

United States Senate Committee on Finance
Hearing on “Examining Charitable Giving and Trends in the Nonprofit Sector.”
March 17, 2022

Questions for the Record for:

Daniel Cardinali, President and CEO of Independent Sector

Chair Wyden

Question 1

During the hearing we discussed challenges facing the nonprofit sector, including the changes to the tax law in 2017, which resulted in a decreased tax incentive to give to charity, and a reduction in the number of taxpayers eligible to claim the charitable deduction. In 2019, just 11 percent of taxpayers claimed itemized deductions, with fewer actually claiming the charitable deduction. In your testimony, you suggested that the number of donors declined and that donations are distributed unevenly across the nonprofit sector.

Are there certain kinds of organizations that have been particularly affected?

Dan Cardinali

Chairman Wyden, thank you for your leadership in convening this hearing. Without swift action, charities of every type will continue to be negatively affected by the expiration of the nonitemizer deduction and communities will be deprived of critical resources. It is hugely important for the health of our civil society that nonprofits are funded by the broadest possible segment of the population. A charitable sector that is funded only by the wealthy will serve America very differently, with ramifications for governance, trust, and the types of organizations and activities that receive funding.

I believe that a charitable deduction available only to itemizers will punish organizations whose donors tend to come from states with lower itemization rates. This construct would also likely punish organizations based in rural and low-income areas, as the donors in their area may tend to have fewer deductions and be less likely to itemize.

When considering which kinds of organizations are affected, I would direct the Committee to the most recent Study of Charitable Giving by Affluent Households, published by the Lilly Family School of Philanthropy at Indiana University in 2021.¹ I defer to Dr. Osili’s analysis of this report, but would note that Section 5 of the report clearly illustrates affluent households giving to a wide range of nonprofit causes and organization types with basic needs and religion topping

¹ Accessed at <https://scholarworks.iupui.edu/bitstream/handle/1805/26654/bank-america-sept21.pdf>

the list. According to data on page 36, eight different categories received support from more than 25 percent of affluent households. Generous donors are generous.

Furthermore, while I remain gravely concerned about the implications of a shrinking donor pool for American civil society, any analysis that focuses solely on giving by subsector or organization type is necessarily incomplete. Organizations deemed to be higher education institutions in any particular analysis are also likely making profound contributions to their community's workforce development or its healthcare access. Nonprofits that may be recorded as arts organizations may be simultaneously making contributions of spiritual inspiration, youth development, and medical education to their communities, to name a few. Independent Sector appreciates your support for the full fabric of the charitable sector, and we look forward to working with you.

Ranking Member Crapo

Question 1

Mr. Cardinali, your written statement mentions Independent Sector's 2021 report, *Health of the U.S. Nonprofit Sector*, which contains helpful data, analysis and recommendations around the nonprofit sector.

Can you discuss the overall health of the nonprofit sector since March 2020?

Dan Cardinali

Ranking Member Crapo, thank you for your leadership in convening this hearing. Our *Health of the U.S. Nonprofit Sector* report focuses on health indicators in four categories: Financial Resources, Human Capital, Governance and Trust, and Public Policy and Advocacy. As you note, there is additional information about these four lenses in my written testimony and the full report is available on Independent Sector's website.²

In summary, losses of earned revenue and unpredictable fundraising have combined with increased community demand and the cost of disrupted operations to strain the nonprofit sector's financial resources since March 2020. Our sector faces severe human capital challenges, having lost 1.6 million jobs during the worst of the pandemic and recovering much more slowly than the economy as a whole. Trust in the nonprofit sector increased in 2020 as the public observed nonprofits serving on the frontlines of the global pandemic and economic crisis, but this appears to have been a temporary increase. I look forward to sharing 2022 figures when they are released later this month. The health of our sector's advocacy efforts can be partially demonstrated by a number of concrete – if incomplete – victories in federal policy in recent years, although we seek a fuller assessment as part of comprehensive advocacy research that Independent Sector is commissioning this year.

² <https://independentsector.org/nonprofithealth/>

Question 2

In your statement, you mentioned the *Legacy IRA Act*, highlighting the ability for individuals to give using their retirement accounts. Considering the Finance Committee is working on a comprehensive retirement savings package, you have raised this point at an opportune time. I know your member organizations benefit from every type of giving, but my sense is that this type of giving may be overlooked.

Can you explain how important giving through retirement accounts is to your members?

Do you have relevant data that you could share with the Finance Committee?

Dan Cardinali

Ranking Member Crapo, giving through retirement accounts is very important for Independent Sector's members and nonprofit organizations nationwide since the number of retirees in the country is rapidly growing. It is expected that 10,000 Baby Boomers will turn 65 every day through 2030, and those over 65 now represent 15 percent of the total population³. Coincidentally, this is the average age of a donor in the United States as of 2021⁴.

Since 2006 when charitable giving through Individual Retirement Accounts (IRAs) or Qualified Charitable Distributions (QCDs) was established and ultimately made permanent through the Protecting Americans from Tax Hikes (PATH) Act, it has remained one of the crucial fundraising avenues for nonprofit organizations. Among the many planned gift options retirees have, the QCD at age 70½ incentivizes greater charitable giving while it mitigates or eliminates the income tax on the withdrawal. Americans donated an estimated \$471.44 billion in 2020. Out of that record number of donations, \$41.19 billion were donations by bequest according to the Giving USA 2021 report.

Over the last few years, nonprofits have seen a surge in the number of QCD gifts coming into their organizations. According to the 2022 Report on Qualified Charitable Distributions from IRAs, 71% of organizations that received QCDs in 2021 said they fundraised more than \$10,000 through these gifts. Nearly one-third said that they received more than \$50,000 in total from QCDs⁵.

Senator Cantwell

³ How Women and Men Give Around Retirement. Pg.3. The Women's Philanthropy Institute. Indiana University Lilly Family School of Philanthropy. <https://scholarworks.iupui.edu/bitstream/handle/1805/16758/wpi-retirement-july18.pdf>

⁴ 2022 Report on Qualified Charitable Distributions from IRAs. Pg. 15. FreeWill. <https://www.freewill.com/qcd-report-2022>

⁵ 2022 Report on Qualified Charitable Distributions from IRAs. Pg. 33. FreeWill. <https://www.freewill.com/qcd-report-2022>

Question 1

Nonprofits make up the fourth-biggest industry in Washington state, with more than 30,000 organizations and 238,000 nonprofit employees. Like too many industries, nonprofits across my state were decimated when the pandemic hit and had to cut staff. And two years later they are still struggling. In Washington nonprofit employment is still down 6 percent below pre-pandemic levels, after dropping 9 percent in early 2020. These are organizations that have been on the frontline throughout the pandemic helping people find access to housing, food, child care, and more, and they need our support.

One of the most effective measures we took in the CARES Act was to provide a payroll tax credit of up to \$5,000 per employee for businesses that were hard hit by the pandemic, to help keep people employed. But unfortunately the Bipartisan Infrastructure Law repealed the ERTC for the fourth quarter of 2021 as a pay-for, leaving nonprofits without one of the key tools they had to retain staff. I am a big believer in payroll tax credits as an incentive to sustain a workforce. It's why I worked to create a similar program for our aerospace workforce in the American Rescue Plan.

What has been the impact of the repeal of the Employee Retention Tax Credit on nonprofit employment? Are you already seeing nonprofits having to lay off staff or leave open positions?

If we could extend the ERTC through the end of this year, what impact would that have to get nonprofits back to their pre-pandemic levels?

Dan Cardinali

Senator Cantwell, I share your support for the Employee Retention Tax Credit (ERTC) and your concern about nonprofit job losses. In a long overdue recognition of nonprofit employers, the ERTC functions as a credit against payroll tax liability – unlike some prior disaster relief income tax credits that offered our sector no benefit. Independent Sector is deeply grateful for that recognition. As a result, the ERTC was a critical lifeline, allowing nonprofit organizations to continue serving their community in the face of immense financial challenges throughout the pandemic. Its early and retroactive termination in the middle of the fourth quarter of 2021 was extremely disruptive to charitable missions and operations throughout our sector, given that organizations had planned for the expiration of the credit at the end of 2021. It is difficult to predict whether restoring ERTC would provide enough support to help recover the more than 450,000 jobs that were still missing from the nonprofit sector at most recent estimate. While the lost jobs caused by early termination reflect families that lost a paycheck, they also point to an issue of even greater urgency — unmet community needs.

That unmet need is particularly urgent as nonprofit organizations struggle to recruit and retain staff. Alarming, 42% of nonprofit organizations responding to a recent survey had job opening

rates of higher than 20%, as they grapple with challenges including salary competition and inability to find child care.⁶

Question 2

There are over 1.3 million charitable nonprofits in the United States. Employing 12.3 million people. But of course their impact goes far beyond their economic footprint—they are there again and again to step in to help those in need when they have nowhere else to turn. And nonprofits are also the recipients and implementors of so much of what we fund here in the federal government, from homeless services to environmental restoration. But despite the scale and importance of the nonprofit industry, there is no unified approach from the federal government to addressing the needs and support charitable nonprofits.

What steps could the executive branch take to better coordinate policy across agencies to support the needs of charitable nonprofits?

Would the creation of a federal task force or dedicated White House office be useful to better support nonprofits?

Dan Cardinali

Senator Cantwell, despite its scale and unique understanding of community needs, you are correct that the nonprofit sector is often on the “outside looking in” when federal policies are decided, and there is absolutely no unified approach. There is no equivalent to the Small Business Administration for nonprofits, the nation’s third-largest employment sector. Nonprofits do play a key role as implementers of federal policy, but – with the right systems in place – their deep community trust and on-the-ground expertise could make them true partners to the federal government. Independent Sector has worked with our members and partners throughout the nonprofit sector to develop an initiative comprised of structures and policies that would truly give nonprofits a proverbial seat at the table. We expect similar bipartisan legislation to be introduced in the House of Representatives very soon.

A White House Office on Nonprofit Sector Partnership would ensure policies are designed with an understanding of the sector’s capacity to realize critical priorities in a way that maximizes the benefit to communities. Coordinating policies across federal agencies through an interagency council would streamline information sharing for both agency staff and nonprofit organizations, allowing nonprofits to spend more time on their missions and helping federal agencies work with our sector more smoothly. This is particularly urgent for organizations that participate in government contracting, with a recent survey finding that government funding covers only about 70 cents on the dollar for these organizations’ direct program expenses.⁷ Finally, we believe that a federal advisory board on the nonprofit sector would allow policymakers access to data,

⁶ The Scope and Impact of Nonprofit Workforce Shortages, National Council of Nonprofits, December 2021.

⁷ *A National Imperative*, Alliance for Strong Families and Communities (since changed name to Social Current), 2017

reporting, and frontline, community-specific expertise from nonprofits so they can better assist constituents and design more effective policies.

Importantly, this initiative calls for other key policies as well. Streamlining multi-state fundraising registration, providing regular employment and workforce data about the nonprofit sector, and broadening access to national service programs would all help give the nonprofit sector a seat at the table.

Question 3

As you're aware, charitable organizations depend on volunteers to help deliver vital programs and services in local communities. However, the number of volunteers in the nonprofit sector have not returned to pre-pandemic levels.

Prior to the pandemic, the annual volunteerism rate in Washington state was over 35 percent, contributing 202 million hours of service valued at nearly \$5 billion. In November 2020, the University of Washington reported that volunteerism rates among Washington state nonprofits had decreased by 30-50%, harming their ability to operate at full capacity just when their services were needed most.

Nonprofits have been essential to helping or local communities during the pandemic, even as they faced health risks, labor shortages, and operational challenges themselves. I think that it is important that we are able to support charitable nonprofits and address this volunteerism shortage.

Mr. Cardinali, there have been some suggestions on how to boost volunteerism like increasing the charity mileage rate to bring it in line with the business mileage rate. What steps do you think Congress should take to incentivize more people to volunteer?

Dan Cardinali

Senator Cantwell, thank you for highlighting the roughly 70 million volunteers who step up to serve the nonprofit sector and their communities in various ways. The challenges you cite in your state are echoed in national survey data and press reports, as my testimony mentions.

Independent Sector strongly supported the investment of an additional \$1 billion last year in national service through AmeriCorps, but it is concerning that no similar attention has been paid to the non-stipend volunteer force.

Increasing the charitable mileage rate to the business rate, as you suggest, would be a critical first step and would send a strong message about the importance of volunteering at a time when many Americans are stretching to make ends meet. We support recently introduced legislation, the Volunteer Driver Tax Appreciation Act (H.R. 7432), which would increase the mileage rate for volunteers who are transporting passengers or property on behalf of a charity.

Additionally, Congress should allocate at least \$250 million in federal funding to: (1) support the creation and launch of a nationally-scaled digital platform to connect, mobilize, and support

volunteer networks across the nation, particularly those in long-underserved communities, and; (2) to build the internal capacity of nonprofit organizations to effectively develop and engage volunteers. In the longer term, Congress can design additional solutions to boost volunteerism if it directs the Bureau of Labor Statistics and AmeriCorps to improve data collection and analysis of volunteerism.

Senator Debbie Stabenow

Question 1

Charitable giving has remained relatively stable compared to GDP over the last several decades, but studies have suggested that the proportion of individual donors has been declining. The nonprofit sector has provided enormous support to communities across the country, while many families, who may normally donate to their local nonprofits, are facing their own struggles and economic hardships during this unprecedented crisis.

Charitable IRA rollovers provide an important option for seniors to donate. In your testimony, you advocated for the Legacy IRA Act (S.243), introduced by Senator Cramer and me, which would expand charitable IRA rollovers.

What would the expansion of charitable rollovers, specifically enactment of the Legacy IRA Act, mean for both seniors who want to donate and the nonprofits that receive those donations?

Dan Cardinali

Senator Stabenow, we are grateful for your leadership on this issue. If enacted, the Legacy IRA Act (S. 243) would broaden access to this giving vehicle by enabling seniors to make tax-free contributions from their individual retirement accounts (IRA) to charities through life-income plans. With many Americans unable to afford to give away their retirement income during their lifetimes, this would give prospective donors one more critical way to invest in the common good in a way that works for them. After the donor passes away, the remaining amount is used by the charity for their mission. Independent Sector was pleased to support a modified version of the Legacy IRA Act that was included in the Securing a Strong Retirement Act (H.R. 2954), and we urge the Senate Finance Committee to include S. 243 in any retirement legislation.

The Legacy IRA Act would mean donors could have a greater impact and nonprofits would have more funds to continue their crucial work. Nonprofits are estimated to see overall giving increase by \$1 billion if this bill becomes law, according to the 2022 Report on Qualified Charitable Distributions from IRAs⁸.

⁸ 2022 Report on Qualified Charitable Distributions from IRAs. Pg. 30. FreeWill. <https://www.freewill.com/qcd-report-2022>

Senator Whitehouse

Question 1

The deduction for charitable donations is meant to encourage contributions that benefit the public. With donor-advised funds, the donor gets the deduction now, but the charitable benefit may not happen for years.

Are there any reforms to donor-advised funds that should be considered?

Dan Cardinali

Senator Whitehouse, donor-advised funds are important charitable giving vehicles worthy of serious conversations within the sector and with policymakers about whether there is opportunity to improve their operation and oversight. Upon the introduction of the Accelerating Charitable Efforts Act (S. 1981), Independent Sector brought the legislation and other associated policies to our public policy committee, and hosted a series of webinars to educate, present multiple perspectives, and hear reactions directly from the charitable sector. We will use the information we heard from experts, researchers, our network, and colleague organizations to evaluate any proposals using three key perspectives. We believe that any legislation in this area should 1) protect public trust in philanthropy and the broader nonprofit sector; 2) improve equitable practices in philanthropy; and 3) preserve the amount of charitable resources flowing into the sector.

President Biden's Fiscal Year 2023 budget request includes a proposal limiting the ability of a private foundation distribution to a donor-advised fund to be considered a qualifying distribution for the purposes of its annual five percent payout requirement. Independent Sector believes that public trust is a critical asset for our sector, and it is important that nonprofits uphold the spirit of the laws that govern them - including the 5 percent payout rule for private foundations - to help preserve that trust. We appreciate the President's budget request recognizing that policy change is needed to address this issue. We look forward to working with policymakers, alongside other philanthropic and charitable organizations, to determine if this specific proposal is the best solution for philanthropy, grantees, and communities.

Question 2

We have heard that reforms which require tracking when donations come in and when they are distributed from donor-advised funds can be an administrative burden.

Do you have ideas for ameliorating any administrative burden that may exist?

Dan Cardinali

Senator Whitehouse, we appreciate your focus on reducing administrative burden for nonprofit organizations in this context and others. Although I am not an expert in this area, it is my understanding that charitable nonprofits that sponsor a donor-advised fund do generally have policies on inactive funds, which necessitate some tracking of donations. Any new reporting or tracking requirements that impose a cumbersome administrative burden would take away from the resources of the organization needed to support their charitable mission. Independent Sector would be glad to work with you and other organizations in our sector to reduce the administrative burden of any policy changes.

Senator Grassley

Question 1

In December 22, 2020, I released the results of an investigation conducted by my staff into the relationship between World Vision, a 501(c)(3) non-profit organization, and the Islamic Relief Agency, which had been sanctioned by the U.S. government. My investigation concluded in part, “A more robust and fundamentally sound system of screening and vetting is needed to restore the public’s trust that contributions to World Vision are not funding illicit organizations.” The full results of that investigation are available on my webpage here: <https://www.grassley.senate.gov/news/news-releases/grassley-releases-results-investigation-world-vision-s-interactions-isra> .

Do you believe that charities have implemented adequate safeguards to ensure that grants from the U.S. Government and donations from Americans are not even inadvertently funneled to the benefit of individuals or groups that have been sanctioned by the U.S. government? Are there additional steps charities can take to ensure they are in compliance with applicable rules and regulations, or is there any action Congress should take to promote that compliance?

Dan Cardinali

Senator Grassley, following leadership from you and Senator Baucus, Independent Sector convened a panel to examine good governance and ethical practices for the nonprofit sector, which resulted in the publication of the 2007 report *Principles for Good Governance and Ethical Practice, A Guide for Charities and Foundations*. This report was updated in 2016 with additional recommendations. Good governance through self-regulation is critical to the health of American civil society, but it is not sufficient on its own. Although the nonprofit sector can accomplish a great deal through shared standards and self-regulation, nonprofits also need state and federal regulators to have enough resources to enforce laws that guard against fraud and abuse, because scandal often negatively impacts public trust in the entire sector.

Independent Sector supports strong enforcement against those that violate the laws governing our sector, and would be pleased to work with you and the Senate Finance Committee to examine appropriate safeguards and compliance policies.

Question 2

In an article published in 2020 in the Maryland Law Review, Professor Johnny Rex Buckles concludes in part, “Federal tax law permits foreign actors to influence U.S. politics and policies through their interactions with American charities.”⁹ He goes on to note in his conclusion, “Even the existing restrictions on lobbying, and the prohibition against political campaign intervention, safeguard against only the most obvious exploitation of charities by politically motivated foreign actions.”¹⁰

In a theoretical case study, the article presents an example where a Russian oil baron donates to a U.S. charity that educates the American public on the dangers of fossil fuels with the intent of promoting increased regulation of U.S. fossil fuel interests that would serve to confer a comparative advantage on their Russian competitor.

This example may in fact not be very theoretical. In an opinion piece published in “The Hill” in March of 2022, Institute for Policy Innovation resident scholar Merrill Matthews wrote, “U.S. policymakers are finally realizing that Russia may have been covertly funding U.S. environmental organizations to shape public opinion and policies – especially energy and anti-fossil fuel policies – to Russia’s liking and benefit. Such Russian skullduggery has long been an open secret in Europe.”¹¹

Do you have concerns that foreign actions are able to exploit U.S. tax-exempt organizations to promote their own priorities and extend influence over U.S. policy?

Are there reliable measures of how much foreign money is poured into U.S. non-profit entities and the source of that funding?

Do you have an estimate of funding for U.S. non-profits that originated from sources aligned with Russia, or Russian policy priorities?

Dan Cardinali

Senator Grassley, foreign influence in U.S. politics and policy presents unique concerns and challenges and the nonprofit sector must be mindful and vigilant to prevent illegal activity. The Foreign Agents Registration Act (FARA) and Department of Justice enforcement are vital to protecting against illicit activity. With that said, we do believe that FARA is badly outdated and that portions of it are overly broad and vague. At a recent hearing before the U.S. House of Representatives Committee on the Judiciary, Nick Robinson of the International Center for Not-for-Profit Law testified that, “FARA’s notoriously sweeping provisions have increasingly interfered with the operations of nonprofits, businesses, media, religious institutions, universities,

⁹ Johnny Rex Buckles, Curbing (or Not) Foreign Influence On U.S. Politics and Policies Through the Federal Taxation of Charities, Maryland Law Review, Vol 79:590, (2020).

¹⁰ Id.

¹¹ Matthews, Merrill, “Russia used 'soft power' to influence EU policies and anti-fossil fuel efforts,” The Hill, March 22, 2022, available at <https://thehill.com/opinion/energy-environment/599113-russia-used-soft-power-to-influence-eu-policies-and-anti-fossil> .

and others with limited or no connection to foreign governments in a manner that Congress never intended...”¹²

We do not have specific detail about Russian spending or Russian policy priorities in the United States. As noted above, Independent Sector has published detailed recommendations for Good Governance and Ethical Practice for nonprofits to follow, including recommendations for transparency in their activities, to ensure nonprofits are acting in accordance with the law and ethical guidelines. Independent Sector is willing to work with you and the Congress to review these practices and continue to ensure nonprofits act ethically and are not used inappropriately.

¹² Enhancing the Foreign Agents Registration Act of 1938, House Committee on the Judiciary, April 5, 2022.