

DIANA L. AVIV
PRESIDENT AND CEO, INDEPENDENT SECTOR
HOUSE WAYS AND MEANS SUBCOMMITTEE ON OVERSIGHT
HEARING ON TAX EXEMPT ORGANIZATIONS
MAY 16, 2012

RESPONSE FOR THE RECORD FOR REP. MARCHANT

Thank you, Mr. Marchant, for your question.

There are a number of principles and improvements we would like to see incorporated into the Form 990. In my written statement I briefly discuss Independent Sector's engagement with the IRS as the agency continues working to improve the Form 990, and am grateful for the opportunity to expand upon that discussion here.

During a public comment period last summer on several issues of concern that had come to the attention of the agency, Independent Sector conducted an online forum to gather input from exempt organizations. The following recommendations are based upon the comments of 220 participants from the nonprofit sector, and were submitted by Independent Sector to the IRS.

Electronic Filing of the Form 990

We support electronic filing of the annual information returns filed by nonprofit organizations because it enhances compliance and transparency, improves oversight and enforcement by the IRS, and provides more timely and accurate information to the public. Congress should amend the Internal Revenue Code to give the IRS authority to expand the scope of returns that are required to be filed electronically by lowering the number of returns that trigger the requirement to file electronically from 250 filed per year to five per year.

Currently only about 30 percent of charitable organizations take advantage of the option to file the Form 990 electronically. While we support expanding the scope of organizations that are required to file electronically, we also believe that more can and should be done to encourage electronic filing. To that end, a group of charitable organizations, led by the National Center for Charitable Statistics at the Urban Institute and joined by Independent Sector, has initiated an effort to better understand and overcome the barriers to filing electronically, and to look for ways to encourage or incentivize additional electronic filing.

We believe that increased electronic filing will improve the quality and accuracy of the data available to the public and for IRS and state regulatory purposes. This will further promote accountability and transparency by exempt organizations, and in the long run save donors, nonprofits and the government time and money.

Reporting Revenue from Governmental Units

Government support has become an enormously important source of revenue for the country's nonprofit sector. Part VIII of the Form 990 should be revised to clarify that government contributions may include grants from contracts. The term "contracts" should be added to Part VIII, line 1e, which identifies the government payments to be included as payments to nonprofits from government for services provided to the public, so that this line of the Form will read as follows: "Government grants, contracts." The word "contracts" should also be included in the several other places on the Form 990 instructions that refer to what should be reported in Part VIII, line 1e, of the form.

This change will make it clear that revenues nonprofits receive from governmental units in the form of purchase-of-service contracts for provision of services to the public, and not just revenue from government grants, should be included on Part VIII, line 1e and not on the line reserved for program service revenue.

Presently, the Form 990 also does not record Medicare and Medicaid payments to nonprofits as revenue received from government. Rather, it directs organizations to record income from Medicare and Medicaid as "program service revenue." As a result, these government payments are lumped together with private fees and payments for service and lose their identity as government support. We believe there are two potential solutions to this issue:

- Change the Form 990 instructions to direct organizations to include their Medicare and Medicaid revenues on Form 990, Part VIII, line 1(e) with other government revenue, rather than on Part VIII, line 2 (a-g), which is reserved for program service revenue;
- Restore the words "Medicare/Medicaid" to Form 990, Part VIII, line 2a, the portion of the 990 Form on which organizations are asked to record their "program service revenue;" include language in the instructions to this portion of the form calling organizations' attention to this line; and include data from this line on 990 files made available to the public through the National Center for Charitable Statistics and IRS data files.

Reporting on Audited Financial Statements

Part XII of the Form 990 should require some additional reporting on audited financial statements for organizations that are required to conduct an audit. We recommend that a line be added to Part XII that asks whether an organization makes its audited financial statements available to the public on its website. Additionally, it would be helpful to ask organizations that have audited financial statements to indicate whether the audit report provided an unqualified, qualified, adverse, or disclaimer of opinion or included an "ongoing concern" explanatory paragraph. If these questions are included, the Form should provide

designated space or instruct preparers to use Schedule O for the organization to explain any problems with the audit report.

We also recommend that the Form 990 Instructions make clear that federal law does not require organizations to have financial statements audited unless the organization receives certain amounts in federal government funding, nor does federal law require that the board establish a separate audit committee.

Activity Codes

While the National Taxonomy for Exempt Entities (NTEE) remains the most appropriate system for classification of nonprofit organizations and their program activities, further adjustments in NTEE are necessary to accommodate the full range of exempt activities undertaken by filing organizations.

We recommend that the IRS convene organizations like The Foundation Center, the National Center on Charitable Statistics, and Independent Sector, as well as other organizations and research programs with an interest in and experience with NTEE and other coding systems, to make the appropriate adjustments to NTEE.

Thank you.