COUNCIL on FOUNDATIONS

PHILANTHROPY WEEK IN WASHINGTON 2015

EMPOWERING COMMUNITIES. TOGETHER.

Frequently Asked Questions and Suggested Answers

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PHILANTHROPY WEEK IN WASHINGTON:

Q. What is Philanthropy Week in Washington?

A. Now in its second year, *Philanthropy Week in Washington* is a week-long series of events and activities that highlight the role of philanthropy in society. Hosted by the Council on Foundations, over 200 philanthropic leaders from across the country will meet in Washington D.C. to discuss the role and impact of philanthropy.

Philanthropy Week in Washington 2015 highlights the power of place-based initiatives and collaboration to help empower communities.

The centerpiece event of *Philanthropy Week in Washington* is Foundations on the Hill (FOTH), hosted by the Forum of Regional Associations of Grantmakers in collaboration with the Council on Foundations. During FOTH, regional associations and foundation leaders will meet with members of Congress and staff to discuss the role of philanthropy in their state or district. They will also discuss how decisions in Washington may impact the communities they serve.

This year, the Council is also partnering on events with Alliance for Charitable Reform, Mission Investors Exchange, and the Council of Development Finance Agencies.

PRESIDENT OBAMA'S FY 2016 BUDGET:

Q. The President's Fiscal Year 2016 Budget includes a few proposals would have a direct impact on both foundations and charities. These proposals include: 1) a cap on the charitable deduction; 2) a simplified excise tax rate for the investment income of private foundations; and 3) the requirement for mandatory e-filing of Form 990s for all nonprofits. How do you feel about these proposed tax policy changes?

A. We've made it clear to the President and members of Congress that we will vigorously oppose any changes to tax policies that discourage giving. One critical reason we are unified as a sector in Washington this week is to ensure lawmakers have a clear understanding of what is at stake when it comes to charitable giving incentives.

1) The President's misguided proposal to cap the charitable deduction could result in the loss of up to $11 billion in charitable giving each year, according to one estimate, significantly reducing the incentive to give. And, a study by the American Enterprise Institute says that limiting the charitable deduction would reduce giving as much as $9.4 billion *in the first year alone*.

2) At the same time, we support the President's proposal to simplify the private foundation excise tax to a single flat rate. The Council has long argued that a single flat rate will simplify the tax laws and encourage increased charitable activity. The Council would prefer to see a flat rate of one percent, the proposal put forth in the *America Gives More Act of 2015* that passed the House on February 12th.

3) We recognize that mandatory e-filing of Form 990s could increase the transparency and availability of nonprofit data. We offer a modest caution that before lawmakers proceed with mandatory e-filing, they should understand the potential implications for small nonprofits and private foundations that could face significant compliance costs associated with e-filing—particularly those organizations with the fewest resources. We also ask lawmakers to include redactions or other protections for individual donor data. We urge Congress to weigh these concerns and get input from the nonprofit sector as it considers this proposal.

CONGRESSIONAL PHILANTHROPY CAUCUSES:

Q. What is the Congressional Philanthropy Caucus? What is its purpose?

A. The House and Senate Philanthropy Caucuses were established in 2007 and 2008, respectively. Their purpose is to inform members of Congress and their staff about the important role that philanthropy and foundations have on communities around the world.

The House and Senate Caucus chairs, consisting of Sen. Chuck Schumer (D-NY), Sen. Richard Burr (R-NC), Congressman Pat Tiberi (R-OH-12) and Congressman John Lewis (D-GA-5), will host a series of discussions and briefings on the dynamic role of philanthropy in society and how philanthropy participates in national policymaking across a wide range of issues.

TAX REFORM:

Q. There is growing speculation that tax reform won't move forward this year, and perhaps not until after the 2016 election. Why are you still concerned?

A. Both tax-writing committees have been working for several years, under the leadership of both Republican and Democrat committee chairman, to lay important groundwork and conduct research for comprehensive reform of America's tax code.

This year, the five separate working groups within the Senate Finance Committee are looking at a wide range of issues. We take a deep interest in this process, and note that our issues fall into two of the groups:

- Individual, because of the individual tax incentives for charitable giving that are currently part of the Tax Code, and
- Business, because that group will address issues related to our philanthropic organizations.

The Council and many of our colleagues in the field have been engaged in this process, which is a marathon – not a sprint. We take seriously our obligation to continuously educate and inform our members of Congress about philanthropy before they make final decisions about tax provisions that impact our work. As the groundwork for tax reform continues to be laid, we will keep asking Congress to weigh the potential implications – both negative and positive – on organizations like ours prior to changing the tax code.

Q. There are a lot of tax reform proposals regarding the charitable deduction—from eliminating the deduction to placing a dollar cap on it. Which one is best for the sector?

A. We strongly urge Congress to preserve the charitable deduction in its current form. Any caps or limits on charitable giving will have a cascading impact on nonprofits and philanthropic organizations and the millions of Americans who rely on their services. Any cap or deduction could interact with another tax reform proposals; we cannot not promote one proposal over another without more information.

Recent data from the American Enterprise Institute shows that there would be a loss of $9.4 billion to charities, in the first year alone, if the 28 percent cap on itemized deductions was adopted.

That said, if donors have less incentive to give, donations will decline – by billions of dollars – which will hurt the important work nonprofits do for millions of people each day. If donors have less incentive to give, donations will decline – by billions of dollars – which will hurt the important work nonprofits do for millions of people each day. Congress should advance proposals that would INCREASE giving, not derail it.

DONOR-ADVISED FUNDS

Q. Donor-Advised Funds (DAFs) seem to be of great interest to community foundations. Is there a distinction between DAFs managed by community foundations and DAFs managed elsewhere?

A. DAFs are effective vehicles for people to channel their philanthropic giving to projects and programs that benefit their community, enabling people to "give where they live". Professional staff at community foundations help donors manage their funds to help their money grow over time, allowing them to pay out much more than the original gift. Community foundations provide leadership and work with a wide variety of stakeholders, like schools, nonprofits, and residents, to understand where a gift can make the most strategic impact. Community foundations can also leverage the collective impact of their funds with other similar DAFs that share a common interest in a specific issue, like child health or adult learning.

A 2014 Urban Institute survey of DAFs managed by community foundations found several unique benefits offered by community foundation DAFs, including:

- ***DAFs help community philanthropy endure.*** DAFs help increase the impact of charitable giving and build access to long-term philanthropic resources in our communities. DAFs ensure funds are available during hard times, much like a community savings account. During the Great Recession, DAFs allowed community foundations to sustain and even increase charitable giving at a time when individual giving and endowments plummeted and communities were in need.

- ***DAFs encourage lasting civic engagement.*** More than 70 percent of foundations report the average age of a DAF donor is between 46 and 64 years old. This signals that DAFs are an important entry point for planned, strategic giving and long-term community involvement. For example, 81 percent of foundations report donors serve on foundation boards, or in another leadership role; 68 percent of foundations report donors help address pressing community needs; and 42 percent of foundations report donors help anticipate emerging community needs.

- ***DAFs build stronger communities.*** DAFS are flexible, allowing community foundations to quickly respond to local needs. DAFs have been used to support everything from emergency response efforts to community economic development. Each community foundation utilizing DAFs has a story to share about connecting donors to the causes they care about using donor advised funds.

Q. We know there have been proposals put forth to regulate the rate at which donor advised funds must pay out their funds each year. Where do you stand on these proposals?

A. We strongly oppose any annual payout requirement for donor advised funds either at the fund level or in the aggregate. We urge Congress to preserve current law regulating DAFs.

DAFs are a unique philanthropic tool. They allow donors to establish accounts at institutions, such as community foundations, and remain involved in supporting the causes and issues they care about. Community foundations oversee and manage funds on behalf of families or individuals and, in many cases, have the discretion to direct some of the resources to priority causes the foundation identifies.

The Pension Protection Act of 2006 (PPA) took numerous steps to regulate DAFs and ensure that they are properly managed. The PPA required charities sponsoring DAFs to report data on grants paid out from DAFs. Both a 2011 Treasury study and a 2012 Congressional Research Service report on DAFs based upon this data found that DAFs already have a high payout rate—as high as 13.1 percent in 2008. The PPA also created a legal definition for DAFs, prohibited payments that would benefit donors, and created new rules about what grants donor advised funds can and cannot make.

In addition to the laws and regulations that govern DAFs, the majority of community foundations voluntarily self-regulate through the National Standards for U.S. Community Foundations™ program. This peer-driven voluntary process includes a review of community foundations' DAF policies and procedures to ensure the community foundation exercises their exclusive control over all funds, gifts and grants with donor input. Accreditation through National Standards signifies that a community foundation rigorously maintains its operations, investments, and programs at a professional level above and beyond what the law requires. Congress must uphold current law regulating DAFs so that communities can continue to benefit from the generosity of local donors.

CHARITABLE DEDUCTION:

Q. Why is the charitable deduction important to foundations?

A. The charitable deduction is a lifeline for communities across the country. Since 1917, the charitable deduction has reflected longstanding American values by encouraging donations that support a host of services and causes. These donations often flow to public charities such as community foundations, which provide vital programs and services to your constituents.

Our tax code is a way for our leaders to signal the activities that we value as a nation. That's why for nearly a century our tax code has identified charitable giving as a highly valued, respected, and encouraged activity.

Under the current law, a donor who itemizes can take a deduction on his or her charitable gift at the same percentage as his or her tax rate. For example, if the donor is in the 35 percent tax bracket and gives $1,000 to charity, he or she reduces taxes by $350 (35 percent of $1,000).

Q. Why is it important to preserve the full value of the charitable deduction?

The charitable deduction is unique in that the benefit goes primarily to the public—and not the donor. And, it is not a loophole for the wealthy—far from it. The reality is that nonprofits and the individuals, families and communities they serve rely on the generosity of donors of every income level. The charitable deduction is a powerful incentive that encourages philanthropic giving, to the benefit of those in need. It is not about donors. It is about what donors' dollars do: help the most vulnerable, educate, heal, and innovate – in ways that government and the private sector cannot.

We need to preserve the full value of the charitable deduction. Any caps or limits on charitable giving will have a cascading impact on nonprofits and philanthropic organizations, and the millions of Americans who rely on their services. If donors have less incentive to give, donations will decline – by billions of dollars – which will hurt the important work nonprofits do for millions of people each day.

A study by the American Enterprise Institute says that limiting the charitable deduction would reduce giving as much as $9.4 billion *in the first year alone*. Other research estimates say the decline could be even higher.

Congress should advance proposals that would INCREASE giving, not derail it.

IRA CHARITABLE ROLLOVER AND "TAX EXTENDERS"

Q. For several years, philanthropic and charitable organizations have asked Congress to make permanent the IRA charitable rollover. Where does the rollover stand this year?

A. We know that the IRA charitable rollover encourages people to direct retirement savings to charity. Since its passage, the rollover provision has proven to be very popular with taxpayers and beneficial to charities. We encourage Congress to extend the provision – which expired at the end of 2014 after being in place for just 2 weeks of the year – and make it permanent.

In addition to permanence, the Council has long supported expanding this provisions to remove limitations on the age of donors and the size of the gifts and to permit charitable rollovers to donor-advised funds, supporting organizations, and private foundations. The Council has and will continue to advocate for permanence and expansion.

Q. Doesn't the America Gives More Act include making the charitable extenders permanent?

Yes, numerous lawmakers already recognize the value of a permanent IRA charitable rollover, and have demonstrated their support by voting for this provision. Last year, two bills that would make the rollover permanent – the *America Gives More Act* and the *Supporting America's Charities Act* – passed the House Ways and Means Committee. The *America Gives More Act* was then passed on a bipartisan basis by the full House of Representatives. While it did not advance in the Senate, this bill was reintroduced again this year (as H.R. 644) and AGAIN passed the House of Representatives. This is a clear signal that there is momentum for this provision, and the time is right to pass it into permanent law.

Q. We know you care about the IRA charitable rollover, but what about the enhanced food inventory donation deduction and the enhanced deduction for land conservation easements, which also expired at the end of 2014?

A. We support the reinstatement of all charitable tax extenders, including the enhanced deductions for food inventory donations and land conservation. These critical tax incentives promote giving and nonprofits around the country rely upon the donations they encourage.

The uncertainty caused by the need for an annual extension of the "tax extenders," as well as the fact that the provisions lapsed at the end of 2014 after being in place for just 2 weeks, reduce the value of these giving incentives, which ultimately reduces charitable giving.

We are encouraged by the momentum for the charitable "tax extenders" that we are seeing on the Hill. As with the IRA charitable rollover, numerous lawmakers have demonstrated their support by voting for these provision. Last year, the *America Gives More Act* and the *Supporting America's Charities Act* – which included the enhanced deduction for food inventory donations and land conservation easements, passed the House Ways and Means Committee. The *America Gives More Act* was then passed on a bipartisan basis by the full House of Representatives. While it did not advance in the Senate, this bill was reintroduced again this year (as H.R. 644) and AGAIN passed the House of Representatives.

This is as clear a signal as any that there is momentum for these charitable giving incentives, and the time is right to pass them into permanent law.

PRIVATE FOUNDATION EXCISE TAX

Q. We know that private foundations have been asking Congress to simplify the private foundation excise tax for years. Why?

A. The current private foundation excise tax is complicated to administer and, because of its overly complicated, two-tier structure, can creates a disincentive when foundations consider increasing giving for unanticipated grants such as disaster aid.

Under the current tax system, foundations can actually be penalized with higher taxes when they give more during times of extraordinary need. The tax is also complicated and unpredictable, requiring foundation staff to constantly monitor and adjust their investments and spending – time that would be better spent serving their communities.

For many years, tax experts and even the Joint Committee on Taxation have recommended simplifying the tax to a single, flat rate. For more than a decade, the Council on Foundations and others in the field have encouraged Congress to simplify this tax.

We support the proposal in the *America Gives More Act of 2015* to simplify the excise tax to a single flat rate of one percent. We also support the President's Budget proposal to simplify this tax, though we would prefer a flat rate of one percent. The policy momentum we're seeing in favor of simplification acknowledges what the Council has long argued: that a single flat rate will simplify complex tax policy and encourage increased charitable activity.

SUPPORTING ORGANIZATIONS

Q. Some proposals have been floated to eliminate certain types of supporting organizations. Why do nonprofits need 3 types of these organizations to choose from?

A. If Type II and Type III supporting organizations were eliminated like former House Ways and Means Chairman Dave Camp proposed last year in the *Tax Reform Act of 2014*, organizations that support public charities would need to be closely controlled by the charity they support, or be treated as a private foundation.

We find this provision deeply troubling. It will reduce the flexibility of community foundations and other nonprofit organizations to establish separate but related entities to help them carry out their charitable missions. Foundations need a variety of philanthropic tools available to them in order to help communities thrive.

While we support the goal of simplifying the tax code, we ask lawmakers to balance this concern against a desire to uphold proven tax policies. We ask you to consider the real world value of supporting organizations for the charities they serve before concluding that eliminating Type II and III organizations is sound policy.

FOUNDATIONS AND SOCIAL FINANCE

Q. What is social finance?

A. Foundations, like individuals, are increasingly considering the social effects of their investment decisions. Social finance – also called impact investing or mission investing – encompasses the broad spectrum of investment practices and products that have social as well as financial returns. Some foundations might look to spur community economic development, while others might invest in promising or sustainable technologies.

These types of investments allow foundations to go beyond their grantmaking dollars and further leverage their resources to advance their missions. Foundations are employing a range of strategies and techniques – often tailored to the specific needs of their community – that often defies categorization.

The Vermont Community Foundation, for example, identified gaps in the regional supply chain for healthy food. In response, not only made grants for targeted programs, but invested directly in local small businesses like a regional meat processor. Others are moving their money to institutional funds that screen for vice industries or exercise proxy rights to promote good corporate governance. **[Include your own strategy, if possible]**

Many impact investments achieve market rate returns or better. Deals can be structured to attract further private sector investment and amplify the initial investment many times over.

Research shows that foundations are increasingly adopting impact investing strategies. A study by the Council on Foundations suggests as many as a third of U.S. foundations are engaged in social finance and many more have begun the process of adopting a mission aligned investment strategy.

As more products and investment vehicles measuring social returns become available, we will see continued growth of the field and adoption of best practices.

Q. What are social impact bonds? What about pay for success?

A. A pay for success program – also called a social impact bond – is a program in which private investors pay the upfront costs of a nonprofit to provision services to a community. If the organization receiving the money is able to meet certain pre-determined measures of impact, the government agency or agencies sponsoring the deal will repay the initial investment plus a return on that investment.

Foundations are best looked at as catalytic partners in these deals. For instance, a foundation might offer first-loss capital or other subordinated debt in order to make the deal more attractive to investors. Or, a foundation might uses it's convening and leadership abilities to offer technical assistance to the service provider. In these ways, philanthropy can help spur the pursuit of innovative solutions to complex problems which can later be brought to scale by government.

While early pay for success programs have been promising, will tell how widely these tools can be adopted and deployed.

Congressmen Todd Young (R-IN-9) and John Delaney (D-MD-6) have introduced H.R. 1336, which would support evidence based policy. The bill would improve social and public health outcomes by encouraging states, towns, and investors to coordinate and expand proven public policies that create more opportunity for people in need

APRIL 15TH GIVING EXTENSION

Q. How do you feel about the proposal to extend the deadline for deductible charitable gifts to April 15th of the calendar year?

A. This proposal would give taxpayers additional time to make charitable gifts and still claim the charitable deduction for a tax year. Research by Gene Steuerle of the Urban Institute shows that up to $6 of *additional* charitable giving would result from extending the giving deadline, per dollar of revenue lost by the government. However, we caution lawmakers to talk to nonprofits to understand the technical challenges that could be caused by a change in the flow and timing of donations, prior to enacting this provision.