October 12, 2020

To: CMF Board of Trustees

From: Neel Hajra, Co-Chair, Government Relations Public Policy Committee
Julie Ridenour, Co-Chair, Government Relations Public Policy Committee
Government Relations Public Policy Committee Members

Subject: **CMF 2021 Government Relations Goals**

Approved by the Board of Trustees October 19, 2020 as recommended by the Government Relations Public Policy Committee September 23, 2020.

FEDERAL LEGISLATIVE GOALS

Background:
The 2020 COVID-19 pandemic created an unprecedented active policy landscape at the local, state and federal levels. Many of the policy priorities sought by CMF and our national partners prior to 2020 remain the same but now with a greater sense of urgency as the nation reconciles current and future impacts of the COVID-19 pandemic on our communities. There appears to be growing interest among legislators in the charitable sector and individual charitable giving as important vehicles to respond to social need amid crises. More work will need to be done to secure permanent reforms that strengthen the charitable sector and enhance our ability to strategically impact long-term systemic change in the communities we serve. Equally, there will be emerging challenges that we will need to address. This work is happening amidst a presidential election and several key races involving policymakers who have historically served as strong partners to philanthropy. The outcomes of the 2020 election cycle could impact key policymakers and activities that may occur during the lame duck sessions at the state and federal levels. CMF remains focused on cultivating charitable sector allies and partnering with our national and regional philanthropy serving organizations (PSOs). We continue to build off the successes we experienced in 2019 with the repeal of the UBIT and simplification of the excise tax to advocate for policies that enhance the charitable sector’s ability to serve society’s needs.

The proposed Goals for 2021 are organized in the 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. Further, you will find narratives under the goals where there has been action or changes in the context.

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

Over the past decade, there has been a steady decline in the number of Americans giving to charity. From 2004 to 2016 the number of donors giving to charity dropped 13%. This decline was amplified in 2017 in part by the 2017 Tax Cuts and Jobs Act (TCJA) which doubled the standard deduction, reducing the number of taxpayers who itemize their taxes and can take a charitable deduction.

CMF has supported efforts to incentivize charitable giving over the past several years. We know that tax incentives do work as evidenced by the success of tax incentives passed in Congress in 2017, 2018, and 2019 in response to natural disasters. These tax incentivizes spurred more charitable giving. In March 2020, Congress enacted a temporary above-the-line charitable tax deduction of $300 for individual non-itemizers and $600 for joint non-itemizing filers as a part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act relief package. Negotiations are in progress for an expansion and extension of the temporary charitable deduction to $600 for individuals and $1,200 for joint filers. Independent Sector commissioned research indicating that **an expansion of the above-the-line deductions for non-itemized individuals could unlock over $17 billion in new giving per year if made permanent.** CMF is working alongside partners at Independent Sector to garner support from members of the Michigan delegation.

Though the deduction is a step in the right direction, it does not incentivize the 44% of Americans in lower-income tax brackets who do not meet the threshold for federal income tax liability. CMF is working alongside our national infrastructure partners to push for expansion and extension of the charitable giving incentive enacted in the CARES Act while simultaneously acknowledging the need for a more inclusive, equitable and permanent tax incentive that would benefit more Americans and further support nonprofits' ability to provide critical services in communities. The Independent Sector research has shown that a credit would not only increase the number of households who give but also the total amount of dollars given to charity.

Key Policymakers
In June 2020, U.S. Senators Lankford (R-OK), Coons (D-DE), Lee (R-UT), Shaheen (D-NH), Scott (R-SC), and Klobuchar (D-MN), as well as Representatives Walker (R-NC) and Pappas (D-NH) introduced the Universal Giving Pandemic Response Act (S.4032), legislation which would allow above-the-line deductions for non-itemizing individuals up to 1/3 of the standard deduction ($4,000 for individuals, $8,000 for joint filers). Representative Bill Huizenga (R-MI) was a co-sponsor of H.R. 3988, Universal Charitable Giving Act of 2017, and Senators Stabenow (D-MI) and Senators Wyden (D-OR) offered an amendment during a Senate Finance Committee hearing to include a charitable deduction for all taxpayers in the TCJA. Senator Peters has been a close ally in the past and, if reelected, we will continue to call on his office to support efforts to further incentivize charitable giving.

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

Amid the 2020 pandemic calls were made to increase and make mandatory payouts for private foundations and donor-advised funds (DAFs). These calls have been initiated by a national group of funders, the Patriotic Millionaires, who urged lawmakers to increase the private foundation payout requirement up to 10% and impose the same on DAFs for three years. DAFs, a charitable giving vehicle created by community foundations and other entities to manage donations by individuals, families and organizations, do not have minimum payout requirements. There have been several other well-financed groups that are also focused on bringing these issues to members of Congress in hopes of having legislation introduced.

CMF and the Council on Foundations, among other philanthropic leaders have pushed back on these calls, citing the work philanthropy was already voluntarily doing and the slippery slope that would accompany critics and lawmakers determining which crises are more important than others by limiting philanthropy's ability to respond to future crises. If similar proposals to impose a 10% payout had been adopted following the 2008 Recession, philanthropy would now have fewer resources to respond to COVID-19.

The payout rate should be based on facts and research. CMF and our PSO partners stand by the research that confirms 5% as the recommended base payout rate based on foundations' real investment returns over the years. In 2017, CMF retained Cambridge Associates to update its 40-year study of the real investment returns of a group of 30 Michigan foundations. The study confirmed a real return of 5.2% and recommended no change in the required payout rate of private foundations. The 2017 study has been shared with members of the Michigan delegation. CMF has commissioned the Dorothy A. Johnson Center for Philanthropy at Grand Valley State University to update this research and calculate the effects of various increased payout rates on foundation balances both historically and via economic projections. This research uses the newly accessible database of IRS Form 990 documents, offering a framework to compare the full set of Michigan-based foundation data with national statistics. The first phases of this research (focused on private foundation payout rates) should be complete by the end of 2020, with the second phase (focused on community foundations) following shortly after.

Additionally, CMF has been monitoring a bill being considered in California's Legislature that would place additional reporting requirements on DAFs, giving the attorney general greater discretion over whether and how funds can be used for charitable purposes (AB 2636). While no active legislation is at play at this time in Michigan, there is concern that this legislation will spread among the states as a model for increasing regulatory requirements for DAFs. Other groups that have been calling for increased DAF regulation are now working to advance their proposals to legislators.

With continued scrutiny on charitable distributions from active and inactive DAFs and new scrutiny on private foundation payout in response to national emergencies, there is concern that members of Congress may consider increasing payout rates for private foundations and tax rates for DAFs. CMF will remain in front of these issues and is forming advocacy strategies with national and regional PSO partners.

Key Policymakers
To be determined.

3. ***Advocacy:* Support legislation and regulatory changes that would permit private foundations to participate fully in community development reinvestment opportunities.**
CMF continues to advocate for legislation that would ease restrictions regarding business holdings while ensuring self-inurement restrictions remain. In 2019, CMF staff were invited to provide a white paper to a new forum presented by Independent Sector and ARNOVA where several new public policy issues were presented as a way of forming a national agenda for tax policy. CMF proposed amending section 4943 of the tax code to include a new subsection that exempts certain philanthropic business holding from the tax on excess business holding of private foundations if a foundation invests in low-income communities as defined by section 45D(e).

By way of background, the current law, enacted in the Tax Reform Act of 1969, prohibits private foundations from holding more than a 20% interest in any business. Any holding more than 20% is subject to a 200% penalty tax. However according to a white paper from Duke University School of Law Professor Richard Schmalbeck, 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. CMF supports reforming the excess business holding rules to allow relief for private foundations that invest in low-income communities. Modifying these antiquated tax rules will empower foundations and the charitable community to make additional, substantial investments in distressed areas.

Key Policymakers
This was part of our Foundations on the Hill (FOTH) 2020 conversations with the U.S. Treasury Department. CMF will continue to work with leadership at Treasury to advance a regulatory reform strategy. No legislation or policymaker has been identified.

4. ***Advocacy:*** **Permit tax-free distribution from individual retirement accounts (IRAs) to community foundation donor advised funds (DAFs) and support bipartisan legislation to accomplish that goal.**

While the IRA charitable rollover is now a permanent giving incentive – a major accomplishment for our sector, gifts from IRAs are still not permitted to DAFs of any type. Many community foundations would like to have this restriction lifted. Concern has been raised by some nonprofit leaders that Congress may require some form of additional payout by the foundation community to compensate for the cost to the government.

Staff of both Michigan Senators have acknowledged the utility of the 2015 CMF funded special survey by the Urban Institute of the IRA charitable rollover and community foundations in securing success for the IRA charitable rollover. The survey confirmed the value of the charitable rollover as a pipeline giving tool for middle class givers and that the average gift is less than $20,000. This continues to be one of the different methods CMF and our members are working to develop and promote charitable giving incentive tools especially among income populations where the sector has seen a decline in giving.

Key Policymakers
Senators Cramer (R-ND) and Stabenow (D-MI) introduced the Legacy IRA Act of 2019 (S. 1257). Senator Peters (D-MI) cosponsored the legislation. While this legislation focuses on expanding the IRA charitable rollover to seniors, CMF sees potential opportunity to work with the senators and representatives on our related goals to further incentivize giving from IRAs.

5. ***Action:*** **To promote talent retention in rural and urban communities by supporting an amendment to the tax code that would make Come Home Awards non-taxable.**

The Community Foundation of St. Clair County, with legal support provided in part by CMF, launched the Come Home Award in 2016. This reverse scholarship program promotes talent retention in communities 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 award as charitable activity. Thus, the college-degreed individual who chooses to participate in the program is taxed for the financial support.

While Michigan has gained population since bottoming out in 2009, our state's slow growth and loss of talent is impacting our competitiveness. A 2013 report from the Detroit Regional Chamber showed graduates from four-year colleges and universities were leaving Michigan for better job opportunities, higher pay and access to public transportation. The Community Foundation of St. Clair County was the first in the nation to create this type of program that incentivizes young professionals to move back home. In 2018, Michigan saw an increase in college-degree holding 25-to-34-year-olds, breaking a job growth record while Midwestern states were seeing college graduates move to other states for job opportunities. For this growth to continue, students and recent graduates need incentives to move back home to contribute to their local economies for more of Michigan's cities to develop economically.

Student debt continues to be a state and national concern. There is bipartisan interest in Washington in securing a solution. Staff at Treasury have been briefed during visits by CMF and our members in 2019 and 2020 during Foundations on the Hill and this information been included in CMF's annual letter to the IRS. CMF and other partners like Philanthropy West Virginia have hosted educational webinars for others in the sector to secure cross-state support. We continue to work with counterparts in West Virginia and other regional PSOs to engage their House and Senate delegations in supporting this measure and have been looking for the appropriate vehicle bill to have this language added.

Key Policymakers
In 2019, Senators Peters (D-MI) and Moore-Capito (R-WV) introduced S. 676, also known as the Workforce Development Through Post-Graduation Scholarships Act of 2019. A House companion bill, H.R. 4038 was also introduced by Representative LaHood (R-Il). These bills would amend the Internal Revenue Code of 1986 to include post-graduation scholarship grants as qualified scholarships to promote economic growth. In addition, Representative Peterson (D-Il) who is a founding member of the conservative Democrats' "Blue Dog" Coalition and most senior member of the House Committee on Agriculture has expressed interest in the concept. CMF and Philanthropy West Virginia have communicating with peers and lawmakers around addressing in a COVID-19 response legislative packages.

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

Progress was made in 2016 on updated program related investment (PRI) examples and new regulations offered by the IRS. However, the two recommendations from CMF: a private letter ruling that all investors could rely on one large regional or statewide project and an expedited process have still not been considered**.** CMF and our partners share the belief that these issues can be addressed with regulatory changes and do not require new legislation. CMF again filed a letter with the IRS and continues to engage the U.S. Department of Treasury to discuss these recommendations.

Key Policymakers
CMF has been working with the requisite leadership in the U.S. Treasury Department to continue the regulatory reform strategy. No legislation or policy maker has been identified.

7. *Advocacy:* **Support efforts to ensure students do not experience scholarship displacement.**

In response to the policy position recommended and adopted by the CMF Board of Trustees in 2019 to oppose scholarship displacement in Michigan, CMF staff continue to identify ways to advance and address the issue. CMF has captured data from community foundations on scholarship displacement to further elucidate the issue in Michigan. In early 2020, with the help of OFL, CMF staff and PPC leadership engaged in conversations with members of the Governor's policy team on this issue and have made some connections between this and the Governor's proposals, the Michigan Opportunity Scholarship and Michigan Reconnect, scholarship programs to help increase the percentage of Michigan residents with post-secondary degrees.

CMF in partnership with the Michigan Association of State Universities has recommended best practices and policy changes to schools' financial aid offices to help them avoid displacing students' critical financial resources for their education. Uptake of the recommendations has been mixed. A statutory language change to the national Higher Education Act would provide a more permanent solution to the issue of scholarship displacement. The Higher Education Act governs how different types of aid in a student's financial aid package can be used. Section 480(j) determines that external scholarships such as those from private and community foundations cannot be used by a student to meet their Expected Family Contribution (EFC). CMF recommends changing the language in the Higher Education Act to allow external scholarships to be used toward a student's EFC to meet the full cost of attendance. As the act is overdue for renewal, there may be possibility for reform to happen with the bill's renewal in the near future.

Key Policymakers
To be determined.

8. *Advocacy:* **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.**

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 to not support efforts by the White House and 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 has not moved forward but it will likely be raised again in the future. 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.

Key Policymakers

While no bill or active measures to repeal the Johnson Amendment are being advanced by Congress currently, there was active advocacy by the Trump Administration to discourage the IRS from fully enforcing this regulatory provision in the sector. There have been no updates from the administration on their plans for an amendment.

2020 Federal Action Goals Achieved:

Simplification of the excise tax on private foundations

For 20 years, private foundations paid a 2% tax on their net investment income, which is called an excise tax. CMF and its national partners lobbied to reduce the rate to a flat 1% and in December 2019 the rate was reduced to 1.39%.

CMF continues to push for a flat rate of 1%. The excise tax was originally brought forward by Bill White, former president and CEO of the Charles Stewart Mott Foundation. The foundation funded an initial study on the impact of the excise tax on independent foundations which found that the cost to calculate the variant tax rate was exceptionally high.

Repeal of Unrelated Business Income Tax (UBIT)

On December 20, 2019, H.R. 1865, the “Further Consolidated Appropriations Act, 2020” became law. This legislation includes the repeal of Internal Revenue Code Section (IRC)512(a)(7), the unrelated business income tax (UBIT) on qualified transportation benefits, and simplification of the private foundations excise tax. Based on research conducted by the Urban Institute and George Washington University, UBIT would divert an average of $12,000 per year away from each nonprofit’s mission. That cost was in addition to the administrative burden it put on nonprofits. This marked a major victory for the nonprofit sector and demonstrates the value of CMF and Michigan Nonprofit Association’s partnership along with what can happen when we use our collective voice as a charitable sector.

CMF was actively engaged with several coalitions and signed on to multiple letters of support, including a letter calling for repeat of UBIT signed by members of the UBIT Coalition, a group of over 115 national and regional organizations. CMF staff traveled to Washington, D.C. in the early part of December 2019 to meet with members of Michigan’s congressional delegation to express the importance of these much-needed changes.

Temporary Universal Charitable Deduction

Support for nonprofits was of critical importance in CMF’s COVID-19 advocacy work.
The Inclusion of a temporary above the line-deduction in the CARES Act was an important success, but we will continue to look at more permanent, equitable and inclusive incentives to incentivize individual giving.

STATE LEGISLATIVE GOALS

Background:
CMF's members have access to engagement structures with the Office of Foundation Liaison (OFL), Michigan Nonprofit Caucus and the Nonprofit Council for the Charitable Trust in the Office of Attorney General that can help ensure that the sector's interests are expressed, understood and advanced. These combined with our partnership with the Michigan Nonprofit Association (MNA) and others provides a strong public policy and government relations infrastructure at the state level. Due to term limits there are 26 seats open in the Michigan House of Representatives with no incumbents running. We anticipate many new members which provides an opportunity to educate new lawmakers on philanthropy and build new champions for the sector. It also means a new legislative session in that any active legislation for this year dies and requires a new start during the new session year.

1. ***Action Goal:*** **Restore charitable tax credits.**

   Several bills have been introduced to restore the charitable tax credit for contributions to community foundations including Senate Bill 55 and House Bill 4993. Substitute language for HB 4993 has been adopted that would make the tax credits exclusive to endowed funds. Two other bills, House Bill 4992 and House Bill 6162, would restore the charitable tax credits for homeless shelters and food banks. CMF has been in partnership with these sectors to advance movement. No fewer than 12 tax credit bills have been introduced in both chambers placing the Charitable Tax Credit in a crowded marketplace for state policy reforms. While the anticipated fiscal impact of all the credits represented in House Bill 4993 and House Bill 6162 is $25 million, during a time where the state is facing nearly a $1 billion shortfall in FY 21 resulting from the required pandemic shutdown, CMF continues to advance that the return to the state is many fold in terms of the ability of nonprofits to provide needed services and incentivizing a long-term pattern of giving.

   In2011, Michigan repealed tax credits for donations made to the endowed funds of nonprofits held at community foundations, homeless shelters, food banks, and public institutions such as museums, public radio and television, and colleges and universities. The repeal of the state tax credits resulted in significant decreases in contributions to these funds that support nonprofits across the state. For example, a report from the Johnson Center for Philanthropy at Grand Valley State University found that donations to endowed funds in the key donation amount of $200 decreased by 44% and decreased by 76% in the key donation amount of $400. Restoring the tax credit would be the first step towards restoring all of the charitable tax credits cut in 2012 and expanding the tax credit for donations to all 501(c)(3) public charities in future budget years.

Key Policymakers
CMF is working to secure support from Michigan's quadrant leaders for the bills. Representatives Whitwer, Berman and Tate introduced House Bills 4992, 4993 and 6162 respectively and Senator Runestad sponsored the Senate Bill. House Bills 4993 and 6162 have been reported out of Government Operations Committee and are expected to receive a vote in the House this fall.

2. ***Advocacy Goal:*** **Support property tax exemption and oppose mandatory and coercive demands for payment in lieu of taxes (PILOTS).**

CMF continues to partner with MNA on preserving the tax-exempt status of nonprofit organizations and opposing any practice that imposes new taxes, fees or PILOTs on charitable nonprofit organizations. There has been an increase in the number of cases where local tax assessors are challenging the tax-exempt status of charitable nonprofits. Additionally, the way that assessors are interpreting the law has been inconsistent.

In June of 2017, the Michigan Supreme Court revisited Wexford when it reviewed a charitable tax exemption in the Baruch case. Wexford was a landmark case on real and personal property tax exemptions outlining six factors a taxpayer must satisfy to qualify for a charitable property tax exemption. The Michigan Supreme Courts' ruling in the Baruch case validated its charitable nonprofit status and serves as a precedent for nonprofits. As a result, a legislative solution is not being sought at this time but with MNA's leadership we continue to work with key stakeholders representing all the subsectors of the nonprofit community, the Charitable Trust Section of the Attorney General's Office and the Department of Treasury.

Key Policymakers
The Michigan Attorney General's Office.

3. ***Action Goal:*** **Promote volunteerism and service.**

Volunteers and national service members were invaluable assets to Michigan's charitable community during the COVID-19 pandemic. As the needs in communities increase, the charitable community has relied on national service members to help bridge gaps in capacity to deliver essential resources and services to families and communities.

Throughout COVID-19 relief negotiations Congress considered the Pandemic Response and Opportunity through National Service Act H.R. 6702 to help increase AmeriCorps members serving as COVID-19 emergency response personnel. CMF will continue to work on long-term strategies to expand the number of volunteers helping to serve their communities and help meet basic needs in Michigan. We also plan to continue advocating for implicit bias training and cultural competency trainings for volunteers who serve in communities that are not their own.

More than 20 years ago CMF and MNA partnered with the state to create the Michigan Community Service Commission (MCSC). Previously part of the Department of Health and Human Services, under Governor Whitmer's administration, MCSC has transitioned to the Department of Labor and Economic Opportunity (LEO). A number of CMF members leverage AmeriCorps members to address critical needs ranging from urban safety to home foreclosure prevention. MNA runs the largest AmeriCorps VISTA program in Michigan.

CMF and MNA both recognize the value of this public-private partnership to the nonprofit sector and the need to educate new policy makers on an ongoing basis. Efforts to eliminate the Corporation for National and Community Service at the federal level have been unsuccessful and CMF has helped MNA and partners to educate and gain bipartisan support from the Michigan Congressional Delegation advocate for its continuation.

Key Policymakers
Executive office and leaders within the Department of Labor and Economic Opportunity.

4. *Monitor:* **Ensure prompt access to data on nonprofit employment.**
Unlike other industries the state does not regularly release data on nonprofit employment, which represents more than 10% of the workforce in Michigan. MNA continues to lead efforts to convince the state to produce these data reports on a regular schedule without special charges to the nonprofit sector. In the interim, MNA works with Public Sector Consultants to update every other year for new data.

5. *Monitor:* **Watch for new forms of public-private financing of public services, such as Social Impact Bonds (Pay for Success) in which philanthropy may play a part and inform/educate members as appropriate.**
There continue to be several pilot programs involving philanthropy including a foster care pilot project in Kent County. The development of new public-private projects financing public service will be monitored by staff working with CMF's Impact Investing Committee.