

Approved by the CMF Board of Trustees October 18, 2021.

FEDERAL LEGISLATIVE GOALS

*The goals are organized in three categories of **action** – where legislation is either being drafted or already introduced; **advocacy** - where letters of support and calls may be required; and **monitoring** – where other partners in our philanthropy ecosystem may be taking the lead but CMF continues to monitor.*

1. Action: Support legislation that would incentivize all Americans to be charitable givers.

CMF will advocate for a universal charitable deduction and other inclusive tax incentives for charitable giving. Data shows these incentives not only work to increase the amount of resources available for nonprofits to carry out their critical work but also create inclusive access for individuals and families at all income levels to the economic, social and civic benefits of charitable giving.

Background

Expanding charitable tax incentives, like the charitable deduction, to all Americans has been a longstanding advocacy goal among many in the nonprofit community. Charitable giving was on the decline for several years prior to the 2017 Tax Cuts and Jobs Act (TCJA) which increased the standard deduction and further amplified the decline in charitable giving. Evidence shows that when charitable tax incentives are expanded and made universally accessible to all taxpayers, those incentives do increase charitable giving. Some evidence of this can be found in giving trends in 2020 after Congress enacted a temporary \$300 above-the-line charitable deduction for cash gifts as part of the COVID relief package known as the CARES Act. A report from the Fundraising Effectiveness Project showed that [giving increased by 10.6% in 2020 as compared to 2019](#), with the largest increase in gifts coming from donors giving less than \$250, suggesting a connection between the up-to-\$300 tax incentive and increase in smaller gifts.

Current Policy Landscape

In 2021, a bipartisan group of lawmakers introduced the Universal Giving Pandemic Response and Recovery Act (S.618/H.R. 1704) which would expand the temporary above-the-line charitable deduction enacted in the CARES Act for non-itemizers to 1/3 of the amount of the standard deduction, roughly \$4,000 for individuals and \$8,000 for joint filers for taxable years beginning in 2021 or 2022. In February 2021, the Charitable Giving Tax Deduction Act (H.R. 1081) was introduced by Representatives Chris Smith (R-NJ) and Henry Cuellar (D-TX). The legislation would create a permanent universal charitable deduction.

Key Policymakers

Senator James Lankford (R-OK) and Representative Chris Pappas (D-NH) are the lead sponsors in the Senate and House of Representatives for the Universal Giving Pandemic Response Act.

- In the past, some Michigan lawmakers have supported a universal charitable deduction, including Representative Bill Huizenga (R-MI) who co-sponsored the Universal Charitable Giving Act of 2017.
- Also in 2017, Senator Debbie Stabenow (D-MI) offered an amendment during a Senate Finance Committee hearing to include a charitable deduction for all taxpayers in the TCJA.
- Senator Gary Peters has also been a close ally on this issue in the past.

2. **Action: Protect the value of endowed philanthropy in part by maintaining the private foundation payout rate at the current 5% to protect foundations' grantmaking capability.**

CMF is recognized as a national thought leader and key sector partner on mandated base private foundation payout rates thanks to our efforts over the past two decades in supporting data-informed discussions through commissioned research. Our research has consistently shown that a one-size-fits all increase to private foundation payout requirements could be detrimental for some foundations in the short-term and detrimental for many foundations that intend to sustain a certain level of grantmaking in the long-term.

Background

CMF commissioned studies by Cambridge Associates in 2000, 2004, 2013 and 2016 to explore the relationship between the 5% payout rate and distribution rates of private foundations in Michigan. Research continually revealed that private foundations consider the 5% payout rate as a “floor, not a ceiling,” and that increasing the payout rate above 5% could significantly impact the foundations’ financial performance and ability to carry out their missions in perpetuity.

In 2020 CMF partnered with the research team at the Dorothy A. Johnson Center for Philanthropy and Plante Moran Financial Advisors to update this critical research, as well as deepen and expand our understanding of how changes to the payout rate may affect future foundation assets. [The 2020 study, *An Evaluation of Private Foundation Model Portfolios, Investment Returns, & Payout Rates*](#) found that:

- A mandated payout rate above 5% would be unsustainable given that investment returns for private foundations on average do not consistently deliver more than 5% annual real returns.
- As it relates to a foundation’s long-term viability, increasing payout rates in the short term means the equivalent of choosing to decrease grants for 17 years in favor of increased grants for the first 3 years.
- Private foundations frequently treat the 5% payout as a floor, not a ceiling, and that half of Michigan’s private foundations paid out 6% or more of their corpus during 2018, as did a similar proportion of foundations nationally.

Current Policy Landscape

In June 2021, Senators Angus King (I-ME) and Chuck Grassley (R-IA) introduced the [Accelerating Charitable Efforts \(ACE\) Act](#). The ACE Act includes policy ideas that were first put forward by the [Initiative to Accelerate Charitable Giving](#) which called for increasing the base private foundation payout rate to 7%. While the ACE Act would not mandate an increase in the base private foundation payout rate, it does create new tax incentives for paying out at least 7% and imposes new regulations that limit the scope of contributions that can count toward a private foundation's payout obligations.

Key Policymakers

Senators Angus King (I-ME) and Chuck Grassley (R-IA) introduced the ACE Act; we anticipate additional lawmakers may cosponsor or come out as champions of the bill and/or some of the bill's provisions regarding private foundation and DAF payout. Additionally, a House companion bill is likely to be introduced.

3. **Monitor: Support legislation and regulatory changes that would exempt certain philanthropic excess business holdings from being taxed.**

Allowing philanthropy to strategically invest in businesses grows the innovative ways we can work for change and allows foundations to advance equity by investing in targeted businesses and geographic areas. CMF will continue to advocate for legislation that would ease restrictions on business holdings while ensuring self-inurement restrictions remain.

Background

Current law prohibits private foundations from holding more than 20% of the voting stock or interest in any business. Any holding in excess of 20% is subject to a 200% penalty tax. The excess business holdings rules were put in place to guard against tax-exempt private foundations using significant amounts of their assets to support or maintain control of a taxable businesses. According to a [white paper](#) from Duke University School of Law, the excess business holdings rules are redundant and the concerns about turning a taxable business into a tax-exempt business simply by setting up a private foundation are guarded against through other laws.

In 2019, CMF staff submitted a [policy proposal](#) to a new policy forum presented by Independent Sector and ARNOVA on easing excess business holdings rules. The proposal called for amending section 4943 of the tax code to include a new subsection that exempts certain private foundation business holdings from the tax on excess business holdings if a foundation invests in under resourced communities as defined by section 45D(e). Doing so would permit private foundations to participate fully in community development reinvestment opportunities.

Key Policymakers

CMF raised this issue to the U.S. Treasury Department during Foundations on the Hill (FOTH) in 2020. CMF will continue to work with leadership at Treasury to advance a regulatory reform strategy. No legislation or lead policymaker have been identified.

4. Monitor: Support legislation that broadens tax free distributions from IRAs to charitable organizations.

While the IRA charitable rollover is now a permanent giving incentive – a major accomplishment for our sector – there are additional charitable entities and supporting organizations that CMF members would like included as eligible entities for tax-free charitable distributions for IRAs. CMF will continue to monitor proposed legislation that seeks to broaden tax-free distributions from IRAs in order to increase dollars donated by individuals from their IRAs for strategic grantmaking in the communities our members serve.

Background

In February 2021, Senators Debbie Stabenow (D-MI) and Kevin Cramer (R-ND) reintroduced the bipartisan Legacy IRA Act to further encourage and incentivize charitable gifts from IRAs. The bill includes provisions that would have provided greater flexibility to seniors who make charitable contributions through their IRAs including lowering the age threshold for eligibility from 70 ½ to 65, raising the cap on the amount that can be distributed tax-free from an IRA to qualifying charities from \$100,000 to \$400,000, and temporarily allowing IRA tax-free charitable distributions to be contributed to split interest annuities.

Current Policy Landscape

As it currently stands, pared down provisions of the 2021 Legacy IRA Act are included in a larger retirement package being considered in the U.S House of Representatives. The Senate version of the retirement package does not contain the Legacy IRA Act. Neither the Legacy IRA Act nor the larger retirement packages permit tax-free charitable distributions from IRAs to DAFs.

Key Policymakers

Senators Cramer (R-ND) and Stabenow (D-MI) have been the lead sponsors on the Legacy IRA Act. The bill is a reintroduction of their 2019 Legacy IRA Act from last session, which Senator Gary Peters co-sponsored. CMF continues to work with Senator Stabenow and her staff on inclusion of DAFs as an eligible charitable entity for IRA rollovers.

5. Action: Promote talent retention in communities by supporting an amendment to the tax code that would make post-graduation scholarships non-taxable.

CMF and our partners at the Council on Foundations have been advocating over the past several years for legislation that would make post-graduation scholarships granted by foundations non-taxable. This would not only relieve college-degreed recipients of the tax burden on their scholarship but also would encourage more foundations to offer post-graduation scholarships that attract, support and retain talent in their communities and help fuel and strengthen their local economies.

Background

The Come Home Award, a post-graduation scholarship program in St. Clair County, was launched in 2016 by the Community Foundation of St. Clair County with legal support provided in part by CMF. The Come Home Award post-graduation scholarship program promotes talent retention in the community by providing student loan forgiveness to college students who move back to St. Clair County after graduation. Unfortunately, the U.S. Department of Treasury does not have language to recognize this type of post-graduation scholarship award as charitable activity. Because these are not treated as a traditional scholarship, the college-degreed individual who receives a post-graduation scholarship from a foundation is taxed for the financial support.

Current Policy Landscape

In 2021, Senators Gary Peters (D-MI) and Shelley Moore-Capito (R-WV) reintroduced the Workforce Development Through Post-Graduation Scholarships Act (S.2191). A House companion bill, H.R. 4095 was also introduced by Representatives Darin LaHood (R-IL) and Terri Sewell (D-AL). This bill would not only recognize post-graduation scholarship grants as charitable activity and make them non-taxable but would also establish requirements to ensure post-graduation scholarships benefit communities most in need of skilled workers. CMF remains active in advocacy efforts on this bill.

Key Policymakers

CMF worked with Senator Peters' office and Senator Capito's office on draft language for the Workforce Development Through Post-Graduation Act of 2021. Several members of Michigan's Congressional delegation were briefed on this issue during Foundations on the Hill.

6. Advocacy: To support regulatory reforms and legislation that will make it easier for foundations to make program related investments (PRIs) and mission related investments (MRIs).

Program related investments (PRIs) help CMF members further advance their missions and can be an important tool that help foundations deepen their impact. We recognize that some of our members do not use PRIs because regulations are unclear. We anticipate many more likely could and would leverage this investment strategy if there were clear guidelines from Treasury. CMF will work in partnership with our legal counsel to advance recommendations to the U.S. Department of Treasury on clarifications and simplifications that could be implemented to support the use of PRIs and mission related investments (MRIs).

Background

Program related investments (PRIs) are investments made by foundations for the purpose of advancing the foundation's charitable mission. For an investment to qualify as a PRI, it must not be made with the primary intent of generating income or appreciating property value and it must not be used directly or indirectly for lobbying. Unclear treasury guidelines around PRIs have made some foundations reluctant to make PRIs.

Current Policy Landscape

In 2016 the IRS offered updated examples and new regulations on PRIs. However, the two recommendations from CMF that year – a private letter ruling that all investors could rely on for one large regional or statewide project and an expedited process – still have not been considered. CMF and our partners share the belief that these issues can be clarified and addressed with regulatory changes and do not require new legislation.

In May 2021 CMF responded to a call by the Department of Treasury for public comment and suggestions for matters to be included in Treasury's 2021-2022 Priority Guidance Plan. CMF requested the Treasury Department include clear guidelines and definitions for PRIs and mission related investments (MRIs). We will continue to engage the U.S. Department of Treasury to discuss these recommendations.

Key Policymakers

CMF has been working with the requisite leadership in the Department of Treasury to continue the regulatory reform strategy. No legislation or lead policymaker has been identified.

7. Action: CMF will support policies or regulations on donor advised funds (DAFs) that are data informed, do not impose unnecessary and overly burdensome requirements and consider community impact.

Donor Advised Funds (DAFs) have a long history of being used to help individual donors engage in strategic charitable giving to meet short-term and long-term needs in their communities. In order to ensure that DAFs continue to be convenient, flexible and dynamic giving tools that help provide sustainable resources for community impact, CMF's advocacy positions around any potential and/or pending reforms to DAFs will be supported by data that confirms the effectiveness of the reform in helping philanthropy and individual donors better serve their communities.

Background

There are currently discussions happening within and outside the sector that raise various points of view on DAFs. Some individuals, groups and organizations suggest that lack of a payout requirement for DAFs leads to “parked wealth” where funds accumulate in a DAF instead of being distributed to charity, as the donor receives an immediate tax benefit. Others note that the “parked wealth” argument is largely a non-issue given research findings showing higher levels of activity among the majority of DAF accounts. Further, in the case of community foundations, those foundations wishing to be accredited under the National Standards for U.S. Community Foundations accreditation process are required to have a policy addressing inactive funds. Some also point to the importance of DAFs as a way to plan for – and in some cases, grow – philanthropic giving over time.

As part of the CMF-commissioned research by the Johnson Center referenced previously, the third phase of the series, [Analysis of Donor Advised Funds from a Community Foundation Perspective](#) provides Michigan's philanthropic community a data informed perspective on Michigan DAFs hosted by community foundations, their activity levels and payout rates. The research has been and will continue to be a helpful resource to open new conversations around DAFs as a giving vehicle.

Current Policy Landscape

In June 2021, Senators Angus King (I-ME) and Chuck Grassley (R-IA) introduced the Accelerating Charitable Efforts (ACE) Act [S.1981](#). The bill establishes two separate types of DAFs, one of which would allow the donor to claim an immediate tax deduction so long as they agree to payout all funds in the DAF or relinquish control of the DAF within 15 years. For donors who do not wish to disburse all of their funds within 15 years, the bill establishes a “50-year” DAF which would delay upfront income tax benefits until the funds are disbursed, but all funds must be disbursed within 50 years. In addition to establishing the two separate DAF categories, the bill also prohibits private foundations from including contributions to DAFs as part of their annual payout obligation.

There are specific carveouts in the bill for community foundations:

- Donors with less than \$1 million in assets in DAFs managed by community foundations would be exempt from the new payout rules described in the bill.
- DAF accounts larger than \$1 million at community foundations would either be subject to a 5% payout each year or have to distribute funds within 15 years.

Key Policymakers

Senators Angus King (I-ME) and Chuck Grassley (R-IA) introduced the ACE Act; we anticipate additional lawmakers may cosponsor or come out as champions of the bill. A House companion bill is likely to be introduced.

- 8. Monitor: Oppose legislation to repeal or amend the Johnson Amendment, which prohibits 501(c)(3) charitable organizations from endorsing, opposing or contributing to political candidates and engaging in partisan campaign activities.**

CMF will continue to work with sector partners and lawmakers to ensure that the Johnson Amendment remains intact and that the nonprofit sector is protected from partisan politics.

Background

In 2018 CMF signed on with more than 5,000 other charitable nonprofits to a letter originated by the National Council on Nonprofits urging Congress not to support efforts by the White House and members of Congress to repeal or amend the Johnson Amendment. Due to extensive advocacy work during passing of the 2017 Tax Cuts and Jobs Act the issue did not move forward but it may be raised again in the future.

Current Policy Landscape

While no bill or active measures to repeal the Johnson Amendment are being advanced by Congress currently, this is a timeless issue and CMF will remain vigilant in monitoring it as the federal policy landscape changes.

STATE LEGISLATIVE GOALS

- 1. Action: Restore Charitable Tax Credits**

CMF has been working over the past several years to restore the charitable tax credit once available to Michiganders. Charitable incentives at the state level are critical to ensuring endowed funds held at community foundations by local nonprofits have access to the resources they need for the communities they serve. Particularly, incentivizing small gifts through charitable tax credits has the effect of engaging younger and first-time donors who become more likely to be lifelong givers.

Background

In 1989, Michigan enacted state charitable tax credits, which offered a tax incentive for small gifts to community foundation endowments, homeless shelters, food banks and public institutions such as museums, public radio stations, colleges and universities. Individuals could receive a tax credit equal to 50% of their contribution, capped at \$100 for a single taxpayer and \$200 for joint filers. After the charitable tax credits were repealed in 2011, a report from the Johnson Center found that over the next two years \$200 donations to endowed funds (the amount necessary to receive the maximum amount of the credit for individuals) decreased by 44% and \$400 donations decreased by 76%.

Current Policy Landscape

Since the repeal of Michigan's charitable tax credits, several bills have been introduced to restore the credits. House Bill 4993, advanced in 2020, would have restored the charitable tax credit for contributions to endowed funds at community foundations, passed in the Michigan House of

Representatives. Another bill, House Bill 6162, would have restored the charitable tax credits for homeless shelters and food banks. In September 2020, House Bills 4993 and 6162 passed in the House on 74-31 and 82-23 votes respectively, but the bills were not taken up in the Senate before the end of the legislative session. In February 2021, Michigan Senator Jim Runestad introduced a bill (SB 113) to restore the charitable tax credits to community foundations, homeless shelters and food banks.

Key Policymakers

CMF has been in conversation with Senator Runestad and other lawmakers on the Senate Finance Committee to encourage their support of the bill. CMF will continue to strategically engage key policymakers as the bill moves through the legislature and to the Governor's desk.

2. Monitor: Regulations that would mandate public donor disclosure.

Over the past several years a number of states have considered measures to require charitable organizations to disclose information about donors on a confidential basis. CMF and our partners will remain attentive to the policy landscape around this issue and will continue to monitor the implications of donor disclosure laws on the sector.

Background

The charitable sector has long supported the option for donors to remain anonymous to the public. Currently charities are required to report to the IRS on their Schedule B forms information for their donors who give over \$5,000. Donor information is redacted when those forms are made available to state officials and to the public.

In 2014, the Americans for Prosperity Foundation filed suit against the California Attorney General, challenging the constitutionality of the state's requirement for charities to report unredacted Schedule B forms to the state. California claimed that the goal of the requirement was to improve oversight, undercut fraud and deter bad actors. The Americans for Prosperity Foundation's lawsuit claimed that a requirement to disclose their donors to the state on a confidential basis not only threatened donor privacy but also infringed upon first amendment rights by potentially discouraging donors from giving freely to the causes of they care about. California had previously had an accidental leak of confidential donor information which caused additional concern for some in California's charitable community. In 2019, the Americans for Prosperity Foundation Case was appealed to the Supreme Court.

Current Policy Landscape

In a July 2021 ruling, the Supreme Court sided with the Americans for Prosperity Foundation, striking down California's requirement that charities submit unredacted Schedule B forms to the state. While the Supreme Court ruling certainly hampers California's and other states' efforts to enact donor disclosure laws, CMF and our partners will remain attentive to the policy landscape around this issue and will continue to monitor the implications of donor disclosure laws on the sector.

Key Policymakers

CMF has been in conversation with the Charitable Trust Section of Michigan's Office of Attorney General about this issue and will continue to engage the office as necessary as we monitor the policy landscape.

3. Monitor: Support property tax exemption; oppose mandatory and coercive demands for payment in lieu of taxes (PILOTS).

Some municipalities request payment in lieu of taxes (PILOTS) from nonprofits to raise additional revenue, leaving nonprofits in a predicament that would force them to divert resources away from their direct charitable missions. With MNA's leadership CMF continues to monitor this issue with key stakeholders representing all the subsectors of the nonprofit community.

Background

The Wexford Medical Group v. City of Cadillac (2006) was a landmark case on real and personal property tax exemptions outlining the six factors a taxpayer must satisfy to qualify for a charitable property tax exemption. In June 2017 the Michigan Supreme Court revisited Wexford when it reviewed a charitable tax exemption in the Baruch SLS, Inc. v. Tittabawassee Twp. case. The Michigan Supreme Court upheld its ruling in Wexford and further clarified one of the six criteria a nonprofit must meet for property tax exemption.

Current Policy Landscape

Despite the tax-exempt status of nonprofits, some local municipalities attempt to impose new taxes, fees or PILOTS on nonprofits as a way to raise revenue in lieu of property and other taxes that nonprofits are exempt from paying. In addition, some local tax assessors have sought to challenge the tax-exempt status of select charitable nonprofits, claiming they do not meet established requirements to qualify for real and personal property tax exemptions. Further, the way that assessors have interpreted the laws granting charitable organizations their tax-exempts on real and personal property taxes has been inconsistent. With MNA's leadership we continue to monitor this issue with key stakeholders representing all the subsectors of the nonprofit community.

Key Policymakers

The Charitable Trust Section of the Michigan Attorney General's Office and the Department of Treasury are key stakeholders that CMF and our partners have engaged on this issue.