

FOSTERING U.S. SOCIAL ENTERPRISE DEVELOPMENT TO  
DIVERSIFY FINANCIAL RESOURCES FOR SEVERE HUMAN SERVICE NEEDS

by  
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## ABSTRACT

Human Service Nonprofit organization are a vital and critical component to American society. They have a long history supporting government in addressing socio-economic concerns the government would otherwise tackle alone. One of the major concerns these organizations face, is the inconsistency in financial resources, which can be contingent on the condition of the economy and traditional donors. The emergence of Social Enterprises and Entrepreneurs have helped produce a new path of resources for social and environmental needs. These new entities have helped create and support economic activity, all while fostering an environment to generate new jobs. In the last five years, there has been a considerable amount of bipartisan support to foster the creation of social enterprises in the US. Unfortunately, America has yet to incorporate the sector into federal legislation.

This paper proposes a legislative policy that creates a subsector in the Small Business Administration, called the Social Enterprise Subsector. It will focus on the advancement and development of Social Enterprises, and the creation of the Qualified Program Related Investment (QPRI) tax status. The QPRI status increases the use of private or philanthropic investment in social programs as oppose to governments agencies bearing the full cost to explore new programs. Historically PRIs are rarely used by charities and foundations, as IRS has yet to formally recognize them. The QPRI status will allow nonprofits and social enterprises to apply for QPRI status, so that investors can safely invest in programs without their investment termed jeopardizing by the IRS. This opens a new market of investors for socially beneficial programs, who will now

receive a return on their investment. The policy proposes reducing the current 100% charitable tax deduction by 15% in order to pay for the SES and QPRI tax status. Those who invest in QPRI status organizations, will be able to write off 75% of their donation or investment and receive returns on investments.

## TABLE OF CONTENT

1. Action-Forcing Event.....	1
2. Statement of the Problem.....	1
3. History.....	5
4. Background.....	14
5. Description of Policy Proposal.....	21
6. Policy Analysis.....	23
7. Political Analysis.....	33
8. Recommendations.....	44
9. Curriculum Vitae.....	45

**To: Bill Drayton, CEO and Chair of ASHOKA.**

**ACTION FORCING EVENT:**

Recent studies have shown record-breaking state budget gridlocks throughout 2016, which effects the timeliness of government pay-outs to nonprofit human service organizations<sup>1</sup>. The most recent recession considerably reduced overall funding to nonprofit human service organizations crippling nonprofit budgets, while service needs simultaneously increased exponentially. The recession caused government funding to either drastically decrease or provide pay-outs late; it also decreased donations from fund-raising and charitable giving significantly<sup>2</sup>.

**STATEMENT OF THE PROBLEM**

One of the major issues in sustaining Human Service Nonprofits (HSNs) is the continued use of inconsistent funding sources, which jeopardizes financial sustainability of nonprofit organizations. As with most nonprofits, funding is dependent upon donations, fees, fundraising, and most important—government contracts and grants. The issues related to funding nonprofits in this manner lies in the fact that funding sources vary each fiscal year; contingent upon the political and economic state of the economy, monetary status of individual donors, and government budgets.

A major financial resource to HSNs is government funding. In general government agencies spend a considerable amount of revenue funding HSN, compared to other 501(c)(3) organizations. Government typically grants more funds to HSNs as

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<sup>1</sup> Snyder, Amanda L. "Nonprofits Struggle with State Budget Impasses, Cuts." April 28, 2016. Accessed February 9, 2017. <http://www.nonprofitpro.com/article/nonprofits-struggle-with-state-budget-impasses-cuts/all/>.

<sup>2</sup>Boris, Elizabeth T., Erwin De Leon, Katie L. Roeger, and Milena Nikolova. "Human Service Nonprofits and Government Collaboration: Findings from the 2010 National Survey of Nonprofit Government Contracting and Grants | Full Report." Urban Institute. Last modified October 2010. [http://www.urban.org/research/publication/human-service-nonprofits-and-government-collaboration-findings-2010-national-survey-nonprofit-government-contracting-and-grants/view/full\\_report](http://www.urban.org/research/publication/human-service-nonprofits-and-government-collaboration-findings-2010-national-survey-nonprofit-government-contracting-and-grants/view/full_report).

they help address serious social concerns and reduce the burden on government funding (i.e. homelessness, LGBTQ, Substance Use). As a result of this privilege however, HSNs find themselves overly reliant on government funding to support its social cause, and are not financially prepared to sustain operations independently, in the event of another financial crisis. Urban Institute (2013) reports in 2012 the federal government paid near \$137 billion to nonprofits with \$81 billion designated to HSNs<sup>3</sup>. Of that \$81 billion 56% of funding to HSNs came in the form of contracts and grants<sup>4</sup>. Although \$81 billion is a considerable amount for HSN, it still is not enough funding to address amassing severe socio-economic issues. The federal budget is very tight, and although there is a greater need for more funding, this study shows that there is not a political will to do more.

During the 2008 recession and years to follow, many HSN programs suffered financial setbacks as revenues decreased from its usual funding sources. This forced HSNs to deplete reserves, cut or furlough staff, and water down or eliminate programming. Dr. Joseph C. Morreale of Pace University (2011) reports the 2008 economic crisis as the largest drop in individual giving in over 50 years (6%). On top of that Government funding significantly dropped from 5% in 2009 to 4% in 2010. As a result, HSNs had to either merge with other companies, reduce overhead staff, or shut down programming as a result<sup>5</sup>. Simultaneously many HSNs reported an increase in

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<sup>3</sup> Pettijohn, Sarah L. Elizabeth T. Boris, Carol J. De Vita, and Saunji D. Fyffe. "Nonprofit-Government Contracts and Grants." Urban Institute. September 23, 2015. Accessed February 07, 2017. <http://www.urban.org/policy-centers/center-nonprofits-and-philanthropy/projects/nonprofit-government-contracts-and-grants>.

<sup>4</sup> ibid

<sup>5</sup> Morreale, Joseph C. "The Impact of the "Great Recession" on the Financial Resources of Nonprofit Organizations." DigitalCommons@Pace | Pace University Research. Last modified August 31, 2011. <http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1004&context=wilson>.

demand for services, where people were either serviced at the nonprofits expense, or turned away due to financial constraints.

Another concern with HSNs relying on government funding specifically, is the issue of contracts paid in full and in a timely manner. According to a study by the Urban institute in 2013 more than 54% of all nonprofits reported problems with government agencies paying for the full cost of services rendered on time or in full. The Urban Institute goes on to describe this issue as routine and systematic<sup>6</sup>. This coincides with recent studies from NonProfitPro indicating several states including Pennsylvania, Illinois, and Connecticut struggling to pass their 2016 budgets; this inherently reduced or withheld funding to social services<sup>7</sup>. According to CNBCs report in March 2016, the National Conference of State Legislatures reported Illinois holding the longest impasse in passing its state budget. As a result, both education and social services were cut, and an accumulation of unpaid bills reached \$6.5 billion<sup>8</sup>. Therefore, the domino effect of failed government contractual obligations will predictably force government—dependent HSNs to close operations as dependent funding sources become consistently unreliable, hindering HSNs functionality.

One of the efforts to address the issues of funding disparities to Nonprofits overall is the development of Social Enterprises. Social Enterprises merge businesslike practices within the nonprofit realm, where profit making companies generate revenue

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<sup>6</sup> National Council of Nonprofits. "A Dozen Common Sense Solutions to Government-Nonprofit Contracting Problems." National Council of Nonprofits |. Last modified December 5, 2013.  
<https://www.councilofnonprofits.org/sites/default/files/documents/white-paper-common-sense-solutions.pdf>.

<sup>7</sup> Snyder, Amanda L. "Nonprofits Struggle With State Budget Impasses, Cuts." NonProfit PRO. Last modified April 28, 2016.  
<http://www.nonprofitpro.com/article/nonprofits-struggle-with-state-budget-impasses-cuts/>.

<sup>8</sup> Schoen, John W. "Illinois' Epic Budget Fail Sets a Dubious Record." CNBC. Last modified March 30, 2016.  
<http://www.cnbc.com/2016/03/30/illinois-epic-budget-fail-sets-a-dubious-record.html>.

to finance program services and operations. Social enterprises can be an alternate funding source to HSNs with the sole purpose of financing their socially driven mission. With the use of social enterprises Nonprofits can diversify funding through more private sector contracts, such as sheltered workshops or set aside contracts. They can also create businesses that are logically connected to the organization's mission such as catering companies that provide employment and training to disadvantaged individuals. Good examples of sustainable social enterprises can be seen with The Delancey Street Foundation based in Los Angeles. Delancey Street is an alternative program to incarceration where individuals receive rehabilitation services in conjunction with vocational training and on the job experience. Delancey Street runs several businesses such as a catering and a moving company, where all proceeds support delivery of program services.

To help support the growth of social enterprises in the US, L3Cs (Low-Profit Limited Liability Company) became the first American legal form to embrace and facilitate social enterprise. L3Cs are like LLCs, where it limits owners' liability to their investment and can operate much like a partnership or corporation through the use of contracts.<sup>9</sup> It also allows the company to issue equity to raise capital. Currently eight states and two Indian territories in the US have cultivated the growth of social enterprise organizations, by adopting statutes that allows social enterprises to register

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<sup>9</sup> Matthew F. Doeringer, *Fostering Social Enterprise: A Historical and International Analysis*, 20 *Duke Journal of Comparative & International Law* 291-330 (2010)

as L3Cs. Such alternative organizational structures can potentially better accommodate socially driven business ventures.<sup>10</sup>

L3Cs are not new. The United Kingdom (UK) is said to have given birth to the concept with its development of Community Interest Company (CIC). The UK has developed the most robust social-enterprise sector in the European Union. The CIC is similar to a limited liability company, but has restrictions guaranteeing that the company will serve a social interest. As of 2012 more than 500 L3Cs have been created in the US, and investment in these organizations is under way by some foundations as a potentially efficient way to engage in program-related investments.<sup>11</sup>

## HISTORY

It is important to understand how the relationship between HSNs and social enterprises emerged. Historically, the sector developed from the voluntary atmosphere engrained in colonial America, where self-governing communities developed associations devised to help one another<sup>12</sup>. As time passed, voluntary associations developed into more formalized nonprofits as a response to natural disasters, civil and world wars, economic depression, and eventually the rebuilding of the economy<sup>13</sup>. As a result, the Federal government began to rely more on volunteer organizations that relieved government of social burdens it would otherwise assume. Organizations like the American Red Cross, Boys and Girls Scouts of America, and the United Way formed as a result to help mobilize the voluntary spirit of America. The relationship between the

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<sup>10</sup> Clark Grinsfelder, Mary. "Chapter 14 Commercialization, Social Ventures, and For-Profit Competition." *The State of Nonprofit America*. By Lester M. Salamon. Ed. Dennis R. Young. N.p.: Brookings Institution, 2012. N. page. Print.

<sup>11</sup> ibid

<sup>12</sup> Mollison, Char. "Overview Of The Nonprofit Sector." Reading, Influence and Impact of Nonprofits, Johns Hopkins University, 1717 Massachusetts Avenue Northwest, Washington, D.C., DC 20036, September 2, 2015.

<sup>13</sup> ibid

voluntary sector and government was so beneficial, that when the new income tax was developed between 1913 and 1917, it included tax deductions and tax exempt status for voluntary organizations. The Federal government believed these organizations provided services that were in the public's interest. Policy makers felt that public wealth provided for public good should not be taxed but encouraged. These concepts helped shaped the charitable deduction individual donors and philanthropists use to decrease their tax liability today, while supporting public needs through their donations

Historically presidential administrations and the state of the economy, have all affected government spending on social services. Since the early 1970s, the gap between the top 20 percent and the bottom 20 percent of household income distribution increased dramatically.<sup>14</sup> Between 1960 and 1968, the Kennedy-Johnson administrations launched the Great Society/War on Poverty programs, initiating a wide range of social service initiatives at the federal level with profound effects on social service delivery. The initiative expanded considerably in financial terms from \$416 million in 1960 to \$8.5 billion by 1980. Pioneer Human Services (PHS), a human service—social enterprise of Seattle, Washington, early origins in the 1960's coincides with the Great Society/War on Poverty, by relying heavily on public funding for its alcohol treatment and prison work release programs. By 1984, roughly 75% of its \$4 million in revenue was from government contracts. However, upon President Reagan's administration in the 1980's, the search for new sources of funding became a necessity,

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<sup>14</sup> Salamon, Lester M. "Chapter 19 For Whom and for What? Investigating the Role of Nonprofits as Providers to the Neediest." *The State of Nonprofit America*. Ed. Pascale Joassart-Marcelli. N.p.: Brookings Institution, 2012. N. page. Print.

as federal spending on human services drastically dropped, and reformed into Medicaid as a form of government funding.<sup>15</sup>

As stated before, presidential administrations and their political agendas can highly affect the allocation of resources to HSNs. Today it is uncertain how the current administration will allocate funding to the human service field in general, let alone HSNs. HSNs that are overly reliant on government funding may find themselves in financial constraints if the administration views human services as less of a priority.

As the US economy moved into the era of Medicaid, government funding was redistributed to allow individuals to choose who they want as service providers, as oppose to government providing block grants to nonprofits. This changed the world of nonprofits, as for-profit organizations could now compete with nonprofits to attract clients to their services through Medicaid waivers and vouchers. Financing from Medicaid and Medicare shifted the social service universe from traditional social services to social services that overlapped with healthcare services<sup>16</sup>.

Despite new competition and reduced government funding in the Reagan administration, it was during the mid-90s and through 2010 when social services grew tremendously. The number of reporting agencies, those with revenues above \$25K, rose even faster from 62,530 to 163,961.<sup>17</sup> The Clinton administration continued to push support for social services with Welfare reform in 1996. The reform sharply reduced the

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<sup>15</sup> Heskett, J. L. (1999, July 19th). Pioneer Human Services. *Harvard Business School Denali Series - Manchester Craftsman Guild*, 1-16.

<sup>16</sup> Salomon, Lester M. "Chapter 4 Social Services." *The State of Nonprofit America*. Ed. Steven Rathgeb Smith. N.p.: Brookings Institution, 2012. N. page. Print.

<sup>17</sup> ibid

importance of cash assistance for the poor and greatly encouraged the importance of effective community-based social services.<sup>18</sup> Organizations such as Catholic Charities, Goodwill Industries, and Volunteer of America grew their core services substantially between 1990 and 2008 as a result of increased government funding, and welfare-to-work programs.<sup>19</sup> The Bush administration maintained steam and aggressively pushed for government funding of faith and community-based agencies that provide social services as a strategy to resolve urgent social problems. The Obama administration continued this partnership through a variety of important federal initiatives, which created the Office of Social Innovation; and funded many high-profile social services agencies around the country.<sup>20</sup>

Although social service nonprofits grew through the mid-90s to 2010, it was during both Presidents' G.W. Bush and Obama administrations, where the economy was mired with economic instability; and in the greatest need for social services where HSNs faced their greatest financial crisis. During the Bush administration, the war in Afghanistan and Iraq placed a financial burden on the economy, and increased widespread budget cuts. Combined with the revelation of Wall Streets' reckless trading practices and the housing market crash, this resulted in the economic crisis of 2008. At that time, Federal funding faced severe budget problems, state and local governments slashed spending to countless agencies; and many federal programs faced declines in

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<sup>18</sup> ibid

<sup>19</sup> ibid

<sup>20</sup> ibid

their assets due to the rise of layoffs and economic uncertainty.<sup>21</sup> The recession not only caused severe declines in government spending, but also in private spending, which negatively affected nonprofit funding sources. Nonprofits that relied heavily on government grants found programs severely cut or completely gone. More families were homeless, out of work, and in need for social services; causing the unemployment rate to sky rocket with more people drawing on automatic stabilizer benefits. Consequently, this placed an even greater financial burden on federal and state budgets. As a result, federal and state debt increased, government funded programs such as Medicaid and Medicare face uncertain futures, and charity and foundation assets have declined leading to cuts in grant-levels and donations.

Nevertheless, nonprofits have found a way to stay relevant and meet the market demands of the human service field. Like mammals scurrying around the feet of dinosaurs, a new breed of nonprofit managers, Social Entrepreneurs, have evolved to adapt to the new political, economic, and social environmental constraints placed on nonprofits<sup>22</sup>. To be clear social enterprises in the US are not new. They became a resource tool in the 70s and 80s to address major cutbacks in government spending for nonprofits<sup>23</sup>. However today, the use of social enterprises in the human service field has increased considerably; particularly to address the same negative externalities of inconsistent funding sources that had been seen in the 70s and 80s.

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<sup>21</sup> Salamon, Lester M. "Chapter 4 Social Services." *The State of Nonprofit America*. Ed. Steven Rathgeb Smith. N.p.: Brookings Institution, 2012. N. page. Print.

<sup>22</sup> Emerson, Jed, and Fay Twersky. New Social Entrepreneurs: The Success, Challenge and Lessons of Non-profit Enterprise Creation. San Francisco, CA: Homeless Economic Fund, the Roberts Foundation, 1996. Print.

<sup>23</sup> Doeringer, Matthew F. "FOSTERING SOCIAL ENTERPRISE: A HISTORICAL AND INTERNATIONAL ANALYSIS." Duke Law Scholarship Repository | Duke Law Research. Last modified 2010. <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1052&context=djcl>.

It was in this economic and social climate that PHS took an innovative approach and formed social enterprises to supplement and support its traditional non-profit work and status. Lester Salamon defines social enterprise as any private activity conducted in the public interest, organized with entrepreneurial strategy, but whose main purpose is not the maximization of profit but the attainment of certain economic and social goals.<sup>24</sup> Salamon referenced PHS in “The State of the Nonprofit America”, and describes PHS as operating a variety of business enterprises that train, employs and rehabilitates ex-offenders, chemically dependent individuals, and individuals on probation. Such enterprises include an aircraft parts manufacturer, sheltered workshops, food buying and warehousing services, and restaurants. Their business ventures are logically connected to the mission of the nonprofit only as a means to provide training and employment opportunities for their clientele.<sup>25</sup> At the same time they are providing needed services to commercial clients and individual customers, like any business operation.

To take a deeper look into make-up of social enterprises, it is important to know that such enterprises can take form in four distinctive characteristics. First, sheltered workshops are designed to benefit from formal contracting priorities of federal or local governments, and private contracts. The National Institute for Severely Handicapped (NISH) supports sheltered workshops by allowing companies to qualify for specific contract awards, which gives added weight to the bidder being a non-profit, and a

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<sup>24</sup> Clark Grinsfelder, Mary. "Chapter 14 Commercialization, Social Ventures, and For-Profit Competition." *The State of Nonprofit America*. By Lester M. Salamon. Ed. Dennis R. Young. N.p.: Brookings Institution, 2012. N. page. Print.

<sup>25</sup> ibid.

foothold in the marketplace through “anchored” contracts.<sup>26</sup> Second, open-market enterprises compete in the marketplace without governmental preferences, or priority in the award of contracts in customer sales.<sup>27</sup> Third, franchises can operate within the context of a national corporation. They are established through the granting of franchise from another, and are usually a nationally active corporation. Fourth, program-based enterprises, which are grown directly out of the program activities of a social service organization. These organizations operate in the marketplace without governmental preferences. <sup>28-29</sup> Many of these enterprises function largely to provide protected employment opportunities to disadvantaged populations, and create a commercial environment to nurture client success and generate resources to sustain the organization.<sup>30</sup> Many times in the HSN world, expansion of social enterprises focuses on the development of program-based enterprises, and sheltered workshops to further its mission and goals.

As stated in our discussion of the problem, in an effort to nurture the organizational structure for social enterprises, the US developed its first legal business-term, Low-Profit Limited Liability Companies (L3Cs). Currently eight states and two Indian territories in the US have adopted statutes that allows social enterprises to

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<sup>26</sup> Emerson, Jed, and Fay Twersky. *New Social Entrepreneurs: The Success, Challenge and Lessons of Non-profit Enterprise Creation*. San Francisco, CA: Homeless Economic Fund, the Roberts Foundation, 1996. Print.

<sup>27</sup> ibid.

<sup>28</sup> Clark Grinsfelder, Mary. "Chapter 14 Commercialization, Social Ventures, and For-Profit Competition." *The State of Nonprofit America*. By Lester M. Salamon. Ed. Dennis R. Young. N.p.: Brookings Institution, 2012. N. page. Print.

<sup>29</sup> Emerson, Jed, and Fay Twersky. *New Social Entrepreneurs: The Success, Challenge and Lessons of Non-profit Enterprise Creation*. San Francisco, CA: Homeless Economic Fund, the Roberts Foundation, 1996. Print.

<sup>30</sup> Clark Grinsfelder, Mary. "Chapter 14 Commercialization, Social Ventures, and For-Profit Competition." *The State of Nonprofit America*. By Lester M. Salamon. Ed. Dennis R. Young. N.p.: Brookings Institution, 2012. N. page. Print.

register as L3Cs, and more than 1000 social enterprises have been created<sup>31</sup>. Since 2012 investment in these organizations have been under way by some foundations as a potentially efficient way to engage in program-related investments.<sup>32</sup> These new organizational structures can potentially better accommodate socially driven business ventures.<sup>33</sup> However, in order for social enterprises to operate successful nonprofits, the enterprise must operate a substantial amount of commercial activity. This activity needs to qualify as activity which furthers their exempt purpose in order to not risk losing their tax-exempt status. Again PHS demonstrates a good example of this, as one of Pioneer's best strategies overall was finding the right balance of acquiring for-profit business venture to promote job training and employment, in order to develop more social service programs. Expanding the organization and becoming more professionalized with its outcomes measures group, has allowed Pioneer to attract many business ventures (over 10 enterprises), and acquire other human service organizations.

Alongside the development of L3C corporations, the Community Reinvestment Act (CRA) and the creation of tax incentives for investment in so-called community development financial institutions have helped push new financing entities and instruments to channel not just philanthropic grants but also private investment capital into L3Cs.<sup>34</sup> The CRA requires depository institutions to demonstrate to federal

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<sup>31</sup> InterSector Partners, L3C. "Latest L3C Tally | InterSector Partners, L3C." Home of InterSector Partners, L3C | InterSector Partners, L3C. Last modified November 30, 2016. [http://www.intersectorl3c.com/l3c\\_tally.html](http://www.intersectorl3c.com/l3c_tally.html).

<sup>32</sup> Clark Grinsfelder, Mary. "Chapter 14 Commercialization, Social Ventures, and For-Profit Competition." *The State of Nonprofit America*. By Lester M. Salamon. Ed. Dennis R. Young. N.p.: Brookings Institution, 2012. N. page. Print.

<sup>33</sup> ibid.

<sup>34</sup> ibid

regulatory authorities that they are channeling a meaningful portion of their loan resources to disadvantaged communities in their service areas.

Despite L3Cs infancy, one of the primary purposes of the L3C is to make it easier and less costly for foundations to determine where they can safely invest program-related investments (PRIs); which increases the amount of capital available for social enterprise. As one of the largest social entrepreneur networks in the world, Ashoka (2013) contributed an article in Forbes describing some of the many benefits PRIs contribute to social enterprises. The article stressed that PRIs allow charities and foundations the ability to invest a sizeable amount of funding to social enterprises through loans or equity stakes, with the hope of recovering their investment and a significant rate of return. According to Ashoka, PRIs allows charities and foundations the ability to invest a sizeable amount of funding to social enterprises through loans or equity stakes, with the hope of recovering their investment and a significant rate of return. Funding through PRIs can create more stable and sustainable enterprises, as it creates an avenue to provide significant funding for hard—hitting social concerns, comparable to traditional funding amounts from charities and foundations<sup>35</sup>. Each L3C must create an operating agreement which contractually binds the company to operate primarily for an exempt purpose. PRIs allow L3Cs the opportunity to access funds from traditional capital markets through a process called “layered investing”. Layered investing occurs when foundations use PRIs to invest in the L3C at a below-market rate

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<sup>35</sup> Ashoka. "Why Program-Related Investments Are Not Risky Business." Forbes. Last modified February 21, 2013. <http://www.forbes.com/sites/ashoka/2013/02/21/why-program-related-investments-are-not-risky-business/#77016d2e1f8e>.

of return. This low-return investment will allow the L3C to contribute a larger share of profits towards market-oriented investors, thereby raising their potential economic return.<sup>36</sup>

Despite the benefits L3Cs give social enterprises, charities are still skeptical in utilizing PRIs with L3Cs because the IRS has not issued an official statement that it will automatically allow investments in L3Cs to count as PRIs. Therefore, charities and foundations are still hesitant to invest large amounts of funding in social enterprises, for fear of such investments being labeled as jeopardizing investments.<sup>37</sup> There is much more exploration needed to investigate the effects of IRS labeling such investments as PRI-investments by charities and foundations, as it may prove especially beneficial to HSN—social enterprises formed as L3Cs.

## **BACKGROUND**

In the last five years, there has been a considerable amount of bipartisan support to foster the creation of social enterprises in the US through either L3Cs or Benefit Corporations. Globally benefit corporations have picked up more steam, but L3Cs continue to be an initiative worth considering. Internationally, several countries have introduced the idea of formalizing legal frameworks to support the development of social enterprises throughout their states. Elizabeth Babson and Robert Esposito reviewed 2016 Legislative and Policy efforts on Social Enterprises, which identified global efforts to foster the new entity. According to Babson and Esposito (2017), in

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<sup>36</sup> Doeringer, Matthew F. "FOSTERING SOCIAL ENTERPRISE: A HISTORICAL AND INTERNATIONAL ANALYSIS." Duke Law Scholarship Repository | Duke Law Research. Last modified 2010.

<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1052&context=djcl>.

<sup>37</sup> ibid

2015 Italy became one of the first countries to authorize benefit corporations. In 2016 both Columbia and Argentina introduced its own form of benefit corporation legislation; Australia, Brazil, UK, and Taiwan have already drafted legislation; and Canada, Chile, Ireland, and Portugal plan to introduce legislation. In October of 2016 Greece introduced the Social & Solidarity Economy Actor status, which is accessible to all legal business forms; November 2016 Luxembourg parliament created a legal frame work for social enterprises; and Bulgaria, Estonia, Malta, and Slovakia are currently attempting to develop legislation to support a social enterprise sector of their own<sup>38</sup>.

Although America has not reached a point where they have incorporated social enterprises into the federal legal framework, throughout 2016 and prior years, legislation has been introduced in several states and at the federal level to support the formation of either benefit corporations or L3Cs. While many of these legislative bills failed to pass, or have been moved to the 2017 state/federal congressional agenda, it shows growing support on both sides of the aisle to find comprehensive legislation for the new business structure in the social benefit world.

In terms of political support, the Stanford Social Innovation review (2012) believes bipartisan support for social enterprises has grown as both parties find benefits within its principles, and the overall aim to create and sustain jobs. Democrats support social enterprises because they allow companies to focus on the triple bottom line; republicans support the initiative because of its ability to operate in the free market

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<sup>38</sup> Babson, Elizabeth K., and Robert T. Esposito. "The Year in Social Enterprise: 2016 Legislative and Policy Review | Insights & Events." Drinker Biddle. Last modified February 7, 2017. <http://www.drinkerbiddle.com/insights/publications/2017/02/the-year-in-social-enterprise>.

economy, without government control<sup>39</sup>. There has been legislation drafted from both sides of the aisle, which has incorporated some key aspects to consider when advocating federal support for the social enterprise sector.

In 2012 “The Social Enterprise Ecosystem and Economic Development Act” (SEEED), drafted at the federal level, was introduced by Congressman David Cicilline (D-RI). Within the act the Small Business Administration (SBA) would explore ways to create a framework for social enterprises as a subsector of the SBA, through the Office of Social Entrepreneurship<sup>40</sup>. The bill’s stamina died down since its introduction in 2012, however, the SEEED proposal regained steam and was re-introduced September 28<sup>th</sup> 2016. This time it was accompanied by bipartisan support from Congressman Tom MacArthur (R-NJ), and was referred to the Committee on Oversight and Government Reform<sup>41</sup>. With its reintroduction, the act proposed the creation of a commission on the Advancement of Social Enterprise, lasting two years, to develop criteria with various experts to determine how the government can cultivate and recommend policy proposals that support the social enterprise culture<sup>42</sup>.

In 2014 Massachusetts committed \$27-million to a 7-yr effort to reduce recidivism through the use of SIBs, and New York carved out \$13.5 million in their

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<sup>39</sup> Westaway, Kyle. "Something Republicans and Democrats Can Agree On: Social Entrepreneurship | Stanford Social Innovation Review." Stanford Social Innovation Review: Informing and Inspiring Leaders of Social Change | Stanford Social Innovation Review. Last modified April 17, 2012.

[https://ssir.org/articles/entry/something\\_republicans\\_and\\_democrats\\_can\\_agree\\_on\\_social\\_entrepreneurship](https://ssir.org/articles/entry/something_republicans_and_democrats_can_agree_on_social_entrepreneurship)

<sup>40</sup> ibid

<sup>41</sup> "Actions - H.R.6232 - 114th Congress (2015-2016): SEEED Commission Act of 2016." Congress.gov | Library of Congress. Last modified September 28, 2016. <https://www.congress.gov/bill/114th-congress/house-bill/6232/all-actions?overview=closed#tabs>.

<sup>42</sup> "Cicilline Introduces Bipartisan SEEED Commission Act to Support Social Enterprise Community | Congressman David Cicilline." Congressman David Cicilline | Representing the 1st Congressional District of Rhode Island. Last modified September 28, 2016. <https://cicilline.house.gov/press-release/cicilline-introduces-bipartisan-seeed-commission-act-support-social-enterprise>.

budget to do the same<sup>43</sup>. As part of the new initiative in Massachusetts, Goldman Sachs, and the Boston Foundation, among several other large foundations committed, \$18-million to invest in a Chelsea HSN that addresses recidivism. Massachusetts introduced social impact bonds (SIB) or “pay for success programs” to the state through social innovation financing contracts in 2012. These bonds take the financial risk away from state-government agencies paying for programs that don’t work; and in turn the philanthropist picks up the cost for risk capital. If invested programs meet predetermined goals, then government agencies repay philanthropist with interest<sup>44</sup>.

The UK first introduced the concept of SIBs with an initiative to reduce recidivism in the criminal justice system<sup>45</sup>; it sees the use of SIBs as a financially responsible way to address social issues when budgets are tight<sup>46</sup>. To ensure outcome measures are reported correctly, an independent evaluator works with the vendor to compare outcomes with a control group<sup>47</sup>. This example demonstrates one of the many ways foundations can utilize PRIs for social causes. It also creates conversation around regulatory frameworks to dispel fears of jeopardizing investment concerns by the IRS. Jeopardizing investments deter foundations and philanthropist from investing in different programs or nonprofits that may be financially risky or ineffective.

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<sup>43</sup> Fernandes, Deirdre. "State Launches Performance-based Funding to Keep Teens out of Jail - The Boston Globe." BostonGlobe.com. Last modified January 29, 2014. <https://www.bostonglobe.com/business/2014/01/29/state-launches-performance-based-funding-keep-teens-out-jail/CJACWX1Bi6aKJsssegjxjK/story.html>.

<sup>44</sup> Westaway, Kyle. "Something Republicans and Democrats Can Agree On: Social Entrepreneurship | Stanford Social Innovation Review." Stanford Social Innovation Review: Informing and Inspiring Leaders of Social Change | Stanford Social Innovation Review. Last modified April 17, 2012.

[https://ssir.org/articles/entry/something\\_republicans\\_and\\_democrats\\_can\\_agree\\_on\\_social\\_entrepren](https://ssir.org/articles/entry/something_republicans_and_democrats_can_agree_on_social_entrepren)

<sup>45</sup> ibid

<sup>46</sup> Fernandes, Deirdre. "State Launches Performance-based Funding to Keep Teens out of Jail - The Boston Globe." BostonGlobe.com. Last modified January 29, 2014. <https://www.bostonglobe.com/business/2014/01/29/state-launches-performance-based-funding-keep-teens-out-jail/CJACWX1Bi6aKJsssegjxjK/story.html>.

<sup>47</sup> ibid

Other noteworthy legislative initiatives to create benefit corporations and L3Cs in 2016 occurred across the country and in Puerto Rico, some of which subsequently died in respective committees<sup>48</sup>. Eight benefit corporation bills were introduced in Georgia, Iowa, Kansas, Oklahoma, Wisconsin, Michigan, Kentucky, and Ohio; and 3 L3C bills were introduced in Massachusetts, New York, and Wisconsin, all of which failed to become legislation. Pennsylvania on the other hand amended their limited liability act in October 2016, to add a subchapter recognizing the formation of benefit companies<sup>49</sup>. Now Pennsylvania along with Maryland (2012), Oregon (2013), and Puerto Rico (2015), have officially authorized benefit limited liability companies<sup>50</sup>.

Several policy initiatives or proposals to foster social enterprises were introduced by California, the Small Business Administration (SBA), and the Benefit Company Bar Association in 2016. California attempted to introduce a procurement system that would provide preferential procurement for “employment social enterprises” state-wide. However, it was vetoed by California Governor Jerry Brown, due to financial constraints it would place on the state’s budget. However, this is the first piece of legislation that steered away from traditional legislation on social enterprises, and focused more on procurement preferences for social enterprises to cultivate the expansion. The SBA introduced a proposal creating Impact Small Business Investment Company’s as a rule for designating qualifying investment funds; it is

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<sup>48</sup> Babson, Elizabeth K., and Robert T. Esposito. "The Year in Social Enterprise: 2016 Legislative and Policy Review | Insights & Events." Drinker Biddle. Last modified February 7, 2017. <http://www.drinkerbiddle.com/insights/publications/2017/02/the-year-in-social-enterprise>.

<sup>49</sup> ibid

<sup>50</sup> ibid

expected to be finalized in 2017. One of the major requirements under the qualification requires funds to be measured against impact outcomes with pre-determined measurement standards<sup>51</sup>. Last the new Benefit Company Bar Association (BCBA) met for its 1<sup>st</sup> annual conference, where its President, William H. Clark Jr., described the goals and mission of the association:

“The purpose of the BCBA, “brings together lawyers who represent clients that are committed to having a positive impact on society and the environment and to promote the idea that business can have a more positive impact on society and environment than it does today”.

As you can see there has been an array of legislative effort to cultivate the social enterprise sector within many states and at the federal level just in 2016. Despite many of the initiatives failing to become bills, it shows a growing effort to find the right way to support the industry, while staying current with the new global trend.

Today many countries are embracing the new business sector into their legal framework at a national level to support social enterprise development in the free market economy. It is also important to look at incorporating the social enterprise sector at a federal level considering America is perceived to be behind the curve with major corporations, and tax reform. However, in the last five years, there has been major push for comprehensive tax reform, with bipartisan support and proposals such as the Wyden-Gregg/Wyden-Coates bills introduced in 2010/2011. Today the current

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<sup>51</sup>Babson, Elizabeth K., and Robert T. Esposito. "The Year in Social Enterprise: 2016 Legislative and Policy Review | Insights & Events." Drinker Biddle. Last modified February 7, 2017. <http://www.drinkerbiddle.com/insights/publications/2017/02/the-year-in-social-enterprise>.

administration and the GOP are looking at tax reform, which may create an opportunity to find a way to address social enterprises within the tax code. Much of the tax reform agenda aims to address the issue of America falling behind in their corporate tax structure, which has caused businesses to move overseas because of high tax rates. These businesses also provide significant funding to HSN, and can represent another reason funding has decreased to the sector. Currently America's Federal nominal corporate tax rate is 35% (which does not include average state taxes), while other countries average (188 surveyed) 22.5%<sup>52</sup>. Both Democrats and Republicans in Congress have called for comprehensive tax reform, as has President Trump and his Treasury Secretary Stephen Mnuchin.

The current administration's push for tax reform is a great opportunity for lobbyists and organizations like Ashoka to push the social enterprise framework. It would likely have a great deal of bipartisan support, and creates an opportunity for the new entity to be incorporated in tax reform as a hybrid of corporate and small business status (L3Cs and Benefit-Corporations). Being able to clearly identify organizations recognized by IRS to receive PRIs under the tax code, subsequently benefits both large corporation, social enterprises, and HSNs. This then creates a new source of funding to attempt to address complex social concerns through investment.

## **POLICY PROPOSAL**

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<sup>52</sup> Pomerleau, Kyle, and Emily Potosky. "Corporate Income Tax Rates Around the World, 2016." Tax Foundation. Last modified August 18, 2016. <https://taxfoundation.org/corporate-income-tax-rates-around-world-2016/>.

The goal of this policy will address severe socio-economic disparities of urban communities, by creating economic activity that meets social needs through job creation, and filling in gaps that are not adequately solved by existing resources. This will be accomplished by increasing and diversifying new funding sources to establish and support social enterprise development and Human Service Nonprofits.

**POLICY AUTHORIZATION TOOL:**

Ashoka should advocate for Congress to pass legislation authorizing the Small Business Administration (SBA) to develop policies and programs that support social enterprises and entrepreneurs. Congress should also authorize a special tax deduction for investments in qualified social enterprises, similar to the charitable deduction. To pay for this program Ashoka suggests reducing all charitable deductions by 15%, allowing a deduction of 85% instead of the full 100% currently allowed. This will generate \$43.8 billion in revenue savings as a result.

**POLICY IMPLEMENTATION TOOL: SBA and IRS**

This legislation will call for the creation of a new division within the SBA called the Social Enterprise Subsector (SES), which was first proposed by Congressman David Cicilline's (D-RI) 2013 SEEED Commission Act<sup>53</sup>. Congress should then authorize the SBA to develop rules and regulations for an investment status called Qualified Program

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<sup>53</sup> Westaway, Kyle. "Something Republicans and Democrats Can Agree On: Social Entrepreneurship | Stanford Social Innovation Review." Stanford Social Innovation Review: Informing and Inspiring Leaders of Social Change | Stanford Social Innovation Review. Last modified April 17, 2012. [https://ssir.org/articles/entry/something\\_republicans\\_and\\_democrats\\_can\\_agree\\_on\\_social\\_entrepreneurship](https://ssir.org/articles/entry/something_republicans_and_democrats_can_agree_on_social_entrepreneurship)

Related Investment (QPRI); which builds upon Aaron Schock (R-IL) and Jared Polis (D-CO) Philanthropic facilitation Act of 2011<sup>54</sup>. This status will be recognized by the IRS.

The SES will focus on stimulating social enterprise development, by creating a website for the advancement of social enterprises, and open SES regional offices throughout the country to increase awareness<sup>55</sup>. The new subsector will support enterprises in identifying preferential treatment to secure goods and services from private, individual, and government entities. In order to streamline financial support, the QPRI tax status will allow individuals, corporations, and foundations to safely invest in social enterprise programming without the fear of investments termed “jeopardizing” by the IRS. Social Enterprises will be responsible for applying for and maintaining its QPRI status by meeting established criteria developed by the SBA. Private businesses and philanthropist donating funds or investments to enterprises with QPRI standing can take a tax deduction equivalent to 75% of the amount invested or donated. Charities and foundations can channel organizations with QPRI status to increase their utilization of Program Related Investments (PRI) without fear of investments labeled jeopardizing

Another primary function of the SES will consist of continuous research and development that promotes social enterprise benefits to major social, economic, and environmental issues, which decreases the full burden on government to find solutions. The SES will develop evaluative metrics to ascertain whether enterprises are meeting and maintaining its goals. The SES will collaborate with International and National Social

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<sup>54</sup> ibid

<sup>55</sup> Matthew F. Doeringer, *Fostering Social Enterprise: A Historical and International Analysis*, 20 *Duke Journal of Comparative & International Law* 291-330 (2010)

Enterprise associations, who will serve as Social Enterprise—representatives, to help mobilize any legislative changes related to QPRI status, and the promotion of social enterprises at the federal levels. Similar to Cicilline’s SEEED Commission, the SES will utilize experts to: “draw upon existing leading research and scholarship in the area as well as the input of practitioners and policy experts within the social enterprise field”<sup>56</sup>. Ashoka will dedicate advocacy efforts or “Sermons” through expert testimonies, and data reports on Social Enterprise impact Ashoka has supported throughout the world. When collaborating with the SES, Ashoka will consistently address the following in order to help legislators foster the industry:

- (1.) New Evidenced based social enterprises accelerating progress on pervasive social and environmental issues.
- (2.) How social enterprises work in a cross-sector manner, as the sector develops overtime.
- (3.) Any new social enterprise metric-systems improving social and environmental goals.<sup>57</sup>

### **POLICY ANALYSIS:**

In general, forming the SES at the Federal level creates a federal unit solely focused on the promotion and facilitation of social enterprise expansion nationwide. In most recent years, several US States have proposed legislation to incorporate L3Cs or Benefit Corporations into its legal framework. At the federal level, several members of

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<sup>56</sup> Cicilline, David. "Text - H.R.6232 - 114th Congress (2015-2016): SEEED Commission Act of 2016." Congress.gov | Library of Congress. Last modified September 28, 2016. <https://www.congress.gov/bill/114th-congress/house-bill/6232/text?q=%7B%22search%22%3A%5B%22chamberActionDateCode%3A%5C%222016-09-28%7C114%7C1000%5C%22+AND+billIsReserved%3A%5C%22N%5C%22%22%5D%7D&r=38>.

<sup>57</sup> ibid

Congress have proposed legislation to develop the social enterprise sector, however these bills have not moved out of their respective committees. The fact that states and congressional leaders have proposed bipartisan legislation to adopt the sector, shows a great deal of support on both sides of the aisle. It also promotes a need to create a system that clearly defines the practice of the social enterprise structure, to bring about consistency which all states can rely on. Thus the SES can serve as the “hub” to develop an efficient and effective way to streamline the process, which allows the US to keep up with a changing economy.

However, as with many policy proposals this proposal has its pros and cons. The cost of a new tax deduction, is a tough decision congress will have to make. The most obvious cost to this proposal is the revenue loss from the QPRI-status tax deduction. Another major cost the federal government will incur is the logistical cost of creating a new division within the SBA (SES). A new subdivision with regional offices brings about new administrative costs that will have to be paid for in addition to the loss in revenue from the QPRI deduction, which is similar to that of the charitable deduction. There is no new money to pay for this new program therefore something in the budget will need to be reduced.

The new tax status and development of the subsector will prompt Congress to look at the tradeoffs between social enterprises and social services. According to the Joint Committee on Taxation, charitable giving is estimated to reach \$292 billion for 2017, with \$57 billion lost in federal revenue<sup>58</sup>. Adversely, this tax deduction may

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<sup>58</sup> <http://www.taxpolicycenter.org/briefing-book/how-large-are-individual-income-tax-incentives-charitable-giving>

increase charitable giving by \$200 billion, which results in an additional \$11.4 billion in revenue loss. Despite bipartisan support for the sector it is uncertain if there would be bipartisan agreement to increase the deficit to pay for the new sector and tax deduction. Also, considering there has been talks of eliminating or reducing the current charitable deduction on both sides of the aisle, Congress may not opt to create this tax deduction when they are evaluating how to reduce the current deduction. As a result, congress may alternatively consider budgeting for more social services rather than creating a new tax break for social enterprises.

In order to encourage congress to support this policy, Ashoka will propose the idea of reducing the current charitable deduction to pay for the SES and the QPRI status. As stated in the policy proposal, reducing the charitable deductions by 15% instead of the full 100%, generates \$43.8 billion in revenue. The \$43.8 billion conserved will cover the QPRI tax deduction (\$11.4 billion), the cost to set up the SES and regional offices. The remainder will be disbursed to States in the form of Grants to support the use of SIBs at the state level. This will not be the first time a proposal to decrease the charitable deduction is brought before congress. Coincidentally, the GOP and President Trump's tax plan have significantly reduced individuals who can claim the deduction<sup>59</sup>.

Unfortunately, it could be debated that the QPRI status is another tax loophole larger for-profit corporations could use to avoid taxes. A 75% write off of an investment is huge benefit to larger corporations. This lends way to potential tax shelter

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<sup>59</sup> Ebeling, Ashlea. "This May Be The Last Year You Get A Charitable Tax Deduction." Forbes. Last modified January 31, 2017. <https://www.forbes.com/sites/ashleaebeling/2017/01/31/this-may-be-the-last-year-you-get-a-charitable-tax-deduction/#3a95ab023ef6>.

organizations or corporations establishing fictitious social enterprises just to obtain the benefits. To curtail the potential unintended consequence, the SES and IRS will be instructed by legislation to develop rules and regulations to prevent abuse of QPRI status by larger corporations that seek to avoid paying their fair share of taxes. However, on a positive note, this may also encourage large socially responsible corporations like Starbucks to invest in social enterprises, in addition to their traditional corporate giving.

To appropriately develop the sector, the SES will identify and consistently collaborate with national and international social enterprise experts to learn from and build upon the success of the UK and other countries in the field. A major feature created under the UKs Social Enterprise Act, is their regulatory system that ensures social enterprises meet the “Community Benefit Test”. The test helps government ensure social enterprise operations are executed in a manner that truly benefits society<sup>60</sup>. Political leaders in the UK use regulatory systems as a way of “investing in the research and development of valuation metrics to account for the social impact of social enterprises”<sup>61</sup>. The SES will develop similar regulatory systems to help maintain standards of operation for socially beneficial means. The US social enterprise regulatory system will streamline data collection to help determine social enterprise effectiveness in addressing severe social and environmental problems, and policies put in place to fosters the system.

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<sup>60</sup> Matthew F. Doeringer, *Fostering Social Enterprise: A Historical and International Analysis*, 20 *Duke Journal of Comparative & International Law* 291-330 (2010)

<sup>61</sup> ibid

Legalization of hybrid business structures such as L3Cs or Benefit Corporations is another way to help develop the sector. The L3C structure has been openly accepted by foundations as an avenue to invest PRIs, because its structure is aligned with IRS standards of PRIs. Benefit corporations on the other hand have begun to pick up more steam than L3Cs when determining social enterprise structure and legislation. In order to clearly define the types of business structures under which social enterprises can form, the SES will clearly define differences between various structures, and allow social enterprises to form under the structure that works best to meet its goal, at respective state levels.

In terms of the L3C –PRI relationship, the Qualified Program Related Investment or QPRI status, will allow foundations and charities to safely choose organizations to invest in that have been pre-approved by the IRS. Previously private charities and foundations have underutilized PRIs when deciphering how to donate or invest 5% of their annual assets required by tax law<sup>62</sup>. According to a study on “Fostering Social Enterprises” (2010), PRI usage by foundations and charities historically has not reached 1% of the 5% disbursement required. Again, this typically is due to the fear of potential investments being termed “jeopardizing” under the eyes of the IRS. The alternative would require the foundation to get a Private Letter Ruling (PLR) from the IRS, which provides more security for the foundation but can become costly, especially if a foundation wants to use PRIs with several social organizations<sup>63</sup>. Obtaining a PLR in

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<sup>62</sup> ibid

<sup>63</sup> ibid

itself is lengthy and incurs a high cost. To obtain a letter there is an \$8,700 fee for the letter, attorney fees amassing up to \$50K, and the potential of IRS requiring investors to provide annual reports reflecting the investment<sup>64</sup>.

As with the UK, creating a regulatory framework will incur cost that will be placed on the federal government. However, in addition to revenue conserved by reducing the charitable deduction, the UK has proposed that registration cost of L3Cs, benefit corporations, and QPRIs, may help balance the cost, as the industry develops. The UK believes the fees may be able to cushion the financial burden on government, but the sector has not been around long enough to realize the effects<sup>65</sup>.

Under this policy, the QPRI status will decrease the onus on foundations to identify qualified organizations, and require social enterprises to front the one-time cost. This creates a more efficient way for charities to dedicate funding to Social Enterprises with an IRS stamp of approval, and eliminate the high cost of PLRs for each organization. It also opens up more investment funding charities would otherwise use in the form of grants and donations. The down-side to QPRIs is that start-up social enterprises may struggle to financially qualify for this status, considering the fees associated with the process. However, this status can be seen as a business investment in order to generate more attraction to receive larger investments from charities that wish to support their mission.

A potential unintended consequence of social enterprise QPRI status, may

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<sup>64</sup> ibid

<sup>65</sup> Matthew F. Doeringer, *Fostering Social Enterprise: A Historical and International Analysis*, 20 *Duke Journal of Comparative & International Law* 291-330 (2010)

decrease investors ability to make their own informed choices. If investment in an enterprise is based on QPRI status alone, then those who cannot afford to apply for the status may have a comparative disadvantage for potential investment. This then brings into question whether QPRI status is equitable. However, if status is gained, then the lottery fund, described below, can help enterprises recoup money lost incurred in the application process.

In addition to the use of QPRIs, the SES will create an environment to enhance the continued support of Social Impact Bonds (SIB) with private organizations and foundations. The Rockefeller Philanthropy Advisors developed a roadmap to Impact investing to help investors and social enterprises navigate the use of SIBs. In its report, SIBs are seen as a new avenue where investors can commit money and continue to reinvest in socially beneficial organizations or projects, while gaining a socially beneficial return on their investments<sup>66</sup>. With SIBs, private organizations and charities assume more risk capital for social investments. Government funding that traditionally carried the financial risk, could then utilize tight funding for programs proven effective. The Rockefeller Philanthropy Advisors views this as a “bridge between philanthropy and capital markets”<sup>67</sup>. This system thus creates an environment where philanthropist and charities invest a major portion of their assets on programs or enterprises that are in alignment with their social or environmental mission and goals<sup>68</sup>

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<sup>66</sup> "Philanthropy Roadmap » Impact Investing." Rockefeller Philanthropy Advisors. Accessed March 4, 2017. <http://roadmap.rockpa.org/impact-investing/>.

<sup>67</sup> ibid

<sup>68</sup> ibid

Unfortunately, just like general investment SIBs carry risk. First, outcome measures on Investment performance, and the effectiveness and efficient use of SIBs are still underdeveloped. However, USAID and the Rockefeller Foundation has teamed up to devise the Impact Reporting and Investment Standards (IRIS), to develop a uniformed reporting system that measures Social Investment outcomes and benchmarks, in order to compare investment effects. They are also working with Global Impact Investing Network (GIIN) to develop a metric system for SIBs<sup>69</sup>. Finding financial and legal experts in the impact investment field can be difficult due to the infancy of the sector, just as identifying philanthropists with skills in investment strategy may prove cumbersome. However, one step towards addressing this concern, can be seen with the newly formed Benefit Company Bar Association launched in late 2016. Lawyers who represent and are engaged in the sector will educate organizations, government, and the public to promote the expansion of the field and promote better awareness of legalities associated with Social purpose organizations<sup>70</sup>.

Another function of the SES is the facilitator of the social investment lottery fund. Private organizations that seek to invest in enterprises addressing severe social concerns can commit a designated amount of money to the SES lottery fund. The lottery will serve as a pool of money that start-up social enterprises can apply for, to support an organization's growth. For example, start-up social enterprises can utilize lottery funding in the form of reimbursement for QPRI status application and processing

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<sup>69</sup> ibid

<sup>70</sup> Biddle. Last modified February 7, 2017. <http://www.drinkerbiddle.com/insights/publications/2017/02/the-year-in-social-enterprise>.

fees. This allows enterprises with little start-up capital to have a fair advantage at receiving PRIs compared to their larger counterparts. This will be a separate pool of money from organizations that work directly with government to invest in organizations of their choosing. Private organizations that commit investment funding or donations to the lottery pool will receive the same 75% tax write-off just as if they directly donated funds to QPRI status organizations. Foundations and charities can also contribute to the lottery through PRIs. However, the same tax incentive will not qualify compared to private organizations, as a result of their 5% disbursement requirement. Essentially the lottery fund will create a new funding resources for social enterprises and HSNs, in which charities and foundations can invest their money knowing it will go to social development.

To help foundations navigate Social Enterprises, the SES will create a website that is geared towards providing information and resources for social enterprises and investors alike. Within the SES website an updated list of all social enterprises with or without QPRI status will be listed, similar to Guidestar. The SES will collaborate with Guidestar, Charity Navigator, and similar websites to ensure Social Enterprises are added, and reflect organizations with QPRI status. The UK utilized their website to help spread the news and provide resources on social enterprises in the UK, and created satellite development centers in various parts of the country to support the sectors<sup>71</sup>. Essentially the idea of government pushing and promoting the use of social enterprise

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<sup>71</sup>Matthew F. Doeringer, *Fostering Social Enterprise: A Historical and International Analysis*, 20 Duke Journal of Comparative & International Law 291-330 (2010)

helped encourage the UKs social enterprise sector. However, this will take a lot of man power, and the burden to finance these jobs will continue to fall on the federal budget.

In terms of data on social enterprise effectiveness, the UKs Social Enterprise Unit publishes an annual report called the “State of Social Enterprise Report”. In its 2015 edition, the report identified some key successes and barriers worth noting. First social enterprises are out performing Small and Medium-sized Enterprises (SME), with 49% of social enterprises operating for at least 5 years and 35% operating for at least 3. They are operating in the top 20% of deprived communities, where they utilize their profits to address social or environmental goals. Between 2013—2015 at least 50% of social enterprises made a profit and 26% broke even. Forty-one percent of social enterprises created new jobs in the last year, with 59% providing jobs to disabled or disadvantaged individuals. In terms of increased independent funding for social enterprises, 52% of social enterprises have increased their turnover, compared to prior years; and 73% earn more than 75% of their income from trade. However, many social enterprises that have been in operation for at least 5 years, are showing the greatest return.

When assessing access to finance for start-ups, 33% of social enterprises identified barriers to funding<sup>72</sup>. Twenty-nine percent of enterprises addressing more problematic socio-economic issues encountered additional barriers compared to 18% of enterprises working with less deprived communities<sup>73</sup>. Access to cash flow presented as another major barrier for start-ups, with 25% reporting a concern; and organization

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<sup>72</sup> Villeneuve-Smith, Frank, and Nick Temple. "State of Social Enterprise Survey 2015." Social Enterprise UK. Accessed March 4, 2017.

<http://socialenterprise.org.uk/uploads/editor/files/Publications/FINALVERSIONStateofSocialEnterpriseReport2015.pdf>.

<sup>73</sup> ibid

sustainability related to access of funding was reported by 39%<sup>74</sup>. Government contracts with social enterprises was noted as an area needing more development and support, particularly for smaller social enterprises<sup>75</sup>. These outcome measures from the UK provides essential information for the US when determining how to support social enterprise access to the market, funding, and sustainability; as well as a great starting point to measure effectiveness.

### **POLITICAL ANALYSIS:**

Overall, there is evidence of bipartisan support in the exploration of social enterprise within US government, and respective agencies. Recently in 2016, the SBA proposed a new rule that defines a new class of business called “Impact SBICs” (Small Business Impact Companies), focused on measurable social impact and financial return to its investor<sup>76</sup>.

Also in 2016, South Carolina a republican state, and Connecticut a democratic state, began utilizing SIBs to address social concerns of its communities<sup>77</sup>. New York and Massachusetts, helped pave the way for this initiative in 2012<sup>78</sup>. Also in 2016, bipartisan support culminated in new legislation creating a commission to explore the use of SIBs called the Evidence-Based Policymaking Commission Act of 2016. The Social

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<sup>74</sup> ibid.

<sup>75</sup> ibid

<sup>76</sup> The Small Business Administration. "Federal Register: Small Business Investment Company Program-Impact SBICs." Federal Register. Last modified February 3, 2016. <https://www.federalregister.gov/documents/2016/02/03/2016-01986/small-business-investment-company-program-impact-sbics>.

<sup>77</sup> Bernstein, Lenny. "Connecticut, South Carolina Launch Social Impact Bond Programs | News | PND." Philanthropy News Digest (PND). Last modified February 16, 2016. <http://philanthropynewsdigest.org/news/connecticut-south-carolina-launch-social-impact-bond-programs>.

<sup>78</sup> Belinsky, Michael. "Private Investment in Social Impact Bonds | Stanford Social Innovation Review." Stanford Social Innovation Review: Informing and Inspiring Leaders of Social Change | Stanford Social Innovation Review. Last modified August 2, 2012. [https://ssir.org/articles/entry/private\\_investment\\_in\\_social\\_impact\\_bonds](https://ssir.org/articles/entry/private_investment_in_social_impact_bonds).

Impact Partnership to Pay for Results Act, was also introduced in 2016 to improve partnerships between the private and public sector, to support social programs. The bill was referred to the Committee on Finance commissions<sup>79</sup>.

Politically for Ashoka to support the US in social enterprise development creates a two-fold benefit, however it is not without its cost. First, the public and congressional leaders are new to the long-term benefits of social enterprises and its relationship to nonprofit organization and social organizations. It is important for Ashoka to help guide U.S. leaders in making systematic changes that creates long term benefits, without pressuring current budgets and deficits. It is also key to be mindful and address benefits and concerns with respect to political and public audiences and their views. As legislation progresses, experts will be called upon to serve as valid representatives to the SES. Ashoka has a competitive advantage to become a key witness and provide expert testimonies during hearings on Social Enterprise legislations. This then allows the U.S. to receives scholarly support from experts in the field, while Ashoka simultaneously meets its mission-to expand social enterprise awareness and idea development to increase social impact throughout the US.<sup>80</sup>.

One cost that may receive mixed reviews by legislators is the QPRI status. On the one hand, it increases safe investment in organizations with approved status. As seen with South Carolina and Connecticut, SIBs have become a new trend, and QPRI status

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<sup>79</sup> Young, Todd. "Actions - H.R.5170 - 114th Congress (2015-2016): Social Impact Partnerships to Pay for Results Act." Congress.gov | Library of Congress. Last modified May 6, 2016. <https://www.congress.gov/bill/114th-congress/house-bill/5170/actions?q=%7B%22search%22%3A%5B%22H.R.+5170%22%5D%7D&r=1>.

<sup>80</sup> "About Ashoka US | Ashoka.org." Home | Ashoka.org. Accessed March 13, 2017. <https://www.ashoka.org/en/country/united-states>.

would help streamline more social cause financing through SIBs. However, donors and investors then qualify to receive a tax deduction equivalent to 75% of their investment or upfront capital. This will increase revenue loss by way of tax deductions for investment in such organizations. As stated before, the U.S. projects \$292 billion in charitable giving for 2017 with a \$57 billion or 19.5% in revenue loss to encourage charitable giving. If charitable giving were to increase by \$200 billion as an outcome of this legislation, then the federal budget would incur an additional \$11.4 billion in revenue loss annually, and \$171 billion loss over a 10-year span. This places more pressure on the federal budget and deficit, and becomes a contentious debate when looking at ways to incorporate the sector.

Contrary to the potential revenue loss, political leaders need to understand that social enterprises can create jobs, and put more individuals back in the workforce. This will lead to more individual taxpayers, an increase in tax revenue, and decreases individuals drawing on automatic stabilizers and public benefits. A review of the UK's 2015 social enterprise sector, shows that 41% of social enterprises created jobs in the last 12 months, with 49% operating for at least 5-yrs, and 35% operating for at least 3-years<sup>81</sup>. Prior to that in 2012 the UK cabinet office published data on Social enterprise market trends. In its findings, it discovered that 70,000 social enterprises operated in the UK, and contributed £18.5 billion to its economy. They were also able to employ

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<sup>81</sup> Villeneuve-Smith, Frank, and Nick Temple. "State of Social Enterprise Survey 2015." Social Enterprise UK. Accessed March 4, 2017.  
<http://socialenterprise.org.uk/uploads/editor/files/Publications/FINALVERSIONStateofSocialEnterpriseReport2015.pdf>.

close to 1 million people, to include individuals with disabilities<sup>82</sup>. This is a significant achievement, especially when considering UKs Social Value Act was created in 2012.

A possible political trade-off of this policy is the potential for biased financing from big institutions. Considering SIBs have become a new trend, it has the potential to exclude certain groups who are not established enough to implement large scale alternatives to social problems. SIBs creates new financing opportunities, that relieves pressure from state budgets to experiment with programs aimed at alleviating severe social needs. SIB financing also relieves the expense on the individual taxpayer from programs that do not work. Organizations like Goldman Sachs can invest in social programs to meet its philanthropic goals, while having a sense of security that its ROIs will be backed by the state, if programs prove beneficial. However, banks and financial institution are then financing riskier loans. If programs prove ineffective and fail to meet determined metrics, states are off the hook for the investment but financial institutions take a hard hit. It can be assumed that larger and riskier investments, would then be awarded to more established social enterprises or nonprofits, giving them the competitive advantage. This may unintentionally exclude more start-up programs from receiving larger financial investment capital, until they are more established. Ashoka would need to work with smaller organizations by guiding them through the financial processes to help them become more attractive to big investors.

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<sup>82</sup> BMG Research. "Social Enterprise Market Trends." Welcome to GOV.UK. Last modified May 2013.[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/205291/Social\\_Enterprises\\_Market\\_Trends\\_report\\_v1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/205291/Social_Enterprises_Market_Trends_report_v1.pdf).

A big cost to social enterprise legislation is that it has the potential for abuse. Organizations forming under social benefit purposes may have ulterior motives. Some organizations may form due to the profit-making opportunity, or as an alternative to programs government seeks to phase out. For example, during the last years of the Obama administration and the 2016 presidential election, prison and sentencing reform was a big topic of discussion. The private prison industry began to look at alternative programs such as community based rehabilitation through community detention, day reporting centers, work release programs, etc.<sup>83</sup>. These industries are also capitalizing on contracts traditional nonprofits bid for to address sentencing and prison reform. As a result, the number of individuals in these programs are beginning to expand. It is in these private organizations' best interest to keep their "clientele" under surveillance as long as possible, to maintain their bottom line. Private organizations with previous goals of populating prisons, can now disguise themselves to appear as social programs, when in actuality the goal is to maintain current prison population profit levels.

To ensure organizations forming for social benefit purposes do not abuse special treatment, the SES will clearly define what constitutes as social enterprise; and whether an enterprise continues to meet their community benefit test. Definitions may alter relevant to time and long-term economic conditions, therefore experts and policy makers will continuously compare changing times with current definitions, to maintain an up to date classification. To keep social enterprises in alignment with federal

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<sup>83</sup> Verdugo, Emily. "How Private Prison Corporations Are Cashing in on the Movement to End Mass Incarceration." American Friends Service Committee. Last modified October 21, 2016. <https://www.afsc.org/blogs/news-and-commentary/how-private-prison-corporations-are-cashing-movement-to-end-mass>.

classification, enterprises will submit annual reports of social engagement activity, and complete annual questionnaires to help determine their status in meeting the social benefit test<sup>84</sup>.

To win over current legislators, it is important to be both strategic and tactical to highlight the financial and social benefit QPRI tax status and the SES brings to the US economy. Big businesses are moving operations overseas to enjoy lower corporate tax rates, consequentially decreasing jobs and tax revenue. Congressional leaders in both houses have campaigned for comprehensive tax reform for at least 6 years. Senator Ron Wyden (D-OR) and Senator Judd Gregg (R-N.H.) proposed a bipartisan tax reform in 2011-2012, Congressman Dave Camp (R-MI) proposed reform in 2014, and the House GOP proposed its plan summer 2016.

President Trump is in alignment with tax reform, and considering social enterprise legislation has gained a lot of bipartisan support, it would be beneficial for Ashoka to dedicate resources to advocate for this policy's inclusion in comprehensive tax reform. The current Evidence-based Policymaking Commission Act of 2016 can help facilitate the introduction of this policy through hearings, and testimonies. The financial returns social enterprises could deliver for the economy through job creation, more private investment, and less government spending on programs that do not work, will appeal to conservative policy makers. Liberal policy makers appeal to the social return, social enterprises bring to society; and their focus on the triple bottom line, in addition to job

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<sup>84</sup> Matthew F. Doeringer, *Fostering Social Enterprise: A Historical and International Analysis*, 20 *Duke Journal of Comparative & International Law* 291-330 (2010)

creation.

To take it a step further Congress, President Trump, and former President Obama, have all looked at placing caps on the charitable deduction to decrease the deficit. “Thus far the cap has been warded off, but there is growing concern if republicans and democrats agree in sweeping tax reform, the charitable deduction will be on the chopping block”<sup>85</sup>. The issue has received much bipartisan support over the years, despite lack of movement on the reduction. Therefore, it’s a question of when the charitable deduction will change, not if. This proposal could be a good compromise in light of looming talks of decreasing the charitable deduction. Our policy advocates the reduction of the current charitable deduction, combined with proposing an enterprise alternative. The shift from traditional deductions to investing in social enterprises, with a business approach, provides a return on investment versus a tax deduction. This creates a more politically friendly alternative, which nonprofits and congressional leaders may feel more comfortable in adopting.

It should be noted that we recognize the risk of opening the door for a percentage reduction in the charitable deduction. Congress may utilize this idea to further reduce the percentage of what’s deducted beyond suggestion. However, since congress is already looking to reduce the charitable deduction, Ashoka can utilize the opportunity to tie the reduction to social enterprise investment.

With congressional leaders on both sides of the aisle supporting both tax reform and

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<sup>85</sup> Conwath, John. "The Deduction for Charitable Contributions: The Sacred Cow of the Tax Code?" Createquity. Last modified April 23, 2013. <http://createquity.com/2013/04/the-deduction-for-charitable-contributions-the-sacred-cow-of-the-tax-code/>.

social enterprise, this policy has pronounced potential to be included in comprehensive tax reform. Drawing a parallel to show how social enterprises fits into the greater goal of bringing jobs and revenue back to the US through tax reform, will need to be carefully crafted when educating congressional leaders.

In order to help congressional leaders, embrace this type policy, it is pertinent they understand the importance of devising a clear definition of what social enterprise encompasses. Definition is key, as there are a lot of existing businesses that are not allotted preferential tax breaks, but operate in a socially beneficial way. The federal government will need to take initiative to define the sector before enacting any legislation. The absence of a unified definition for government to apply, and build policy around, has contributed to the lack of progress that could have been made within the sector up to now. However, it is good politically to not be hasty and enact legislation that could potentially upset current constituents, until adequate information is available to justify decisions.

With that said Ashoka should be prepared for opposition from its constituents and allies to this policy proposal. Some opponents will come from nonprofits who fear they will have another industry to compete with to receive funding. With the exception of contracts, funding in the form of large grants typically goes to nonprofits without much accountability to the donor. Instead of financial support in the form of traditional grants, preferential contracts, and endowments that typically go to nonprofits, programs that can be funded by investors and show a ROI may receive more support. From a political standpoint, liberal democrats with many nonprofit or religious

constituents that are not in favor of having to show a ROI, and who instead favors donors giving without restrictions, will push back on such policies. Nonprofits may view this policy as creating increased competition with social enterprises providing similar services. It may also make some nonprofits feel the need to establish an enterprise of its own to compete for similar funding, which becomes costly.

Churches and parishioners will more likely oppose this policy because it will encourage people to give less because of the decreased charitable deduction. This will affect many church budgets, who in turn provide a wealth of support to their local community. Governors and Mayors will more likely be opposed to this policy as well. If the federal government decreases support for community based services by decreasing charitable deductions to local service organizations, then local and state governments will have to pick up the cost.

Another stakeholder who may not be in alignment with this proposal is the Charitable Giving Coalition (CGC). This coalition was developed to protect the charitable deduction for the arts, social services, education, environmental groups, and various nonprofit organizations. This coalition may argue that government cannot abandon its responsibility to fulfill community and social service needs. For example, environmental organizations such as the Chesapeake Bay Foundation rely heavily on this deduction. The President's 2017 budget cuts funding to this organization, and there is a lot of public opposition in response<sup>86</sup>. If the charitable deduction were to decrease as well, then

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<sup>86</sup> Rankin, Sarah. "Trumps Budget Cuts Funding for EPA's Chesapeake Bay Program." U.S. News and World Report. Accessed April 9, 2017. <https://www.usnews.com/news/best-states/virginia/articles/2017-03-16/trump-budget-cuts-funding-for-epas-chesapeake-bay-program>.

there would be even more backlash from organizations like CGC. Also, wealthy individuals who pay too much in taxes, and donate funding to offset their tax liabilities, may oppose this plan. However, it can be assumed that if they invest in social enterprises and receive a return on investment, then opposition may decrease.

The private prison industry may also oppose the creation of social enterprises, particularly those with causes to decrease the prison population. As mentioned earlier, many private companies have taken over the prison industry. Some non-profit organizations and social enterprises compete to reduce private prison's clientele with alternative incarceration programs and reduced recidivism programs. Both organizations are aimed at keeping streets safe on the surface, but typical nonprofit programs and social enterprises focus on sustainable rehabilitative solution to retain competitive employment, to decrease imprisonment. Social enterprises now become a new competitor, just as nonprofits, to the private prison industry. Private prisons have attempted to reshape their image by creating new alternative programs through community detention. However, as stated earlier this may be a ploy to retain the industry's bottom line.

Other opposition to federal support for social enterprises may come in the form of the public's perspective of social enterprises. With President Trump's strong ties to the business community, people may view social enterprise as more preferential treatment for businesses. It may also appear that government is creating more opportunities for "social businesses", that take away services from poor and disadvantaged individuals unintentionally. For example, the public may believe funding for social enterprises will

reduce funding to programs such as WIC and school lunch programs. Naysayers may then argue that funding only shifted from one category in the budget to another.

However, it is important that Ashoka help draw a silver lining in the purpose of legislation, which is to help social enterprises address severe socio-economic disparities that current resources have failed to achieve. Many nonprofits have the vision, but not the financial stability to make sizeable impact. Nonprofits could utilize the creation of social enterprises as a new collaborative effort, or opportunity to redevelop its own financial strategies. Ashoka's proposal could be the political compromise that persuades congress in understanding there is social need that could be met by social enterprises. At a time where the federal government has the desire to reform the tax code to reduce budget deficits, it is important that congressional leaders understand that government cannot completely abandon its responsibility in fulfilling the needs of social and community services. It is important to understand that social enterprise legislation will place the federal government in a better position to meet needs at a lower cost with an enterprise approach, where donors receive a return on investment. Wealthier individuals may like and support this type of policy. Especially when considering most donations and investments come from this population.

**RECOMMENDATION:**

Ashoka has been dedicated to the expansion of social enterprise worldwide for over 35 years, and has supported over 200 US social entrepreneurs to develop social enterprises since 2001<sup>87</sup>. Ashoka's vast experience in international social enterprise

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<sup>87</sup> "About Ashoka US | Ashoka.org." Home | Ashoka.org. Accessed March 13, 2017. <https://www.ashoka.org/en/country/united-states>.

development will prove beneficial to government officials and the general public when determining how to create legislation, and systematic support for the new sector. Considering the potential reduction in the charitable deduction proposed by the GOPs tax reform plan and President Trump's plan, it is imperative that Ashoka join the debate. Ashoka should also encourage Representative Cicilline to re-introduce the SEEED Act, so that Ashoka could urge respective committees to hold hearings on the bill(s).

In order to generate more support, including support from potential competitors, Ashoka should draft a white paper to present to the SBA describing the needs and benefits of SES. Urge the SBA to create a new division or office in Washington DC to advise and coach social enterprises on how to form, organize, operate efficiently, or to pitch to funders/donors for investment. The SBA office will need to support social enterprises that are focused on delivering human and community services, and how that works best within the HSN arena. This can be done whether there is a tax deduction or not. The SBA could also propose this as part of its budget, by working in collaboration with HHS and its discretionary funds.

In conclusion, Ashoka should make the creation and support for SES a major priority for the 2017-2018 fiscal year. It can do so by including information in its communications and blogs; have agenda items on its conferences on the topic; organize roundtables with stakeholders to discuss the importance of the SES to ensure social service needs are met. Discussions should include governors and mayors, wealthy donors, big foundations, and detractors who are opposed, to get all views debated in roundtable discussions. In other words, Ashoka should become the lead advocate for

the creation and support of SES as a funding alternative for HSNs and social purpose organizations.

#### ALLYSON L. TAYLOR

#### EDUCATION

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**John Hopkins University, Washington DC** 2017

Masters of Public Management

*Capstone:* "Fostering U.S. Social Enterprise Development To Diversify Financial Resources for Severe Human Service Needs"

**Pepperdine University, West Los Angeles, CA** 2008

Masters of Arts in Clinical Psychology

Emphasis: Marriage and Family Therapy,

**Mount Ida College, Newton, MA** 2005

Bachelor of Arts in Communications

Minor: Criminal Justice

#### WORK EXPERIENCE

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**Arlington County DHS, Arlington Va.** Sept. 2016—Present

**Intellectual Disabilities Support Coordinator**

Identify resources required to support varied levels of program operations for clients. Review administrative audit and investigative reports to determine appropriate changes or corrective

action required. Analyze and evaluate the effectiveness of provider program operations in meeting established goals and objectives;

**Woodbourne Center** Baltimore, MD May 2012—Sept. 2016

## **Clinical Administrator/Family Liaison**

Psychiatric Residential Treatment Center for adolescent males. Support Clinical Director with implementation of clinical services. Independently complete licensing application for agency Psychiatric Rehabilitation Program (PRP), Therapeutic Behavioral Service Program (TBS), Outpatient Mental Health Clinic (OMHC). Program manager and analyst for Family Liaison Department and Discharge—Aftercare program..

**NAFI-MST MD** Baltimore, MD Aug. 2010—June 2012

**Starview Community Services Compton, CA** July 2007—August 2010

## ***Evidence Based Multi-Systemic Therapy (MST) Supervisor/Therapist***

Supervise team of therapist providing MST services. Conduct and compute data analyses to measure program outcomes and adherence to the MST model. Complete quarterly reports on program outcomes for stakeholders; and problem-solve barriers to outcomes.

# TRAININGS

Oct. 2013	Facilitating Restorative Conferences Bethlehem, PA
July 2013	Basic Restorative Practices Baltimore, MD
June 2013	Aggression Replacement Training Baltimore, MD
Feb. 2010	MST Supervisors Training, Charleston, SC
Oct. 2007	MST Therapist Training, Charleston, SC