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Federal

The Lame-Duck Sprint Begins Today...

Congress returns this week with a long or short to-do list, depending on party affiliation. The primary must-pass legislation is funding the federal government, likely through an omnibus spending bill to run through the end of the 2023 fiscal year. Current funding ends December 16, and Congress may need to pass a week-long continuing resolution to give congressional negotiators extra time to draft a bill. The President and Democrats also hope to raise the federal debt ceiling, restore and extend the child tax credit, and enact laws on same-sex marriage, Electoral College reform, and assault rifles. The takeover of the House by Republicans next year gives that party an incentive to do as little as possible now to have greater influence on the outcome later. An exception could be a [bipartisan retirement security bill](#) that includes a few provisions favored by nonprofits.

... and What Nonprofits Need to Do. Today!

The stakes for charitable nonprofits are enormous as Congress has only three or so weeks to enact urgently needed relief to help overcome the challenges of [nonprofit workforce shortages](#) caused by the pandemic, sharply increasing demands for services, and the effects of multiple natural disasters around the country. Specifically, charitable organizations need Congress to [restore and improve expired natural disaster tax provisions](#) that will help nonprofits help more people seeking services while facing [severe shortages of workers](#) and resources. It is imperative that charitable nonprofits call on Congress to include the following priorities in any legislation enacted during the lame duck-session:

- Renew the **universal charitable (non-itemizer) deduction** at least through 2022 and significantly increase the cap on the deduction, as proposed in the bipartisan Universal Giving Pandemic Response and Recovery Act (S.618/H.R.1704).
- Extend two additional disaster-relief giving incentives that expired on December 31, 2021: the provision permitting individuals who itemize to deduct charitable donations up to **100% of their adjusted gross income**, and the measure allowing corporations to deduct charitable donations up to **25% of taxable income**.
- Restore retroactively the **Employee Retention Tax Credit**, as proposed in the bipartisan ERTC Reinstatement Act (H.R. 6161/S. 3625), extend this refundable payroll tax credit through 2022, and modify the credit to better reflect increased nonprofit costs.
- Raise the **charitable mileage rate** from 14 cents/mile up to the standard business rate of 62.5 cents/mile to help defray the costs of driving on behalf of charitable organizations and thus provide an incentive for volunteers to help their communities.

Take Action: Tell your Senators and Representatives they must enact disaster relief legislation that restores and expands expired charitable giving and employment tax incentives during the lame duck session of Congress.

- **Email** ([Representatives](#), [Senators](#)) and **tweet** to your [Representative and Senators](#) the new nonprofit disaster-relief letter. <https://bit.ly/3TD9I0G>
- **Retweet** messages from [@NatlCouncilNPs](#) and [#Relief4Charities](#) to your [Representative and Senators](#).

Learn more about [nonprofit policy priorities and what you can do to promote them](#).

Why the Focus on Natural Disasters?

Hurricanes Fiona and Ian are only two of the [20 natural disasters declared since Labor Day](#) that have devastated the lives of individuals and communities. Local nonprofits are at the center of disaster relief and recovery, while also suffering direct impacts themselves. Most of the nonprofit policy priorities identified above originated as tax relief incorporated by Congress in post-natural disaster legislation, dating back at least to [Hurricane Katrina in 2005](#). The provisions were updated in the [CARES Act](#) and other pandemic-related laws, but congressional recognition of the role and impact of nonprofits during disaster recovery remains the foundational policy principle. **Congress must enact natural disaster tax relief during the lame-duck session** that restores and improves the three expired charitable giving incentives, updates and reinstates the Employee Retention Tax Credit, and raises the charitable mileage rate to the standard business rate.

Advocacy Materials

- **Charitable Giving Incentive:** [CGC Sends Letter to Congress Urging Renewal and Expansion of the Charitable Deduction for Non-Itemizers](#), Charitable Giving Coalition, Nov. 14, 2022.
- **Data on Disasters:** [Atlas of Disaster](#), Rebuild by Design, Nov. 2022, finding that 90% of U.S. counties have experienced a federal climate disaster between 2011-2021, and that in 2021 alone, the U.S. experienced 20 separate billion-dollar climate disasters with over 688 direct or indirect fatalities.” See also, [New Measure of Climate’s Toll: Disasters Are Now Common Across U.S.](#), Christopher Flavelle, *The New York Times*, Nov. 16, 2022.
- **Natural Disaster Tax Relief Action Page**, National Council of Nonprofits, providing background, talking points, and sample tweets for promoting congressional action.
- **Volunteers:** [Letter to House Ways and Means Committee Leaders](#), signed by Independent Sector, Meals on Wheels America, and National Council of Nonprofits, Nov. 21, 2022, urging an increase in the **charitable mileage rate** to 62.5 cents/mile.

Worth Quoting

The IRS on Charitable Giving

- “Most contributions of cash or property made to a charitable organization are deductible as an itemized deduction on [Schedule A, Form 1040, Itemized Deductions](#). Cash contributions include those made by check, credit card or debit card, as well as unreimbursed out-of-pocket expenses in connection with volunteer services to a qualifying charitable organization. Donations of property other than cash are generally deductible at their fair market value.”

— Special reminder from the Internal Revenue Service, posted in [Giving Tuesday is coming; now is a good time to review tax benefits for charitable giving](#), IRS Tax Tip 2022-175, Nov. 15, 2022.

- “While many individuals, families, or businesses focus on the charitable benefits they can provide to a nonprofit organization, they should note that charitable contributions can be tax-deductible. However, not all donations may qualify for claiming a deduction on a tax return or provide an offset for taxes due. The IRS offers a helpful [Can I Deduct My Charitable Contributions?](#) tool to help users determine whether a donation is tax-deductible. If it is deductible, taxpayers most often can claim it as an itemized deduction on [Schedule A, Form 1040, Itemized Deductions](#).”

— National Taxpayer Advocate, writing in the blog posting, Giving Thanks, [Giving Tuesday \(November 29\): Tax Benefits and Charitable Contributions](#), Nov. 22, 2022.

Federal FastView

Student Loan Payment Pause Extended: Last week, the U.S. Department of Education announced an [extension of the pause on student loan repayment](#), interest, and collections. As for the duration of this pause, the announcement states, “Payments will resume 60 days after the Department is permitted to implement the program [of debt cancellation] or the litigation is resolved, which will give the Supreme Court an opportunity to resolve the case during its current Term.” The Administration’s debt cancellation plan, announced in August, has been blocked by several federal courts and appears to be headed to the Supreme Court. The Education Department statement continues, “If the program has not been

implemented and the litigation has not been resolved by June 30, 2023 – payments will resume 60 days after that.” Learn more about student loan changes, including news about the Public Service Loan Forgiveness program, in the newly posted blog article, [Student Loan Rollercoaster and How It Impacts Nonprofit Workers](#) by Tiffany Gourley Carter.

Preserving Earmarks: With control of the House shifting to Republicans in the 118th Congress, charitable nonprofits and governments are asking whether Representatives will continue to be able to select Community Project Funding (formerly known as “earmarks”) that identifies specific projects in their districts. Last month, Americans for Tax Reform President Grover Norquist wrote to House Republicans in support of [reinstating a ban on earmarks](#) that had been in place until 2021. In response, Steve Taylor, former top advocate for United Way Worldwide [wrote an op-ed in *The Hill*](#) that makes the case for continuation of earmarks. Pushing back against fiscal conservatives who historically oppose congressional direction of spending, Taylor writes: “Congressionally directed spending ensures that limited taxpayer dollars are going to the most valuable projects and trustworthy recipients as determined by each senator and member of Congress. As they should be.” According to [Government Accountability Office records](#), charitable nonprofit organizations (other than higher education) received more than \$1.7 billion in earmarks that Senators and Representatives requested for them in the 2022 fiscal year. See the [transparency and accountability rules](#) for Community Project Funding.

Independent Contractor or Employee: The U.S. Department of Labor (DOL) [published a proposed rule](#) for determining whether workers should be treated as employees or independent contractors under the Fair Labor Standards Act (FLSA). The distinction matters because under FLSA, employers must pay minimum wage and overtime to employees, but not to independent contractors. Read the notice of proposed rulemaking: [Employee or Independent Contractor Classification Under the Fair Labor Standards Act](#). The proposed rule is [open for public comments](#) through **December 13**. See [tips for filing comments on proposed rules](#).

State and Local

State Governments in 2023

When state legislatures convene for their 2023 sessions, there will be new Governors with deep backgrounds of direct experiences in public service via nonprofits, giving them insights into the issues that affect charitable organizations. There are also many milestones to note in the makeup of legislatures.

Governors: [Katie Hobbs](#), governor-elect of **Arizona**, started her career as a social worker for homeless youth, and was the Chief Compliance Officer for the Sojourner Center, one of the largest domestic abuse shelters in the country. **Maryland**'s next governor, [Wes Moore](#), is a combat veteran and was CEO of the Robin Hood Foundation, where he oversaw the launch of the Power Fund for nonprofit leaders of color. [Jim Pillen](#), governor-elect of **Nebraska**, has served as President of the Columbus Family YMCA and Chair of the Columbus Community Hospital board of directors.

Legislatures: The **Alaska** Senate will have a coalition of nine Democrats and eight Republicans serving as a majority, the only [bipartisan-run legislative chamber](#) in the country. **Colorado** is the second state to have a [majority-women legislature](#), joining **Nevada**, and the three major leadership positions – House speaker, majority leader, and assistant majority leader – will also be held by women. **Michigan**, where voters installed a new Democratic “trifecta,” [made history](#) by electing Sen. Winnie Brinks as its first female Senate majority leader and Rep. Joe Tate as the first Black House speaker. Nationwide the [LGBTQ Victory Fund](#) reported that at least 330 LGBTQ+ candidates won their races, with at least five states electing their first candidates for statewide office or legislature.

2022 in Review

In Focus: Expanding Child Care

Recognizing that families and employers alike need adequate, available, and accessible child care options, multiple states enacted legislation this year to address shortages and promote a wide range of solutions. **New York** established a \$100 million grant program to [build and expand child care capacity](#) in areas with the least supply, known as child care deserts. [West Virginia](#) created a tax credit up to 50% of the cost for qualified child care properties and a separate tax credit equal to 50% of the cost of operation for an employer that provides or sponsors child care for

employees. The law further permits the credit to be transferable for nonprofit organizations.

Other focus areas include government grants and contracts, matching fund support, and direct payments to affected workers. The **District of Columbia** established a [grant program for pay parity](#) for early childhood educators with the intent to send direct payments of \$10,000 per eligible childcare workers. **Kentucky** established the [Employee Child-Care Assistance Partnership](#) to create a revolving fund for employers to contribute and the state to match up to 100% of contributions for employers to voluntarily create and apply for child-care assistance programs. **Minnesota** expressly included child care workers, as well as employees of home and long-term care facilities, in a program to provide \$1,500 pandemic-related hazard pay. **New Mexico** waived copays for families in its [Child Care Assistance Program](#), and the state expanded eligibility to include families earning up to 400% of the federal poverty level.

Investing ARPA Funds

Addressing Out-of-Date Reimbursement Rates

This month, **Massachusetts** Governor Baker signed a \$3.7 billion Economic Development bill ([H. 5375](#)) that includes \$225 million for human services workers. At least \$100 million will be provided in the current fiscal year to human service providers whose reimbursement rates are subject to the unique Massachusetts Chapter 257 mandatory rate-setting law. The law states that payments in FY 2023 "shall be provided solely to increase payments to direct care, front-line and medical and clinical staff, which may include, but shall not be limited to, hourly rate increases, wraparound benefits, shift differentials, overtime, hiring and retention bonuses or recruitment." The law also states that the remaining \$125 million will be used to increase rates for service providers at a sustainable level above the 50th percentile of the US Bureau of Labor Statistics benchmark for the Commonwealth. The law is funded by a combination of state resources and federal funds from the American Rescue Plan Act. See [Governor Baker's news release](#).

Tracking ARPA Spending

Nationwide: [ARPA Spending, National Council of Nonprofits](#), updated regularly.

State: [ARPA State Fiscal Recovery Fund Allocations](#), National Conference of State Legislatures, updated regularly.

Local: [Local Government ARPA Investment Tracker](#), Brookings Institute, updated regularly.

Worth Quoting

On diversity, equity, and inclusion

- “Positively dystopian.”

— Chief U.S. District Judge Mark Walker, writing in a 138-page temporary injunction barring enforcement of the Florida so-called “Anti-Woke Act” that sought to restrict how lessons on race and gender can be taught in colleges and universities. The full quote: The state “Defendants argue that, under this Act, professors enjoy ‘academic freedom’ so long as they express only those viewpoints of which the State approves. This is positively dystopian.” [‘Positively dystopian’: Florida judge blocks DeSantis’ anti-woke law for colleges](#), Andrew Atterbury, *Politico*, Nov. 18, 2022.

On nonprofit oversight

- “Our nonprofit sector is unusual in that we welcome outside oversight of our work – we need the trust of the community and of government in order to advance our missions. We want clear rules, boundaries, and guidelines so that we can demonstrate that we’re abiding by them carefully.”

— Marie Ellis, Public Policy Director of **Minnesota Council of Nonprofits**, [Oversight and Reform of State Grants: What to Expect in 2023 Legislative Session](#), *Nonprofit News*, Nov. 2022.

Numbers in the News

\$12.92 million

The 2023 Estate Tax Exemption, an increase of \$860,000 from 2022 due to an adjustment for inflation. The exemption represents the amount of a decedent's estate (including previously taxable gifts) that is exempt from federal estate tax.

Source: [What's New - Estate and Gift Tax](#), Internal Revenue Service, Oct. 27, 2022.

20

The number of Major Disaster Declarations and Emergency Declarations the Federal Emergency Management Agency has issued since Labor Day 2022.

Source: [Declared Disasters](#), Federal Emergency Management Agency, accessed Nov. 23, 2022.

Did You Know?

[Ready.gov](#) has resources on how to “prepare for, respond to, and mitigate emergencies, including natural and manmade disasters.” Users can view information on disasters and emergencies, fill out a planning form, and see a sample emergency supply list.

Key Dates

- **Giving Tuesday** is Nov. 29
 - **World AIDS Day** is Dec. 1
 - **International Volunteer Day** is Dec. 5
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Upcoming Events

- Nov. 29, [Communicating with Legislators](#), Momentum Nonprofit Partners
- Dec. 1, [Nonprofit Advocacy Summit](#), Oklahoma Center for Nonprofits
- Dec. 2, [Nonprofit Policy Caucus](#), New Hampshire Center for Nonprofit
- Dec. 6, [Telling Your Story to Legislators](#), Momentum Nonprofit Partners
- Dec. 7, [2022 Policy Symposium](#), CalNonprofits

- Dec. 7, [Annual Nonprofit Conference](#), CT Community Nonprofit Alliance
 - Dec. 7, [NJ Nonprofits Conference](#), New Jersey Center for Nonprofits
 - Dec. 8, [Advocacy in Action](#), The Foraker Group
 - Dec. 8-9, [2022 Annual Conference](#), Nonprofit New York
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Help Us Improve This Newsletter

In 2023, the National Council of Nonprofits will launch a new website, and this newsletter will have a new name. While the look will be somewhat different, we want to make sure the content is honed to what you as nonprofit advocates need to advance your missions. Do you need more (or less) federal, state, and local news? Do you want more (or less) focus on what happens in the legislative, executive, and judicial branches? Are the reports on research affecting nonprofits helpful? Does trendspotting assist you in getting ahead of the actions in your states?

Advocacy in Action

Following Up After Monumental Moments

Here are some radical thoughts. The world doesn't end after an election or hibernate for two years. Nor does the world brighten and all woes disappear because legislation has been signed into law. The monumental moments may get marked on calendars, but it's often the hard slogging in the weeds and many one-on-one discussions that turn bad into good and good into better. For nonprofit advocates, that means following up with elected officials, bureaucrats, and supporters after monumental moments to ensure that good intentions result in positive impact. Here are two simple practices that the best nonprofit advocates regularly utilize.

[Continue reading *Following Up After Monumental Moments*](#)