

TEGE Exempt Organizations Council*

**SYSTEMIC ISSUES WITH EXEMPT ORGANIZATIONS
BUSINESS MASTER FILE (AND INTERACTIONS WITH
OTHER SYSTEMS AND DATABASES REGARDING
TAX-EXEMPT ORGANIZATIONS) DESERVE PRIORITY
TREATMENT UNDER IRS'S IRA SOP**

March 29, 2024

* The TEGE Exempt Organizations Council was formed to (i) open and maintain lines of communication between the Tax Exempt & Government Entities Division of the IRS and the practitioner community, (ii) provide the TEGE Division with the thinking of the practitioner community on procedural and systemic matters, (iii) provide practitioners a forum to share their concerns with the IRS regarding both policies and specific tax issues and procedures, and (iv) educate the practitioner community and the exempt organizations community.

The Council Membership is currently composed of 650 members (not including its 71 Government Council Members), which includes attorneys, CPAs and accountants, and other practitioners in the exempt organizations industry who come from a total of 414 distinct CPA and law firms (which vary in size from solo shops to the nation's largest firms), colleges and universities, hospital conglomerates and healthcare entities, private foundations and national DAFs, various other operating charities, professional associations, and social welfare groups. Members are accepted based on the following criteria: (i) expression of an interest in the purposes of the Council and in membership; and (ii) the provision of significant professional services in or to the exempt organization community (including professionals who work within an exempt organization).

EXECUTIVE SUMMARY

TEGE Exempt Organizations Council (the “Council”) has identified numerous and chronic errors in the Exempt Organizations Business Master File (“EO/BMF”) and requests the Commissioner’s commitment to a sustained effort to correct such errors on a timely basis and to prevent them from reoccurring.

Unlike other IRS databases used for solely for internal tax administration, the EO/BMF is the cornerstone of the nonprofit sector. The EO/BMF is relied upon by numerous stakeholders, including donors and grantmaking institutions whose tax consequences are determined by the data reported in the EO/BMF, and by regulators and media watchdogs overseeing the sector who rely on the EO/BMF to police waste, fraud, and abuse. Correcting and preventing errors in the EO/BMF is of great importance to all concerned and deserves material investment of time and resources on the part of the IRS to maintain it in good repair.

As discussed in more detail below, the EO/BMF is riddled with errors. Many of these errors are in basic data fields such as entity name, 501(c)-type, public charity/private foundation classification, accounting year-end, and address. It is not uncommon for organizations to become aware of such errors only after a loss has occurred, such as a donor refusing to make a grant, or the IRS imposing a penalty. Yet organizations seeking to correct their information must wait months or even years for the IRS to process their requests. In many cases, errors that have been previously corrected suddenly reappear. It is not uncommon for organizations to receive erroneous notices and assessments, for their tax filings to disappear or become lost, and for corrections to take six months to a year to complete. Attempts to file the Form 990-series annual returns and Forms 990-T are routinely rejected from e-filing due to conflict between the IRS’s EO/BMF records and the information on the returns. TEGE Council members have reported a dramatic increase in the frequency of these errors since 2022.

Failures in the EO/BMF erode public trust. If the public cannot confirm that a charity is qualified to receive donations, it is less likely to contribute. At the same time, a corrupted database makes IRS enforcement less credible. This vicious cycle needs to stop as soon as possible.

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I. INTRODUCTION

The Council is making this submission in response to IR-2023-171 (Sept. 15, 2023) in which the IRS requested “comments and feedback on opportunities to expand and enhance tax certainty and issue resolution . . . whether it’s by enhancing existing programs and tools or developing new ones.” We are pleased to submit this report in furtherance of the Council’s mission to open and maintain lines of communication between the Tax Exempt & Government Entities Division of the IRS and the practitioner community and to provide the TEGE Division with the thinking of the practitioner community on procedural and systemic matters. Specifically, as practitioners we have noticed systemic issues with the IRS’s databases regarding exempt organizations that affect the interests of a broad range of stakeholders including:

- The IRS;
- Tax-exempt organizations and their founders, staff, and volunteers;
- The professionals who assist tax-exempt organizations with their filings;
- Individual and corporate donors;
- Governmental contractors, community, and private foundation grantmakers;
- State and local regulators;
- Charity watchdog groups (ProPublica’s Nonprofit Explorer, Guidestar/Candid, Charity Navigator, etc.); and
- Members of the public.

The interests of these groups are not automatically in conflict with each other. Rather, the Council’s view is that the good actors in each group want the same things. For example, IRS enforcement against those who attempt to abuse exempt organizations helps compliant tax-exempt entities by protecting the reputation of the industry as a whole and aids the public by building trust in the system’s oversight. Likewise, streamlining the publicly accessible data on tax-exempt entities would free up the IRS’s limited resources (including those resources that could be used to pursue bad actors), assist tax-exempt entities in documenting their compliance with applicable requirements, and provide the public with clearer disclosures.

Above all else, interested groups have a common goal of wanting legitimate nonprofit enterprises to succeed. To that end, the concerns noted throughout this submission are *not* simply IRS problems. Rather, they are opportunities for everybody to work towards those common goals. They are specific issues that members of the Council have noted in their own practices, hopefully conveyed in a manner that is readily understandable to readers regardless of their roles.

II. BACKGROUND

Although the Council might be biased in this view, tax-exempt entities are fascinating. They range from the smallest community garden clubs to massive multinational organizations that help millions of people across the globe. And there are a *lot* of them. The IRS's own data from Table 14 of Publication 55-B (last released March 2023) indicates there are 1,817,332 recognized Section 501(c) organizations in the United States.¹

These organizations serve valuable purposes—they combat poverty, advance education, create pleasant spaces for the public, address environmental concerns, serve refugees and other vulnerable populations, and perform other important charitable and non-charitable purposes for their key constituencies. In short, they help by bolstering governmental efforts to assist the public, or even stepping in to nimbly provide services where the various governmental entities are unable or unwilling to address an issue given limited governmental resources and bureaucratic processes. The benefits don't end there; although charitable organizations exist to serve their missions, they also benefit millions of workers and volunteers who can find gainful employment and valuable experience, not to mention the members of the for-profit sector that rely on them as important customers for goods and services. They also create secondary benefits through their employment of individuals (which in turn increases tax revenue from employment and individual income taxes).

But these organizations do more than merely solve real-world issues impacting our communities while creating positive externalities. As the IRS is undoubtedly aware, these organizations also generate a ton of filings reflecting burdens on both the filing organizations and the IRS. Table 2 of Publication 55-B notes that tax-exempt organizations accounted for 1,751,682 filings in 2022.² For exempt organizations, these filings often serve a dual purpose. In exchange for the benefit of tax-exempt status, they share their information with both regulators, which promotes sound tax administration, and the public (including through IRS systems), which provides significant public benefit by keeping the public informed on their operations and certifying a Section 501(c)(3) organization's eligibility to solicit and receive tax-deductible contributions.

The issue, however, is that the IRS systems through which tax-exempt organizations share their data and file for new or continued tax-exempt status are

¹ Table 14 appears on page 30 of <https://www.irs.gov/pub/irs-pdf/p55b.pdf>. This includes only those entities that have obtained their own exemption ruling letter, and thus omits subordinates under a group ruling, the number of which is currently ~420,000 based on December 2023 data.

² Table 2 appears on page 4 of <https://www.irs.gov/pub/irs-pdf/p55b.pdf>.

broken. Certainly these systems are not *completely* broken—a large number of tax-exempt organizations are able to submit their filings without issue (or at least without issues that prompt outside or internal concern). However, it’s clear to the Council’s members that there are significant, system-wide errors that are causing significant disruptions and dire consequences for tax-exempt organizations of all kinds.

The IRS uses a series of systems (both new and legacy systems) to track and report data internally and to the public. The legacy systems the IRS uses still use the COBOL programming language, which first appeared as a programming language in 1959. COBOL can be a very secure language, which is important, but it is also outdated and no longer commonly (or ever) taught to new programmers. In addition, much of the IRS workforce that was able to work in this language has retired. As a result, the IRS’s access to programmers able to work in COBOL is extremely limited.

Additionally, exempt organizations used to have a standalone database within the IRS’s systems: The Exempt Organizations Master File. Yet in 1981, the IRS merged the Exempt Organizations Master File with the general “Business Master File” that tracked for-profit organizations, creating the EO/BMF as a new segment of the Business Master File. Some data from the EO/BMF regarding tax-exempt entities is publicly available through the Exempt Organizations Business Master File Extract (“EO BMF Extract”), such as an organization’s legal name, doing-business-as name, employer identification number, address, 501(c) classification, and accounting year-end.³ Those public fields in turn inform the IRS’s Publication 78 database that is available through its Tax-Exempt Organization Search (“TEOS”) function.

As the old Exempt Organizations Master File was merging into the larger EO/BMF, another issue was arising. Because of COBOL’s age beginning to show itself, the IRS developed newer systems to track and report data. But because the old data was housed in the legacy systems, the IRS’s workaround was to create additional standalone systems designed to bridge the gap between the legacy and “new” ones. These bridging programs must process a giant amount of information specific to exempt organizations, much of which is unique to the tax-exempt sector.

The more moving parts in a system, the more likely that something breaks. And it certainly has broken, especially with additional new systems such as completing

³ The EO BMF Extract is made available through eleven yearly releases—one per month except for January; however, the monthly release is sometimes delayed and information in the Public Abstract can be outdated by several months, as discussed below. The EO BMF Extract is made available online at <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-EO-BMF> (last visited March 24, 2024).

and e-filing exemption applications through pay.gov, the Electronic Federal Tax Payment System, the systems handling routine Section 527 organization filings, and whichever systems are responsible for handling Form 8822-B's "responsible party" and taxpayer address updates.⁴ The intersection between the number of databases and other systems appears to be a sizable part of the problem. Those "other systems" include additional IRS master files, such as payroll, employment, and employer identification numbers as well as the systems that field and process e-filed Form 990-series annual returns, Form 990-T and relevant excise tax filings.

As discussed in more detail below, people attempting to navigate the IRS's tax-exempt filing and access systems are overcome with errors. Organizations' information appears incorrect online, corrections take months (or even years) to process, previously corrected errors suddenly appear again, organizations receive erroneous notices and assessments, filings mysteriously vanish into the filing black hole, etc. The Council notes that its members have reported a dramatic increase in the frequency of these errors since 2022.⁵ The Council's members report that corrections typically do not appear in the EO/BMF (or public databases based on it) in less than six to eight months, and there are numerous reports of corrections taking more than a year.

While historically data-input errors sometimes occurred at the time the IRS issued and rostered an organization's initial exemption determination, or upon an organization later providing notice of having undergone a legal name change, that scenario changed in 2022. Starting in January 2022, the Council's members have encountered situations in which an organization's properly reported name, 501(c)-type, public charity/private foundation classification, accounting year-end, or address have inexplicably changed to something that is just plain incorrect. The Council recurringly has members report the following scenarios, which clearly are not anomalous given their number and frequency:

- A 501(c)(3) taxpayer that has always been classified as public charity under IRC sections 509(a)(1), (2), or (3) now appears as a private foundation.

⁴ To be clear, the participants in this submission support e-filing as an efficient and modern approach to tax filings, but e-filing has exacerbated existing issues with information mismatch.

⁵ Notably, this uptick in errors began *after* the height of the COVID-19 pandemic and the initial flood of issues that began during that time with workplace changes at the IRS. To document the frequency of these errors, the Council is undertaking EO BMF monthly file comparisons and will be able to provide the results of these comparisons over time as data is gathered. The Council will continue to update its list of real world examples with submissions from its members.

- An organization that changed its accounting year successfully from its historic year end to a new one discovers that the historic year end has “returned.”
- A longstanding 501(c)(3) organization is now listed as exempt under 501(c)(4) or another non-(c)(3) subsection.

Errors in names, addresses, accounting years, and 501(c)-type impact the ability of organizations to e-file. The 2022 and 2023 filing seasons saw an inordinately high number of e-filed Form 990-series annual returns and Forms 990-T rejected from e-filing due to conflict between the IRS’s EO/BMF records and the information on the returns. In these cases, the IRS’s e-filing Helpdesk is the first source of assistance, but actual resolutions of the issue depends on whether the staffer assisting is knowledgeable in exempt-organization-specific matters.

Even worse—exempt organizations most frequently learn about these issues once they receive notice that a donor or grantor will not make a donation or grant because of the inability to verify the information provided by the organization based on the EO BMF Extract or TEOS. Errors in that data specifically affect whether the donor or grantor has legal reliance for treating the donation as tax-deductible or as a grant to a public charity under existing guidance from the IRS. Rev. Proc. 2018-32 provides that donors and grantors can rely on an organization’s tax-exempt and public charity status as listed in either the EO BMF Extract or TEOS (both of which are based on data from the EO/BMF). Without correct information in these sources, donors and grantors cannot move forward because these are the only two sources of information that they can legally rely on. This leads to significant delays in funding and frustration for organizations that depend on gifts, grants, and contributions as well as donors and grantors. In particular, this deeply affects private foundations and donor advised fund sponsoring organizations that face the increased risk of potential excise tax liability regarding grants that require expenditure responsibility. Similarly, many federal, state, and local government agencies use the EO BMF Extract or TEOS to verify exemption qualification when awarding grants or contracts, and errors mean that government agencies cannot make grant payments or reimburse contracted expenditures in a timely manner.

It all adds up to a very human cost. From the public’s perspective, a lack of accurate data erodes trust in the system. Additionally, the public cannot always confirm that a stated charity is in fact qualified to receive donations. From the perspective of tax-exempt organizations, that erosion of trust and inability to verify donation and grant targets means potential doom. If an organization cannot prove it is eligible to receive grants or tax-deductible donations, it could very well see its funding (and its mission) vanish. Of course, there is also the heartache and stress

that accompanies any computer troubleshooting—exempt organizations lose numerous dollars and their employees and board members experience many sleepless nights when IRS errors occur.

These problems also matter to the IRS. Data analytics are a cornerstone of its recent efforts, including through laudable initiatives such as the creation of the Enterprise Digitalization & Case Management Office. But data analyses are only as valuable as the accuracy of the underlying data. Without accurate, up-to-date information, the IRS's data analytics initiatives are at risk, as is the IRS's credibility to oversee the sector.

III. THE REAL-WORLD IMPACT

Again, the technology issues described above are not a merely theoretical problem. As a broad group of tax professionals from across the country, the Council's members have seen many ways in which real, ordinary taxpayers trying to do the right thing are failed by the current system. The purpose of this section is to provide specific examples of these system-wide failures.

A. Tax-exempt organizations face numerous concerns

The majority of the issues described in this submission stem from problems with the EO/BMF, along with the related systems through which members of the public enter and access data such as the EO BMF Extract and TEOS. These searchable databases are the primary means through which members of the public can access information about tax-exempt organizations. Almost every issue described in this section could potentially be solved through judicious use of improved existing and additional automated systems, including systems designed to correct key public-facing errors in a more streamlined manner.

1. Persistent EO/BMF errors and delays in releasing EO BMF Extract updates

As noted above, a wide array of EO/BMF data errors impede tax-exempt organizations, and the EO BMF Extract updating mechanisms are insufficient for present-day challenges. The result is simple: If the proper status and information for tax-exempt organizations is not accessible from the IRS (or certifying institutions that themselves apply the IRS's data), then those organizations will fail.⁶

⁶ This point cannot be overstated. An organization that cannot fundraise is doomed barring immediate and drastic efforts by the organization and its chosen counsel (if any). These corrections often involve multiple contacts with the IRS at a minimum, and usually months (if

Examples of the many phantom errors that crop up within the EO/BMF include entity names not properly appearing, public charities being misreported as private foundations, entities appearing with other incorrect classifications, or reported fiscal years inexplicably changing.⁷ Compounding these concerns are the general correction times that entities face—most issues appear to take six to eight months to address, but the worst are not fixed more than a year. In one particular case, a member of the Council reported a client with “Healthcare” in its name appearing publicly as “Heathcare” in the IRS’s systems, which took over eighteen months to correct. Often, the IRS will not provide any documentation regarding the correction leaving the organization completely dependent on the monthly updates to the EO BMF Extract and TEOS to prove that errors have finally been corrected.

These issues are further aggravated by delayed releases of EO BMF Extract monthly postings, which occurred in the last quarters of each of 2022 and 2023. In 2022, the November 2022 EO BMF Extract was timely released on November 14, 2022. But the IRS’s webpage never showed a December update release until the error was caught on January 12, 2023. When the Council asked EO Director Rob Malone about the update failure at the Council’s March 2023 public Q&A, he explained that “the EO BMF data was updated December 12[, 2022]. . . . [B]ut the date on the webpage wasn’t [then] updated. So the data was there and [had] been corrected.”⁸

That explanation was little comfort to organizations (and their potential contributors) who were looking for the December 2022 release to cure eligibility issues under the November 2022 database. The mislabeling error meant that the IRS’s webpage failed to signal that a pending correction request might have been addressed. Indeed, many organizations with critical EO BMF Extract (and Publication 78) errors remained in the dark as to whether corrections had occurred. Further, these organizations’ potential donors and grantmakers would have only been aware of the correction had they consulted any of the third-party agencies who

not over a year) of delay. An organization cannot exist that long with its essential funding sources paused.

⁷ These issues are further magnified for subordinate entities operating under a group ruling, given the inherent complexity of being situated “under” a central organization. For example, subordinate entities are not easy to find (and some fail to appear) in the EO BMF Extract. For those that choose to make their own 990 filings (rather than being included in the central organization’s group return), filing is often impeded when not all EO/BMF data appears as expected, such as an incorrect employer identification number appearing. Additionally, subordinate entities face unique hurdles in seeking to correct errors, and often face waiting times of nine to fifteen months when seeking to effect changes in EO/BMF data fields. Making matters worse, the central organization holding the group ruling is often unable to confirm its input of subordinates’ updated information each year has been accepted (or even received).

⁸ See March 3, 2023 Transcript included with this submission.

plumbed the data (despite the mislabeling) during the last two weeks of the year. And as no January release occurs, those organizations who knew they were still not correctly listed in the EO BMF Extract as of the November 2022 release continued believing they were ineligible for charitable contributions until mid-January 2023.

In 2023, the scheduled November release of the EO BMF Extract did not occur. As a result, 501(c)(3) charities with errors in the EO BMF Extract's (and companion Publication 78's) data as of the October 2023 release had no choice but to hope their corrections would be in place in time for the December 2023 release so fundraising could resume during a crucial fundraising month in which many organizations close for the end of year holidays. But even for those organizations for whom that hope was realized, a mere two-week window to access donations was not enough to overcome the financial straits they faced, which led organizations to pause activities (with attendant lay-off of staff) or, worse yet, close. The Council hopes that this explanation will prevent the same issues from occurring in 2024.

Ultimately, tax-exempt organizations and their advisers face numerous cyber problems that affect their real-world operations. These systems appear to have been designed and implemented without consideration of exempt organizations' practical needs and without understanding the havoc that incorrect information in the EO BMF Extract and TEOS cause given that those are the only sources that donors and grantors can rely on for verification of exemption and public charity status. And aside from the rare submission like this one, sector representatives are normally unable to convey the totality of these issues to the IRS in a meaningful way, which means that the IRS's programmers do not always realize the issues are present. Although we recognize that the IRS cannot possibly anticipate every workaround or error that will inevitably appear, it can *minimize* the number and severity of those problems by making the public-facing and interactive parts of the IRS systems as accessible and error-free as possible while maintaining open lines of communication among all interested parties.

2. Errors in other IRS Platforms

As to use of platforms other than the EO/BMF, the Electronic Federal Tax Payment System ("EFTPS") also raises concerns with respect to its tax-exempt interactions. For private foundations that must pay excise taxes on their net investment income, all 501(c) organizations that have unrelated business income tax, and those who may wish to make protective estimated tax deposits on potential excise tax liabilities, making a deposit often generates unexpected IRS demands for unfiled returns or queries as to where the deposit should be applied. Exempt organizations and their professional advisers are unable to easily see tax payments (which would be helpful in answering some of those demands) and would benefit greatly from a

system allowing a designated officer (such as a chief financial officer) to view all relevant data for the organization. Additionally, the EFTPS documentation is not always clear to users. A guide could help them determine the necessary codes for payments or even the specific forms they *cannot* address via EFTPS (e.g., Form 1120-POL for political organizations, despite the availability of the general Form 1120 through EFTPS).

And of course, no discussion of technological issues would be complete without mention of pay.gov. While the Council certainly appreciates the efforts through pay.gov to make tax-relating filings more accessible, there are a few technical errors that are repeatedly causing issues for organizations seeking tax-exempt status.

First, most practitioners using pay.gov are aware by now of the importance of preparing Form 1023 in PDF or other forms first, and *then* using that pre-prepared information to populate the electronic form. But uninitiated users often learn the hard way that information saving is not always reliable, and they cannot guarantee the information they previously submitted will be available when revisiting the form.

Second, the platform requires that users complete each page in sequence, even when revisiting the form at a later date. Although this issue again is mostly “resolved” by manually typing out the answers ahead of time and populating them later, it does create an issue when a pre-filing correction must be made to only a single item in a specific section, and risks users inadvertently deleting or modifying data in prior sections.

Third, the instructions in place for the e-filed Form 1023-EZ have skewed the program to incorrectly yield “private foundation” ruling letters going to almost half of all such applicants, according to findings by former IRS agent Sandy Deja.⁹ Ms. Deja’s Form 14411 submission to the Taxpayer Advocate Service demonstrates that the Form 1023-EZ has for a decade inadvertently and incorrectly steered small organization applicants (most of whom are unsophisticated in their understanding of public charity qualification) to “choose” private foundation status rather than readily qualify as public charities. Ms. Deja’s report notes how and why this issue has occurred and provides details regarding how it has prompted a corresponding increase in the number of Form 8940 reclassification submissions. These submissions

⁹ Ms. Deja’s one-page Form 14111 submission along with 8 pages of additional background documentation are included with this submission.

involve a huge financial cost to small organizations and further strain upon the IRS's resources (including the need to re-code these entities in the EO/BMF).¹⁰

3. Specific systems could be automated

One of the most pervasive concerns that members of the Council and their client organizations face is a perceived black box effect, through which it is not always clear whether filings have been received or are being processed.

A chief example is the group ruling holder annual update process, which group ruling organizations use to notice the IRS of all subordinate organizations covered under their group rulings.¹¹ The annual report—which can include thousands of organizations—is an opportunity to add or remove subordinate organizations. Unfortunately, the only options for the central organization to submit this list is through mail or fax. As a starting point, these submissions (and mid-cycle corrections, which are almost always needed)¹² would seem to be the type of filings that could be submitted electronically, saving practitioners from faxing or mailing hundreds of pages. An e-filing system for group ruling holders could also allow for

¹⁰ We note that the EO BMF Extract is inordinately slow at reflecting changes based on Forms 8940 filings. Many entities will receive approval letters, yet months pass before the EO BMF Extract reflects the taxpayer's sought changes. Since the EO BMF Extract and TEOS are the only permissible sources for donor and grantor reliance under Rev. Proc. 2018-32, this is a significant issue because presenting the IRS's favorable ruling letter is not sufficient.

¹¹ Group ruling holders are required each year to update the lists of subordinates covered by their group rulings. They also may submit updated information correcting IRS errors or effecting name or address changes of subordinates at other times during the year. The group ruling sub-sector includes—by the Council's understanding, 420,524 subordinate organizations, which corresponds to about 23% of all organizations listed in the December 2023 EO BMF Extract—and since 2022, the Council's members have found numerous errors affecting it.

¹² One Council member detailed a scenario of multiple "faults" in the EO/BMF needing to be corrected for a client with several thousand subordinates:

- a) The central organization's current legal name was somehow replaced in the EO/BMF with its original name from more than thirty years ago (the one submitted with its initial application). But in most other instances related to its filings, its correct current name was still listed.
- b) The name of one subordinate organization was replaced with its central organization's name in the EO/BMF, which jeopardized the subordinate's ability to receive funding given the apparent mismatch between the EIN of the subordinate and the name of the organization.
- c) Multiple other subordinates' names were found to be incorrect in the EO/BMF, typically with pluralization added (or dropped) and with their names' grammatical articles removed. These changes typically resulted in the organization's names appearing similarly to but not exact matches of their actual names.

real-time error flags allowing the central organization to submit the best-possible info to the IRS.¹³

Yet the problems go beyond the mere required use of paper filings being less interactive. More importantly, *the entities submitting these forms do not receive confirmation that their forms were even received*. At most, the submitting central organizations receive confirmation only once the updates are made, and even then these confirmations only seem to arrive about half the time. As a result, the organizations and professionals are left waiting, wondering whether there were any errors they could correct or other issues with the submission (including, again, whether the IRS has in fact received the submission).

To that end, the Council envisions that not only group ruling holders' updating of information regarding their subordinates, but also requests for EO/BMF corrections for all taxpayers who have been issued exemption rulings, could be optimized through a more streamlined, automated setup:

1. Filings are submitted electronically (with paper options for those few organizations that cannot take advantage of electronic filing).
2. The electronic systems receiving those filings provide instant feedback to issues, such as the attempted use of a disallowed character.
3. The electronic filings are quickly logged and sent for what the Council assumes would be more efficient processing, plus the processing would avoid transcription errors by ensuring the data entered by the organizations is transferred character-for-character into the EO/BMF and related systems.
4. As part of the logging, the submitting organization receives an instant e-mail confirming the filing's acceptance.¹⁴

¹³ Considering the stacks of physical paper littering the desks of the Council's members, the Council can only imagine the volume of paper the IRS receives for the ~1.8 million exempt organizations holding rulings under IRC sections 501(c) and 527 and the ~420K subordinate organizations who do not have their own ruling letter.

¹⁴ We further note that the pay.gov platform does not provide a dated confirmation for any of the four exemption applications nor for the Form 8940. While an instant confirmation from pay.gov would be enormously helpful for the sector, we also request that the IRS resume its prior practice of sending a confirmation letter when an application or Form 8940 has been assigned for review to an IRS employee, which was enormously helpful and offered better transparency on how long applications are under review by the IRS.

5. In particularly busy times, the IRS could also have an automated follow-up e-mail to the organization that the submission is still under review, perhaps a few months from the original filing date.
6. Upon review, the organization could also receive automated confirmations that the filings were processed or, in the event of errors requiring correct, notice of their obligations.

Removing all human review from the various systems would not be desirable or even possible. The IRS's staff have important responsibilities that are not and should not be automated in terms of fact-gathering and making qualitative determinations (e.g., whether an activity is "substantially related" to an organization's tax-exempt purpose). But those activities require human time and attention, neither of which is best spent on sending run-of-the-mill confirmation letters or chasing transcription errors.

Accordingly, the proposal above has at least two layers of automation that would save time, money, and heartache for all involved. First, the electronic submissions would prevent at least some obvious initial errors by catching them at the outset (much like the pay.gov platform does on filed Forms 1023-EZ, 1023, 1024-A and 1024, along with the e-filed Form 1040 for personal tax returns). Second, avoiding the need to re-type paper forms' entries into the broader systems would save time spent typing or scanning on the IRS's end, not to mention the potential need to correct transcription errors later. Third, it would help the filers feel acknowledged, knowing that their submissions did not simply disappear into a black hole.

That acknowledgment is important—the mystery is usually what leads to the confusion and attempted phone calls by the filers, which leads not only to more IRS time spent answering the phone, but also more taxpayer correspondence being generated in attempting to determine if initial requests were received. In other words, *communication is key*.

However, note that there are persistent EO/BMF issues affecting group rulings in particular that will require other types of solutions. For example, there are numerous technical issues if subordinate organizations wish to completely leave their connection to a group ruling holder and seek their own exemption rulings. One Council member that works exclusively with religious organizations reported enormous difficulties when individual churches sought to leave their denominations. For example, in 2022 and 2023, several individual churches had been properly included in a group ruling, but wished to leave the denomination. When they filed their own Forms 1023 through pay.gov, the system rejected those filings because the churches were considered "already exempt." The IRS also rejected those churches'

efforts to update their addresses, stating that the central organization with the group-ruling would need to update their contact information with the IRS.¹⁵ The member noted that there are many reasons a church leaving a denomination might *not* want to put that type of power and information in the hands of the denomination it is seeking to leave.

4. Incorrect notices and assessments from automated systems

Council members for the last two years have seen with increasing frequency errant assessments or letters seeking “missed filings,” which appear to be triggered automatically. As the reasons for these notifications are unknown, the recipients are bewildered and often call their advisers for help.

For example, one Council member reported a situation in which an organization did not timely file a Form 8976, resulting in late filing penalties. The organization requested an abatement of the penalties, and in response has received a series of competing letters. One set of letters (three and counting) informs the organization that the IRS is reviewing its request and requires additional time, while the other set demands payment. It is unclear which of these sets of letters has the correct outcome, as the situation is ongoing.

In another example of confusing letters from the IRS, despite never submitting any abatement request, an organization received correspondence from the IRS asking it to provide additional information regarding the supposed request. After several rounds of communication between the IRS and the Council member, the IRS agent finally agreed that no request had been made and closed the case. It’s an amusing story when removed from the situation, but does not change the terror that many exempt organizations feel when receiving letters from the IRS about supposed unmet obligations, nor the ensuing time expenditures by the taxpayer, its representatives, and the IRS.

Beyond that, members of the Council report numerous of these types of problems:

- When organizations provide estimated tax payments for Form 4720 excise taxes or Form 990-T unrelated business income, it appears to trigger requests by the IRS for successive years’ Forms 4720 and

¹⁵ Although churches are not required to file exemption applications, many choose to do so in an abundance of caution and in the interest of being upfront with the public. Moreover, these issues also affect parachurch organizations that operate outside of individual denominations (e.g., campus ministries).

990-T, even if the underlying filed returns showed no tax liabilities and the deposited amounts were fully refunded.

- Likewise, filing a Form 990-T in the last two years has yielded requests by the IRS to file “missed” prior years’ returns even though those same prior years’ annual information returns evidenced no unrelated business income and noted that no 990-T was required.
- An organization that filed a Form 990-N marked “final” received multiple notices that it was delinquent with respect to filing returns on successive years.
- Additionally, a system error occurs for Section 527 organizations filing final Forms 8872, as they then are no longer considered “in business” and thus are unable to file the required final Form 990.
- Organizations receive incorrect penalty assessments, including for paper-filed Forms 990 required under Revenue Procedure 2014-11 when seeking retroactive reinstatement after an automatic revocation.
- In an example of an error-catching function itself having errors, organizations often face issues when attempting to file a short tax year return. For example, an organization that historically has had a December year end but then switches to a June 30 year end will file a short return for the period to cover the first-post change year (January 1 to June 30). The Form 990 instructions say the organization can use the form for either the current year or prior year for purposes of these short returns. But attempting to use the prior year’s return form (which likely to happen this year as the 2024 returns will not be released until 2025) results in an automated error because the taxpayer already had a prior-year Form 990 filed on the full calendar year. This scenario prevents exempt organizations (or at least those that are permitted to effectuate a tax year change via Form 990) from both timely meeting their filing obligations and accomplishing desired changes.

The conclusion is simple: automation alone is not enough to address errors and sometimes IRS employee intervention is clearly needed. Multiple issues such as those above persist and plague tax-exempt organizations. Taken into consideration with the previously described issues regarding attempts to resolve errors in a timely fashion, these issues have hugely drained and will continue to drain the IRS’s limited

resources, while at the same time stressing operating tax-exempt organizations and haunting the nightmares of professionals attempting to help those tax-exempt organizations.

5. Unclear “ownership of responsibilities”

As previously noted, tax-exempt organizations do not simply have to contend with the EO/BMF; they also face a litany of systems including EFTPS, pay.gov, and the systems that accept (and then direct follow-up letters based upon) electronically filed 990-series annual information returns and Forms 990-T, 4720, and 8976.

In March 2022, the Council received notice that the IRS’s EO Entity (Control) office in Ogden has jurisdiction over fielding issues with and implementing corrections to the EO/BMF.¹⁶ Most—if not all—exempt organization advisers were previously unaware of this fact, and taxpayers and professionals had been turning to the TE/GE Customer Accounts Service phonenumber for assistance in these matters. This approach stemmed from the IRS’s “Exempt Organizations Business Master File Extract (EO BMF)” webpage, which stated (and continues to state): “If you have any questions about the tax-exempt organizations or the content of the files, please contact TE/GE Customer Account Services toll-free line at 877-829-5500).”¹⁷

Some EO/BMF corruptions or issues are (or at least seem) more immediately resolvable with assistance from the IRS’s e-filing helpdesk, which has been helpful in many cases. But success here is also dependent on accessing the few staffers who are knowledgeable about exempt organization rostering and filings.¹⁸ (When staff members are not familiar, they typically send the caller to the 877-829-5500 line, which in turn refers the caller back to the e-file HelpDesk.) And of course with the

¹⁶ This information was shared with us immediately following one of the Council’s thrice-yearly “EO Update Panel (including Q&A) with EO Division Director” sessions. Available transcripts from these sessions confirm that the Council has alerted the IRS of many of the issues raised in this submission, and have often been treated in IRS responses as sporadic or one-off issues, which we believe contributes to the ongoing problems. We hope that this submission makes clear the systemic nature of the issues.

¹⁷ “Exempt Organizations Business Master File Extract (EO BMF),” available at <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-EO-bmf> (last visited March 24, 2024).

¹⁸ Considering the complexity of the Internal Revenue Code’s provisions governing exempt organizations, and the accompanying thousands of pages of related Income Tax Regulations, it is less of a disappointment when the staffer is unfamiliar with exempt organization matters and more of a source of joy when they are. The Council also fully appreciates the IRS’s own internal capacity issues relating to staffing given the breadth of matters Congress has appointed it to oversee and the limited funding Congress has appropriated.

volume of calls the IRS receives, wait times can be lengthy and sometimes result in calls dropping at the end of business hours (if not through technology issues).

Regardless, the EO Entity (Control) office in Ogden has ultimate responsibility for the accuracy of the EO/BMF and it has no mechanism for expediting requests, no matter how urgent. Furthermore, that office does not acknowledge receipt of taxpayer's requests, which given such long wait-times for processing generates unnecessary concerns that a request has been lost or received but not processed. Moreover, the Ogden office and the IRS's various other departments do not always have access to the same information as each other—the technological issues described above in this submission also seem to affect the IRS's backend systems.

As a result, exempt organizations and the professionals assisting them are regularly bounced between the TEGE Customer Account Services phonenumber and the e-filing HelpDesk. And if the issue must go to EO Entity Control, the wait times for a response (via letter—which is rare—and via posted EO BMF Extract correction) take multiple months if not longer than a year.

Issues that seem to be specific to exempt organizations have even sometimes been referred to pay.gov, which occasionally results in the pay.gov representatives sending the requesting organization right back to the department from which it came. Moreover, it is unclear to the Council why certain forms are unavailable to be filed through pay.gov,¹⁹ or in general why there is not a centralized filing location (whether pay.gov or another). It is also the case when pay.gov filing issues have been brought to the EO Division Director by the Council, the response is that the software program is outside of the Division's jurisdiction (i.e., "that's a pay.gov issue.")²⁰

The net effect is not only confusion, but also considerable resource drains. As mentioned throughout this submission, these circumstances usually result in calls to the IRS (and the corresponding resource drain) at best, or at worst lack of compliance or efforts to "fix" the problems that only result in further issues. Centralizing filing-assistance locations and providing clearer directions (i.e., the right number to call or right office to contact) for people seeking help would help alleviate these issues.

¹⁹ Entities must use pay.gov for their initial exemption applications (Forms 1023, 1023-EZ, 1024, and 1024-A) and later-made reclassification ruling requests (Form 8940). It is unavailable, however, for the excise tax return that exempt organizations use (Form 4720) or the return for reporting Section 527(f) income tax liability on political expenditures (Form 1120-POL).

²⁰ See November 17, 2023 transcript included with this submission.

6. Public confusion wastes resources

All of the above items are simply to say: We need help. Now.

Exempt organization tax mandates (and filings and procedures) are complicated. The sector has many small organizations who are less sophisticated than larger entities. It also is a sector that is often constrained for resources, and that sometimes deals with those constraints by emphasizing programs over administrative needs. Professionals similarly struggle when faced with these types of errors because it takes a significant amount of their time to navigate these procedures and those advising the sector may have difficulty charging the full costs for this work. On all fronts, the sector requires faster, more efficient solutions to free time for IRS agents to pursue their duties while providing greater clarity to the public and people assisting existing and startup exempt organizations regarding legal compliance.

A sample experience from a Council member illustrates how these issues yield complex and time-consuming (and potentially financially disastrous) effects. A small client had filed a Form 1023-EZ but mistakenly checked boxes causing it to be ruled a private foundation. The “fix” to obtain for the client its proper public charity status required the following steps:

- The Council member submitted a Form 8940 on behalf of the organization, and in turn received a public charity determination letter in June 2023. Yet the organization was still reported as a private foundation in the IRS’s TEOS database over the next two months, a status which caused the client’s Form 990-N filing to be rejected.
- The member faxed the determination letter by which public charity status had been secured to the IRS’s EO Entity office in Ogden with a request to update the EO/BMF in August 2023. No correction occurred, so the member reached back out in early October 2023—again, unsuccessfully.
- The member then worked with the client to submit a request to the Taxpayer Advocate Service’s office in late October 2023 (via Form 911). The assigned TAS agent promptly contacted the member and suggested filing a Form 990-N in a few weeks after he had a chance to request the correction be inputted.
- Through the combined efforts of the agent, member, and client, the reclassification status finally posted in January 2024, *over six months after the IRS’s public charity determination letter*. During

this entire time, the organization was at risk of automatic revocation for seeming failures to file Form 990-PF.

That example illustrates the extraordinary efforts of an organization that had extensive professional help (and, more to the point, *pro bono* help) from one of the Council's members. Many small organizations could not afford the legal fees for such services if the services were not available *pro bono*. Nonetheless, this example is common within the Council's membership pool and evidences the extent to which valuable time of IRS personnel and taxpayer advisers are wasted by untoward delays incurred when corrections are needed (not to mention the stress it undoubtedly caused the client).

Now keep in mind all of the small or resource limited organizations that do *not* have access to that kind of help.

The Council has only so many members and there are simultaneously not enough professional advisers who specialize in helping tax-exempt entities. Likewise, the IRS only has so many agents, and the public only has so much capacity to learn how to address the IRS's systems via self-help. Accordingly, it is vital that the IRS's systems be streamlined and efficient to avoid as many errors as possible or, if not avoid them, at least mitigate the harm they cause.

B. The numbers and stakes require action

There are around ~1.8 million 501(c) tax-exempt organizations currently rostered in the United States,²¹ and ~1.5 million of those are charitable entities exempt under Section 501(c)(3). Meanwhile, there are around 550 dedicated staff in the IRS's Exempt Organizations Division. Although the common stereotype is that attorneys are incapable of doing math, the Council's CPA members have mercifully done the heavy lifting and assured its lawyer members that this ratio is a problem.

Unfortunately, that is a problem entirely out of the control of the IRS and the tax-exempt sector. Short of Congress fixing the issue by providing greater funding to the IRS, it will remain a problem. But the Council includes this section for purposes of noting that the issues discussed above do not exist in a vacuum. Every error described above translates directly to time and resources both for the IRS and the public it serves. Errors and additional processing time lead to a drain on the IRS's

²¹ This figure does not include the ~45,000 Section 527 political organizations, nor ~420,000 subordinate organizations under a group ruling.

limited human resources and funding,²² along with heartache (and potential failure!) for tax-exempt organizations seeking to comply with the law.

Above all else, the problems described above limit the public's ability to enjoy the valuable services that tax-exempt organizations provide for the public good. Just as the IRS does not have the available resources to handle every possible task on its plate, other governmental entities (federal, state, and local) cannot solve every problem. And not every problem has a profit motive that would justify a for-profit company stepping into the role. Tax-exempt organizations step in to fill that void.

These organizations do not just provide jobs and volunteer opportunities for the public; they serve children in foster care, maintain community parks, assist veterans with navigating the return to civilian life, and provide innumerable other services for the common good. The IRS also serves a valuable role in protecting and informing the public and ensuring that the organizations receiving tax exemptions comply with their legal obligations. The errors outlined in this filing stand in the way of all those goals.

The Council cannot solve the IRS's funding issue, nor can the IRS solve it on its own. What we *can* do, however, is ensure that the available resources go to their highest and best uses. The problems above are very real ones that tax-exempt organizations face. But as noted in the related suggestions, along with the broader call to action below, these "problems" are ultimately opportunities to foster public trust and streamline the process for entities seeking to provide tax-exempt services.

IV. THE COUNCIL'S RECOMMENDATIONS

Given the breadth and immediacy of issues discussed in this submission, the Council makes the following recommendations:

- (1) Place attention to limitations and issues we have noted under supervision/direction of a new post, an "EO Czar", who would—
 - Undertake immediate software systems' functional needs assessment to understand where EO-related IT operations and taxpayer interface with IT-systems need be improved and/or may be simplified.

²² Not to mention the recurring phone calls from organizations wondering about the statuses of their filings.

- Ensure that the functional needs assessment’s results are given priority and prominence in the planning for BMF’s replacement (now scheduled in IRA SOP to be initiated sometime in FY2027 or FY2028).
 - Implement a mechanism by which exempt organization taxpayers and their authorized representatives can access history of their filings and payments (and where same have been applied).
 - Simplify EFTPS intersection for EO’s and/or allow pay.gov tax deposits.
 - Oversee implementation of each of the following recommendations.
- (2) Dedicate additional resources for COBOL-programming staff serving EO needs (we understand that there are currently only two part-time programmers who together occupy <1 FTE).
- (3) Implement appropriate testing and feedback when evaluating existing or adding more-modernized language software platforms serving EO’s needs. As we have noted, these systems not only intersect poorly with the EO/BMF but suffer in great part from what appears to be design and testing without input from the sector’s representatives or stake-holders. For example, updating data within and then releasing monthly EO BMF Extracts, along with the various TEOS databases, cannot be treated as an afterthought when they are the only sources for donors and grantors to have legal reliance in order to make donations and grants under applicable guidance.
- (4) Adopt immediate workarounds for Section 501(c)(3) public charities that have fallen out of the EO BMF Extract in error or otherwise have inaccurate data as same defeats the public’s ability to confirm organization’s name/address, Section 501(c)(3) exemption, and proper public charity/private foundation classification. For example, the Council urges the IRS to revise current guidance to allow affected organizations to be considered “temporarily” as being listed in the EO BMF Extract/TEOS, thereby allowing donors and grantors to legally rely on data other than erroneous information in the EO BMF Extract/TEOS (or Pub. 78 which is derived from it) which at present is the sole reliance source under Rev. Proc. 2018-32.
- (5) Address limitations and issues requiring immediate attention noted in preceding sections of the submission by doing the following –

- Evaluate more-modernized language systems’ current intersections with EO/BMF to determine what is causing increasing frequency of data-errors as well as causing corrections to “revert” back to prior state.
- Cause EO Entity (Control) electronic system to generate a written acknowledgment of a request for EO/BMF correction having been received/accepted.
- Implement a dedicated EO-specific Practitioners Helpline.

V. CONCLUSION

It is difficult to overstate the importance of correcting the EO/BMF and keeping it in good repair. The nonprofit sector cannot function properly without a well maintained EO/BMF. The Council urgently seeks the IRS’s sustained commitment not only to rectify the chronic systemic errors identified above but also to respond more rapidly to new errors as they are detected and to implement measures to prevent future errors.

As a matter of fairness and equity, the IRS should prioritize the maintenance of the EO/BMF because nonprofit organizations serve the neediest in society, yet are themselves among the least well-resourced taxpayers to pursue systemic administrative justice. The return on investment of even small improvements to the EO/BMF will be significant and well worth the cost.

It is not in the IRS’s long term interest to neglect the nonprofit sector and the EO/BMF. The less reliable the data in the EO/BMF, the less the public will look to the IRS to administer the tax law, and the more opportunists will seek to take advantage. A vicious cycle will result, further eroding public trust and emboldening bad actors.

It is within your power to act decisively to protect and defend the nonprofit sector from an uncertain fate. The investment required to shore up the EO/BMF is not material at this point, but it is sure to increase over time. We implore you to take the necessary steps today to forestall a future state of affairs that none of us wishes to see.