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Federal

Budget Season Opens, Earmarks at Risk

This week, the White House will send to Congress its budget proposals for the 2024 fiscal year that begins on October 1. This action starts the annual budget and appropriations process that is supposed to lead to passage of 12 appropriations bills. Split control of the House and Senate will make it difficult for Congress to reach agreement on how much to spend next year on defense and non-defense priorities, let alone enact any of the separate spending bills. Commentators are already predicting that federal lawmakers will be forced once again to pass a stopgap spending measure called a Continuing Resolution (CR) to keep the federal government open into the fall and perhaps the full fiscal year.

Use of a CR can impact the work of many nonprofits by limiting funding. In recent years, Congress enacted spending laws that included billions in direct funding for specific projects and programs run by charitable nonprofits or governments in local communities. However, these direct spending decisions – known as “earmarks” – can’t be included in a Continuing Resolution, so the fate of spending bills can have a significant impact on the ability of thousands of organizations to serve their communities. Further limiting the benefit of earmarks, the House last week released a new policy on Community Project Funding (the House term for earmarks), banning earmarks by three subcommittees (Defense, Labor-HHS, and Financial Services-General Government). The Labor-HHS appropriations bill has historically been a major vehicle for direct funding to charitable nonprofits. The new rules also limit earmarks to half of one percent of discretionary spending, down from one percent this current fiscal year. See Guidance for Community Project Funding for more information. The Senate rules do not match the new House approach, meaning a showdown is looming.

Introducing the *Charitable Act*

On March 1, a bipartisan group of U.S. Senators introduced the *Charitable Act* (S.566) that would create a non-itemizer, universal charitable deduction. Specifically, the bill would enable taxpayers who take the standard deduction (about 88% of taxpayers) to deduct charitable donations of up to one-third of the standard deduction, or about $4,600 for individuals and $9,200 for married couples based on the current standard deduction. In introducing the legislation, Senator James Lankford (R-OK), said, "Our families, our churches and other nonprofits are the first and most important safety net for the most vulnerable in our communities." He observed, "Our nonprofits provide our neighborhoods and families vital job training, compassionate homeless assistance, food in times of crisis, and spiritual counsel during our best and worst days." Senator Chris Coons (D-DE) stated, "In **Delaware** and across our nation, we've always stepped up in extraordinary ways to meet the needs of our communities.… I am proud to have worked on the *Charitable Act* that will expand and extend the deductions Americans can claim to encourage even more Americans to embrace the civic virtue of charitable giving." The bill was introduced with 10 bipartisan cosponsors; a House version of the measure is expected in the coming weeks. Key letters of endorsement from the National Council of Nonprofits and the Charitable Giving Coalition were released last week.

Worth Quoting

- "Charitable giving has not kept up with inflation, let alone met increasing community needs. The *Charitable Act* proposes sound tax policy that would incentivize millions more taxpayers to give to their local community-based organizations, enabling people to feel more invested in, engaged with, and supportive of the collective success of their neighbors and community." ~ Tim Delaney, President and CEO of the National Council of Nonprofits, quoted in Congress, NPOs Take Another Shot At A Universal Tax Deduction, Eric Obermauer, *The NonProfit Times*, Mar. 2, 2023.

Worth Reading

- **News Release**: Lankford, Coons, Colleagues Advocate for More Charitable Giving to America's Nonprofits, Houses of Worship, Religious Organizations, and Charities, Office of Senator Lankford, Mar. 1, 2023.
- Over 25K groups back bipartisan Senate measure to expand federal tax deductible amount for charitable giving, Kelly Laco, *Fox News*, Mar. 1, 2023.

Worth Watching

- Lankford & Coons Host Press Conference for the Charitable Act (20:40), Office of Senator Lankford, Mar. 1, 2023.

FastView

Supreme Court Debates Student Debt Cancellation: Last week the U.S. Supreme Court heard two cases to determine whether the Biden Administration may proceed with its student loan debt cancellation program. The cases hinge on whether the plaintiffs, six states and two loan borrowers, have legal standing to bring lawsuits against the Administration and if so, whether the Administration has the power to cancel federal debt without explicit authorization from Congress. The program, announced in August, would cancel up to $10,000 for federal borrowers and an additional $10,000 for Pell Grant recipients. The program is estimated to cost

$400 billion and affect 40 million borrowers. A majority of the justices seemed open to rejecting the program due to executive overreach. However, questions also arose concerning whether third-party lawsuits or by borrowers who may not have been injured should be permitted. The pending cases do not involve the Public Service Loan Forgiveness program which permits people with federal student loans to earn forgiveness in exchange for 10 years of public service through employment at charitable nonprofits or governments.

Government Capacity to Access Federal Aid: Concerned that smaller local governments do not have the capacity to bid on numerous new federal grant opportunities, Senate Majority Leader Schumer (D-NY) is asking Treasury Secretary Yellen to clarify that governments can spend some of their American Rescue Plan Act (ARPA) funds to create dedicated offices and initiatives focused on capacity building to pursue federal investments. Specifically, Schumer is asking the Treasury Department to make "it clear that boosting state and local capacity is an allowable use" of APRA funds in order to "significantly aid states and localities in cutting through red tape, maximizing the impact of taxpayer dollars, and getting funding quickly out the door." In his letter to the Treasury Secretary, Senator Schumer suggests the "added capacity would also help [local governments] tap investment from other sectors like philanthropy and the private sector." Learn more about ARPA funds and nonprofits.

House Investigations Priorities: Last week, the House Ways and Means Committee approved its agenda of oversight-related activities for the next two years. Among other issue areas, the Committee said it will prioritize oversight of federal tax laws, regulations, and filing requirements that affect tax-exempt organizations, including charitable nonprofits, foundations, and "political groups operating as social welfare organizations." It reportedly plans to evaluate IRS efforts to monitor these organizations and prevent abuse, as well as review the IRS tax-exempt application and agency oversight of new exempt organizations. The National Council of Nonprofits, state charities officers, and a *New York Times* investigation demonstrated the need for tighter scrutiny of applicants seeking tax-exempt status in order to protect the public and integrity of the charitable nonprofit sector.

Reforms to the Federal Regulatory Process: The federal Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) published recommendations on Broadening Public Engagement in the Federal

Regulatory Process. Recommendations include making materials more accessible and usable and urging government agencies to proactively engage communities. The public is invited to review and submit feedback on these recommendations by **Friday, March 10**.

Nonprofits Can Benefit from Energy-Efficient Tax Deduction

Nonprofits can now benefit from tax deductions if they install energy-efficient equipment in new or renovated buildings that they own. Tax credits or deductions don't usually provide any benefit to nonprofits because tax-exempt organizations generally do not have any income tax liability. But changes in the Inflation Reduction Act (IRA) passed in 2022 extend a tax incentive that has been in the Internal Revenue Code since 2005 to nonprofits, giving organizations more negotiating power when building or renovating their structure. Read the full article.

State and Local

Workforce Shortages: Ongoing Challenges and Finding Solutions

State and local governments and charitable nonprofits alike are experiencing severe workforce shortages, and legislation across the country is reflecting the challenges and proposing solutions. A bill in **Connecticut** would establish a student loan subsidy program to reduce the interest rate on loans to individuals employed in certain high-demand professions as determined by the state's Chief Workforce Officer. The state also announced grantees of CT Health Horizons, a three-year $35 million program in cooperation with nonprofit institutes of higher education to "grow and diversify the nursing and social work student body and workforce." A measure in **Massachusetts** would provide student loan repayment assistance to qualifying human services employees; see Providers' Council analysis. Two bills in the **Texas** House would assist with repayment of certain mental health professional education loans in response to the state's mental health crisis, where patient waiting lists for some providers extend beyond six months. There are also initiatives in parts of the country to introduce high school students to public service through internships and work-based learning.

Worth Reading

- Workforce shortages impact nonprofits, wider state community, Marnie Taylor, President and CEO of the **Oklahoma Center for Nonprofits**, *The Journal Record* (Oklahoma City, OK), Mar. 3, 2023.
- The Worker Shortage Is Real. Could Tech Help Governors Close Gaps?, Kery Murakami, *Route Fifty*, Feb. 15, 2023.

In Focus:

Government-Nonprofit Grants and Contracting Reform

Already this year, a major, 200-year-old charitable nonprofit in New York City has closed its doors due in large part to the failure of city government to pay its bills on time. Poor policies and practices there threaten to push other nonprofits over the brink as well. But it's not just in New York. Systemic failures in government-nonprofit grant and contract policies and practices by state, county, and city governments across the country severely harm the ability of nonprofits to serve people in local communities. Nonprofits continue to call on policymakers to reform antiquated and broken systems. Here are some recent examples:

- **CalNonprofits** is highlighting eight bills that address its campaign to improve nonprofit contracting with the state of **California**. The state association of nonprofits is launching a public campaign later this month to ensure that the measures are signed into law.
- Legislation in **Connecticut**, if enacted, would enable nonprofits that contract with the state to retain unspent allocations under grants – thereby encouraging efficiencies and innovation. The bill would also require the state to provide annual cost of living adjustments to nonprofit grantees/contractors, pay bills within 30 days of delivery of service, and identify and eliminate any administrative burdens placed on the service providers that are not necessary to prevent fraud or misuse of funds or prescribed under federal law. Similar

provisions have been enacted in the past, only to be undone via bureaucratic interpretations and inaction.

- Baltimore, **Maryland**, has established an expedited process for approving federal grant awards, including the Community Development Block Grants (CDBG), for which contracting and reimbursement have famously been delayed over the past several years. The challenges have been richly detailed in a recent Abell Foundation study.

Worth Quoting

- "…even five years ago, one of the largest obstacles to community-based organizations achieving financial stability was the fact that government contracts were not covering the actual cost of providing services. And that was prior to the COVID-19 pandemic and the resulting recession and rise in inflation, all while the demand in services increased and nonprofit social sector employees stepped up to serve as frontline workers during the pandemic."
~ Jody Levison-Johnson, President and CEO of Social Current, writing in Government contract reform is a must for social sector nonprofits, *NYN Media*, Feb. 28, 2023.

- The **Minnesota** Office of the Legislative Auditor "has found pervasive noncompliance by state agencies with grants management policies in recent years, and statutes provide little authority to enforce agencies' compliance with these policies. We make recommendations to strengthen grants management policies and increase oversight of grants management in executive branch agencies."
~ Oversight of State-Funded Grants to Nonprofit Organizations, Office of the Legislative Auditor, Program Evaluation Division, State of Minnesota, February 2023.

Worth Reading

- Late Government Funds Claims Another Victim, Richard Levey, *The NonProfit Times*, Feb. 28, 2023.
- Government contract reform is a must for social sector nonprofits, Jody Levison-Johnson, President and CEO, Social Current, *NYN Media*, Feb. 28, 2023

Commentary

When the Minimum Wage Rises

A leader of a state association of nonprofits once observed that on issues of minimum wage hikes and other labor policy changes, charitable organizations typically experience two conflicting viewpoints: moral support yet operational anxiety. As in, working people – both employees of charitable nonprofits and the people the organizations serve – deserve fairness and protections, but managers must resolve how their nonprofits will pay for the increased costs. Come now two states considering partial relief for this moral support/operational anxiety conundrum. A proposed minimum wage hike for all hourly workers in **Vermont** -- from $10.96 to $19.45 by July 1, 2023 -- would also create a program to provide grants equal to the amount of payroll increases for certain small businesses and nonprofits with fewer than 20 full-time employees. In **Washington State**, a bill would require that state government grants and contracts stipulate that the hourly minimum rate be adjusted as necessary to provide that the wage is not less than the latest minimum wage rate at the time the work is performed. If enacted, this could overcome a common challenge that governments mandate minimum wage hikes but don't pay for those added costs in existing written agreements.

Worth Quoting

On adapting to challenges

- "It may appear that more money is being donated, but it's from a few very wealthy individuals that are picking larger individual organizations. It's not the bread and butter of the nonprofit sector that really relies on their local communities and individuals."
  ~ Jennifer Hutchins, Executive Director of the **Maine Association of Nonprofits**, quoted in Even as Economy Shows Positive Signs, Nonprofits Aren't Letting Their Guard Down, Alex Daniels, *Chronicle of Philanthropy*, Feb. 28, 2023.

- “We haven’t just learned to pivot — we’ve had to learn to pirouette.” ~ Anne Hindery, CEO of the **Nonprofit Association of the Midlands** (Nebraska), quoted in the same *Chronicle* article.

Numbers in the News

27%

The share of Florida nonprofits that report having trouble filling open paid-staff positions. Plus, fully a quarter (25%) acknowledge experiencing voluntary staff turnover. Many do not have the resources to raise salaries or benefits sufficiently to hire new staff.

Source: 2022 Florida Nonprofits Survey, **Florida Nonprofit Alliance**, Feb. 24, 2023. Also see the FNA news release and Florida Nonprofits Struggling To Keep Up, Eric Obermauer, *The NonProfit Times*, Mar. 1, 2023.

March is

- Women’s History Month
- National Disability Awareness Month
- National Deaf History Month (March 13 – April 15)

Nonprofit Events

- Mar. 7, Nonprofit Day on the Hill, Kansas Nonprofit Chamber
- Mar. 7, Nonprofit Day at the Capitol, Michigan Nonprofit Association
- Mar. 7-9, Nonprofit Summit, Together SC
- Mar. 8, Nonprofit Day at the Capitol, Kentucky Nonprofit Network
- Mar. 9, Advocacy in Action, Foraker Group (Alaska)
- Mar. 9, Advocacy 201, Nonprofit Association of Oregon
- Mar. 14, Public Policy Action Network, Momentum Nonprofit Partners
- Mar. 16, Nonprofit Advocacy, Center for Nonprofit Excellence (Virginia)
- Mar. 28, Legislative Reception, Iowa Nonprofit Alliance
- Apr. 3-4, Oregon Nonprofit Leaders Conference, Nonprofit Association of Oregon

Advocacy in Action

Introducing a Bill When the Odds Appear Long

Senators Lankford (R-OK) and Chris Coons (D-DE) have re-introduced their bipartisan *Charitable Act* (S.566), legislation to create a universal charitable (non-itemizer) deduction so all taxpayers, not just the wealthy, have an extra incentive to support their community by donating to the work of charitable nonprofits. The bill faces a Congress known primarily for its extreme partisanship, looming fiscal crises and potential government shutdowns, and perhaps historically low expectations of significant accomplishments. The *Charitable Act* faces truly long odds of passing, so why bother?

Read the full article.