October 2, 2007

Via Electronic Mail

Internal Revenue Service
Form 990 Redesign, SE:T:EO
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Comments of American Federation of Labor and Congress of Industrial Organizations, National Education Association, Service Employees International Union, and American Federation of State, County and Municipal Employees

Dear Sir or Madam:

The comments herein, which respond to the draft Redesigned Form 990 released for public comment in IR-2007-117 on June 14, 2007, are respectfully submitted on behalf of the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"), the National Education Association ("NEA"), the Service Employees International Union ("SEIU"), and the American Federation of State, County and Municipal Employees ("AFSCME").

Background

The AFL-CIO is a voluntary federation of 55 national and international unions, all of which are labor organizations exempt from federal income tax under section 501(c)(5) of the Internal Revenue Code of 1986, as amended (the "Code"), as is the AFL-CIO itself. In total some 10 million workers belong to unions affiliated with the AFL-CIO. The AFL-CIO was created in 1955 by the merger of the American Federation of Labor and the Congress of Industrial Organizations. The Federation's mission is to improve the lives of working families--to bring economic justice to the workplace and social justice to the

nation--by massing the resources needed to organize and create the strategies to win organizing campaigns and union contracts and by leading efforts to give workers a say in all the decisions that affect their working lives.

NEA is a nationwide employee organization exempt from federal income tax under section 501(c)(5) of the Code of more than 3.2 million members, nearly all of whom also belong to one of the more than 50 NEA-affiliated state employee or professional organizations exempt from federal income taxation under sections 501(c)(5) or 501(c)(6) of the Code, and possibly also with a local employee or professional organizations affiliated with the state organization. NEA was founded in 1857 to promote the cause of popular education in the United States, and continues to pursue this objective, in part, by expanding the rights and furthering the interests of educational employees.

SEIU is an international labor union exempt from federal income tax under section 501(c)(5) of the Code with more than 1.9 million members in the United States, Canada, and Puerto Rico. SEIU principally represents workers in the service industries, including hospital systems, property services, long term care, and public services. Its members are united by the belief in the dignity and worth of workers and the services they provide and dedicated to improving the lives of workers and their families and creating a more just and humane society.

AFSCME is a national labor union exempt from federal income tax under section 501(c)(5) of the Code with more than 1.4 million members, nearly all of whom also belong to an affiliated state district council or local union that also is exempt from federal income tax under section 501(c)(5) of the Code. AFSCME organizes for social and economic justice in the workplace and through political action and legislative advocacy and represents a diverse group of service and health care workers in the public and private sectors including nurses, emergency medical technicians, bus drivers, child care providers, custodians and librarians.

Collectively the AFL-CIO, NEA, SEIU and AFSCME (together, the "Unions") represent more than 15 million workers and are affiliated with thousands of tax-exempt labor organizations that file the Form 990.

To begin this comment, the Unions wish to express their support for the Service's stated goals for engaging in the redesign of the Form 990: enhancing transparency, promoting tax compliance, and minimizing the burden on reporting organizations. The Unions support these goals and the Service's efforts to improve the Form 990. The Unions also appreciate the opportunity that the Service has afforded to provide comments that focus on issues of

relevance peculiarly to labor organizations exempt from taxation under section 501(c)(5).

In that regard, the Unions request that the Service reconsider and revise two sections of the Redesigned Form--Schedule C, Part I and Schedule C, Parts II and III. The Unions do so on their belief that, in expanding the Form 990 reporting of political activities and lobbying, the Service has gone beyond its proper authority with respect to section 501(c)(5) organizations by proposing far-reaching reporting requirements that constitute a governmental intrusion into areas of free association and free speech organizational activities not justified by any governmental tax code enforcement/tax collection interest.

Specifically, the reporting requirements in Parts I, II, and III of Schedule C of the draft Redesigned Form 990 are stated in extremely broad terms, with respect to section 501(c)(5) organizations, that appear to require reporting and concomitant recordkeeping, bookkeeping and cost accounting on activities that are not subject to tax. Because these Parts relate to the exercise of first amendment rights of free speech and free association of the members of these organizations, the Service should, the Unions submit, stay within the limits of its tax code enforcement/tax collection authority by focusing its information requests on the activities of the section 501(c) and reporting section 527 organizations that are subject to tax through modifications to Parts I, II, and III of Schedule C of the draft Redesigned Form 990 along the following lines:

First, to alleviate the problems of excessive overbreath of the reporting request on "political campaign activities," the Service should revise Part I-A of Schedule C to read, in its entirety, as follows:

> "Part I-A. Question 1 is to be completed by (1) all organizations exempt under section 501(c) ***other than*** organizations exempt under section 501(c)(3) and (2) all section 527 organizations. Question 2 is to be completed by all organizations exempt under section 501(c)(3). (*See* Schedule C instructions for details.)
>
> "1. Provide a description of the filing organization's political activities in which the organization made section 527 exempt function expenditures:_____
>
> _____
>
> Political expenditures (from Part I-C, line 3): $_____
> Did volunteers, in the organization's best estimate, devote a substantial number of hours to the activities described in the answer to question 1, above? Yes___ No___

> "2. Provide a description of the filing organization's political activities through which the organization participated in, or intervened in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office:_____
>
> _____
>
> Political expenditures on the foregoing activities: $_____
> Did volunteers, in the organization's best estimate, devote a substantial number of hours to the activities described in the answer to question 1, above? Yes___ No___

Second, in the interest of clarity, and in conformity with the Service's evident intent to require more detail on the indirect exempt function expenditures reported on Part I-C, line 2, the heading of Part I-C, line 5, column (d) should be rephrased to state:

> "Amount paid in contributions to other organizations for section 527 exempt function activities from filing organization's own internal funds. If none, enter -0-."

And, on a related technical point, to conform it to section 1.527-6(e) of the Treasury Regulations, the heading of Part I-C, line 5, column (e) should be rephrased to state:

> "Amount paid in contributions or dues received and promptly and directly delivered to a separate segregated political organization. If none, enter -0-."[1]

Third, in order to correct the overly broad scope of the reporting obligations on lobbying activities, the Service should reorganize Parts II-B, III-A, and III-B of Schedule C so that all three parts are within a single Part II and follow the currently denominated Part II-A; with the part currently denominated as Part III-A placed first (*i.e.*, to be denominated Part II-B); the Part currently denominated Part III-B placed second (*i.e.*, to be denominated Part II-C); and the Part currently denominated Part II-B placed third and last (*i.e.*, to be denominated Part II-D). The instructions for this new fourth and last Part should be phrased either to state:

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[1] *See* Treas. Reg. § 1.527-6(e) (". . . a transfer of political contributions *or dues* collected by a section 501(c) organization to a separate segregated fund . . . is not treated as an expenditure for an exempt function. . . .") (emphasis added).

"To be completed by all organizations exempt under section 501(c)(3), section 501(c)(4), section 501(c)(5), and section 501(c)(6), ***EXCEPT*** (1) those organizations that are exempt under section 501(c)(3) that filed Form 5768 (election under section 501(h)), ***AND*** (2) those organizations that answered "yes" to question 1 or 2 of Part II-B."

Or, in the alternative, to state:

"To be completed by all organizations exempt under section 501(c)(3), section 501(c)(4), section 501(c)(5), and section 501(c)(6), ***EXCEPT*** those organizations exempt under section 501(c)(3) that filed Form 5768 (election under section 501(h)); and ***EXCEPT THAT*** those organizations that answered "yes" to question 1 or 2 of Part II-B are not required to attach any statements describing the activities the organization conducted (either through its employees or volunteers) attempting to influence legislation."[2]

Rationale for the Foregoing Comments

1. Section 527 of the Code subjects to tax the section 501(c) organization political campaign activities delineated in that provision. As the Service has recognized, in conformity with the Federal Election Campaign Act ("FECA"), neither section 527 nor any other provision of the Code reach 501(c) organization activities that are of a political nature and that Congress recognized in the FECA are at the core of the right of free association and the right of free speech, such as, most particularly, preparation and circulation to the organization's members and their families of internal communications that support or oppose candidates.

Against that background, it would appear that Part I-A is phrased in vague and exceedingly broad language so as to require section 501(c) organizations to report on--and, thus, to keep separate recordkeeping, bookkeeping and cost accounting track of--the widest range of activities that might be deemed to fall within the term "direct and indirect political campaign activities" without regard to whether those activities are at the core of the rights of free association and free speech, have tax consequences, or, indeed, are

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[2] See Appendix A, which sets out this suggested reorganized, rephrased Parts II-B, II-C, and II-D of Schedule C in a full text form. In that Appendix we note an additional suggested modification to the new Part II-D, line 2a, even though that question is directed to section 501(c)(3) organizations and not labor organizations, simply because, as we read it, the current line 2a asks a question that no organization fairly could be asked to answer.

subject to election law regulation. We submit that this Schedule C reporting requirement is fatally defective on four separate grounds.

First, as a matter of first principle, it is improper for the Service to require an organization to report sensitive information of a proprietary nature concerning its constitutionally protected free association/free speech activities that is not justified by a strong governmental tax code enforcement/tax collection interest. And Part I-A's reporting requirement, which is phrased to reach far beyond political campaign activities that are subject to tax, is not supported by any such tax code enforcement/tax collection justification.

Second, as a practical matter, it is improper for the Service to impose a burdensome tax form reporting requirement on organizations that is not justified by a strong governmental tax code enforcement/tax collection interest. And, Part I-A's reporting requirement, which reaches activities that have no tax consequences and no election law regulatory consequences, will force reporting organizations to incur time and expense in providing for and in then maintaining separate recordkeeping, bookkeeping and cost accounting systems to track these activities, even though that substantial administrative burden is not justified by any sufficient governmental interest. The unprecedented need to track volunteer hours is, to be sure, the heaviest and most unreasonable of these burdens, but that does not detract from the point that the other administrative burdens imposed on reporting organizations by Part I-A regarding activities that have no tax consequences are, by any standard, both heavy and unreasonable.

Third, governmental reporting requirements that impinge on the exercise of the rights of free association and free speech must, at the very minimum, be stated in precise terms that delineate the activities to be reported; Part I-A does not meet that standard. It is all but impossible to conceive of a vaguer, more boundless, and less definitive reporting requirement than one on "direct and indirect political campaign activities," accompanied only by the quite uninformative Schedule C glossary and instructions, which do nothing to domesticate Part I-A's broad language and, indeed, do very little to clarify Part I-A's scope other than to push the concept of political activities past the point to which the Service previously has taken it in the context of section 527 of the Code with regard to activities supporting or opposing candidates for <u>appointive</u> office, which was the subject of the unresolved regulatory proceeding in the aftermath of Announcement 88-114, 1998-37 I.R.B. 26.

Fourth and finally, and for the foregoing three reasons, Redesigned Schedule C, Part I goes beyond the authority granted the Service by section 6033 of the Code. Under that section, Congress directed the Secretary of the Treasury to prescribe an ". . . annual return, stating specifically the items of

gross income, receipts, and disbursements, and *such other information for the purpose of carrying out the internal revenue laws . . .*" Code § 6033(a)(1) (emphasis added). By its terms, the Service's mandate is not an open-ended permission to seek any information that the Service believes might be of any value to the government or the public; rather, it is a permission to require the reporting of information relevant to "carrying out the internal revenue laws." Part I, which goes to the reporting of exempt organization political campaign activities that are not subject to tax, simply cannot be said to be a proper exercise of the authority to request the reporting of information relevant to "carrying out the internal revenue laws."

Against this background, the point of the suggested modifications to Part I is (1) to provide for the full and proper reporting by exempt organizations of their political activities that have tax consequences, as those activities have been defined by the Service in its regulations and rulings, <u>but only such activities</u>; (2) to make it clear that all the information requests in Parts I-A, I-B, and I-C concern the filing organization's political activities that have tax consequences; and (3) to restate the "volunteer hours" request, which is at best a barely proper tax form information request, so as to alleviate the wholly disproportionate and, in our view, wholly unjustified burden imposed on reporting organizations by the request as presently stated.

We believe these points speak for themselves and would only add that the glossary and instructions on Part I would, if the Part is modified as we suggest, also need to be rewritten and that such a revision should, among other things, correct the present instructions for Part I-C, which fly in the face of the plain language of Part I-C, lines 1-3's request for information relating to direct and indirect expenditures for "section 527 exempt function activities."

2. The lobbying activities of section 501(c)(5) labor organizations substantially all (*i.e.*, 90% or more) of whose dues are nondeductible by its members are core free association/free speech activities that have no tax consequences.[3] That being so, for all of the reasons given in the preceeding discussion of Redesigned Schedule C, Part I, supra pp. 5-7, it is wholly improper to require such a section 501(c)(5) labor organization to do the deeply intrusive lobbying activities reporting (and the concomitant separate recordkeeping, bookkeeping, and accounting necessary to track these activities) called for in Redesigned Schedule C, Part II-B.

Against that background, the purpose of the suggested modifications to Schedule C, Parts II and III is to provide that the reporting obligation on lobbying activities run to the organizations whose lobbying activities have tax

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[3] The same is true of any such section 501(c)(4) or section 501(c)(6) organization.

consequences, but not to the organizations whose lobbying activities have no tax consequences.

Conclusion

In these two specific respects the Unions submit that the redesigned Form 990 issued for comment on June 14, 2007, is flawed and would require the reporting of information that serves no sufficient tax enforcement/tax collection purpose and that would impose significant burdens on filers and unnecessarily inhibit their exercise of constitutionally protected rights of free speech and free association. The Unions urge the Service to reconsider these few flaws and redraft the Form 990 to narrow its requests for information of a sensitive and politically charged nature.

Respectfully Submitted on behalf of:

The American Federation of Labor and Congress of Industrial Organizations

The National Education Association

The Service Employees International Union

The American Federation of State, County and Municipal Employees

By: _____
Douglas L. Greenfield
Bredhoff & Kaiser, P.L.L.C.

Enclosure (Appendix A)

Appendix A
Suggested Revisions to Redesigned Form 990, Schedule C, Parts II-B and III

Part II-B To be completed by all organizations exempt under section 501(c)(4), section 501(c)(5), or section 501(c)(6). (See Schedule C instructions for details.)

	Yes	No
1 Were substantially all (90% or more) dues received nondeductible by members?		
2 Did the organization make only in-house lobbying expenditures of $2,000 or less?		
3 Did the organization agree to carryover lobbying and political expeditures from the prior year?		

Part II-C To be completed by all organizations exempt under section 501(c)(4), section 501(c)(5), or section 501(c) (6) if ***BOTH*** questions 1 and 2 of Part II-B are answered "No" ***OR*** if question 3 of Part II-B is answered "Yes." (See Schedule C instructions for details.)

1 Dues, assessments and similar amounts from members	$
2 Section 162(e) non-deductible lobbying and political expenditures (**do not include amounts of political expenditures for which the section 527(f) tax was paid.)**	$
a Current year	$
b. Carryover from last year	$
c Total	$
3 Aggregate amount reported in section 6033(e)(1)(A) notices of nondeductible section 162(e) dues	$
4 If notices were sent and the amount on line 2c exceeds the amount on line 3, what portion of that amount does the organization agree to carryover to the reasonable estimate of nondeductible lobbying and political expenditures next year?	$
5 Taxable amount of lobbying and political expenditures (line 2c total minus 3 and 4)	$

Part II-D To be completed by organizations exempt under section 501(c)(3), section 501(c)(4), section 501(c)(5), or section 501(c) (6) ***EXCEPT*** (1) those organizations that answered "yes" to question 1 or 2 of Part II-B or (2) those organizations that are exempt under section 501(c)(3) that filed Form 5768 (election under section 01(h)). (See Schedule C instructions for details.)*

	(a)		(b)
	Yes	No	Amount (only for 501(c)(3))
1 During the year, did the filing organization attempt to influence foreign, national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use, of			
a. Volunteers			
b. Paid staff or management (include compensation in expenses reported on lines c through i)			
c. Media advertisements			
d. Mailings to members, legislators, or the public			
e. Publications, or published or broadcast statements			
f. Grants to other organizations for lobbying purposes			
g. Direct contact with legislators, their staffs, government officials, or a legislative body			
h. Rallies, demonstrations, seminars, conventions, speeches, lectures, or any other means			
i. Other activities. If "yes," describe:			
j. Total lines c through i			
2a Did the line 1 activities cause the 501(c) organization to have engaged in substantial lobbying?			
b If "Yes," enter the amount of any tax incurred under section 4912			
c. If "Yes," enter the amount of any tax incurred by organization managers under section 4912			
d If the filing organization incurred a section 4912 tax, did it file Form 4720 for this year?			

* In the alternative, Part II-D would state: "To be completed by organizations exempt under section 501(c)(3), section 501(c)(4), section 501(c)(5), or section 501(c) (6) ***EXCEPT*** those organizations exempt under section 501(c)(3) that filed Form 5768 (election under section 501(h)), and ***EXCEPT THAT*** those organizations that answered "yes" to question 1 or 2 of Part II-B are not required to attach any statements describing the activities the organization conducted (either through its employees or volunteers) attempting to influence legislation."