

**SUPPORTING STATEMENT**  
**Internal Revenue Service**  
**OMB Control Number 1545-2157**  
**TD 9605**

**Payout Requirements for Type III Supporting Organizations That Are Not Functionally Integrated**

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The collection of information in this proposed regulation is in Prop. Reg. §1.509(a)-4(i)(2)(iii). The collection of information flows from section 509(f)(1)(A), which requires a Type III supporting organization to provide to each of its supported organizations such information as the Secretary may require to ensure that the Type III supporting organization is responsive to the needs or demands of its supported organization(s).

To implement this provision, the proposed regulations require that each taxable year, a Type III supporting organization must provide to each of its supported organizations: (A) a written notice addressed to a principal officer of the supported organization identifying the supporting organization and describing the amount and type of support it provided to the supported organization in the past year; (B) a copy of the supporting organization's most recently filed Form 990; and (C) a copy of the supporting organization's governing documents, including any amendments. Copies of governing documents need only be provided once. The proposed regulations provide that the required notice and documents may be delivered by electronic media. Organizations must satisfy the notification requirement to qualify as a Type III supporting organization and should, therefore, retain proof of delivery in their records.

TD 9605 contains both final regulations and temporary regulations regarding the requirements to qualify as a Type III supporting organization that is operated in connection with one or more supported organizations. The regulations reflect changes to the law made by the Pension Protection Act of 2006. The regulations will affect Type III supporting organizations and their supported organizations.

2. USE OF DATA

The information will be used as a tool by a supported organization to ensure that its supporting organizations are responsive to its needs. Additionally, a supporting organization will be required to maintain copies of these statements so that it can prove to the IRS that it is an organization that qualifies as a Type III supporting organization under section 509(a)(3).

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

The regulation allows supporting organizations to provide this annual notification by electronic notice.

4. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available for use or adaptation from another source. This is a specific requirement of Congress and is not duplicative of any other requirement of a Type III supporting organization. We did provide that once an organizational document is provided to a supported organization, the supporting organization need not provide that document again.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

There is no burden on small businesses or entities by this collection due to the inapplicability of the authorizing statute to this type of entity.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Consequences of less frequent collection would result in the IRS not being able to verify the requirements that it is an organization that qualifies as a Type III supporting organization under section 509(a)(3).

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances requiring data collection to be inconsistent with guidelines in 5 CFR 1320.5(d)(2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

On August 2, 2007, the Treasury Department and the IRS published in the **Federal Register** ([72 FR 42335](#)) an advanced notice of proposed rulemaking (ANPRM) (REG-155929-06). The ANPRM described proposed rules to implement the PPA changes to the Type III supporting organization requirements and solicited comments regarding those proposed rules.

Forty comments were received in response to the ANPRM and were considered in drafting the notice of proposed rulemaking and these final and temporary regulations.

No public hearing was requested or held.

On September 24, 2009, the Treasury Department and the IRS published in the **Federal Register** ([74 FR 48672](#)) a notice of proposed rulemaking (NPRM) (REG-155929-06). The NPRM contained proposed regulations (the "2009 proposed regulations") setting forth the requirements to qualify as a Type III supporting organization under the PPA. The IRS received more than 30 comments in response to the NPRM. These comments were considered in drafting these final and temporary regulations and are available for public inspection at [www.regulations.gov](http://www.regulations.gov) or upon request. No public hearing was requested or held.

After reviewing all comments received, the Treasury Department and the IRS believe that certain topics require further consideration. The Treasury Department and the IRS will continue to study these topics and will request comments on these topics in a separate notice of proposed rulemaking. Nonetheless, the Treasury Department and the IRS believe that immediate effective guidance is needed for Type III supporting organizations. Accordingly, the Treasury Department and the IRS are issuing both final regulations and temporary regulations. The provisions in the 2009 proposed regulations regarding the amount that non-functionally integrated Type III supporting organizations must annually distribute have been significantly revised in response to comments. As a result, these provisions (as well as provisions related to how assets are valued for purposes of this distribution requirement) are being issued as temporary and proposed regulations, to permit additional opportunity for comment. The other provisions of the 2009 proposed regulations are being issued as final regulations, which are substantially similar to the 2009 proposed regulations but reflect certain revisions that were made based on comments received.

Based largely on comments received from commenters, the final and temporary regulations make revisions to various provisions in the 2009 proposed regulations, including (1) the definition of “supported organization” in § 1.509(a)-4(a)(6); (2) the prohibition on receiving gifts or contributions from persons that control the governing body of a supported organization set forth in § 1.509(a)-4(f)(5); (3) the notification requirement set forth in § 1.509(a)-4(i)(2); (4) the responsiveness test set forth in § 1.509(a)-4(i)(3); (5) the requirements to qualify as a functionally integrated Type III supporting organization set forth in § 1.509(a)-4(i)(4); (6) the requirements to qualify as a non-functionally integrated (NFI) Type III supporting organization set forth in § 1.509(a)-4(i)(5); and (7) the transition rules provided in § 1.509(a)-4(i)(11).

On December 28, 2012, the Treasury Department and the IRS published Notice of public rulemaking in the **Federal Register (77 FR 76382)** as TD 9605. A comment was received and can be viewed at <https://www.regulations.gov/document?D=IRS-2007-0062-0083>.

After consideration of all the comments received in response to the 2012 NPRM, this Treasury decision adopts the 2012 NPRM without change, except to (1) conform the provision regarding the valuation of non-exempt-use assets to the [section 4942](#) regulation provision that it cross-references ([§ 53.4942 \(a\)-2 \(c\) \(2\)](#)), and (2) replace references in [§ 1.509 \(a\)-4](#) to the temporary regulations with references to these final regulations. Thus, other than the change conforming the provision in the final regulations regarding the valuation of non-exempt-use assets to the provision in the [section 4942](#) regulations, these final regulations are the same as the temporary regulations that have been applicable to Type III supporting organizations since December 28, 2012. Additionally, this Treasury decision removes the temporary regulations.

On February 19, 2016, the Treasury Department and the IRS published a Notice of proposed rule making in the Federal Register (81 FR 8446) TD 9746. These regulations amplify, distinguish, and clarify TD 9506. The comments and responses can be viewed at Explanation of Provisions and summary of comments, <https://www.regulations.gov/document?D=IRS-2016-0007-0001>.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No gifts or payments are being provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

No sensitive personally identifiable information (PII) is collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The collection of information under § 1.509(a)-4(i)(2) flows from section 509(f)(1)(A) of the Internal Revenue Code (Code), which requires a Type III supporting organization to provide to each of its supported organizations such information as the Secretary may require, to ensure, that the Type III supporting organization is responsive to the needs or demands of its supported organization(s).

The collection of information under § 1.509(a)-4(i)(6)(v) is required only if a Type III supporting organization that is not functionally integrated wishes for certain amounts set aside for a specific project to count toward the distribution requirement imposed by § 1.509(a)-4(i)(5)(ii).

<b>TD 9605</b>	<b>Total Responses</b>	<b>Estimated hours per responses</b>	<b>Total burden hours</b>
§ 1.509(a)-4(i)(2) and § 1.509(a)-4(i)(6)(v)	7,556	2 hrs.	15,122 hrs.
§ 1.509(a)-4(i)(6)(v)	4,438	2 hrs.	8,876 hrs.
	11,994		2,3988 hrs.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

15. REASONS FOR CHANGE IN BURDEN

There is a change in the previously estimated burden due to an adjustment of estimated responses to reflect a more precise estimate.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

There are no exceptions.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

## Relevant Provisions of the Law

### § 509(f)(1)(A)

Responsiveness. For each taxable year beginning after the date of the enactment of this subsection, the organization provides to each supported organization such information as the Secretary may require to ensure that such organization is responsive to the needs or demands of the supported organization.

### Treas. Reg. § 1.509(a)-4(i)(2)

(2) Notification requirement. Each taxable year, the supporting organization must provide to each of its supported organizations--

(i) A written notice addressed to a principal officer of the supported organization indicating the type and amount of support provided by the supporting organization to the supported organization in the past year,

(ii) A copy of the supporting organization's most recently filed Form 990, "Return of Organization Exempt from Income Tax," or other return required to be filed under section 6033, and

(iii) A copy of the supporting organization's governing documents, including its charter or trust instrument and bylaws, and any amendments to such documents. Copies of governing documents in a given year need not be provided if such documents have previously been provided and have not subsequently been amended.

(iv) Electronic Media. Notification may be provided by electronic media.

(v) Due Date. The required notifications shall be postmarked or electronically transmitted by the last day of the 5<sup>th</sup> month after the close of the supporting organization's tax year.