



ISSUE PAPER

## Philanthropic Facilitation Act of 2011

**Position:** The Council on Foundations supports federal legislation that would encourage transparency and consistency by directing the IRS to respond promptly to ruling requests from foundations seeking to make program-related investments, and to otherwise facilitate such voluntary ruling requests.

For more information, contact the Council's  
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**Background:** Under current tax law, private foundations may count investments made primarily to further programmatic goals toward their minimum payout obligation even if made in a for-profit entity, such as a local newspaper or key local employer, provided that the investment is primarily charitable in nature and not merely for the production of income. As foundations seek to leverage their charitable assets more efficiently, these Program-Related Investments (PRIs) are an increasingly attractive tool. 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 PRIs to address pressing social problems.

Foundations seeking to ensure compliance with applicable tax law may voluntarily seek rulings from the IRS that proposed investments meet the criteria for PRIs. However, in practice, the ruling request process is plagued by excessive or indefinite delays, and is often unworkable.

**Proposal:** The Council supports enactment of the "Philanthropic Facilitation Act of 2011", federal legislation which would refine the current process for PRI ruling requests so that it will serve its intended purpose and facilitate appropriate investments. The legislation would require the IRS to rule, favorably or unfavorably, on PRI ruling requests within 120 days. Also, once a determination has been made that investments in an entity qualify as program-related investments, organizations making such investments would be entitled to rely on the determination, unless and until the IRS publishes notice of revocation. Under the legislation, the ruling request process would remain voluntary, and the criteria for PRIs would remain unchanged.

**Rationale:** PRIs present an innovative means for philanthropy to address critical needs in the communities they serve. Yet, because of the complicated rules relating to PRIs, and the significant penalties for noncompliance, foundations often are unable to utilize this important tool without a definitive IRS ruling that they may do so. Improving the process for PRI ruling requests also would promote consistency and efficiency.

**Consistency:** Because IRS ruling requests often take significant time, or are not acted upon at all, 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 rules relating to PRIs are interpreted and applied.

**Efficiency:** Under current law, each foundation interested in participating in a PRI must make seek a separate determination that the investment is permissible. Enabling multiple entities to rely on an IRS determination will facilitate needed investments in PRIs which the IRS has found to meet all applicable criteria.

**Legislative Activity:** No legislation has been introduced on this subject.

**We Need Your Help:** The Council on Foundations is currently working to enact the Philanthropic Facilitation Act of 2011 in the 112<sup>th</sup> Congress. If you are interested in supporting this legislation, please contact Chatrane Birbal of the Council at [cbirbal@cof.org](mailto:cbirbal@cof.org).

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