Frequently Asked Questions and Suggested Answers

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This document is meant to offer potential questions that you might be asked by a lawmaker, and provides suggested responses. Wherever possible, it may be helpful for you to provide additional data points or examples from your organization and philanthropy's impact on your community in addition to the general messaging/answers provided below.

GENERAL:

Q. What is the role of public policy in philanthropy? Why do foundations believe it is important to be involved in public policy?

A. Philanthropy is a vital part of American tradition and culture. Its fundamental purpose, and the role it has played historically and today, is to direct resources toward addressing a wide range of issues and the needs of people and communities like ours in [INSERT COMMUNITY/STATE NAME HERE, AND POTENTIAL BRIEF LOCAL EXAMPLE].

As such, public policy should support and strengthen philanthropy and the communities it serves—not threaten or weaken it. Today, government plays a strong role in the philanthropic sector. This includes oversight at both the federal and state level, and tax policy has significant implications on the ability of foundations to maintain healthy operations. Additionally, there are structures in place ***within*** the sector—like the National Standards for U.S. Community Foundations® accreditation program—that provide yet another important layer of accountability, transparency, and expertise.

Q. How does your work fit in with the public policy issues that are most important right now?

A. Our mission is [INSERT MISSION.]

Some specific examples of what we do in the community are [EXAMPLES HERE. WHEN POSSIBLE, THESE EXAMPLES SHOULD INCLUDE DATA – NUMBERS HELPED, PERCENTAGES AFFECTED, PHILANTHROPIC DOLLARS PAID WHERE PUBLIC DOLLARS DID NOT EXTEND, ETC.]. The impact of policy and regulation on our ability to do this work is critically important to the communities and people we support.

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Q. What is the difference between foundations and non-profits? Are your issues the same?

A. Section 501(c)(3) of the Internal Revenue Code (IRC) sets forth the criteria for what types of organizations qualify as charitable, tax exempt organizations. Both foundations and nonprofit organizations are classified as charitable in nature under that section of the code.

The distinction lies in the way these organizations generate revenue to carry-out their charitable activities. Private foundations generate their revenue primarily from investment income of their endowment. These types of organizations are important because the revenue they generate can be distributed to support programs and can help address tough issues today and for years to come.

Public charities generate their revenue through annual fundraising efforts. These organizations must pass the "public support" test—detailed in the IRC under §170(b)(1)(A) and §509(a)(2)—to prove that their revenue is coming from many contributors who have chosen to support the mission of that organization. Community foundations are considered public charities.

Ultimately, both types of organizations serve to fulfill charitable missions, and are only different in their operational models and variated treatment under the tax code.

Q. Why is there urgency now? Why haven't I heard from you before?

A. The national economy is on stronger footing today than it has been for some time. But that doesn't stop the search for new and more public revenue. We want to ensure that public policy supports and strengthens philanthropy and the communities it serves today and going forward. We are engaging with lawmakers now to share the many impacts of our work in your community, and communicate what is at stake in changes to tax policy.

TAX REFORM:

Q. There is growing speculation that tax reform won't move forward until after the 2016 election. Why are you still concerned? Why are you speaking out about this issue now?

A. Democrats and Republicans alike are having conversations about the need to reform the federal income tax code. The last comprehensive reform occurred nearly 30 years ago in 1986, and stakeholders in business, government, and the nonprofit sector are urging lawmakers to revisit certain existing provisions and consider adding new provisions.

Both tax-writing committees in the Senate and the House have been working for several years under the leadership of both Republican and Democrat committee chairmen to lay the groundwork and conduct research for comprehensive reform of America's tax code. Just this year, for example, five separate working groups within the Senate Finance Committee explored a range of issues in the tax code, and issued reports containing options to consider for comprehensive reform earlier this July.

The Council and many of our colleagues in the field have been engaged in this process—which is by nature a marathon, not a sprint. We take seriously our obligation to continuously educate and inform members of Congress about philanthropy and the work that it does to help strengthen communities before they make final decisions about tax provisions that impact our work, the sector, and the organizations, communities and individuals that we serve.

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. We work to ensure that public policy supports and strengthens philanthropy and the communities it serves and does not threaten or weaken it.

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 work that you do/protects what you do for my constituents?

A. Philanthropy is successful because it is flexible and innovative in how it directs resources to address a whole range of issues and the needs of the people in our community. The charitable deduction acknowledges the charitable value of the gift to the community by creating a tax benefit for making philanthropic contributions.

We strongly urge Congress to preserve the charitable deduction in its current form. Our nation and our communities are stronger because of philanthropy and a wide range of philanthropic organizations, like ours, depend on the benefits of the charitable deduction to

address important issues facing our communities. Any caps or limits on charitable giving will have a cascading impact on—and real cost to—nonprofits and philanthropic organizations and the millions of Americans who rely on their services and benefit from their work.

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—which has been proposed and considered—were adopted.

CONGRESSIONAL PHILANTHROPY CAUCUSES:

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

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

For 2015, the House and Senate Caucus chairs Congressmen Pat Tiberi (R-OH-12) and John Lewis (D-GA-5), and Sens. Chuck Schumer (D-NY) and Richard Burr (R-NC), will host a series of discussions and briefings on the dynamic role of philanthropy in society and how philanthropy participates in national policymaking and federal programs across a wide and diverse range of issue and interests.

DONOR ADVISED FUNDS:

Q. What is a Donor-Advised Fund (DAF)?

A. Philanthropy is successful because it is flexible and innovative in how it directs resources to address a whole range of community issues at the right time, at the right place.

DAFs are one of many philanthropic tools that are available for individuals to channel their giving to projects and programs that build and support their communities. Community foundations, in particular, enable people to "give where they live" through such giving mechanisms as DAFs.

Community foundations provide leadership and work with a wide variety of stakeholders, like schools, nonprofits, and community 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, to make larger contributions and have a more sustained impact.

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 one of many philanthropic tools that are available for people to channel their philanthropic giving to projects and programs that build and support their communities. Community foundations, in particular, enable people to "give where they live" through such mechanisms. The staff who manage DAFs are subject matter experts with in-depth knowledge of the issues of concern in their communities.

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. [IF YOU HAVE A LOCAL EXAMPLE OF THE IMPACT LOCAL DAFs HAVE HAD, GOOD TO REFER TO IT HERE].

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. A primary benefit of philanthropic giving is the ability to be flexible and innovative in directing resources to find solutions during times of need and/or as part of a long-term plan to support specific causes. Donor advised funds (DAFs) are a unique philanthropic tool that allow donors to establish charitable accounts at institutions, such as community foundations, and remain involved in supporting the issues and causes they care about.

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 donor advised funds (DAFs).

Public policy should support and strengthen philanthropy and the community it serves, not threaten or weaken it. DAFs have been in existence and supporting meaningful work in communities for years.

The *Pension Protection Act of 2006* (PPA) took numerous steps to regulate DAFs and ensure that they are properly managed. When a DAF is established, donors relinquish personal legal control of the funds to the community foundation, which then oversees and manage these funds on behalf of the families, groups, or individual donors. All funds distributed from these DAFs must be used for qualified, charitable purposes, and community foundations often have the discretion to direct DAF funds toward the most pressing issues in their communities.

In addition to the laws and regulations at the state and federal level that govern DAFs, the majority of community foundations participate in the National Standards for U.S. Community Foundations® program. 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.

IRA CHARITABLE ROLLOVER AND "TAX EXTENDERS":

Q. What is the IRA charitable rollover? What is a "tax extender"?

A. "Tax Extenders" are a collection of around 50 provisions in the tax code that have traditionally required renewal on an annual basis. Included in these provisions are several charitable "tax extenders," including the IRA charitable rollover, and enhanced charitable deductions for charitable contributions of food inventory and land conservation easements.

The IRA charitable rollover provision allows for taxpayers, age 70 ½ or older, to make transfers of up to $100,000 from their individual retirement accounts (IRAs) directly to charity without having to first recognize the distribution as taxable income. Since its establishment under the *Pension Protection Ac*t of 2006, this provision has proven to be very popular with taxpayers and beneficial to charities.

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

A. Philanthropy is successful because it is flexible and innovative in how it directs resources to address a whole range of community issues. Positive community impact ise supported by the IRA charitable rollover because it enables people who choose to do so to direct a portion of their 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 provision 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 of the IRA charitable rollover.

Q. Didn't the *America Gives More Act of 2015* include making the charitable extenders permanent?

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A. Yes, numerous lawmakers already recognize the importance of public policy that strengthens philanthropic endeavors in their districts and demonstrated their support by voting to make permanent the IRA charitable rollover earlier this year.

In 2014, two bills that would make the rollover permanent—the *America Gives More Act (AGMA) of 2014* and the *Supporting America's Charities Act*—passed the House Ways and Means Committee. The *AGMA 2014* 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 under the same name 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. Are there other charitable "tax extenders" or provisions I should be aware of?

A. We support public policy that supports and strengthens philanthropy and its impact in communities across the country and around the world. This support extends to 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, reduces the value of these giving incentives, which ultimately reduces charitable giving.

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. Often, these donations 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. If anything, our national leaders should be sending the signal to give MORE to charitable causes.

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

A. Philanthropy is successful because it is flexible and innovative in how it directs resources to address a whole range of community issues and the needs of the people in our community. The charitable deduction acknowledges the charitable value of the gift to the community by creating a tax benefit for making philanthropic contributions.

The charitable deduction is unique in that the impact of this gift goes primarily to the public. 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, in ways that government and the private sector cannot.

Public policy should support and strengthen philanthropy and the communities it serves, not threaten or weaken it. Caps or limits on charitable giving will have a cascading impact on—and very real cost to—nonprofits and philanthropic organizations, and the millions of Americans who rely on their services.

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.

PRIVATE FOUNDATION EXCISE TAX:

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

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

Public policy should support and strengthen philanthropy and the communities it serves, not undermine it. 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 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 Congressional 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 that was included in the *America Gives More Act of 2015* earlier this year 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. What does it mean to be designated a "supporting organization" and what is their purpose?

A. A supporting organization is a type of organization established to meaningfully support an existing 501(c)(3) tax-exempt organization—whether financially, programmatically, or both. There are 3 types of supporting organizations:

- ***Type I***: by far the most common, this type is often described as the subsidiary to a parent organization—which appoints the majority of the supporting organization's board.
- ***Type II***: the least common, this type is described as supervised in connection with and involves an overlapping board relationship where at least a majority of the members of the supporting organization's board are also members of the supported organization's board.

- ***Type III***: operating with the most independence, this type is sometimes described as operating in connection with the supported organization—often with at least one board member appointed by the supported organization and operated to provide either financial or programmatic support.

Former House Ways and Means Chairman Dave Camp proposed last year in the *Tax Reform Act of 2014* that Type II and Type III supporting organizations be eliminated. The unfortunate impact of such a change would be to eliminate the unique benefits of different types of supporting organizations and the charities they serve.

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 societal effects of their investment decisions. Social finance—also called impact investing or mission investing—encompasses the very broad spectrum of investment practices and products that can be said to have societal benefits 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—tailored to the specific needs of their community—that often defies categorization.

The Vermont Community Foundation identified gaps in the regional supply chain for healthy foods and so invested directly in a locally based 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 STRAEGY, 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 provide 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 use its 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, time 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.

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 value of 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. Philanthropy is a vital part of American tradition and culture. Its fundamental purpose is to direct resources toward addressing a wide range of issues and the needs of people in their communities. Public policy should support and strengthen philanthropy and the communities it serves, not threaten or weaken it. We vigorously oppose any changes to tax policies that discourage giving or harm struggling communities. One critical reason we wanted to meet with you is to make sure it is clear what is at stake.

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 at the individual and organizational level. 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, like the proposal that was 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.

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 per dollar of revenue lost by the government would result from extending the giving deadline. However, we urge lawmakers to talk with nonprofits to understand the technical challenges that these organizations may face if there were a change in the flow and timing of donations, prior to enacting this provision.