April 9, 2014

The Honorable Charles E. Grassley  
United States Senate  
Washington, DC 20510  

Dear Senator Grassley:

Thank you for your letter dated April 4, 2014. The Internal Revenue Service continues to implement provisions for tax-exempt hospitals enacted within the Patient Protection and Affordable Care Act (ACA), Pub. L. No. 111-148, section 9007 (Mar. 23, 2010). As added by this statute, section 501(r) of the Internal Revenue Code generally requires charitable hospitals to complete a community health needs assessment, maintain a financial assistance policy, and comply with certain billing and collection procedures. Further, section 9007(c) mandates a triennial review of the community benefit activities of each charitable hospital organization to which section 501(r) applies. Finally, section 9007(e) imposes reporting requirements on the Department of the Treasury, in consultation with the Department of Health and Human Services (HHS).

I am attaching a detailed response to your questions. I hope that this letter is helpful. If you have additional questions, please contact me, or a member of your staff, can contact Leonard Oursler, Director, Legislative Affairs, at (202) 317-6985.

Sincerely,

John A. Koskinen

Attachment
Q1. What is the status of the MOU between IRS and HHS?

In connection with the reporting requirements under section 9007(e), HHS has agreed to confirm in writing that it will continue to work with the IRS to maintain and update all necessary data elements and algorithms. Additionally, HHS has agreed to annually work with the IRS and review the annual report prior to submission to Congress.

Q2. When do you expect the MOU to be finalized?

The IRS expects to receive this written confirmation in the near future. Meanwhile, the IRS, in consultation with HHS, continues to collect and compile the data for the report.

Q3. What hasn't there been an annual report to Congress regarding nonprofit hospitals, as required by law?

Section 9007(e)(1) requires that the annual report include the following:

(A) Information with respect to private tax-exempt, taxable, and government-owned hospitals regarding—

(i) levels of charity care provided;
(ii) bad debt expenses;
(iii) unreimbursed costs for services provided with respect to means-tested government programs; and
(iv) unreimbursed costs for services provided with respect to non-means tested government programs.

(B) Information with respect to private tax-exempt hospitals regarding costs incurred for community benefit activities.

The IRS does not collect the information required by section 9007(e)(1)(A) with respect to taxable and certain government-owned hospitals. HHS, through the Centers for Medicare & Medicaid Services (CMS), began collecting all of the information under section 9007(e)(1)(A) for Cost Reporting Years beginning on or after May 1, 2010. Accordingly, the first full calendar year (CY) of CMS Cost Report data for which complete data was available is CY 2011. HHS made this data available to the public in November 2013.

The IRS collects the information required by section 9007(e)(1)(B). To ensure that the reporting periods are aligned, the IRS plans to use 2011 Statistics of Income (SOI) data and CMS Cost Report data for CY 2011. The 2011 SOI data will be available on or after June 2014. This is because taxpayers filed their 2011 tax returns in 2012 and 2013 and processing of those returns was generally finished in 2013.

Considerable work has already been completed on the first annual report to Congress under section 9007(e)(1). We currently expect the Department of the Treasury to
provide a final copy to Congress in late summer of this year. Thereafter, annual reports will be filed sequentially, corresponding to the retrospective filing of tax returns with concomitant processing and analysis that regularly ensues over a three-year cycle.

Q 4. What is the status of the annual report? When can Congress expect to receive the Fiscal Year 2013 report?

Due to the three-year cycle referenced above, the data necessary to complete an annual report using CY 2013 data collected by HHS and the IRS will not be available until on or around June 2016. A final copy will be provided to Congress shortly after all data are received.

Q 5. What is the current status of regulations implementing the nonprofit hospital provisions of the PPACA? Please indicate what regulations, if any, are final, indicate where they are in the review process and expected timeline for completion.

Since the enactment of section 501(r) in 2010, the IRS has promulgated several extensive guidance documents that required significant involvement by many members of the tax law staff in the IRS and its Office of Chief Counsel, as well as coordination with the Department of the Treasury and HHS. This guidance has included:

- Notice 2010–39, 2010–24 I.R.B. 756 (May 27, 2010), soliciting comments on the application of the additional requirements imposed by section 501(r);
- Notice 2011–52, 2011–30 I.R.B. 60 (Jul. 8, 2011), addressing the community health needs assessment under section 501(r)(3);
- Notice of Proposed Rule-Making (NPRM), 77 Fed. Reg. 38,148 (June 26, 2012), regarding section 501(r)(4) (which requires hospitals to establish financial assistance and emergency medical care policies), section 501(r)(5) (which limits the amount hospitals can charge for certain care provided to individuals eligible for financial assistance), and section 501(r)(6) (which prohibits a hospital from engaging in extraordinary collection actions before making reasonable efforts to determine whether an individual is eligible for financial assistance);
- NPRM, 78 Fed. Reg. 20,523 (Apr. 5, 2013), regarding community health needs assessments of charitable hospitals;
- Notice 2014–2, 2014–3 I.R.B. (Jan. 13, 2014), confirming that tax-exempt hospitals can rely on proposed regulations under section 501(r) contained in NPRMs issued on June 26, 2012, and April 5, 2013, pending the publication of final or temporary regulations or other applicable guidance; and
- Notice 2014–3, 2014–3 I.R.B. (Jan. 13, 2014), containing a proposed revenue procedure that provides correction and disclosure procedures under which certain failures to meet the requirements of section 501(r) of the Internal Revenue Code will be excused for purposes of section 501(r)(1) and (r)(2)(B).

In sum, the IRS has been very engaged in and committed to the drafting of guidance, and continues to work towards finalization of the proposed regulations, each of which
resulted in extensive public comment. Finalization of these regulations constitutes an item on the IRS Priority Guidance Plan for the year ending June 30, 2014.

Q 6. The PPACA requires the IRS to conduct a review of the community benefit activities of nonprofit hospitals at least once every three years. TIGTA indicated in its June 2012 report the IRS had begun conducting these reviews. How many of the approximately 1,700 nonprofit hospitals has the IRS reviewed to date?

The IRS continues to conduct the statutorily mandated community benefit activity reviews. During the first three-year cycle, the IRS identified 3,001 charitable hospitals subject to the review. The IRS completed reviews of these 3,001 organizations during Fiscal Years 2011, 2012 and 2013. Currently, the IRS is reviewing these hospital organizations as part of the second three-year cycle.

Q 7. What are the results of the IRS's reviews of nonprofit hospitals? In responding to this question, please provide aggregate data on hospitals found to be in compliance, those found to be out of compliance, and the nature of the noncompliance.

As a result of the charitable hospital reviews in the first three-year cycle, the IRS referred 13 hospital organizations for examination and 14 hospital organizations for compliance checks. The potential issues were unrelated business income tax, employment tax and exempt purpose.