



COUNCIL *on* FOUNDATIONS



LEGISLATIVE AGENDA
FOR PHILANTHROPY FOR
THE 112TH CONGRESS

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The Council on Foundations is a national nonprofit association of approximately 2,000 grantmaking foundations and corporations. Our members' collective assets exceed \$300 billion, and we provide those members with services and support to help them succeed and advance the common good. As a leader in philanthropy, we strive to increase the effectiveness, stewardship, and accountability of our sector. We emphasize the value of philanthropy in the lives of people everywhere.

LEGISLATIVE AGENDA FOR PHILANTHROPY FOR THE 112TH CONGRESS

The Council on Foundations seeks to advance several issues on behalf of its members and the field of philanthropy in the 112th Congress. To accomplish this, the Council collaborates with colleague organizations to achieve broad support across the sector and in Congress. Engaging these public-policy issues complements much of the Council's work on other important matters such as voluntary standards, ethical principles, and best practices. Our goal is to promote responsible philanthropy, accountability, transparency, and high standards of conduct through voluntary leadership and self-regulation.

Recognizing that the economic issues facing the nation are quite serious, the Council is committed to considering the fiscal effects of policies that strengthen philanthropy's ability to serve the public. We embrace approaches that consider the economic effects of legislation affecting the philanthropic sector and society as a whole in order to strengthen public policy and sustain effective philanthropy consistent with the public good.

HOW THE COUNCIL DEFINES ITS PUBLIC POLICY ROLE

As the national policy voice for philanthropy, the Council generally adopts policy positions that meet the following criteria:


- **Federal in scope:** The Council focuses on the federal legal and regulatory system but also engages in state issues that may become models for action in other states or at the federal level.
- **Supported by research:** The Council uses data to support its positions, though its leadership role sometimes requires action when data are unavailable or incomplete.
- **Relevant to philanthropy:** The Council pursues positions that affect the field broadly or concern all organizations in a specific area.
- **Promote and defend philanthropy:** The Council seeks to enhance philanthropy and promote its role in society consistent with the public good, rather than favor particular forms of philanthropy, giving vehicles, or funding priorities. The Council also protects philanthropy from policy changes that could undermine the vitality of the field.
- **Service to members:** The Council works to preserve and enhance its ability to serve its members and fulfill its leadership role on behalf of the field.

CORE PRINCIPLES SHAPE THE POLICIES THE COUNCIL PURSUES

These core principles guide the Council in considering which issues to pursue and in setting priorities:

- **Efficiency:** The legal and regulatory systems must balance requirements for effective public oversight and enforcement with the need for philanthropic institutions to remain efficient, flexible, and effective. That is, we seek to ensure legal compliance and prevent abuse without imposition of undue compliance burdens.
- **Stewardship:** Public confidence in philanthropic institutions is essential, and abuses should not be tolerated. Sustaining public confidence requires adequate federal funds not only to encourage voluntary compliance but to provide oversight and enforcement.
- **Independence:** Philanthropic institutions must be able to pursue diverse charitable goals and missions within a legal framework that ensures their resources are used for public benefit and not for private gain.
- **Promote participation:** The long-term well-being of our society depends on a healthy philanthropic sector consistent with the public good; consequently, public policy should encourage voluntary contributions to philanthropic efforts.
- **Globalization:** Our nation's laws and regulations affecting philanthropies should recognize the bonds of the global philanthropic community, minimize barriers to international grantmaking, and harmonize with the rules affecting philanthropy globally.

WHAT ARE THE COUNCIL'S TOP PUBLIC POLICY CONCERNS?

 **ACTION ISSUES** are the two or three highest priority issues on which the Council is determined to take a lead role in influencing policy. The Council devotes significant staff time and resources to such efforts and actively encourages foundations to engage these issues as well.

Simplify the private foundation excise tax on net investment income.

The Council supports simplification of the private foundation excise tax to a single flat rate. This will encourage increased giving by private foundations and alleviate administrative burdens associated with complying with the two-tiered rate.

Promote the charitable sector.

A strong and healthy charitable and philanthropic sector is vital to a prosperous nation and vibrant communities. The Council will work to ensure that any reforms to the tax code affirm the importance of the charitable sector by enhancing federal and state laws that encourage individuals and corporations to support charity and philanthropy through charitable contributions. The Council supports fiscal responsibility at all levels of government and seeks to ensure that changes to the federal and state tax codes reduce complexity, administrative burdens, and financial limitations that inhibit charitable institutions from effectively and efficiently pursuing their charitable missions.


Encourage the Rural Philanthropy Growth Act's investment initiatives.

Rural areas face critical challenges as transfers of intergenerational wealth threaten to siphon much-needed resources from these communities. The Council supports, in concept, two provisions outlined within the draft legislative proposal, "The Rural Philanthropy Growth Act of 2009." Specifically, the Council seeks investment of existing federal resources through the creation of a program within the U.S. Department of Agriculture or other appropriate federal agencies.

This program would provide challenge grants and capacity-building grants to support endowments that would benefit economically distressed rural counties. With Congress scheduled to write a new farm bill in 2011, we will engage with the Congress and the administration to determine the best options to advance the growth of philanthropy in rural America. This could include legislative language and/or congressional directives to the Department of Agriculture.

Support the PRI Promotion Act.

The Council supports federal legislation that would create a timely and consistent process for foundations to request IRS approval prior to making program-related investments (PRIs) involving low-profit limited liability companies (L3Cs) and other business entities.

 **ADVOCACY ISSUES** are not among the Council's top legislative priorities, but the Council considers such issues important to the field and thus takes a position on them. Advocacy issues will consume appropriate staff time and resources, and the Council either may take a leadership role or participate through colleague organizations or coalitions. Advocacy issues may become "action issues" as developments warrant.

Expand and extend the IRA charitable rollover.

The Council supports expansion of the IRA charitable rollover to include gifts to donor advised funds, supporting organizations, and private foundations; gifts above \$100,000; and planned gifts. We also support the reinstatement and extension of the IRA charitable rollover so it applies to the 2012 tax year and beyond.

Support Pension Protection Act reforms.

Improving reforms within the Pension Protection Act related to donor advised funds and supporting organizations remains a high priority for the Council. The anticipated release in 2011 of a Treasury Department study provides an opportunity to pursue legislative and regulatory changes to address several key issues:

- Permit scholarship programs of civic organizations and similar groups to operate as they have in the past without being subject to rules for donor advised funds.
- Amend the expenditure-responsibility rules for donor advised funds so they apply only to *grants* to non-charities and not to *distributions*.
- Exempt funds created by public charities and governmental entities from the definition of “donor advised fund.”
- Permit reasonable compensation to disqualified persons of supporting organizations.
- Eliminate the excess-business-holding rules for donor advised funds.
- Permit payment of donor pledges from donor advised funds as long as the donor receives no benefit.

Exempt hedge fund investment income from UBIT.

The Council supports changing the tax code to equalize the application of the exception to the debt-finance income rules that would allow all tax-exempt entities to invest in hedge funds and similar investment partnerships without being subject to unrelated business income tax (UBIT). The exception is modeled on the exception to these rules that currently exempt pension funds and universities from UBIT when they invest in debt-financed real estate. However, this exception would be available to all tax-exempt entities, including foundations.




MONITORING ISSUES are issues the Council educates and informs members about to help them stay abreast of new developments. Monitoring issues may include matters not “ripe” for federal legislation, topics the Council believes are inappropriate for federal legislation to address, or positions that are of secondary importance or matter more to other organizations that are taking a leading role.

Retain 5 percent as the appropriate “payout rate” for private foundations.

Section 4942 of the tax code establishes a mandatory payout for all private foundations to ensure they make annual distributions to advance their charitable purposes. So that foundations may retain enough of their investment income to offset the long-term erosive effects of inflation, the rate was established at 5 percent based on long-term (40-year) average investment returns (8 percent) and inflation (3 percent). The Council opposes any arbitrary adjustments to the qualifying distribution rate that are not supported by commonly accepted data.

Oppose arbitrary limits on administrative expenses and compensation.

Reasonable compensation and other administrative expenses are necessary to ensure philanthropic institutions are well-run, efficient, and accountable in advancing their charitable missions. The Council strongly opposes excessive compensation and unreasonable administrative expenses and supports legislative and regulatory efforts to stop abuses. However, the Council opposes arbitrary limits on compensation and administrative expenses. The Council also opposes efforts to exclude such payments from counting toward the mandatory payout for private foundations, as long as abuses are absent.

 **REGULATORY ACTIVITIES** that concern the philanthropic world are on the Council's agenda for 2011. Below are the top regulatory priorities:

Monitor community foundation audits.

Following on compliance-check questionnaires sent to community foundations in August 2007, the IRS began audits of community foundations in the last quarter of 2009. We are tracking these audits and will provide support if issues emerge that affect the field as a whole. The IRS is planning about a hundred audits; 22 were underway or nearly complete as of November 2010.

Global philanthropy.

Through various initiatives, the Council seeks to improve the legal and regulatory environment for philanthropy in a global context, develop models to increase collaboration in global philanthropy, and identify opportunities to engage on global issues with leaders in multilateral nongovernmental organizations and with governments. Toward those goals, the Council will do the following in 2011:

- 1.** Continue to seek a resolution of the excess regulations known as Treasury Guidelines that prohibit funding of terrorism but impede proper activities by most funders and charities.
- 2.** Continuing work to create a centralized source for determinations that a foreign nongovernmental organization is the equivalent of a domestic public charity. This involves revisions to Revenue Procedure 92-94 establishing standards under which the IRS may issue private-letter rulings allowing grantmakers to rely on equivalence determinations made by staff of a centralized repository. This may require legislative action in 2011, as the agencies do not feel comfortable making these changes without such support.
- 3.** Provide support for the Global Philanthropy Leadership Initiative and its task force on legal and regulatory issues.

The Council's Legal Services and Public Policy Department welcomes your questions or comments. Please contact us at govt@cof.org or 703-879-0600.



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