



**Testimony of Tim Delaney, on behalf of the
National Council of Nonprofits**

**Before the
House Committee on Ways and Means
Hearing on Tax Reform and Charitable Contributions**

February 14, 2013

Chairman Camp, Ranking Member Levin, and members of the Committee, I appreciate the opportunity to present the views of the National Council of Nonprofits on the importance of the charitable giving incentive in the context of federal tax reform. My testimony today addresses how the charitable giving incentive supports the work that charitable nonprofits accomplish every day in every community across America, provides an analysis of the context in which nonprofits are operating today, and demonstrates that charitable nonprofits of all sizes and in all subsectors rely on the support of the public through the giving incentive to address public needs that government cannot or will not attempt to address.¹ My perspective is informed by the front-line experiences of Americans working in local, community-based charitable nonprofit organizations from coast to coast and border to border who have provided real-world context for this fundamental point:

Without support from the public through giving, charities will not be able to continue picking up the pieces and addressing needs in communities suffering from economic hardships, natural disasters, and policy decisions at the local, state, and federal levels that have shifted increasing burdens on the backs of charitable nonprofits. Any reconsideration of charitable giving incentives in the Internal Revenue Code must begin with recognition of the increasing need to enhance, rather than limit, the ability of nonprofit organizations to serve those most in need and strengthen our communities.

Communities Rely on the Work of Charitable Nonprofits

The work of charitable nonprofit organizations (“nonprofits”) throughout the United States improves lives, strengthens communities and the economy, and lightens the burdens of government, taxpayers, and society as a whole. Your constituents recognize the vital and ongoing work of nonprofit organizations in delivering essential services, enhancing their quality of life, and uplifting the spirit of faith, innovation, and inspiration in local communities across America. Indeed, the incredible diversity of nonprofits touches and benefits Americans virtually every day of their lives, truly from cradle to grave.

¹ I will defer comment on various theories and proposals for altering the current charitable deduction that might be advanced during the hearing until after we have had the opportunity to evaluate the real-world impact of those proposals on the ability of community-based organizations to pursue their missions and address local needs.

For the past several years, the network of the National Council of Nonprofits has been informing the public and the nonprofit community about the potential impact of spending and tax changes that would affect the ability of charitable nonprofits to pursue their missions. Over this time period, we have received hundreds of concerned comments – mostly spontaneous– that demonstrate reality and dispel many misconceptions about the charitable giving incentive. Below are just four of these heart-felt comments from front-line charitable nonprofits:

“Ele’s Place, a healing center for grieving children in Lansing and Ann Arbor, Michigan, supports hundreds of grieving families each year who are coping with the death of a parent, sibling or other loved one. Most of our donors are motivated not only by our mission, but by the tax-incentive. We strongly urge you to protect the charitable giving tax incentive. Any changes would have a devastating impact on donations to our organization and our ability to continue serving the grieving children in our communities.” – Ele’s Place, Lansing, MI

“With dollars declining from government, foundations and corporations, our nonprofit depends on individuals' generosity to ensure we can protect abused women and children with shelter and other services that create contributing members to a healthy community.” – SafeHaven of Tarrant County, Hurst, TX

“Do not take away our ability to effectively raise resources and then expect us to fill the social service holes you create with program cuts!” – Casa of Menominee County, Menominee, MI

“Desert Manna is the only social services nonprofit in our area and we provide food, shelter, and utilities assistance to homeless and low-income men, women, and children - over 55,000 services a year. Since 2008 when the current economic downturn began, we have seen a 400 percent increase in the number of households in our community needing food assistance and a 200 percent increase in the number of homeless families. At the same time, government funding has dried up on the County and State level. A large part of our income, 25 percent or more, is from individuals, organizations, and businesses that rely on the tax deduction to decrease their tax liability. Without this tax deduction, many of them would no longer donate to Desert Manna.” – Desert Manna, Barstow, CA

These statements and the scores of quotes attached in the Appendix represent a small sampling of voices we have heard from grassroots nonprofits in every state. These voices of real people describe how the public – and governments at all levels that increasingly force private charities effectively to subsidize government – rely on charitable giving to meet their communities’ continually growing needs. These are not words from the wealthy saying protect their tax breaks. Nor are they words from elite institutions saying they want big gifts with naming rights. These are words from regular Americans in local neighborhoods from across the country who are trying desperately to raise essential resources required to meet growing needs in their local communities.

No meaningful public policy discussion regarding the invaluable role of the charitable giving incentive in the Federal Tax Code can occur without first examining the broad context of community needs and dispelling common myths so policymakers can make informed decisions. So my testimony covers both.

The Broad Context of Community Needs Being Addressed by Charitable Nonprofits

The public depends on the charitable sector to provide a reliable social safety net and deliver a wide range of other services that are vital to the cultural, economic, spiritual, and environmental well-being of our citizenry and communities. Yet the unprecedented stresses from the Great Recession and governmental reactions to it threaten the health of the charitable sector and its ability to provide the safety net upon which the public and, indeed, governments rely.

Charitable Nonprofits Face Grim Economic Realities: As a result of those unprecedented stresses, charitable nonprofits are severely depleted from serving so many more, for so much longer, with so much less. Consider these ever-increasing surges in the workloads of nonprofits, year after year:

- in 2008, 73 percent of nonprofits experienced an increase in demand for their services;
- in 2009, 71 percent had an increase;
- in 2010, 77 percent reported an increase; and
- in 2011, 85 percent of nonprofits saw an increase in the demand for their services.²

These skyrocketing demands have been coupled with plummeting resources: “Payments from government agencies dropped, donations from individuals, corporations, and private foundations shrank, and investment returns and fee income fell.”³ As a result of this mismatch between demand and resources, in 2012 more than half of nonprofits surveyed (57%) had only three months or less cash-on-hand.⁴ From 2000 to 2010, demand for services was so high that sector-wide “the gap

² See [2012 State of the Sector Survey](#), Nonprofit Finance Fund.

³ Elizabeth T. Boris, Erwin de Leon, Katie L. Roeger, Milena Nikolova, [Human Service Nonprofits and Government Collaboration: Findings from the 2010 National Survey of Nonprofit Government Contracting and Grants](#), Urban Institute Center on Nonprofits and Philanthropy (Oct. 2010). Individuals – who provide about 10 percent of the sector’s overall revenue via donations – have given less during the economic downturn. “In constant dollars, itemizers’ charitable deductions dropped 14 percent from 2007 to 2008 and by another 8 percent from 2008 to 2009.” *Id.* Unfortunately, the prospects for improvements in individual giving remain dim, with 2013 predicted to be “one of the worst fundraising years in five decades” because stocks are “likely to tumble, the unemployment rate will remain stubbornly high, health-insurance costs will surge, and the 2-percent payroll-tax increase that took effect in 2013 will make people stingier.” Raymund Flandez, [“Giving Will Barely Rise in 2013. Forecast Predicts,”](#) *Chronicle of Philanthropy* (Jan. 25, 2013); see also Reuters, [“U.S. payroll tax hike seen hurting charitable giving: survey”](#) (Jan. 31, 2013) (“Charities that rely on donations from individuals should brace for lean times, with the U.S. payroll tax increase expected to curtail Americans’ generosity, according to a poll released on Thursday. One in five people questioned for the survey said they would reduce their charitable giving by an average of 29 percent because of the 2 percentage point tax increase, to 6.2 percent.”).

⁴ See [2012 State of the Sector Survey](#), Nonprofit Finance Fund; see also [Oregon Nonprofit Sector Report 2011](#) (57% of nonprofits reported not having three months of operating reserves and 24% reported having less than one month of operating reserves).

between income and expenditures ... was negative for 8 of the 10 years.”⁵ This fragile condition presents a danger for Americans because the social safety net which governments and the public depend on charitable nonprofits to provide is unraveling rapidly.

Governments Are Shifting Increasing Burdens onto Charitable Nonprofits: Governments and charitable nonprofits serve the same constituents and same communities. The two sectors’ shared interests – serving and protecting the public – are inextricably intertwined, albeit from purposefully different roles, perspectives, and approaches. Yet during the last few years governments at all levels have been compounding the stress on the nonprofit community and threatening the viability of organizations that exist to serve the public good, reduce the burden of government, and enhance the quality of life in our cities and towns. As I recently outlined at a national convening at Columbia Law School’s National State Attorneys General Program,⁶ at least five hidden-in-plain-sight trends highlight how individuals and local communities are endangered by governments:

1. Abusing nonprofits in the contracting context, hurting program recipients and taxpayers in the process;⁷
2. Directly taking money away from nonprofit missions through the imposition of new taxes and fees, and demands for payments in lieu of taxes;⁸
3. Indirectly taking nonprofit resources by improperly invading boardrooms of private nonprofits, which under controlling Supreme Court precedence are independent entities;⁹

⁵ See *The Nonprofit Almanac 2012*, Urban Institute’s National Center for Charitable Statistics (2012); see also [State of the Sector Report](#), Nonprofit Center of Northeast Florida (Fall 2012) (“Since 2007, the percentage of nonprofits operating in the red has risen, reaching 45% in 2009, the highest since this research began, indicating the gravity of the recession’s impact”); [New Jersey Non-Profits 2012 Trends and Outlook](#), Center for Non-Profits (April 2012) (“Amid widespread reports of increased demand for programs and services, 40% of responding organizations reported spending more money than they took in during their most recent fiscal year”); [Oregon Nonprofit Sector Report 2011](#) (in 2010, expenses for Oregon-based public charities “increased by nearly one billion dollars, while revenue remained flat. The increased expenses were entirely program related. Management costs actually declined.”).

⁶ Tim Delaney, “Advocacy by Charitable Nonprofits: Flipping the Accountability Lens to Focus on Government Actions” (preliminary draft paper presented at “Charity Regulation Policy Conference,” February 7, 2013, conducted by Columbia Law School’s National State Attorneys General Program).

⁷ See National Council of Nonprofits, [“Costs, Complexification, and Crisis: Government’s Human Services Contracting ‘System’ Hurts Everyone”](#) (Oct. 7, 2010) (explaining how the contracting problems affect everyone in America – including individuals entitled to receive services, taxpayers who pay too much for red tape, and the broader community; and proposing solutions that nonprofits, government officials, funders, and citizens can adopt to improve services, restore value for taxpayers, and strengthen communities); see also [www.GovtContracting.org](#).

⁸ See “Taxes, Fees, and PILOTs”: <http://www.councilofnonprofits.org/public-policy/state-policy-issues/government-taxes-fees-and-pilots>; see also Rick Cohen, [“Sewage Fee or Toilet Tax?” Nonprofit Quarterly](#) (Nov. 3, 2010) (“Here’s an intriguingly blatant attempt to impose taxes on tax exempt organizations” in New York); Editorial, [Scranton Times-Tribune](#) (Oct. 5, 2012) (calling the Scranton City Council’s “opposition to any zoning variance sought by any nonprofit entity” not making voluntary tax payments “an unconstitutional and self-destructive response” to the tax exemption issue); Jean Hopfensperger, [“Cities ask tax-exempt groups to pay for services,” Minneapolis Star-Tribune](#) (Jan. 27, 2013).

⁹ Under well-established American law, charitable nonprofits are private, independent corporations. Yet in recent years, lawmakers in [Florida](#), [Georgia](#), [Kansas](#), [Massachusetts](#), [Michigan](#), [Nevada](#), [New Hampshire](#), [North Carolina](#), [Utah](#), and elsewhere have sought to impose ineffective and burdensome mandates, restrictions, and other reporting burdens on the apparent misunderstanding that private nonprofit organizations are somehow

4. Abandoning commitments to the public as they eliminate programs and slash funds, expecting charitable nonprofits and foundations to fill the voids governments create;¹⁰ and
5. Draining the philanthropic pool of dollars.¹¹

Governments at the federal, state, and local levels have been rapidly shifting significant financial burdens onto charitable nonprofits, including reducing funding without reducing the underlying human needs, thereby **increasing demands** on nonprofits in local communities while also **decreasing resources** for nonprofits to provide needed services. Indeed, the following direct observations from local charitable nonprofits across the country tell the real story:

- *“The charitable deduction provides critical private sector funding to JFCS that helps to offset losses from reduced government and corporate funding. The deduction incentivizes private donors to support basic human needs which are more critical than ever during this unprecedented economic downturn.”* – Jewish Family & Career Services of Atlanta, Inc., Atlanta, GA
- *“When government budgets for essential social services were cut, the answer was ‘the private sector’ will pick it up. Today nonprofit organizations (501(c)(3) under the tax code) provide the ONLY social services in our neighborhoods. Please don’t cut our budgets also. Continue to provide the incentive of tax credits for contributions to nonprofits.”* – Mercy Corps Northwest, Portland, OR
- *“Our agency’s government contracts have been cut by over \$200,000 this past year. The only way we can replace that money is through private grants and individual donations. Tax deductibility of those donations is crucial to making that system work. Find some other way to increase revenues.”* – Neighborhood Initiatives Development Corp, Bronx, NY

“quasi-governmental,” “government-sponsored,” “public bodies,” or “publicly supported” entities. If enacted, the proposals would have imposed excessive burdens, resulting in greater strain on the nonprofit entities and reduced effectiveness in dealing with community problems.

¹⁰ “Faced with the steepest and longest decline in tax collections on record, state, county and city governments have resorted to major life-changing cuts in core services like education, transportation and public safety that, not too long ago, would have been unthinkable.” Michael Cooper, [“Governments Go to Extremes as the Downturn Wears On,”](#) *New York Times* (Aug. 6, 2010) (“The length of the downturn means that many places have used up all their budget gimmicks, cut services, raised taxes, spent their stimulus money – and remained in the hole”); Editorial, [“The Looming Crisis in the States,”](#) *New York Times* (Dec. 25, 2010) (“School aid, Medicaid, transportation, employee salaries, social services, courts – whatever there was to cut, states have slashed it, often at ruinous costs to the most vulnerable: the poor, the sick and disabled, students, tens of thousands of laid-off workers”).

¹¹ An increasing number of states are overtly shifting their financial burdens off of government balance sheets and over to nonprofits to assume responsibility for programs and assets that they were unwilling to maintain. In Arizona, California, Kansas, New Jersey, Ohio, and Virginia, to name only a few, public officials to save money abandoned operations for the arts, economic development, education, parks, and public museums. See, e.g., Kevin Sieff, [“Fairfax Schools Expand Their Philanthropy Bonds,”](#) *Washington Post* (Jan. 5, 2011) (“Crippled by a protracted budget crunch, Fairfax County’s school system has ... establish[ed] a second education foundation to attract donations. ... School districts across the country increasingly have turned to the private sector to cover budget shortfalls or pay for new programs”); Rita Price, [“Disabled’s legal-rights agency to go nonprofit,”](#) *Columbus Dispatch* (Aug. 11, 2012) (Ohio’s government-run legal rights agency for disabled individuals announced plans to convert from government to nonprofit).

Charitable nonprofits and their state associations are working every day to educate policymakers about the economic realities their communities are facing and providing input to prevent the adoption of policies that exacerbate the challenges that they are facing.¹² These realities are presented here to show that the charities in the communities of Committee members are struggling to pursue their missions but remain committed to solve problems – in partnership with government – for the common good.

Misdirection and Misconceptions about Who Benefits from Charitable Giving

In recent years, the debate over the charitable giving incentive has been misdirected (in our opinion) by equal parts esoteric tax policy and partisan class-consciousness. From the outside it appears that too many economic scholars ensconced high in ivory towers enjoy proposing competing theoretical forecasts without regard to the deep human need in local communities. Meanwhile, partisans appear to want to either protect or punish the wealthy, without focusing adequately on community needs, such as how to provide essential resources for services to people in need. The hungry child, shivering senior, and homeless veteran do not care what tax break a donor received so long as someone donated to the nonprofit that fed them their meal, paid for their heat, or provided them temporary shelter when they were in desperate need. Much of the federal debate has focused on the wrong end of the equation: the benefits or burdens on the donor. To date, there has been far too much rhetoric and not enough reality. Accordingly, I now share practical, real-world informed insights from front-line community nonprofits to break through conventional myths that are not rooted in the realities of your constituents.

Myth: Changes to the charitable giving incentive will have little to no impact on nonprofits or the communities they serve because the charitable deduction does not really motivate people to give more than they otherwise would.

- **Reality:** Congress has long recognized the incentive effect of favorable tax policy, as shown recently when temporarily lifting the annualized limit on charitable deductions and enacting other giving tax incentives to support relief efforts after Hurricanes Katrina and Rita, flooding in the American Midwest, the tsunami in Indonesia, and the earthquake in Haiti.
- **Reality:** More than 20 percent of online giving for the entire year occurs on December 30 and 31, demonstrating that tax incentives are on the minds of donors.¹³
- **Reality:** A 2012 national poll found that “without tax incentives for charitable contributions, 30 percent of Americans would reduce their giving levels.” Among “those who would reduce their giving, a majority (62%) indicate they would have to reduce their contributions by a

¹² See Delaney, “Advocacy by Charitable Nonprofits: Flipping the Accountability Lens to Focus on Government Actions” (note 6 above) (“in the vast majority of circumstances within these five large-scale trends, it appears that the problems flow not from malice or intent to harm the work of charitable nonprofits and thereby the public. Rather, the problems usually seem to flow from lack of knowledge: policymakers are either (a) unaware of how much the public and government depend on charitable nonprofits or (b) oblivious to the broader negative consequences of their actions.”).

¹³ [The Online Giving Study](#), Network for Good, and True Sense Marketing (2012).

significant amount. (26% would have to reduce their contributions by 50% or more; 36% would have to reduce their charitable giving between 25% - 50%.)”¹⁴

- Observation from a nonprofit shelter in Massachusetts: “If you believe that people give out of the goodness of their hearts, think again and come see the donations that we receive in December with ‘year-end tax donation’ written out on the check.”

Myth: The charitable giving incentive only benefits wealthy individuals and elite institutions.

- Reality: Among itemized deductions, the charitable incentive is the only one for which the donor is encouraged to give money away to help others and not receive a personal benefit. While the taxpayer gets a **partial** tax benefit (of 10 - 39.6 percent) for making a donation, the community gets the **entire** benefit of every dollar donated to charitable nonprofits. The community, more than the individual taxpayer, would suffer the greater adverse consequences of a cap, limit, or other restriction on the charitable giving incentive.
- Observation from a food bank in Montana: “The demand on our services has never been greater than today. Private nonprofits are feeding, housing, and healing those most in need in our community. To take away the tax deductions that make it possible for nonprofits like [our nonprofit] to exist would break these entities. Please don't throw the hungry and homeless under the bus in the process.”
- Observation from a church in New York: “Our outreach programs to the community and financial support for food pantries, housing for homeless persons, minority advocacy, and other programs would not continue without financial support from our members and the community; this would diminish dramatically if the deduction for charitable giving were to disappear.”
- Observation from a nonprofit serving the blind in Pennsylvania: “Our organization is 90% funded by charitable giving. Changing the charitable giving tax law would hurt our organization substantially. In the current economic time, individual giving has decreased. We can't afford any additional decrease in giving, if we are to sustain our programming.”
- Observation from a nonprofit school for disadvantaged youth in North Carolina: “We work with high school dropouts, young people that have fallen through every crack there is. There is a huge need - and our need is the ability to raise funds to keep going every day. The charitable deduction is essential to that fundraising. And since government is reducing their services to the poorest in our nation we nonprofits have to take on more. To do that we need the money to keep our doors open. Do not take away a very critical tool in our fundraising toolbox!”

Myth: It's time for everyone to do their fair share and absorb some pain to reduce the deficit, so charitable nonprofits need to suffer, too.

- Reality: The employees of charitable nonprofits already have paid more than their fair share as they have handled the skyrocketing demands with declining resources for nearly five years, helping communities by delivering more services while at the same time suffering

¹⁴ “The [Charitable Tax Deduction Poll](#) was conducted from November 9-20, 2012, by United Way Worldwide. Importantly, the survey also found that the “vast majority of Americans (79%) believe reducing or eliminating the charitable tax deduction would have a negative impact on charities and the people they serve.”

through cuts to their own employee benefits, hours, and even jobs.¹⁵ Importantly, when nonprofits “suffer” it really means that the community suffers through reduced levels of service.

- **Reality:** For charitable nonprofits that provide services on behalf of governments at all levels, research demonstrates that the service provider has already “given in the contract” many times over. Groundbreaking research from the Urban Institute demonstrates that governments consistently pay late on contracts, impose unnecessary and costly administrative burdens that waste nonprofit and taxpayer resources, and, most significantly, fail to pay the full cost of performing services under the contracts. The result is that nonprofits are forced to subsidize government by raising outside funds to cover costs that for-profit contractors are regularly paid. Sadly, it is usually the people dedicated to providing those services, the employees of charitable nonprofits, who are paying the price of budget cuts and economic stagnation.
- **Observation from a New York alcoholism and substance abuse facility:** “Nonprofits struggle all the time to provide programs to more and more recipients. In a weakened economy it has been difficult to fund raise and maintain a workable budget. If charitable deductions are cut, we will cease to exist.”

Myth: Curtailing charitable giving will have no effect on the economy.

- **Reality:** Every nonprofit that closes its doors places new strain on the economy. Nonprofit employees, who make up 10 percent of the American workforce, will join the unemployment rolls. For-profit and government employees who rely on nonprofits to care for their children or elderly relatives will have nowhere to turn. People who rely on nonprofits for job training and placement services will remain out of work. The public ultimately will turn to government to create bureaucracies to replace work that was accomplished more efficiently and effectively by charitable nonprofits, thus driving up costs for taxpayers.
- **Observation from a faith-based nonprofit in Michigan:** “If nonprofits are unable to function, what will Congress do to take care of all the needs that nonprofits currently do for low-income families? Additionally, our nonprofit creates revenue for local businesses through local purchases made that are donated to our programs. Without charitable tax incentives those local businesses will lose out as well. If Congress does not protect the charitable giving tax incentives there will be a ripple effect that will devastate our Nation at a time when we cannot afford to reduce the number of social service programs that meet basic human service needs.”

Based on the foregoing, it is clear that America’s charities are aggressively addressing the problems in our communities. The more than 25,000 nonprofits in our network request the respect and support of this Committee to maintain and enhance their ability to pursue their missions and provide measurable impact in our communities.

¹⁵ See, e.g., [Urban Institute Survey of Nonprofit-Government Contracting and Grants](#) (2010) (finding that 42 percent of human service nonprofits operated with a deficit in 2009, forcing human service nonprofits with government contracts/grants to take one or more actions, including freeze or reduce employee salaries (50%); reduce employees (38%); reduce health, retirement, or other staff benefits (23%); and, as last resort, reduce service (21%); see also *The Nonprofit Almanac 2012* (“Some organizations closed their doors during the recession; others cut staff, wages, or program activities to stay afloat”).

Conclusion: Charitable Donations Support the Public

The charitable nonprofit community is concerned about reports that Congress and the White House are looking at reducing the charitable giving incentive, which would effectively **take away incentives for donations** to churches and synagogues, domestic violence shelters, early childhood programs, education, food banks, youth and senior groups, and all other charitable nonprofits at a time when the deep need for public support for public charities to serve the public is at an all-time high.

We recognize that Congress is trying to determine the right balance of cutting federal spending, reforming tax laws, and altering entitlement programs. We also realize that even an unintended change could undermine the ability of nonprofits to maintain the current level of programs and services, much less to expand them to meet the increased needs as a result of the lagging economy and policy choices being made at all levels of government. Under these conditions, nonprofits may not merely be the next place for people in need to turn; we are likely their only place to turn. Charitable nonprofits across America must be able to count on the current tax incentives for charitable giving if there is to be any validity in the presumption of policymakers that nonprofit organizations will be there to fill the gaps. Congress should take action to **encourage charitable giving** rather than **discourage** individuals from giving to organizations that are making a real difference in our communities – thereby reducing the burdens on government as a result.

I close with the appeal to the Supercommittee that was made by more than 4,400 charitable nonprofits in 2011, a message that is as relevant today as it was then:

It is imperative that Congress make no changes to the charitable giving incentive that threaten the ability of nonprofit organizations to serve those most in need and to continue to strengthen our communities. We ask that you avoid endangering the ability of nonprofits to serve your constituents and our communities by making a clear statement in support of the charitable deduction and in opposition to proposals to reduce or cap the value of deductions for charitable contributions.

National Council of Nonprofits

The National Council of Nonprofits (Council of Nonprofits) is a trusted resource and advocate for America's charitable nonprofits. Through our powerful network of State Associations and 25,000-plus members – the nation's largest network of nonprofits – we serve as a central coordinator and mobilizer to help nonprofits achieve greater collective impact in local communities across the country. We identify emerging trends, share proven practices, and promote solutions that benefit charitable nonprofits and the communities they serve.

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