



July 30, 2007

The Honorable John Lewis, Chairman  
The Honorable Jim Ramstad, Ranking Member  
Committee on Ways and Means Subcommittee on Oversight

Dear Chairman Lewis and Ranking Member Ramstad,

On behalf of the National Committee for Responsive Philanthropy, I am pleased to submit comments to the House Ways and Means Subcommittee on Oversight concerning provisions in the Pension Protection Act of 2006 (P.L. 109-280) pertaining to tax-exempt organizations.

NCRP recommends that the committee:

- Extend the charitable provisions found in the Pension Protection Act, including the IRA Rollover, and keep them in their current form
- Subject supporting organizations and donor-advised funds to the excise tax, similar to how private foundations already pay the tax, and dedicate the revenue to oversight of the sector
- Simplify the supporting organization structure by eliminating the Type III classification, through which most abuses occur
- Develop a clear set of guidelines and requirements for international organizations to be considered charitable organizations

As the nation's premier philanthropic watchdog group, NCRP values this opportunity to substantively contribute to the discussion, which we anticipate will have an impact on efforts to promote the public's interest among foundations, corporate grantmakers, individual donors and public charities.

If you have any questions or need additional information, you can reach me at 202.387.9177 or at [adorfman@ncrp.org](mailto:adorfman@ncrp.org).

Sincerely,

Aaron Dorfman  
Executive Director



## **Improving Philanthropic Accountability: Recommendations on the Pension Protection Act of 2006**

---

### ***Comments from the National Committee for Responsive Philanthropy, July 30th, 2007***

The National Committee for Responsive Philanthropy (NCRP) is pleased to have the opportunity to provide comments to the House Ways and Means Committee on the subject of provisions relating to tax-exempt organizations contained in the Pension Protection Act of 2006 (P.L. 109-280).

As the nation's premier philanthropic watchdog with a 30-year track record of research and action on non-profit and philanthropic accountability, NCRP is well acquainted with the questions being addressed by the committee. Throughout our 30-year history, NCRP has been at the forefront of bringing about substantive change in the philanthropic sector, and with the passage of the Pension Protection Act last year, NCRP believes significant steps were taken to make philanthropy more responsive and address the needs of communities that need help the most.

The efforts of the 109<sup>th</sup> Congress in passing the Pension Protection Act of 2006 constituted, we believe, a noble starting point in the fight to significantly reform the practices of tax-exempt organizations in the United States. Notable among these revisions were the regulations put in place on donor-advised funds, supporting organizations and private foundations. Many of the regulations put in place were long overdue and received the full support of both NCRP and other organizations in the philanthropic sector. However, despite the many substantial reform measures put in the place by the Pension Protection Act, NCRP believes more can be done to strengthen the charitable community by revising several of the measures introduced with the legislation last year.

In addition, the five new tax incentives that were introduced to help encourage charitable giving are set to expire at the end of 2007, and NCRP strongly believes they should be extended in their current state. Chief among these provisions is the IRA Rollover incentive, which permits taxpayers 70 ½ and older to make tax-free donations from Individual Retirement Accounts (IRAs) to charitable organizations.

Overall, NCRP strongly supported the passage of the Pension Protection Act and today fully endorses the vast majority of the provisions contained within it. Only a small portion of the legislation directly affects the non-profit community, with the main section being Title XII, also known as the portion of the bill pertaining to tax-exempt organizations. The giving incentives and reform measures included are a huge step forward toward increased transparency in the

philanthropic sector, and the changes made have already had a substantial impact on the sector as a whole.

NCRP welcomes the efforts of the 110<sup>th</sup> Congress to address the concerns of the philanthropic sector, and we believe the arrival of new leadership in Congress this session can truly bring about substantive change in the philanthropic community. The comments we have submitted below outline NCRP's main concerns with the Pension Protection Act and highlights the sections of the bill we feel deserve reexamination by the Ways and Means Committee; in addition, we have also outlined several areas we believe deserve the attention of the committee going forward when considering new legislation pertaining to the non-profit and philanthropic sectors.

### **TAX INCENTIVES FOR CHARITABLE GIVING**

The passage of the Pension Protection Act last August brought with it five new tax incentives that were put in place to encourage greater contributions to charitable organizations. All five of these incentives have had a positive effect on communities all over the United States, and NCRP strongly supports extending these programs before they are due to expire at the end of the 2007 calendar year. Tax deductions allowed for food and book donations especially are programs that we believe will significantly benefit the American people; new legislation from the 110<sup>th</sup> Congress that permanently extends these programs is highly recommended and encouraged by NCRP.

The Pension Protection Act includes a tax incentive relating to IRA accounts, and the provision allows taxpayers 70 ½ and older to make tax-free donations to public charitable organizations. The donations have had a remarkable effect on communities all over the country, and NCRP supports legislation that would keep the IRA rollover program in its current state and permanently extend the provisions that are contained. Any changes to the requirement of which charitable organizations are eligible to receive these tax-free contributions would detract from the primary purpose of the IRA Rollover in the first place, which was to provide IRA account holders the opportunity to make charitable donations that would best serve the interests of the charitable community.

Current restrictions in the Pension Protection Act prevent IRA account holders from making tax-free contributions to donor-advised funds, supporting organizations or private foundations. Legislation introduced in Congress this year by the House and Senate (H.R. 1419 and S. 819, respectively) would repeal these restrictions and allow contributions to be made to these funds. NCRP is concerned that if these restrictions are lifted, more money will be taken away from public charities and will sit in donor-advised funds or private foundations unused. By sitting in the bank accounts of large private foundations, money that could have been donated to public charities directly will simply add to the assets of foundations. By extending the current IRA rollover tax credit in its current state, NCRP believes that money contributed from these IRA accounts will truly be put to the best use possible.

## **DONOR-ADVISED FUNDS**

The passage of the Pension Protection Act brought forth the first substantive effort to regulate donor-advised funds. The vast majority of the provisions contained in the Pension Protection Act are changes that NCRP supports, and many are changes that were advocated by NCRP in the years leading up to the passage of the Act last August. However, there are a few issues we feel should be corrected relating to donor-advised funds, and these include a payout requirement, the tax issue arising from donations to a donor-advised fund in place of a donation to a private foundation and the issue of excessive donor control.

In passing the Pension Protection Act, lawmakers removed an expected provision that would call for a minimum annual required level of distributions for donor-advised funds, a provision which NCRP fully supported. Instead of including the provision in the bill, the Pension Protection Act calls for a study commissioned by the Treasury Department and the secretary of the Treasury to answer several questions relating to donor-advised funds and supporting organizations. These questions include: whether tax deductions for contributions to supporting organizations and donor-advised funds are appropriate given how donated assets are used, and whether the donor receives any benefits from the transaction, either directly or indirectly; second, whether there should be a payout requirement on donor-advised funds; and finally, whether the retention by donors of rights associated with their contribution is consistent with the tax treatment of donations as completed gifts. The Treasury Department's study is set to be completed and turned into the Senate Finance Committee some time before the end of 2007. NCRP submitted comments in April of this year to the IRS relating to the Treasury study, and the study, when released, will hopefully be responsive to the issues we raised in our comments, which can be viewed on our website.

NCRP feels that there are a few minor inadequacies in the Pension Protection Act that should be corrected by future pieces of legislation. The first of these measures concerns donations being made to a donor-advised fund in place of a gift to a private foundation. Deduction limits already in place that prevent large, unethical gifts to private foundations are a needed check against tax abuse in the United States. Because of these laws, donors have the potential to make significant tax-exempt contributions to donor-advised funds to try and circumvent tax responsibilities. The Pension Protection Act does not address this problem. We realize that correcting all the problems relating to tax evasion with tax-exempt organizations is far from certain, but with legislation aimed at correcting these evasion techniques, the sector can become more responsive to the needs of the constituents they claim to be representing.

The second concern we have found in the Pension Protection Act relating to donor-advised funds concerns the issue of excessive donor control. One of the key requirements for a fund to be considered a "donor-advised fund" is the notion that the donor has the right to provide advice on how the fund makes investments or donations. A donor can recommend which charities receive the funds, but the foundation administering the fund is under no legal obligation to allocate the funds per the request of the donor. When a grant is made from a donor-advised fund to the donor's private foundation, we believe the transaction of funds

constitutes excessive donor control. While technically allowed under the Pension Protection Act, which allows a donor-advised fund to make a donation to any organization, NCRP believes action should be taken to address the unethical nature of grants and donations being made from a donor-advised fund to a private foundation that features the same individual.

## **SUPPORTING ORGANIZATIONS**

The structure currently set in place by the Pension Protection Act regarding supporting organizations is confusing at best. The distinctions between Type I, Type II and Type III organizations, despite the clarification brought forth in the bill, still remain unclear. The definitional tests put in place remain complex, and with no clear, transparent definitional test in place, the potential for abuse and fraud remains high. This is most true with Type III supporting organizations, where the control by the sponsored legislation is the weakest and the potential for abuse is the strongest. With Type I and Type II supporting organizations, there is at least some level of control set in place, and because of this, the abuse of funds is less likely to occur. We urge Congress to look into revising the section of the Pension Protection Act dealing with supporting organizations and scrapping the category of Type III supporting organizations all together; by eliminating this category and refining the definitions and classification of supporting organizations, the hope is that greater transparency and responsiveness will result. NCRP addressed the issue of Type III organizations in our comments to the IRS back in April 2007.

Similar to our argument for a minimum annual required level of distributions for donor-advised funds, NCRP believes the same rule should be applied to supporting organizations. To achieve a maximum level of accountability concerning supporting organizations, and donor-advised funds, all efforts should be made to ensure stronger disclosure of the distributions made by the funds. NCRP would like to see legislation introduced in Congress this session concerning an effort to require “real time” disclosure of grants made by supporting organizations that would result in detailed, unrestricted disclosure. Greater insight into who is receiving these funds in a quick and responsive way has the potential to encourage increased accountability among the supporting organizations and donors themselves, in the end resulting in more dollars going to the charities that need the money the most.

## **EXCISE TAXES**

One of the provisions missing from the Pension Protection Act that we would like to see amended by future legislation concerns supporting organizations and donor-advised funds paying excise taxes. Given the history of abuse and fraud that is prevalent in both supporting organizations and donor advised funds, we believe a mechanism that must be put into place is to require the funds to pay excise taxes, similar to how private foundations already do. With billions of dollars in assets, donor-advised funds and supporting organizations can easily afford to make the payments, and when coupled with a strict payout requirement, the taxes paid should not take away from the charitable contributions the funds are making. NCRP believes excise taxes on private foundations, donor-advised funds and supporting organizations should

be used exclusively for oversight of the nonprofit sector. Adding a new excise tax to donor-advised funds and supporting organizations without dedicating the revenue to oversight of the sector would serve little purpose.

## **INTERNATIONAL ORGANIZATIONS**

One aspect of the Pension Protection Act that deserves clarification is the provision dealing with international organizations. When a donor-advised fund issues a grant to an international charitable organization, the fund is required to “make a good faith determination that the organization is equivalent to a domestic charity”, with no standards or rules governing how this determination is supposed to be made. With the potential for fraud and abuse by international organizations and the good-natured intent of donor advised funds being tarnished because of unclear specifications, NCRP feels that new standards should be put in place by either the Treasury Department or Congress that clarify the expectations used when making grants to international organizations. With clearer guidelines as to what constitutes a charitable international organization, donor-advised funds can have a better understanding as to whom they are contributing to; in addition, having the regulations in place can ultimately make sure charitable dollars are allocated to the people and resources that need them the most.

## **REPORTING REQUIREMENTS**

Section 1223 of the Pension Protection Act, located under the Reforming Exempt Organizations subtitle, issues new reporting requirements on tax-exempt organizations that are not currently required to file information returns. Under the current law, these organizations have gross receipts of less than \$25,000 on an annual basis. This threshold has not been raised in nearly three decades, and NCRP believes an increase in the threshold will benefit smaller organizations that cannot afford to take on the workload of the increased reporting requirements. We believe raising the annual threshold to \$50,000 will have a positive impact on the sector and decrease the number of organizations that have to file the normal amount of paperwork that larger organizations are required to file. NCRP will be submitting comments to the IRS next month concerning the revisions of the 990 form, and will include comments on the threshold, and how we strongly encourage a raise in the reporting requirement.

## **CONCLUSION**

NCRP has been on the offensive for years relating to the problems associated with donor-advised funds, supporting organizations and private foundations. The changes made in the Pension Protection Act were a noble step forward in the fight to bring about more responsiveness and transparency to the philanthropic sector. However, there is still substantial work that needs to be done, and NCRP hopes that through our comments and the comments of our colleagues there can be a dialogue to bring about change. Despite the passage of the Pension Protection Act nearly a year ago, tougher regulation standards on donor-advised funds and supporting organizations are still sorely needed, and NCRP believes this can be achieved,

partly, through mandatory payout requirements and excise taxes. It is our hope that through new legislation these measures and the others laid out in our comments can be achieved.

Finally, we would like to stress our fundamental belief that the charitable provisions in the current Pension Protection Act deserve renewal. By permanently extending these provisions, Congress will be sending a clear message to the philanthropic community that they are encouraging charitable activity, especially in regard to the IRA Rollover program. NCRP strongly believes that the best way to ensure strong charitable giving through the IRA Rollover program is to leave the provision in its current state. Changing the provision in any sort of meaningful or substantial way would harm the essential spirit of philanthropy that resides in its current form. NCRP is hoping to see legislation this session that refrains from revising the IRA Rollover plan and leaves the charitable revisions contained in the Pension Protection Act intact. The other charitable revisions contained in the bill, including rewarding donations to food and book programs, deserve an extension as well.

We would like to thank the House Ways and Means Committee for allowing us to submit comments pertaining to the provisions in the Pension Protection Act that relate to tax-exempt organizations. NCRP is willing to assist the Committee in any way we can relating to issues concerning the non-profit and philanthropic sectors, and we look forward to working with the Committee to bring about substantive change to the charitable community.