



ISSUE PAPER

Philanthropic Facilitation Act of 2011 (H.R.3420)

Position: The Council on Foundations supports federal legislation that would encourage transparency and consistency by directing the IRS to respond promptly to ruling requests from foundations seeking to make program-related investments, and to otherwise facilitate such voluntary ruling requests.

H.R. 3420

Sponsors:

Rep. Aaron Schock (R-18IL)

Rep. Jared Polis (D-02CO)

For more information, contact the Council's Government Relations Department at:
(703) 879-0600 or govt@cof.org

Background: Under current tax law, private foundations may count investments made primarily to further programmatic goals toward their minimum payout obligation even if made in a for-profit entity, such as a local newspaper or key local employer, provided that the investment is primarily charitable in nature and not merely for the production of income. As foundations seek to leverage their charitable assets more efficiently, these Program-Related Investments (PRIs) are an increasingly attractive tool. The emergence of new business entities under state law, in particular the low-profit limited liability company (L3C), has spawned additional opportunities for foundations to leverage their philanthropic resources with private capital through PRIs to address pressing social problems.

Foundations seeking to ensure compliance with applicable tax law may voluntarily seek rulings from the IRS that proposed investments meet the criteria for PRIs. However, in practice, the ruling request process is plagued by excessive or indefinite delays, and is often unworkable.

Proposal: The Council supports enactment of the "Philanthropic Facilitation Act of 2011", federal legislation which would refine the current process for PRI ruling requests so that it will serve its intended purpose and facilitate appropriate investments. The legislation would require the IRS to rule, favorably or unfavorably, on PRI ruling requests within 120 days. Also, once a determination has been made that investments in an entity qualify as program-related investments, organizations making such investments would be entitled to rely on the determination, unless and until the IRS publishes notice of revocation. Under the legislation, the ruling request process would remain voluntary, and the criteria for PRIs would remain unchanged.

Rationale: PRIs present an innovative means for philanthropy to address critical needs in the communities they serve. Yet, because of the complicated rules relating to PRIs, and the significant penalties for noncompliance, foundations may be unwilling to utilize this important tool without obtaining a definitive IRS ruling that they may do so. Improving the process for PRI ruling requests also would promote consistency and efficiency.

Consistency: Because IRS ruling requests often take significant time, or are not acted upon at all, many foundations seek opinions of counsel rather than request an IRS determination. These opinions may be based on the varying interpretations of the lawyers who prepare them. A process that permits foundations to receive timely IRS guidance will promote transparency and consistency in the way rules relating to PRIs are interpreted and applied.

Efficiency: Under current law, each foundation interested in participating in a PRI must make seek a separate determination that the investment is permissible. Enabling multiple entities to rely on an IRS determination will facilitate needed investments in PRIs which the IRS has found to meet all applicable criteria.

Legislative Activity: On November 14, Reps. Aaron Schock (R-Ill.) and Jared Polis (D-Colo.) introduced the Philanthropic Facilitation Act (H.R. 3420). The proposal directs the IRS to respond promptly to private-letter ruling requests from foundations seeking to make program-related investments (PRIs) and to otherwise facilitate such voluntary ruling requests. To date, a Senate companion bill to H.R. 3420 has not been introduced.

How You Can Support Philanthropy: The Council on Foundations is seeking additional sponsors for H.R. 3420, and Senate support for a companion bill for the Philanthropic Facilitation Act. If you are interested in being a co-sponsor of H.R. 3420 or a Senate sponsor, please contact Chatrane Birbal of the Council at cbirbal@cof.org.