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Philanthropic Facilitation Act Encourages Program-Related Investments

The [Philanthropic Facilitation Act](#) recently was introduced in the House of Representatives by co-sponsors Cory Gardner (R-CO) and Jared Polis (D-CO). The Act would amend the Internal Revenue Code to create a voluntary review process by which the Internal Revenue Service would determine whether specific investments qualify as a private foundation program-related investment (PRI).

Expedited approval process. A PRI is an investment that a private foundation makes for the primary purpose of furthering its charitable purposes and that has no significant investment purpose. Under the Act, the Secretary of the Treasury would develop a procedure by which an entity seeking to receive PRIs could request a determination that, “based on consideration of all relevant facts and circumstances,” investments by private foundations in the entity would qualify as PRIs under the Code. Rulings would need to be provided within 120 days of submission.

Once a determination has been made that an investment qualifies as a PRI, private foundations could rely on the determination. It would be a voluntary process, however. The absence of a determination would not preclude a private foundation from making its own assessment that an investment qualifies.

Public reporting by PRI recipient. If the IRS determines that an investment qualifies as a PRI, the entity seeking the PRIs would have to file an annual return providing specific information for any year in which it receives or retains one or more PRIs. This information would include the organization’s gross income for the year, expenses attributable to such income, a balance sheet, its disbursements for charitable purposes with a narrative describing the results the entity obtained, as well as the names and addresses of all private foundations holding PRIs in the organization. This information would be publicly available, as would the IRS determination and the documents submitted by the entity seeking the determination that the investment qualifies as a PRI.

Flood of impact investment? The Act’s objective is to facilitate investment by private foundations, as well as other charitable investors, in for-profit businesses that may further a charitable purpose through their activities. New “hybrid entities” in particular, such as benefit corporations, flexible purpose corporations, and L3Cs, may wish to take advantage of this process (if enacted) to encourage charitable investment in their business models.

Will this legislation dramatically increase the amount of funding available to social entrepreneurs pursuing social as well as financial objectives? We will have to wait and see. A version of this legislation was introduced in November of 2011 but failed to

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become law. We will be monitoring the fate of this 2013 bill.

Representative Gardner's press release regarding the Act can be found [here](#).