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Federal

State of Play in June

The legislative agenda is full when Congress returns next week from the Memorial Day recess, but progress may be even more elusive than in past election years given what's ahead in June: anticipated revelations during the House hearings on the January 6 insurrection and blockbuster decisions expected from the Supreme Court on abortion, guns, immigration, and religion. While both chambers must turn with earnest to Fiscal Year 2023 appropriations, escalating partisan rancor will further mire action on everything from gun limitations and border security to additional funding for COVID testing, vaccines, and research.

An area of potential movement in June, but still on a partisan basis, is a budget reconciliation bill that uses a process allowing Democrats to pass significant spending and tax legislation without Republican support. Senator Manchin (D-WV), who blocked action on the President's Build Back Better Act, recently announced support for a smaller legislative package, stating that there is "a responsibility and opportunity" for Democrats to get some kind of big fiscal deal done before the end of the year, meaning through a budget reconciliation bill. He listed prescription drug reforms, deficit reduction, energy and climate provisions, and raising taxes on the wealthy as achievable priorities.

In a Wall Street Journal op-ed on Memorial Day, President Biden laid out his agenda for curbing inflation that includes several proposals – such as lowering the cost of child care, enacting clean energy tax credits, and raising taxes on wealthier individuals – that were included in the House-passed Build Back Better Act blocked earlier by Senator Manchin. Senior Democrats are expected to work behind the scenes in the coming weeks to negotiate a reconciliation package that includes as many of their policy goals as possible Most nonprofit policy priorities are bipartisan but could be included in the budget reconciliation package with concerted advocacy from the nonprofit sector. See the nonprofit community letter and sign your organization on.

Ramping Up Advocacy for ERTC Relief

Earlier this month, the Senate took up but failed to advance a $48 billion package of COVID relief for restaurants and other for-profit businesses. That stalemate leaves legislation (H.R. 6161/S. 3625) that would restore the Employee Retention Tax Credit (ERTC) for small businesses and nonprofits as the best and perhaps only viable proposal that could be enacted in the near term. The legislation enjoys strong bipartisan support, with more than 100 cosponsors in the House and Senate, and a growing recognition that Congress made a mistake when it repealed the refundable payroll tax credit for the fourth quarter of 2021. A broad coalition of small businesses and charitable nonprofits is making the case that “employers still require financial relief to provide the final push in recovery from economic hardships caused by the COVID-19 pandemic.” See sign on letter.

The urgency of the issue for charitable nonprofits was made clear recently in Inaction On Retention Credit Risks Nonprofit Staff Cuts (*Law360*, premium). The article explains that for nonprofits “the credit offered a means to keep workers on payroll and even raise their wages.” Further, nonprofits that “were counting on the credit for the fourth quarter of 2021 in their budgeting are having to adjust, and services and employment could suffer as a result.” The article includes quotes from representatives of the League of American Orchestras, National Council of Nonprofits, Opera America, and YMCA of the USA, all explaining that a failure of Congress to reinstate the ERTC as soon as possible will result in more layoffs for nonprofit employees, longer waiting lists for services, and loss of essential services in local communities.

Sign the ERTC Letter

The small business and nonprofit coalition promoting restoration of the Employee Retention Tax Credit invites nonprofit organizations to sign onto a letter urging Congress to pass the Employee Retention Tax Credit Reinstatement Act (H.R. 6161/S. 3625). The deadline for signing is close of business Wednesday, June 1.

Read the Letter and Sign the Letter.

Worth Reading

- Attention Nonprofit Employers: Did You Forget to Claim Refundable Tax Credits from the IRS?, Steven M. Woolf, National Council of Nonprofits, May 11, 2022, providing plain-English answers to questions from nonprofits about the Employee Retention Tax Credit.

Federal *FastView*

- **2020 Census Undercount**: The 2020 Census undercounted residents in six states, and it overcounted people in eight states, according to the Census Bureau. Over- and undercounts are determined by the Post-Enumeration Survey, which measures the accuracy of the Census compared to an independent estimate based on a sample of the population. The survey results determined no statistically significant net errors, and the inaccurate counts do not change congressional apportionment. The states with the largest undercounts – of between 1.9 to 5 percent --- are **Arkansas, Florida, Illinois, Mississippi, Tennessee,** and **Texas.** Overcounted states are **Delaware, Hawaii, Massachusetts, Minnesota, New York, Ohio, Rhode Island,** and **Utah**.
- **Donating Paid Leave**: The Internal Revenue Service recently provided clarification on the tax treatment of donations of paid leave to charitable nonprofits supporting humanitarian efforts in Ukraine (Notice 2022-28). The

new guidance explains that employees who forfeit their paid time off in exchange for the donations on their behalf cannot claim charitable tax deductions on the funds, but employers can deduct the payments as business expenses under certain circumstances. The guidance is valid through the end of 2022. For the employee, it is a financial wash, but a powerful statement of compassion for and solidarity with the people of Ukraine. And the impact on Ukrainians who are suffering could be significant as more and more individuals in the United States show their support.

- **Analyzing COVID Employment Tax Credits**: The employment tax relief measures enacted by Congress to help employers affected by the pandemic cost about $237.8 billion in foregone revenue to the U.S. Treasury for fiscal years 2021-2031, according to a new report from the Government Accountability Office (GAO-22-104280). GAO analyzed IRS data from employment tax returns for 2020 and found that about 1.5 million employers claimed $9.8 billion in tax credits to help with the costs of paid leave required under the Families First Act and other laws. More than one million employers took advantage of payroll tax deferrals totaling about $123.6 billion. The GAO found that nearly 120,000 employers took advantage of the Employee Retention Tax Credit at a cost of about $11 billion. Employers claimed more than 360,000 employer retention tax credits totaling about $32 billion for 2021, likely due to expanded eligibility to Paycheck Protection Program borrowers with forgiven loans and other entities.

Retirement Security and Other Federal Bills Worth Watching

Improving retirement security is one area attracting bipartisan and bicameral support. In March, the House passed by wide margins “The Securing a Strong Retirement Act of 2022" (referred to as SECURE 2.0). The legislation contains several provisions impacting Section 403(b) plans often provided by nonprofit employers, including a provision that would permit groups of nonprofits to join together to offer retirement plans to their employees through so-called “multiple employer” plans. SECURE 2.0 would also expand the IRA charitable rollover incentive by indexing for inflation the $100,000 annual cap and providing a one-time election for qualified distributions of up to $50,000 to 501(c)(3) nonprofits through charitable annuities or certain charitable trusts, a provision known as the “legacy IRA.” A bipartisan Senate bill, introduced by Senators Cardin (D-MD) and Portman (R-OH), contains many of the provisions of SECURE 2.0, but if passed, would need to be reconciled with the House version.

Other Federal Bills

- **Donor Advised Funds**: The ACE Act (S. 1981/H.R. 6595), legislation to alter the rules governing donor advised funds and spending by private foundations, continues to generate debate in the philanthropic community. A recent op-ed in *The Chronicle of Philanthropy* reflected sentiment among many nonprofits challenging the need for further DAF-related legislation. A letter in response to the op-ed, however, disputed that conclusion and called for DAFs to “be subject to rules that enforce more timely disbursement of funds and greater transparency.” In his proposed budget for 2023, President Biden included one of the bill’s provisions precluding private foundations from counting DAF contributions as distributions for purposes of the annual 5% payout requirement unless the DAF itself makes qualified distribution of the funds.
- **Workforce Training**: The House-passed Workforce Innovation and Opportunity Act (WIOA) of 2022 (H.R. 7309) would help train an estimated one million workers per year by 2028 and provide funding for “innovative approaches to workforce development.” The original Workforce Development Act expired in 2002.
- **YouthBuild**: The YouthBuild for the Future Act (H.R. 7381) would authorize spending $1 billion over six years to improve program supports through grants for programs in rural communities, as well as funding for participant meals. The YouthBuild program works with young people not employed or in school, and participants earn their high school diploma while gaining skills in high-need trades.

Worth Studying

- Economic Well-Being of U.S. Households in 2021, Federal Reserve Board, May 23, 2022, a report based on the Federal Reserve Board’s annual Survey of Household Economics and Decisionmaking. The survey was conducted in

October and November of 2021, before the rise in COVID-19 cases from the Omicron variant. Responses showed that fifteen percent of workers switched jobs in 2021, and most parents received additional income through the Child Tax Credit.

State and Local

Tracking ARPA Fund Investments

ARPA and Advancing Equity

A new report from the Biden Administration, Advancing Equity Through the American Rescue Plan, seeks to lay out how federal departments and agencies have been working to implement the $1.9 trillion relief legislation as equitably as possible. The report identifies more than 200 programs and services that have been funded by the American Rescue Plan Act (ARPA). One of the programs selected for a case study is the Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) program, which provides $350 billion in funding to state, local, Tribal, and territorial governments to address COVID-related challenges, including providing resources to charitable nonprofits as beneficiaries and as providers of services to others. The section opens by asserting, “The Administration has worked from day one to craft the [CSLFRF] program in a way that encourages governments to intentionally use funds to support a truly equitable recovery and address health and economic disparities, exacerbated by the pandemic, in the most underserved communities.” This statement is consistent with the first of four Guiding Principles for Identifying High-Impact Programs from the National Council of Nonprofits, which calls on governments to commit to “equity from the outset when spending CSLFRF dollars to improve outcomes for communities traditionally left behind.”

Keeping Track of ARPA Spending

Local: Local Government ARPA Investment Tracker, Brookings Institute, Apr. 13, 2022

State: ARPA State Fiscal Recovery Fund Allocations, National Conference of State Legislatures, updated May 26, 2022.

Nationwide: ARPA Spending Website, National Council of Nonprofits, updated regularly.

Worth Reading

- General-Operating Grants Can Advance Equity, *The Chronicle of Philanthropy*, May 2022.
- **California**: American Rescue Plan Act Scorecards for California Counties, developed by the California Pan-Ethnic Health Network.

Tools Available for Accessing ARPA Funds

The American Rescue Plan Act expressly authorizes state, local, Tribal, and territorial governments to invest their allocations of the $350 billion in funds in charitable nonprofits. Yet, while nonprofits are ***eligible*** for that funding, they are not ***entitled*** to receive these funds – nonprofits must make a case for funding. The recently updated Special Report: Strengthening State and Local Economies in Partnership with Nonprofits, provides the latest federal guidance and fresh examples from across the country, plus insights gleaned from effective nonprofit advocacy campaigns and examples of how foundations can support the equitable distribution of ARPA funds. Read the Executive Summary, the full report. And check back regularly for updated resources and other information.

Lawmakers, Nonprofits Push State Charitable Giving Incentives

Donors to various nonprofits in several states are poised to see tax benefits for those charitable donations. **Colorado** taxpayers making donations to nonprofits and programs providing services to people experiencing homelessness or preventing homelessness may receive an income tax credit of up to 30% under a recently passed bill awaiting the Governor's signature. Legislation enacted earlier this year in West Virginia creates a tax credit equal to 50% of the cost of operation for an employer that provides or sponsors childcare for employees and permits that credit to be transferred to nonprofits in the state. Proposed legislation in Connecticut and Illinois that would have provided tax credits for food donations and endowment gifts, respectively, each failed this year.

New Jersey is one of only 10 states with income taxes but no charitable giving tax incentives. The **New Jersey Center for Nonprofits** and others are calling on lawmakers to enact a state-level charitable giving incentive by creating an income tax deduction for all New Jersey taxpayers who donate to charitable nonprofits in the state. Although the state would reduce its tax revenue, the overall return on that investment in New Jersey communities would be significant. The proposed law could "generate $16 to $28 in donations for each $1 foregone by the state," according to estimates by the New Jersey Office of Legislative Services.

Worth Reading

On charitable giving

- Foundation Funding for COVID Dropped Mid-Pandemic, *The NonProfit Times*, May 31, 2022.
- Pandemic Has Changed Giving Strategy for Many Rich People, and Some Plan to Donate More, Emily Haynes, *The Chronicle of Philanthropy*, May 23, 2022.
- **New Jersey**: Tax Breaks, Transparency On State Agendas, Peggy Wright, *The NonProfit Times*, May 24, 2022.

Worth Studying

- Budget Surpluses Push States' Financial Reserves to All-Time Highs, Justin Theal and Joe Fleming, Pew Charitable Trusts, May 10, 2022, tracking the growth in state rainy day funds and the number of days state governments could run without other revenues.
- State and Local Tax Treatment of Charitable Contributions, U.S. Legacy Income Trusts, as of February 2022, providing state-by-state listing of maximum state/local tax benefits based on the treatment of qualified charitable contributions and tax rates.

States Clarifying Nonprofit Property Tax Exemptions

Legislatures in Colorado and Connecticut have passed legislation to expand or clarify nonprofit property tax exemptions for some nonprofits. The Colorado bill awaiting the Governor's signature (H.B. 22-1006) would modify the general requirement that property be owned and used by a charitable nonprofit to qualify for exemption. Specifically, it would allow a nonprofit child care center to qualify for property tax exemption if it is a tenant or subtenant of another property owner. In Connecticut, the Governor signed a measure clarifying that nonprofit group homes and other nonprofit residential services are exempt from property taxes. The legislation requires the state government to develop and provide a form for property tax exemption for charitable nonprofits and mandates that the board of assessors must state on its records the rationale if it determines the nonprofit property is not tax exempt. Although state law already exempts nonprofit group homes from local property taxes, some assessors continue denying nonprofit property tax exemption applications anyway, even though the State Supreme Court rejected their argument in September 2021.

Worth Studying

On donor secrecy legislation

- "This bill would impede the ability of New Hampshire citizens to have the information they need to ensure that our government is working for everyone and not just for wealthy special interests. Instead of codifying secrecy for political nonprofits, legislators should be working to make our government more transparent and responsive to New Hampshire voters."

  — Betty Tamposi, former State Department Assistant Secretary and New Hampshire lawmaker, writing in Voters lose when big donors are untraceable, *New Hampshire Union Leader*, May 26, 2022, urging Governor Sununu to veto a bill to impose extreme donor secrecy restrictions on government law enforcement.

On the pandemic's impact

- High Inflation Leaves Food Banks Struggling to Meet Needs, Thalia Beaty and Glenn Gamboa, *Associated Press*, May 12, 2022.

Worth Reading

On overcoming nonprofit workforce shortages

- How (and Why) Nonprofits Are Supporting the Mental Health of Their Employees, Jessica Mendieta and Amy Silver O'Leary, National Council of Nonprofits blog, May 11, 2022.
- Public Service Loan Forgiveness as a Recruitment Tool, Ben Bullock, Together SC, May 20, 2022.
- How to Create a Culture that Retains Talent, *The Chronicle of Philanthropy*, May 2022.

Numbers in the News

152,000

The number of "quits" — workers across the country who left their jobs voluntarily — in March 2022, adding up to a record high of 4.5 million.

Source: Job Openings and Labor Turnover Survey News Release, U.S. Bureau of Labor Statistics, May 3, 2022.

59%

The percentage of people who trust nonprofits / international NGOs, 3% above trust in government but 3% below trust in for-profit businesses. Globally, people in the U.S. reported higher levels of confidence in institutions in the past five months, according to the survey in 14 countries, with 14,000 respondents.

Source: Special Report: The Geopolitical Business, Edelman Trust Barometer 2022.

Upcoming Events

- June 1, 2022 Elections: How Maine Nonprofits Can Take Action, Maine Association of Nonprofits
- June 1, Nonprofit Advocacy, Nonprofit Association of Oregon
- June 6, Legislative Recharge, Maryland Nonprofits
- June 7, Public Policy Action Network, Momentum Nonprofit Partners (Memphis, TN)
- June 8, Working in Coalitions, Florida Nonprofit Alliance
- June 8, Advocacy Through Earned Media, Maine Association of Nonprofits
- June 8-9, Nonprofit Leadership Conference, North Dakota Association of Nonprofit Organizations
- June 28, Public Policy Action Network, Momentum Nonprofit Partners (Memphis, TN)

Advocacy in Action

The Nonprofit Workforce Shortage Crisis and Child Care

Survey data show that a major reason job applicants turn down work at charitable nonprofits is a lack of available and affordable child care. See the nonprofit workforce shortages report. The nonprofit community letter to Congress explains that “as employers, and, in many cases, as child care providers, charitable nonprofits are deeply concerned that the lack of child care and equitable wages are impediments to all, noting that one expert told the Federal Reserve, “There is no recovery of the economy without child care.” Federal policy solutions identified in the letter include increased funding to expand access to high-quality child care. But with Congress mostly stuck in gridlock, nonprofit advocates are turning to the states for appropriate relief. North Carolina provides an example of such advocacy in action.

Read more