

**AMENDMENT TO RULES COMMITTEE PRINT OF
H.R. 1947
OFFERED BY MR. GARDNER OF COLORADO**

Page 401, after line 4, add the following:

1 **SEC. 6207. PHILANTHROPIC FACILITATION RELATING TO**
2 **PROGRAM-RELATED INVESTMENTS.**

3 (a) FACILITATION OF PROGRAM-RELATED INVEST-
4 MENTS.—Subsection (c) of section 4944 of the Internal
5 Revenue Code of 1986 is amended to read as follows:

6 “(c) PROGRAM-RELATED INVESTMENTS.—

7 “(1) TREATMENT OF PROGRAM-RELATED IN-
8 VESTMENTS.—For purposes of this subchapter, pro-
9 gram-related investments—

10 “(A) are not investments which jeopardize
11 the carrying out of one or more purposes de-
12 scribed in section 170(c)(2)(B),

13 “(B) are not business holdings under sec-
14 tion 4943, and

15 “(C) may be qualifying distributions under
16 section 4942.

17 “(2) PROGRAM-RELATED INVESTMENTS DE-
18 FINED.—

1 “(A) IN GENERAL.—For purposes of this
2 subchapter and chapter 61, an investment made
3 by a private foundation constitutes a program-
4 related investment if—

5 “(i) the primary purpose of the invest-
6 ment is to accomplish one or more of the
7 purposes described in section 170(c)(2)(B),

8 “(ii) no significant purpose of the in-
9 vestment is the production of income or
10 the appreciation of property, and

11 “(iii) no purpose of the investment is
12 to accomplish one or more of the purposes
13 described in section 170(c)(2)(D).

14 “(B) SPECIAL RULES.—For purposes of
15 subparagraph (A)—

16 “(i) determinations of whether an in-
17 vestment qualifies as a program-related in-
18 vestment shall be based on consideration of
19 all relevant facts and circumstances, and

20 “(ii) the fact that the entity produces
21 significant income or capital appreciation
22 shall not, in the absence of other factors,
23 be conclusive evidence of a significant pur-
24 pose involving the production of income or
25 the appreciation of property.

1 “(3) SAFE HARBOR DETERMINATIONS.—The
2 Secretary shall establish a procedure which shall be
3 substantially similar to the processes for recognition
4 of exemption under section 501(a) or 4945(g) and
5 under which an entity seeking to receive program-re-
6 lated investments may petition the Secretary for a
7 determination that, based on consideration of all rel-
8 evant facts and circumstances, investments by pri-
9 vate foundations in such entity will be program-re-
10 lated investments meeting the requirements of para-
11 graph (2). Under this procedure, the Secretary shall
12 rule on all requests within 120 days of submission.

13 “(4) EFFECT OF DETERMINATION.—Once a de-
14 termination has been made that investments in an
15 entity qualify as program-related investments, orga-
16 nizations making such investments shall be entitled
17 to rely on the determination, unless and until the
18 Secretary publishes notice of revocation of the deter-
19 mination.

20 “(5) VOLUNTARY NATURE OF PROCESS.—Enti-
21 ties seeking program-related investments are not re-
22 quired to seek a determination under paragraph (3),
23 and the absence of such a determination shall not
24 affect the ability of a private foundation to make a
25 program-related investment based on its own deter-

1 mination that the investment qualifies as a program-
2 related investment.

3 “(6) ORGANIZATIONS TREATED AS PRIVATE
4 FOUNDATIONS.—For purposes of this subsection and
5 section 6104A, all references to private foundations
6 include organizations that are treated as private
7 foundations under any of the provisions of sections
8 4940 through 4948, inclusive, whether created under
9 state law or the law of any federally-recognized
10 tribe.”.

11 (b) DECLARATORY JUDGMENT REMEDY.—Paragraph
12 (1) of section 7428(a) of the Internal Revenue Code of
13 1986 is amended by striking “or” at the end of subpara-
14 graph (C) and by adding after subparagraph (D) the fol-
15 lowing new subparagraph:

16 “(E) with respect to whether investments
17 in an entity are program-related investments
18 (as described in section 4944(c)(2)), or”.

19 (c) INFORMATION RETURNS.—Part III of subchapter
20 A of chapter 61 of the Internal Revenue Code of 1986
21 is amended by inserting after section 6033 the following
22 new section:

1 **“SEC. 6033A. INFORMATION REPORTING BY FOR-PROFIT**
2 **ORGANIZATIONS RECEIVING PROGRAM-RE-**
3 **LATED INVESTMENTS.**

4 “(a) ORGANIZATIONS REQUIRED TO FILE.—If in-
5 vestments in an entity have been determined to be pro-
6 gram-related investments through a determination of the
7 Internal Revenue Service pursuant to section 4944(c)(3)
8 or by a determination of a court pursuant to section
9 7428(a), the entity shall, in addition to any other applica-
10 ble filing obligations, file an annual return providing the
11 information specified in subsection (b) for any taxable
12 year in which it receives or retains one or more program-
13 related investments (as defined in section 4944(c)(2)).

14 “(b) REQUIRED REPORTING.—The return described
15 in subsection (a) shall provide, in such manner and at
16 such time as the Secretary may by forms or regulations
17 prescribe, the following information—

18 “(1) the organization’s gross income for the
19 year,

20 “(2) its expenses attributable to such income
21 incurred within the year,

22 “(3) its disbursements within the year for one
23 or more purposes described in section 170(c)(2)(B),
24 together with a narrative statement describing the
25 results obtained from the use of those assets for

1 such one or more purposes described in section
2 170(c)(2)(B),

3 “(4) a balance sheet showing its assets, liabil-
4 ities, and net worth as of the beginning and end of
5 such year,

6 “(5) the names and addresses of all private
7 foundations holding program-related investments in
8 the organization,

9 “(6) a statement of the portion of its liabilities
10 and net worth that represent capitalization obtained
11 by means of program-related investments as of the
12 beginning and end of such year,

13 “(7) a statement of any interest, dividends, or
14 other distributions paid with respect to any pro-
15 gram-related investments during the year, and

16 “(8) such other information as may be nec-
17 essary for the return described in subsection (a) to
18 satisfy the annual financial reporting required by the
19 expenditure responsibility rules pursuant to the reg-
20 ulations under section 4945 or as the Secretary may
21 by forms or regulations prescribe.”.

22 (d) PUBLICITY OF INFORMATION.—Subchapter B of
23 chapter 61 of the Internal Revenue Code of 1986 is
24 amended by inserting after section 6104 the following new
25 section:

1 **“SEC. 6104A. PUBLICITY OF INFORMATION REGARDING OR-**
2 **GANIZATIONS RECEIVING PROGRAM-RE-**
3 **LATED INVESTMENTS.**

4 “(a) INSPECTION OF PETITIONS FOR DETERMINA-
5 TION OF PROGRAM-RELATED INVESTMENT STATUS.—If
6 an entity seeks a determination pursuant to section
7 4944(c)(3) that investments by private foundations in
8 such organization will be program-related investments, the
9 petition seeking such a determination, together with any
10 documents submitted in support of such petition and any
11 determination or other document issued by the Internal
12 Revenue Service with respect to such petition, shall be
13 open to public inspection at the national office of the In-
14 ternal Revenue Service.

15 “(b) INSPECTION OF ANNUAL INFORMATION RE-
16 TURNS.—The information required to be furnished by sec-
17 tion 6033A, together with the names and addresses of
18 such entity, shall be made available to the public at such
19 times and in such places as the Secretary may prescribe.

20 “(c) PUBLIC INSPECTION OF PETITIONS AND AN-
21 NUAL INFORMATION RETURNS.—Any entity that receives
22 a determination from the Internal Revenue Service that
23 private foundation investments shall be program-related
24 investments pursuant to section 4944(c)(3) shall make
25 copies available at the organization’s principal office, dur-
26 ing regular business hours, of the petition for such deter-

1 mination (together with supporting materials provided
2 with the petition and documents issued by the Internal
3 Revenue Service with respect to such petition), as well as
4 the annual returns required by section 6033A filed by such
5 organization. Upon request of an individual made at such
6 principal office, copies of such petition materials and an-
7 nual reports shall be provided to such individual without
8 charge other than a reasonable fee for any reproduction
9 and mailing costs. The inspection and duplication rights
10 granted in this subsection shall apply to an annual return
11 only during the three-year period beginning on the last
12 day prescribed for filing such return (determined with re-
13 gard to any extension of time for filing).

14 “(d) LIMITATION ON PROVIDING COPIES.—Para-
15 graph (c) shall not apply to any request if, in accordance
16 with regulations promulgated by the Secretary, the entity
17 has made the requested documents widely available, or the
18 Secretary determines, upon application by an entity, that
19 such request is part of a harassment campaign and that
20 compliance with such request is not in the public inter-
21 est.”.

22 (e) CONFORMING AMENDMENTS.—

23 (1) CONFORMING CHANGE TO SECTION
24 501(n).—Paragraph (4)(A) of section 501(n) of the

1 Internal Revenue Code of 1986 is amended by in-
2 sserting “paragraph (2) of” before “section 4944(c).”

3 (2) CONFORMING CHANGE TO SECTION
4 514(b).—Paragraph (1) of section 514(b) of the In-
5 ternal Revenue Code of 1986 is amended by redesign-
6 ating subparagraphs (D) and (E) as subparagraphs
7 (E) and (F) and by inserting after subparagraph (C)
8 the following new subparagraph:

9 “(D) any property owned or treated as
10 owned by a private foundation by virtue of its
11 having made an investment in an entity that
12 has received a determination from the Internal
13 Revenue Service pursuant to section
14 4944(c)(3), or by a court pursuant to section
15 7428(a), that such investments in such entity
16 qualify as program-related investments;”.

17 (3) CONFORMING CHANGE TO SECTION
18 4943(d).—Paragraph (3) of section 4943(d) of the
19 Internal Revenue Code of 1986 is amended by strik-
20 ing “or” at the end of subparagraph (A), by redesign-
21 ating subparagraph (B) as subparagraph (C) and
22 by inserting after subparagraph (A) the following
23 new subparagraph:

24 “(B) any program-related investment, as
25 defined in section 4944(c)(2), or”.

1 (f) REGULATIONS.—The Secretary of the Treasury
2 shall, not later than 1 year after the date of the enactment
3 of this Act, amend any applicable regulations as may be
4 necessary or appropriate to implement any amendments
5 contained in this Act or to carry out the purposes of this
6 Act, including providing additional examples of qualifying
7 program-related investments.

8 (g) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to investments made after the date
10 of the enactment of this Act in taxable years ending after
11 such date.

