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(Original Signature of Member)

112TH CONGRESS
1ST SESSION

H. R.

To amend the Internal Revenue Code of 1986 to facilitate program-related investments by private foundations.

IN THE HOUSE OF REPRESENTATIVES

Mr. SCHOCK introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Internal Revenue Code of 1986 to facilitate program-related investments by private foundations.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Philanthropic Facilitation Act of 2011”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; Table of Contents.
- Sec. 2. Facilitation of program-related investments.
- Sec. 3. Declaratory judgment remedy.
- Sec. 4. Information returns.

Sec. 5. Publicity of information.
Sec. 6. Conforming amendments.
Sec. 7. Regulations.
Sec. 8. Effective date.

1 **SEC. 2. FACILITATION OF PROGRAM-RELATED INVEST-**
2 **MENTS.**

3 Subsection (c) of section 4944 of the Internal Rev-
4 enue Code of 1986 is amended to read as follows:

5 “(c) PROGRAM RELATED INVESTMENTS.—

6 “(1) TREATMENT OF PROGRAM RELATED IN-
7 VESTMENTS.—For purposes of this subchapter, pro-
8 gram-related investments—

9 “(A) are not investments which jeopardize
10 the carrying out of one or more purposes de-
11 scribed in section 170(c)(2)(B),

12 “(B) are not business holdings under sec-
13 tion 4943, and

14 “(C) may be qualifying distributions under
15 section 4942.

16 “(2) PROGRAM-RELATED INVESTMENTS DE-
17 FINED.—

18 “(A) IN GENERAL.—For purposes of this
19 subchapter and chapter 61, an investment made
20 by a private foundation constitutes a program-
21 related investment if—

1 “(i) the primary purpose of the invest-
2 ment is to accomplish one or more of the
3 purposes described in section 170(c)(2)(B),

4 “(ii) no significant purpose of the in-
5 vestment is the production of income or
6 the appreciation of property, and

7 “(iii) no purpose of the investment is
8 to accomplish one or more of the purposes
9 described in section 170(c)(2)(D).

10 “(B) SPECIAL RULES.—For purposes of
11 subparagraph (A)—

12 “(i) determinations of whether an in-
13 vestment qualifies as a program-related in-
14 vestment shall be based on consideration of
15 all relevant facts and circumstances, and

16 “(ii) the fact that the entity produces
17 significant income or capital appreciation
18 shall not, in the absence of other factors,
19 be conclusive evidence of a significant pur-
20 pose involving the production of income or
21 the appreciation of property.

22 “(3) SAFE HARBOR DETERMINATIONS.—The
23 Secretary shall establish a procedure which shall be
24 substantially similar to the processes for recognition
25 of exemption under section 501(a) or 4945(g) and

1 under which an entity seeking to receive program-re-
2 lated investments may petition the Secretary for a
3 determination that, based on consideration of all rel-
4 evant facts and circumstances, investments by pri-
5 vate foundations in such entity will be program-re-
6 lated investments meeting the requirements of para-
7 graph (2). Under this procedure, the Secretary shall
8 rule on all requests within 120 days of submission.

9 “(4) EFFECT OF DETERMINATION.—Once a de-
10 termination has been made that investments in an
11 entity qualify as program-related investments, orga-
12 nizations making such investments shall be entitled
13 to rely on the determination, unless and until the
14 Secretary publishes notice of revocation of the deter-
15 mination.

16 “(5) VOLUNTARY NATURE OF PROCESS.—Enti-
17 ties seeking program-related investments are not re-
18 quired to seek a determination under paragraph (3),
19 and the absence of such a determination shall not
20 affect the ability of a private foundation to make a
21 program-related investment based on its own deter-
22 mination that the investment qualifies as a program-
23 related investment.

24 “(6) ORGANIZATIONS TREATED AS PRIVATE
25 FOUNDATIONS.—For purposes of this subsection and

1 section 6104A, all references to private foundations
2 include organizations that are treated as private
3 foundations under any of the provisions of sections
4 4940 through 4948, inclusive, whether created under
5 state law or the law of any federally-recognized
6 tribe.”.

7 **SEC. 3. DECLARATORY JUDGMENT REMEDY.**

8 Paragraph (1) of section 7428(a) of the Internal Rev-
9 enue Code of 1986 is amended by striking “or” at the
10 end of subparagraph (C) and by adding after subpara-
11 graph (D) the following new subparagraph:

12 “(E) with respect to whether investments
13 in an entity are program-related investments
14 (as described in section 4944(c)(2)), or”.

15 **SEC. 4. INFORMATION RETURNS.**

16 Part III of subchapter A of chapter 61 of the Internal
17 Revenue Code of 1986 is amended by inserting after sec-
18 tion 6033 the following new section:

19 **“SEC. 6033A. INFORMATION REPORTING BY FOR-PROFIT**
20 **ORGANIZATIONS RECEIVING PROGRAM-RE-**
21 **LATED INVESTMENTS.**

22 “(a) ORGANIZATIONS REQUIRED TO FILE.—If in-
23 vestments in an entity have been determined to be pro-
24 gram-related investments through a determination of the
25 Internal Revenue Service pursuant to section 4944(c)(3)

1 or by a determination of a court pursuant to section
2 7428(a), the entity shall, in addition to any other applica-
3 ble filing obligations, file an annual return providing the
4 information specified in subsection (b) for any taxable
5 year in which it receives or retains one or more program-
6 related investments (as defined in section 4944(c)(2)).

7 “(b) REQUIRED REPORTING.—The return described
8 in subsection (a) shall provide, in such manner and at
9 such time as the Secretary may by forms or regulations
10 prescribe, the following information—

11 “(1) the organization’s gross income for the
12 year,

13 “(2) its expenses attributable to such income
14 incurred within the year,

15 “(3) its disbursements within the year for one
16 or more purposes described in section 170(c)(2)(B),
17 together with a narrative statement describing the
18 results obtained from the use of those assets for
19 such one or more purposes described in section
20 170(c)(2)(B),

21 “(4) a balance sheet showing its assets, liabil-
22 ities, and net worth as of the beginning and end of
23 such year,

1 “(5) the names and addresses of all private
2 foundations holding program-related investments in
3 the organization,

4 “(6) a statement of the portion of its liabilities
5 and net worth that represent capitalization obtained
6 by means of program-related investments as of the
7 beginning and end of such year,

8 “(7) a statement of any interest, dividends, or
9 other distributions paid with respect to any pro-
10 gram-related investments during the year, and

11 “(8) such other information as the Secretary
12 may by forms or regulations prescribe.”.

13 **SEC. 5. PUBLICITY OF INFORMATION.**

14 Subchapter B of chapter 61 of the Internal Revenue
15 Code of 1986 is amended by inserting after section 6104
16 the following new section:

17 **“SEC. 6104A. PUBLICITY OF INFORMATION REGARDING OR-**
18 **GANIZATIONS RECEIVING PROGRAM-RE-**
19 **LATED INVESTMENTS.**

20 “(a) INSPECTION OF PETITIONS FOR DETERMINA-
21 TION OF PROGRAM-RELATED INVESTMENT STATUS.—If
22 an entity seeks a determination pursuant to section
23 4944(c)(3) that investments by private foundations in
24 such organization will be program-related investments, the
25 petition seeking such a determination, together with any

1 documents submitted in support of such petition and any
2 determination or other document issued by the Internal
3 Revenue Service with respect to such petition, shall be
4 open to public inspection at the national office of the In-
5 ternal Revenue Service.

6 “(b) INSPECTION OF ANNUAL INFORMATION RE-
7 TURNS.—The information required to be furnished by sec-
8 tion 6033A, together with the names and addresses of
9 such entity, shall be made available to the public at such
10 times and in such places as the Secretary may prescribe.

11 “(c) PUBLIC INSPECTION OF PETITIONS AND AN-
12 NUAL INFORMATION RETURNS.—Any entity that receives
13 a determination from the Internal Revenue Service that
14 private foundation investments shall be program-related
15 investments pursuant to section 4944(c)(3) shall make
16 copies available at the organization’s principal office, dur-
17 ing regular business hours, of the petition for such deter-
18 mination (together with supporting materials provided
19 with the petition and documents issued by the Internal
20 Revenue Service with respect to such petition), as well as
21 the annual returns required by section 6033A filed by such
22 organization. Upon request of an individual made at such
23 principal office, copies of such petition materials and an-
24 nual reports shall be provided to such individual without
25 charge other than a reasonable fee for any reproduction

1 and mailing costs. The inspection and duplication rights
2 granted in this subsection shall apply to an annual return
3 only during the three-year period beginning on the last
4 day prescribed for filing such return (determined with re-
5 gard to any extension of time for filing).

6 “(d) LIMITATION ON PROVIDING COPIES.—Para-
7 graph (c) shall not apply to any request if, in accordance
8 with regulations promulgated by the Secretary, the entity
9 has made the requested documents widely available, or the
10 Secretary determines, upon application by an entity, that
11 such request is part of a harassment campaign and that
12 compliance with such request is not in the public inter-
13 est.”

14 **SEC. 6. CONFORMING AMENDMENTS.**

15 (a) CONFORMING CHANGE TO SECTION 501(n).—
16 Paragraph (4)(A) of section 501(n) of the Internal Rev-
17 enue Code of 1986 is amended by inserting “paragraph
18 (2) of” before “section 4944(c).”

19 (b) CONFORMING CHANGE TO SECTION 514(b).—
20 Paragraph (1) of section 514(b) of the Internal Revenue
21 Code of 1986 is amended by redesignating subparagraphs
22 (D) and (E) as subparagraphs (E) and (F) and by insert-
23 ing after subparagraph (C) the following new subpara-
24 graph:

1 “(D) any property owned or treated as
2 owned by a private foundation by virtue of its
3 having made an investment in an entity that
4 has received a determination from the Internal
5 Revenue Service pursuant to section
6 4944(c)(3), or by a court pursuant to section
7 7428(a), that such investments in such entity
8 qualify as program-related investments;”.

9 (d) CONFORMING CHANGE TO SECTION 4943(d).—
10 Paragraph (3) of section 4943(d) of the Internal Revenue
11 Code of 1986 is amended by striking “or” at the end of
12 subparagraph (A), by redesignating subparagraph (B) as
13 subparagraph (C) and by inserting after subparagraph (A)
14 the following new subparagraph:

15 “(B) any program-related investment, as
16 defined in section 4944(c)(2), or”.

17 **SEC. 7. REGULATIONS.**

18 The Secretary of the Treasury shall, not later than
19 1 year after the date of the enactment of this Act, amend
20 any applicable regulations as may be necessary or appro-
21 priate to implement any amendments contained in this Act
22 or to carry out the purposes of this Act, including pro-
23 viding additional examples of qualifying program-related
24 investments.

1 SEC. 8. EFFECTIVE DATE.

2 The amendments made by this Act shall apply to in-
3 vestments made after the date of the enactment of this
4 Act in taxable years ending after such date.