

ASSOCIATION RELATIONSHIPS UNDER SCRUTINY
Drafting Subordinate Relations Policies for the New IRS
Form 990

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New IRS Focus on Nonprofit Governance: Is Your Board Ready?

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Introduction

On December 20, 2007, the Internal Revenue Service (IRS) promulgated a revised Form 990, the annual reporting form historically applicable to most tax-exempt entities, both charitable (26 U.S.C. § 501 (c) (3)) and noncharitable (most other tax-exempt categories under 26 U.S.C. § 501 (a)).¹ The last major revision of the Internal Revenue Service's Form 990 took place in 1979.

In its June 14, 2007, draft for comments of the proposed new Form 990, the IRS sought to eliminate the longstanding ability for associated multilevel groups to file a group return.² At the time, the IRS cited concerns for transparency and compliance for its proposal.

¹ Historically, while there have been several significant exceptions, the bulk of tax-exempt organizations that filed annual returns with the IRS were required to file the Form 990. Some smaller organizations have been able to file the Form 990-EZ. Some tax-exempt organizations, such as most religious organizations, are exempt from filing altogether, while others are required to file separate specialized forms, such as those applicable to homeowners associations or black lung benefit trusts. See Form 990 General Instruction B (2007). The Form 990-N e-postcard for small tax-exempt organizations with annual income under \$25,000, required by the Pension Protection Act of 2006, is in its first year of implementation, starting with organizations whose tax years ended December 31, 2007, which were required to file the new form by May 15, 2008. If all qualified small nonprofits file the required e-postcard, the number of Form 990-N filings may eventually exceed Form 990 returns. 152,137 Form 990-Ns had already been filed as of August 17, 2008.

² In its guidance for group exemption requests, the IRS used the terms "related" and "affiliated" to describe the relationship between a central organization and its subordinate units, which are defined to be "under the general supervision or control" of the central organization. Rev. Proc. 80-27, 1980-1 C.D. 677; Pub. 557 (Rev. 6-2008); Pub. 4573 (Rev. 6-2007). Nevertheless, "affiliated group" has a specific meaning in IRS terminology for treatment of lobbying expenditures, and can include organizations with interlocking boards, not a typical governance format for multilevel organizations. "Related organization" has a similar meaning in the context of political expenditures. "Controlled organization" has a distinct meaning in the context of unrelated business income tax. "Supporting organization" has a distinct meaning in the context of distinguishing between public charities and private foundations. The instructions to Form 990 Schedule R explain that subordinate units subject to group exemption letters are not "related" and "controlled" entities for purposes of that schedule and Form 990 Part IV, lines 34-36. Presumably, the subordinate units of similarly structured associated multilevel groups without group determinations would be treated similarly. The terms "affiliated organizations," "related organizations," "supporting organizations," and "controlled organizations" can therefore be somewhat confusing in the typical multilevel (also called "multi-tiered") association context. The term "association" typically refers to a membership organization, which may be unitary (with all members, which may be individuals or other entities, relating directly to the organization without intermediaries), or may be organized as an associated group on a multilevel basis with a central organization and subordinate units. This summary uses the term "multilevel association" to refer to (i) groups eligible for group determination letters; (ii) similarly structured organizations composed of one central organization and several subordinate units, but ineligible for group determinations because some subordinates fail to meet IRS group determination requirements, such as separate governing documents, entity organization in the United States, identical fiscal years, and non-private foundation status; and (iii) unified organizations with local service units providing similar services to members as subordinate units, but which organize such service units as internal divisions or departments within the unified entity. If necessary, the

After receiving numerous comments about the cost and time that would be required for separate annual returns for each subordinate unit in associated multilevel groups that had long filed group returns, the IRS continued to allow group returns in the final version of the new Form 990.

The continuance of group exemption determinations for associated multilevel groups had also been under discussion for similar reasons. The IRS's concern with policing compliance and mission fidelity in multilevel associations underlay a line in the June 14, 2007, draft Form 990 that was adopted in the final form as Part VI, lines 9a & 9b:

- 9a. Does the organization have local chapters, branches, or affiliates?
- 9b. If "Yes," does the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with those of the organization?

The final instructions, which were issued on August 19, 2008, explain that these questions apply regardless of whether the central organization³ has obtained a group exemption for its subordinate units.⁴ According to the instructions, the highest level of all multilevel associations is required to respond "yes" to line 9a and either answer "yes" or provide a narrative response to line 9b.⁵ That would include the highest level of any associated multilevel group capable of requesting a group determination or filing a group return.

first two types of organizations will be referred to as "associated multilevel groups" and the third type of organization will be referred to as "unified multilevel entities."

³ This summary uses the IRS term "central organization" for the highest level organization in an associated multilevel group. These highest level organizations are also sometimes also called the "parent," "head," "main," or "superior" organizations. The term "parent" organization may be somewhat confusing, as lower level units in the group are typically separate legal entities with their own distinct membership, which may or may not be a sub-set of the central organization's membership. Subordinate units are rarely related to the central organization in the same way that subsidiary corporations are wholly or primarily owned by a parent corporation.

⁴ This summary uses the term "subordinate unit," a variation on the IRS term "subordinate organization," employed, in regard to group determinations, for the lower level organizations in an associated multilevel group. These lower level organizations are also sometimes also called the "inferior" or "constituent" organizations or units. There are a number of commonly used terms for such subordinate units, including *chapters, units, groups, affiliates, branches, lodges, posts, regions, districts, and locals*. Subordinate units are most often organized on a geographic basis. Sometimes, subordinate units are organized on other bases, such as areas of mutual interest, and may be called *special interest groups, communities of practice*, or other similar designations. The actual designation for such subordinate units has no legal significance, but should be clear because multilevel associations often use different terms for different levels or to signal different types of relationship.

⁵ The instructions state that the terms "local chapters, branches, lodges, units, or similar affiliates," as used in line 9a, "include organizations over which the organization has the legal authority to exercise supervision and control (whether or not in a group exemption), and local units that are not separate legal entities under state law over which the organization has such authority."

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Many practitioners interpret the second clause of the definition in the instruction—“local units that are not separate legal entities under state law over which the organization has such authority”—to include local and regional units within a unified multilevel entity that are established as internal divisions or departments, rather than as separate legal entities.⁶ The highest level of a multilevel association that chooses to establish local units as internal divisions rather than subordinate units with separate legal identities, often specifically to avoid separate tax filings for each such division, would still be required to respond to Line 9b. These local divisions, although they report their income and expenditures to the IRS as part of an integrated structure of the overall unified multilevel entity, still operate fairly independently simply by virtue of distance and lack of day-to-day oversight. IRS concern with ensuring mission fidelity in the activities of such local divisions is understandable, as the unified multilevel entity’s mission is the basis of its tax exemption and the local divisions’ activities are imputed to the entire organization, perhaps more so than with the more typical subordinate unit that is a separate legal entity.

The instruction also covers associated multilevel groups, that choose not to avail themselves of a group exemption or that are similarly organized but ineligible for a group exemption, so long as the central organization “has the legal authority to exercise supervision and control.” An associated multilevel group may be organized similarly to other associated multilevel groups eligible for a group exemption, but fail to qualify because the subordinate units fail meet certain group exemption requirements. Some such requirements include written organizing documents, entitlement by all subordinate units to exemption under the same paragraph of § 501 (c), a prohibition on foreign subordinate units, and a prohibition on subordinate units that qualify as private foundations. The emphasis in the instructions on chapter governance or mission fidelity policies regardless of the associated multilevel group’s exemption status indicates that the IRS is looking at more than policing group determinations.⁷ Rather, Lines 9a & 9b are intended to ensure mission fidelity and good governance practice in supervision of far-flung local units in any multilevel association.

When responding to Line 9b, a satisfactory “yes” response should optimally be based on combined: (1) language in the central organization’s bylaws or other governing documents

⁶ Largely to insulate the higher-tiered organizations within a multilevel association from liability and to grant the lower units significant independence of action, the lowest levels in most multilevel associations are typically organized as separate legal entities, with separate membership, leadership, and governing documents. Sometimes, for administrative convenience, philosophical reasons, or to avoid multiple small tax filings, multilevel associations choose to organize as unified multilevel entities. ASAE (formerly American Society of Association Executives) uses the comprehensive term “components,” to cover both the more typical subordinate units and local units that are set up institutionally as internal divisions or departments of a unified multilevel entity.

⁷ Central organizations are responsible for ensuring that their subordinate units continue to qualify as tax exempt. The IRS oversees this responsibility largely through the annual update letters required from all central organizations that have obtained group exemptions. See Pub. 4573.

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setting out the basic parameters of the central-subordinate relationship and (2) policies that further define the internal structures of the subordinate units and the mandatory communications between the central organization and the subordinate units. A “no” response requiring a narrative response should indicate that the central organization is making progress towards implementing a subordinate relations policy and state the specific steps being taken and any existing institutional barriers that may be impeding progress. If the central organization, for institutional reasons (such as religious polity), needs to answer “no” to Line 9b for the long term, the narrative should explain why and how close the existing governance structure of the multilevel association comes to the ideal of having governing document language and governance policies regarding subordinate relations. This response will likely not be tenable for associated multilevel groups with group determination letters or unified multilevel entities.

The IRS has indicated that it intends, through the greater transparency of the new Form 990, to encourage central organizations to adopt clear and comprehensive subordinate relations policies, which can be used to improve internal performance measures, gain voluntary accreditation, improve standings in outside rating systems, and qualify for funding grants, among other reasons. Continuing failure to improve subordinate relations transparency as disclosed on the Form 990 might ultimately result in greater IRS scrutiny, particularly in regard to group determinations.

In practice, many multilevel associations include some barebones language about lower level organizations in the central organization’s bylaws (or constitution, in organizations having a separate constitution) and fail to provide much more in the way of guidance or formal oversight. Others have detailed provisions and elaborate and informative chapter manuals. Others have well designed chapter manuals that, nevertheless, fail to provide guidance on the issue of greatest concern to the IRS, maintaining mission fidelity among the subordinate units. One of the most significant reasons that central organizations fail to provide adequately for their relationships with subordinate units is that they have not been challenged to think through the many available variations of the central-subordinate relationship and to articulate their positions.

The Subordinate Relations Policy Checklist below suggests some of the many issues that central organizations need to think about in their relationships with subordinate units. Sometimes, the failure to articulate the nature of the relationship can cause confusion, as when the question arises whether heavily controlled local service units are legally independent subordinate units or divisions of a unified entity. Significant tax and liability consequences can rest on such distinctions. Other times, failure to think through relationships in advance results in unintended consequences if the common law inserts itself when a dispute arises. For example, a subordinate unit may unilaterally disaffiliate, despite longstanding presumptions, because the governing documents contain no specific language about that possibility.

Some of the issues suggested by the checklist are significant governance issues for the central organization itself and should probably be addressed in its bylaws (or constitution). One

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issue that is typically addressed in central organization's bylaws, for example, is representation of subordinate units in central organization governance through delegates or board members. A significant governance issue rarely addressed in central organization bylaws is discipline for subordinate organizations that fail to meet their obligations to the central organization. Other issues, involving detailed subordinate unit governing document provisions or standard interactions and communications are better addressed at the level of central organization policies, which are more easily amendable. For example, while certain minimum subordinate organization requirements are often included in the central organization's bylaws, model subordinate organization organizing documents (charters or articles of association, certificate/articles of incorporation/organization, and constitution/bylaws) are typically established as policies of the central organization rather than as bylaw provisions to allow for sometimes necessary local variation. Of course, if the central organization wishes to impose policy-level decisions on subordinate units, it must require such a condition in their initial internal charter (chapter charter/agreement of association) and consider also placing similar restrictions in the subordinate units' initial bylaws and (if they incorporate) their articles of incorporation/certificate of incorporation/articles of organization/corporate charter, if permitted by state law. Some of these issues are also of concern to unified entities with local service units organized as internal divisions.

After the Subordinate Relations Checklist is a compilation of chapter manuals available online as possible samples. The materials in these checklists should be helpful in creating a subordinate relations policy.

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Subordinate Relations Policy Checklist

(1) Organization of Levels within Central Organization

- Hierarchical or Multi-modal
 - ___ Hierarchical (each subordinate unit fits within a strict pyramidal structure); or
 - ___ Multi-modal (some subordinate units at different levels may directly report to central organization, e.g., local and state subordinates both report directly to the central organization and membership at the state level may not be a prerequisite of membership at the local level or vice versa)
- Unified, Federated, or Confederated
 - ___ Unified (strictly controlled by central organization; association and disassociation based solely on initiatives of central organization)
 - ___ Federated (power shared by central organization and subordinate units; both must agree to association and disassociation, except for central disciplinary proceedings to disassociate noncompliant subordinate units)
 - ___ Confederated (power primarily with subordinate units, which can associate relatively freely and disassociate without impediment on their own initiative; possible disassociation by central organization disciplinary proceedings against a noncompliant subordinate unit)
- Polity. The typical types of church polity are:
 - ___ Episcopal
 - ___ Presbyterian
 - ___ Congregational
 - ___ Individual Conscience (possibly)

These longstanding religious designations have doctrinal and theological implications not relevant for secular tax-exempt organizations. Religious organizations need to consider language in their governing documents consistent with the appropriate polity for the group's theology. While judicial intervention in internal church relationships is severely constrained by the First Amendment's free exercise clause, judicial intervention is indeed possible in a number of instances, particularly when church property is at stake. The legal cases prompted by a local church seeking to disaffiliate from its longstanding denominational affiliation are legion. See, e.g., *General Convention of the New Jerusalem, Inc. v. MacKenzie*, 449 Mass. 832, 874 N.E.2d 1084 (2007); *Wooten v. Crayton*, 66 Mass. App. Ct. 187, 845 N.E.2d 1213 (2006).

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- “Secular” Polity. The different levels at which primary control resides in the various religious polities provides some insight into different secular nonprofit practices as to where primary power within a multilevel association lies.
- Central Organization. Primary power rests with the highest level central organization, typically the national or international level.
- Intermediate Organization. Primary power rests with intermediate level subordinate units, typically the state level.
- Local Organization. Primary power rests with the lowest level subordinate units, typically the local level.
- Individual Member. Primary power rests with the individual member.
- International Issues
- There are possibly significant governance issues if several subordinate units of a central organization organized in the United States are organized in foreign nations, or if a central organization organized in a foreign nation includes one or more subordinate units organized in the United States.

(2) Relationship between Central Organization and Individual Members

- No individual members; only subordinate units are members; individuals may be members of subordinate units (typically considered a “federation”); central organization may or may not prescribe qualifications of individual members of subordinate units or sub-subordinate units*
- Individual members can only be members of the central organization if they are members of subordinate units; typically subordinate units have a significant role in governance, with delegates and/or directors chosen by or on the basis of subordinate unit membership*
- Many or most individual members of the central organization are members of subordinate groups and relate to the central organization primarily through the intermediary of their subordinate units; members-at-large who do not qualify as members of a subordinate unit have some representational rights; typically subordinate units have a significant role in governance, with delegates and/or directors chosen by or on the basis of subordinate unit membership*

* The subordinate units in these types of associated multilevel groups are often referred to as “constituent units,” “constituent organizations,” or “constituent entities,” as the central organization is constituted primarily on the basis of subordinate unit representation.

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- Individual members must belong to the central organization before they can join a subordinate unit; individual members are not required to belong to subordinate units; subordinate units have some representational rights in the governance of the central organization†
- Individual members must belong to the central organization before they can join a subordinate unit; individual members may choose to belong to subordinate units; subordinate units are for the convenience of the members only and have no representational rights in the governance of the central organization†
- Mixed. Each level of the associated multilevel group has its own autonomous membership. Individuals can choose to join at any level or at all levels. In some such organizations, in order to remain in good standing, subordinate units must maintain a certain minimum percentage of their membership as members in the central organization. Subordinate units may or may not have a significant governance role in the central organization.

(3) Initiation of Relationship between Central Organization and Subordinate Units

(a) Governance

- Does the central organization issue internal subordinate unit charters or articles of association?⁸ Or does the central organization have a simple contractual relationship with the subordinate unit, which may be written (sometimes termed a “subordinate unit affiliation or association agreement”), oral, or even based on custom and longstanding course of dealing between the central organization and the subordinate unit?
 - Does the central organization periodically review and update internal charters/articles of association/contractual agreements of subordinate units or otherwise regularly renew subordinate unit status?
-

† Subordinate units in these types of associated multilevel groups are not truly “constituent units,” as the central organization is constituted primarily on the basis of individual membership rather than through intermediary entities.

⁸ Although the terms are sometimes used interchangeably, internal charters (as opposed to corporate charters/articles of incorporation issued by the state) are typically unilaterally imposed by the central organization, while articles of association are often bilateral, requiring approval of both the central organization and the subordinate unit for changes. Nonprofit consultant Robert C. Harris, on his website, <http://www.nonprofitcenter.com>, includes sample chapter affiliation agreements in the Management Tips & Templates/Operating Documents area. The internal charter ranks above the constitution and bylaws of the subordinate unit and supersedes them in case of conflict within the hierarchy of governing documents. In case of conflict between the internal charter and the corporate charter of a subordinate unit, the courts will rank the corporate charter higher and impose its provisions. The central organization may, for purposes of internal discipline of subordinate units, rank the internal charter above the subordinate unit’s corporate charter and impose discipline on the subordinate unit for failing to follow the directives of the internal charter, even though the subordinate unit is permitted to do so under the articles of incorporation/corporate charter or other state statutory requirements.

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- Does the internal charter/contract of association provide that the subordinate unit will take no action and adopt no rule that conflicts with the mission of the associated multilevel group or with the governing documents and rules of the central organization?
- Does the internal charter/contract of association clearly state the unifying mission of the associated multilevel group (typically, the specific purposes stated in the central organization's articles of incorporation)? To the extent that the central organization has adopted other statements of purpose that are typically updated periodically, such as a mission statement, a vision statement, goals and objectives, etc., does the central organization require that the subordinate units update their parallel provisions?
- Are the subordinate units required to adopt governing documents (required for a group exemption determination)? If so, do the governing documents reiterate the unifying mission of the associated multilevel group in their purpose or objectives clauses?
- Does the central organization require that subordinate units organize and act so as to qualify under a specific paragraph of 26 U.S.C. § 501 (c)? Does it require election of a specific paragraph of 26 U.S.C. § 501 (c) in the subordinate unit's governing documents? It is required that all subordinate units covered by a group exemption qualify under the same paragraph, although that need not be the same paragraph as the central organization.
- Does the central organization limit the geographic scope, interest area, or other distinctive aspect of subordinate units? Or do subordinate units adopt their own limitations, possibly subject to central organizational approval, so long as the limits are consistent with the associated multilevel group's purpose? What are the rights of the central organization to intervene and resolve disputes between subordinate units over issues such as overlapping jurisdiction?
- Does the central organization provide basic governance parameters for the subordinate unit, such as required officers, board service requirements, board and officer terms, election procedures, membership qualifications, minimum membership numbers, meeting frequency and quorum requirements, committee requirements? If members of the subordinate units are not required to be members of the central organization, are board members and/or officers? Does the central organization maintain as a policy a set of model bylaws for subordinate units? Are model bylaws contained in the central organization's bylaws instead? Does the central organization contain sufficiently comprehensive requirements in its own governing documents that no separate bylaws are necessary for the subordinate unit, except perhaps for some internal procedural rules? Does the central organization permit the model bylaws to be varied by the board/an officer/a staff member to meet special circumstances for a particular subordinate unit?
- Do the central organization's model subordinate unit bylaws and model purpose language for subordinate unit articles of incorporation reiterate the unifying mission of the association in their purpose or objectives clauses?

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- Is it clear whether components/local service units are (i) independent legal entities associated with the central organization and subject to its general supervision and control, or (ii) internal divisions of a unified multilevel entity?
 - Is the subordinate unit explicitly required by the central organization to hold itself out as a separate legal entity, with separate finances and accounts, and with no power as an entity or through its officers or board members to act as an agent for the central organization?
 - Does the central organization require a certain type of entity status for subordinate units? Some central organizations require subordinate units to be corporations. Others prohibit them from incorporating. If the central organization allows or requires incorporation, does it limit subordinate units to incorporation in home state of their members (or most of them) or require subordinate corporations to incorporate in the central organization's home jurisdiction?⁹
 - Is the central organization empowered to appoint directors or officers of the subordinate unit?
 - If the associated multilevel group includes several levels, is the highest level responsible for chartering all subordinate units, regardless of level, or are subordinate units responsible for chartering sub-subordinate units subject to their general control or supervision?
 - If the subordinate units are empowered to discipline individual members or sub-subordinate units, do the individual members or sub-subordinate units have an internal rights of appeal to higher levels within the association?
-

⁹ Michigan state law, for example, provides general parameters for subordinate unit governance and representation in the central organization. Mich. Comp. Laws § 450.2443. Section 450.2443 (3) specifically provides that subordinate units of central organizations incorporated in Michigan may also incorporate in Michigan, which allows the central organization to ensure uniformity in its treatment of subordinate units. A staffer at the central organization could be appointed managing agent for all the subordinate units. Most state nonprofit corporation statutes would permit out-of-state based subordinate units to incorporate in the state of the central organization's own incorporation or headquarters.

Many of the benefits of incorporation, without the formality and statutorily imposed mandates of a corporation, can be obtained by organizing as an unincorporated nonprofit association under the Uniform Unincorporated Nonprofit Association Act (1997) ("UUNAA"), which has been adopted in several states, or parallel provisions of state-specific nonprofit association statutes in other jurisdictions. UUNAA §§ 3, 4 (a) provide that an unincorporated nonprofit association ("UNA") can act as an entity in the state regardless of other ties to the state. The March, 2008, Interim Draft Revised UUNAA ("RUUNAA") §§ 4 (b), 5 (a) provide that a UNA can choose in its governing documents the jurisdiction under the laws of which it will be organized and recognized as an entity. UUNAA § 10 and RUUNAA § 11 provide that a UNA can choose to list a registered agent in the state of organization, which gives the UNA some formal recognition as an entity and may make potential creditors more amenable to doing business with the UNA. For reasons similar to the recommendation above in regard to incorporation of subordinate units, central organizations could require subordinate units to organize as UNAs in the jurisdiction in which the central organization is organized or has its headquarters.

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- If one entity within an associated multilevel group is empowered to impose discipline on individual members, what is the effect of imposition of discipline on membership rights in other entities within the associated multilevel group?
- If the central organization maintains supporting organizations, such as a charitable foundation (which typically does not meet the definition of private foundation), or other affiliates (such as women's auxiliary for an all-male organization), do the governing documents or policies describe the relationship of the subordinate units to such other entities?

(b) Intellectual Property

- If subordinate units include in their names part of the name of the central organization or a distinct identifying element associated with the central organization, does the central organization require in the subordinate unit's internal charter, articles of incorporation, and bylaws that the subordinate unit also change its name?
- Does the central organization reserve the right in the subordinate unit's internal charter, articles of incorporation, and bylaws to prohibit further use of logos, derived logos, trademarks, other identifying elements, membership lists, and other intellectual property of the central organization upon disassociation? Is permission granted to the subordinate unit to use any intellectual property in the form of a restricted license?

(c) Programming

- Does the central organization allow subordinate units to put on programs without central organization approval? Does it require the subordinate unit to report on its programming for review for mission fidelity and conformity with tax status (if the subordinate unit is subject to a group exemption determination)?
- Does the central organization allow subordinate units to adopt their own accreditation system? If so, with or without central organization approval?

(d) Finances

- How are dues and other fees paid? To the central organization and re-allocated downwards? To a lower- or intermediate-level subordinate unit and re-apportioned upward, or both upward and downward? Or there separate dues for each level, which an individual member can choose to pay separately? Are there separate dues for each level, which individual members are required to pay at each level?
- If dues or other moneys are re-allocated from one entity to another within an associated multilevel group, are there procedures in place to handle such transactions and properly account for them?
- Does any level within the multilevel association provide financial assistance to individual members with dues or programming?

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- What is the effect of an individual member's nonpayment of dues on other levels of membership?

(4) Responsibilities of Subordinate Units

- Typically include compliance with requirements, if any, imposed by central organization, and with all applicable laws and regulations, including applicable filing requirements with federal, state, and local governments. (may check more than one)
- Periodic filing with the central organization of subordinate unit office, officer, director, and professional staff contact information, and of officer and director terms
- Periodic filing with the central organization of treasurer's reports/financial statements and/or bank statements
- Filing with the central organization of internal audits, external audits, and/or financial reviews
- Filing with the central organization of copies of subordinate unit tax filings, if not included in a group return, and official filings with state and federal agencies, such as annual corporate statements, state annual charitable status and solicitation forms, and required lobbying disclosures
- Filing with the central organization of board and/or member meeting minutes
- Filing with the central organization of individual member contact information
- Filing with the central organization of reports on programming and activities
- Verify that central organization is in compliance with obligations undertaken on behalf of subordinate unit, such as filing a group return covering the unit

(5) Responsibilities of Central Organization

- Types of support provided (may check more than one):
 - Chapter/Component support liaison on the central organization's staff
 - Officers & directors insurance coordination for subordinate units
 - Other forms of insurance
 - Assistance with hiring/training subordinate unit staff
 - Assistance with recruiting subordinate unit volunteer leadership
 - Training/leadership workshops for subordinate unit volunteer leaders and/or staff
 - Assistance with administrative/fiscal requirements
 - Group filing of annual federal tax returns
- Supervision of subordinate unit compliance with multilevel association mission fidelity and federal, state, and local governmental requirements

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(6) Ongoing Relationship between Central Organization and Subordinate Units

(a) House of Delegates Intermediate between Membership and Board

- Organization of the House of Delegates
- Only subordinate units may send delegates; members-at-large, if any, aggregated and treated as a unit/units
- Delegates selected on other bases, such as geographic (but not related to subordinate units)
- Hybrid system
- Who selects delegates? Subordinate unit members, board, or officers? Are certain officers automatic delegates? Are substitutes or alternates allowed?
- Are subordinate units allowed to instruct delegates? May they impose a uniform voting requirement on delegations (a unit voting rule)? Does the central organization require unit voting in certain circumstances? Are the votes of delegations or individual delegates weighted based on representational or other programmatic needs?
- Do the association president and secretary serve in parallel roles in the House of Delegates? Or does the House of Delegates have its own speaker and secretary/recorder? If so, how are the separate officers of the House of Delegates chosen?
- Does the House of Delegates have rules of procedure for its meetings? An adopted parliamentary authority to settle procedural disputes? Does the association retain a professional parliamentary to assist with procedure at House of Delegates meetings?
- In what manner are minutes recorded? On actions taken only? Summary of proceedings? Verbatim transcript? How are minutes approved? By the board, a minutes approval committee, or the next House of Delegates meeting?
- Powers of the House of Delegates (pick i or ii; iii apply independent of i or ii)
 - (i) House of Delegates has all the powers of the individual or entity members; or
 - (ii) House of Delegates has many of the powers of the members, but members reserve some powers, such as amendment of bylaws and direct election of officers and/or directors, often by mail ballot rather than at a meeting
 - (iii) House of Delegates has some of the powers of the board and/or right to supervise/oversee the board

(b) Board-Level Representation

- Does a subordinate unit or a collection of subordinate units select/elect officers or board members (often regional vice presidents or regional board members)?
- If so, may the representative officer/board member simultaneously serve as an officer or on the board of a subordinate unit?

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- If so, does the central organization have a conflict of interest policy that addresses potential conflicts in fiduciary obligations to different entities within an associated multilevel group?
- (c) *Visitation/Policing of Subordinate Governance* (may check more than one—fewer checks indicates loose or passive visitation of subordinates by central organization; more checks indicates strong or active visitation)
- Communications from subordinate organization to central organization concerning personnel issues (identity of local officers, directors, delegates, and/or professional staff)
- Central organization receives copies of bylaw amendments, possibly other governance documents, and notice of fundamental transactions (amendment to governing documents and significant changes in entity structure, such as mergers and consolidations)
- Central organization has the reserved right to approve of bylaw amendments and fundamental transactions;¹⁰ often through formal officer, board, or staff approval, or through automatic approval after the expiration of a notice period without negative action by the central organization
- Central organization periodically receives subordinate unit bylaws, and possibly other governing documents and governance policies, and reviews for compliance with central organization's mission
- Central organization has reserved the right to mandate changes in subordinate units' governing documents and possibly governance and operating policies. Typically in this circumstance the central organization requires the membership of the subordinate unit to amend its own governing documents on pain of discipline or financial withholding (if the central organization provides significant funds to the subordinate organization). Occasionally, the central organization reserves, in the subordinate unit's governing documents, the right to amend subordinate unit governing documents by its own action.

¹⁰ It is important for a central organization interested in a strong supervisory role over subordinate units to reserve the right to approve, and possibly mandate, fundamental transactions as well as bylaw amendments. Depending on the law of the incorporating state, it may be possible for a central organization to require a subordinate unit that is a corporation to incorporate by reference its internal charter (as from time to time amended) into its articles of incorporation/corporate charter. Central organizations often omit a reservation of rights over all fundamental transactions (including amendments to articles of incorporation/corporate charters), while reserving the right to approve or mandate the more common and familiar bylaw amendments. Articles of incorporation (articles of organization/certificate or incorporation/corporate charter, depending on the state) are higher level governing documents than bylaws and generally supersede them. If a serious dispute arises between a subordinate unit and a central organization that has reserved the right to approve subordinate unit bylaws, but not articles of incorporation, the subordinate unit can "go over the head" of the bylaws and directly amend the articles of incorporation to, e.g., disaffiliate and retain all its property without central organization approval.

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- Central organization receives subordinate unit membership and/or board minutes; literature and programming materials produced by subordinate units; regular or periodic activity reports; and/or financial reports

(d) Group exemptions (may check more than one)

- Central organization has obtained a group exemption determination†
- Central organization annually files a group return for some or all of its subordinate units†
- Central organization requires subordinate units to participate in its group determination and possibly also in its group return, if filed†

(7) Termination of Relationship between Central Organizations and Subordinate Units

- Do central organization governing documents provide for discipline/termination/disassociation/dissolution of subordinate units? If so, are procedures included in a written policy? Has the central organization adopted a parliamentary authority or other outside manual including a detailed discipline procedure? What types of discipline are permitted? What sanctions may be imposed? Reprimand? Probation? Suspension? Financial penalties?
- Does the central organization recognize inactive status for subordinate units? If so, what is the procedure by which a subordinate unit obtains inactive status? What are the consequences of inactive status?
- What happens to the property, including intellectual property and licenses, of the subordinate unit on termination/disassociation/dissolution? Does it revert to the central organization? Does it stay with the subordinate unit if it remains as a legal entity? Is it distributed to another similar organization pursuant to the directive of the central organization or decision of the subordinate unit's members? Is it distributed among the members (common law solution, but may run afoul of the Tax Code's noninurement provision)?
- Who may initiate discipline/termination/disassociation/dissolution of subordinate units? Individual members of the subordinate unit? The subordinate unit itself? Other individual members of the central organization? Other subordinate units? Central organization officers, board, committees, or staff? Note that some state incorporation statutes may not allow an outside entity (such as a central organization) to reserve the right to initiate a

† Unless specifically required to do so, subordinate units may choose not to participate in a group exemption or (if included in the group exemption) in the group return (if the central organization chooses to file a group return). Subordinate units included in a group exemption must update their contact information regularly with the central organization for its required annual group report to the IRS. Subordinate units included in a group return (eligible only if also included in a group exemption) must provide financial information as well. Central organizations that have obtained a group exemption determination should include a provision in their model internal charter or other similar document requiring the subordinate unit to provide to the central organization the information that is necessary for the annual group report and the group return, if applicable.

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nonjudicial dissolution of an incorporated subordinate unit without approval of the subordinate unit's membership. In such case, the central organization's remedies for subordinate unit disobedience may be largely contractual.

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Chapter Manual Samples

There is a wealth of online sample chapter manuals for student groups, student chapters of professional groups, and educational groups, perhaps because central organization staff feel students may need additional direction. Some of these chapter manuals are very well done and could serve well as model chapter manuals for any type of organization. Typically such chapter manuals include programmatic advice and central office contact information in addition to governance requirements/suggestions and reporting requirements. Some examples include:

American Society for Information Science & Technology Student Chapter Manual, available at
http://web.simmons.edu/~asist/temp/manual/student_chapter_manual

Association for Computer Machinery Student Chapter Manual, available at
<http://www.acm.org/chapters/students/manual/manual-toc/>

International Law Students Association Chapter Manual, available at
<http://www.ilsa.org/members/ILSAChapterManual2008-2009.doc>

Kappa Delta Pi Chapter Tools & Resources, including Chapter Resources Notebook, available at
<http://www.kdp.org/services/resources/resources.php>

United States Distance Learning Association, available at
http://www.usdla.org/html/aboutUs/chapters/toolkit/05USDLA_ChManual.2.%20march.doc

Other organizations with comprehensive chapter manuals available online include:

American Chemical Society Local Section Officer's Resource Manual, available at
http://portal.acs.org/portal.acs/corg/content?_nfpb=true&_pageLabel=PP_SUPERARTICLE&node_id=1737&cuse_sec=false&sec_url_var=region1

Institute of Electrical & Electronics Engineers Communications Society Chapters Manual, available at
<http://www.comsoc.org/socsTR/documents/chapmanual/~~01.CHAPTERS%20MANUAL.MainBody.0403.pdf>

Institute of Internal Auditors Chapter Manual, available at
http://www.theiia.org/chapters/pubdocs/119/Chapter_Manual_May2004.pdf

Preventive Cardiovascular Nurses Association Chapter Manual, available at
<http://www.pcna.net/library/ChapterManual.pdf?PHPSESSID=46ae138d8aac72ca19c79cf5b12a78a8>

United States Lacrosse Chapter Operations Manual, available at
<http://www.uslacrosse.org/chapters/chaptermanual08.pdf>

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