



2019 PUBLIC POLICY SLATE

Philanthropy New York

DRAFT
For Board Approval- Highlighted Sections are new for 2019

Philanthropy New York 2019 Public Policy Slate

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Why Philanthropy New York Engages in Policy Work

Philanthropy has a special place in the United States – our history and laws set out a remarkable independent sector that is intended to achieve social good in countless ways that government might not. The philanthropic sector is not monolithic and every funder has its own unique take on how to make the world better, but the social, economic and political polarization of our era calls for philanthropy to strategically and thoughtfully support the changes needed to develop a more equitable, sustainable, and democratic society. Philanthropy New York’s mandate is to advocate not only for the specific policies that would improve the functioning of the nonprofit and philanthropic sectors, but also for the fundamental and essential value of a thriving independent philanthropic sector.

The goal of our public policy work is to cultivate and catalyze institutional leadership around public policy, advocacy and collaboration in the sector by (1) identifying issue trends; (2) strengthening PNY’s role as an advocate for policies that affect the philanthropic field; (3) developing new training for our members in policy and advocacy; and (4) bringing together members to advocate on critical issues.

Core Principles for PNY’s Policy Work

At Philanthropy New York, we believe it is critical that the United States, the State of New York and New York City (and other cities and counties across the state) maintain laws, regulations and administrative policies that nurture our nation’s nonprofit and philanthropic sectors. We are guided by these basic principles for strengthening and promoting our nation’s philanthropic sector:

- We will champion and shine a spotlight on the unique ability of foundations – whether limited-life or endowed for perpetuity – to use their resources for social good over the long-term.
- We will advocate for policies that create an environment in which philanthropy flourishes, including taking positions on tax policies that provide incentives for giving like the charitable deduction and tax policies specifically affecting foundations such as simplifying the excise tax on private foundations.
- We will balance our work advocating for tax policies that allow philanthropy to flourish with education about the facts surrounding how reduced government revenues affect the work of the nonprofits our members support.
- We will defend the laws that allow philanthropic organizations and the nonprofits they support, including nonprofit associations, to play a vital and active role in public dialogue.

standard deduction increase. PNY will advocate for the 2025 phase out of the increased standard deduction. PNY will support efforts to pass legislation that creates or moves toward a universal charitable deduction. PNY may write editorials to draw attention our positions on these topics. We will work with partner associations that are working on these related issues and sign on to appropriate public statements. PNY will advocate for additional changes to the tax code in the future that includes a universal charitable deduction and other policies that return the full value of the charitable deduction.

Estate Tax

The estate tax is a complex issue but an important one for the nonprofit sector because of its impact on charitable giving. According to the Congressional Budget office, eliminating the estate tax would decrease donations to nonprofits. The CBO has also found that the estate tax leads affluent individuals to donate far more than they otherwise would, because such donations sharply reduce estate tax liability, and that repealing the estate tax would reduce charitable bequests by 16 to 28 percent. For this reason, many nonprofit advocacy organizations have opposed the elimination of the estate tax. The existence of the estate tax has historically played an important role in motivating donors with large estates to establish private foundations, and therefore expand the philanthropic sector and increase long-term charitable giving. The continued existence of the estate tax therefore directly effects creation of new foundations and the health of the philanthropic sector. Therefore, Philanthropy New York opposes the elimination of the estate tax, and opposes any future increases in the exemption level beyond the current inflation-indexed rate set in 2013. The TCJA passed by Congress in December 2017 doubled the estate tax exemption levels, but did not eliminate the estate tax altogether.

2019 Activities: Philanthropy New York will communicate with our U.S. Congressional delegation the official position we have taken on maintaining the estate tax and returning to pre-TCJA exemption levels. PNY will advocate for the 2025 phase out of elements of the TCJA that raised exemption levels. We may also write and disseminate editorials on this topic and further draw attention to our position.

We will work with partner associations that are working on these related issues and sign on to appropriate public statements.

Protect Nonprofits from Partisan Politics (Johnson Amendment) AND Maintain Nonprofit to Advocate on Issues

Nonprofits have long-established legal rights to be active in public debate on issues, but are barred from participating in partisan politics, endorsing candidates, etc. Philanthropy New York and its nonprofit advocacy partners hold positions on various aspects of this complex issue that call for maintaining the current status of nonprofit advocacy rights and protection from partisan politics.

On protection from partisan politics, Philanthropy New York opposes the repeal of the Johnson Amendment. Enacted in 1954, the Johnson Amendment is a provision of the U.S. tax code that prohibits all 501(c)(3) nonprofit organizations including charitable foundations, universities, hospitals, churches, food pantries, think tanks and countless other types of social purpose organizations that receive tax-deductible contributions from endorsing or opposing political candidates. The Johnson Amendment only prevents such organizations from engaging in electoral politics, it does not prevent them from engaging in issue advocacy or in lobbying on specific legislation. The tax plan passed by the House in November 2017 included language that would have significantly weakened the Johnson Amendment. The provision (Sec. 5201) would have granted a partial exemption from the Johnson Amendment to

houses of worship and their auxiliary organizations. Given the Democrats new control of the House, it appears unlikely that the House will now push for an elimination of the Johnson Amendment.

Regarding the protection of nonprofits' rights to engaging in advocacy on issues, a number of issues have arisen over recent years. In 2013, U.S. Treasury and IRS issued proposed guidance regarding tax-exempt social welfare organizations – 501(c)(4)s – on candidate-related political activities. The guidance would have defined nonpartisan activities as “political” and would have had vast potential implications for 501(c)(3)s also. The Council has stated that, “The proposed rules would create tremendous uncertainty, confusion and burdensome compliance costs. In the face of this uncertainty, foundations concerned about compliance are far more likely to be cautious and potentially stop their grantmaking for civic engagement activities altogether. The Council strongly urged Treasury to consider the impact of this proposed rule on the larger civic education environment in the United States.” In response to a very high level of public comments on the rules, most in opposition, Treasury withdrew the rules and promised to publish a revised version in 2015. That did not occur, and with the new tax reform legislation presented in Congress in November 2018 moving in the direction of allowing expanded leniency for churches on political advocacy, it appeared that Treasury guidance limiting the political activities of 501(c)(4)s would be unlikely. In fact, The IRS Inspector General issued a report in October 2018 finding that the IRS – the federal agency responsible for protecting the public by investigating and stopping impermissible political activity by tax-exempt entities (primarily involving 501(c)(4) organizations) – frequently fails to do its job.

Separately, but on related concerns, in summer of 2018, the Treasury Department and IRS issued Revenue Procedure 2018-38 announcing that nonprofits other than 501(c)(3) organizations will no longer be required to identify the names of donors who contribute more than \$5,000. The changed disclosure rule applies to 501(c)(4) social welfare organizations, 501(c)(5) labor unions, and 501(c)(6) trade associations, all of which are permitted to engage in some – but not unlimited – partisan, election-related activities because donations to them do not generate charitable tax deductions for donors. The concern expressed by some groups is that by turning a blind eye to the funding of partisan campaigns through ostensibly “independent” nonprofit organizations, the IRS is encouraging individuals to spend heavily in elections with the promise of anonymity.

Action on “Political Advocacy” regulations for nonprofits has also shifted somewhat from IRS to federal court, in a significant development that PNY is monitoring. On September 18, 2018, [SCOTUS](#) let stand a lower-court ruling forcing politically active nonprofit groups to disclose the identity of any donor giving more than \$200 when those groups advertise for or against political candidates. Until now, such nonprofit organizations—generally those of the 501(c)(4) “social welfare” and 501(c)(6) “business league” varieties—could keep secret their donors under most circumstances. Some PNY members fund nonprofits that have c4 operations, and so this could affect them.

2019 Activities: On protecting nonprofits from partisan politics, PNY will monitor Congressional proposals related to the Johnson Amendment. It may also write and disseminate editorials on this topic. On ensuring that changing definitions and regulations on nonprofit “political” activity do not alter the ability of nonprofits to engage in issue advocacy, PNY will continue to rely on the efforts of the Forum and the Council, and will continue to monitor any developments from Treasury and the IRS on regulations that might affect nonprofit advocacy rights. In the event a bill is proposed or new rules promulgated, we will work to create an official policy position for PNY and coordinate with national partners.

Private Foundation Excise Tax

Philanthropy New York supports simplifying the federal excise tax on private foundations. On May 4, 2017, Congressman Erik Paulsen (R-MN), together with Congressmen Danny Davis (D-IL), Pat Tiberi (R-OH), George Holding (R-NC), and Richard Nolan (D-MN), introduced a bill (H.R. 2386) to simplify the private foundation excise tax to a flat rate of one percent. A proposal to simplify the excise tax on private foundations was introduced to 2017 tax reform legislation, but did not make it into the final bill signed by President Trump. PNY's policy statement of 2012 on this issue called for simplifying the private foundation excise tax at a revenue neutral 1.39% rate, which was being proposed by sector leaders at the time. The United Philanthropy Forum is considering a statement that it would *only* support a flat 1% rate.

2019 Activities: PNY will continue to talk with NY Senators and Representatives to communicate our established position and look for opportunities to coordinate with national partners taking the lead on this issue. PNY will support either a flat 1% or 1.39% rate, and would not sign on to any statement calling for rejection of a 1.39% flat rate.

Protect Census 2020

Along with the National Council on Nonprofits, the United Philanthropy Forum and several RAs across the nation, PNY believes that the accuracy of census data is crucial because it affects so many aspects of apportionment and government spending decisions. PNY will work with nonprofit partners to promote inclusive assessment and responses to community needs based upon consistent, comparable, valid, objective and inclusive census data. The decennial census count doesn't just determine voting representation (New York State will probably lose one congressional seat in redistricting after the 2020 Census, but could lose two seats without a full and accurate count). The census also determines the geographic distribution of a huge amount of federal funds – from human services programs like Medicaid, SNAP, S-CHIP, WIC, and housing vouchers to large-scale capital investments like highway planning and construction. For fiscal 2015, it was estimated that 300 federal programs were shaped by the census, determining the allocation of approximately \$700 billion for that year alone. Corporations also rely on census data to inform their business strategies and need accurate information. While the U.S. Commerce Department in 2018 increased funding to the Census Bureau over recent years, it is not clear that its funding commitment to the Bureau is in line with historical proportions for ramping up as the census approaches or in keeping with the needs associated with conducting the census online for the first time. Another threat to Census 2020 comes from the proposed inclusion of questions on citizenship. Experts believe these questions would depress response rates in many communities and add significantly to the cost of the census without improving accuracy. DOJ's request claimed that it needs data on citizenship for smaller geographic areas to enforce section 2 of the Voting Rights Act. But a multi-agency review process previously confirmed that the citizenship data collected from the American Community Survey were sufficient to implement the VRA. The census has never previously posed citizenship questions since the VRA was enacted in 1965. In its officially approved statement on the census, Philanthropy New York urges Congress and the Administration to devote sufficient resources to the 2020 Census *now*, to put planning and preparations back on track and resist calls for untested, unnecessary new questions that would decrease participation and increase the inaccuracy of the count.

2019 Activities: PNY will communicate with the New York Congressional Delegation about the importance of full funding for Census 2020 in the 2018, 2019 and 2020 federal budgets and continue to sign on to efforts opposing inclusion of citizenship questions on the census. (See also below on local activity related to ensuring "full and fair" Census count in New York State.)

Federal issues, on which PNY has not moved through the full policy statement approval process, but which fall within our policy parameters, we are tracking, and should be prepared to act upon if necessary:

IRA Charitable Rollover

In 2014, PNY's Board approved an [official statement advocating for the passage of the America Gives More Act](#) (our primary focus was a provision to simplify the excise tax on private foundations), a component of which was a provision expanding and making permanent the IRA Charitable Rollover. While the America Gives More Act did not become law, later legislation moved the IRA Charitable Rollover forward. In December 2015, the IRA Charitable Rollover was made permanent and passed by Congress and signed into law by the President, allowing taxpayers age 70½ 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. However, limitations remain: It applies only to those over 70½; the amount is capped at \$100,000; and donors are specifically not permitted to make charitable rollovers to donor-advised funds, supporting organizations and private foundations. The Council on Foundations supports 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. PNY is generally supportive of the Council's position on the IRA Charitable Rollover because of the impact on increasing charitable giving, but has not taken an official position.

2019 Activities: It is unclear whether or not this issue will see any action in the coming year. PNY will continue to monitor legislative activity and work with national partners who would take the lead if legislation moves forward.

Donor Advised Funds

PNY has produced an [issue guide](#) to help increase understanding of DAFs. A small number of advocates have lobbied key congressional leaders to institute a minimum annual payout or mandatory spend-down requirement on DAFs. Philanthropy New York has not taken an official position, but we are generally supportive of the position of the Council on Foundations, which opposes policy that would mandate payout requirements. The Council points to the value of DAFs to increase overall charitable giving, and that is also in line with our stated principles. Tax reform legislation presented in Congress in November 2017 contained provisions requiring DAFs to disclose their policies on donor advised funds as well as the average amount of grants made, on an annual basis. However, the final version of the bill signed by President Trump included no changes to DAF reporting requirements.

At the end of 2017, Treasury and the IRS announced that they are considering developing [proposed regulations](#) of the IRS Code that would include three less controversial changes to the treatment of DAFs that deal with the issues of bifurcation, pledges and public support. While the Forum's public policy committee is considering shaping a policy statement on these proposed regulations, PNY's public policy committee noted that its members are not likely to oppose those limited regulations.

Separately, after a highly publicized August 2018 NYTimes article "[How Tech Billionaires Hack Their Taxes with a Philanthropic Loophole](#)," DAFs again seemed to be in the public cross-hairs of advocates calling for minimum annual payouts. The Forum is working on producing an official policy statement and is seeking additional research on DAF pay-outs and other data to solidify its position.

One of the anti-DAF advocates' concerns about them is transparency and the inability to determine whether anonymous donors are misusing them for self-serving purposes. This topic is taken up more substantially in the "Donor Anonymity" section below.

2019 Activities: While PNY principles suggest it will oppose any new legislation or regulations that would have the effect of reducing overall giving to charities (which would include those on DAFs), its Public Policy Committee has recommended that PNY's work on DAFs focus attention on the value of endowed philanthropy in general, which is at the core of anti-DAF advocate's concern about this giving vehicle. The committee advised that PNY messaging on DAFs should emphasize the societal benefit of endowing philanthropy, whether it is private foundations, which are commonly associated with the long-range charitable efforts of the ultra-wealthy, or Donor Advised Funds, which are generally utilized by people with smaller amounts to give and used for either short- or long-term giving. PNY will continue to monitor proposals related to DAFs and will highlight the importance of endowed and flexible philanthropy, in which DAFs play an important role in democratizing giving tools.

Private Foundation Distribution Requirements

In recent years, there have been occasional proposals to increase the required distribution by private foundations beyond the current 5%. A mandated payout rate over 5% would, over the long-term, reduce the funds available to foundations to make grants to nonprofits. The imposition of a larger payout amount would have the effect of forced sun-setting for foundations that might otherwise choose to operate in perpetuity. Philanthropy New York has not yet taken an official position on payout rates.

2019 Activities: Legislation on private foundation distribution requirements is unlikely to arise in 2019. Nonetheless, PNY will continue to monitor and work with national partners if potential legislation is being formulated. If changes in rules are proposed or legislation introduced that would increase the payout rate, we will immediately advocate against those changes.

April 15 Charitable Deduction Extension

In 2014, the U.S. House passed legislation (it did not move in the Senate) that would enable donors to contribute to charities until April 15 and still claim the deduction in the tax year ending the previous December 31. According to research from the Urban Institute, this change would vastly increase charitable giving, without any loss in revenues to the government. Support of this proposal, would be in line with our principles, though PNY has not taken an official position to date.

2019 Activities: If it were to arise as part of future tax reform negotiations, PNY would support legislation on this issue, as it is consistent with our principles outlined above in the section "Tax Reform that Sustains and Grows Charitable Giving," however, charitable deduction extension legislation is unlikely to gain traction in 2019.

The Effects of Lower Federal Revenues on Nonprofits

The nonprofit sector has seen its capacity severely diminished over the past two decades of ceaseless government budget cuts at the federal and state levels. Philanthropy New York is generally opposed to tax reform legislation that would further decrease federal revenues because it would directly lead to further cuts in spending that would broadly impact the nonprofit sector.

2019 Activities: The effects of decreased revenues on the nonprofit sector did arise in the course of public debate on the TCJA. PNY will continue to talk with NY Senators and Representatives to

communicate our established positions in favor of tax reform that sustains and grows charitable giving and opposition to the elimination of the estate tax, as well as the potential ramifications that any potential reduction in overall government spending will have on the nonprofit sector. In particular, PNY will advocate for the phase out of elements of the TCJA that decreased federal revenues, which have led directly to increasing federal budget deficits and pressure on funding for social programs and entitlements.

Treasury/IRS Regulations on NYS SALT work-arounds/Effects on Charitable Funds

After the TCJA limited state and local tax deductions to \$10K, New York, New Jersey and Connecticut created “charitable workarounds” to allow taxpayers to offset their state and local tax bills by contributing to charitable funds that support government operations. The IRS has put these states on notice that it will not allow this and proposed [regulations that have been issued by the U.S. Treasury Department](#) that say taxpayers who itemize will only be eligible for a federal deduction that is a small fraction of their charitable donations for property tax payments. The Treasury regulations say taxpayers can receive a federal tax write-off equal to the difference between the state tax credits they get and their charitable donations.

New York gives taxpayers an 85 percent state tax credit for donations made to local municipalities, counties and school districts. Under the IRS proposal, only 15 percent of the donation amount would be eligible for a federal tax break. That means a NY taxpayer who makes a \$30,000 charitable donation to pay property taxes and receives a \$25,500 state tax credit would only be able to write off \$4,500 on a federal tax bill.

Treasury faced a complex task in creating regulations that block the new SALT workaround proposals while taking into account existing programs in states such as Georgia and Alabama that give donors credits for making contributions to hospitals and schools. More than 30 states have programs that give taxpayers breaks for charitable donations. Most taxpayers won’t be affected by the new Treasury rules since the majority of Americans don’t itemize, or if they do, their SALT deductions are less than \$10,000. But those who make contributions to existing school voucher programs could see some changes to their tax benefits under the proposal. Regulations that distinguish the SALT credit programs from tax credit arrangements used to fund education vouchers could have put Treasury in a tricky political spot for seemingly preferring red states over blue states.

Some NP associations are looking into supporting litigation opposing the Treasury regulations because of their harm to charitable funds supporting education, healthcare and other issues.

2019 Activities: PNY staff will monitor policy developments on this issue and share them with members. If appropriate, the Public Policy Committee will consider developing a policy statement that makes the case for government-supporting charitable funds and our opposition to legislation or administrative actions that diminish donor incentives to utilize them. That position will take into account PNY’s generally accepted position to maintain federal revenues that ultimately support the work of many nonprofits.

UBIT

The TCJA has an big impact on nonprofits’ relationship to “Unrelated Business Income Tax” in two different ways. One, TCJA’s outline of the potential tax liability for unrelated business income requires

every charitable nonprofit to know where its income is coming from and determine whether any of it is taxable under the UBIT regulations. Income from advertising and corporate sponsorships is especially prone to being considered “unrelated,” so NCN recommends caution for nonprofits with income from those sources. Says NCN, “Just because the income is used for a mission-related purpose does not shield the income from tax liability. The activity that generated the income/loss is actually what triggers the tax.” Some nonprofit associations are advocating delay of enforcement until the IRS can provide greater clarity.

In addition, TCJA created a new UBIT liability for tax-exempt organizations that provide transportation fringe benefits for their employees, such as commuting/parking expenses. Tax-exempt employers may still subsidize employees’ commuting (in some localities, they are required to do so)/parking expenses through a bona fide reimbursement arrangement, pre-tax qualified “cafeteria” plans, or compensation reduction agreements, so that payments are excluded from the employees’ W-2s, but nonprofit employers will now have to pay UBIT on those amounts.

These two changes have produced great concern. (Interestingly, some of the strongest voices being heard in Washington are coming from associations of evangelical churches). National Council of Nonprofits and many others are advocating to delay the implementation of new taxes on tax-exempt entities and for the IRS to provide guidance to help organizations interpret their liabilities. The U.S. Congress has taken notice, with three bills introduced to repeal these new taxes. Rep. Mike Conaway (R-TX-11) introduced the Nonprofits Support Act (HR 6037) that repeals the two new taxes. Rep. Mark Walker (R-NC-06) introduced the Lessen Impediments from Taxes (LIFT) for Charities Act (HR 6460) that repeals just the tax on transportation benefits. Rep. Jim Clyburn (D-SC-06) introduced the Stop the Tax Hike on Charities and Places of Worship Act (HR 6504) that would also repeal the transportation benefits tax and also includes a “pay for” that proposes raising the corporate tax rate from 21 percent to 22 percent. But none of these is expected to be enacted this year.

2019 Activities: On the first element related to the additional burdens on nonprofits to track and record their UBIT sources, there is not a clear set of activities for PNY to develop at this stage. However, staff will continue to track policy developments and inform members. On the issue of taxation on travel benefits, the staff and Public Policy Committee will consider a position statement that is flexible enough to support any reasonable legislation that repeals or mitigates the effect of this new tax on nonprofits (which could also be applied to the “Decouple US/NYS UBIT Laws” item in the NY State section below). In the meanwhile the 2019 Activities includes flexibility for PNY to advocate for policies that protect NPs’ status as tax-exempt entities.

Allowing Foundations to Fund Post-Graduation Scholarships

A bill was introduced in the House September 23 by Reps. Darin LaHood (R-IL) and Terri Sewell (D-AL) titled [Workforce Development Through Post-Graduation Scholarships Act \(H.R. 6486\)](#). The Council on Foundations worked closely with the lead sponsors and their staff to get this bill introduced, and have been working with Senate offices who will be introducing a companion bill. Essentially, this bill would allow foundations to provide “scholarships” for paying off a portion of student loans for graduates of a degree/technical program in exchange for them committing to live and work in a particular community for a period of time. The change this makes in the code is to make those scholarships exempt from income tax for the recipients, as well as to eliminate some of the hurdles that foundations would otherwise have to clear in order to administer this type of program (by inserting a definition for this type

of grant under the “qualified scholarships” section of the Code). Several Forum members have been following this bill including CMF and PWV among others.

2019 Activities: PNY staff will monitor the legislation and inform members.

Donor Anonymity

The value and role of donor anonymity in encouraging unfettered philanthropy has, historically, been a widely accepted, infrequently debated foundation for policy work among philanthropy serving organizations. However, there is increasing attention to the prominence of Donor Advised Funds to influence issues and the increasing use of 501(c)(4) organizations to influence elections, both of which commonly shield givers’ identity. The term “dark money” is often associated with giving tools that shield billionaire donors from identification as they seek to influence public perception of issues and election campaigns, and this dark money is blamed by many for threats to core democratic functions in our society and the increasing imbalance of power in policy making between the majority of citizens and the mega-wealthy. This has led some PSOs to reconsider their positions on the value and limits of donor anonymity.

PSOs have historically advocated for donor anonymity based on the precedent established in the 1958 Supreme Court case of “NAACP v. Alabama” that says attempts to force donor disclosure interfere with free association guaranteed in the 14th Amendment. The decision equated donations with “membership” in an organization. The judgement said “Immunity from state scrutiny of petitioner's membership lists is here so related to the right of petitioner's members to pursue their lawful private interests privately and to associate freely with others.”

That case centered on a civil rights organization seeking to protect members/donors from harassment for supporting what was then an unpopular cause in Alabama. But the precedent established in that case also protects the anonymity of extraordinarily powerful and wealthy individuals who are using giving vehicles in ways that many civic society advocates say deeply undermine basic democratic functioning in our nation.

Philanthropy New York has not taken an official position on donor anonymity generally or in relation to specific policy issues.

2019 Activities: PNY’s Public Policy Committee agreed that it is a complex issue that warrants deep exploration and discussion among our members. It has recommended that staff produce programming that brings together members to shed more light on the topic and produce member input that leads to a better defined position. It also recommended that this might be an appropriate topic to explore in PNY’s “Promising Practices” work and that PNY’s Board have thoughtful conversations on donor anonymity as it relates to nonprofits, elections, transparency and money in politics, from which a clearer set of policy guidelines can be developed related DAFs, C4s etc.

New York State Concerns

NY State issues that PNY's Board has already approved official statements:

Government's Responsibility to Reimburse Indirect Costs

In December 2014, the federal Office of Management and Budget formally recognized, in new rules called the Uniform Guidance, that when governments hire nonprofits to provide services, those nonprofits incur indirect costs (often referred to as overhead or administrative expenses) and that government should pay for those costs. The Uniform Guidance supersedes all previous OMB directives regarding use of federal funds to pay nonprofits for services delivered under grants and contracts. The new rules expressly require pass-through entities using federal funds – typically state and local governments – to reimburse nonprofits for the reasonable indirect costs they incur when performing services on behalf of governments. Nonprofits that have previously negotiated a federal indirect cost rate must be paid using that rate. Nonprofits that have never had a federally approved indirect cost rate can elect either the minimum rate of 10 percent of their modified total direct costs or to negotiate a higher rate in accordance with federal cost principles. As of Fall 2018, neither the State of New York nor New York City have implemented contracting procedures that are fully consistent with the new rules and continue to develop RFPs and contracts with overhead rates that are significantly less than those to which nonprofits are entitled by the federal rules. Following an extensive review process in 2016, PNY took two official positions: Philanthropy New York urges New York State and New York City to immediately act in compliance with OMB Guidance on Indirect Costs. **Further, [Philanthropy New York encourages New York State and New York City to integrate contracting procedures that will consistently reimburse nonprofits for their full federally-negotiated indirect cost rate or, for nonprofits that don't have one, a negotiated rate in accordance with federal cost principles or a minimum rate of 10 percent of total direct costs.](#)** Since then, New York City has moved in a significantly positive direction, announcing that it would gradually, over the next five years, move indirect cost rates up to 10 percent. This is a very positive move, but it still does not bring the City into full compliance with OMB Uniform Guidance that indicates City and State agencies should accept a higher than 10 percent if a nonprofit already has a federally negotiated rate.

New York State has not taken any concrete action, despite research – which it requested and was paid for by PNY members – that found that indirect costs could not be implemented in a way that would be cost-neutral to State agencies.

2019 Activities: We will continue to work closely with our nonprofit advocacy partners to convene sector and government leaders to move toward a more reasonable approach to indirect costs in government contracts. Initially, our nonprofit partners were relatively satisfied with the City's progress with the Nonprofit Resiliency Committee, but they seem increasingly concerned with the City's lack of progress on this and several other contracting issues. However, to date, there are no advocacy campaigns or litigation efforts on OMB Guidance. PNY has previously expressed its willingness to support our nonprofit partners on indirect cost rates and to be active in voicing our established position that New York State must act to be in compliance with OMB Guidance on Indirect Costs. PNY continues to believe that it could take actions such as notifying the Governor's Nonprofit Liaison that we are concerned about this inactivity, write OpEds that draw attention to this issue, and work with nonprofit associations to call upon the State and City to enact contracting policies that are fully compliant with OMB Uniform Guidance on Indirect Costs. We will work in concert with our nonprofit partners.

[assuming this is approved by the PNY Board]

Integrating Health and Human Services Systems [insert link to statement]

As the Medicare and Medicaid systems look for ways to reduce costs, its leaders are increasingly focusing on the “social determinants of health” along with the providers of social services that help improve vulnerable people’s lives and could prevent costly healthcare consumption. DSRIP (the Delivery System Reform Incentive Payment program) has been a major driver of change. It set a goal that by 2019 all Managed Care Organizations must employ a non-fee-for-service payment system that rewards value over volume for at least 80-90% of their provider payments – thus shifting to “value over volume” and integrating physical and behavioral primary care including social services interventions and community-based prevention activities. This change – for the healthcare system to invest in the social services that keeps people healthier – could have a positive impact on the nonprofit sector. The Human Services Council created the “Value-Based Payment Commission” to research concerns in the human services sector and make recommendations.

HSC’s Commission on Value-Based Care (Philanthropy New York was a part of that commission) issued a report which found that “the paradigm shift from volume-driven to value-driven care presents both great opportunity and great challenges for human services CBOs, and that government, as the principal buyer of their services until now, must take decisive action to strengthen these organizations, modernize the regulatory framework within which they operate, and foster cross-sector partnerships that truly incentivize positive outcomes.” In short, New York State must take deliberate steps to foster the transition. If done well, integration of these systems can lead to better population health and a more sustainable human services nonprofit sector with more diversified funding streams (and decrease the need for philanthropy to “fill the gaps” left by inadequacies in the system).

The blueprint suggests that New York State should act to:

1. Bridge the technology divide between health systems and CBOs
2. Undertake a comprehensive review and overhaul of regulatory requirements
3. Make investments and build systems that support stronger and more informed relationships between the healthcare system and human services CBOs
4. Provide greater and more targeted support for establishing provider networks
5. Address contractual barriers to VBP participation
6. Ensure that measures of social determinants of health interventions make sense and are relevant to population health goals
7. Shift risk incrementally and commensurate with service level

In October, 2018, PNY’s Board approved this statement: Philanthropy New York endorses the recommendations of the HSC Commission on Value-Based Care and its conclusion that New York State government should exert leadership in implementing those recommendations.

2019 Activities: HSC, PNY and some of its members have begun having conversations with Ryan Ashe, New York State’s Director of Medicaid Payment Reform in the Office of Health Insurance Programs. We will use the report recommendations as groundwork to encourage the state to act upon them.

NY State issues, on which PNY has not moved through the full policy statement approval process, but which fall within our policy parameters, we are tracking, and should be prepared to act upon if necessary:

“Real Costs” Budgeting

Because of OMB Guidance on Indirect Costs, there is an ongoing conversation about indirect costs (which generally refers to administrative and operational expenses that are naturally incurred in the course of providing services on behalf of government), but there remains almost no acknowledgement by state and local government of nonprofits’ needs for reserve and capital funds. Full Costs/Real Costs is a more inclusive term and is associated with an ongoing discussion in the sector about the need for government contracts to recognize those needs as well. PNY has not taken an official position on “full cost budgeting” – as it relates to both government and foundation budgeting – but is generally supportive of efforts to increase the overall sustainability of the sector.

2019 Activities: Without a strong current push from either the nonprofit or funder community, this issue is currently on the back burner, but may be taken up in PNY’s “Promising Practices” work.

Maintaining Nonprofits’ Right to Advocate on Issues in New York

Similar to the federal item “Maintaining Nonprofit’s Right to Advocate on Issues” in the federal section above, at the New York State level, the sector faces increasing calls for laws and regulations that would curtail nonprofits’ ability to engage in public dialogue. Philanthropy New York supports the rights of charitable organizations to continue their involvement in public policy debates in accordance with the current rules and regulations. PNY opposes additional limitations on the ability of nonprofit organizations to participate in the public policy process, including legislation or rules that:

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

In August 2016, Gov. Cuomo signed legislation that imposes sweeping disclosure requirements on nonprofit lobbying groups and donors to them. According to news coverage of the legislation:

“The measure will greatly increase the donor information some nonprofits will be forced to disclose to the government. It requires issue-oriented lobbying groups in New York — designated as 501(c)(4) groups — that spend more than \$15,000 in a year on lobbying to disclose donors who give more than \$2,500. The previous limits had been \$50,000 and \$5,000, respectively. If a charitable, tax-exempt nonprofit — which are designated as 501(c)3 organizations — gives more than \$2,500 to a covered 501(c)4, the charity will have to disclose all of its donors during that six-month filing period to the state Attorney General’s Office, which will review the donors’ identities for privacy issues before disclosing them to the public.”

These new reporting requirements are likely to discourage donations to legitimate, charitable activities. The foundations of the ACLU/NYCLU have jointly filed a lawsuit saying the law violated the First and Fourth amendments, and a judge has stayed the implementation of the statute as the lawsuit continues

through the courts. Foundations' concern on this issue was raised with NY Charities Bureau Chief James Sheehan in January 2017, but he was unable to comment due to the ongoing litigation.

An amicus brief by Philanthropy Roundtable submitted in the summer 2018, noted that it opposed New York Executive Laws 172e and 172f because (1) they target nonprofits generally, not specific political activity; (2) they will impose substantial costs upon charities and donors; and (3) they pose a threat to the American tradition of anonymous charitable giving.

2019 Activities: PNY will continue to track the litigation and inform its members if/when these new requirements take effect.

Protecting Charitable Giving Incentives

PNY will continue to support existing income tax credits, deductions and other vehicles at the NY State level that provide incentives for increased charitable giving.

2019 Activities: We don't anticipate any changes to New York State law in 2019 that would either increase tax incentives for charitable giving or reduce charitable giving incentives.

Defending Nonprofit Tax Exemptions

PNY will work to protect the special legal and tax status of nonprofits that exist in New York and in every other state of the nation. In states and municipalities across the nation, government leaders are questioning the nonprofit status of large nonprofit institutions and seeking tax payments and fees. PNY aims to protect the special tax status of nonprofits, defend the rationale for them and promote the extraordinary contributions of nonprofits to communities beyond property tax payments and other revenue generation governments seek to impose on them (See also PILOTs in NYC section below).

2019 Activities: While we don't know of any ongoing efforts in the state that would affect nonprofit tax exemption, PILOTs are a real possibility at any time, especially in upstate municipalities that face property tax revenue challenges. PNY will continue to monitor.

Census Count in New York State

As noted above in the federal section "Protect Census 2020," the decennial count could have tremendous impact on the nonprofits of our region and the communities they serve. At the local level nonprofits and funders are coming together to guard against an undercount of hard-to-reach communities.

For the past year, PNY has been supporting members in forming the "2020 Census Funders Work Group," which aims to plan and identify needs in the lead up to the 2020 Census, monitor and support an accurate count as it happens, and follow through on the information generated by the 2020 Census to ensure it is used properly in community representation and funding allocations. This had led to the establishment of the "NYS Grantmakers for Census Equity Fund," a collaborative fund at the New York Community Trust.

While both NYS and NYC have moved toward appointing leadership and resources toward “get-out-the-count” efforts, clear lines of responsibility and specific dollar amounts have not been forthcoming from either. The Census Funders group is, however, in close conversations with high-level City and State leaders and advocating for those commitments.

2019 Activities: PNY will continue to support to the Census Funders group, host meetings and participate in conversations with State and City officials when appropriate.

Decoupling US/NYS UBIT Laws

Legislation awaiting Gov. Cuomo’s signature (S. 8831/A. 11051) decouples the State’s UBIT from the federal tax code with respect to changes in the treatment of commuter related fringe benefits. The NYS legislation came about largely as a result of strong nonprofit voices, led by Nonprofit Coordinating Committee’s and joined by leaders from Human Services Council, New York Council on Nonprofits, Lawyers Alliance of New York, UJA-Federation of New York, Fiscal Policy Institute, and the Commission on Independent Colleges & Universities in New York. (Philanthropy New York has participated in the planning meetings of this ad hoc NYS Tax Reform Coalition, but has not taken an official position on the legislation).

The legislation will protect nonprofit institutions from additional state taxes based on the federal tax law. TCJA imposes federal UBIT taxes on any amount a nonprofit employer has “paid or incurred” for providing employees with pre-tax commuter benefits, such as a NYC Metrocard, Buffalo NFTA metro Pass, Rochester RTS Pass, or employee parking. New York State law currently imposes a state UBIT whenever federal law does so. As a result, New York automatically followed the new federal statute, imposing an additional 9% tax effective beginning last January 1, 2018. If the nonprofit pays for all or part of the employee’s commuter benefits, it owes both the federal tax (21%) and the 9% New York tax. While the legislation cannot address the 21% federal tax on commuter benefits, it saves the additional 9% to New York State.

2019 Activities: If Gov. Cuomo does not sign the legislation in 2018, PNY will continue to work with the ad hoc coalition and seek permission from PNY’s Board to sign onto messaging and lobbying efforts associated with the group.

New York City & Regional Concerns

Local issues that PNY's Board has already approved official statements:

Government's Responsibility to Reimburse Indirect Costs

See above discussion in the NY State section on this topic, which applies equally to New York City and other municipalities. Philanthropy New York urges New York State and New York City to immediately act in compliance with OMB Guidance on Indirect Costs. **Further, [Philanthropy New York encourages New York State and New York City to integrate contracting procedures that will consistently reimburse nonprofits for their full federally-negotiated indirect cost rate or, for nonprofits that don't have one, a negotiated rate in accordance with federal cost principles or a minimum rate of 10 percent of total direct costs.](#)**

Indirect costs is one of the central issues taken up by the Nonprofit Resiliency Committee formed by the de Blasio administration in September 2016. The committee was to be a two-year initiative looking at a much wider swath of issues beyond indirect costs, including contracting process inefficiencies, improvements to the HHS Accelerator, data reporting mandates, cash flow and prompt payment, engagement of nonprofits in RFP formulation, cost escalation, full cost issues and a variety of other issues related to dedicating more resources to nonprofits building communities. Two years later, HSC and others remain unsatisfied with the committee's outcome, including the City's incomplete progress on indirect costs.

2018 Activities: PNY will support HSC and others specifically on the issue of indirect cost rates.

Other local issues we're tracking:

Payments in Lieu of Taxes (PILOTs)

Laws in all 50 states provide property tax exemptions for nonprofits. For cities heavily reliant on the property tax, the exemption of nonprofits from property taxation means that homeowners and businesses bear a greater share of the property tax burden. Some local leaders have, on occasion, floated the idea of Payments in Lieu of Taxes (PILOTs) for property owning nonprofits in New York City. PILOTs are payments made "voluntarily" by tax-exempt nonprofits as a substitute for property taxes. Since 2000, they have been implemented in at least 177 municipalities in at least 18 states. According to the Urban Institute, while PILOTs have rarely brought in more than 1 percent of total revenues, the dollar value can be quite large. Boston, which has been the most aggressive municipality in developing its PILOT program is bringing in \$17.4 million in additional revenues (which is only .73% of its \$2.4 billion annual budget). The PILOTs issue concerns not just the relatively few philanthropic organizations that own the buildings in which they do their work, but all donors who are concerned about equitable government revenue generation and the fiscal health of nonprofit organizations. Philanthropy New York has not taken an official position on PILOTs, however we have produced an [issue guide](#) to increase understanding of the issue. PNY is generally supportive of the position of the National Council of Nonprofits, which has consistently opposed PILOTs across the nation.

2019 Activities: We don't anticipate any action on PILOTs in New York City, however, it is possible they might arise in municipalities across the larger region. PNY will continue to monitor and voice our concern if necessary.