

# Unmasking the Unthinkable: Financial Institutions Hoard Intended Charitable Gifts

August 5, 2022

## I. Introduction:

U.S. charities face alarming delays and problems when they attempt to collect gifts at financial institutions left by deceased donors. In recent years many—but not all—financial institutions have caused tremendous delays in paying these death claims based on the financial institution’s internal company policies. It’s become a draconian process for charities with no sign of relief. For income (and estate) tax purposes, donors are often shown the exceptional tax benefits of naming a charity as the beneficiary of an IRA. Hence, this charitable gift is quite common and will continue to become even more popular as more and more donors name a charity as a beneficiary of their IRAs—necessitating the need to address this national problem.

## II. Payment Process “A”\*:

Some financial institutions will pay the charity promptly and with little hassle. The charity provides 3 basic items to the financial institutions and in turn, is paid in approximately 30 days:

- The deceased donor’s death certificate
- An IRS Form W-9 showing the charity’s tax identification number (needed for IRS tax reporting purposes)
- A corporate resolution that the person signing the paperwork has authority to act on behalf of the charity

## III. Payment Process “F”\*:

At least ½ dozen other financial institutions refuse to pay the charity. Instead, they force the charity down a dark abyss the charity can barely ever climb out from. Why?

They make it their corporate policy to refuse to pay “beneficiaries.” In fact, they established their computer systems in a way that can’t even pay a beneficiary. Is this illegal? Is it a breach of the IRA contract? Are they doing this because they make more money if they hold the money longer?

To actually receive payment, these financial institutions first force the charity to become their “new customer” by applying for and setting up a brand-new account usually by completing 20-50 pages of documents. The financial institutions then transfer the money from the deceased donor’s IRA into this new account (called an Inherited IRA or Beneficiary IRA). Thereafter, the charity has to go through a whole new process and paperwork nightmare to liquidate the account just to access the funds for their mission. This might sound easy but the fact is this entire process can commonly take a few years. One charity has waited 6 years and still hasn’t been paid.

\*The author’s own description

Now 30 days has turned into several years. Why? Sometimes the financial institution loses the paperwork, and the charity has to start all over again. Or the customer service person at the financial institution changes jobs and the charity has to start the paperwork all over again with a new customer service clerk. Or the financial institution now wants 3 new forms they hadn't asked for before. It goes on and on. One university said it could have given out 3 full-ride scholarships to under-served students in the time it took them to get just 1 claim paid!

It's akin to financial hostage, "Be our customer or we won't give you the money we owe you." And wait, if there is more than 1 beneficiary, these companies won't pay a dime until EVERY SINGLE beneficiary has completed every last bit of paperwork – further stalling payment of the charities' rightful funds.

Here's what 2 nonprofits said about the process:

*"We've sent three different versions of paperwork, spent a number of phone calls, asked for specific help in fulfilling their requirements to send the gifted IRA proceeds, and they still have not sent the money. The gift itself is now in an account with our name and it is a modest amount. But, we've asked for that account to be liquidated but it still has not happened. The company's process and the people have been the issue. I've had a representative apologize and admit that the entire process is difficult. This process has been going on for years for this one gift."*

*"I've been working on this one since July, and that's quite a while for an IRA beneficiary distribution. They didn't like our first submission because it had X's signature on the form and Y's signature on the W-9. Our second submission was incorrect because they forgot to list that there was cash in addition to securities. They didn't like the third submission because they wanted X to initial by the cash number, and they called yesterday and said the fourth submission had "Wite-out" on it, so it was invalid."*

Charities realize they are not legally required to follow F (open a second account to receive its rightful death benefit). It is the company's own internal policy but not a legal requirement. Therefore, charities are pushing back against F and requesting A. Some financial institutions will make an exception with a written letter from the charity and will then use A. And, to fulfill their customers' wishes, in July of 2022, Edward Jones changed their procedures from F to A.

#### **IV. Personal Social Security Numbers:**

The absurdity of the financial institution's process is illuminated when—to open the account—it demands private, sensitive, and confidential information from the charity's employee(s):

- Name of a charity's employee (or board member),
- Employee's home address,
- Employee's home phone number,
- Employee's Social Security number,
- Employee's driver's license, and
- Sometimes the employee's personal net worth statement

Charities know this approach is costing them staff time and money to track down these gifts and monitor the labored company process. One organization's CFO said,

*"I find this to be an annoying and frustrating step that is clearly designed to make it more difficult for beneficiaries to get their payments. The fact that we have to provide my (and sometimes others') personal information to set up these accounts adds insult to injury. My sense is that all of this paperwork we need to complete takes time away from more productive things that we could be doing instead."*

Charities also inquire if the financial institutions are inappropriately acquiring fees through the process of creating the new account, holding the assets longer, and even charging additional fees when the account is finally closed.

The charity is the IRA beneficiary not the individual employee/board member so why is the "personal" information required? Further, all charities have their own tax identification number (available online at [Organizations Eligible to Receive Tax-Deductible Charitable Contributions](#)), so why would the financial institution want the employee's personal information? It's very uncomfortable for the charity to share private and sensitive information of an employee in light of potential data breaches or identify theft.

Here's how one charity described its experience.

*"On multiple occasions, the president of the foundation (paid staff member) has been required to send personal information (social security numbers, home addresses, etc.) because the company that holds the donor's IRA is requiring our organization to open an account with them to transfer the funds into it before sending the funds to us. Additionally, some companies have even asked for personal wealth information, knowledge of stock transactions, and other personal details that are not germane to the process of receiving the donor's gift. They have also asked for information about people who are on our board - which we've not given."*

One financial institution on multiple occasions placed the money in the employee's personal account -- instead of the charity's new account -- because it linked it to the employee's Social Security number they had asked for.

The following are financial institution responses charities have heard while trying to negotiate receiving their donor's gift.

*"We aren't going to compromise."*

*"Let the death claim sit with us until it goes to a statewide unclaimed property fund. Then try to get the money."*

*"Go see a judge and get a court order if you don't like how we do it."*

*"You're refusing to comply with federal regulations if you don't give us the person's Social Security number."*

Why would opening a second account make sense to either the charity or the financial institution? Isn't it more work for the financial institutions when they know the charity will just liquidate the account to use the funds according to the donor's wishes in making the gift?

Each and every single time a nonprofit has a death claim with one of these financial institutions, this paperwork nightmare occurs from scratch all over again. If a charity has 5 death claims at ABC

financial institution in one year, this death claim paperwork nightmare starts again from scratch 5 different times at just ABC alone...let alone for each death claim the charity has at other financial institutions. It goes on and on.

V. **Charities are Easy to Identify:**

Charitable organizations have the easiest methods to verify their identity. How the F process was created was to blindly mirror the policies used for human beneficiaries. Humans and charities are apples and oranges. Using the same internal policies is beyond frustrating; it causes huge delays, burdensome paperwork, and even further, it defies common sense.

It seems the financial institutions intentionally devised their operations to hoard the funds and force all beneficiaries—human and charity—to become “new” customers. However, nonprofits will never want to delay the receipt of their donor’s gifts, but instead will always desire to receive the proceeds as soon as possible to fulfill their mission of saving sick children, providing lifesaving healthcare, educating our youth, etc.

VI. **Is The Patriot Act *REALLY* the Reason?**

Now enter The Patriot Act, Bank Secrecy, AML, etc. The financial institutions using F may be hiding behind a falsehood. Are these financial institutions looking for an excuse to hold onto the money longer, using The Patriot Act, etc., as the fall guy?

These financial institutions blame The Patriot Act for their draconian processes. They claim The Patriot Act requires detailed information of “new” customers. But the charity never wanted to be a “new” customer. They want A. In fact, the financial institution **forces** them to be a customer. Other financial institutions use A and pay the beneficiary right away without unconscionable delays. ***If they all just used A, the charity wouldn’t be a “new customer.”***

*But there’s an important twist:* Does using F really make them a “new” customer in the eyes of the Financial Crimes Enforcement Network (FinCEN) (the federal government agency which monitors compliance with The Patriot Act)? FinCEN stated in an email in June of 2019 that a charity is not considered a “new customer” under The Patriot Act if the charity doesn’t maintain the account after the death of the donor. That clearly answers the question: it doesn’t matter whether A or F is used to pay—either way a charity isn’t a new customer.

Two points make The Patriot Act inappropriately applied by the financial institutions:

- 1) Charities make it clear to the financial institutions their wish for an immediate lump sum payment before any paperwork is ever completed—indicating their wish to decline opening a new account nor maintaining the account, and
- 2) The only reason there would ever be a “new” account is because it is mandated as company policy by the financial institutions, (i.e., F).

Unfortunately, a large East Coast financial institution claimed that FinCEN’s response is not “formal” and ignored it—refusing to pay the charities without the new account.

Some financial institutions have claimed if they don’t require personal Social Security numbers they personally face exposure to federal sanctions along with civil and criminal penalties. They wouldn’t be in that position if they paid under A or if they stopped copying the exact procedures to pay charities that they use for humans.

Therefore, FinCEN has been asked for a REQUEST FOR RULING IN CONFORMITY WITH SECTION 1010.71, and we hope to have this by November of 2022 and that the ruling would formally clarify to financial institutions that charities are not “customers” when named as beneficiaries – thus, negating the need for personal information.

## **VII. The Ultimate in Unmasking:**

Let’s assume for an absurd moment that The Patriot Act really applies when a charity is the beneficiary of an IRA. Nowhere in The Patriot Act does it call for the personal Social Security Number of the employee of a charity. Charities are not willing to provide its employees’ Social Security numbers in light of the numerous data breaches nationwide and the exposure to identify theft. That is a risk most charities are not willing to take as it is not necessary to do so under the law. They realize there is no legal requirement to demand an employee’s Social Security Number to fulfill the financial institution’s obligations for tax reporting.

The financial institution could access IRS Publication 78 online; it is freely available to anyone to verify the tax-exempt status of the charity because the IRS has already done the thorough vetting of the charity. These donors who leave their IRAs to charities aren’t terrorists who worked their whole life in a job saving for retirement and then plan to leave their account to a terrorist organization. The donors who make these gifts are long-time supporters of the charity for years and are doing this gift to leave their legacy.

Even if FinCEN considered a charity beneficiary as a “customer” merely by its status as an account beneficiary, the financial institutions “have enough information to form a reasonable belief that they know the identity” of the charity with the following enclosed documents:

1. IRS Form W-9 for your tax reporting responsibilities
2. Evidence of tax-exempt status – further verifiable on-line via IRS Publication 78
3. Corporate resolution
4. Death certificate of account owner

By providing the above documentation, this more than clearly gives the financial institution enough information to meet the legal standard which is to have a “reasonable belief” of who the “customer” is. But yet they refuse. It defies common sense. It’s financial hoarding and it’s not right.

Moreover, most of this could be easily accomplished if the financial institution used common sense, because this practice of financial institutions hoarding these accounts happens to nationally and internationally known charities like famous U.S. museums, nationally known children’s research hospitals, colleges, universities, food pantries and the like. It is beyond ridiculous for financial institutions to hold back paying a donor’s gift because they have to make sure, for example, that Iowa State University Foundation isn’t a terrorist organization under The Patriot Act. It needs to stop immediately.

## **VIII. What’s Getting Worse:**

There has been a huge uptick in some of the financial institutions using these same hoarding techniques with “other than IRA” accounts:

- Brokerage accounts (TOD or POD)
- Family and other testamentary trusts
- Charitable remainder trusts

What seems apparent is that these financial institutions have blindly copied these same hoarding procedures for these accounts as they do for their IRA accounts.

Some of the IRA financial institutions do not inform the charity they are a beneficiary when the financial institutions know the account owner is deceased. An especially disturbing situation involves one university that just found out it was the beneficiary of a 401(k) account from a deceased employee who died 16 years ago. And yet the 401(k) financial institution (hired by the university) never communicated to its own client that the university was the 401(k) beneficiary. Never said a word – for 16 years. The financial institution just sat on his account. If the financial institutions refuse to notify charities, how will this money ever be distributed to the rightful charity?

Further still, some financial institutions will not inform the charity of the dollar amount of the charity's share until it pays the claim. One charity—after completing all the paperwork back-and-forth with the financial institution—received a check for ten cents. The charity spent far more time and effort than it would have, had it been informed of the amount up-front.

And the excuses to keep the funds just keep coming...now one financial institution claims it needs the employee personal information in order to liquidate the securities in the deceased donor's account post death -- yet they refuse to acknowledge the default provisions in their own IRA disclosure give them the ability to do just that liquidation.

For questions or comments, please reply to:

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