Supreme Courts.

Mr. Laurence A. Hansen is a partner in the Chicago office of Locke Lord LLP, where he focuses on employee benefits, executive compensation, and tax-exempt organizations. Among his clients are various religious organizations, including retirement and benefit plans covering thousands of participants throughout the United States.

Mr. Emanuel ("Emil") J. Kallina, II, is the managing member of Kallina & Associates, LLC, which focuses its practice on estate and charitable planning for high net-worth individuals and represents charitable organizations in complex gifts. Mr. Kallina works extensively with charitable lead and remainder trusts, supporting organizations, and private foundations. He has also practiced business law, corporate tax law, partnerships, and real estate. Mr. Kallina founded the website CharitablePlanning.com, which provides professionals the tools needed to complete planned and major gifts.



Mr. Dennis Kasper, a partner in the Los Angeles office of the law firm Lewis Brisbois Bisgaard & Smith LLP, has 30 years of experience representing charitable organizations and businesses. His charitable clients include churches, schools, denominational bodies, mission organizations, and multinational religious charities, in addition to public benefit organizations.

Mr. Steven T. McFarland has 30 years of experience in law practice and public service, in which he has directed the Center For Law and Religious Freedom of the Christian Legal Society, spearheaded the Faith-Based and Community Initiative in the U.S. Department of Justice, directed a federal commission for international religious freedom, served prisoners abroad at Prison Fellowship International, and now serves as chief legal officer of World Vision in Washington, DC, a Christian relief and development ministry serving vulnerable children worldwide.

Mr. G. Daniel (Danny) Miller is a partner in the Washington, DC office of Conner & Winters LLP. He graduated from Vanderbilt University in 1971 and received his law degree from the Vanderbilt University School of Law in 1974. Mr. Miller specializes in employee benefits and advises church benefit programs and religious nonprofits nationally. Mr. Miller is a Fellow of the American College of Employee Benefits Counsel and is a former member of the Advisory Committee to the Commissioner of the Tax-Exempt and Government Employers Division of the Internal Revenue Service.

Mr. Charles O. Morgan, Jr., is a tax lawyer, specializing in trusts, estates and charitable organizations. He is a graduate of Wheaton College, and holds a law degree from the University of Miami and Masters of Laws in Taxation (cum laude) from New York University. He is chairman of the audit committee of Billy Graham Evangelistic Association, executive director of the Don Shula Foundation, board member of Chatlos Foundation and the Orange Bowl Committee, and former board member of the Christian Legal Society. Mr. Morgan is author of *Jesus Online*.

Mr. Michael P. Mosher, an Illinois attorney and founder of Mosher & Wagenmaker, LLC, has concentrated his legal practice on serving the needs of charitable, religious, and educational organizations since 1976. Today, Mr. Mosher represents several hundred religious institutions throughout the country, assisting with a wide range of tax and corporate law issues and promoting principles of good governance. He teaches the law of tax-exempt organizations at three universities in Chicago and is a frequent speaker at nonprofit and legal seminars.

Ms. Lisa A. Runquist, attorney at law in Los Angeles, has represented nonprofits for 35 years. She is the winner of both the Outstanding Lawyer Award and the Vanguard (Lifetime Achievement) Award from the American Bar Association (ABA) Business Law Section, NP Committee. She is the author/editor of Guide to Representing Religious Organizations (2009), The ABC's of Nonprofits (2005), and Nonprofit Resources (2007), as well as serving as ABA liaison to the ALI/ABA Principles of the Law of Nonprofit Organizations, ABA Advisor to ULC Uniform Unincorporated Nonprofit Association Act, and ABA Advisor to ULC Model Protection of Charitable Assets Act.

Mr. Kevin Snider is chief counsel for Pacific Justice Institute in Sacramento, California. He has litigated numerous high profile First Amendment cases. Mr. Snider has taught church law to seminary students and is a frequent presenter on church law and religious liberties. He counsels pastors relating to church issues, and advises leaders of faith-based nonprofits on corporate matters. Mr. Snider is admitted to practice in the California and District of Columbia Bars.

Mr. Frank Sommerville, JD, CPA, is a shareholder in the law firm of Weycer, Kaplan, Pulaski & Zuber, P.C. He is also Board Certified in Tax Law by the Texas Board of Legal Specialization. Mr. Sommerville has served religious institutions of all sizes and all major faith communities (Christian, Jewish, Muslim, and Hindu). He is a regular contributor to many publications, including Christianity Today, Your Church, and PPC's Nonprofit Tax & Governance Guide: Helping Organizations Comply (2011). Trained as a commercial litigator, he has successfully litigated many court cases involving religious organizations. He frequently trains nonprofit and religious organizations regarding legal risks and compliance issues.

Mr. Erik Stanley serves as senior legal counsel with the Alliance Defending Freedom (ADF). He has focused his practice on appellate law, free speech, traditional family values, pro-life, and religious liberty constitutional law. Mr. Stanley has filed, briefed, and argued numerous trial and appellate cases on constitutional issues throughout the United States. He graduated from Temple University School of Law in the top five percent of his class and is a member of the Florida, Kansas, and the District of Columbia bars, as well as the U.S. Supreme Court and numerous federal district and appellate court bars.

Mr. Mathew D. Staver is the founder and chairman of Liberty Counsel, an international nonprofit litigation, education, and policy organization. He also chairs Liberty Counsel Action, Liberty Action, PAC, and Freedom Federation. He serves as dean and professor of law at Liberty University School of Law. He is a trustee for The Timothy Plan, a publicly-traded family of mutual funds. He serves on a number of nonprofit boards. Mr. Staver has written ten books, several hundred scholarly publications, and more than 210 published legal court opinions. He is board certified in appellate practice by the Florida Bar and has the highest AV rating given to attorneys by Martindale-Hubble. He is an accomplished constitutional litigator and has argued twice before the U.S. Supreme Court.

Mr. James R. Walker is a partner at Rothgerber Johnson & Lyons LLP in Denver. His broad practice includes advising charities, religious organizations, and donors on tax-related matters. Mr. Walker assisted the Panel on the Nonprofit Sector in its response to the U.S. Senate Finance Committee in 2004 to 2006. In 2008, he secured a high profile private letter ruling from the IRS's National Office for a Colorado Type III supporting organization. He also helps religious leaders navigate through campaign restrictions.

Mr. Charles M. ("Chip") Watkins is an attorney with Webster, Chamberlain & Bean, LLP, Washington, DC. Mr. Watkins served as an attorney in the office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations) of the Internal Revenue Service from 1981 through 1985. Mr. Watkins counsels and represents religious and other tax-exempt organizations on tax, employee benefits, corporate governance, fundraising, contracts, and other legal and regulatory matters. Mr. Watkins is a member of the District of Columbia Bar, and a ruling elder of McLean Presbyterian Church in McLean, Virginia.

Mr. Thomas Winters is the founding partner of Winters & King, Inc., a Tulsa, Oklahoma law firm. He teaches as an adjunct professor on nonprofit law, and is a frequent presenter at nonprofit conferences. He has worked with many nonprofit clients facing inquiries by governmental entities including the IRS and Senate Finance Committee.

Bryan Cave LLP

Mr. Stuart Lark is a partner with Bryan Cave LLP. For more than 15 years, his practice has focused on advising nonprofit clients on corporate, tax, transactional, and other matters related to their unique missions. Mr. Lark helps clients navigate complex matters involving corporate structure (including formation and governance), operations (joint ventures, trademarks, commercial activities, international transactions), finance, mergers and acquisitions, and taxes (IRS rulings, unrelated trade or business income tax, private foundation rules, property and sales tax).

In addition, Mr. Lark counsels many clients with respect to religious accommodations in the law, including tax exemptions, faith-based employment rights, government benefits, immigration, church property disputes, and other matters. He previously served as legal counsel for the Christian Legal Society's Center for Law and Religious Freedom in Washington, DC. He has also written many papers and amicus briefs on critical religious liberty issues, including two briefs recently filed on behalf of 32 national religious organizations in U.S. Supreme Court cases impacting religious hiring rights.

Mr. John Wylie is a partner in the Bryan Cave LLP Colorado Springs office. For nearly 30 years, Mr. Wylie has focused on advising nonprofit organizations, including religious, charitable, sports, health care, and educational institutions, as well as private foundations. He led the firm's Nonprofits Team for 10 years, and currently co-leads with Mr. Lark the firm's practice with religious organizations. Mr. Wylie not only brings technical experience to his practice, but he also has a deep understanding of nonprofit organizations and a unique sensitivity to their priorities and legal needs. Mr. Wylie served on the national board of directors of Christian Legal Society for 10 years, including two years as president and chairman of the board.

Mr. Wylie's experience includes such activities as obtaining private letter rulings from the IRS, structuring mergers, joint ventures and "strategic alliances" between nonprofit organizations, as well as between nonprofits and for-profits, providing counsel regarding the international activities of such organizations and negotiating and closing mergers and major asset transactions.

Holland & Knight

Dr. Nathan A. Adams, IV, is a partner with Holland & Knight practicing in appellate and complex commercial litigation and assisting or serving as general counsel for a number of institutions with special emphasis on educational, healthcare, hospitality, nonprofit, and religious institutions. Dr. Adams has briefed and argued dozens of appeals in courts nationwide and extensively litigated and advised regarding diverse subject matter, such as Federal and state constitutional provisions; church autonomy doctrine, contractual requirements; intellectual property, unrelated business income, statutory and common law discrimination laws; false claims and deceptive trade practices; public records, ethics and elections laws; restrictive covenants; and fraudulent conveyance claims. Dr. Adams received his M.A. and Ph.D. from the University of Florida and J.D. from the University of Texas School of Law and is a Board Certified Specialist in Education Law.

Prior to joining Holland & Knight, Dr. Adams served as counsel for the Executive Office of the Governor, Department of Education, Division of Community Colleges, State Board of Education, Board of Governors, and Center for Law and Religious Freedom. He serves on the Board of the Florida Education Foundation, Florida Tax Watch Center for Smart Justice; as president-elect, Echo Ministries, as chairman of the Education Law Committee of The Florida Bar; and head of the Holland & Knight Religious Institutions Team.

Mr. Stuart Mendelsohn practices in the areas of real estate, land use, litigation, government affairs, and corporate law. His clients include a broad range of corporations, nonprofit organizations, builders, and developers. He serves as outside general counsel to a large religious nonprofit. Mr. Mendelsohn serves as executive partner for Holland & Knight's Northern Virginia office.

Mr. Mendelsohn served eight years on the Fairfax County, Virginia, Board of Supervisors and two years as vice Chairman of the Fairfax County School Board. He has also served on a number of regional transportation commissions, land use committees, and councils.

Prior to entering private practice, Mr. Mendelsohn was a senior manager of a defense contractor.

In the community, he has committed an extensive amount of time to community service in Fairfax County, the Commonwealth of Virginia, and nationally.

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

January 5, 2011

Dan Busby, President
Evangelical Council for Financial Accountability
440 W Jubal Early Dr, Suite 130
Winchester, VA 22601

Dear Mr. Busby,

I am writing to express my appreciation for the Evangelical Council for Financial Accountability's (ECFA) ongoing dialogue with me and my staff about the accountability of religious organizations. In my June 8, 2009, letter to you, I explained that my staff was considering several proposals to address policy issues. In that letter, I stated that I would reserve judgment on any proposals until my staff had completed its work.

I am enclosing a copy of the memo to me that transmits my staff's reviews of the media-based ministries I wrote to in 2007. This memo also outlines the policy issues identified by my staff. I am writing to request your input on how to address these issues and to help facilitate discussion on whether these issues can be addressed without legislation. ECFA has a proven track record of accountability with its member organizations and is uniquely situated to work with representatives from the religious and broader nonprofit community. The Panel on the Nonprofit Sector, spearheaded by Independent Sector, provided invaluable feedback to my staff's 2004 proposals regarding charity reform. ECFA's work will be just as vital in informing me and making a positive difference in the religious community.

As you consider the issues my staff raised, please remember our discussion in my office when you visited me with other members of ECFA board on March 12, 2009. I stated then that I believe that legislation should be the last resort. However, ideas for reform often inspire informed and thoughtful discussions which, in turn, lead to self-correction and eliminate the need for legislation.

ECFA was founded because of a challenge then-Senator Hatfield made in 1977 to Christian groups to be more accountable. He apparently was responding to a scandal in the religious community at that time. The size and diversity of the religious community in the United States has grown tremendously since the ECFA was created. I hope that a discussion of the issues raised by my staff will similarly result in increased accountability while acknowledging this growth and diversity.

I look forward to your response.

Sincerely,

Chuck Grassley

Charles E. Grassley
Ranking Member

In Appreciation

The Commission expresses its deep appreciation to ECFA for sponsoring, facilitating, and providing logistical support for the Commission's proceedings and for doing so with excellence. More specifically, the Commission expresses appreciation to:

- ECFA's board of directors for its support and guidance, and
- ECFA's leadership team and staff for their tireless effort:
  - Dan Busby, President
  - John Van Drunen, Vice President and General Counsel
  - Michael Martin, Director of Member Services and Associate Legal Counsel
  - Scott Anderson, Web Developer
  - Stephanie Guido, Assistant to the Commission
  - Travis Huntsman, Graphic Designer
  - Joy May, Executive Assistant, Graphics
  - Marsha Miller, Executive Assistant
  - Matt Pavey, Web Developer
  - Kim Sandretzky, Director of Communications
  - Michelle Szabo, Assistant to the Commission

The Commission also expresses sincere gratitude to the organizations and individuals who provided the funding to make the work of the Commission possible.

About ECFA

Founded in 1979, ECFA is an independent national accreditation organization for Christian organizations. ECFA establishes standards for governance, financial management, and fundraising. When organizations apply for accreditation, they commit to comply with all of ECFA's standards all of the time.

More than 1,700 churches, denominational organizations, colleges and universities, seminaries, K-12 schools, media ministries, rescue missions, adoption and orphan ministries, domestic and international mission groups, relief and development organizations, youth ministries, and other organizations are accredited by ECFA.

More information about ECFA is available at ECFA.org.

The views expressed in the accompanying Report by the Commission on Accountability and Policy for Religious Organizations were developed by the Commission and its Panels independently of the operations of ECFA.

COMMISSION ON ACCOUNTABILITY AND POLICY FOR RELIGIOUS ORGANIZATIONS

For additional copies of the report, please visit

religiouspolicycommission.org

COMMISSION ON ACCOUNTABILITY AND POLICY FOR RELIGIOUS ORGANIZATIONS

440 West Jubal Early Drive • Suite 100 • Winchester, VA • 22601
www.religiouspolicycommission.org