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## An Express Lane to More Trouble for the IRS?

By Tim Delaney

Imagine if staff at the Department of Motor Vehicles decided that, rather than conducting the reliable in-person eyesight, paper exam, and driving tests for driver's licenses, they would instead shorten the application lines by sending licenses to anyone choosing to mail in a brief form promising they had good eyesight, knew the rules of the road, and had the ability to drive? After all, staff reasoned, traffic cops can deal with unqualified drivers at the back-end.

Would you feel safe?

That's essentially the approach the IRS has concocted for new express-lane approvals for charitable nonprofit status.

The IRS recently unveiled a proposed two-page Form 1023-“EZ” checklist to be used as an optional alternative to the existing process that requires applicants for charitable status to supply supporting documentation and information about their planned activities. The IRS performs a detailed due diligence review to ensure that the applicants understand the rules of the road for running a charitable nonprofit, including that the organization will benefit the public, not themselves.

The new form and process would all but eliminate the current due diligence undertaken by the IRS. One experienced nonprofit executive [forecasts chaos](#) for individual donors and foundations, “if the field is suddenly flooded with hundreds of thousands, if not millions, of newly minted c3’s.”

State charity regulators – the “traffic cops” providing local enforcement of nonprofits – [uniformly oppose](#) the proposed process. The National Association of State Charity Officials has sternly warned the IRS “that the Form 1023-EZ will increase opportunity for fraud and heighten the burden on state regulators.”

The National Council of Nonprofits, the largest network of charitable nonprofits in the country, joined the Attorneys General and other state regulators in [opposing the plan](#), cautioning the IRS that we “support efficiency and reducing burdens to applicants, but not at the expense of accountability” and that the proposed minimalist form and express-lane approval process “go too far, too fast.”

Why all the concern?

1. *Public trust.* Protecting public trust is essential for nonprofits to operate. Every story of fraud committed against a nonprofit, such as the CNN/*Tampa Bay Times* stories about the “50 Worst Charities” – that largely seemed to be private telemarketers masquerading as charities – erodes donor confidence in all nonprofits. The number of such stories will only grow when bad actors see this giant hole in the system the IRS created for them to exploit.

2. *Responsibility.* If the IRS abdicates its assigned duty as gatekeeper, then who will determine whether applicants legitimately deserve charitable status? Those determinations have broad, profound effects. Donors and foundations rely on the IRS to make careful front-end determinations. So do state and local governments, because issuance of federal charitable status has fiscal implications, triggering state income tax-exemptions, plus property-tax exemptions for local governments.

3. *Concern for taxpayers.* The Fram oil filter commercials suggested: “You can pay me a little now, or a whole lot later.” Back-end enforcement costs much more. The IRS’ intentional shift from preventive front-end enforcement to reactive back-end is like saying, “We’ll enforce *after* a car wreck,” instead of doing its best to keep ill-prepared – or worse – impaired drivers off the road.

Despite the warnings, the IRS recently indicated it is plowing ahead.

The primary cause of the application backlog is that the IRS Exempt Organizations division has long been under-resourced. A proper solution would be to provide the funding it needs for its role in protecting the public and preventing unqualified operators from getting behind the wheel of a new charitable nonprofit.

The existing Form 1023 is cumbersome and in need of streamlining to ease the burden on new applicants and IRS staff. But the IRS, rather than ignoring the united voices of state charity regulators, the regulated

charitable community, and seasoned legal practitioners who oppose the radical proposed EZ form, should invite these stakeholders in for quality input. This reasoned approach would fix the real issue and avoid the current path that will erode public trust, erase IRS accountability, and increase taxpayer burdens.

Handing out charitable status like candy at Halloween is a bad idea. Someone at the Treasury Department, the White House, or Congress needs to put some barricades up and speed bumps down to stop the IRS from rolling out its dangerous express lane before the public and legitimate charitable nonprofits are needlessly hurt.

*Delaney is president and CEO of the National Council of Nonprofits, the nation's largest network of charitable nonprofits.*