COUNCIL *on* FOUNDATIONS

April 15, 2015

The Honorable Chuck Grassley
Co-Chairman
Individual Income Tax Reform Working Group
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Mike Enzi
Co-Chairman
Individual Income Tax Reform Working Group
219 Senate Office Building
Washington, DC 20510

The Honorable Debbie Stabenow
Co-Chairwoman
Individual Income Tax Reform Working Group
219 Senate Office Building
Washington, DC 20510

Dear Senator Grassley, Senator Enzi, and Senator Stabenow:

Thank you for your work with the Senate Finance Committee Individual Income Tax Reform Working Group ("Working Group") and for your leadership in taking on the great challenges presented by comprehensive tax reform. To help your efforts to reform the Internal Revenue Code, the Council on Foundations ("Council") wishes to share its suggestions relating to specific tax policy provisions that have a significant impact upon the philanthropic sector. The Council believes that it is critical that tax reform improves and does no harm to these provisions so that the philanthropic sector can do its part to help meet the needs of the communities we serve.

The Council has a membership of over 1,500 grantmaking foundations and corporate giving programs which collectively grant and invest billions each year to help meet the many needs of the communities they serve. As the voice of philanthropy nationally, the Council works to create an environment in which philanthropy can grow and thrive and seeks to promote policies that enable the philanthropic sector to work most effectively.

We affirm the strong commitment of the Council and the philanthropic community to do our part to help address the grave fiscal challenges confronting our nation. In particular, the Council recognizes that in an era of fiscal austerity, the philanthropic sector is called upon to step up to meet the needs of some of our most vulnerable communities and neighbors. At the same time, the Council urges you and your colleagues to consider that significant community needs and diminishing public dollars create increasing demands and strain on our charitable organizations. These organizations look to philanthropy—both organized structures such as foundations and individual American donors—to support their efforts. As

you consider tax reform measures, we implore you to recognize that the charitable sector cannot fully step in to do more if changes to tax policy result in fewer dollars to charities.

The Council sees clearly that its members are committed to meet the challenge of increased needs. In 2011, the last year for which complete data is available, foundations contributed through grants and other means $41.67 billion to help meet the needs of the communities they serve. From 2005 through 2011, charitable contributions from individual donors actually declined—understandably so in view of the great economic hardship many Americans faced and a concomitant decline in median household incomes. Yet, over that same period, giving from foundations increased a remarkable 28.6 percent. In fact, foundation giving during that period totaled $273.24 billion, a huge commitment which made a positive difference in virtually every community in our nation. Because of the increased giving from foundations, total charitable giving over that period, which included the worst recession since the 1930s, increased.

During 2010 specifically, when community needs were highest, many donors saw a drop in their incomes and foundations saw a decline in their invested assets. Yet, because endowed philanthropic tools like Donor Advised Funds—managed by community foundations—allow donors to guide funds to future causes with intentionality, foundations were able to continue to make gifts during this difficult economic time to local housing programs, workforce development efforts, and family service organizations. If foundations had not increased giving dramatically, let alone given a constant or even reduced amount, total charitable giving would have declined at a time when resources were most needed. Tax policy will have a significant effect on whether foundations can sustain that level of grantmaking in coming years while maintaining the philanthropic legacies many foundations represent.

Our members are committed to help not only by offering their own resources, but by identifying ways in which to do more with less. Philanthropy has a proven record of using resources in highly innovative ways to achieve solutions to intractable problems, and the Council's members have realized dramatic results by leveraging their own resources to implement those innovations on a large scale. Philanthropy creates thriving communities by finding new ways to create jobs, spur community growth, support the vulnerable, and empower your constituents to improve their lives.

Philanthropy has a unique ability and freedom to take risks and innovate in ways government and for-profit entities cannot. Philanthropic organizations provided the charitable dollars and innovative thinking behind the efforts to conquer polio in the United States, eliminate smallpox worldwide, paint stripes on traffic lanes to prevent accidents, facilitate the creation of national parks and nature preserves, develop private colleges and universities, and so much more.

We ask you to pursue changes in tax policy that encourage—not stifle—the philanthropic tools that foundations rely on to invest in causes, programs, research, and activities that are essential for thriving communities.

Maintain the Full Value of the Charitable Deduction

The Council's top legislative priority is to preserve the full value of the charitable deduction. Any change in current law relating to the charitable deduction provided by Internal Revenue Code section 170 would compromise philanthropy's capacity to serve. As a result, the communities and individuals who rely upon philanthropy to help meet their needs and realize their aspirations would be denied crucial help at a time when they have few other places to turn.

The deduction for charitable contributions is a long-standing recognition of the value our society places on the selfless act of charitable giving. This deduction is unique among tax incentives in that it promotes behavior that does not primarily benefit the person undertaking the action—rather, the rewarded action benefits unrelated persons, communities, and society as a whole. Unlike, for example, state and local taxes, charitable contributions are not required and are a selfless, voluntary act of giving by a donor. Unlike mortgage interest, which results from a contractual obligation, charitable contributions do not relate to an expenditure which benefits the person claiming the deduction. Every other deduction either mitigates the cost of an expenditure that must be made in any event, or subsidizes the cost of an expenditure relating to the consumption or investment of the taxpayer. Conversely, a charitable donor never benefits financially from making a contribution.

Americans are unquestionably generous by nature, contributing more money to charity each year than the GDP of some wealthy nations (*e.g.*, Denmark, Israel). Research indicates, however, that the deduction for charitable contributions does in fact promote giving—particularly with respect to the amount donated. For example, data derived by the Tax Policy Center at the Urban Institute and Brookings Institution show that under current law a $1 contribution to charity on average costs the giver $0.77. According to the research, the combined impact of changes to the value of the charitable deduction proposed by former Chairman Camp in his Tax Reform Act of 2014 would increase the average cost of a $1 contribution to $0.88—an increase of more than 14 percent. All else being equal, increasing the cost of a charitable contribution will reduce the amount contributed.

Other data supports this conclusion. In a study regarding the impact of changes to the Internal Revenue Code on charitable giving, the American Enterprise Institute estimated that imposing a cap on the value of charitable contributions (as has recently been re-proposed by President Barack Obama), would lead to an across-the-board decrease in the amount donated each year of 4.35 percent, which, based upon 2011 data of the yearly overall amount of charitable giving in the United States, would amount to a decline in giving of nearly $10 billion.

By any estimate, lowering the value of the charitable deduction would reduce charitable contributions by many billions of dollars in the coming years. Donors do not choose to give to charity because of the tax deduction. However, the deduction very much affects the amount that they are able to give. Basic economics, not to mention simple common sense, indicate that if charitable giving is made more expensive, less charitable giving will take place.

For these reasons, the Council is very concerned about proposals to impede charitable giving by further limiting the charitable deduction beyond the recent reinstatement of the “Pease” itemized deduction phase-out for upper income taxpayers. Additionally, any proposal to limit the value of the deduction for gifts of appreciated property—such as a publicly traded stock that has appreciated in value—to public charities such as community foundations would impede an invaluable fundraising option for these organizations that rely on gifts of appreciated property. Currently, community foundations can offer a fair market value deduction to their donors for these gifts. Limiting the value of this deduction would significantly chill giving and harm local charitable organizations and the people who rely upon their services.

The many hundreds of billions of dollars which foundations have invested in their communities—funds used to provide for a wide range of a community’s needs, ranging from homeless shelters to medical research to education—have been critical to allowing communities to thrive. These funds cannot be replaced by other sources if philanthropy is forced to curtail giving as a consequence of diminished

resources. Not only is government limited by the realities of fiscal austerity, but, as noted, individual charitable giving also has been constrained by economic conditions.

As noted previously, tax policy experts from both sides of the aisle have observed how the charitable deduction is unique among tax deductions in that it encourages behavior that is both discretionary and is solely for the benefit of others. Because the charitable deduction is unique, sponsors of legislation to codify the "Buffett Rule", including S. 321 and H.R. 766, have taken care to single out charitable contributions from other tax deductions, and to preserve their treatment under current law. Similarly, Martin Feldstein, who served as chairman of the Council of Economic Advisers under President Ronald Reagan, wrote in a February 22, 2013 op-ed in *The Wall Street Journal*, "The existing charitable deduction in particular deserves to be maintained. Unlike other deductions and exclusions, it does not benefit the taxpayer but provides important private support for universities, religious and cultural institutions, and hospitals." Though the Council takes no position on either the Buffett Rule or positions advocated by Professor Feldstein, the Council agrees that, whatever course this Working Group, the Senate Finance Committee, and Congress choose to take, current law regarding the charitable deduction should be preserved.

Whether by denying donors the full value of their charitable contribution tax deduction by imposing a dollar cap on the amounts which may be deducted, capping at a marginal rate the value of the deduction, or imposing a floor on the ability to deduct charitable contributions, reducing the value of the charitable tax deduction would lead to a significant reduction in contributions. Although the Council opposes any change in current law relating to the charitable deduction, it strongly supports any efforts that would make current law work better. In particular, the Council is committed to combating any abusive practices that permit bad actors to potentially game the system. The Council stands ready to assist your Working Group in identifying and addressing any concerns, and ensuring that enforcement measures effectively target abusive behavior that could both tarnish the sector and harm those whom we serve.

Make the IRA Charitable (and Other Charitable Extenders) Permanent Law

Internal Revenue Code section 408(d)(8) permits donors to make tax-free distributions from their individual retirement plans for charitable purposes. This provision is currently expired but has been repeatedly extended (retroactively, at times). The America Gives More Act of 2015, H.R. 644, permanently extends this provision. H.R. 644 also permanently reinstates the enhanced deduction under Internal Revenue Code section 170 for charitable contributions of food inventory, permanently reinstates a rule allowing enhanced contribution limitations for qualified conservation property, and reduces and streamlines the private foundation excise tax. The Council applauds the passage of H.R. 644, and respectfully requests that members of the Senate to bring H.R. 644 to the floor for a favorable vote as soon as possible.

Passing H.R. 644 would ensure that philanthropic organizations have the means and flexibility to address dramatically growing needs. It also would provide donors greater certainty when planning the timing and amount of their charitable gifts. Certainty is particularly important for donors of modest means, who disproportionately have utilized the IRA charitable rollover. A recent Urban Institute survey of community foundations with total assets of $5 million or more found that over two-thirds (68.9%) of community foundations surveyed reported that gifts have been lost, delayed, and/or reduced as a result of the uncertainty over whether the rollover provision would be renewed by Congress. Local residents making IRA rollover donations to these community foundations included retired businesspeople; school

administrators establishing and funding scholarships; a utility company supervisor starting a fund to benefit energy conservation projects; a physician funding community recreation projects; and a librarian contributing to an agency endowment fund.

In addition to making the provision permanent, the Council also supports expanding the IRA charitable rollover to spur additional charitable giving by eliminating the current $100,000 cap, allowing donors to make rollovers beginning at age 59 ½, and permitting rollovers to supporting organizations, private foundations, and donor advised funds, the latter of which make as much as two-thirds of their grants from community foundations. These changes would help cultivate new sources of support for philanthropy, and greatly enhance the sector's ability to serve their communities.

Preserve Current Law on Donor Advised Funds

The Council wants to ensure that the Individual Income Tax Reform Working Group understands that changes to valuable philanthropic tools, such as donor advised funds, would chill charitable giving and give individual donors fewer options for making charitable gifts. Furthermore, a significant payout requirement on these tools would severely restrict the ability of donors and charitable organizations alike to plan for and execute intentional, future gifts.

Donor advised funds (DAFs) are a unique charitable giving vehicle, allowing donors to establish charitable accounts at vetted public charities, such as community foundations, and remain involved in supporting the charitable causes and issues they care about. Community foundations control the oversight and management of funds on behalf of families or individuals, and in many cases, have the discretion to direct some of the resources to priority causes the foundation identifies.

DAFs are used exclusively for charitable purposes. DAFs engage donors and nurture greater charitable activity in a community. For example, in a recent Urban Institute survey of funds managed by community foundations, 88 percent of surveyed foundations receiving DAF funds reported that their donors participated directly in foundation-sponsored events. In addition, more than 70 percent of foundations reported that the average age of a DAF donor is between 46 and 64 years old. Furthermore, 81 percent of foundations report that their donors remain involved in the foundation or their communities after donating. These survey results highlight the unique ability of DAFs to attract and engage donors and provide an important entry point for long-term community involvement.

The Council also strongly believes in the value of endowed philanthropy. The compulsion to pay out all charitable dollars today in order to address immediate needs is woefully shortsighted. Philanthropy does not think just of the latest development, the next election, or the next business cycle. Rather, foundations must constantly be thinking of the needs of the next generation.

When our country was in the middle of a prolonged recession and community needs were highest, many donors saw a drop in their incomes and foundations saw a decline in their invested assets. However, DAF donors were able to make gifts to local housing programs, workforce development efforts, and family service organizations because they had intentionally made their charitable donation during more prosperous times. Because of their intentional gifts made years earlier with just such an economic downturn in mind, DAF donors were able to continue to give at sustained levels throughout the recession and direct their funds to needs in their communities as they arose.

DAFs are one of many invaluable philanthropic tools that community foundations use to engage donors and connect them with important local causes. The Council respectfully requests that the Working Group recommend that current law with respect to DAFs be preserved to allow charitable organizations like community foundations to continue to utilize this critical tool.

Closing

The Council respectfully asks you to preserve current law regarding the charitable tax deduction. Reducing the charitable deduction—through a percentage limitation, deduction cap, or otherwise—would result in a loss of billions of dollars each year in contributions that help serve the critical needs of our communities. Moreover, making the IRA charitable rollover and other "extender" provisions permanent will encourage additional giving by providing donors with much-needed certainty regarding the tax law. To this end, the Council asks that you support the America Gives More Act of 2015 (H.R. 644). The Council also urges you to preserve current law on donor advised funds to allow donors to help local communities for years to come.

We urge you to bear in mind that the impact of the tax policy changes will primarily be borne not by those individuals with the most resources, but by those with the least—the struggling members of our communities who rely on philanthropy to help themselves and their families meet the challenges of daily life.

Finally, we appreciate that the purpose of organizing the Working Groups was to distribute tax issues among them. In our case, there are issues that bridge the groups. For that reason, we are attaching the comments we have submitted to the Business Working Group as an additional reference.

Thank you again for your leadership in reforming our tax code. The Council on Foundations stands ready to work with you on this crucial task.

Very truly yours,



Vikki Spruill

President and Chief Executive Officer



Sue Santa

Senior Vice President for Public Policy and Legal Affairs