



Program Related Investments (PRIs) Promotion Act

Position: The Council on Foundations supports federal legislation that would encourage transparency and consistency by creating a voluntary procedure for entities seeking foundation participation in (PRIs) to obtain an IRS determination that such participation constitutes a permissible charitable activity.

Background: Under current tax law, private foundations may count investments made primarily to further programmatic goals toward their minimum payout obligation provided that their investment is primarily charitable in nature and not merely for the production of income. To ensure that such Program Related Investments (PRIs) further charitable purposes and do not result in private inurement for other investors, foundations must follow specific procedural and due diligence requirements set forth in the Treasury regulations.

As foundations seek to leverage their charitable assets more efficiently, PRIs are an increasingly attractive tool because they allow achievement of charitable goals without depleting endowments, even producing a modest return in many cases. The emergence of new business entities under state law, in particular the low-profit limited liability company (L3C), has spawned additional opportunities for foundations to leverage their philanthropic resources with private capital through PRI's that address pressing social problems.

Proposal: The Council supports creation of a voluntary review process through which either private foundations or entities seeking to attract private foundation participation could apply for a determination that the structure of the PRI is such that foundation participation in the venture will be considered primarily charitable in nature. To encourage utilization of the process, determinations would be made within a reasonable time of the request (six months) and multiple private foundations would be entitled to rely on the determination.

Rationale: PRI's often represent innovative approaches to societal problems. Because IRS guidance is either nonexistent or lags behind the pace of innovation, definitively determining whether a project is charitable can be difficult. Since many PRI's combine nonprofit and for-profit participants, it is critical that the foundation's participation be structured to ensure that its contribution furthers charitable purposes rather than subsidizing the gains of for-profit participants. Under current procedures, foundations are understandably reluctant to enter into otherwise promising ventures because of the risks.

Consistency: Because IRS determinations take significant time, many foundations seek opinions of counsel rather than request an IRS determination. These opinions are generally secret and based on the varying interpretations of the lawyers who prepare them. A process that encourages foundations to request IRS guidance will promote transparency and consistency in the way that the legal rules surrounding PRI's are being interpreted and applied.

Efficiency: Under current law, each foundation interested in participating in a PRI must make its own determination that the investment is permissible. Enabling the entity that will receive the PRI to apply for a determination upon which multiple investors may rely will significantly reduce both the expenses and the time invested if each foundation must make the determination individually.

Status of Legislation: No legislation has been introduced on this subject. However, Representative Sander Levin (D-MI) has expressed interest in the provision and may sponsor legislation on the issue.

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