



November 30, 2022

Mr. Edward Killen  
Deputy Commissioner, TE/GE  
Internal Revenue Service  
1111 Constitution Ave, NW  
Washington, DC 20224

**RE: Request for Relief of Certain Form 990-PF Requirements**

Dear Mr. Killen:

The American Institute of CPAs (AICPA) is writing to address the need for guidance related to Internal Revenue Code (IRC) section 6033<sup>1</sup> and Treas. Reg. § 1.6033-3 regarding private foundations. Due to the concerns for the privacy of individual grant recipients as well as the increased burden on taxpayers and practitioners to provide all information required by Treas. Reg. § 1.6033-3 and Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation* in mandatory electronic format, the AICPA provides recommendations for the modification or removal of certain provisions included in Treas. Reg. § 1.6033-3 and related guidance.

Specifically, the AICPA provides recommendations and requests guidance on the following items related to Form 990-PF disclosures:

- I. Individual Grant Recipient Privacy Concerns
- II. Disclosure of Investments Held at the End of the Year on a Security-by-Security Basis

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The AICPA is the world's largest member association representing the accounting profession, with more than 428,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state, and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of our comments and welcome the opportunity to discuss these issues further. If you have any questions, please contact Christopher Anderson, Chair, AICPA

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<sup>1</sup> Unless otherwise indicated, hereinafter, all section references are to the Internal Revenue Code of 1986, as amended, or to the Treasury Regulations promulgated thereunder.

Exempt Organizations Taxation Technical Resource Panel, at [CAAnderson@maloneynovotny.com](mailto:CAAnderson@maloneynovotny.com);  
Arlene Schwartz Senior Manager – AICPA Tax Policy & Advocacy, at (202) 434-9218, or  
[arlene.schwartz@aicpa-cima.com](mailto:arlene.schwartz@aicpa-cima.com); or me at (601) 326-7119, or [JanLewis@haddoxreid.com](mailto:JanLewis@haddoxreid.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Lewis". The signature is fluid and cursive, with the first name "Jan" being more prominent and the last name "Lewis" following in a similar style.

Jan Lewis, CPA  
Chair, AICPA Tax Executive Committee

cc: Mr. Douglas O'Donnell, Acting Commissioner, Internal Revenue Service  
Mr. William Paul, Principal Deputy Chief Counsel and Deputy Chief Counsel (Technical),  
Internal Revenue Service  
The Honorable Lily Batchelder Asst. Secretary for Tax Policy, Department of the Treasury  
Ms. Amber MacKenzie, Attorney Advisor, Department of the Treasury

Mr. Robert Choi, Deputy Commissioner (TE/GE), Internal Revenue Service  
Mr. Robert Malone, Director (TE/GE), Internal Revenue Service  
Ms. Rachel Levy, Associate Chief Counsel (EEE), Internal Revenue Service

# AMERICAN INSTITUTE OF CPAs

## Request for Relief of Certain Form 990-PF Requirements

November 30, 2022

### OVERVIEW

#### **I. Individual Grant Recipient Privacy Concerns**

##### Background

Section 6033(c)(1)<sup>1</sup> provides that regulations shall require a private foundation to include in its annual return information that would have been required under section 6056<sup>2</sup> (relating to annual reports by private foundations).

The 1979 version of section 6056(b)(7) provided that a foundation was required to include in its annual report: “an itemized list of all grants and contributions made or approved for future payment during the year, showing the amount of each such grant or contribution, the name and address of the recipient...”

Mirroring former section 6056, Treas. Reg. § 1.6033-3(a)(2) provides that a foundation shall include on its annual return “an itemized list of all grants and contributions made or approved for future payment during the year, showing the amount of each such grant or contribution, the name and address of the recipient...” Section 6033(c) provides an exception for disclosure of indigent or needy individual grant recipients (other than a disqualified person within the meaning of section 4946) who receives less than \$1,000 during the year.

Private foundations are currently required to provide the names and addresses of all grant recipients as prescribed in Treas. Reg. § 1.6033-3(a)(2),<sup>3</sup> including other information such as the amounts, foundation status of the recipient, and purpose of the grant. The complete annual returns of private foundations are accessible online. Private foundations make grants to individuals domestically and abroad for many purposes, but scholarships and hardship or disaster assistance are among the most common.

##### Recommendation

The AICPA recommends that Treasury and the IRS remove or modify the requirement to disclose individual grant recipient names and addresses for recipients who are not disqualified persons.

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<sup>1</sup> In 1980, P.L. 96-603 repealed section 6056, and added new subsection 6033(c) effective for tax years beginning after 12/31/1980.

<sup>2</sup> Section 6056 was effective on January 1, 1979.

<sup>3</sup> Form 990-PF (2021) Page 11, Part XIV Supplementary Information (*continued*), 3 Grants and Contributions Paid During the Year or Approved for Future Payment.

## Analysis

Taxpayer privacy issues have changed significantly since 1980, when the above regulations became effective. The IRS has made taxpayer privacy a priority. For example, Chapter 5 of Part 10 of the Internal Revenue Manual is titled “Privacy and Information Protection” with the stated purpose “to preserve and enhance public confidence by advocating for the protection and proper use of identity information.”

Minors and young adults receive scholarship grants, and the most vulnerable and needy portions of the population receive hardship and disaster assistance. Although there is a statutory \$1,000 exception for grants to needy individuals, the threshold becomes more restrictive every year because it is not indexed for inflation. Personally identifiable information (“PII”) such as names and addresses, made publicly available in the annual returns of private foundations, can be used to identify and potentially locate an individual grant recipient in the United States (U.S.) or any country receiving aid from U.S. private foundations. Due to the ease of obtaining the names and addresses of individual recipients from the annual Form 990-PF report, the disclosure of such PII can leave grantees vulnerable to harm.

When Form 990 was redesigned for exempt organizations other than private foundations, the IRS was cognizant of the security risks and how certain disclosures may jeopardize the organizations, its staff or charitable class. Form 990, Schedule F, Statement of Activities Outside the United States, and Schedule I, Grants and Other Assistance to Organizations, Governments, and Individuals in the United States, do not require the donor organization to disclose the names and addresses of individual grantees outside the U.S. Rather, only regional locations of the individual grantees are required to be disclosed in order to protect the personal information and identity of needy recipients. Conversely, Form 990-PF, Part XIV, Line 3 requires private foundations to provide the names and specific addresses of grant recipients in excess of \$1,000, jeopardizing the security of individuals and their families, who experience the same security risks as those who receive grants from organizations that are not private foundations. Therefore, we suggest providing private foundations, which provide grants to at-risk recipients, the same protections as other exempt organizations by revising Form 990-PF to require only partial disclosures, such as the grantee’s city and country.

The Family Educational Rights and Privacy Act (FERPA)<sup>4</sup> is a federal law that protects the privacy of student education records. FERPA requires schools to obtain written permission from the student or a parent in order to disclose information regarding that student’s records. Certain directory information (e.g., name, address, telephone number, honors and awards and dates of attendance) may be disclosed by schools without consent. However, schools must notify students and their parents about such disclosure and allow a reasonable amount of time for the student or parent to request that the school not disclose the directory information. Private foundations complying with Treas. Reg. § 1.6033-3(a)(2) with respect to scholarship grants are disclosing information otherwise covered under FERPA but without any of FERPA’s protections.

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<sup>4</sup> 20 USC § 1232g; 34 CFR Part 99.

Should the IRS choose not to remove the requirement for disclosure of private foundation grants to individuals, we recommend modifying the required disclosures to protect the PII of grant recipients. For example, Form 990, Schedule B protects the PII of donors from public disclosure while meeting IRS reporting requirements by redacting certain information if special rules are met. A similar redaction could be applied to the public inspection copies of Forms 990-PF to conceal the names and addresses of individual grant recipients.

## **II. Disclosure of Investments Held at the End of the Year on a Security-by-Security Basis**

### Background

Section 6033(c)(1) grants the Secretary of the Treasury the authority to provide regulations for private foundations which specify information required in its annual return. Treasury Reg. § 1.6033-3(a)(1) provides that a foundation shall include on its annual return “an itemized statement of its securities and all other assets at the close of the year, showing both book and market value.” The Form 990-PF instructions for Part II, line 10 define “itemized statement” for government obligations, corporate stock, and corporate bonds as consisting of a list of each security held at the end of the year, except that debt-securities of the U.S. government and obligations of state and municipal governments may each be listed as a lump-sum total. The instructions define “itemized statement” for other investments as consisting of a “schedule listing and describing each of these investments” and for other assets as a list which shows the “category of asset.”

Until tax year 2006, Form 990 filers were similarly required to attach a detailed listing of investments held at the end of the year. The 2006 Form 990 was changed to differentiate between publicly-traded securities, which did not require a detailed listing unless the holding represented 5% or more of the outstanding stock and other securities, which continued to require a detailed listing. The 2008 Form 990 was further revised to only require a detailed listing for other securities when the total amount reported for other securities represented 5% or more of the filer’s total assets. Additionally, the instructions for the detailed listing provided (and continue to provide) that only publicly-traded stock for which the filer held 5% or more of the outstanding shares was required to be listed by name and class, while all other securities were to be described by type.

### Recommendation

The AICPA recommends that Treasury and the IRS remove or modify the requirement to disclose investments held at the end of the year on a security-by-security basis. Specifically, we suggest revising Form 990-PF to replace Part II, Lines 10a, 10b, and 10c with a single line for publicly-traded securities, which would not require a detailed security-by-security listing if the foundation owns less than 2% or more of a particular security. In cases which the foundation owns 2% or more of the outstanding stock of a corporation (or equivalent for partnerships), we recommend that Part II, line 13 provide that the detailed listing to be attached allow for the aggregation of all investments by category (e.g., “domestic partnerships,” “foreign partnerships,” “closely-held stock,” etc.).

## Analysis

Many private foundations hold a significant number of individual securities. In the past, a common way for such foundations to comply with the requirement to attach a detailed list of investments was to use excerpts from their year-end brokerage statement(s). Beginning with the 2020 tax year, foundations are required to electronically file Form 990-PF and most software packages do not permit the inclusion of a third-party attachment (pdf) containing information that can be entered into the software directly, such as the detailed list of investments. While foundations can obtain electronic versions of their year-end brokerage statements, it is administratively burdensome to edit them into a format that can be imported into tax software. In addition, the requirement to provide details on an individual security basis often results in a return containing hundreds of pages of securities listings, making it more difficult for the public and the IRS to find meaningful information related to Chapter 42 compliance in other parts of the returns.

While Treas. Reg. § 1.6033-3(a)(1) requires private foundations to provide an “itemized statement of its securities and other assets” on its tax return, it does not specify the details of to include in the itemized statement. The term “itemized” can be interpreted in various ways, such as itemization of classes of securities and assets, or a statement that does not require a listing on a security-by-security basis. Currently the instructions to Form 990-PF show evidence of a different interpretation of the term “itemized” by permitting the aggregation of certain assets by type, such as government obligations and other assets.

Our recommended modifications to Form 990-PF will lessen the administrative burden for taxpayers and practitioners of providing itemized statements of security holdings and other assets, while providing the Service with the data needed to ensure that private foundations are in compliance with Chapter 42 provisions, including excess business holdings or the rules relating to holding jeopardizing investments.