Indiana Philanthropy Alliance

Champion. Support. Connect.

2019 Public Policy Agenda (approved 12.7.18)

Indiana's philanthropic sector plays an important role in promoting and supporting the quality of life in this state. The more than 1,200 family, independent, community, and corporate foundations, corporate giving programs and other grantmaking entities annually distribute more than $1.6 billion in grants to support a broad range of health, educational, cultural, human service, environmental, and other causes, with 76% going to Indiana-based organizations.

Indiana Philanthropy Alliance (IPA) strives to be the premier resource for networking, education, information and knowledge, and advocacy on behalf of organized philanthropy in Indiana. IPA recognizes that philanthropy is affected by public policies that relate directly to charitable giving and the nonprofit sector, as well as those that relate to issues that are addressed by grantmaking. As a nonprofit membership association of grantmakers and individuals supporting philanthropy, IPA advances philanthropy by:

- educating members about public policy issues that can affect the nonprofit sector;
- educating public officials about the role of foundations as stewards of resources for the public good to strengthen and improve the health and vitality of communities;
- proactively developing relationships with public officials to ensure they recognize organized philanthropy and IPA as key constituents in their decision-making process;
- and by advocating for public policies that promote effective philanthropy and build stronger communities.

GUIDING PRINCIPLES

IPA's work in public policy is guided by these basic principles:

Education of policymakers about the nature and importance of the nonprofit and philanthropic sectors

IPA builds an informed and supportive community of policy makers through regular dialogue, education, information and advocacy; and will work with others in the nonprofit and philanthropic sector to advance this goal.

Effective management and governance of foundations and corporate giving programs

IPA supports public policies that promote effective management of charitable resources and supports values of transparency and ethical conduct, responsible philanthropy and corporate giving, and reasonable access to information. IPA encourages voluntary efforts of self-regulation within the sector and supports appropriate external enforcement agencies for nonprofit compliance and oversight.

Necessity of an advocacy role for the nonprofit community
Advocacy, within certain constraints, is legal for nonprofit organizations and conducive to an informed, healthy and strong democratic society. IPA supports the advocacy rights of nonprofits and believes that they can and should participate in public policy dialogue that affects their organizations, communities, and the people they serve. IPA supports public policy efforts that safeguard these advocacy rights without undermining the public's trust in the nonprofit sector as nonpartisan community problem solvers.

Supportive tax policy for private foundations and public charities
IPA supports tax policy that encourages the growth, maintenance, and vitality of private foundations and public charities.

Preservation of charitable deductions and strengthened tax policy supports for nonprofit organizations
IPA supports the preservation of charitable deductions as an important tool to encourage taxpayer contributions to nonprofit organizations. Respecting donors' choices, IPA supports tax policies that broaden the incentive for all donors to give to charities of their choice without influence, restriction, or inequitable treatment.

Building stronger communities
IPA recognizes that systemic community change requires partnership with government and other leaders, leveraging resources and public authority in order to understand complex problems and scale promising solutions. In service of building stronger communities, IPA educates members about policies that impact quality of life, provides opportunities for members to convene with policymakers, and supports member affinity groups or initiatives that address specific community needs.

2019 Public Policy Positions

The following are specific areas of public policy that IPA will monitor, offer perspective, and when appropriate take active policy positions when discussing with elected officials at the local, state, and national levels during 2019.

FEDERAL ISSUES

Tax Policy

Congress passed the first major overhaul of tax policy at the end of 2017, with some elements having the potential to negatively impact charitable giving and the philanthropic sector, as well as the broader nonprofit sector. Efforts for additional tax policy revision continue. These fall under a range of issues that IPA is following, and, in some cases, taking an active advocacy position:

Charitable Deductions

Position: Support making the charitable deduction available to all taxpayers regardless of their tax rate or whether they itemize, to incentivize and recognize the giving of all Americans.

Rationale: The charitable deduction encourages charitable giving, benefiting communities across the country. The passage of the Tax Cuts and Jobs Act in 2017 (which included the near doubling of the standard deduction and a proposed cap on state and local tax deductions) raised concerns about a drop-off in itemizing as well as charitable giving. According to a recent article in POLITICO Morning Tax (10/29/18), the data on impact will not be available until the end of 2019 or later, but will likely show a decrease in charitable giving from low- and moderate- income givers.

Despite an improved economy, many Hoosiers continue to struggle with everyday needs in their life. A reduction in charitable giving could significantly reduce services and the quality of life for Indiana residents. **This problem could be solved by allowing a universal charitable deduction that would allow all taxpayers to claim the charitable deduction. A 2017 research study conducted by the IU Lilly Family School of Philanthropy found that this could INCREASE giving by $4 billion a year.**

Pending Regulation Impacting Tax Credits/Deductions

In August 2018 the U.S. Department of Treasury and the Internal Revenue Service issued Proposed Regulation §1.170A-1(h)(3), which provides that a “taxpayer’s charitable deduction under section 170(a) is reduced by the amount of any state or local tax credit that the taxpayer receives or expects to receive in consideration for the taxpayer’s payment or transfer.” This general rule only applies to state or local tax credits that exceed 15% of the taxpayer’s cash payment or the fair market value of property contributed by the taxpayer. The proposed regulations provide a different rule for state and local programs that provide a state or local tax deduction instead of a credit. Under the proposed regulations, a taxpayer is not required to reduce their charitable deduction by the amount of the deduction. However, if the state or local tax deduction exceeds the amount of the taxpayer’s cash payment or fair market value of the property contributed, the taxpayer must reduce their charitable deduction by such excess. Public comments have been accepted by the IRS but final regulations have not yet been published. **IPA will monitor this issue to assess the potential impact on charitable giving.**

IRA Charitable Rollover

Position: Support enhancing the IRA charitable rollover by dropping the age threshold and expanding the organizations eligible for transfer of the IRA distribution to donor advised funds, supporting organizations and private foundations.

Rationale: IPA has actively supported extending and expanding the IRA charitable rollover since its inclusion in The Pension Protection Act of 2006 (PPA). PPA allowed taxpayers ages 70 ½ or older to transfer up to $100,000 annually from their IRA accounts directly to charity without first having to recognize the distribution as income. This provision was made permanent in legislation passed by Congress - *Protecting Americans from Tax Hikes (PATH) Act of 2015*. However, current statute prohibits contributions to donor advised funds, supporting organizations and private foundations.

The *CHARiTY Act of 2017 (sponsored by Sen. John Thune, R, SD; Indiana Sen. Joe Donnelly (D) is a cosponsor)* proposes extending this provision to allow taxpayers who are at least 70½ years of age to exclude from their gross income up to $100,000 in distribution from an individual retirement plan to a donor advised fund. No action on this bill has taken place in 2018, but IPA joins others in the field in support of dropping the age threshold and expanding the types of organizations eligible for transfer to include donor advised funds, supporting organizations, and private foundations. IPA supports the position that these actions would increase charitable giving and promote more equitable tax policy.

Excise Tax on Private Foundations

Position: Support simplifying the private foundation excise tax on net investment income to a flat rate and dedicate use of the revenue raised for its original intended purpose, to provide funds for the IRS to regulate the nonprofit sector.

Rationale: Under current law, private foundations that are exempt from federal income tax are generally subject to a 2% excise tax on their net investment income. However, the tax is reduced to 1 % in any year in which the foundation's percentage of distributions for charitable purposes exceeds the average percentage of its distributions over the five preceding taxable years. This two-tiered structure causes problems because:

- It can actually deter foundations from increasing their charitable giving. Many foundations set spending policies at 5 to 6 % to preserve the long-term value of their endowments. But if they substantially increase their grantmaking in a particular year, in support of — for example, Hurricane Harvey relief or other types of natural disasters — they also increase the five-year average on which the tax rate is determined. As a result, the foundation pays tax at the 2% rate for the next five years. A flat rate could eliminate this perverse incentive that may deter a foundation from increasing grantmaking during times of great need.
- The calculation of distributions necessary to qualify for the reduced tax is complex and depends on multiple variables and assumptions that can change dramatically from year to year. The resources (time and money) that must be spent to ensure the amount spent by the end of the year is neither too high nor too low takes away from what could otherwise be allocated to grantees.

The *CHARiTY ACT of 2017* proposed to reduce the rate from 2% to 1%. Some in the sector have expressed concern about a 1.4% flat rate because it would be a tax increase for many foundations. While IPA supports a flat rate overall, a 1% rate is preferred. No further action has yet been taken on this legislation.

Federal Estate Tax

Position: Closely monitor any legislation that proposes elimination of the federal estate tax to consider impact on charitable giving.

Rationale: With the passage of the Tax Cuts and Jobs Act last year, every person may now leave or give away up to $11.2 million without owing any estate tax. As a practical matter, that means that under the new rules about 99.9% of all estates will NOT owe any **federal** gift/estate tax. The exemption amount will rise with inflation each year. However, many charity experts say the estate tax is a major incentive for wealthy people to give away their fortunes, and its elimination would hit big institutions like hospitals and universities especially hard because they rely the most on large bequests from wealthy donors.

An analysis by the Center on Budget and Policy Priorities, a Washington think tank, found that just 50 small businesses and small farm estates would have faced the estate tax in 2017. A 2004 Congressional Budget Office study found that eliminating the estate tax could result in a decline of charitable contributions of up to 12 %. Getting rid of the estate tax would cost the U.S. Treasury nearly $270 billion in lost revenue over 10 years.

Donor Advised Funds (DAFs)

Position: Promote the availability of donor advised funds as a viable charitable giving vehicle (with operating policies that are consistent with National Standards for Community Foundations). Support legislative reforms for DAFs that help to promote ethical and accountable management of the charitable resources in these funds for the public good without compromising the privacy of the donor, and oppose legislative reforms that inhibit or diminish the reasonable growth and effectiveness of donor advised funds.

Rationale: Donor advised funds (DAFs) are a unique philanthropic tool that allows donors to establish charitable funds at institutions, such as community foundations, and remain involved in supporting the issues and causes they care about. When a DAF is established, donors relinquish personal control of the funds to the community foundation, which then oversees and manages these funds on behalf of the families, groups, or individual donors. All funds distributed from these DAFs must be used for qualified, charitable purposes.

While initially proposed in last year's tax reform legislation, language that would require DAF-sponsoring organizations to annually disclose their policies for inactive funds and disclose the average amount of grants made from funds they manage, was not included in the final bill that passed.

The *CHARiTY ACT of 2017* proposes to modify the disclosures that tax-exempt organizations sponsoring DAFs must make each year so that they include the number of DAFs that had been in existence for 36 months at the end of the tax year, as well as the number of those DAFs that made grants during that same 36-month period. Additionally, the DAF-sponsoring organization would be required to indicate whether it has a policy with respect to DAFs that become inactive, dormant, or failed to make distributions; describe its policy for responding to such funds; and indicate whether the sponsoring organization monitors and enforces that policy. No action on the bill has taken place in 2018, but IPA generally supports the intent of the legislation.

<u>Foundation and Nonprofit Regulation</u>

Unrelated Business Income Tax (UBIT) on Nonprofits

Position: Support a delay on implementation of the new requirement in the Tax Cuts and Jobs Act that subjects certain employer-provided fringe benefits (such as transportation and on-premises gyms and athletic facilities) to a 21% unrelated business income tax (UBIT).

Rationale: Under Section 512(a) of the Internal Revenue Code, nonprofits are subject to tax on gross income, minus directly connected expenses, for activities that constitute an "unrelated trade or business." The Code offers a three-pronged test for determining whether a particular activity is an "unrelated trade or business." The activity must be (1) a trade or business that is (2) regularly carried on, and (3) isn't substantially related to the organization's exempt purpose. There are many exceptions to what activities qualify as "unrelated trade or business," including exceptions for volunteer services. Whereas under previous law, separate trade and business activities could be used to offset UBIT liability (by offsetting losses with income), under current law, there are fewer opportunities to do so—with the only offsets allowed being between different tax years for the same trade or business activity.

The new law disproportionately hurts tax-exempt employers by requiring them to pay a new unrelated business income tax (UBIT) on the value of these benefits. The American Society of Association Executives (ASAE) contends this is a new tax on an expenditure, not a revenue-generating activity, and the lack of guidance from the IRS for tax-exempt entities in this area has also created a lot of confusion and conflicting opinions about how nonprofits should go about calculating their tax liability to comply with the requirement.

Nonprofit Regulation

Position: Support public policies that promote effective management of charitable resources, appropriate transparency, ethical conduct, responsible philanthropy and corporate giving, the diversity and independence of the sector and reasonable access to information without placing undue or unreasonable burden on nonprofits.

Rationale: IPA encourages **voluntary efforts of self-regulation within the sector** and supports appropriate external enforcement agencies for nonprofit compliance and oversight. Government-imposed requirements on foundations for specific collection of data based on certain demographic information, for example, are seen as overly burdensome without providing a meaningful assessment of the impact of the organization's work.

Private Foundation Distribution Requirements

Position: Support an appropriate payout level for private foundation distributions that allows for the availability of funds for distribution in perpetuity.

Rationale: Proposals to increase the required distribution by private foundations beyond the current 5% IRS regulation or to change the types of expenses that are allowed to be included in the calculation have been considered by Congress in recent years. Current tax reform proposals do not include such language, but IPA will continue to closely monitor legislation as it moves forward. Previous national studies have shown that a 5% payout is optimum for supporting the long-term position of a foundation and ensuring the availability of charitable grantmaking for the future. Some foundations choose "sunset" provisions that direct the full distribution of assets within a selected timeframe, but **such policies should be the decision of the foundation's governing body, not imposed by Congress.**

Protection of Endowed Gifts

Position: IPA will work with policymakers to support current laws protecting and promoting endowed gifts within the philanthropic sector.

Rationale: IPA believes that, through their philanthropic endowments, foundations are able to operate with a longer-term focus. Foundations thrive when policies allow them to be agile, autonomous and different from government and business sectors. The perpetuity of endowments ensures that private resources will continue to be available to address difficult social issues and the evolving needs of society, especially when other resources may not be available. Policymakers should preserve foundations' ability to advance their charitable missions and should acknowledge the importance of philanthropic endowments recognizing that these endowments are critical to sustain communities. They help underwrite long-term support of charitable institutions, use public and private resources, and provide a base for the development of new and effective philanthropic tools that will support the charitable sector in the future.

Nonprofit Advocacy

Position: Support the rights of charitable organizations to continue their involvement in public policy debates. Oppose additional limitations on the ability of nonprofit organizations to participate in the public policy process, including legislation or rules that:

- **place more burdensome reporting and disclosure on nonprofits than on business or governmental bodies;**
- **restrict the ability of nonprofit agencies that apply for or receive government funds to use non-governmental funds to conduct nonpartisan advocacy, lobbying or other legitimate program activities that further their charitable missions;**
- **unnecessarily limit public policy input on the part of nonprofit organizations that would otherwise be allowed to participate in public discourse.**

Rationale: Advocacy, within certain constraints, is currently legal for nonprofit organizations and is conducive to an informed, healthy, and strong democratic society. IPA supports the advocacy rights of nonprofits and believes that nonprofits can and should participate in public policy dialogues that affect their organizations, communities, and the people they serve.

2020 Census

Position: IPA supports a fully funded, accurate and cost-effective 2020 Census.
Rationale: The federal decennial Census assures a fair, proportionate representation in Congress. It helps community and business leaders plan to address emerging social service, business, and infrastructure needs. Federal dollars are also used for education, healthcare, housing, food, income security, and rural access to broadband. In Indiana, dollars received as a result of the 2010 Census are estimated at approximately $1,600 per person, or $11 billion total

The upcoming 2020 decennial census required by the Constitution is anticipated to be the largest census and most digitally advanced count in U.S. history. Despite these expectations, the Census Bureau's planning and preparation cycle has been severely hindered by unfulfilled budget requests, forcing the delay and even cancellation of critical testing of new cost- saving technology. In 2018, the Census is supposed to be running an end-to-end test, which is essentially a dress rehearsal for 2020 where all new technologies and enumeration methods will be tested. However, because of the historic underfunding, operational testing in only one urban site is being planned, and testing planned for all sites in rural or suburban communities has been cancelled. This introduces unprecedented risk to successfully modernizing the census in 2020 and potentially puts numerous populations at risk of not being accurately counted.

Position: IPA supports withdrawing the citizenship question from the proposed 2020 Census questionnaire.

Rationale: IPA shares a commitment to reliable and accurate data as a necessary foundation for a well-functioning government, robust civil society, and thriving business sector. We rely on accurate census data to help identify community needs and prioritize grantmaking, and our members' nonprofit grantees rely on accurate census data to serve communities - especially those that are hard-to-count - through their work on various issues including poverty, health care, criminal justice reform, racial equity, education equity, and infrastructure improvement.

In March 2018 the Census Bureau was directed to add a question to the 2020 Census form, which would ask the citizenship status of every person in America. Adding this question about citizenship to the census form will discourage participation and threaten the accuracy of the count, especially in already "hard-to-count" communities.

Former Census Bureau Directors from both political parties, as well as Census Bureau executive staff and its Scientific Advisory Committee, have disagreed with the decision to add a citizenship question without necessary testing, noting that it would endanger the quality of all census data because it could discourage census participation among the tens of millions of households with non-citizen members. It could also have unknown adverse consequences for other populations' participation, and possibly influence the accuracy of responses to other census questions, such as those collecting data on race and ethnicity.

Census undercounts also result in increased costs to the federal government. According to Census Bureau estimates from 2017 prior to adding the citizenship question, every one percent decrease in the self-response rate increases the cost of the count by $55 million. A conservative estimate of a five percent drop in self-response from adding the citizenship question would add an additional, unplanned $275 million cost to census operations, as the Constitution requires an actual count of every person.

Getting the 2020 Census right is important for all American communities – particularly those most likely to be undercounted. The citizenship question compromises the Census Bureau's constitutional responsibility to conduct a fair and accurate count of every person living in the U.S.

Post-Graduation Scholarships

Position: Support allowing foundations to administer post-graduation scholarship programs through a measure like the Workforce Development Through Post-Graduation Scholarships Act (H.R. 6486).

Rationale: A post-graduation scholarship is a type of charitable grant that foundations would make to attract individuals with career skills needed in a particular region to make their homes and build their careers in that community. It would function much like a traditional scholarship, but would pay off a portion of the student loans held by an individual who has already completed a degree or technical program, qualifying him or her to work in a chosen career field that is needed in a community. As with traditional scholarships, these programs would establish eligibility requirements as well as a process to verify that those requirements continue to be met through the duration of the scholarship award agreement, and the payments would likely be made directly to the loan provider and not to the individual. Foundation grants made for a charitable purpose are already exempt from income tax for the recipient—whether it's a grant to an individual as a scholarship, or a grant to any other entity for a charitable purpose. In some cases, the scholarship might only cover a fraction of an individual's student loans—leaving the individual responsible for paying any remaining amount.

On July 24, 2018, Representatives Darin LaHood (R-IL) and Terri Sewell (D-AL) introduced the Workforce Development Through Post-Graduation Scholarships Act (H.R. 6486)—which would allow charitable foundations to administer post-graduation scholarship grant programs, subject to all the same requirements and restrictions as traditional scholarships are under current law. The goal of this legislation is to combat "brain drain," stimulate regional economic growth, and help address the growing student debt crisis. The bill would apply to student loans at both for-profit and nonprofit institutions and would not exclude individuals who chose to continue their education by working toward additional or higher certifications or degrees. According to the Council on Foundations, the cost to the federal government is expected to be very low, if at all.

Philanthropy Caucus

Position: Support efforts to encourage members of the Indiana Congressional delegation to join the House and Senate Philanthropy Caucuses.

Rationale: The work of the philanthropic sector affects the lives of millions of Americans, so it is critical that Indiana foundation leaders take an active role in shaping public policy by building relationships with their members of Congress. Lawmakers need to know more about the work that foundations and corporate giving programs do in their states and districts. The Bipartisan Philanthropy Caucus will:

- inform members of Congress and Congressional staff about the important role that foundations play in our communities and around the globe
- identify issues of mutual interest to the philanthropic sector and lawmakers
- raise awareness about legislative issues affecting foundations.

STATE ISSUES

IPA will continue to work with its membership to inform and educate Indiana's elected officials about the important role that Indiana's grantmaking community serves to enhance Indiana's communities and impact the lives of all Hoosiers and advocate for state policies that promote effective philanthropy and build stronger communities.

Promotion of Charitable Giving

Position: Support income tax credits, deductions and other vehicles that provide an incentive for increased charitable giving.

Rationale: In keeping with IPA's mission to champion, support and connect members as they transform Indiana through effective philanthropy, we support efforts that increase the availability of grantmaking funds. We specifically support legislation that provides a tax credit against adjusted gross state income tax liability for donations to a qualified endowment fund at an eligible Indiana community foundation.

State Budget

Position: Monitor and, if necessary, take action on state or local proposals that shift financial responsibility for needed programs to philanthropy, that alter the state budget in ways that place unfair or undue burden on nonprofits and communities, or that unduly dismantle the state's responsibility for investing in local communities. Work in partnership with nonprofit allies to actively educate public officials about the role of philanthropy and the capacity of philanthropy.

Rationale: State budget cuts to both government services and nonprofits put tremendous pressure on foundations and nonprofits alike. In order to manage expectations about philanthropy's ability to fill gaps created by state budget cuts both in government services and in grants to nonprofits, a proactive strategy to develop productive relationships with public officials is warranted. It is critical to obtaining positive outcomes for the larger community, as well as the nonprofit and philanthropic sector.

Tax Issues

Position: Continue to promote tax exemption for nonprofits. Increasingly throughout the nation, local and state governments are imposing a variety of fees and special taxes impacting the nonprofit community. IPA will closely monitor state and local legislation that would extend Indiana sales or property taxes, or user fees in lieu of taxes, to nonprofit 501(c)(3) organizations.

Rationale: There are several historic reasons for providing tax exemptions to nonprofits. Changes in tax policy should be made only on a demonstration that these rationales no longer apply:

- *Fairness* argues that the tax exemption compensates nonprofits for the resources and opportunities that are closed to them by state and federal regulations.
- *Market gaps* argue that the tax exemption is in recognition of the fact that there are some goods and services that the market cannot supply.
- *Subsidy* argues that nonprofits serve minority interests that are not sufficiently served by government action, and which government would have to provide if the nonprofit sector did not.
- Regulation argues that the special regulatory treatment of nonprofits is in return for special tax treatment.

Nonprofit Regulation

Position: Support public policies that promote effective management of charitable resources, appropriate transparency, ethical conduct, responsible philanthropy and corporate giving, and reasonable access to information without placing undue or unreasonable burden on nonprofits.

Rationale: IPA encourages voluntary efforts of self-regulation within the sector and supports appropriate external enforcement agencies for nonprofit compliance and oversight.