

THE ALLIANCE AND THE DEBATE ON CHARITABLE REFORM **A SHORT HISTORY**

In October of 2003, the Boston Globe ran a series of articles highlighting the outrageous behavior of several private foundation officials – for example, using foundation assets to subsidize family weddings. This series of media articles prompted an investigation by the Senate Finance Committee (SFC) which led to its Staff Discussion Draft (Draft) which proposed sweeping changes to the charitable community in June of 2004.

In addition to several targeted and commonsense reforms, the Draft threatened broad-based changes that many agreed would have a chilling effect on charitable giving in America, including inflicting overly-broad new reporting and regulatory requirements on the entire charitable community, foundations and charities alike. Some of these reforms included:

- Accreditation requirements on tax-exempt organizations;
- Mandatory five-year reviews of organizations' tax-exempt status;
- Stricter liability standards and compliance requirements, similar to those of public corporations
- Limits on types of organizations that foundations are able to give to;
- Radically broadened legal exposure; and,
- One-size-fits-all micromanagement of board composition, governance practice, and certain compensation issues.

Upon release of the Draft, the SFC held a hearing entitled “Charity Oversight and Reform: Keeping Bad Things from Happening to Good Charities.”

In January of 2005, The Philanthropy Roundtable founded the Alliance for Charitable Reform (Alliance). The Alliance was formed as an emergency advocacy initiative to respond to legislative efforts on Capitol Hill targeted at the charitable community and help bring common sense to the charitable reform debate protecting philanthropic freedom in America – particularly from the perspective of smaller, family foundations.

Later that same month, the Joint Committee on Taxation (JCT) released its “Tax Gap” study that enumerated several revenue-raising recommendations of how Congress could begin to bridge the gap between taxes owed and taxes collected – including in the tax-exempt sector. The JCT study underscored many of the SFC’s earlier proposals and recommended additional charitable reforms - some of which were understandable, like increasing penalties on tax cheats, (though increasing the rate of audits so that they are again commensurate with the much expanded non-profit sector likely would be even more effective), while others were more troubling.

As one of its first major events, the Alliance hosted a legislative conference in March in Washington, D.C. with over 100 foundations and charities. Our goal was to educate participants on the pending congressional proposals involving the charitable sector. The Alliance brought in top policy staff involved in the charitable reform debate to address the conference, including Dean Zerbe, from the Senate Finance Committee staff and chief

proponent of the draft, and other high-level staffers from the Senate, House Leadership and the White House.

Throughout 2005, the SFC held hearings to advance legislation in this area, and the Alliance responded with several initiatives:

- In April, the Alliance helped organize over 70 charitable organizations to send a letter to then-Majority Leader Bill Frist about their deep concerns with certain charitable reform proposals under consideration by the Senate Finance Committee that would undermine the role of charities in American public life.
- In May, the Alliance secured 22 Senators' signatures on a "Dear Colleague" letter to Senator Grassley and then-SFC Ranking Member Max Baucus expressing concern over the potential unintended consequences of charitable reform legislation particularly on family foundations and calling for more vigorous enforcement of existing laws.
- In July, the Alliance gathered over 60 members of the charitable community to meet with their Senators and Representatives in Washington about the charitable reforms being considered by the SFC. Other hosts of this event included the American Council on Education, Americans for the Arts, the Association of Fundraising Professionals, and the National Committee on Planned Giving.
- In November, the Alliance hosted a second Washington advocacy event for representatives from more than 75 charitable organizations such as the United Way, Independent Sector, Association of Small Foundations, Young America's Foundation, National Taxpayers Union, and Americans for the Arts. Participants met with their Members of Congress (including 49 Senators) to educate them on the benefits of charitable giving incentives included in the CARE Act, sponsored by Senators Rick Santorum (R-PA) and Joseph Lieberman (D-CT). Participants also discussed how charitable reforms still under consideration by the SFC could actually create disincentives to charitable giving. Immediately following this "CARE Day" event, conference participants sent a letter to Senators Grassley and Baucus advocating the inclusion of charitable incentives from the CARE Act in any moving legislation.

Toward the end of 2005, during late night consideration of the annual budget bill, Senator Grassley amended the legislation to include several charitable reform provisions. One of these measures would expand the foundation excise tax on certain income of foundations. Moments later, the Senate passed the budget bill, S. 2020. On the House side, its version of the budget bill passed without any charitable reform proposals. Because both budget bills were different, the House and Senate now had to reconcile the differences between their respective versions – through a legislative process called a "conference."

The conference dragged on for several months into 2006 – allowing more time for the charitable community and concerned Members of Congress to educate Members, thereby

influencing the process. In February, the Tax Division of the American Bar Association released a critique of the charitable reforms passed by the Senate as part of S. 2020, urging numerous changes to the proposals. Later that same month, then-Ranking Member of the House Committee on Ways and Means Charles Rangel (D-NY) sent a letter to the conference negotiators stating that legislative changes to the charitable laws must be carefully and precisely designed not to harm legitimate charitable efforts, and ought to be considered separately from the budget process.

Several other Members of the House of Representatives joined Rep. Rangel in his efforts to protect the charitable community from unbalanced legislation including ten members of the North Carolina House delegation, Rep. Jean Schmidt (R-OH) and Rep. Eddie Bernice Johnson (D-TX). In addition, the Alliance assisted Rep. Phil English (R-PA) and ten of his House colleagues in sending another letter to conference negotiators specifically expressing their opposition to the proposal expanding the private foundation excise tax. Twenty-seven House Members of the Republican Study Committee also penned their own letter opposing any new regulatory restrictions and tax increases on the charitable sector.

Finally, in May of 2006, the conference concluded and the Congress passed a budget bill that contained only one non-controversial reform aimed at charitable organizations engaged in tax shelters – a commonsense reform the Alliance supported. The bill was signed into law by President Bush on May 17th.

Several months later, Chairman Grassley reminded the charitable community that additional law changes were imminent. In an article in The Hill newspaper in July of 2006, Senator Grassley characterized his pursuit to pass charitable reforms as one of his “constitutional responsibilities to protect the public purse.” Later that summer, Chairman Grassley added a limited package of charitable reforms to must-pass pension legislation – The Pension Protection Act (PPA). The Alliance worked quickly to engage several congressional allies to modify the package so that the final provisions were more targeted. The President signed PPA into law on August 17, 2006.

As for impact of the PPA charitable provisions, our Members have reported that the provisions had an insignificant impact. However, some of our community foundation and charity friends have raised significant concerns regarding several of the reform provisions including:

- Substantial changes to the donor-advised funds rules;
- Limitations on grants to some Type-III supporting organizations;
- New rules for charitable giving, including for non-cash contributions, certain scholarship funds, fractional interests in certain types of property and historic preservation; and,
- New reporting requirements for small charities

Despite the recent power shift in Congress, 2007 is expected to be fraught with new opportunities and challenges. As the new Chairman of the Senate Finance Committee, Senator Max Baucus is likely to continue the charitable reform debate – particularly since

he and Senator Grassley have historically worked closely together on many issues considered by the Committee, including charitable reform legislation. For a current summary of those issues that continue to be “on the table”, please see our document “Continued Vigilance” on the risks we still face.