



Gift Substantiation Proposed Regulations

Of the Treasury Department and Internal Revenue Service

(IRS REG-138344-13)

The U.S. Treasury Department and the Internal Revenue Service published [proposed regulations](#) in September that would permit, but not require, charitable nonprofits to file a new, separate information return with the IRS (in addition to the Form 990) by February 28 every year to substantiate contributions of more than \$250 in value. The new informational tax return (“Donee Report”) would require the nonprofit to collect the donor’s name, address, and Social Security number or other taxpayer identification number. Nonprofits taking this option would also be required by that date to provide a copy to each donor listed (but only the portion that contains “information related to that donor”). The IRS is [accepting public comments](#) on the proposed rule change through December 16.

The National Council of Nonprofits’ position is that the proposed voluntary reporting regime is inappropriate because the process could impose significant costs and burdens on nonprofit organizations, would create public confusion and disincentives for donors to support the work of nonprofits, and could lead fraudulent actors to increase targeting donors and reputable nonprofit organizations. Moreover, Treasury and the IRS state in the background description of the proposed rule that the current system of contemporaneous written acknowledgement of donations “works effectively, with the minimal burden on donors and donees.” The proposal to add a potentially confusing parallel reporting regime that needlessly introduces the risks of fraud, identity theft, and decreased donations to the community should be rejected.

Nonprofit organizations and leaders are encouraged to exercise their rights to submit comments to the proposed regulations in order to explain the real-world consequences of the rule to help inform government officials before a final decision is made. See the National Council of Nonprofits’ [Tips on submitting comments](#). Many concerned citizens have already submitted [comments](#), but government decision-makers need to hear from as many people as possible, whether you want to file a lengthy analysis, a short opinion, or even just a sentence.

Background

Under current law, individuals and organizations (taxpayers) that claim a charitable deduction for contributions of \$250 or more must obtain substantiation in the form of a contemporaneous written acknowledgement (CWA) from the charitable nonprofit (donee) receiving the donation. Section 170(f)(8)(A). The CWA acknowledgement (usually referred to as a “receipt” even though it is often in letter form) must present (1) the amount of the cash donation or a description (but not value) of the non-cash property donated; (2) a statement whether any goods and services were provided by the donee organization in exchange or consideration for the donation; and (3) a description and good faith estimate of the value of any goods and services provided by the donee or a statement that such goods and services consist of intangible religious benefits (Section 170(f)(8)(B)). See IRS [Publication 1771](#).

The Internal Revenue Code provides that donors will be exempt from their requirement to secure a contemporaneous written acknowledgement if the charitable organization reports the donation to the IRS. Specifically, the statute states that the CWA gift acknowledgement requirement “*shall not apply to a contribution if the donee organization files a return, on such form and in accordance with such regulations as the Secretary may prescribe, which includes the information described in subparagraph (B) with respect to the contribution.*” (Section 170(f)(8)(C).)

The proposed regulations seek to create the process through which nonprofits report contributions directly to the IRS. It is important to note that any new Donee Report form proposed in the rulemaking would include the existing requirements for gift acknowledgements, but adds a fourth requirement: reporting the taxpayer's Social Security number or other taxpayer identification number. The background material accompanying the proposed regulation explains the thinking of Treasury and IRS officials for requiring nonprofits to obtain this sensitive information from donors:

The donor's taxpayer identification number is necessary in order to properly associate the donation information with the correct donor. Unlike a contemporaneous written acknowledgement, which is not sent to the IRS, the donee reporting information return will be sent to the IRS, which must have a means to store, maintain, and readily retrieve the return information for a specific taxpayer if and when substantiation is required in the course of an examination.

It is also important to note that a similar proposal was considered and rejected in the past based on the numerous legal, policy, and confidentiality problems it raised. The results of a [Government Accountability Office](#) investigation found the following:

Requiring information reporting for charitable cash contributions may not be an effective way to improve compliance. Charities could incur substantial costs and burdens if they were required to file information returns with IRS and taxpayers on the cash contributions they receive. ... Finally, requiring information reporting could result in reduced charitable cash contributions from taxpayers, for example, because taxpayers may not want the federal government to know to which charities they donate, particularly for donations to religious organizations.

Later in the [same report](#), GAO expressed concern that **"taxpayers may reduce giving because they are reluctant to provide Social Security numbers to charities given concerns over identity theft."** (Emphasis added)

Considerations

The National Council of Nonprofits opposes the proposed Donee Reporting Rule and encourages donors and nonprofits to submit comments to the federal government explaining the real-world consequences of the rule, if promulgated as written. In preparing comment, the following considerations and concerns are offered as a guide:

- **"Never" is the better answer.**
A charitable nonprofit should **never** be asking a donor for her or his Social Security number when soliciting donations; if someone is asking in relation to a donation, that should be considered a sign of a scam or fraudulent solicitation. Rather than create a regime in which some nonprofits require donors to provide their SSNs, Treasury and the IRS would better serve the public by getting behind a consistent message that donors should never be asked to provide their SSNs for gift substantiation purposes.
- **The proposed Donee Reporting Rule conflicts with the IRS' advice to taxpayers.**
The Internal Revenue Service advises taxpayers [on its website](#) and on a [YouTube video](#) to only give out their Social Security numbers when "absolutely necessary." Yet the IRS proposed voluntary system essentially requires nonprofits to do just that: ask donors to give out their SSNs when it is not absolutely necessary. Voluntary and "absolutely necessary" are polar opposite

instructions that undermine taxpayer protections and public confidence – public confidence in both the IRS and innocent charitable nonprofits.

- **Requests for Social Security numbers could result in reduced charitable contributions.**

Numerous individuals commenting on the proposed rule have raised the concern that donors will be unwilling to contribute more than \$250 to a charitable nonprofit if it asks for Social Security numbers. This concern was expressed by the [Government Accountability Office](#) in May 2009 when it considered an earlier proposal to make such a reporting regime mandatory. Under the heading, “**Requiring information reporting could result in reduced cash contributions,**” GAO provided the following points:

 - Taxpayers may reduce giving because they are reluctant to provide Social Security numbers to charities given concerns over identity theft
 - Social Security numbers are generally required on information returns and IRS uses Social Security numbers to match information returns to tax returns
 - Donors may perceive that charities will not adequately safeguard their Social Security numbers
 - Many charities rely on volunteers, to whom donors may not want to provide their Social Security numbers
 - An alternative means to uniquely identify donors, that is, for IRS to provide separate, unique numbers for this purpose, could alleviate donor concerns about identity theft but could be burdensome to implement

- **Concerns about identity theft are very real.**

Just this year, hackers have accessed sensitive employee data at the federal Office of Personnel Management and the Central Intelligence Agency, two sophisticated entities with the resources and commitment to fighting intelligence breaches. And yet, hackers could not be thwarted. It is irresponsible for Treasury and the IRS to propose a system that calls on nonprofits to collect, store, and protect SSNs when identity theft is a growing challenge that even the federal government is not yet able to overcome. The observation by the [Government Accountability Office](#) in 2009 remains valid today: “*An alternative means to uniquely identify donors, that is, for IRS to provide separate, unique numbers for this purpose, could alleviate donor concerns about identity theft but could be burdensome to implement.*” Unfortunately, Treasury and the IRS have ignored that warning and continue to promote their own administrative convenience at the expense of donor, nonprofit, and public wellbeing.

- **The current contemporaneous written acknowledgement system is working.**

The proposed regulations make several admissions that raise the question: why are Treasury and the IRS bothering to create a new, optional, parallel reporting regime that will require more administrative burdens on both nonprofits and government personnel? The background description of the *status quo* states that the present contemporaneous written acknowledgement (CWA) “*system works effectively, with minimal burden on donors and donees, and the Treasury and the IRS have received few requests ... to implement a donee reporting system.*” Treasury and the IRS even repeat their key admission: “Given the effectiveness and minimal burden of the CWA process, it is expected that donee reporting will be used in an extremely low percentage of cases.” Since there is not an overriding need for an alternative system, the flawed proposal to adopt a confusing and potentially dangerous Donee Report Rule should be rejected.

- **Just because the proposal is voluntary now is no reason to ignore its potential adverse impacts.** Some might say they are not concerned about the proposed Donee Report Rule because it is purely voluntary *at this time*. But being silent now is not the answer; overt opposition to the proposed rule is needed for three important reasons:
 1. The IRS attempted to implement a mandatory system in 2008, but that effort was thwarted by nonprofits and the [Government Accountability Office](#). The principal obstacle then, as now, was the unwarranted inclusion of Social Security numbers in the gift substantiation process. Nothing has changed in the intervening seven years to make the proposal less objectionable. Making a bad idea voluntary in the first step gets the IRS closer to the initial plan of making the bad idea mandatory in a second step.
 2. This voluntary reporting system could well become a watchdog group's idea of a "best practice" that all "good" nonprofits are then prodded to adopt. The revised Form 990 that most charitable nonprofits submit to the IRS each year includes several questions about governance practices that are considered best practices but that are not mandated by statute. The manner in which nonprofits answer those questions is addressed in media stories and perhaps evaluations by donors and watchdog groups. This proposal encouraging nonprofits to seek sensitive and private Social Security numbers should not be allowed, however well intentioned.
 3. Most importantly, it is in the best interest of donors and the nonprofit community for there to be a clear, unambiguous rule: **A charitable nonprofit should never be asking a donor for her or his Social Security number to substantiate a donation; if someone is asking, that is likely the sign of a scam or fraudulent solicitation.** Indeed, even the [IRS website materials on identify theft](#) exhorts taxpayers: "Don't give a business your SSN just because they ask – only when absolutely necessary." This mixed message is sure to confuse the public and undermine public confidence in nonprofits.

Submit Comments

The IRS is [accepting public comments](#) on the proposed rule change through December 16.

- See [Tips for Submitting Effective Comments](#) from the Internal Revenue Service
- Read [Taking the Mystery Out of Filing Comments on Proposed Rules](#) from the National Council of Nonprofits
- View [comments already submitted by concerned citizens](#).

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