Via U.S. Regular Mail

Jeffrey Zients, Acting Director Office of Management and Budget 725 17th Street N.W. Washington, D.C. 20530

Re: Form 990, Schedule H

Dear Acting Director Zients:

On December 16, 2011 representatives of the American Hospital Association, the Healthcare Financial Management Association, and VHA Inc. met with the Office of Management and Budget ("OMB") as well as with Internal Revenue Service ("IRS") personnel to discuss Section V.B. of the revised Schedule H of Form 990. Section V.B., which added eighty (80) additional questions to the Schedule H that hospitals must now answer, reflects the IRS' view of the new requirements for tax exempt hospitals enacted as part of the Patient Protection and Affordable Care Act (codified in Internal Revenue Code 501(r)). We welcomed the opportunity for that meeting.

The purpose of this letter is to set forth the specific manner in which the IRS failed to follow the requisite procedures under the Paperwork Reduction Act of 1995 ("PRA" or the "Act") for issuing the revised Schedule H. As a result, the Schedule, and in particular Section V.B. of the Schedule, contains redundancies, inconsistencies, onerous reporting requirements, and undefined terms, which compliance with the Act might have eliminated.

The failure to follow PRA procedures was compounded by IRS' failure to issue regulations or to otherwise provide the hospital field with a meaningful opportunity to comment on the Schedule H form and instructions. Equally concerning is that one day after publishing a notice on the IRS website on December 15, 2011 requesting comments on the "draft" Schedule H, IRS representatives told those attending the OMB meeting that the Schedule H form and instructions were final and that no further changes would be made. The result was that IRS finalized Schedule H and the instructions on January 23, 2012 without ever even planning to consider the comments it had requested a little more than a month earlier.

This letter summarizes the relevant aspects of the PRA and requests the IRS and OMB to adhere to the procedures established by the Act in an effort to produce a substantially improved Schedule H form and instructions and withdraw Section V.B. of the form until they do so.

The Paperwork Reduction Act

The Paperwork Reduction Act of 1995 was enacted to minimize the burden for, among others, individuals and educational and nonprofit institutions resulting from the collection of information

by government agencies. To achieve this goal, the Act prescribes a procedure that each agency must follow when engaging in or making a material change to an existing "collection of information." "Collection of information" or "COI" is a term of art used by the PRA to denote the activity of obtaining, soliciting or requiring the disclosure of facts or opinions by or to an agency. COI may be conducted in any format, including the use of report forms, application forms, schedules, questionnaires, surveys, reporting or record keeping requirements.

According to the PRA, an agency may not engage in a COI unless the following steps have been followed:

- Internally, the agency must:
 - (1) Conduct a review of the COI to evaluate the need for the COI, to determine an objectively supported estimate of the burden imposed, and, if appropriate, to conduct a test of the COI through a pilot program,
 - (2) Publish a 60-day notice in the Federal Register and consult with members of the public to solicit comments to evaluate whether the agency's estimate of the burden of the proposed COI is accurate and to enhance the quality and clarity of the information to be collected, and
 - (3) Evaluate and take into account public comments received during the 60-day period.
- When submitting the COI to the OMB for approval, an agency must:
 - (1) Include a certification that the COI is necessary for the proper performance of agency functions, is not unnecessarily duplicative of information otherwise reasonably available to the agency, reduces the burden on affected persons by clarifying, consolidating or simplifying compliance and reporting requirements, is written using plain, coherent and unambiguous terminology understandable to those who are to respond, and that the COI is to be implemented in ways consistent and compatible to the maximum extent practicable with existing reporting and record keeping practices of those who are to respond to the proposed COI,
 - (2) Provide a summary to the OMB of the public comments received during the 60-day notice and the actions taken by the agency in response to the comments, and
 - (3) Publish a notice in the Federal Register instructing the public to forward comments to OMB within 30 days of the notice's publication.

An agency must also demonstrate that it has taken every reasonable step to
ensure that the proposed COI is the least burdensome for the proper
performance of the agency's function in complying with legal requirements and
achieving program objectives and is not duplicative of information otherwise
reasonably accessible to the agency.

IRS Failure to Comply with PRA in Revising Form 990, Schedule H

As indicated in the PRA, the foregoing process must be implemented whenever a material modification is made to a COI. Form 990, together with its schedules, constitutes a COI and the IRS must comply with the PRA mandates when making any material changes to Form 990.

Congress enacted Internal Revenue Code Section 501(r) to impose additional requirements on hospitals to maintain tax-exempt status. The IRS attempts to measure a hospital's compliance with Section 501(r) requirements in the new Section V.B. of Schedule H, Form 990. As a result, responses to the new Section V.B. of Schedule H may affect the tax-exempt status of the responding hospital and, therefore, constitute a material change to Form 990 that requires OMB review.

However, the Federal Register and OMB records suggest that the IRS issued the revised Schedule H without performing the required internal review and without submitting the Form to OMB for review. None of the notices published in the Federal Register since the March 23, 2010 enactment of Section 501(r) refers to or indicates that the revised Part V.B. of Schedule H will be submitted to OMB for review. The IRS published only two notices in the Federal Register mentioning Schedule H dated March 4, 2010 and July 28, 2010. However, Section 501(r) was enacted after the March 4, 2010 notice was issued and both notices were published in connection with the IRS application to renew the OMB control number assigned to Form 990. The 2009 version of Schedule H, not the revised 2010 Schedule H (with the new 501(r) questions), was attached to Form 990 when it was submitted to OMB on July 28, 2010. Aside from the 2010 notices, the Federal Register is void of any reference to a review of Schedule H by OMB.

Further, releases by the IRS of draft Schedule H and subsequent publication of the final Schedule H confirm that IRS failed to submit the revised Schedule H to OMB for review. The IRS published identical draft Schedules H on October 14, 2011 and then on December 15, 2011. A note appended to these Schedules explained that the form is a draft, which the "IRS is providing for your information as a courtesy." The note stated that "forms generally are subject to OMB approval before they are officially released" and instructed the public to submit comments to the IRS. Believing that the draft Schedules issued in 2011 constituted the 60-day notice required under the PRA, some in the hospital field actually submitted comments to the IRS. However, on January 23, 2012 the IRS published the draft Schedule H in final without considering any of the comments it received.

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The concerns registered by the hospital field in response to the draft Schedule H suggest the IRS has also failed to follow the internal review procedure prescribed by the PRA. The responses indicate that the IRS neglected to make an objective estimate of the burden imposed by the Schedule and to take reasonable steps to ensure that the COI instituted by the IRS is the least burdensome for complying with Section 501(r) requirements. In fact, it appears to us that the IRS could not submit the required certification to the OMB because the questions in the newly revised Schedule H are unnecessarily duplicative, burdensome, in certain instances, ambiguous, and generally inconsistent with hospitals' existing reporting and record keeping practices.

The Schedule H issued by the IRS on January 23, 2012 evidences the failure of the IRS to comply with the PRA-mandated process. The Schedule includes duplicative questions and redundant and excessive paperwork collection from individual hospital facilities when a more sensible reporting process would equally ensure accountability while enhancing transparency. The hospital community has previously provided to the IRS extensive detailed recommendations for changes that would address these problems.

The PRA prohibits an agency from engaging in a COI without following prescribed steps and the failure of the IRS to follow such steps indicates that Schedule H has not been validly issued. In light of this failure, we request that OMB direct the IRS to withdraw Part V.B. of Schedule H or to issue a notice that Part V.B. of Schedule H is optional for 2011 while IRS revises and seeks review and approval of Schedule H from OMB as required by law. We would be glad to engage with your agency and/or the IRS to resolve these issues, so that an appropriate Schedule H could take effect.

Please feel free to contact Melinda Hatton, Senior Vice President and General Counsel, at 202-626-2336 or mhatton@aha.org.

Sincerely,

Melinda Reid Hatton Senior Vice President & General Counsel American Hospital Association Richard L. Gundling Vice President Healthcare Financial Practices, Healthcare Financial Management Association Edward N. Goodman Vice President, Public Policy VHA Inc.

cc: The Honorable Darrell Issa, Chairman
House Oversight and Government Reform Committee