



September 23, 2009

Chairman Max Baucus
Senate Finance Committee
219 Dirksen Senate Office Building
Washington, DC 20510-6200

Ranking Member Charles Grassley
Senate Finance Committee
219 Dirksen Senate Office Building
Washington, DC 20510-6200

Dear Chairman Baucus and Ranking Member Grassley:

In our capacity as the leading voice for the association management profession, the American Society of Association Executives (ASAE), Washington, DC, respectfully submits the following comments in response to two amendments (Committee Amendments No. 489 and 490) filed in the Senate Finance Committee markup of the America's Healthy Future Act that have generated immediate, widespread concern in the association community and broader tax-exempt sector.

ASAE is a section 501(c)(6) individual membership organization of more than 22,000 association executives and industry partners representing nearly 12,000 tax-exempt organizations. Its members manage leading trade associations, individual membership societies, and voluntary organizations across the United States and in 50 countries around the globe. We advocate for voluntary organizations so that they may continue to improve the quality of life in the United States.

ASAE appreciates the challenging but worthy endeavor undertaken by the Chairman and the entire Senate Finance Committee to reform America's health care system. ASAE supports the committee's broad goal of ensuring access to affordable, quality health care for all Americans.

Among the 500+ amendments submitted in advance of this week's markup of the America's Healthy Future Act are proposals drafted by Ranking Member Grassley to specifically mandate that the Internal Revenue Service (IRS) require governance and management information be reported by tax-exempt organizations as part of their annual Form 990 filings, and to remove the safe harbor available to tax-exempt organizations with respect to determining reasonable compensation of executives.

Both of these proposals bear significant implications for tax-exempt organizations and deserve a public hearing to consider their impact before passage as well as an opportunity to comment on the specific proposed statutory language to help avoid unintended consequences.

As noted in the text of amendment No. 489, the IRS recently revised the annual information return filed by most tax-exempt organizations and included a new section on governance. The section asks filing organizations questions about board composition, governing body review of the 990, and whether certain policies are in place for conflicts of interest, whistleblower and document retention, as well as a process for determining executive compensation. During the comment period for the new Form 990, ASAE questioned the inclusion of questions about policies and procedures that are not required under the Internal Revenue Code. What is standard practice for a large trade association may very well be impractical and unnecessary for a smaller philanthropic organization. While ASAE agrees that correlations can be drawn between good governance and compliance in a very general sense, we are concerned about the IRS creating *de facto* specific standards of organizational behavior, supplanting the longstanding “business judgment” rule where no narrow standards can or should exist in view of the extraordinary diversity of the tax-exempt sector.

Additionally, amendment No. 489 would protect the IRS from “wasteful” legal challenges by adding language to specifically mandate that IRS require governance information in annual filings. Depending on the specific language of the amendment, this could be interpreted to remove any legal recourse for associations and other tax-exempt organizations whose governance practices are questioned by the IRS. Surely the committee agrees that tax-exempt organizations have legal rights to fair treatment and recourse to resolve disputes with the IRS as a matter of basic due process.

ASAE also has significant concerns with amendment No. 490 removing the safe harbor available to tax-exempt organizations with respect to setting reasonable compensation of executives. The current statute allows the IRS to impose intermediate sanction excise taxes on top officials within tax-exempt organizations who receive excessive compensation. The regulations provide organizations with a relatively simple procedure to ensure that they are in full compliance, the “rebuttable presumption of reasonableness.” This procedure entitles organizations a rebuttable presumption that compensation provided is reasonable if the board of directors or compensation-setting body obtains and relies on comparability data based on industry surveys, documented compensation of persons holding similar positions in similar organizations, expert compensation studies, or other relevant data. The IRS can still challenge the compensation if it develops sufficient contrary evidence to rebut the probative value of the organization’s comparable data. Current statute appropriately puts the burden of proof on the IRS.

While ASAE agrees that there have been reports of excessive compensation in certain tax-exempt organizations, the vast majority of organizations have appropriate, responsible processes in place for determining the fair compensation of top executives. Granting the IRS authority to subjectively determine the appropriateness of comparable information in setting salaries seems excessive and dangerous, and unfairly shifts the burden of proof to filing organizations to prove that the compensation is reasonable instead of the government. As with the previous amendment,

depending on the language used, this amendment might even have the effect of creating a presumption of unreasonableness.

ASAE is well aware of the deadlines on the Senate Finance Committee to produce a comprehensive health care reform bill, but we urge Committee members to take note of these two amendments. However well-intentioned, these proposals hold severe consequences for associations and other tax-exempt organizations and ASAE respectfully asks that they not be accepted as part of the health care reform bill currently under consideration by the Senate Finance Committee.

Thank you in advance for your careful consideration, and please do not hesitate to contact us if we can provide any further perspective on these amendments. Please contact Jim Clarke, ASAE's senior vice president of public policy, at 202-626-2798 or jclarke@asaenet.org.

Sincerely,

A handwritten signature in black ink that reads "John H. Graham IV". The signature is written in a cursive style with a prominent "J" and "G".

John H. Graham IV, CAE
President and CEO