



2019-2020 Public Policy Priorities

Public Policy Committee Approval: **Approved 10/10/2019**

Board of Directors Approval: **Approved 12/09/2019**

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Introduction

Philanthropy New York's public policy efforts are guided by the belief that local, state, and federal laws and policies should 1) promote a just and equitable society, 2) strengthen nonprofits and 3) support a healthy and sustainable philanthropic sector.

Philanthropy New York will:

1. Advocate for tax and fiscal policies that support philanthropic giving.
2. Support policies and practices that create and sustain a thriving nonprofit sector.
3. Champion public policies that have systemic effects on issues and marginalized communities our members serve.

About this Document

This document identifies and summarizes current public policy issues and updates for PNY's collective membership. It's not intended to deliver comprehensive analyses of the issues affecting the sector. It does reference studies from Philanthropy New York's [past library of policy work](#). We also rely on the work of our national and local partners in the sector. These partners include:

- **Alliance for Charitable Reform**
- **Council on Foundations**
- **Human Services Council**
- **National Council of Nonprofits**
- **Nonprofit New York**
- **Philanthropy Roundtable**
- **United Philanthropy Forum**

Policy Progress in a Challenging Environment

The 2017 Tax Cuts and Jobs Act (“TCJA”) unleashed immense challenges to the foundation and nonprofit sector, ultimately affecting vital services and benefits for the public. The independent sector continues to face policy disruptions and trials at the federal, state, and local level. Despite a challenging social and political environment, the sector’s diverse alliance continues to advocate for sensible, just policies for public good. Philanthropy New York is a proud partner and supporter of this alliance which has gained policy wins in the past 24 months:

Defense of The Johnson Amendment

After Senate Democrats used the Byrd Rule to remove the repeal of the Johnson Amendment from the Tax Cuts and Jobs Act of 2017, The Free Speech Fairness Act ([S.264](#)) was introduced as stand-alone legislation to repeal the Johnson Amendment. The bill died and that was the last notable attempt to weaken it. Philanthropy New York supports the Johnson amendment and will join efforts to sustain this critical 60-year-old law that protects the nonprofit sector from partisan politics.

Funding “Homecoming” Scholarships

The Workforce Development Through Post-Graduation Scholarships Act ([H.R. 6486](#)) would enable foundations to give tax-free scholarships to individuals who have graduated from college in exchange for coming back to live and work in their home state. While the bill hasn’t passed Congress, it has inspired similar, state based bills and has the potential to alleviate the [\\$1.5 trillion U.S. student debt crisis](#) and spur “[brain gain](#),” trends across the country. In short, this “homecoming” legislation, further expands options for individuals and institutions to give charitably.

Protecting the 2020 Census

Philanthropy New York joined a nationwide coalition of advocates, associations, foundations, and nonprofits in a campaign to ensure a complete and accurate census count. Signing onto an amicus brief (a first for PNY), supporting the Census 2020 Working Group and publishing analysis and information about the significance of the census were among PNY’s key policy engagement activities. On June 27, 2019, The U.S. Supreme Court rejected the administration’s stated reason for adding [the citizenship question](#), blocking its addition to the census. Census bureau experts and studies believed the question would have led to undercounting in households with legal immigrants.

Excise Tax Simplified / UBIT’s Repeal

Last December, Congress passed, and President Trump signed a tax bill that included the Private Foundation Excise Tax Simplification Act, H.R. 4953 provision, which simplified the excise tax into a single, flat rate of 1.39 percent. This change is a long time coming and was PNY’s first public policy position back in 2012. Also, the unrelated business income tax (UBIT) was repealed. The repeal is retroactive to January 1, 2018, which means any nonprofits that paid this tax can file for refunds.

PNY's Formal Positions

October 30, 2018

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.

March 28, 2018

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.

November 15, 2017

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.

November 15, 2017

Philanthropy New York supports efforts to revise the tax code in ways that will further incentivize charitable giving and opposes efforts that would reduce charitable giving.

March 15, 2017

Philanthropy New York opposes the repeal of the Johnson Amendment.

August 3, 2016

Philanthropy New York urges New York State and New York City to immediately act in compliance with OMB Guidance on Indirect Costs.

August 3, 2016

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.

June 11, 2015

Philanthropy New York endorses Independent Sector's Principles for Good Governance and Ethical Practice

August 7, 2014

Philanthropy New York supports the passage of the America Gives More Act.

September 17, 2013

Philanthropy New York supports maintaining full deductibility of itemized charitable deductions.

September 21, 2012

Philanthropy New York supports simplifying the federal excise tax on private foundations.

The Issues Watch List

This watch list represents issues PNY is monitoring because of current or pending legislative activity as well as issues that matter to the communities and causes our membership support. This list is subject to change given the nature of a dynamic political environment. The issues are organized into three categories: **T** Tax & Fiscal Policies; **N** Thriving Nonprofits; **C** Issues & Communities.

Charitable Deduction **T** Federal

The TCJA's increase in the standard deduction significantly decreased and dis-incentivized the number of taxpayers who give charitably. Across national tax and nonprofit watch groups, there is a strong consensus that the documented decrease in overall giving from individuals is tied to this change. In response, there are a few bills in Congress (HR [1260](#), HR [651](#), HR [4002](#)) attempting to mitigate this effect and create other avenues to support charitable giving for all individuals. The "Everyday Philanthropist Act" (HR [4002](#)) would create a pre-tax payroll deduction that would go into a charitable giving account. HR 1260 and 651 extend the charitable deduction to non-itemizers. These latter bills are variations on a universal charitable deduction intended to democratize giving for all individuals.

CHARITY Act & Private Foundation Excise Tax **T** Federal

A revised version of The Charities Helping Americans Regularly Throughout the Year (CHARITY) Act (S. [1475](#)) was reintroduced in 2019. The bill proposes simplifying the excise tax to a flat 1 percent and expanding the IRA Charitable Rollover to permanently permit distributions to Donor Advised Funds. Additionally, the Ways and Means Committee advanced tax legislation that included a provision to simplify the excise tax to a revenue-neutral 1.39 percent.

Donor-Advised Funds **T** Federal State

In 2017, Charitable assets in [donor-advised funds](#) (DAFs) crossed the \$100B line for the first time. They have gained popularity and have also been facing public scrutiny lately. The criticism and debate about DAFs include issues related to distribution requirements, donor anonymity, perpetuity and sponsorship and administrative costs. Even if community foundations already self-regulate and follow rigorous self-imposed standards, many are wary of imposing rules that limit this important mechanism for charitable giving. Others fear that congress will hastily create regulations with incomplete information that will not only limit DAFs but may create unintended consequences for private foundations.

Repeal the Unrelated Business Income Tax **T** Federal

[Several bills introduced to the 116th Congress](#) are attempting to repeal the most egregious tax code changes in UBIT which negatively affected nonprofits. Two issues have received the lion's share of attention. First, the law placed a 21 percent federal tax on fringe benefits for nonprofit employees, which typically include employee benefits around mass transit support and parking availability. The second requirement forced nonprofits to silo their profits and losses for each stream of unrelated business income separately and making them significantly increase the cost of reporting as well as increasing overall tax burdens. Iterations of the repeal have strong bipartisan support, showing policymakers' recognition that UBIT's changes from TCJA were a mistake.

The Issues Watch List

Treasury Rule on State and Local Tax Workarounds **T** State

When the Tax Cuts and Jobs Act of 2017 created a \$10,000 ceiling on SALT deductions, some states created “workarounds” that allowed taxpayers to make their SALT payments charitable deductions. The Treasury’s [final rule](#) on stopping SALT workarounds went into effect on August 11, 2019. The rule states that charitable deductions must be recalculated and affected by state tax credits received. The ruling also included a “safe harbor” provision that allows individuals to “still deduct the full value of the donation on their federal taxes. Taxpayers can split the value of their donation between two federal deductions: the SALT deduction and the charitable deduction. The value of the tax credit can be treated as payment of state or local tax and therefore qualify for the SALT deduction.” United Philanthropy Forum explained how this will affect donations: “For big donors or donors in high-tax states, many will not be able to take advantage of the safe harbor provision. For low-tax states that don’t often exceed \$10,000 in state and local taxes, the safe harbor provision is helpful in retaining the full tax benefit.” On September 30, U.S. District Judge Paul Oetken dismissed the lawsuit filed by Connecticut, Maryland, New Jersey, and New York that challenged the federal administration’s cap.

April 15 Charitable Donation Extension **T** Federal

There is strong evidence that extending the deadline for charitable deductions to “Tax Day” can increase giving, especially with middle-class taxpayers. Nonprofits have expressed concern about unintended effects on the flow of end of year contributions.

Indirect Cost Gap at the State & City Level **N** State City

It’s been almost six years since the Office of Management & Budget (OMB) issued guidance stating that state, local and federal agencies need to reimburse nonprofit grantees indirect costs (aka administrative or overhead costs) calculated by applying the nonprofits federally negotiated indirect cost rate. If this rate doesn’t exist, nonprofits can elect for the 10 percent default rate or request to negotiate a rate. Despite this requirement from the federal government, the state and city of New York continue to ignore it in their contracts where there are federal streams of revenue (the requirement is triggered when there are federal dollars involved).

Nonprofit Advocacy & Lobbying Threshold **N** State City

Governor Cuomo’s proposed Good Government and Ethics Reform law introduced early this year included a provision that would reduce the threshold for allowed spending on advocacy for nonprofits from \$5,000 to \$500 before requiring the need to register as a lobbyist. Registering as a lobbyist would require nonprofits to pay fees, report regularly, and receive training—lobbying standards more appropriate for organizations where lobbying is a more significant activity. The consensus from nonprofit associations in New York is that this proposal unfairly targets smaller advocacy groups important to the ecosystem of keeping government informed and educated about the impact and effect of their policies. In a recent report, The National Council of Nonprofits noted that only 3 percent of nonprofits report lobbying activity, piling in comparison to the private and government sectors.

The Issues Watch List

Complete Census Count in New York State **C** State City

The 2020 Census in New York State is facing considerable data collection challenges. The Trump administration, despite the [recent Supreme Court ruling](#), is directing Commerce Secretary Wilbur Ross, to collect information on citizens only—an unconstitutional order since the government is required to count [all persons residing in the United States](#). As a [sanctuary city](#), with a large non-citizen immigrant population, New York would be severely impacted by a decrease in federal dollars. An undercount of New York’s immigrant population would deprive the city and the nonprofits that provide essential social services of much needed federal funding. In a report commissioned by the New York Community Trust entitled, *Achieving A Complete 2020 Census Count*, “New York State received more than \$73 billion from 55 federal programs that rely on census data to determine funding. An undercount could result in financial losses in these programs, even though program recipients remain the same or grow.” Additionally, the 2020 Census will be relying heavily on [web-based responses](#) from about 80 percent of households. The lack of reliable internet access for poor communities and communities of color raise concerns about under-reporting. Also, census advocates believe many non-citizen families won’t respond to the survey for fear that the information will be reported to federal authorities. These fears are exacerbated by the technology gap and the need for assistance in filling out online forms. An undercount would result in a steep drop in federal funding, negatively impacting marginalized communities and increasing nonprofit dependence on philanthropy.

Fair Redistricting in New York State **C** State

Across the United States, several efforts have taken root to address [gerrymandering](#). In 2014, New York approved a constitutional amendment establishing a bipartisan commission for NY State legislative and U.S. Congressional redistricting. This commission was created in direct response to criticism that the state’s redistricting process used in the 2010 census [lacked transparency](#) and diluted the power of New York City residents. Currently, New York has 150 Assembly districts, 63 Senate districts and 27 for the U.S. House of Representatives. Recent estimates project that New York will likely lose one congressional seat due to net-migration but could lose two seats without a full and accurate census count. A nonpartisan redistricting process is integral to promoting fair and equitable representation.

Public Charge **C** Federal State City

On October 15, The Trump Administration’s change to the [Department of Homeland Security’s “public charge”](#) rule goes into effect, affecting noncitizens’ eligibility to be admitted or obtain a green card. The rule existed before but “public charge” was not defined as broadly or subjectively. What concerns advocates about the rule is its inclusion of Medicaid and SNAP, which “increases the likelihood of (a noncitizen being labeled) a public charge nearly tenfold.” Analysts view the rule change as an effort to restrict legal immigration, mirroring the federal administration’s efforts with asylum seekers, refugees, the Muslim ban, et al. U.S. Citizens will be at risk of being separated from immediate family members who have a legal path towards permanent residency or citizenship. Finally, thousands of immigrants will be forced to choose between gaining public access to health and food support and continuing their residence in the United States.

Policy Engagement Activities

PNY uses a mix of strategies to engage in public policy guided by the board of directors and public policy committee. Policy engagement activities include:

1. Communicating with lawmakers and elected officials through in-person meetings, phone calls, and written correspondence.
2. Collaboration with partner networks and associations that can include many actions (e.g., signing on to public statements or promoting mission-aligned policy efforts as examples).
3. Creating opportunities to convene groups leading and pursuing advocacy that align with PNY's policy priorities.
4. Monitoring litigation and legislation in significant sector related issues.
5. Publishing information, editorials, and official positions about the issues.
6. Providing members education about permissible policy engagement.
7. Implementing long term campaigns to engage PNY's membership focused on a single issue or theme.

Issue Levels

Issue	Level
Charitable Deduction	Federal
CHARITY Act & Private Foundation Excise Tax	Federal
Donor-Advised Funds	Federal, State, City
Repeal the Unrelated Business Income Tax	Federal, State
Treasury Rule on State and Local Tax Workarounds (SALT)	State
April 15 Charitable Donation Extension	Federal
Indirect Cost Gap at the State & City Level	State, City
Nonprofit Advocacy & Lobbying Threshold	State, City
Complete Census count in New York State	State, City
Fair Redistricting in New York State	State
Public Charge	Federal, State, City

Sources & Further Reading

- [Supreme Court Leaves Citizenship Question Blocked from 2020 Census](#)
- [Legal Background on Scholarship Grantmaking by Foundations](#)
- [Something Special Is Happening in Rural America](#)
- [Don't lower the lobbying disclosure threshold](#)
- [Johnson Amendment](#)
- [Battle rages over tax rules for churches](#)
- [Federal Tax Law, Nonprofits, and the Action in the States, so far](#)
- [Claiming Attempt to Silence Them, Advocacy Groups Oppose Cuomo Lobbying Proposal](#)
- [UBIT Decoupled in New York State](#)
- [An April 15 Deadline for Charitable Giving Would Be a Boon to Nonprofits](#)
- [Private Foundation Excise Tax](#)
- [The Legacy IRA: The Charitable IRA Rollover Part II](#)
- [New OMB Guidance on Indirect Costs: What It Does and Why It Matters](#)
- [Donor-Advised Funds Debate Intensifies with Proposed California Legislation](#)
- [Donor-Advised Funds](#)
- [U.S. judge rejects states' challenge to Trump tax cap on 'SALT' deductions](#)