



October 7, 2011

[The Joint Select Committee on Deficit Reduction](#)

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Sen. Patty Murray (D-Wash.), Co-Chair
Sen. Max Baucus (D-Mont.)
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Rep. James Clyburn (D-S.C.)
Sen. John Kerry (D-Mass.)
Sen. Jon Kyl (R-Ariz.)
Sen. Rob Portman (R-Ohio)
Sen. Pat Toomey (R-Pa.)
Rep. Fred Upton (R-Mich.)
Rep. Chris Van Hollen (D-Md.)

SUBJECT: Independent Contractors Status (Section 530); and exempting research calls from the Telephone Consumer Protection Act (TCPA)

As you work to produce recommendations on deficit reduction, I write to express my association's concerns regarding (1) protections for independent contractor relationships (Section 530) and (2) amendments to the Telephone Consumer Protection Act (TCPA). The President's proposal to repeal Section 530 would actually reduce tax revenues rather than increase them and his proposal to exempt certain calls from the TCPA, if expanded, could significantly reduce federal spending.

My name is Howard Fienberg, and I am the Director of Government Affairs for the Marketing Research Association (MRA), the leading and largest association of the survey and opinion research profession¹. MRA promotes, advocates and protects the integrity of the research profession and strives to improve research participation and quality.

(1) Protection of Independent Contractor Status (Section 530)

The President's deficit reduction proposal² includes a proposal to "increase certainty with respect to worker classification" by repealing Section 530 of the Revenue Act of 1978 ("Section 530"). The proposal also would create a statutory program offering eligible

¹ The research profession is a multi-billion dollar worldwide industry, comprised of pollsters and government, public opinion, academic and goods and services researchers. Purchasers of opinion and survey research include the government (the world's largest purchaser), media, political campaigns, and commercial and non-profit entities.

² <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/jointcommitteereport.pdf>

taxpayers a waiver of penalties for voluntarily reclassifying independent contractors to employees, which could supplant the existing CSP and VCSP programs. The President's proposal mistakenly estimates that these changes would result in an \$8 billion increase in revenue over ten years.

Specifically, the President's proposal would permit the Internal Revenue Service (IRS) to issue generally applicable guidance about the proper classification of workers, which Section 530 currently prohibits, and to require prospective reclassification of workers who are currently misclassified and whose reclassification is otherwise protected by Section 530. Under the proposed voluntary program for converting independent contractors to employees, tax penalties would be waived for taxpayers with a small number of employees, and a small number of misclassified workers, provided that the taxpayer has consistently filed all Forms 1099 reporting all payments to all misclassified workers and the taxpayer agrees to prospective reclassification of misclassified workers.

Why MRA cares: Independent contractors play an important role in survey and opinion research, whether as field ethnographers, focus group moderators, or general research consultants. More fundamentally, any research participant receiving an incentive can conceivably be considered an independent contractor.

Section 530 provides both parties to an independent contractor relationship with absolute certainty that such status will be respected by the Internal Revenue Service (IRS). As long as the income paid an individual is reported on Forms 1099-MISC, the federal government shouldn't care whether an individual performs services as an employee or independent contractor. The FICA/SECA tax treatment of each is now substantially the same and their respective tax-compliance rates are more or less the same.

The certainty that Section 530 provides enables companies and self-employed service providers – the quintessential small business persons³ – to enter into business relationships that they know will be respected for federal employment-tax purposes. A certain and predictable regulatory environment for independent contractors inures to the benefit of independent contractors, the companies that purchase their services and our nation's economy.

Tax impact overstated: The President's proposal unreasonably estimates that this repeal would reduce the deficit by \$8 billion over 10 years. Section 530 has rigorous eligibility requirements that are not easily satisfied. Rather than providing a loophole, Section 530 actually **enhances** tax compliance by demanding tax reporting compliance as a condition of eligibility. IRS data show a 97% compliance rate for recipients of Forms 1099, versus 99% for those of Forms W-2 and most of the "tax gap" for the self-employed comes from the unreported cash economy. There is no rational basis for the President's \$8 billion figure. In

³ Self-employed service providers are a type of small business – one of the most vibrant sectors of our economy, supplying innovation, job creation, and economic growth. Over half of U.S. employment comes from firms with less than 500 employees, and all net new job creation comes from small business.

fact, repealing Section 530 would likely lead to an increase in unreported and untaxed income and a significant decrease in reportable, taxable income.

MRA respectfully requests that the Joint Select Committee avoid any action that might repeal or impede Section 530 protections for independent contractor relationships.

(2) The Telephone Consumer Protection Act (TCPA)

The President's deficit reduction proposal also includes an amendment to the Telephone Consumer Protection Act (TCPA) as part of a broader attempt to collect debts owed to the federal government. It would exempt government debt collection calls from the TCPA requirement of express prior consent for using any form of autodialer to call a cell phone: "Allow agencies to contact delinquent debtors via their cellular phones. The Administration also proposes to amend the Communications Act of 1934 to facilitate collection of debts owed to or guaranteed by the Federal Government, by facilitating contact of delinquent debtors who are most readily reached on their cell phones. This provision is expected to provide substantial increases in collections, particularly as an increasing share of households no longer have landlines and rely instead on cell phones."

Decreasing the costs of research: The proposal does not include an estimate of how much revenue the President expects to reap from such a change. However, MRA can recommend a broader TCPA amendment that could substantially reduce the cost of survey and opinion research, including research conducted or commissioned by the federal government: exempting calls for bona fide survey and opinion research⁴ purposes from the TCPA autodialer/cell phone restrictions.

Automatic telephone dialing systems (known as "autodialers") are an essential tool of survey and opinion research. Almost every telephone research call requires them, in order to reduce both the time it takes to dial a number manually -- a significant cost -- and the chance of error. Researchers seeking to include cell phone users in their studies estimate that doing so takes much longer and costs 2 to 4 times as much as an ordinary telephone study. Those costs are also passed on to the government, since most agencies now require inclusion of cell phone only and cell phone mostly households in the research studies they conduct and commission.

More than 45% of American households are only reachable on their cell phones: Three of every ten American homes (29.7%) had cell phones and no landline telephones in

⁴ The term "bona fide survey and opinion research" means the collection and analysis of data regarding opinions, needs, awareness, knowledge, views, experiences or behaviors of a population, through the development and administration of surveys, interviews, focus groups, polls, observation, or other research methodologies, in which no sales, promotional or marketing efforts are involved and through which there is no attempt to influence a participant's attitudes or behavior.

the 2nd half of 2010 -- a 46% increase since 2007. In addition, one of every six American homes (15.7%) still had a landline but received all or almost all calls on their cell phones.⁵

These 45.4% of American households are by no means identical to the rest. The cell phone only population is more likely to be younger, include more renters and minorities, engage in more risky behaviors such as binge drinking and smoking, lack health insurance, and have lower income as compared to the broader U.S. landline population. These populations are thus under-represented in critical research areas, like political polling, unemployment measures, health care access, and health indicators.

MRA respectfully requests that the Joint Select Committee take this opportunity to exempt bona fide survey and opinion research calls from the TCPA requirement of prior express consent for autodialer calls to cell phones.

Conclusion

As I've outlined, MRA respectfully urges the Joint Select Committee to (1) take no action that might hurt Section 530 and the status of independent contractor relationships, and to (2) amend the TCPA to allow bona fide survey and opinion research calls to cell phones using autodialers without express prior consent.

I look forward to talking with you and your staff on these issues and any other of impact to the survey and opinion research profession. If there is anything further I or MRA can provide, please do not hesitate to get in touch.

Sincerely,



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⁵ Blumberg SJ, Luke JV. "Wireless substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2010." National Center for Health Statistics. June 2011. Available online: <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201106.htm>