

May 19, 2016

CC:PA:LPD:PR (REG-118867-10)  
Room 5203  
Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

RE Comments on Proposed Amendments to the Income Tax Regulations (26 CFR 1)  
Regarding Organizations Described in Section 509(a)(3) of the Internal Revenue Code  
(Supporting Organizations)

Dear Ladies and Gentlemen:

The Council on Foundations is please to submit comments on the proposed regulations affecting Type I and Type III supporting organizations. The Council on Foundations is a nonprofit leadership association of grant making foundations and corporations, and a public charity qualified under Section 501(c)(3) of the Internal Revenue Code. Our members include over 1200 philanthropic organizations and our mission is to provide the opportunity, leadership, and tools needed by these organizations to expand, enhance and sustain their ability to advance the common good.

These comments were developed by the Public Policy and Legal Affairs staff at the Council on Foundations and reviewed and approved by the Council's President and CEO. Council staff have daily contact with our numerous foundation members and these comments are informed by the issues and challenges our members express. We appreciate your consideration of these recommendations and welcome the opportunity to discuss these items with you further. If you have any questions, please feel free to contact me at (703) 879-0715, or [Sue.Santa@cof.org](mailto:Sue.Santa@cof.org); or you may contact Suzanne S. Friday, Senior Counsel and Vice President of Legal Affairs at (703) 879-0705 or [Suzanne.Friday@cof.org](mailto:Suzanne.Friday@cof.org). Below please find our comments and recommendations regarding these proposed regulations.

Sincerely,



Sue Santa  
Senior Vice President of Public Policy and Legal Affairs

Our comments focus on two specific areas of the proposed regulations:

1. With respect to the annual notification required pursuant to Reg. §1.509(a)-4(i)(2)(i) and particularly the description of the written notice as set forth in 4(i)(2)(i)(A), in addition to the new parenthetical language regarding *distributions described in paragraph (i)(6)*, we request clarification regarding how to report on programs and services the supporting organization performs in support of the supported organization, and what level of detail will be considered sufficient. For example, the new parenthetical could state:

*(including all of the distributions described in paragraph (i)(6) of this section if applicable, and a brief summary of all programs and services performed by the supporting organization in support of the supported organization).*

Because some supporting organizations support multiple supported organization and this requirement for annual notification will create an additional administrative burden for these organizations, it is important to allow for summarization of programs and services or other methods to communicate this information in an efficient manner.

2. With respect to the annual distribution requirement for Type III NFI supporting organizations described in Reg. §1.509(a)-4(i)(5)(ii), we appreciate the clarity of a definitive list and the corresponding change in language in Reg. §1.509(a)-4(i)(6) from “*shall include, but not limited to*” to “*are limited to the following,*” however, we feel additional clarification is needed with respect to paragraph (i)(6)(iii)(B) which currently provides:

*(B) Expenses incurred to solicit contributions that are received directly by a supported organization, but only to the extent the amount of such expenses does not exceed the amount of contributions actually received by the supported organization as a result of the solicitation, as substantiated in writing by the supported organization.*

The term “*received directly by a supported organization,*” in the above paragraph suggests that, in order for fundraising expenses to be counted toward the distribution requirement, any fundraising activity conducted by the supporting organization must provide a mechanism for fundraising proceeds to be collected by the supported organization, or delivered directly to the supported organization without the intervention by the supporting organization. We anticipate this to be a challenge for many fundraising activities and events that are conducted by supporting organizations and suggest that the word “*directly*” be deleted from this paragraph. In the alternative, we request that additional language be added to this paragraph to allow for receipt of contributions directly by an agent of the supported organization. For example, this paragraph could read “*Expenses incurred to solicit contributions that are received directly by a supported organization, or agent appointed by the supported organization for this purpose . . . ,*”

The term “*substantiated in writing*” may be similarly difficult to achieve and an unnecessary administrative burden for the supported organization if the intent is to provide written substantiation each time a contribution is received. We suggest this paragraph be

further revised to allow the supported organization to provide one written substantiation annually, aggregating all contributions received from a supporting organization fundraising activity. Finally, although we assume the intent of this paragraph is not to assign to the supported organization the responsibility for calculating the amount of contributions less the expenses for the particular fundraising activity, we request clarification that the written substantiation only applies to the net contributions received.

In summary, we would request this paragraph (B) to read as follows:

*(B) Expenses incurred to solicit contributions that are received by a supported organization, but only to the extent the amount of such expenses does not exceed the amount of contributions actually received by the supported organization as a result of the solicitation. The supported organization shall provide written substantiation annually of the total contributions received by the supported organization for each particular solicitation.*