Gilded Giving 2020 -- Policy Recommendations

Gilded Giving 2020 focuses on the continued impact of increasing income and wealth inequality on the philanthropic sector, and how that has been amplified by both the current pandemic and the 2018 tax reform package. It puts forward several possible implications of these conditions and suggests some solutions.

[Submitter's Note: This StratML rendition documents the proposed solutions as goals and objectives. For explication of the problems, see the original source.]

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Institute for Policy Studies (IPS)

Description:

The Institute for Policy Studies (www.ips-dc.org) is a multi-issue research center that has been conducting path-breaking research on inequality for more than 20 years.

Stakeholder(s):

Program on Inequality and the Common Good:
The IPS Program on Inequality and the Common Good was founded in 2006 to draw attention to the growing dangers of concentrated wealth and power, and to advocate policies and practices to reverse extreme inequalities in income, wealth, and opportunity. The program has investigated the intersection of inequality and philanthropy in the following reports: Gilded Giving 2018: Top-Heavy Philanthropy and its Risks to the Independent Sector (November 2018); Warehousing Wealth: Donor-Advised Funds Sequestering Billions in the Face of Growing Inequality (July 2018); The Case for an Emergency Charity Stimulus (May 2020)

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Congress:
It is time for bold measures to reform philanthropy. Congress should convene hearings and advance related legislation.

Charity Reform Commission:
One helpful step could include the formation of an independent Charity Reform Commission to review the menu of proposals above. This Commission should include participants who understand the perils of the current direction of philanthropy and represent the wider public interest. The Commission would enlist leaders within the philanthropic sector, but also draw from those concerned about democracy, the health of civil society, racial equity, economic inequality, and the integrity of the tax system and public sector investments. The Commission members should thoughtfully debate the various pathways to reform philanthropy. This assembly of the willing should avoid being paralyzed by defenders of the status quo: those benefiting significantly from tax-avoidance vehicles and self-interested legacy institutions that have historically blocked reform. Based on the Commission’s recommendations, advocates for charitable reform should press to advance related legislation.
Vision
Wealth and power are more evenly distributed.

Mission
To suggest solutions to the impact of income and wealth inequality on the philanthropic sector.

Values

**Philanthropy:** The growing concentration of wealth and power is distorting philanthropy and imperiling our democratic institutions.

**Equality:** Top-heavy philanthropy—small-dollar donor declines combined with increasing numbers of ultra-wealthy mega-donors—poses growing risks to the independence of the nonprofit sector, the integrity of the tax system, and the health of our democracy. The giving sector is increasingly becoming a tax-subsidized province of the wealthy, who exercise considerable private power over the nonprofit sector and civic life as a whole.

**Democracy:** Private philanthropy is on a collision course with democracy. Without intervention, billionaire philanthropists will soon be shaping public policy in competition with local and state governments, which will be facing austerity conditions in the wake of a resurgent Covid-19 pandemic.
1. Stimulus

*Stimulate charity.*

**Stakeholder(s)**

**Donors:**
Donors have already taken tax deductions for these donations, so mandating an increased payout will move an estimated $200 billion off the sidelines and into working charities without increasing taxes or adding to the deficit. In the parlance of tax and budget policy, they are already paid for.

An Emergency Charity Stimulus — We call on Congress to enact a three-year emergency mandate to:

1.1. Private Foundations

*Require private foundations to double their payout from 5 percent to 10 percent.*

**Stakeholder(s):**

**Private Foundations:**
Currently, an estimated $1 trillion is held by private foundations with the requirement that they pay out just 5 percent of their assets each year.

1.2. Donor-Advised Funds

*Establish a temporary 10 percent payout requirement for donor-advised funds.*

To avoid abuses, we propose excluding from the emergency payout calculation private foundation donations to donor-advised funds (DAFs); impact and program-related investments; and more than a modest percentage of overhead expenses. We propose that these payout restrictions also apply to DAFs, and that DAF-to-DAF donations be excluded from payout calculations as well.

**Stakeholder(s):**

**Donor-Advised Funds:**
Another estimated $120 billion is warehoused in DAFs with no payout requirement at all.
2. Reform

_Modernize the rules governing philanthropy._

**Stakeholder(s)**

**Congress**

Structural Charity Reform Recommendations — Congress last overhauled the legal framework for the philanthropic sector in 1969, a time when wealth was less concentrated than at any other time in the last century. Now, more than 50 years later, it is time to modernize the rules governing philanthropy to:

### 2.1. Influence

*Protect the independent sector from undue influence of wealthy donors.*

**Stakeholder(s):**

*Independent Sector*

*Wealthy Donors*

### 2.2. Democracy & Civil Society

*Protect democracy and civil society, of which philanthropy is one aspect, from the undue influence of private power.*

**Stakeholder(s):**

*Civil Society*

### 2.3. Abuse

*Prevent abuse of the tax system from charitable giving vehicles primarily used for aggressive tax avoidance or as a means to maintain indefinite control over donated dollars.*
3. Rules

Overhaul the rules governing philanthropy to maximize the public good.

To further these larger goals, the rules governing philanthropy should be overhauled to maximize the public good in these ways:

3.1. Independence

Preserve a vibrant, independent charitable sector outside of private, state, and corporate control.

Stakeholder(s):
Governments
Corporations

3.2. Incentives

Modernize incentives to encourage broad-based giving across all segments of society, particularly the non-wealthy.

Stakeholder(s):
Non-Wealthy People

3.3. Funding Flows

Ensure the timely flow of funds out of charitable giving instruments to the public benefit, thereby discouraging the warehousing of wealth.

3.4. Tax Deductibility

Reform tax deductibility rules to align them with the public interest and to protect the integrity of our tax system.

Stakeholder(s):

Foundations:
Public policy should restore the connection between the deductibility of gifts to foundations—which is entirely subsidized by the U.S. taxpayer—and the donor surrendering dominion and control over donated funds.

Donors:
Donors should only receive a tax reduction if funds are deployed to serve the public interest in a timely way.

Taxpayers:
Taxpayers should not be required to subsidize donor-controlled foundations in perpetuity, since they receive no commensurate benefit from them.
4. Wealth & Power

Reduce concentrated wealth and power.

We propose a number of charity-related reforms in conjunction with changes in the larger tax system to reduce concentrated wealth and power and the perils it poses.

4.1. Concentration

Protect society from concentrated wealth.

Philanthropic reform alone is insufficient to remedy the anti-democratic effects of concentrated private wealth and power. For this, we need to tackle the broader ecosystem of wealth management practices of which strategic charitable giving is one aspect. We propose two reforms that would directly address the problem of concentrated wealth and power in the charitable sector.

4.1.1. Wealth Tax

Levy a wealth tax on closely held private foundations.

Subjecting private foundation and donor-advised fund assets to wealth taxation would encourage the transfer of charitable funds to nonprofits, public foundations, and community foundations’ general funds that are not controlled by wealthy donors.

**Stakeholder(s):**

**Private Foundations**

**Senator Elizabeth Warren**

A wealth tax, such as Senator Elizabeth Warren’s proposal to levy a 2 percent annual tax on wealth over $50 million, should also apply both to private foundations that are closely controlled by donors (see our later discussion of independent governing boards) and to donor-advised funds.

**Emmanuel Saez**

As Emmanuel Saez and Gabriel Zucman wrote in a 2019 paper on wealth taxation: To prevent abuse, donor advised funds or funds in private foundations controlled by funders should be subject to the wealth tax until the time that such funds have been spent or moved fully out of the control of the donor. For example, assets in the Bill and Melinda Gates’ foundation should be counted as part of the wealth of Bill and Melinda Gates.

**Gabriel Zucman**

4.1.2. Deductions Cap

Establish a lifetime cap on charitable deductions.

A fundamental design flaw in the philanthropic system allows unlimited tax reductions to donors who have private foundations. As Bill Gates, Sr., pointed out to IPS scholar Chuck Collins, Microsoft founder Bill Gates will never pay taxes on the more than $100 billion he will donate to his tax-exempt foundation. A lifetime cap of $500 million would not discourage billionaires whose giving is genuinely motivated by generosity. But it would
limit the extent to which charitable giving can reduce a donor’s taxes to zero—especially when it comes to estate or inheritance taxes.

4.2. Foundations

Reform foundations.

The most basic first steps toward reforming our philanthropic system are to increase the minimum distribution requirement and to ensure that excessive administrative expenses do not count towards that minimum.

Stakeholder(s):

Foundations:

Private foundations must currently distribute a minimum of 5 percent of their asset value to charity each year. Failure to do so results in an increased excise tax penalty.

4.2.1. Payout Exclusions

Reform foundation payout exclusions, including limiting the amount of overhead that counts toward payout and excluding grants to donor-advised funds and investments from payout.

4.2.1.1. Overhead

Reduce or eliminate overhead from counting towards the minimum payout requirement.

This would reduce incentives for exorbitant internal spending on salaries, travel, and accommodations for board members; internal programs; and other administrative costs—and would move more funds to active charities.

4.2.1.2. Grants to DAFs

Prohibit grants to DAFs from qualifying toward the payout requirement, since such grants fail to move money to active charities.

4.2.1.3. Program Investments

Close loopholes that allow program-related and impact investments to be considered part of the payout allocation.

Using tax-advantaged vehicles such as foundations for socially-oriented investing may have public benefits, but these activities undermine the principle of moving funds out of donor dominion in a timely way. In other words, no form of investment should be considered a charitable gift. Such activities can be continued, and even encouraged, but should not count toward payout.

4.2.2. Payout Requirement

Increase the annual foundation payout requirement to 7 to 10 percent.

We propose increasing the requirement to 7 to 10 percent of assets. One alternative to this would be to base payout requirement on asset value, with the highest payout requirements for foundations with assets over $100
million. As discussed earlier, smaller foundations already typically have higher payout rates than larger foundations. A third alternative would be to link the excise tax on foundation investment income to payout. Foundations currently pay an annual 1.39 percent federal excise tax on income their net investment earnings. The excise tax could be restructured to encourage larger annual disbursements; for example, foundations that paid out over 7 percent of their assets could be exempted from the excise tax.

4.2.3. Perpetual Foundations

_Eliminate the perpetual foundation._

This would require the charters of all future private foundations to include a limited lifespan provision. The idea that foundations should exist in perpetuity is in fundamental conflict with their tax-deductible status. The deductibility of gifts to foundations—which is entirely subsidized by the American public—is predicated on donors surrendering dominion and control over their donated funds, and the use of those funds to serve the public interest in a timely way. Taxpayers should not be required to subsidize privately-controlled foundations in perpetuity, since they receive no commensurate benefit from them. An alternative to this would be to create a Limited Lifespan Foundation status that is subject to a lower excise tax rate. These limited-lifespan foundations would be chartered to exist for less than 25 years.

4.3. DAFs

_Reforms to donor-advised funds._

Donor-advised funds (DAFs) have been able to take advantage of rules governing public foundations to establish private giving accounts with no payout requirement, few transparency and reporting provisions, and other abuses of the public trust. The “donor-advised” descriptor is essentially a fictional notion, since the donor continues to control the destination of their gifts and, often, the investment practices of the fund. To protect the interests of the taxpaying public, Congress must address the fundamental design flaws in the DAF system as follows:

**Stakeholder(s):**

DAFs

4.3.1. Payouts

_Require a donor-advised funds payout._

Require that donor-advised funds pay out donations within three years after donations have gone into the fund. DAF sponsors would set up sub-accounts under each fund for each calendar year, and monitor the payout schedule on each sub-account.

4.3.2. Deductions

_Allow the tax deduction to be taken only after the distribution of funds to an active charity, not to another DAF or impact investment._

Currently, donors take their tax deductions when their donations go into the DAF, giving them no incentive to move funds out to working charities.
4.3.3. Impact Investments

*Exclude impact investments from DAF payout.*

DAFs should be used as short-term intermediaries for transferring funds to charities; to ensure that these tax-deductible donations serve the public interest, revenue should not be warehoused in the DAF for more than a few years. And DAFs should not become vehicles for tax-advantaged investment decisions by their donor-advisers, no matter how socially beneficial. Individuals who wish to engage in social impact investments should either make alternative investments using their personal funds, without taking the charitable deduction, or make equity contributions to impact funds, giving up dominion and control over the destination of those funds when they do so. There are existing DAFs that have assets tied up in multi-year impact investments and are not able, in the short-term, to pay out funds. These DAFs could be exempted from the new rules.

4.3.4. Non-Cash Assets

*Tighten requirements around donations of non-cash assets.*

In order to prevent abuses of the charitable deduction, we need to revise the rules for donations of certain forms of non-cash appreciated property such as art, jewelry, real estate, and cryptocurrency to DAFs. A deduction could still be allowed based on the asset’s appreciated value rather than its cost basis, but the value would be calculated upon the exit of funds from the DAF rather than on entry — and so might even result in a value lower than the cost of the asset.

4.3.5. Transparency & Reporting

*Increase DAF transparency and reporting.*

Donations to and from DAFs should be required to be publicly disclosed and reported on an account-by-account basis, along with payout rate. This could be done in such a way to protect anonymous givers.

4.4. Inclusiveness

*Broaden giving and reverse top-heavy philanthropy*

As our report argues, long-term declines in charitable giving by lower-dollar givers are less a result of tax policy and more a reflection of growing income inequality and declining economic security. The only real way to broaden charitable support is to foster an economy that supports a stable and secure middle class, and to ensure that they have disposable income to donate to charity. For this reason, policies to increase donor tax incentives should be carefully structured so that they do not further subsidize households in the top 10 to 20 percent of income and assets. And they must balance private incentives for private charitable giving with the need for public revenues to support public services.

4.4.1. Wages

*Address underlying issues of wage stagnation which depress broader giving.*
4.4.2. Tax Credit

Create a universal giving tax credit.

Encourage giving by all with a tax credit for any households that dig deep and give more than 2 percent of their adjusted gross income.

**Stakeholder(s):**

*Non-Itemizers:*

*Extending the charitable deduction to non-itemizers could bring in up to $36.9 billion in charitable giving in 2021 and add an additional 10.6 million U.S. households to charitable giving rolls.*

4.5. Transparency & Abuse

Prevent abuses and encourage transparency.

A number of actions should also be taken to restore public trust in foundations and the charitable giving sector as a whole after decades of opaque activities. This would include reducing the politicization of charities and increasing transparency into the “dark money” world.

4.5.1. Independence

*Require foundation board independence.*

Reduce the risk of self-dealing by eliminating compensation for foundation board members and trustees and requiring independent boards. If a charity is truly a public interest organization by virtue of its advantaged tax status, it should not have a board composed entirely of family members and paid staff. Charitable foundation boards should have independent boards with rules similar to those governing public corporation boards in many states.

**Stakeholder(s):**

*Foundation Boards*

4.5.2. Compensation

*Impose a ban on compensating family members for foundation services.*

There should be an outright ban on compensation to family members for foundation services.

**Stakeholder(s):**

*Family Members*

4.5.3. Politicization

*Prevent the politicization of charities.*

Ensure that Congress doesn’t eliminate the Johnson Amendment, which would overturn the rule that prohibits charities from supporting or opposing candidates for public office.
4.5.4. Dark Money

*Shine a light on dark money by requiring disclosure of 501(c)4 contributions.*

Require the disclosure of donors to 501(c)4 corporations, which serve as a key mechanism for dark money donations from both the right and the left. While donors to 501(c)4 corporations don’t claim a tax deduction, they can anonymously use them to give unlimited funds to influence issue work and campaigns.

4.6. Fiduciary Rules

*Reform fiduciary rules.*

4.6.1. State Laws

*Reform state laws governing foundations to allow for increased payout.*

Federal and state laws may need to be revised to allow for increased payout of charitable funds independent of economic conditions (expanding on the Uniform Prudent Management of Institutional Funds Act).

**Stakeholder(s):**
- States

4.6.2. Mission Alignment

*Expand definitions of fiduciary duties to include mission alignment.*

Foundations should have latitude in their investment policies and practices to exclude investments in socially injurious companies and enterprises that are not aligned with their missions. Again, per our earlier recommendation, no investment programs could count toward payout.

4.7. Oversight

*Create a new oversight system for foundations and charities.*

**Stakeholder(s):**
- Foundations
- Charities
- Charitable Nonprofit Sector
  - The charitable nonprofit sector is a large segment of the U.S. economy. It accounts for over 10 percent of the private workforce and contributes 5 percent to the gross domestic product. Yet public oversight of the sector is severely lacking.
- State Attorneys General
  - The offices of state attorneys general typically have small charity divisions with few resources devoted to oversight. As a result, they are ill-equipped to oversee charities registered in their states.
- U.S. Treasury Department
  - The U.S. Treasury Department and the Internal Revenue Service are charged with certifying tax exemption and overseeing charitable giving, but they are also constrained in the resources allocated to enforcement, especially with severe cutbacks to the IRS. From their vantage point, investigating charitable abuses is a resource-intensive sideline with little revenue payoff.

**Internal Revenue Service**

**Foundation Sector**

The good news is that the foundation sector provides substantial federal revenue itself with which to fund an oversight body. Revenue from the excise tax on the net investment income of foundations was $581.6 million in 2016, the most recent data available.
4.7.1. National Office

*Create a new Office of Charity Oversight.*

Use excise tax revenue from foundations to fund a new independent watchdog organization, removing that responsibility from the IRS. This new regulatory body would have broad authority to not only to support the nonprofit sector and increase its effectiveness, but also to hold it accountable.

4.7.2. State Offices

*Provide block grants to state oversight offices.*

The new Office of Charity Oversight could allocate a portion of excise tax revenue to state level oversight offices. Funds could be block-granted to states depending on the size of their philanthropy and charity systems.

**Stakeholder(s):**

States

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**Administrative Information**

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