

## **CMF 2018 Government Relations Goals**

***Adopted October 25, 2017 by the Board of Trustees as recommended by the Government Relations Committee on October 5, 2017.***

This document is incorporated in the ongoing CMF Legislative Goals Statement that tracks the history of CMF's Government Relations work since 1979 and documents both Federal and State Legislative Accomplishments.

In 2017 CMF's President has continued to serve on the Public Policy Committee of the Council on Foundations (COF) and as Co-Chair of the Public Policy Committee of the United Philanthropy Forum (formerly the Forum of Regional Associations of Grantmakers.) It has been a longstanding tradition for CMF to support the COF Philanthropy Legislative Agenda at the federal level.

CMF continues to work closely with Senator Stabenow and her staff because of her role on the Senate Finance Committee. In addition, we continue to work with Representative Levin and now Representative Bishop as Michigan's members of the House Ways and Means Committee.

Recognizing the strength of the nonprofit sector in Michigan as vital to CMF's role and its members, CMF was involved in the creation of the Michigan nonprofit Association (MNA) in 1991. As a result, when appropriate, the State Action Goals also reflect the priorities of MNA. In 2017, the President of CMF continues to Chair the Public Policy Committee of MNA. Since 2008, MNA and CMF have supported the Legislature's bi-partisan, bi-cameral Nonprofit Caucus. While the Caucus develops its own priorities, where appropriate its priorities may be included in the CMF State Goals.

In addition, since 2008, MNA and the Michigan Association of United Ways with CMF have had a Nonprofit Council to assist the Charitable Trust Section of the Attorney General's office, an important source of information about charitable giving and the nonprofit sector in Michigan.

The proposed Goals for 2018 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 nonprofit partners may be taking the lead. Many of these Goals continue from year to year because the legislative process at both the federal and state levels is both lengthy and opportunistic.

### **FEDERAL LEGISLATIVE GOALS**

**Accomplishments in 2017 have included:**

- **In time for March Foundations on the Hill released commissioned updated research papers by Cambridge Associates on Private Foundation Payout and Excise Tax**
- **Facilitated Foundations on the Hill with COF and Forum of Regional Association of Grantmakers for 22 CMF members – a total delegation of 34**

- **Updated 2014 letter to the IRS and Treasury recommending inclusion of new regulations for Program Related Investments and support for Talent Retention Scholarships in the IRS 2017-18 Work Plan,**
- **Held a special meeting with the Department of Treasury, at the conclusion of Foundations on the Hill, to discuss further clarifications to the Program Related Investment regulations and share progress on the Talent Retention Scholarship pilot program introduced by the Community Foundation of St. Clair County while seeking support for regulatory and legislative changes.**

1. **Action Goal: Oppose legislation as part of tax reform that would result in a reduction in charitable giving by minimizing the full value of the charitable tax deduction and other giving incentives and support legislation that would incentivize all Americans to be charitable givers.**

Update: Tax Reform continues to be a high priority of Congress and the Trump Administration with two priorities of reducing business/corporate taxes and providing tax relief to the Middle Class as identified in the Tax Reform Framework released by the Republican leadership in Congress and the Trump Administration on September 26, 2017. In proposing to simplify the Tax Code, the Framework would reduce the number of Americans who now itemize from 33% to 5%, which according to the Lily Institute at Indiana University will result in a loss of \$13.2 billion annually in charitable giving. CMF continues to be part of a broad national coalition to continue to promote the value of the charitable tax deduction in its current form.

**There is bi-partisan support for a universal tax deduction available to all Americans that would increase giving to 3% of GDP from the current 2% and add \$200 billion annually in giving. HR 3988 the Universal Charitable Deduction Act was introduced in October 2017 by Representative Mark Walker (R-NC). The cost for making this Universal Deduction available has yet to be calculated by the Joint Committee on Taxation. While support for all Americans to have access to a charitable giving incentive is a popular political goal, the appetite for adding the cost of this to the federal debt is not evident.**

2. **Action Goal: Oppose legislation to repeal or amend the Johnson Amendment, which would adversely affect the nonpartisanship and trust of the charitable sector.**

Update: In addition to President's Trump Executive Order, legislation has been introduced in both Houses to Repeal the Johnson Amendment to allow 501(c)(3) nonprofits to accept political contributions and endorse candidates. An Amendment was passed in the House and added to a spending bill but not passed in the Senate. CMF has 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 this legislation. However, Chairman Brady of the House Ways and Means Committee has indicated his intent to attach such legislation to Tax Reform legislation in which it could pass the House with just Republican votes.

**3. Action Goal: Support simplification of the excise tax on private foundations to a one percent flat tax or a revenue neutral tax and support bipartisan legislation introduced to accomplish that goal.**

Update: Simplification of the Excise Tax to a flat one percent has again been included in legislation introduced with bi-partisan support, including a number of members of Michigan's Congressional delegation, in both Chambers of Congress. Cambridge Associates' CMF sponsored research on the excise tax has been shared with members of Congress as well as the Administration. The research confirms that about 55,000 private foundations with assets of under \$10 million each are paying about \$66 million in excise tax but having to pay more than \$100 million to professional advisors to calculate the tax to be paid.

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

Update: While the IRA Charitable Rollover is now a permanent giving incentive – a major accomplishment for our sector, gifts from IRA's are still not permitted to donor advised funds of any type. Many community foundations would like to have this restriction lifted. Legislation to allow this has been reintroduced this summer with Senator Stabenow as one of the primary co-sponsors in the Senate. The Joint Committee on Taxation is still determining the cost for this legislation over a ten-year period. 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.

In addition, members of the Michigan Congressional Delegation and both Senators have requested that CMF continue to provide examples of how the IRA Charitable Rollover is being used. CMF will provide such examples as part of the Annual Foundations on the Hill event. CMF supported the Council on Foundations in updating the IRA Toolkit for community foundations, originally developed in 2006 by CMF when the first bill was passed with the leadership of Congressman Camp.

Staff of both Members of the Michigan Congressional Delegation and the House Ways and Means Committee and Senate Finance Committee acknowledged the helpfulness of the CMF funded special survey by the Urban Institute of community foundations and the IRA Charitable Rollover in the first quarter of 2015, which 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.

**5. Action Goal: To support legislation and regulatory reform that will make it easier for foundations to make program related investments (PRIs).**

Update: Progress has been made in 2016 on updated 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 for 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. As noted in the Accomplishments section above, CMF again filed a letter with the IRS and met with Elinore Ramey in Treasury to discuss these recommendations.

**6. Action Goal: To promote talent retention in rural and urban communities by supporting a legislative amendment to the Tax Code that would make scholarship payments to reduce student debt non-taxable to the ultimate beneficiary – the student who has incurred such debt.**

**Update:** Student debt continues to be a Michigan and national concern with bi-partisan interest in Washington in securing a solution. The Community Foundation of St. Clair County with legal support provided in part by CMF is piloting a new Talent Retention Scholarship Program. As noted above in accomplishments, staff at Treasury has been briefed in each of the past two years and this opportunity has been included in CMF's Annual Letter to the IRS.

**With bi-partisan support from Michigan's Congressional delegation, CMF is helping to prepare language for a bill to be introduced by Congressman Mitchell.** There is interest in possibly expanding this pilot based on the federal government's program supporting rural doctors and urban teachers, and Michigan's increasing talent shortage.

**7. Action Goal: Oppose efforts to repeal the Estate Tax and promote reinstatement of the federal state estate tax credit.**

**Update:** Gross charitable bequests in 2010 the year the federal estate tax was repealed dropped 37% from \$11.9 billion to \$7.49 billion. The tax returned in 2011 and bequests increased to \$14.3 billion. There is strong bi-partisan support for eliminating the federal estate tax as part of Tax Reform legislation in 2017 while agreeing that the Estate Tax leads to higher charitable giving. While the sector has been focusing on preserving the charitable tax deduction, the National Council for Responsive Philanthropy (NCRP) is leading efforts to oppose elimination of the Estate Tax.

Therefore, reinstatement of the Federal Credit to the States – lost in 2012 - seems remote at this time given a projected cost to the Treasury of \$8 billion. Concern continues that with so many states having budgetary problems, new inheritances taxes will be reinstated as a form of revenue raiser, pitting states against each other and resulting in a potential loss to Michigan of wealthy estates as was evidenced in 2007 when an effort was made to reinstate a State Inheritance Tax – opposed by CMF.

**8. Advocacy Goal: Protect the value of endowed philanthropy in part by maintaining the private foundation payout rate at not more than 5 percent to protect the real value of foundations' grantmaking capability.**

**Update:** As noted above under accomplishments, 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 Study has been shared with Representatives Bishop and Levin and Senator Stabenow because of their roles on the key tax writing committees. With continued scrutiny on charitable distributions from active and inactive donor advised funds (DAFs), there is concern that members of Congress from both parties are questioning the value of endowed philanthropy and efforts may be made as part of Tax Reform to increase payout by foundations and DAFs.

**9. Advocacy Goal: Support legislation to allow tax-exempt entities to invest in securities and commodities that involve indebtedness without being subject to unrelated business income tax (UBIT). This legislation would also eliminate the classification of realized gains and income, derived from leveraged real estate investments by foundations, as unrelated business taxable income.**

Update: Because of bi-partisan interest in eliminating off-shore tax havens as part of Tax Reform, there is bi-partisan interest in introducing legislation that would mirror Congressman Levin's 2009 Bill – H.R. 3497 to create an exception to the debt finance income rules that would allow all tax-exempt entities to invest directly in domestic hedge funds without being subject to UBIT. Private foundations should be treated in the same manner as educational organizations and qualified pension plans, which since 1980 have been exempt from the debt-financed property rules with respect to the acquisition of certain real property

The original intent of UBIT (Unrelated Business Income Tax) was to prevent nonprofits from competing against for-profit entities in a business that is not substantially related to its exempt purpose. However, over the last twenty years, foundations and universities have invested in hedge funds and other alternative investments to increase their investment returns and reduce the volatility of their investment portfolio. Many times these investments involve leverage (debt) that would subject the foundation to UBIT. In addition, income derived from leveraged real estate investments, owned directly or through partnerships, is currently taxed as UBIT. Based on Private Letter Rulings from the IRS, foundations are able to invest in this area through offshore corporations as limited partners and avoid UBIT.

**10. Advocacy Goal: To support efforts to increase rural philanthropy.**

Update: The Rural Funders Affinity Group of CMF Members continue to be active and our partnership with the Aspen Institute's Community Strategies Group continues. As a result of the 2016 Presidential Election and the important role that rural voters played in electing the President and the bi-partisan interest in infrastructure, there is renewed interest by foundations in the Midwest to collaboratively support a rural initiative. However, at this time no legislation is anticipated in 2017.

**11. Advocacy Goal: Support legislation to reinstate the ability of supporting organizations to pay reasonable expenses and compensation.**

**Update:** The Pension Protection Act removed the ability of supporting organizations, which are public charities under the management of another public charity, from paying reasonable expenses and compensation to individuals who are related to the managers and certain others. Whereas, private foundations not under any oversight by a public charity can pay reasonable expenses and compensation, public charity supporting organizations are barred from paying any expenses or compensation to these persons. The proposed change would return the tax code to pre-PPSA status and thereby allow supporting organizations to fulfill their role in many cases of improving the quality of life in the communities they serve.

## **12. Monitoring Goal: Avoid excessive regulations on corporate giving.**

Update: Legislation introduced in the last Congress would allow for a carryover of excess charitable contributions for the purposes of tax deduction from the current five to 20 succeeding taxable years may be reintroduced in this Congress. Because of the interest in corporate tax cuts, it may be attached to a larger tax reform plan.

### **STATE LEGISLATIVE GOALS**

**Accomplishments have included:**

**Goal 1 – With Senator Shuitmaker taking the lead, legislation has again been introduced to reinstate the charitable tax credits, including the community foundation tax credit. A Hearing with the Senate Finance Committee is expected in the fall of 2017.**

**Goal 2 – With Senator McGregor taking the lead, legislation has again been drafted to address the issue of nonprofit property tax exemption. Due to the State Supreme Court issuing a verdict on nondiscrimination favorable to the nonprofit charitable sector, the legislation may be deferred for a year while the assessors work with the new definition from the Baruch Case.**

**Goal 3 from last year has now been accomplished - to reinstate the definition of community foundation in state law. On August 21 the Community Foundation Act became law. Introduced by Senator Schmidt, the new law accomplishes three goals: it reinstates the definition of a community foundation in state law; it consolidates the three laws passed in the Engler Administration allowing private gifts to be transferred to a community foundation and now allows local units of government, school systems and public libraries to sell assets and transfer the income from the sale of the assets to community foundations that meet national standards to be endowed in agency funds with the income available for the public use designated by the donor organization – units of government, school system or public library. This new law also helps to insure that more communities do not try to create new versions of community foundations as a result of the economic challenges being faced by many local communities and school systems.**

**In addition, CMF has in partnership with MNA contracted with Public Sector Consultants for the biennial update of the Economic Impact Analysis of the Nonprofit Sector – the link is**

available [here](#). This provides county data on the number of nonprofits, the number of people they employ and annual revenues. In addition to sharing with state policymakers the data is used for Foundations on the Hill.

Again in partnership with MNA, CMF supported Michigan State University asking questions about giving and volunteering as part of its quarterly spring State of the State Survey. This data confirmed that about 82% of Michiganders continue to be involved in charitable giving.

While progress is being made as highlighted above, six goals continue for 2018.

**1. Action Goal: Goal: Support legislation encouraging tax incentives for charitable giving by individuals and business.**

Update: As noted above, legislation has been introduced in the Senate to restore all the Charitable Tax Credits that ended in 2011. There is bipartisan support thanks in part to the two years of research by the Johnson Center for 2012-2013 on the impact of the loss of the community foundation tax credit on Michigan community foundations confirming a dramatic reduction in gifts of \$400 by donors who used the \$200 State tax credit. The research shows that the credit played a critical role in serving as a pipeline for new donors.

**2. Action Goal: Support the continued granting of property tax exemption by local units of government to foundations and nonprofits and support legislation to add the federal 501(c)(3) charitable status to state law defining nonprofits and oppose demands for Payments in Lieu of Taxes (PILOTS) that threaten the charitable tax status of nonprofits.**

Update: As noted under accomplishments CMF continues to assist MNA with a legislative solution to the issue of defining what charitable nonprofits are eligible for nonprofit property tax exemption. Negotiations continue with the Department of Treasury to codify the Wexford Case while adding clarity so that both local assessors and nonprofit organizations have a simple checklist to help them apply for and determine eligibility for property tax exemption. The number of nonprofit cases before the Tax Tribunal continues to be a problem.

Concern remains on a part of local government that this bill not reduce revenues for local units of government. Local units of government continue to consider nonprofits, including foundations, which own real estate as new sources of income through PILOTS and other special fees – lighting, refuse collection, public safety, etc. Senator McGregor has taken on the issue and is willing to introduce legislation. However, it may be delayed while the results of the Supreme Court on the Baruch case in defining nondiscrimination as a factor for determining eligibility are implemented by assessors statewide.

**3. Advocacy Goal: Promote Volunteerism and Service**

Update: CMF continues to advocate for the annual state appropriation to fund the Michigan Community Service Commission. CMF and MNA joined more than 20 years ago

in partnering with the State to create the Michigan Community Service Commission (Commission) which includes the CMF President as a Commissioner. Part of the Department of Health and Human Services, the Commission requires an annual appropriation from the State of about \$900,000 to leverage annually more than \$12 million in federal funds –primarily for AmeriCorps. A number of CMF members are involved in leveraging these resources and AmeriCorps members to address critical needs ranging from urban safety to home foreclosure prevention. 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.

**4. Monitor Goal: Ensure prompt access to data on employment**

Update: Unlike other industries the State does not regularly release data on nonprofit employment, which represents more than 10 percent 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.

**5. Monitoring Goal: Support Simplification of the Government Contracting Process for Nonprofit Corporations**

Update: MNA continues to monitor the State process introduced in FY 2013 Budget designed to help nonprofit (and for-profit) vendors see when the state is making payments for services rendered.

The Department of Technology, Management, and Budget (DTMB) now maintains an accessible and up to date searchable website that tracks:

- (a) Fiscal year-to-date expenditures by category.
- (b) Fiscal year-to-date expenditures by appropriation unit.
- (c) Fiscal year-to-date payments to a selected vendor, including the vendor name, payment date, payment amount, and payment description.

**6. Monitoring Goal: Monitor new forms of public-private financing of public services, such as Social Impact Bonds, SIBs now called Pay for Success in which philanthropy may play a part and inform/educate members as appropriate.**

Update: While the Governor's interest in this issue as a priority seems to have waned for his last 18 months in office, there continue to be several pilot programs involving philanthropy – most recently in Kent County involving foster care. This issue will be monitored by staff working with CMF's Impact Investing Committee.