



**INDEPENDENT SECTOR**  
A vital voice for us all

December 16, 2015

Robert J. Basso  
Senior Counsel (IRS/TREAS)  
CC:PA:LPD:PR (REG-138344-13)  
Room 5203  
Internal Revenue Service, POB 7604  
Ben Franklin Station  
Washington, DC 20044

**Re: Comments on Proposed Rulemaking Regarding Substantiation Requirement for Certain Contributions; Proposed Rule (September 17, 2015), RIN: 1545-BL94**

Dear Mr. Basso,

Independent Sector appreciates the opportunity to provide comments on the Notice of Proposed Rulemaking issued by the U.S. Department of Treasury and the Internal Revenue Service (IRS) regarding the expansion of substantiation reporting for charitable contributions over \$250. Independent Sector is a national coalition of nonprofits, foundations, and corporate giving programs whose members represent tens of thousands of organizations and individuals locally, nationally and globally who are committed to advancing the common good in America and around the world. These comments are based on broad consultation with our member organizations and others in the charitable and philanthropic community.

The proposed rule would shift gift substantiation responsibility from donors to charities by allowing charities to voluntarily forgo the current gift substantiation process of providing contemporaneous written acknowledgments in favor of filing a new annual form with the IRS, in addition to the already-required Form 990. The new form would include donor names, addresses, and taxpayer identification numbers for all gifts over \$250. In addition to collecting donor information and filing the additional form, participating charities would also be required to provide each donor a copy of the report that contains his or her personal information.

Independent Sector supports IRS efforts to substantiate charitable gifts, which help ensure the deductions claimed by taxpayers accurately correspond to contributions that support the work of charities in communities across the country. However, we have deep concerns about the proposed rule, which are outlined below.

*Risk to Taxpayer Privacy*

The collection, storage, and reporting of taxpayer identification and Social Security numbers (SSNs) pose multiple challenges that could place taxpayer privacy at risk. Charitable organizations will need to develop policies, procedures, and technological safeguards in order to properly protect private donor information. For example, online giving portals and donor databases will need to be redesigned to better protect donor data from hackers, such as ensuring their database systems encrypt private donor data.

Charitable organizations are deeply concerned about their ability to safely collect and protect private donor data. The federal government and major corporations have expended substantial resources to protect private information that eventually was breached by hackers. Few charitable organizations have the same level of expertise or resources available as these entities. Limited expertise and resources to properly safeguard donor information make charitable organizations attractive targets to hackers, as evidenced by the hacking of both large and small nonprofits in recent years.

In order to comply with the proposed rule, charitable organizations would have to communicate to prospective donors the need to collect the personal information required on the new form. To protect against identity theft, the IRS currently advises taxpayers against providing this very information to external parties unless absolutely necessary.<sup>1</sup> Likewise, many charitable organizations assure donors that taxpayer identification or Social Security numbers need not be provided in order to give. Current messages from both the IRS and charities, designed to protect taxpayer privacy, conflict with the new messaging that would be necessary for organizations to comply with the proposed rule.

The resulting donor confusion about when it is appropriate or necessary to provide this information to charities would throw open the door to widespread identity theft. Posing as a charity, criminals would simply need to cite the new reporting regime – presumably verifiable on the IRS' own website – as a legitimate reason to ask donors for their Social Security numbers. Even if no charitable organizations ultimately comply with the new rule, its mere existence increases the number of taxpayers at risk of falling victim to identity theft.

Reporting private taxpayer information presents an additional challenge for charities. On occasion, charitable organizations have included private taxpayer information in documents submitted to regulators that were later made public.<sup>2</sup> To better protect taxpayer privacy, the IRS has urged exempt organizations to refrain from including Social Security numbers or other private information on 990-series forms.<sup>3</sup> This proposal is likely to create confusion regarding the proper way to report private donor information, leading to additional instances of donor SSNs or taxpayer identification numbers being inappropriately included on federal or state regulatory forms and risking public disclosure unless that data is first redacted by regulators.

Each time a public charity is hacked or private donor data mistakenly is released on a Form 990, the American public loses trust in both nonprofit and government institutions' ability to safeguard their personal information. Encouraging over one million 501(c)(3) organizations with limited resources, technical expertise, and procedural safeguards to collect, store, and report Social Security numbers will turn charities into even more attractive targets for hackers and increase the likelihood private taxpayer information being compromised.

Further, a breach of taxpayer identification numbers or SSNs collected by a charitable organization may expose that charity to liability issues. Janet Kleinfelter, deputy attorney general of Tennessee and president of the National Association of State Charity Officials recently said that "as a regulator, I would look at that as a breach of fiduciary duty."

We are concerned that this proposed rule poses significant increased risk to taxpayer privacy while creating new liabilities for charitable organizations.

### *Decreased Charitable Giving*

In a 2007 Research Bulletin, the IRS stated that "current rules regarding the deductibility of charitable contributions already impose some burden on individual taxpayers, and ramping up documentation requirements might actually discourage bona fide contributions."<sup>4</sup>

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<sup>1</sup> "Taxpayer Guide to Identity Theft." Internal Revenue Service. <https://www.irs.gov/uac/Taxpayer-Guide-to-Identity-Theft>.

<sup>2</sup> Perry, Suzanne. "Activist Challenges IRS Over Release of Social-Security Numbers on Tax Forms." *Chronicle of Philanthropy*. July 15, 2014. <https://philanthropy.com/article/Activist-Challenges-IRS-Over/152853>.

<sup>3</sup> Ripperda, Tamera. "Message from the Director of Exempt Organizations: Priorities for the Year Ahead." Spoken Remarks at Representing and Managing Tax Exempt Organizations. Georgetown Law. April 23, 2015.

<sup>4</sup> Turk, Alex, Maryamm Muzikir, Marsha Bluemthal, and Laura Kalambokidis. "Charitable Contributions in a Voluntary Compliance Income Tax System: Itemized Deductions versus Matching Subsidies." *The IRS Research Bulletin: Proceedings of the 2017 IRS Research Conference*. 2007. <https://www.irs.gov/pub/irs-soi/07resconfurk.pdf>.

Charitable organizations are concerned that including a request for Social Security numbers will deter some donors from giving. Donors concerned about privacy, or seeking any easy transaction, may prefer to give to an organization that does not request their SSN as a condition of giving, or give less than \$250 so as not to trigger the collection of their personal information.

The collection of taxpayer identification numbers also poses potential problems for charities that partner on fundraising campaigns with third parties, such as corporate partners or social media platforms. In most of these instances, the charities do not communicate directly with donors, and may find their fundraising partners unwilling to either collect private donor information or share that information with the charity. For example, employers that manage employee giving campaigns often do not provide charities with a list of individual donors, so they may be unlikely to disclose their employees' Social Security numbers. In these situations, charitable organizations would be forced to choose between revenue generated from a key partner and compliance with the proposed rule.

Charities are likely to be penalized for complying with the proposed rule through a reduction in revenue as donors begin to make charitable giving decisions based on this new reporting process rather than an organization's mission or impact.

### *Administrative Burden*

This proposal would impose significant administrative burdens on charitable organizations. The Government Accountability Office concluded in 2009 that "charities could incur substantial costs and burdens if they were required to file information returns with the IRS and taxpayers on the [contributions] they receive."<sup>5</sup> These burdens range from overhauling entire resource development strategies and communications to revising data management systems and developing internal procedures and technological safeguards to protect private donor data.

The February 28 deadline for filing the new, additional form – and sharing it with donors - creates another administrative burden. Currently, organizations are able to provide donors with contemporaneous written acknowledgments (CWA) as gifts are received throughout the year. This practice not only allows charities to spread the work across a longer timeline, it also allows them to use CWA communications to thank and inform donors immediately after receiving a gift – an industry best practice proven to increase donor retention. Requiring charities to provide donors a copy of the form during the narrow window between February 28 and April 15 is an additional burden that will shift resources away from delivering programs and services.

Finally, charities rely on donors for the accuracy of the taxpayer identification information they collect and report to the IRS. We are concerned that moving forward the IRS may adopt policies similar to rules governing university reporting of student self-reported data, which would result in charities being fined for filing inaccurate donor-reported data. In the alternative, the IRS could require charities to take extra steps to verify the accuracy of the data in the future, further increasing the administrative burden.<sup>6</sup>

By increasing the administrative demands on charities, the proposed rule would redirect valuable resources away from advancing charitable missions and providing critical programs and services to communities.

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<sup>5</sup> "Tax Gap: Requiring Information Reporting for Charitable Cash Contributions May Not Be an Effective Way to Improve Compliance." U.S. Government Accountability Office Report to the U.S. Senate Committee on Finance. May, 2009. <http://www.gao.gov/assets/290/289664.pdf>.

<sup>6</sup> "Colleges Receiving IRS Penalty Notices in Random Compliance Check." National Association of Independent Colleges and Universities. September 19, 2013. [https://www.naicu.edu/news\\_room/detail/colleges-receiving-irs-penalty-notices-in-random-compliance-check](https://www.naicu.edu/news_room/detail/colleges-receiving-irs-penalty-notices-in-random-compliance-check).

### *Pressure to Comply*

While the proposal stipulates that compliance with the new reporting requirement is optional, we are concerned that charities may feel compelled to participate in the new reporting regime for a number of reasons. The widespread adoption by charities of conflict of interest and whistleblower protection policies, for instance, underscore the extent to which non-mandatory policies are perceived as government recommendations about best practices by exempt organizations. We would similarly expect to see charities comply with this proposal in an effort to remain in good standing with the IRS.

Additionally, we are concerned that the annual filing of this optional new form may be interpreted – by individual donors, foundations, and the general public – as an industry best practice with which the government expects “good” charities to comply. Lastly, donors seeking to relieve themselves of the recordkeeping burden associated with the current system may ask charities to participate in this regime and report charitable gifts on their behalf. Such a donor request would be difficult for a charity to ignore.

Labeling the proposal as voluntary will likely do little to relieve charities of perceived or real pressure to accommodate expectations of government regulators, public watchdog groups, or donors.

### *Conclusion*

We appreciate the opportunity to provide the charitable and philanthropic community’s perspectives on this proposed rulemaking. For the reasons outlined above, Independent Sector believes the proposal will jeopardize taxpayer privacy and pose serious challenges for charities that choose to comply with the rule.

These concerns raise the question of whether the sacrifices nonprofits and their donors must make in order to comply with the proposed rule outweigh the possible benefits that the proposal may provide to regulators. Beyond the fact that the donor-reported information may not be accurate, GAO states that limiting the reporting requirements to only cover gifts over a specific amount, as proposed in the IRS rule, would limit the policy’s effectiveness and make it a less than desirable solution to correct taxpayer reporting errors.<sup>7</sup>

The current contemporaneous written acknowledgement process works effectively, so there does not appear to be a compelling need to promulgate a rule that creates so many problems for charities and taxpayers. We urge the IRS to withdraw this proposed regulation.

Sincerely,



Geoffrey Plague  
Vice President of Public Policy  
Independent Sector

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<sup>7</sup> “Tax Gap: Requiring Information Reporting for Charitable Cash Contributions May Not Be an Effective Way to Improve Compliance.” U.S. Government Accountability Office Report to the U.S. Senate Committee on Finance. May, 2009. <http://www.gao.gov/assets/290/289664.pdf>.