

ISSUE PAPER

Mandatory Form 990 Electronic Filing

Position

The Council on Foundations supports mandatory electronic filing of Form 990s and publicly-available data about the nonprofit sector, while cautioning lawmakers to involve nonprofits in implementation and ensure adequate data protection.

S. 1578, *The Taxpayer Bill of Rights Enhancement Act of 2015* (114th Congress)

H.R. 4691, *Private Foundation Excise Tax Simplification Act* (113th Congress)

*Incorporated into H.R. 4719

Sponsors:

Senator Chuck Grassley (R-IA)
Senator John Thune (R-SD)

H.R. 1, *Tax Reform Act of 2014*

Sponsor:

Representative Dave Camp (R-MI-4)

Background and Current Law

Each year, foundations are required to submit a variety of financial and operational information through an annual return to the Internal Revenue Service, the Form 990. This Form is already submitted annually by nonprofits required to file and made publicly available through organizations like GuideStar. It provides crucial information about the size and scope of the nonprofit sector, its role in our economy and trends in charitable giving. Public availability of much of the information on the Form 990 can lead to improved form accuracy and better compliance and accountability, as donors, prospective donors, and regulators all make use of this information. The Form also allows nonprofits to self-assess in relation to other organizations, which can provide useful comparative data to improve operational efficiencies. In short, the information that organizations provide on their Form 990s is valuable to nonprofit organizations, the public, researchers, and policymakers.

Several years ago, the IRS began requiring electronic filing, or e-filing, of Forms 990 and 990-PF for certain classes of tax-exempt organizations; it also made e-filing an option for all filers. Many organizations already choose to e-file for the efficiency it affords, and each year increasing numbers of organizations are making the transition. The IRS has projected that 40% of private foundations would e-file their 2014 returns, and estimates that close to 50% of private foundations will e-file these returns by 2017. In addition, many groups have publicly called for mandatory e-filing and readable nonprofit data, including the Aspen Institute, the IRS's Advisory Committee on Tax Exempt and Government Entities, and the White House in its past few President's Budgets.

Status of Bills

S.1578 was introduced by Senators Grassley and Thune on June 16, 2015. It was referred to the Senate Finance Committee for consideration.

H.R. 1, Chairman Camp's comprehensive tax reform proposal, was introduced by the former Chairman at the end of 2014 but is not expected to be taken up in full by the 114th Congress. It is nonetheless very significant as it will form the starting point for any future tax reform efforts.

For more information, contact the
Council's Public Policy and Legal Affairs Department at
govt@cof.org
www.cof.org/public-policy

Position Rationale

The Council agrees that e-filing is preferable for most organizations and supports it in principle. However, we offer lawmakers and regulators alike a few modest cautions and urge them to seek the input of nonprofits of all types. Lawmakers and IRS officials drafting the regulations to implement mandatory e-filing should talk to nonprofit legal counsel and accountants—including outside accountants—to better understand the compliance challenges that organizations will face.

Improvements to the Form 990. We encourage lawmakers and regulators to use this opportunity to work with the sector to improve upon the Form itself. We support the recommendation of the **IRS Advisory Committee on Tax Exempt and Government Entities** to convene a task force from within the sector to determine which parts and schedules of the current Form and related instructions should be updated, enhanced, or eliminated.

Sector Involvement in Implementation. It will critically important for lawmakers to understand how to work with charitable organizations to ensure that the implementation of mandatory e-filing is workable for the sector. Representatives from various types of nonprofits, including all types of foundations required to file, should have an opportunity to help shape how this policy is implemented.

Data Protections and Redaction. Proposals put forth to date require the IRS to make Form 990 information machine-readable for public extraction and interpretation, but do not specify which parts of the Form would be publicly available. We have concerns about the security of the data that need to be considered before this provision is implemented, along with whether personal information, such as that included on the Schedule B, would be redacted.

Burden on Smaller Organizations. Mandatory e-filing may be a disproportionate burden for medium and smaller-sized organizations with few, if any, full time staff, and these organizations will need assistance in making the transition along with adequate time to prepare and allocate resources.