United States Senate Finance Committee

Statement for the Record

October 18, 2011 Hearing: Tax Reform Options —
Incentives for Charitable Giving

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The American Council on Gift Annuities (ACGA) (formerly the Committee on Gift Annuities) was formed in 1927, is an IRC §501(c)(3) organization described in IRC §170(b)(1)(A)(vi). ACGA’s officers, board of directors and its legal counsel are all unpaid volunteers. ACGA is sponsored by over 1,000 social welfare charities, health organizations, environmental organizations, colleges, universities, religious organizations and other charities. The Mission of ACGA is to “actively promote responsible philanthropy through actuarially sound charitable gift annuity rate recommendations, quality training opportunities and the advocacy of appropriate consumer protection.”

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Summary of Statement

Preface. In 1973, I testified before a Congressional Committee at a hearing on the charitable deduction on behalf of a coalition of tax-exempt health organizations. Testifying with me was Dr. Jonas Salk who told the committee that a major part of the funding for the development of his polio vaccine came from charitable gifts by individuals to the University of Pittsburgh School of Medicine and the National Foundation for Infantile Paralysis (now known as the March of Dimes Birth Defects Foundation).

1. Curtailing the tax incentives to charitable giving would adversely affect the people served by America’s charities. Doing this slice by slice — salami tactics — could result in little or no tax incentives for private philanthropy.

2. The current important incentive that allows tax-free IRA rollovers for direct (outright) transfers to specified categories of charitable organizations expires on December 31, 2011 and should be made permanent. The IRA/charitable rollover is
an important source of charitable support. Being off-again-on-again-off-again is confusing and decreases the number of new donors and repeat annual donors.

3. Chairman Baucus, at the October 18, 2011 hearing, stated: “Most Americans aren’t able to receive tax benefits from the charitable deductions since they don’t itemize. Less than one-third of taxpayers itemized their deductions last year.”

The IRA/charitable rollover is unique in that it does give tax incentives to the two-thirds of the taxpayers who don’t itemize, but take the standard deduction. Although no charitable deduction is allowable for IRA/charitable rollovers, the rollovers aren’t taxable. Not being taxable on income that would otherwise be taxable is the equivalent of a charitable deduction.

4. The tax-free IRA/charitable rollover should be expanded to include life-income charitable gifts — gifts that pay income to the donor for life, with a remainder to a qualified charity. This would be at no revenue loss to the government because annual payments to the donor would be fully taxable at ordinary income tax rates.

5. With decreased federal, state and local government support and the increased burdens on charities to serve our people, now is the time to increase, not decrease, the long-established and successful tax incentives for private support for the public good.

STATEMENT

1. Beware of salami tactics. Proposals discussed at the October 18, 2011 hearing included those that would place a 28% or other tax-bracket cap on the charitable deduction, impose an adjusted gross income floor before charitable gifts could be deducted and substitute a low credit for the current deduction.

If your opponent has a salami and you want it for your very own, you must not grab it — because he will defend it. Instead take for yourself a small slice and he will not notice it. Or, if he does, he will not mind very much. And then you take another slice, and then another slice. And slowly but surely, that salami will pass from his possession into yours. — Matyas Rakosi, Hungarian politician in the 1950s, coined the term “salami tactics.”

So it could be with the charitable tax incentives — a slice here and a slice there. Caps can be lowered, floors raised and credits reduced. And before you know it, our nation’s unique tax encouragement to charitable giving would disappear. And some of the proposals would take big chunks at the outset — all to the detriment of the countless
millions who rely on our nation’s charities.

ACGA echoes the testimony of the five witnesses who testified at the hearing that limiting the charitable deduction would significantly decrease charitable support. And we also echo the statement of each Committee member who spoke at the hearing that this is not the time to limit tax incentives to charitable giving. The options being considered would decrease the ability of our nation’s charities to serve their constituents in these troubled economic times and increased needs.

2. The current law that allows tax-free IRA rollovers for direct (outright) transfers to specified categories of charitable organizations should be made permanent. The law, enacted in 2006, has expired a few times, but has been extended (sometimes retroactively) and expires again on December 31, 2011. The IRA/charitable rollover is an important source of charitable support. Being off-again-on-again-off-again is confusing and reduces the number of new donors and repeat annual donors. The law should be made permanent.

The expiring 2011 law (and the law from 2006 through 2010) in a nutshell. An individual age 70½ or older can make outright (direct) charitable gifts from an IRA — including required minimum distributions — of up to $100,000 to public charities (other than donor-advised funds and supporting organizations) and not have to report the IRA distributions as taxable income on his or her federal income tax return. Most private foundations are not eligible donees, but private operating and pass-through (conduit) foundations are. The tax-free rollover is for outright gifts only, not life-income gifts. A charitable deduction is not allowable for the amount transferred to charity from an IRA, but the donor is not taxable on the amount transferred — up to $100,000. Not being taxable on income that would otherwise be taxable is the equivalent of a charitable deduction.

3. The IRA/charitable rollover is unique in that it gives tax incentives to the two-thirds of the taxpayers who don’t itemize but take the standard deduction. Although no charitable deduction is allowable for IRA/charitable rollovers, the rollovers aren’t taxable. Not being taxable on income that would otherwise be taxable is the equivalent of a charitable deduction.

Chairman Baucus, at the October 18, 2011 hearing, stated: “Most Americans aren’t able to receive tax benefits from the charitable deductions since they don’t itemize. Less than one-third of taxpayers itemized their deductions last year.”

Making the current IRA/charitable rollover law permanent would continue to provide charitable tax incentives for nonitemizers.

4. The tax-free IRA/charitable rollover should be expanded to include life-income charitable gifts — gifts that pay income to the donor for life, with a remainder to a
qualified charity. This would be at no revenue loss to the government because annual payments to the donor would be fully taxable at ordinary income tax rates.

The Senate now has before it a bipartisan bill co-sponsored by three Senate Finance Committee members that would make the IRA/charitable rollover permanent and expand it to include life-income charitable gifts.

The Public Good IRA Rollover Act of 2011 was introduced by Senator Charles Schumer (D-NY) and Senator Olympia Snowe (R-ME) on March 10, 2011 with co-sponsors: Sherrod Brown (D-OH), Richard Burr (R-NC), Kirsten Gillibrand (D-NY), Tim Johnson (D-SD), John Kerry (D-MA), Patrick Leahy (D-VT), Carl Levin (D-MI), Mark Pryor (D-AR).

The Public Good IRA Rollover Act has been introduced in every Congress over a number of years. The original co-sponsors were Senator Byron Dorgan (D-ND) and Senator Olympia Snowe (R-ME).

The Public Good IRA Rollover Act — in a nutshell. It would allow tax-free IRA rollovers for both outright and life-income gifts and with no annual ceiling. And it includes rollovers to all public charities and all private foundations.

If it is deemed that the absence of annual ceilings on the amount that can be rolled over outright annually would make this bill too costly at this time and if there are concerns about including donor advised funds, supporting organization and private foundations as qualified donees, we ask the Senate Finance Committee to report out ACGA’s proposed All-American Charitable IRA Rollover.

The All-American Charitable IRA Rollover Act would: (draft language is at the end of this statement)

- Make permanent current law (for years 2006 through 2011) that allows individuals age 70½ or older to make direct (outright) gifts from an IRA of up to $100,000 per year to public charities (other than donor advised funds and supporting organizations) and to private operating and pass-through (conduit) foundations without having to report the IRA distributions as taxable income on their federal income tax returns.

- Expand current law to authorize tax-free IRA rollovers for gifts that benefit charities and provide taxable retirement income for the donors. The qualified charities would be the same donees authorized under current law for direct rollovers. There would be a $500,000 annual ceiling for life-income rollovers and donors must be age 59½ or older.

- The types of life-income plans assure that the annual taxable payments
will be equal to (or greater than) what an individual would receive under the required minimum distribution rules had he or she kept the funds in the IRA instead of rolling them over for a life-income plan. The life income paid from the rollover cannot be assigned.

- Under the authorized life-income plans, the IRA owner will be taxable on income received at ordinary income tax rates. Because the payouts are 5% or more, there will be more income paid with the charitable plans than under the normal payouts of the minimum required distribution rules. The higher payout amounts will produce greater tax revenue for the Treasury.

The current outright (direct) IRA/charitable rollover has resulted in millions of dollars of charitable gifts that would not otherwise have been made. It helps the Americans served by our nation’s charities — provides for housing assistance, feeding the hungry, education, medical services and thousands of other services that American citizens need. The life-income rollover would greatly increase those gifts.

Why would IRA owners not just give outright to charity (a direct gift) from an IRA as provided under current law? Many IRA owners want to make charitable gifts, but also need retirement income. The life-income IRA rollover is an excellent way for donors of average resources to combine a charitable gift with retirement income. Many charities have donors who are “standing by” and wish to make life-income charitable gifts from their IRAs.

This is an All-American Charitable IRA Rollover. It allows all Americans with IRAs — not just those with large stock portfolios — who meet the minimum age requirements, to benefit charities. And since it encourages non-itemizers (over 65% of taxpayers) as well as itemizers, it is truly All-American.

Senate Finance Committee member Snowe was the original co-sponsor of the Public Good IRA Rollover Act. On November 14, 2007, the Senate Finance Committee held a hearing titled: “Federal Estate Tax—Uncertainty in Planning Under the Current Law.” I was one of the four invited witnesses.

Among the written questions asked of me by Committee members after the hearing, was this question from Senator Snowe and my response:

Senator Snowe
Mr. Teitell, thank you so much for your reference in your written testimony to the Public Good IRA Rollover Act of 2007 (S. 819) that I introduced with Senator Byron Dorgan earlier this year. I agree with you that it is a critical incentive for both donors and charities.

Mr. Teitell, focusing on the planned-giving component of this legislation through
which an individual could donate to a charity and receive life income that is taxable, could you please comment on how this provision would promote charitable donations while simultaneously reducing individuals’ present-law estate tax liabilities and addressing Congress’ concern that individuals do not outlive their retirement savings?

**Conrad Teitell**

Senator Snowe, many individuals would like to give part or all of their IRAs outright to charity, but they need the retirement income from their IRAs. Allowing them to roll over their IRAs at age 59½ or older to a life-income plan that would pay the individual (and a spouse, if desired) income for life (through a charitable gift annuity, charitable remainder unitrust or annuity trust, pooled income fund gift) would enable them to provide retirement income for life and make a charitable commitment. The charities could plan on receiving the gift after the life interest terminates.

A life-income rollover is truly an All-American IRA/Charitable Rollover. It would encourage philanthropy by all Americans—not just those who can afford to part with their assets now and not just those who itemize their deductions on their tax returns.

The ability to roll over an IRA to charity directly—or for a life-income plan—gives charitable tax incentives to the approximately two-thirds of taxpayers who take the standard deduction. Not being taxed on income that would otherwise be taxed (withdrawal from an IRA) is the equivalent of a charitable deduction.

The IRA assets rolled over for a life-income plan would not be included in the taxpayer’s estate at death. However, the vast majority of the rollover gifts would come from individuals who have no estate tax concerns.

The life-income rollover shouldn’t cost the government anything because the payments received from the life-income plans would be fully taxable—just as if the payments were received from the original IRA custodian or administrator. The big difference is that the nation’s charities and the people they serve will be greatly benefitted.

Rolling over an IRA for a charity’s life-income plan is not giving away the assets in the plan. The individual continues to receive income for life—just as if she or he had kept the IRA assets with the current custodian or administrator.

Senator Snowe, as you know the IRA/charitable rollover law that allowed tax-free rollovers for direct (outright) rollovers to charity for 2006 and 2007 wasn’t in an extenders’ bill at the end of 2007. When the Senate this year (soon, I hope) considers extending the just-expired IRA/charitable rollover provision, I hope that it will add the life-income component of the Public Good IRA Rollover Act of
As volunteer legal counsel to the American Council on Gift Annuities (an organization of over 1200 charities receiving support through life-income plans), I convey ACGA’s thanks for your being an initial co-sponsor of S. 819 with Senator Byron Dorgan—not only in this Congress, but also several years ago in an earlier Congress.

The bill that you and Senator Dorgan initiated now has wide bipartisan co-sponsorship in both the Senate and the House—including many members of the Finance and Ways and Means Committees.

To sum up: The IRA/charitable life-income rollover is not a revenue drainer and it doesn’t decrease retirement savings—just puts an IRA in a different container. I hope that Congress agrees that passage should be a no-brainer.

5. With decreased federal, state and local government support and the increased burdens on charities to serve our people, now is the time to increase, not decrease, the long-established and successful tax incentives for private support for the public good.

General William Booth, the founder of The Salvation Army, spoke these words on May 9, 1912 at Royal Albert Hall in London:

While women weep, as they do now — I’ll fight. While little children go hungry as they do now — I’ll fight. While men go to prison — in and out, in and out, as they do now — I’ll fight. While there is one lost little girl upon the street, While there is one soul without the light of God — I’ll fight. I’ll fight. I’ll fight until the very end.

With all our nation’s problems, ours is still a most wonderful country. But the societal ills that General Booth spoke about almost 100 years ago are still with us today.

Continuing the current tax incentives to charitable giving, making the IRA/charitable rollover permanent and allowing IRA rollovers to charitable life-income gifts will better enable America’s charities to do the job of eliminating the evils that General Booth spoke about. And, it will provide better education, further the arts, and expand the other laudable activities in our country.

All-American Charitable IRA Rollover Act of 2012 — Draft Bill

To amend the Internal Revenue Code of 1986 to expand tax-free distributions from
individual retirement accounts to include rollovers for charitable life-income plans for charitable purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “All-American Charitable IRA Rollover Act of 2012.”

SEC. 2. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT ACCOUNTS FOR CHARITABLE PURPOSES.

(a) In General -- Paragraph (8) of section 408(d) of the Internal Revenue Code of 1986 (relating to tax treatment of distributions) is amended to read as follows:

(8) DISTRIBUTIONS FOR CHARITABLE PURPOSES

(A) IN GENERAL

For purposes of this paragraph, so much of the aggregate amount of qualified charitable distributions with respect to a taxpayer made during any taxable year –

(i) which is made directly by the trustee to an organization described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any fund or account described in section 4966(d)(2)), and does not exceed $100,000, shall not be includable in gross income of such taxpayer for such taxable year, or

(ii) which is made directly by the trustee to a qualified split-interest entity for the benefit of an organization described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any fund or account described in section 4966(d)(2)), and does not exceed $500,000, shall not be includable in gross income of such taxpayer for such taxable year.

(B) QUALIFIED CHARITABLE DISTRIBUTION

For purposes of this paragraph, the term "qualified charitable distribution" means any distribution from an individual retirement plan (other than a plan described in subsection (k) or (p)) --

(i) which is made directly by the trustee to an organization described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any fund or account described in section 4966(d)(2)), and which is made on or after the date that the individual for whose benefit the plan is maintained has attained age 70½, or
(ii) which is made directly by the trustee to a qualified split-interest entity for the benefit of one or more organizations described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any fund or account described in section 4966(d)(2)), and which is made on or after the date that the individual for whose benefit the plan is maintained has attained age 59½.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includable in gross income without regard to subparagraph (A).

(C) CONTRIBUTIONS MUST BE OTHERWISE DEDUCTIBLE

For purposes of this paragraph --

(i) a distribution to an organization described in subparagraph (B)(i) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph), or

(ii) a distribution to a split-interest entity described in subparagraph (B)(ii) shall be treated as a qualified charitable distribution only if a deduction for the entire value of the interest in the distribution for the benefit of an organization described in subparagraph (B)(ii) would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

(D) APPLICATION OF SECTION 72

Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includable in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would have been so includable if all amounts in all individual retirement plans of the individual were distributed during such taxable year and all such plans were treated as one contract for purposes of determining under section 72 the aggregate amount which would have been so includable. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(E) SPLIT-INTEREST ENTITY DEFINED

For purposes of this paragraph, the term “split-interest entity” shall include --

(i) a charitable remainder annuity trust as defined in section 664(d)(1) which must be funded exclusively by a qualified charitable distribution, or
(ii) a charitable remainder unitrust as defined in section 664(d)(2)) which must be funded exclusively by one or more qualified charitable distributions, or

(iii) a charitable gift annuity as defined in section 501(m)(5) which must be funded exclusively by a qualified charitable distribution, and shall commence fixed payments of 5% or greater not later than one year from date of funding.

(iv) No person may hold an income interest in a charitable remainder annuity trust, a charitable remainder unitrust or a charitable gift annuity funded by a qualified charitable distribution other than one or both of the following: the individual for whose benefit the individual retirement plan is maintained and the spouse of such individual. Income interests in split-interest entities funded by qualified charitable distributions shall not be assignable.

(F) SPLIT-INTEREST ENTITY DISTRIBUTIONS

For purposes of this paragraph --

(i) notwithstanding section 664(b), distributions made from a trust described in subparagraph (E)(i) or subparagraph (E)(ii) shall be treated as ordinary income in the hands of the beneficiary to whom is paid the annuity described in section 664(d)(1)(A) or the payment described in section 664(d)(2)(A), and

(ii) qualified charitable distributions made for the purpose of funding a charitable gift annuity shall not be treated as an investment in the contract under section 72(c).

(G) DETERMINING DEDUCTION UNDER SECTION 170

Qualified charitable distributions shall not be taken into account in determining the deduction under section 170.