

October 27, 2009

To: Melonie Colaianne, Chair and Members of the Board of Trustees

From: Andrea Cole and Carol Paine-McGovern, Co-Chairs Government Relations Committee

cc: Rob Collier, President

Re: **Report of the Government Relations Committee**

The Annual Meeting of the Government Relations Committee was held via conference call on September 24 with participation by 14 members. All participants in Foundations on the Hill are invited to participate in the Government Relations Committee.

The following report with recommended actions is presented for your consideration.

I. Review and Adopt Committee Charter

Co-Chair Andrea Cole introduced a proposed Government Relations Committee Charter (attached) that outlines the responsibilities and structure. Mr. Collier noted that while CMF has been taking members to Washington for 31 years, it was brought to his attention that we do not have a Charter for the Committee like we do for the much newer Public Policy committee. He noted that membership in the Committee will now be limited to those who have attended Foundations on the Hill at least once in the past three years.

RESOLVED that the Committee Charter be approved as recommend by the Government Relations Committee.

II. Update of Legislative Goals Statement

Co-Chair Carol Paine-McGovern noted that two State Goals have been accomplished in this past year: amendment of the LLC Act to provide for a Low-Profit Limited Liability Company and updating UMIFA to UPMIFA that will allow for nonprofits to access endowment funds that are below their historic dollar value. She then proposed adoption of the Legislative Goals Statement for 2009-2010.

RESOLVED that the Legislative Goals Statement, as attached, be adopted for 2009-10 as recommended by the Government Relations Committee.

Background

Co-Chair Carol Paine-McGovern reviewed the proposed five Action Goals for National Legislative Issues, pages 3-6:

- simplification of the excise tax on private foundations to a revenue neutral number;
- extension of the IRA Charitable Rollover;
- reinstatement of the federal state estate tax credit;
- legislation that allows tax-exempt entities to invest in securities and commodities that involve indebtedness without being subject to unrelated business income tax (UBIT); and
- legislation and regulatory reform that will make it easier for foundations to make program related investments.

She then reviewed the proposed four Action Goals for State Legislative Issues, pages 10-12:

- monitoring the permanent community foundation tax credit;
- opposing efforts by the Greenlining Institute, as they did in California, or other organizations, to legislate at the state (or federal) level reporting requirements on diversity for foundations, their grantees and vendors;
- legislation to simplify the Charitable Solicitations Act;
- legislation to exempt youth volunteer activities from work permit requirements - this is new legislation being promoted by the new Nonprofit Caucus.

III. Update from the Public Policy Fellow

Dana Linnane commented on the Public Policy Activities summarized in the Public Policy Report also included in the Board of Trustees materials.

IV. March 16 & 17, 2010 Foundations on the Hill

Co-Chair Andrea Cole asked all Committee members to save the dates of March 16 & 17, 2010 for CMF's annual trip to Washington to meet with members of our Congressional Delegation noting that this will be a vital year. She asked for suggestions on how Foundation on the Hill can be more effective for all participants. The group emphasized Congressional members' like hearing stories from their district and doing follow-up after the fact.

V. Other

Co-chair Cole introduced two additional items that had surfaced since the Committee materials were sent. First, she shared a letter to Senator Max Baucus supported by the Council on Foundations supporting maintaining the current charitable deduction rates. She also reviewed the news that Senator Grassley has proposed two amendments to the Senate's Health Bill that would give the IRS statutory authority to require information on governance and management as part of the annual Form 990 reporting requirement; and remove the safe harbor provision for nonprofits on issues of excessive compensation to executives. **There was consensus by the Committee that CMF should sign on to the letter to Baucus and oppose the Grassley amendments.** NOTE – Senator Grassley did drop his two amendments to the Senate Health Bill before it was passed by the Senate Finance Committee.

Finally, the Committee started discussion that will continue on Strategies for the 2010 State Elections. Mr. Collier noted there are only eight State Senators not term-limited in 2010, and one of them is Senator Mark Jansen, co-chair of the Nonprofit Caucus.

ADDITION SINCE THE COMMITTEE MEETING

Efforts to consider a new Michigan Inheritance Tax as a revenue raiser seem to have been dropped by the State Legislature. Rob Collier met with Senate Majority Leader Bishop on Tuesday evening September 29 to discuss the problems posed by a new effort in the State Senate and Michigan's history of driving affluent families from the State by having an Inheritance Tax.

Council of Michigan Foundations Government Relations Committee Charter

Purpose

The Government Relations Committee recommends CMF's Legislative Goals Statement at the state and federal levels in addressing CMF's Advocacy Goal to monitor and take positions on regulatory and legislative activity that will impact the ability of philanthropy to operate in Michigan. The Committee will help engage CMF members in efforts to advocate for legislation, regulation and broad-based public policies that encourage a responsible, effective and independent philanthropic sector nationally and in Michigan. Upon request of the President, the Committee's members may advise on interim actions when a rapid response is required.

Reporting

The Government Relations Committee reports to CMF staff and the Board at least once a year.

Responsibilities

The Committee:

- Annually reviews and updates the Legislative Agenda and recommends approval to the Board,
- Helps CMF be responsive on legislative and regulatory issues by providing a discussion forum for vetting issues with members,
- Assists CMF in identifying and engaging partners such as the Michigan Nonprofit Association to help advocate for the field,
- Supports and participates in the annual Nonprofit Day in Lansing and Foundations on the Hill in Washington,
- Meets periodically with individual state legislators and congressional representatives to advance CMF's Legislative Agenda, and
- Works in concert with CMF's Public Policy Committee on issues that may impact philanthropy.

Composition

The Committee is chaired by at least one Board member, selected by the Board Chair in consultation with the President & CEO for up to two two-year terms. The Committee consists of all members that participate in at least one Foundations on the Hill over a three-year period as long as they are interested in doing so, and at a minimum shall be made up of at least 12 members that reflect CMF's diverse membership. Where doing so advances the interests of CMF, up to three individuals from partners who are not affiliated with members may be invited to join the Committee as voting members.

Meetings

The Committee meets at least twice a year by phone and at Foundations on the Hill and more often as needed.

2009-10 Legislative Goals Statement

The purpose of the Government Relations Committee of the Council of Michigan Foundations is to seek support for legislative and regulatory changes at both the state and national levels that will help to strengthen, promote and increase foundation and corporate philanthropy.

The CMF Board of Trustees approved the initial Legislative Statement on March 1, 1979. Revised statements were approved September 19, 1980; January 27, 1982; May 10, 1983; June 14, 1985; April 12, 1988; February 25, 1992; November 4, 1992; November 8, 1995; October 30, 1996; March 13, 1997; November 4, 1998; October 14, 1999; October 2, 2000, October 2, 2001, September 29, 2002, November 10, 2003, November 3, 2004, October 10, 2005, October 17, 2006, October 22, 2007, October 13, 2008 **and November 5, 2009.**

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I. INTRODUCTION

Foundation and corporate giving has long been a unique part of American society, supported by appropriate federal and state legislation and regulations. While there have been reforms at both levels of government to encourage giving, there have also been provisions in past legislation, such as the 1969 Tax Act, and regulations that serve as disincentives for the creation of new foundations, as well as discourage charitable donations to existing foundations.

Because the mission of CMF is to strengthen, promote and increase philanthropy in Michigan, the Board of Trustees has adopted as one of six operating goals – to advocate for a legislative and regulatory government conducive to philanthropy. In 1977, the Members of CMF directed the Board of Trustees to develop a public information program that would support and encourage Michigan foundation philanthropy and include communication with public policymakers.

***Bolted text signifies 2009 update.**

A Government Relations Committee, representing foundation and corporate giving program members, was established to implement the program and has continued to represent CMF Members on their legislative interests and priorities. In 1978, CMF began an annual activity of taking a group of foundation representatives to meet with each member of the Michigan Congressional Delegation in Washington. Known as Foundations on the Hill, 2008 marked the 30th year of this activity now shared by other regional associations of grantmakers across the country in partnership with the Council on Foundations and the Forum of Regional Associations of Grantmakers.

In addition to these organizations, CMF works with the Michigan Nonprofit Association, Independent Sector, and other nonprofit organizations to enhance the understanding of public policymakers at the federal and state level about philanthropy and to bring about appropriate legislative changes in laws and regulations. In part because CMF and its community foundations have been successful in making the community foundation tax credit permanent in the state tax code, CMF retains the firm Public Affairs Associates to assist in Lansing with its educational efforts with state policymakers.

As a result of these efforts by CMF and others, the following goals have been accomplished.

II. NATIONAL GOALS ACCOMPLISHED

- Reduction of mandatory pay-out requirement for private foundations to 5%
- Excise Tax on private foundations reduced from 4% to 2%, and in some cases 1%
- Terminated .65 limit on grant administrative expenses for private foundations
- Fair regulations on private foundation lobbying issued
- Full deductibility of gifts to private foundations of publicly-traded stock made permanent
- Gain portion of gifts of appreciated property not subject to the alternative minimum tax
- Affidavit process for simplifying private foundations grants to non-U.S. charities instituted
- Private & community foundations allowed to own S-Corporation stock
- Protected charitable gift annuities as attractive giving vehicle for donors
- Premiums paid for D&O liability insurance not treated as compensation for trustees
- Regulation passed indicating U.S. foundation grants to nonresident aliens would be taxed, depending on the place where the research or study takes place
- Community foundations permitted to administer pooled income fund
- Due date of first estimated private foundation tax payment on investment income changed to coincide with the due date of the Form 990-PF
- Generation-skipping transfer law pertinent to the predeceased parent exclusion, extended for charitable lead and remainder trusts
- Legislation passed eliminating Charitable Split Dollar Insurance Plans
- Estate tax phased out between 2002 and 2010
- Legislation passed in 2006 providing for a two year pilot for 2006 and 2007 for a Charitable IRA provision and renewed in 2008 for the years 2008 and 2009.

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III. STATE GOALS ACCOMPLISHED

- State inheritance tax repealed
- Community foundation tax credit for individuals and businesses made permanent
- Definition of community foundation strengthened in tax code
- Tort liability of volunteers of nonprofit corporations limited
- Michigan Intangibles Tax repealed
- 501(c)(3) organizations allowed to have an insurable interest in the life of an individual who has given written consent
- Legislation (three separate bills) passed allowing gifts and bequests received by units of local government (cities, villages, counties, public libraries and schools), to be gifted to community foundations
- Nonprofit Corporation Act amended to allow youth ages 16 and 17 to serve on boards of nonprofit corporations with vote
- Legislation passed for distribution of \$20 plus million in 2001-2003 tobacco settlement funds to state-certified community foundations for healthy youth and healthy seniors programs
- Nonprofit Corporation Act amended in 2008 in two bills – first to allow for electronic communication, and second to require a minimum number of three trustees, no loans to officers, and notification of the Attorney General on dissolution.
- **Amendment to the LLC Act signed by Governor Granholm in January 2009 to allow for creation of low profit limited liability companies.**
- **In September 2009, Governor Granholm signed Public Acts 87 and 88 of 2009, bills updating UMIFA to UPMIFA – the Uniform Prudent Management of Institutional Funds Act.**

IV. NATIONAL LEGISLATIVE ISSUES

ACTION GOALS

1. **Goal:** Support simplification of the excise tax on private foundations to a flat tax that is revenue neutral for the federal government.

Explanation: The 1984 Tax Act allows the excise tax on investment income to be reduced from two to one percent if a foundation's payout for the year in question equals or exceeds an amount equal to the year's assets, times the average payout percentage for the five years, plus 1 percent of the foundation's net investment income. Private foundations are the only 501(c)(3) organizations that currently pay this federal tax. The current formula is difficult to administer and can limit charitable giving.

While CMF has been advocating simplification of the tax to a flat one percent, as a result of the 2008 Foundations on the Hill, CMF was encouraged by members of the Michigan Congressional Delegation to have an outside firm complete an analysis of what a revenue neutral number would be for a flat excise tax. Cambridge Associates completed the analysis in September 2008 and recommends a revenue neutral number of 1.32%. This analysis has been shared with members of the Michigan Congressional Delegation as well as the Council on Foundations.

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Senate Bill 676 was introduced in March 2009 by Senators Schumer, Levin and Stabenow to introduce a revenue neutral excise tax of 1.32%. A companion bill is expected to be introduced by Representative Danny Davis of Illinois in the fall of 2009. CMF will send a letter to members of the Michigan Congressional Delegation encouraging them to support this Bill too. The legislation will not be acted on until the Joint Committee on Taxation has scored the Revenue Neutral Number and verified the work of Cambridge Associates.

2. **Goal:** Permit tax-free distribution from individual retirement accounts (IRAs) for charitable purposes.

Explanation: Despite the projected loss of a trillion dollars in IRA retirement accounts in the 2008-09 economic recession, economists project that more than two million dollars still remain in these accounts. There are still Michiganders and others who do not need to take the required distribution at age 70½ and pay the required tax. Evidence confirms since first put into law in 2006 with bi-partisan support that individuals will support charitable activity if given the option of rolling the required distribution tax free to an eligible charitable beneficiary.

Michigan Representative Dave Camp and both Senator Levin and Senator Stabenow played key roles in the inclusion of the IRA Charitable Rollover in the final version of the Pension Reform Bill signed into law by the President in August 2006. The provision allows individuals age 70 ½ to make contributions of up to \$100,000 tax free from IRAs to charitable organizations, except donor advised funds and private foundations, in both 2006 and 2007. CMF through its supporting organization, Midwest Community Foundations' Ventures, played a leading role in the development of the Charitable IRA Portfolio distributed in September 2006 to all community foundations nationwide that meet national standards for community foundations.

While legislation was introduced in 2007 to include community foundation donor advised funds, remove the cap of \$100,000 and lower the age to 59½, Congress did not act on this legislation, but did approve an extension of the IRA Rollover with no changes for 2008 and 2009.

This legislation has been reintroduced in 2009 by Representative Pomeroy, H.R. 1250. However, due to pay go rules, and the increased cost to the federal treasury, it is unlikely that this legislation will pass in 2009. CMF has continued to promote extension of the IRA Rollover with inclusion of community foundation donor advised funds as an eligible recipient. Due to widespread bi-partisan support for the IRA Rollover as it currently exists, Michigan Congressional representatives are confident that it will be extended again for 2010 and 2011 as part of an extenders package that will be acted on in the last days of the 2009 session.

3. **Goal:** Monitor the impact of estate tax legislation passed in 2001 on creation of new foundations and gifts to existing foundations and promote reinstatement of the federal state estate tax credit.

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Explanation: The "Tax Relief Reconciliation Act of 2001" passed by the Congress and signed into law by the President in June 2001, phases out the Estate Tax between 2002 and 2010. Full repeal however is only in effect for the year 2010. The estate tax then reverts, unless new legislation is passed, to the 2000 tax code status.

It is estimated by the Congressional Budget Office in a July 2004 Report titled *Charitable Bequests and the Repeal of the Estate Tax*, that full repeal of the estate tax would annually cost the nonprofit sector \$17 billion in charitable bequests.

Independent Sector (IS) supports a compromise of an exemption rate of \$3.5 million for an individual and a 35% tax rate. At this rate it is believed that nearly all family farms and family-owned businesses would be exempt from the estate tax. The estate tax would only apply to 0.3 percent of Americans as opposed to only 2 percent of estates today. The Congressional Budget Office further estimates in a July 2005 Report titled *Effects of the Federal Estate Tax on Farms and Small Businesses*, that the IS position would decrease charitable giving by about 3 percent or \$7.4 billion as opposed to \$17 billion with total repeal.

This goal is tied to Goal 7 under State Legislative Issues – opposing reinstatement of a state inheritance tax. Michigan was receiving funds from the federal state estate tax credit that more than offset repeal of the state inheritance tax in 1993 – a CMF Goal. The federal credit has now been phased out at a projected cost to Michigan of \$200 million or more each year. Concern has been expressed on several levels that with so many states having budgetary problems, new inheritances taxes will be reinstated as a form of revenue raiser, pitting states against each other and resulting in a potential loss to Michigan of wealthy estates as was evidenced in 2007 when an effort was made to reinstate a State Inheritance Tax.

Staff of Michigan Congressional Members indicate that they expect the 2009 rates for the excise tax to be extended for an additional year to give Congress more time to finish work on health care reform and other priorities. With the leadership of Robin Ferriby from the Community Foundation for Southeast Michigan, CMF has had meetings in 2009 with the Washington staff of Governor Granholm, the Policy Staff of the National Governors Association and Senators Stabenow and Levin and Representatives Levin and Camp to discuss reinstatement of the Federal Credit as part of the permanent fix to the Estate Tax. If a permanent fix to the Estate Tax is considered in 2010, these leaders have agreed to discuss this issue with staff of both the House Ways and Means Committee and the Senate Finance Committee.

4. **Goal:** Support legislation that allows tax-exempt entities to invest in securities and commodities that involve indebtedness without being subject to unrelated business income tax (UBIT). This legislation would also eliminate the classification of realized gains and income, derived from leveraged real estate investments by foundations, as unrelated business taxable income.

Explanation: The original intent of UBIT (Unrelated Business Income Tax) was to prevent nonprofits from competing against for-profit entities in a business that is not substantially related to its exempt purpose. Over the last twenty years, foundations and

*Bolded text signifies 2009 update.

universities have invested in hedge funds and other alternative investments to increase their investment returns and reduce the volatility of their investment portfolio. Many times these investments involve leverage (debt) that would subject the foundation to UBIT. But based on Private Letter Rulings from the IRS, foundations are able to invest in this area through offshore corporations as limited partners and avoid UBIT. The key issue is tax-exempt institutions should not be taxed on passive leveraged investments.

In addition, income derived from leveraged real estate investments, owned directly or through partnerships, is currently taxed as unrelated business taxable income (UBTI). Private foundations should be treated in the same manner as educational organizations and qualified pension plans, which since 1980 have been exempt from the debt-financed property rules with respect to the acquisition of certain real property.

Michigan Representative Sander Levin has reintroduced legislation in September 2009, HR 3497, with support from Representatives McDermott and Van Hollen to create an exception to the debt finance income rules that would allow all tax-exempt entities to invest directly in on shore hedge funds without being subject to UBIT. This legislation was passed by the House in the last session but did not make it through the Conference Committee process with the Senate. CMF has written to all Michigan Representatives encouraging them to support this Bill.

- 5. Goal: To support legislation and regulatory reform that will make it easier for foundations to make program related investments.**

Explanation: Despite the ability to make program related investments, research has shown that less than 10% of foundations make these below market investments in projects with a charitable purpose. A number of foundations chose to take a conservative approach by requesting a private letter ruling from the IRS. With the passage of the Low Profit Limited Liability Corporation (L3C) legislation by Michigan and 6 other states, the Council on Foundations has drafted the Program Related Investments Promotion Act of 2009. CMF staff have talked with the key staff for Representative Sander Levin about sponsoring this legislation. He has indicated a willingness to do so once a trial L3C application is filed with the IRS.

ONGOING GOALS

- 1. Goal: Maintain the private foundation payout rate at not more than 5 percent to protect the real value of foundations' grantmaking capability.**

Explanation: In order to preserve the "real" grantmaking capacity of a private foundation, it is important that all historical financial data be taken into consideration. History has shown that a portion of the annual return should be returned to principal. (Reilly/Skadden, University of Michigan Graduate School of Business Administration study sponsored by CMF, 1981 - *Private Foundations: The Payout Requirement and Its Effect on Investment and Spending Policies*, and a DeMarche Associates, Inc. study "*Spending Policies and Investment Planning for Foundations*," 1995, sponsored by the Council on Foundations.) A CMF sponsored study, completed in May 2000 and updated

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in 2004 by Cambridge Associates, Inc. of the actual performance of a group of Michigan endowed private foundations, confirms the position of maintaining the payout rate at no more than 5 %.

Efforts to increase the payout of private foundations to more than 5% were reactivated earlier this year by the release of the 2009 National Committee on Responsive Philanthropy (NCRP) Report recommending a 6% percent payout. Given the impact of the economy on endowments, there does not seem to be any interest by members of Congress on increasing the required payout rate in 2009. The interest in past sessions of Congress about requiring a payout for endowments held by public charities seems to have also quieted down.

2. **Goal:** Change the limitation on gifts to a private foundation from 20 percent to 30 percent of AGI for gifts of appreciated property and from 30 percent to 50 percent of AGI for gifts of cash.

Explanation: Under existing law, the amount deductible by an individual taxpayer for contributions to private non-operating foundations is computed as a percentage of the donor's contribution base (in most cases, his or her adjusted gross income). An individual may deduct only 20 percent of the gifts of appreciated property or 30 percent of gifts of cash. On the other hand, an individual taxpayer can deduct up to 50 percent of their contribution base for cash (and 30 percent for appreciated property) for gifts to public charities.

3. **Goal:** Increase the deduction allowed a taxpayer for a gift to a private foundation of certain capital gain property.

Explanation: Individual taxpayers may deduct the full fair market value of a gift to a private foundation of appreciated property in the form of publicly-traded stock, if the gift is less than 10 percent of the outstanding stock of the company. However, in other cases, such as privately held stock, the amount of deduction continues to be limited to the donor's cost or basis in the stock if the gift is to a private non-operating foundation. The same gift to a public charity entitles the taxpayer to a full fair market value deduction.

4. **Goal:** Prevent further efforts to reduce the usefulness of the charitable deduction and repeal the three percent floor on itemized deductions.

Explanation: In 1990, after initially considering a cap on all itemized deductions, Congress approved a three percent floor in deductions. This floor was scheduled to expire at the end of 1995, but in 1993 was made permanent.

5. **Goal:** Limit lineal descendants who are "disqualified persons" at the level of grandchildren.

Explanation: In 1984, the law was amended to limit "disqualified persons" to substantial contributors to a foundation and their children, grandchildren, great grandchildren, and their spouses. The amendment provided that substantial contributors will no longer be considered "disqualified persons" if, over a ten-year period, they meet

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certain requirements to distance themselves from the foundation. However, there is still no logical rationale - - or examples of abuse - - to justify the inclusion of lineal descendants beyond the level of grandchildren.

6. **Goal:** Modify the law to permit the “out of corpus” requirement to be met by a foreign grantee if sufficient documentation is provided showing that the full amount of the grant was spent for the specified purposes within 12 months after the year the grant was made.

Explanation: When making grants to some foreign charities, private foundations are required to treat them as private foundations. Any grant from a private foundation to another private foundation requires that the amount granted “flow through” the grantee and out as qualifying distributions that are made “out of corpus” by the end of the following year. The purpose for this rule is to prevent a foundation from avoiding the payout rule by having one private foundation give to another, who then simply adds the grant to its endowment (corpus), with charitable grantees receiving no benefit. In the foreign grant context, the grantee rarely has any endowment and totally misunderstands the concept of “out of corpus.”

7. **Goal:** Secure passage of legislation providing a charitable deduction for non-itemizers.

Explanation: Most taxpayers no longer file the long tax form that permits itemized deductions; instead they file the short form that allows only a standard deduction. From 1983 to 1986 non-itemizers were permitted to take the standard deduction plus itemize charitable contributions within certain limits, but the deduction expired January 1, 1987.

Because the Senate Fiscal Agency has evaluated the cost of the non-itemizer and deemed that it will cost the federal government more than it will generate in new charitable giving, efforts to attach this goal to legislation were dropped in 2007 and are not expected to be continued in 2009.

8. **Goal:** Support reasonable limits on the degree to which foundations and charities can lobby or otherwise influence public policy decisions and oppose unreasonable limits that adversely affect grantmaking.

Explanation: Continuous monitoring is essential to oppose unreasonable and unnecessary regulatory reporting burdens on both foundations and their grantees.

Independent Sector (IS), on behalf of foundations and public charity nonprofits, has taken the position that 501(c)(3) and 501(c)(4) organizations should not be included in the definition of political committees. Political committees are prohibited from raising money from corporations (including nonprofit corporations) or unions or from using contributions in excess of \$5,000 from an individual to pay for electioneering activities. Political committees must also disclose names of contributors in regular reports to the Federal Election Commission (FEC), and contributions to such committees are not tax-deductible. IS makes the following points:

- Current tax law already limits the lobbying and partisan political activities of these groups.

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- The FEC should maintain its current, clear distinction between “express advocacy” communications (those that clearly call for a vote for or against a particular candidate or political party) and other nonpartisan communications. It should not adopt IRS standards for partisan advocacy, which were designed for a different regulatory and enforcement regime.
- Voter registration and get-out-the-vote activities should only be considered political expenditures if they are clearly tied to a candidate or party. Activities targeted to specific populations (e.g., women, African Americans, a particular neighborhood, members of a particular organization) should not be considered political “expenditures” simply because those populations may be “more likely” to vote for a particular candidate or party.

9. **Goal:** Avoid excessive regulations on corporate giving.

Explanation: CMF supports public accountability, but not excessive regulation, which would require costly administration by corporations. CMF continues to monitor proposed legislation like the House version of the 2002 Corporate and Accounting: Accountability and Transparency Act that included three reporting provisions (all Board service by officers, directors, and significant family members; all gifts of \$10,000 or more; all transactions valued at \$10,000 or more) that would have a negative impact on corporate philanthropy. There has been no similar legislation introduced since 2006 and none is expected in the 2009 Congressional session.

10. **Goal:** Support efforts to incorporate philanthropy as an objective of legislation providing financial resources to character education and other K-12 educational initiatives.

Explanation: CMF was successful through the *Learning to Give* initiative in having the word "giving" added to the definition of character education in the 2002 Education Bill. *Learning to Give*, now through its new affiliation with The League, is assisting when appropriate national partners, such as the Corporation for National and Community Service, in efforts to ensure that giving is incorporated in new character education programs and other appropriate federal initiatives.

11. **Goal:** Support legislation requiring a five percent payout for Donor Advised Funds.

Explanation: In 2005 and 2006, staff of the Senate Finance Committee advocated for a required payout for Donor Advised Funds, defined simply as Funds at public charities that primarily make grants to charitable beneficiaries pursuant to advice provided by the donor. This proposed required payout is caused by concerns of members of Congress that some Donor Advised Funds administered by organizations such as the Fidelity Gift Fund never make a charitable distribution and that university and college endowment funds make less than a five percent payout while the cost of higher education continues to escalate for students.

Because the five percent payout is recommended by both Michigan and national standards for community foundations, CMF supports such legislation. The National Panel convened by IS at the request of the Senate Finance Committee has recommended this

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payout requirement for Donor Advised Funds in its final Report presented in 2005 to Senator Grassley, Chair of the Senate Finance Committee.

12. **Goal:** Support efforts to make the IRS forms 990 and 990PF more useful to the public, foundations, charities and regulators as prime sources of reliable information on the nonprofit sector.

Explanation: The IRS has concluded efforts on a new Form 990 effective in 2009 which CMF has contributed to through work led by the Council on Foundations, Independent Sector, the Foundation Center, and the National Center on Charitable Statistics. CMF is prepared to contribute to the 990PF update once the IRS begins work on it.

13. **Goal:** Support efforts to limit tax shelters in which charities receive little or no benefit.

Explanation: The Senate Finance Committee identified through Hearings held in 2004 and 2005, examples of tax shelters providing little benefit to charity. As a result Senator Grassley introduced S 993 in 2005 to place excise taxes on insurance contracts in which certain exempt organizations may hold an interest. This Bill received support from the Council on Foundations, Independent Sector and CMF and was included in the Reform Provisions of HR 4 passed in 2006.

V. STATE LEGISLATIVE ISSUES

ACTION GOALS

1. **Goal:** To monitor administration of the permanent community foundation tax credits for individuals, families and businesses and their relationship to current and proposed tax credits.

Explanation: As a result of term limits CMF staff continually work with legislators to explain the tax credit and the role of community foundations in building permanent endowments. There is an on-going effort by other nonprofit sector groups such as hospitals, schools and community development corporations to obtain targeted tax credits for endowments without acknowledgement of the potential to meet their needs through the existing community foundation tax credit. In addition, CMF staff assists Treasury Department staff to insure that the re-certification process is working with certified community foundations that cover all 83 counties.

The community foundation tax credit has been included in the new Michigan Business Tax (MBT) that took effect in 2008. However, a new credit for endowment gifts to K-12 education foundations has been added to the section of the MBT covering the community foundations tax credit. Efforts continue to separate this new credit from the community foundation tax credit as part of additional legislation on the MBT.

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2. **Goal:** To oppose efforts by the Greenlining Institute, as they did in California, or other organizations to legislate at the state (or federal) level reporting requirements on diversity for foundations, their grantees and vendors.

Explanation: California Assembly Bill 624 would have required all foundations (30) in California with more than \$250 million to provide annual documentation on the ethnic diversity of foundation trustees, staff, as well as grantees and vendors. While there was widespread opposition to this Bill, it did pass the Assembly and was withdrawn from consideration only after a group of large private foundations promised to take action on the issue. Staff of the Greenlining Institute of Berkeley California, author of the legislation, has met with Congressman Rangle, Chair of the House Ways and Means Committee, to encourage introduction of this legislation at the federal level. The Institute has also indicated that it intends to have this legislation introduced in New York, Pennsylvania, Florida and Texas. And the Greenlining Institute has found a receptive legislator in Florida.

At the COF 2008 Summit, Congressman Becerra of California stated that Congress needs to be able to justify the \$32 billion earmark that is given for gifts to foundations. While not endorsing this California Bill, he made it clear that diversity is also a matter of class, and he along with others in Congress want to know how foundations are helping the neediest.

Through our Diversity and Inclusion Initiative CMF has taken the position to be a leader. Therefore at the May 2008 CMF Board Meeting the following two resolutions were approved.

RESOLVED that the Council of Michigan Foundations joins with the Northern California Grantmakers, Southern California Grantmakers and San Diego Grantmakers – the three California Regional Associations and the Council on Foundations in opposing California Assembly Bill 624 because this legislation:

- ignores the commitment of many of our members to better reflect, represent, and serve all populations through the impact of the operations – governance, staffing, business practices and grantmaking - of organized philanthropy,
- mandates the collection of data related to the diversity of our boards, staff and grantees that may be impossible to accurately collect, and
- has the potential to both negatively impact the very diverse populations and communities it seeks to serve, and to slow—rather than grow – philanthropy and philanthropy’s commitment to serve such populations.

RESOLVED further that, in recognition of both CMF’s Board approved Diversity and Inclusion Initiative and the appropriate balance between the voluntary decisions of individual grantmakers with the sector’s responsibility to serve the common good and all of society, the Council of Michigan Foundations supports the call to action from the Council on Foundations that all of philanthropy join in a growing commitment to respond to the appropriate concerns about our lack of progress to date and our collective commitment to increasing our value for and leadership to the importance of diversity and inclusiveness in all that we do.

***Bolded text signifies 2009 update.**

3. **Goal:** Support legislation to simplify the Charitable Solicitations Act.

Explanation: Community foundations are required, as well as other charitable nonprofits, to file for an annual solicitation license. The licensing, enforcement, and appeal processes are not considered user friendly by nonprofits and do not reflect the changing cost in fundraising. The Michigan Nonprofit Association is leading the effort on this issue and **new legislation is expected in the fall of 2009.**

The following is a list of the changes that would be beneficial to Michigan's Nonprofit Community by enabling more streamlined processing of files for those charities wishing to solicit donations and more effective enforcement of standards to protect Michigan charities from undue pressures and competition from the few who are "charities" in name only:

- **Increasing the filing threshold from \$8,000 to \$25,000,**
- **Changing the processing from a licensing procedure to registration, clarifying that a charity is registered upon filing of the proper information, unless notified of deficiencies.**
- **More effective enforcement provisions to protect the nonprofit community from undue competition from fraudulent fundraising and questionable activities of those organizations that do not operate for the benefit of their constituents.**

4. **Goal:** Support legislation to exempt youth volunteer activities from work permit requirements.

Explanation: The work permit requirement does not specifically exempt volunteer activities. Therefore, those minors who perform volunteer work for charitable organizations – such as the estimated 1,500 high school students who volunteer for community foundation youth advisory councils each year, are most likely required to obtain work permits, usually from the school where the minor is enrolled. Legislation is expected to be introduced in September 2009 to amend the Youth Employment Standards Act in order to not discourage young people from volunteering.

ONGOING GOALS

1. **Goal:** Monitor and support the continued granting of property tax exemption by local units of government to foundations and nonprofit charitable organizations.

Explanation: CMF, working with partners such as the Michigan Nonprofit Association (MNA), is monitoring cases that could adversely impact foundations where nonprofit organizations are being forced by local tax authorities to appeal their tax exemption status to the State Tax Tribunal, and if needed, consider filing letters of support with the Tax Tribunal. A landmark case in the State of Minnesota adversely impacting a nonprofit day care operator has put this issue on the radar screen of all local taxing entities and nonprofit associations nationwide.

***Bodied text signifies 2009 update.**

2. **Goal:** Support legislation encouraging a tax-deduction for charitable contributions from individuals.

Explanation: Other states have found that a tax deduction mirroring the federal tax code does motivate additional gifts by individuals to charities. While the introduction of legislation in tough economic times is unlikely, the Michigan Nonprofit Association continues to identify this as a legislative priority.

3. **Goal:** Monitor and report to the state on the use of tobacco settlement funds distributed to certified community foundations in 2001-2003 for health youth and healthy senior purposes.

Explanation: Michigan's share of the national tobacco settlement (\$206 billion over the next 26 years) between 46 states, five commonwealths and territories and the District of Columbia with five tobacco companies, representing 97.5% of the industry, is \$8.3 billion. The master settlement agreement did not specify how states may spend their settlement payments. Between 2001 and 2003 CMF distributed from the state more than \$20 million of interest earned on the tobacco settlement funds not used for the Merit Scholarship Program and earmarked annually through the Department of Career Development budget to certified community foundations for both pass through grantmaking and to endow Healthy Youth and Healthy Senior Funds.

Because of the State's financial budget problems, no funds were appropriated for this effort in 2004 and 2005. The legislature passed legislation in 2006 with the Governor's support to securitize a major portion of the tobacco settlement to create the 21st Century Jobs Fund. The balance of the tobacco settlement allocation was securitized by the state in 2007 to balance the budget. However, CMF still requests information annually from the community foundations on the use of the endowed funds they received for healthy youth and healthy senior purposes.

4. **Goal:** To assist the Charitable Trust Section of the Attorney General's office, an important source of information about charitable giving and the nonprofit sector in Michigan.

Explanation: CMF has always worked with the Charitable Trust Section of the Office of the Attorney General. With the election of Attorney General Cox in 2004, CMF and the Michigan Nonprofit Association proposed a more formal relationship to the Attorney General which he approved. As a result, the Nonprofit Council to the Charitable Trust Section, led by his Deputy Attorney General Carol Isaacs, was created. CMF has three representatives on the Council, which is considered a national model and is now being replicated by other Attorneys General. The Committee meets twice a year and assists the Section on issues related to charitable giving and charities. In addition, the staff leader of the Section attends the CMF Annual Conference. This relationship is vital because there are recent cases in which state attorneys general have initiated litigation against foundations for excess compensation and self-dealing abuses and there are examples of unfavorable state legislation initiated by attorneys general.

5. **Goal:** To support revisions to the Nonprofit Corporation Act

***Bolded text signifies 2009 update.**

Explanation: There have been no major amendments to the Act since it was adopted in 1982. A major revision of the Act has been completed by a Taskforce of the State Bar Association with the support of CMF and MNA. However, due to term limits and the complexity of the total update of the Act, it has been determined to update the Act in stages.

The first step was successful passage of SB 123 now Public Act 9 of 2008 effective February 29, 2008 to permit the use of electronic transmission, such as email, for notices, waivers of notice, proxies, written consents and voting when participating in a meeting by remote communication. These amendments have the potential of streamlining the procedures for providing notices, obtaining signatures for written consents, and conducting meetings.

In August 2008 the Governor signed into law HB 5681 which requires a minimum number of three Trustees instead of the present one for a nonprofit corporation, prohibits loans to staff, and requires nonprofits that are dissolving to notify the Attorney General within 60 days and obtain the written approval of the Attorney General for the disposition of assets— three priorities identified by the Nonprofit Panel convened by Independent Sector at the request of Senator Grassley and Senator Baucus.

6. **Goal:** To provide educational resources to members of the State legislature and the Office of the Attorney General on the issue of donor intent.

Explanation: As a result of an investigation into the Ford Foundation by the Attorney General, HB 6351 was introduced by Representatives Dillon and Huizenga in June 2006 to redefine donor intent as a pattern of grantmaking in the first three years of a foundation's existence and the specification of a defined place, like the state of Michigan, in the founding documents. Due to vigorous opposition by CMF, the bill was not considered by a committee.

In addition, CMF had two documents prepared, by the law firm Miller, Canfield, Paddock and Stone PLC during the summer of 2006 which were delivered to the two representatives and Deputy Attorney General Isaacs in September 2006. The first document is a review of existing laws that confirm the Attorney General does not need new legislation to oversee donor intent with regard to private foundations. The second document provides an introduction to donor intent from the perspective of a policy maker.

Despite these efforts, in September 2006 HB 6535 the Charitable Foundations Accountability Act was introduced by Representative Huizenga without the support of Representative Dillon. CMF indicated its opposition to this bill and provided a Media Response Statement to members should the media ask about it. Representative Huizenga indicated that this Bill would not advance and was only introduced at the request of the Attorney General. There have been no further efforts by the Legislature to deal with the issue of Donor Intent.

***Bolded text signifies 2009 update.**

7. Goal: To oppose reinstatement of a State Inheritance Tax, repealed in 1993 with support from CMF.

Explanation: HB4377 the Michigan Estate tax act was introduced in March 2007 by Representative Paul Condino as part of a strategy to balance the states structural fiscal crisis. While this Bill was not considered by Committee, due to the state's continued structural financial crisis, CMF will monitor efforts to reinstate an Inheritance Tax at the state level. Based on documented data from the early 1990s, families of wealth will transfer their residency to their second homes in places like Florida if such a tax was reinstated.

***Bolded text signifies 2009 update.**