Overcoming Obstacles When Charities Collect Deceased Donors' IRAs

— Johni Hays, J.D., FCEP

One would think that when a generous donor decides to name a charity as the beneficiary of a retirement account, the intended charity should quickly and easily receive payment upon that donor's death. But alas, that is not what is happening. The reality is that charitable organizations for the last ten years have been facing a difficult time in receiving their donors' gifts from the financial firms (banks, broker dealers, financial institutions, etc.). In fact, it has become such an obstacle that many charities are asking for assistance in eliminating the barriers to payment.

When the nonprofits question the reason for payment barriers, the financial firm's response is usually a variation of this: "This information is required by FINRA to meet their CIP (Customer Identification Program)." Or, maybe they say: "The IRS requires it." But, is that the case? We'll take a look behind the scenes to see what's really happening.

This article shares information as to what the facts are so charities can effectively push back:

- Why this situation is happening to charities.
- What you can do today to successfully push back.
- What work is being done on a national and state basis to affect change.

Since the 1800s, charitable organizations have been the beneficiary of retirement or financial accounts. After the donor's death, the charity submits basic information to the financial firm (i.e., donor's death certificate, tax-identification number of the charity, proof of tax-exempt status, and information on who at the charity has legal authority to act).

Then, the typical death claim is paid within 30 days. I call this the ***standard approach*** in paying claims. In the last ten years, however, some financial firms came up with a different strategy to pay claims – I call it the ***mandatory new customer approach***.

Executive Summary: Has your nonprofit bumped into roadblocks while attempting to collect IRA accounts from a deceased donor? Have IRA custodians delayed the death claim process by requesting more forms every time you send in what they asked for? Or, has your nonprofit been required to set up an entirely separate, second account (i.e., an Inherited IRA) just to get paid? Did they ask for driver's licenses, Social Security numbers, net worth, and other personal information about your officers or board members? More and more, nonprofits struggle receiving funds from donors' accounts after a donor's death. Financial institutions implement payment policies that can be cumbersome and can stand in the way of the nonprofit conveniently and quickly receiving the donor's intended gift. The RIFT Project was formed to remove the payment obstacles by advocating for change in the financial industry. The goal is to enable all charities to easily receive donor's funds quickly and efficiently because what charities have to go through now seems out of control. What was once a simple practice of providing a death certificate and receiving your share of the IRA within 30-60 days has now turned into what feels like an unwinnable battle – so much so that some charities are completely giving up on applying for their share. They are frustrated with the payment delays that can last for months, and yes – even years. Read on to find out how to avoid all this and learn about national and state efforts for change and a workable solution for all.

This approach requires the charity to become a full customer of the firm, and thereafter, the charity has to liquidate the new account. Unfortunately, by the very nature of having a new account created and then liquidated, this approach creates a longer time lag in paying the claim. Instead of 30 days, a claim now may take one to two years to pay.

One charity said it took six years, and another is still waiting for payment after 10 years. Implementing the **mandatory new customer approach** provides the financial firms with the ability to retain assets longer under the theory of "asset conservation."

THE HARM OF THE MANDATORY NEW CUSTOMER APPROACH

Under the **mandatory new customer approach**, the firms *never* pay a death claim to a customer's beneficiary. That sounds harsh, but that is exactly how it is. Instead, their systems are established to only have the ability to pay a customer. To receive payment, the firms' policies mandate that the charity—as a beneficiary—first and foremost must become a full customer of that firm and open up a new account *before* the firm will put the deceased's funds into the new account. But, the charity still doesn't have its gift.

Instead, the charity must complete a new set of forms and paperwork (and more time taken) to close the newly opened account and finally receive payment.

One might think: "What kind of a big deal is opening a new account?" And the answer to that is:"It's a huge deal." Why? Because the government implemented rules that state when new customer accounts are opened, the firms must have a "reasonable belief they know the identity of the new customer." To do this, each firm establishes its own policies and procedures—so no two firms' policies are the same—creating a lack of uniformity from the charities' perspectives. To become a new customer, these firms mandate any one or more of the following types of information from the charity's board members, officers, and/or certain employees:

- Social Security number
- Date of birth
- Driver's license
- Passport
- Home address
- Home phone number
- Annual income (including child support)
- Value of personal assets (and source of wealth)
- Credit checks
- Criminal background checks
- Marital status
- Number of dependents
- Spouse's maiden name
- Verification of the deceased's last three residential addresses

Do these requirements sound intrusive and even overzealous? What does this personal information have to do with the charity which is the donor's account beneficiary? It doesn't appear to make sense that these firms' policies require this personal and sensitive information when the charity is the beneficiary, not the employee. Certainly, one solution everyone could get behind would be to implement the **standard payment approach**. This has the benefit of making it easy for the firms to pay the claims because they wouldn't have to require charities to open up new accounts only to close them as soon as they are funded. Without opening new accounts – none of the personal and sensitive information is necessary under the **standard payment approach**. On the other hand, if the firm chooses to maintain the **mandatory new customer approach**, then another solution would be for the firms to determine the identity of the charity as the new customer by accessing information online from IRS publication 78 to see if it is a valid charity. This would be easy enough for both the charity and the financial firm in that none of the personal information would be necessary.

BURDENS CHARITIES FACE

Beyond the lengthy time delays, charities face additional burdens. Here are a few examples that illuminate the problems:

- The opening of a new account happens with every single IRA death claim—every time—without exception. If a charity has five IRA death claims in the

year, the staff has to go through this entire process five different times – even if the claims are all with the same firm.

- One university said it could have given out three full-ride scholarships with the lost interest from the time it took to get just one claim paid.
- One national charity was told the CFO had to authorize part of the paperwork over the phone and when he called the financial firm, he was placed on "hold" for more than eight hours straight.
- One firm wanted all the driver's licenses and Social Security numbers of every board member, and these board members were some of the most prominent and well-known people in the US.
- On more than one occasion, charities have experienced the financial firms losing their paperwork. One nonprofit had to resend its paperwork eight different times because the financial institution couldn't find it. And in the era of rampant identity theft and data breaches at large financial institutions, it begs the question, "Where did the paperwork end up and who now has access to the missing personal information including Social Security numbers?"
- Some firms will not disclose to the charity the dollar amount of the gift in advance of completing the paperwork. After three years of paperwork back and forth, one charity finally received a check for 10 cents. They would have never spent the staff time on this claim if the firm would have disclosed the claim amount up front.
- These firms send 50+ pages of paperwork to open a new account. Then another round of paperwork must be completed to immediately liquidate the new account. Plus, they may charge fees for opening the new account and also when closing it.
- Some firms erroneously withhold income taxes on IRAs when the charity has made it clear they are a tax-exempt entity. The firms will not refund the amount withheld, forcing charities to wait to obtain a refund from the IRS.
- Another huge obstacle occurs when there is more than one charity named as beneficiary. A recent trend is now some firms are requiring multiple charities on a donor's account to all send in their paperwork within an arbitrary 60-day time frame. What makes it impossible is the firm refuses to share the names of the other charities with each other so they can coordinate the timing of their paperwork submission.
- Another erroneous step occurs when the firm places the charity's funds in a private account in the name of the employee from whom they asked for the personal information – creating a lengthy hassle to unwind that transaction. One firm disturbingly advised the nonprofit employee that she had the right to personally withdraw the funds.
- Most firms do not share with the charity that the forms are necessary to create a new account and become a new customer; the firm just sends forms for completion without communicating the procedure or its implications. I have yet—over the last 10 years—to find one charity who wanted to become the firm's new customer.

IS THIS INFORMATION UNNECESSARY?

These financial firms use the **mandatory new customer approach** when individual persons are the beneficiaries of these accounts. Is it possible the firms have copied their procedures for individual beneficiaries and implemented the identical procedures for charities? But, it is much easier to verify identities for charities than for individuals. Maybe it is a matter of educating the firms on how to identify charities, rather than using the same procedures for individual beneficiaries.

When politicians or other influential national leaders looked into this problem, some firms defended their policies stating they have no choice but to require this information. **But if they switched their policies back to the standard approach, they wouldn't have to ask for all this information. That is probably the most important take away from this article.** Recall the firms have voluntarily set up the **mandatory new customer approach** – there is no mandate to use this approach. In other words, without requiring the charity to become a new customer, the firms wouldn't need the intrusive informa-

tion. Going back to the **standard approach** would be an ideal solution for charities and the firms as well, as they would have less paperwork in setting up and liquidating accounts. What needs to be communicated as a solution to help all parties, is that if the firms would use the **standard approach**, they would never need personal and sensitive information from employees of the charity.

Absent a voluntary changing of the approach by the firms, possible solutions are urging national and state leaders to enact legislation that will:

- Prevent financial firms from using the **mandatory new customer approach** with charities, or
- Use data obtained from IRS Publication 78 to verify the identity of the charity (rather than personal information) if they continue to use the mandatory new customer service, or
- Require firms to use the **standard approach**

The good news is that some firms have changed their internal procedures when they understand the **mandatory new customer approach** doesn't work for charities.

Edward Jones worked with the charitable sector and changed back to the **standard approach**. However, more than a dozen major financial firms still use the **mandatory new customer approach** and have not made exceptions. All this led to why the RIFT (Release IRA Funds Timely) Project started. RIFT was formed as an all-volunteer, all pro bono project to advocate for nonprofits to receive their rightful claims in a couple of months rather than years.

YOUR BEST RESOURCE – THE RIFT DATABASE

RIFT created a database of financial firms and their death payment requirements for both IRAs and brokerage accounts (TOD/transfer on death). Our fellow nonprofits populate the database with crowdsourced materials. It lists who to contact at each firm and sample letters to push back against their requirements for personal information.

RIFT discovered over the years that some financial firms will not make an exception and other firms will. To access the database, go to: charitablegiftplanners.org/ira-distribution-resource-center and find the section Charitable Beneficiary IRA Distribution Center (RIFT). Scroll down to the table of contents. It's filled with resources and is updated frequently as information changes. Be sure to check the database each time you have a new claim.

The National Association of Charitable Gift Planners houses and updates the RIFT database and make it freely available to all nonprofits in the country, not just members of CGP.

RIFT ADVOCATES

Beyond the database itself, Karen Smedley, an estate administration expert, created an expanded resource: Karen launched RIFT Advocates, a community of fellow estate and bequest administrators. The Advocates collaborate with and support each other by sharing tools, strategies, and offering one another support.

Karen shares her inspiration in forming RIFT Advocates: "**I started RIFT Advocates as part of the RIFT Project because I saw a real need – one that wasn't being talked about enough.** Estate and bequest administrators often find themselves stuck in a maze of delays, unclear processes, and uncooperative financial institutions, especially when it comes to IRA beneficiary gifts. In fact, a growing number of nonprofits report that these gifts are among the most difficult to collect, even when the donor's intentions are crystal clear. I created RIFT Advocates to offer support, clarity, and a sense of community for professionals navigating these challenges. We're here to share knowledge, advocate for smoother processes, and make sure these important gifts actually reach the charities they were meant for. Too often, estate and bequest administrators feel alone when faced with certain challenges. Gift planning resources tend to focus on donor intent, while the practical realities of acquiring the donor's gift are frequently overlooked. My goal in founding RIFT Advocates was to help estate administration professionals navigate the complicated landscape of IRA beneficiary designation gifts by pooling our shared knowledge. Through collaboration, education, and peer support, we're building a stronger network – and making sure no one has to go it alone."

Anyone can freely join RIFT Advocates through the RIFT section on the CGP website. Patricia Bowen serves as the current liaison to RIFT Advocates.

MORE NATIONAL EFFORTS

In 2024, CGP hired Integer, LLC, which lobbies in the charitable sector in Washington, DC. As one of his projects, Grant Berkshire, assistant vice president, has been working to find a path forward for RIFT on a national basis.

To do this, Grant has been educating policymakers on this issue and pursuing a federal solution to streamline the distribution of these death benefits nationwide. What CGP has found is that few in the federal government were aware of the current arduous process. Once they learn about it, they are eager to help but unsure what laws and/or regulations they need to change to address the issue. Lawmakers are discussing directing a governmental agency to undertake a study and issue a report on the breadth of the issue and options for a federal fix. CGP is hopeful the finding of such a report would provide all the information needed for policymakers to address the RIFT issue.

"With the advocacy effort CGP is leading," Berkshire explains, "and the possible report we hope is undertaken and released next year, it feels we are on the path toward making it easier for nonprofits to obtain these donations. We are continuing our education efforts to prime more lawmakers to support potential solutions identified in a report or elsewhere. **We would not be in this place without all of the gift planning professionals who have participated in this advocacy**, and I would encourage anyone interested in getting involved to become a CGP Advocate."

Policymakers in Washington, DC, believe that the RIFT issues should be easily solved because of these three main benefits:

1. Policymakers are hopeful there will be a relatively easy resolution to the situation.
2. A solution would likely cost the government very little—if any—revenue to implement.
3. It is truly a nonpartisan issue.

NEW IOWA LAW BRINGS 100 PERCENT SUCCESS

To protect charities, the Iowa Legislature passed a law (Iowa Code 633.358), effective July 1, 2024, preventing this payment practice with charities. The Iowa law passed all three votes in the House and all three votes in the Senate with zero "nay" votes, indicating the truly nonpartisan nature of this law.

The law applies when an Iowa charity is the beneficiary of an IRA, retirement account, brokerage TOD account, annuity, or life insurance policy. In order to pay the claim, the law prohibits financial institutions from demanding the Social Security number, driver's license, contact information, or personal financial information from any employee or board member of the charity. The charity can push back if these items are still requested by providing an affidavit with simple data on the charity, proof of its tax-exempt status, a corporate resolution, IRS Form W-9, and either a death certificate, notice of death in a newspaper, receipt of paid funeral expenses, or the obituary. The financial institution has 30 days from the receipt of the affidavit to either pay the claim or provide the information if requested (e.g., the dollar amount of the claim).

If the financial institution fails to provide the payment (or information if requested) within 30 days, the court can award any (or all) of these:

1. Damages the charity sustained
2. Costs of the legal action
3. A penalty between $500 and $10,000
4. Reasonable attorney fees incurred by the charity

Many Iowa charities have used the law since its inception with 100 percent success. All the charities received their check within a couple of weeks. And, instead of having to use the full affidavit approach, most of the charities just needed to mention the law's very existence. Luckily, that was all that was needed to avoid the hassles and red tape. The law is successfully working to help Iowa charities.

OTHER STATES

The rising popularity of the Iowa law encouraged many other states to work toward passing similar legislation. Legislation modeled after the Iowa law is now available for any state to use, called the "Charitable Organizations Privacy Protection Act." You'll find it on the RIFT website. The best advice is for each state to use the model law without deviations in the language, where possible. This prevents the financial institutions from adding exceptions or exemptions that give them the ability to continue to use the **mandatory new customer approach**.

FINCEN'S INVOLVEMENT

The Financial Crimes Enforcement Network (FinCEN), part of the US Treasury, had some involvement in this issue. FinCEN issued FIN-2024-R001 which stated that broker dealer firms which require an inherited IRA (i.e., **mandatory new customer approach**) could ask for the Social Security number of the charity's control person – even after FinCEN received more than 300 emails and letters from charities that very week, asking them not to rule in this fashion. RIFT hopes that FinCEN will review their position. An ideal resolution would be if CGP and other charitable advocates could formally meet with FinCEN and each side could share their perspectives to come to a mutually workable resolution. It's a matter of sharing how our charitable industry works with the staff at FinCEN to gain mutual understanding of both sides and their positions.

JUDICIAL OPTIONS

What about going to court to get these claims paid? Many charitable organizations are incredibly frustrated, and they know that certainly one of their paths to find success is going to court. In fact, charities may discover their best approach to affect change as quickly as possible could be banding together for one large lawsuit as a class.

In conclusion, charities face red tape and delays in collecting death claims when their donors pass away. What was for decades a simple straightforward approach to receive payment in 30 days has turned into an overwhelming set of paperwork and delays of several years. These firms mandate that charities must become new customers to pay the claim and that kicks off a

set of rules the firms have implemented to determine the identity of the new customer. The paperwork and processes to prove the charity's identity as the new customer creates the obstacles that charities would like to address and find a reasonable solution that works for all. In the meantime, charities have the RIFT Project and its database to help navigate the claims on a day-to-day basis, while CGP hired a lobbyist to affect national change. In addition, state laws are beginning to pop up across the country to protect charities from the obstacles, delays, and requests for personal information of the charities' employees and/or board members. Finally, the courts are another avenue charities may choose to affect faster change. With all these avenues of possible change (legislation both nationally and at the state level, as well as judicial options), we hope for a resolution where the charitable sector finds relief by eliminating these obstacles to receiving our donors' intended gifts.

Learn more about the RIFT Project at charitablegiftplanners.org/advocate ■

The "Dead Giveaway" podcast uncovers the stories behind the people who help transform generosity into lasting legacies.

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