

THE KRESGE FOUNDATION

October 25, 2024

Mr. Andres Garcia
Internal Revenue Service
Room 6526
1111 Constitution Avenue NW
Washington, DC 20224

Via pra.comments@irs.gov

Re: The Kresge Foundation Comments with respect to OMB Number: 1545-0047
Specifically Form 990-PF with respect to expenditure responsibility reporting

Dear Mr. Garcia:

The Kresge Foundation (“the Foundation”) is responding to the above referenced request for comments with respect to forms filed by tax-exempt organizations. This letter is being submitted by the management of the Foundation. The Foundation was founded in 1924 to promote human progress. Today, the Foundation fulfills that mission by building and strengthening pathways to opportunity for low-income people in America’s cities, seeking to dismantle structural and systemic barriers to equality and justice. Using a full array of grant, loan, and other investment tools, the Foundation invests more than \$160 million annually to foster economic and social change. For more information visit kresge.org.

Our comments are focused on an area of federal tax compliance related to reporting expenditure responsibility (“ER”) requirements. After reviewing the information provided on these attachments, we’ve determined much of the same information is provided elsewhere in the return thus providing little or no substantive additional information to the U.S. Treasury that is not already available or already being provided. These filings are submitted individually for each applicable grant on separate forms as attachments to the Form 990-PF in reference to Statements Regarding Activities for which Form 4720 May Be Required in Part VI-B lines 5a(4) & 5d.

The administrative cost to the Foundation is significant. For example, for the 2023 tax year, we incurred approximately 200 hours of internal time gathering and reviewing data resulting in over 100 attachments. Further, even minor errors or omissions in what is included on the attachments (as opposed to our records) can cause significant penalties as a result of not including certain information even if the organization complies with all of the rules regarding control procedures and recordkeeping. We believe this could be simplified and eliminate redundancy, while at the same time focusing the information included in the tax return to that which is useful to the IRS.

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Background

Internal Revenue Code (“IRC”) Section 4945(h) and the Regulations thereunder, require private foundations to obtain and report on certain information with respect to grants to organizations other than qualifying charitable organizations. These grants are for charitable purposes and require significant recordkeeping with respect to each such grant. We are not concerned about following the required procedures for maintaining appropriate records. What we find financially burdensome and repetitive is the amount of detail that is included in the Form 990-PF and, if missed or incorrect in the Form 990-PF, could cause the grant to be deemed to be a taxable expenditure resulting in assessed penalties on the private foundation as well as the management of the foundation.¹

In substance, a private foundation may have complied with all of the requirements imposed by the IRC but may have a minor error – such as the date of a report - which could cause the grant to be considered a taxable expenditure by the IRS.

In 1984, the Joint Conference requested that Treasury simplify these reporting requirements citing the burden to taxpayers. To date, Treasury has not amended the Regulations to meet this request.²

ER reporting requirements can arise from more than just grants made to organizations other than qualifying public charities. For instance, ER can arise from joint grants by multiple foundations to fund a project whereby one private foundation takes the lead with respect to the grantee and its reporting obligations for which the other foundations grant between one another to support the project. ER reporting is required between private foundations even if the ultimate grantee is a qualifying charitable organization.

Additionally, there has been an increase in private foundations utilizing a variety of investment tools having a range of maturity from multi-year cash grants to program related

¹ IRC Section 4945(a).

² H Rep No 98-851, 98th Cong., 2d Sess. 1091(1984). The conferees also directed the Treasury Department to report to the House Committee on Ways and Means and the Senate Committee on Finance on its review and modifications. Treasury was directed “to review its expenditure responsibility regulations for purposes of modifying any requirement which is found to be unduly burdensome or unnecessary” and, specifically, to modify the required grantor private foundation report to the IRS. These regulations were not modified until September 26, 2015 via TD 9740 and then only with respect to equivalency determinations, and not the expenditure responsibility reporting per se.

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investments (“PRIs”) consisting of loan agreements, guarantees, equity investments and bank deposits which can have ER reporting requirements if made to organizations other than qualifying charitable organizations. Due to the long-term nature and duration of these types of grants or PRI’s to grantees, this reporting requirement, in many instances, could extend for a significant number of years thereby making reporting repetitive and costly to the Foundation.

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility.

We understand that the main objective of ER reporting is to ensure that grants made by private foundations to organizations that are not qualifying public charities are used for charitable purposes and are properly documented. While some of the information being reported enables the IRS to ensure compliance with U.S. tax laws, we would argue that the amount of data reported rarely provides any practical utility to the IRS as there is a redundancy of information being gathered and reported.

Utility to the IRS

Particularly for large grant making organizations, the degree of detail included in the annual Form 990-PF becomes unwieldy for the IRS to meaningfully use the information or to determine if there are any areas of concern. We believe streamlined reporting, particularly for organizations that have a significant volume of ER grants, would be much more useful to the IRS.

Redundancy

For any grants with payments made in the current year, the amounts are reported in Form 990-PF Part XIV and, if a PRI, would appear in Part VIII-B.

Specifically, Part XIV line 3a reporting includes the name and address of the grantee, the foundation status of the grantee, the purpose of the grant and the amount of the grant paid in the current year. All of this information is duplicated for ER grants. From the codes used to report the foundation status of the recipient, the IRS can easily identify those grants that may be ER grants, or the IRS could modify the list of foundation types to make it even easier for the IRS to determine ER grants as identified by the grantor.

Part XIV line 3b requires disclosure of the same information for grants approved in the current year but instead of the cash paid, the amount reported is that which is approved for

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future payment under the grant approved during the tax year. If there is a payment against such grant in the current year, thereby making it a multi-year grant, this would also be reported on line 3a as part of current year grants.

For PRIs made during the current tax year, information required in Part VIII-B of the Form 990-PF consists of a description of the investment and the amount.

The combination of these three disclosures is to report all current year grants or PRIs paid and grants approved for future payment.

Further, Part VI-B lines 5a(4) and 5d requires for each grant the following information which is provided in statements attached to the return for each individual grant.

- The cumulative amounts expended by each recipient as of their latest report
- The dates of any reports received from the grantee
- Whether the grantee has diverted any portion of the funds (or the income therefrom in the case of an endowment grant) from the purpose of the grant (to the knowledge of the grantor)
- The date and results of any verification of the grantee's reports undertaken pursuant to and to the extent required under IRC Section 53.4945-5(c)(1) of this section by the grantor or by others at the discretion of the grantor.

The disclosure regarding whether there was a diversion of funds as well as the results of any verification is identical for all grantees unless there is actually an issue to report. Given the number of ER attachments, finding any discrepancies disclosed for individual grants by the IRS could be very time consuming under the current Form 990-PF instructions.

(b) The accuracy of the agency's estimate of the burden of the collection of information

The Foundation is unable to analyze this other than with respect to our burden as already noted above. There are several elements with respect to the reporting. While recordkeeping and follow up on reporting is a necessary requirement, the time spent preparing, reviewing and inputting the information into the disclosure forms to produce the attachments for the Form 990-PF creates approximately 200 additional internal hours. Furthermore, the disclosures require external tax advisor review prior to signing the tax return. The amount of time and the cost associated with this reporting is significant, and

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the resources could be spent on programmatic activities and furthering the Foundation's mission.

(c) Ways to enhance the quality, utility, and clarity of the information to be collected

To enhance the utility of information reported by exempt organizations with respect to ER grants under IRC Section 4945(d)(4)(B) and 4945(h)(3), the Foundation recommends the following changes. By making these changes, the information provided can be focused on what is essential to the collection of information necessary for the proper performance of the functions of the IRS, including only gathering information with practical utility rather than being inundated with a lot of unnecessary data.

Simplified Reporting: We believe that a simplified reporting requirement would both reduce the burden on the Foundation and make the information more useful to the IRS. We believe this change could be made through modifications to the Form 990-PF instructions as well as Regulation changes. Then, the IRS would be better positioned to ensure that the organization follows appropriate procedures to meet the conditions outlined in IRC Section 4945(h). These items are as follows, with related recommendations described.

- 1. Results of Verification:** The results of verification is required for each grant and is redundant. If verification is satisfied, it is the same disclosure on every such ER attachment. Consideration should be given to simplifying reporting and adding disclosure when the verification could not be made. This could be accomplished by adding a simple Yes/No question to the reporting³ or requiring a general disclosure in response to Part VI-B question 5d and the wording of the "instructions" on the form itself for this line. This could then require a description for the year in which there is reason to doubt the accuracy or reliability of the data in accordance with Treas. Reg. Section 53.4945-5(c)(1). This would streamline the efforts of the IRS to identify potential verification issues.
- 2. Dates of Reports by Grantee:** All dates of reports rather than the most recent report date can be burdensome. The fields currently in the schema for electronic filing are sometimes not sufficient to include dates for all reports as the schema only provides

³ We understand that including a Yes/ No question on the form itself requires programming. As such, we have also provided an "instruction" change in order to accomplish this as well. Then, if Treasury revamps the Form 990-PF a Yes/ No question could be added as part of that process.

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for five dates. We would recommend either eliminating this field from the tax return disclosure requirement or at least changing this to just include the date of the most recent report received.⁴ It may also be helpful to note if this is the final report so that the IRS can better determine when reporting has ended.

- 3. Purpose of Grant:** The form requires the purpose of the grant. However, in the year of origination, this is already included in Part XIV line 3a and/or 3b disclosures and is, therefore, duplicative in future years. We recommend removing this additional requirement for Part VI-B line 5d as it should not be necessary to report every year.
- 4. Any Diversion by Grantee:** Disclosure of diversion is required for each grant and is redundant. If there is no diversion, it is the same disclosure on every such ER attachment. Consideration should be given to simplifying reporting and adding disclosure only when diversion does occur. This could be accomplished by adding a simple Yes/No question to the reporting or requiring a general disclosure in response to Part VI-B question 5d and the wording of the ‘instructions’ on the form itself for this line. This could then require a description for the year a diversion of funds is identified and the actions being used to address the issue as well as to identify who the diverting grantee is and the amount involved. This then would streamline the efforts of the IRS to identify a potential diversion of funds.

Based on the above recommendations, please see a revised reporting attachment in **Appendix A** that would reduce the filing from one page per ER grant to a list format significantly reducing the number of pages included with the return while providing the IRS with essential annual reporting information.

PRIs and ER Reporting: Per Treas. Reg. Section 53.4945-5(d)(1), a private foundation must provide an annual report to the IRS for any grant for which any amount or any report is outstanding with respect to the grant. This could be burdensome for long-term PRIs for which no funds are actually disbursed, such as loan guarantees which could span many years. We recommend an exception to annual reporting for PRIs for which no funds have been disbursed. In the event a distribution is later made, it would require reporting in Form 990-PF Part VIII-B.⁵

⁴ This would require Treas. Reg. Section 53.4945-5(d)(2)(vi) to be modified from “the dates of any reports received” to “the date of the last report received”.

⁵ For example, a PRI may include a loan guarantee for many years but may never need to be drawn upon. Disclosure should only be required in the year in which payment was made and would be reported in Part VI-B

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General Procedures Disclosure or Submission: The general procedures that a private foundation follows with respect to ER and the related controls could be disclosed to the IRS rather than all the additional detail currently required in the Form 990-PF or as attachments for each individual grant. This could be accomplished either by having the procedures reviewed by the IRS through a separate submission similar to the “pre-approval”⁶ request for scholarship programs⁷ OR as a general disclosure in the annual Form 990-PF. The annual disclosure route we believe would be less burdensome to the IRS and would also reflect any minor modifications to the procedures that may occur during a given tax year. We believe this change could be made through modifications to the Form 990-PF instructions as well as Regulation changes. The IRS would be better positioned to ensure that the organization follows appropriate procedures to meet the conditions outlined in IRC Section 4945(h):

The expenditure responsibility referred to in subsection (d)(4) means that the private foundation is responsible to exert all reasonable efforts and to establish adequate procedures -

(1) to see that the grant is spent solely for the purpose for which made,

(2) to obtain full and complete reports from the grantee on how the funds are spent, and

(3) to make full and detailed reports with respect to such expenditures to the Secretary.

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology

With technology, there are certain items that can be easily imported into the tax return preparation software such that this is not burdensome to include in the annual Form 990-PF, however there are other elements that create complications or are purely a duplication of information already imported elsewhere.

line 5d and Part VIII-B. This would ease the burden of annual ER reporting when there is no disbursement and for which there may never be a disbursement.

⁶ Please note that the “pre-approval” process for scholarships requires a submission to the IRS and if no denial is received within a specified period of time, then the procedures are deemed approved.

⁷ IRC Section 4945(g) and Treas. Reg. Section 53.4945-4(c)(1).

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The recommendations made relate to the elimination of duplicative information, the identification of useful information versus volume of information and the elimination of information reporting in the return while maintaining recordkeeping requirements.

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information

For 2023 alone, the Foundation included over 100 expenditure responsibility attachments for both cash grants and PRIs. This reporting takes approximately 200 internal staff hours annually to gather a significant amount of information for the format currently required for the Form 990-PF.

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Thank you in advance for this opportunity and your consideration of reducing this financial and administrative burden and duplicative reporting, so that the Foundation can better direct resources toward fulfilling the Foundation's charitable mission. Further, this will provide the IRS with more focused information thereby enabling it to more efficiently ensure requirements are being met. If you should have any questions about these comments, please contact us.

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Recommended ER Disclosure

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