



*A higher standard.
A higher purpose.*

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Transparency of Financial Information and the Disclosure of Certain IRS Forms

Federal law requires charities to disclose Forms 1023, 990 (and 990-EZ), 990-T, and 5227 when requests are made in person or in writing. However, ECFA's Standard 5 goes beyond Federal regulation in that it states:

Standard 5 – Financial Disclosure – Every member shall provide a copy of its current financial statements upon written request and provide other disclosures as the law may require. A member must provide a report, on written request, including financial information, on the specific project for which it is soliciting gifts.

Audited financial statements disclosure under ECFA Standards. The Standard provides that “every member shall” provide its audited financial statement. Under this Standard, a member organization has no authority to determine the parameters of meeting the requirement; *i.e.*, denying access to its audited financial statements when an individual or another organization requests it. A member organization’s compliance with this Standard is a condition of continued ECFA membership in good standing.

The words “shall provide” clearly set forth the mandatory nature of this Standard’s requirement. The Standard’s language is not permissive in scope and does not merely provide a “guide” for a form of public accountability. Rather, this Standard requires the organization to provide its financial statements.

The use of the word “provide” in the drafting of the Standard is intentional. The sense of the word is “to supply”, “to furnish,” or “to give.” Merely making a current financial report available for inspection at the organization's headquarters or financial office is not sufficient. Restricting availability or charging a fee before providing a report discourages access. These restrictive practices are inconsistent with the Standard’s underlying policy consideration and philosophy.

ECFA Standard 3 requires that every member organization shall obtain an annual audit performed by an independent certified public accounting firm in accordance with auditing standards generally accepted in the United States of America (GAAS) with financial statements prepared in accordance with accounting principles generally accepted in the United States of America (GAAP). ECFA Standard 5 requires the disclosure of the

current audited financial statements, complete with auditor's opinion and notes. Summaries of audited financial statements contained in newsletters, brochures, or promotional literature does not satisfy the requirement of Standard 5. However, if the financial report as defined under Standard 3 is part of a larger report, such as the organization's annual report or a book of annual reports of affiliated or associated organizations, the organization is in compliance with Standard 5.

The Standard requires that the audited financial statement be sent or provided to anyone who submits a written request. The Standard lists no exceptions under which certain people, organizations, classes of people or organizations could be excluded from receiving the report. Therefore, a member organization is not justified in failing to provide a copy of its audited financial statements. The Standard's norm is disclosure to anyone seeking a copy of the audited financial statement.

A member is not required to comply with a request for a copy of its audited financial statement if it has made the document "widely available" or the member is subject to a harassment campaign.

Project reporting under ECFA Standards. The Standard provides that "on written request," every member "organization must provide a report, including financial information, on the project for which it is soliciting gifts." Project reports are valuable to communicate project results to donors and are a further evidence of the ministry's accountability.

A "project" generally occurs when a donor places a restriction on a gift as to purpose or time or a ministry accepts contributions that are solicited with a time limitation or for a specific area of ministry, such as a program or project. Solicitation for project-related gifts may occur via fund-raising events, through direct mail, Internet solicitation, by radio or television, and in other ways.

Unrestricted contributions have no implicit or explicit time or donor restrictions and are available to be used at any time and in any exempt area or operations of the organization. Therefore, project reporting does not apply to unrestricted gifts.

The financial aspect of the report should include the amount of donated income, the costs related to administering the project, and the dollar amounts that went directly to the project for which the solicitation was held. Any unusual items related to income or disbursements should be identified and explained. Audited financial statements provide overall financial data for the reporting period but are not intended to provide data on specific projects. In addition to financial reports, project accomplishments should be shared with the donor. This may include both short-term and long-range results of project gifts.

The appropriate style of the project report depends on various factors. If a donor requests a report in writing, a written response is generally appropriate. If the request is made by telephone, a verbal response may be adequate. Some charities may post project information on their Web site to reduce the need to provide written and verbal responses. If the project

reporting is made “widely available” or the member is subject to a “harassment campaign” (see earlier discussion), a member is not required to comply with a request for a copy of the project report.

The primary responsibility for project reporting is to a charity’s donors. Any information that is shared with individuals who have not donated to a certain project may be appropriate, but it is not required as a commitment to financial accountability.

Public disclosure of IRS forms. Federal requires the disclosure of certain forms that may be filed with the IRS by nonprofit organizations:

- **Form 1023.** Federal law requires an exempt organization to make available for public inspection, without charge, its application for tax-exempt status (if it has filed the application). An application includes the application form (Form 1023), all documents and statements the IRS requires the organization to file with the form, any statement or other supporting document submitted by an organization in support of its application, and any letter or other document issued by the IRS concerning the application.¹

If a charity did not have a copy of its tax-exempt application on July 15, 1987 and the application was filed before July 15, 1987, there is no requirement to disclose the Form 1023. So, for organizations that filed Form 1023 and do not meet this July 15, 1987 exception, the Form 1023 should be in their files so they may be prepared to comply with the public disclosure rules.

- **Form 990 and 990-EZ.** Federal law also requires an exempt organization to make its annual information returns (Form 990) available for public inspection without charge in the same offices (see above) during regular business hours.² Each return must be made available for a period of three years, beginning on the date the return is required to be filed, whichever is later.
- **Form 990-T.** If filed after August 17, 2006, the Pensions Protection Act of 2006 now requires IRC Section 501(c)(3) organizations to make their Form 990-T available for public inspection. However, this requirement does not apply if the Form 990-T was filed only to request a credit for federal telephone taxes paid.³
- **Form 5227.** As a result of the Pension Protection Act of 2006, the Form 5227 is open to public inspection.⁴ This form reports the financial activities of a split-interest trust; discloses charitable deductions and distributions; and assists in determining if the trust is subject to excise taxes as a private foundation.

¹ IRC Section 6104(d)(1)(A)

² IRC Section 6104(d)(1)(A)

³ IRC Section 4965 For further information:

<http://www.irs.gov/charities/charitable/article/0,,id=169963,00.html>

⁴ Act Section 1201(b) of the Pension Protection Act of 2006

- **Charges for copies.** An exempt organization must provide a copy without charge, other than a reasonable fee for reproduction and actual postage costs, of all or any part of any application for recognition of exemption or return required to be made available for public inspection to any individual who makes a request for the copy in person or in writing.⁵
- **Timeliness of compliance.** Generally, a nonprofit organization must provide copies of the documents, in response to an in-person request, at its principal, regional, and district offices during regular business hours. Also generally, the organization must provide the copies to a requestor on the day the request is made.⁶

In the case of an in-person request, when unusual circumstances exist so that fulfillment of the request on the same business day places an unreasonable burden on the nonprofit organization, the copies must be provided on the next business day following the day on which the unusual circumstances cease to exist or the fifth business day after the date of the request, whichever occurs first.

If a request is made in writing, the nonprofit organization receiving a written request for a copy must mail the copy within 30 days from the date it receives the request. If, however, a nonprofit organization requires payment in advance, it is only required to provide the copy within 30 days from the date it receives payment.⁷

- **Widely available exception.** A nonprofit organization is not required to comply with requests for copies of its application for recognition or annual information return if the organization has made the document widely available.⁸ The rules as to public inspection of the documents continue to apply.

A nonprofit organization can make its application or a return widely available by posting the document on an Internet page that the organization establishes and maintains. It can also satisfy the exception if the document is posted as part of a database of similar documents of other exempt organizations on an Internet page established and maintained by another entity.⁹

- **Harassment campaign exception.** If the IRS determines that a nonprofit organization is the subject of a harassment campaign and that compliance with the requests that are part of the campaign would not be in the public interest, the

⁵ IRC Section 6104(d)(1)(B)

⁶ Reg. 301.6104(d)-3(d)(1)(i)

⁷ Reg. 301.6104(d)-3(d)(2)(ii)

⁸ IRC Section 6104(d)(4); Reg. 301.6104(d)-4(a)

⁹ Reg. 301.6104(d)-4(b)(2)(i)

organization is not required to fulfill a request for a copy that it reasonably believes is part of the campaign.¹⁰

There is a procedure to follow for applying to the IRS for a determination that the organization is the subject of a harassment campaign (there is no form). The organization may suspend compliance with respect to the request, as long as the application is filed within 10 days after harassment is suspected, until the organization receives a response from the IRS.¹¹

Sample Policy

It is the organization's policy to:

- fully comply with the Federal (and any state) public disclosure requirements with respect to IRS Forms 990, 990-T, 1023 and 5227. Our organization will (fulfill all requests for the forms made in writing or in person, post them on our website, or some combination of these avenues in order to comply with the Federal public disclosure requirements).
- submit the Form 990 to the board of directors prior to the filing of the Form 990. While neither the approval of the Form 990 or a review of the 990 is required under Federal law, the organization's Form 990 shall be submitted to each member of the board of director's via (hard copy or email) at least 10 days before the Form 990 is filed with the IRS.
- fully comply with ECFA's Standards relating to providing a copy of the organization's current financial statements upon written request.
- fully comply with ECFA's Standards regard providing a report, on written request, including financial information, on the specific project for which our organization has solicited gifts.

¹⁰ IRC Section 6401(d(4); Reg. 301.6104(d)-5(a)

¹¹ Reg. 301.6104(d)-5(d), (e)