SAFE HOUSING ALLIANCE

Flexible Funding and the IRS[1]

ABOUT THIS SERIES

Flexible Funding is financial support provided to survivors of domestic violence and sexual assault to address whatever barrier exists between them and safe housing stability.

Flexible funding – swift, individualized, and targeted financial assistance coupled with housing advocacy and safety planning – has increasingly been employed by victim service programs to meet survivors' varied needs, particularly with achieving safety, stable housing, and well-being. Providers adopting flexible funding programs have found this strategy to be one of the most responsive, and innovative, ways to help survivors recover from violence, care for themselves and their families, and move forward with their lives. In fact, as programs have struggled to manage during the COVID-19 crisis, flexible funding programs have multiplied across the country, enabling victim-serving agencies to support survivors' access to essential housing and services while observing critical social distancing measures.

While the elements of various flexible funding programs may look different from one agency to the next, the basic principles are generally the same. Most providers strive to make this type of assistance as easily accessible, flexible, and survivor-centered as possible. A good primer for the basics of flexible funding can be found here: https://www.safehousingta.org/wp-content/uploads/2019/01/FlexFundingFAQ-Jan2019.pdf

However, while many victim services programs have varying pots of emergency assistance funds to provide this kind of support to survivors, without a system that enables seamless administration, dissemination, and management of those funds, such interventions can also be prohibitively burdensome, expensive, and complicated. Facilitating payments to meet survivors' individualized needs requires structures for approval, documentation, and tracking that many agencies do not have. Making such payments can put a strain on organizations' cash flow and can require onerous levels of paperwork to satisfy audit requirements and fiscal accountability.

Managing the process for disseminating and tracking the use of flexible funding can seem like more effort than it is worth. Additionally, such resources, when provided by funders, often come with restrictions and requirements that may impede their use in the most helpful way. As organizations attempt to draw down and distribute funds according to those parameters, they are faced with balancing available funds with survivors' specific needs, while maintaining flexibility to support survivors as effectively as possible. Even when funders allow for maximum flexibility with limited restrictions, the scope of the flex funding may be limited by program operators concerned about squaring cash grants with internal accounting policies and concerns about financial audits.

While there may be complications to implementing flexible funding programs, the emerging research shows that this approach holds such great promise for helping survivors that many organizations are working to overcome these barriers to offer it to the survivors they serve. This series offers guidance on how to manage some of these issues in order to capably manage flexible funding programs.

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[1] This is the part of a series of guidance briefs about flexible funding and accounting and compliance issues.

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IRS IMPLICATIONS

When considering whether to make payments to or on behalf of survivors, organizations that want to provide flexible funding to survivors may have questions or want additional information about how this intervention aligns with IRS and tax requirements for nonprofits. This brief provides some basic guidance about these issues.

It is important to note that compliance with rules related to the IRS are related to the organization's nonprofit status. When organizations initially file for tax-exempt status from the IRS, they agree to abide by certain requirements in order to receive an exemption from paying taxes on their income. So, it is essential for nonprofit programs to comply with the established rules to keep that status. Nonprofits must file an annual return with the IRS where they respond to questions that indicate their compliance with IRS requirements. The consequences for failing to meet these expectations can be very serious.

Having nonprofit status does not mean that an organization cannot make a profit or that they do not have to pay taxes at all. It simply means that the organization is fulfilling a public service and as such does not have to pay taxes in the same way that other corporations do.

REPORTING INCOME TO THE IRS

In providing flexible funding, programs may choose to make payments for survivors to cover various expenses, such as providing payment to a landlord, attorney, or a therapist. The IRS generally requires that when payments are made to individuals or companies, nonprofits must get a signed W-9 form at the time of payment and provide a 1099 statement to those entities (as well as to the IRS).

Reporting the total payments at the end of the calendar year allows the IRS to know that taxes are owed on that income.

A 1099 is required for payments made while conducting business including:

1. Certain payments made to each individual, partnership, limited liability company (LLC), limited partnership (LLP), or estate; or, in a couple instances, a corporation; and
2. Payments made to anyone to whom an organization or individual has paid at least $600 (cumulatively over the course of the tax year) in rents, services, prizes and awards, or other income payments.

It is good practice to request a W-9 from any vendor before they get paid. This lets the business know that a 1099 will be issued at the end of the year.

EXAMPLES WHEN 1099S ARE NOT REQUIRED

In certain circumstances, when a nonprofit makes payments while providing services, a 1099 is not required to be issued. These situations include:

- If the vendor is organized as a non-profit, C or S corporation, a federal/state/local/territorial government, or is otherwise a tax-exempt organization
- Payments of rent to or through a real estate agent or property managers acting as an agent for the owner
- Payments made to companies for telephone, utilities, freight, or similar items
- Food or meals purchased that are not catered and not part of a banquet, workshop, etc.
- Scholarships or payments made to a school, college, university, or other non-profit educational institution

- Software – when no software support is provided or where no annual renewal fee is required to continue using software
- Payments to pharmacies or tax-exempts hospitals

Make note that payments for medical/healthcare and legal services typically always require a 1099, even if the vendor is incorporated, except when that provider is a nonprofit corporation.

FUNDING PROVIDED DIRECTLY TO INDIVIDUALS

Nonprofit organizations can make grants directly to individuals and businesses if they are made in furtherance of their organizational mission/tax-exempt purposes. The most common way that flexible funding programs do this is through Emergency Relief Funds to individuals. Providing this type of assistance is not considered income and therefore, it is not required to provide a 1099 to the individual or the IRS. Individuals (i.e., survivors) who receive Emergency Financial Funds are not required to pay taxes on that funding because it is considered charity, not income. This is why it is not required for the organization to get a W-9 from or issue a 1099 to the survivor to provide them with this kind of funding.

Emergency Relief Funds refer to financial assistance that organizations provide to individuals to ensure they have access to basic necessities, such as food, clothing, housing, transportation, and medical assistance following an emergency. The IRS specifically says that this kind of assistance can be provided when individuals are[2]:

1. Temporarily in need of food or shelter when they are stranded, injured, or lost because of an emergency;
2. Temporarily unable to be self-sufficient as a result of a sudden and severe personal or family crisis, such as victims of violence crimes or physical abuse;
3. In need of long-term assistance with housing, childcare, or educational expenses because of an emergency; and,
4. In need of counseling because of trauma experienced as a result of a violent crime.

Funding can only be provided to a charitable class, such as a group of people within a community or those who are in a specific group of people who have suffered from the emergency – such as those who experience domestic violence, sexual assault, or human trafficking. The assistance must be open-ended, including victims of present and possible future emergencies, to be considered serving individuals in a charitable class.

When providing this kind of funding to individuals, organizations are obligated to make an assessment of the individual's need for such assistance at the time they receive the assistance and document that process. To satisfy this, an organization should record:

- a complete description of the assistance,
- cost of the assistance,
- the purpose for which the assistance was given,
- the charity's objective criteria for disbursing assistance under the program,
- how the recipients were selected,
- the name, address, and amount distributed to each recipient[3]

[2] https://www.irs.gov/pub/irs-pdf/p3833.pdf p. 8

[33] The individual's personally identifying information should not be disclosed to the IRS.

- the composition of the selection "committee" approving assistance.

The program should also note if the recipient has any relationship to any officers, directors, key employees of or substantial contributors to the organization. Such a relationship does not disqualify an individual from assistance, but it is important to disclose such relationships in order to avoid the appearance of a conflict of interest or misuse of funds.

It is allowed for agencies to provide financial assistance on a short- and long-term basis to individuals in need providing they continue to establish the individual's need over that period of time. If an individual's circumstances change such that the financial assistance is no longer needed, the IRS expects that the program would discontinue the funding. Organizations should consistently take into account its charitable purpose, the public benefit it serves, and the specific needs and resources of the victims being assisted.

In summary, it is good practice for organizations that provide financial assistance to individuals to do the following:

- Be a tax-exempt charity recognized as such by the IRS;
- Have by-laws, articles of incorporation, or other governing documents for the organization that allow for such grants to be made;
- Have a process in place to assess the individual's need at the time of the cash disbursement;
- Demonstrate how individuals who receive funding are part of a charitable class;
- Document who is on the selection "committee" approving assistance in the organization;
- Document how providing cash grants to individuals is in line with the organizations' charitable purpose;
- Keep all documentation current and keep all survivor information confidential.

CONCLUSION

While it may seem intimidating to navigate IRS rules for providing financial assistance to survivors, as long as organizations satisfy the basics outlined in this guidance brief, it is not just doable but extremely useful for survivors. It is also an innovative and effective way for organizations to create change in their communities and help survivors achieve safety, stability, and well-being.

Helpful resources:

About Form 1099 Reporting for Federal Agencies: https://www.irs.gov/pub/irs-tege/form_1099_reporting_for_federal_agencies.pdf

Disaster Relief: Providing Assistance Through Charitable Organizations: https://www.irs.gov/pub/irs-pdf/p3833.pdf

Flexible Funding FAQ: https://www.safehousingta.org/wp-content/uploads/2019/01/FlexFundingFAQ-Jan2019.pdf

Instructions for Forms 1099-MISC and 1099-NEC: https://www.irs.gov/pub/irs-pdf/i1099msc.pdf

Online Ordering for Information Returns and Employer Returns: https://www.irs.gov/businesses/online-ordering-for-information-returns-and-employer- returns

Payable Accounting Vendor Payments – Reportable on Form 1099-Misc Or Not? https://www.cmich.edu/fas/fsr/cps/Documents/Vendor%20Payments_Reportable%20Or%20 Not.pdf

WSCADV's Financial Assistance and Grants by Non-Profit Organizations to Individuals: https://wscadv.org/wp-content/uploads/2017/08/Financial-Assistance-and-Grants-by-Non- Profits-to-Individuals-FINAL.pdf