



March 5, 2018

Dear Treasury Department and IRS Staff:

Thank you for the opportunity to provide input on Notice 2017-73 addressing issues related to donor-advised funds, one of the most popular and efficient charitable giving options offered by almost two dozen community foundations in Colorado. In the aftermath of federal tax law changes that could significantly reduce donations to charity, it's especially important to implement policies that allow for the greatest flexibility and ease on the part of the many generous donors in our state.

Colorado Association of Funders is the statewide network of more than 80 foundations and funders, including almost all of Colorado's community foundations serving the large metro areas and those located in nearly a dozen rural regions. These community foundations favor the goal of ensuring that donor-advised funds actively continue to make grants to charities working to address challenges and support our citizens. IRS data show a large portion of the assets of donor-advised funds invested by community foundations go to work in our state every day. Our latest scan shows Colorado's 10 largest community foundations had combined donor-advised fund assets of \$463.8 million and made grants of \$98.7 million, which works out to an average annual DAF payout of 21.3%.

We respectfully offer the following comments on Notice 2017-73:

#### Section 3. Incidental Benefit

We're requesting that the Treasury Department reconsider its guidance on this issue and uphold the provisions of the law that permit for bifurcation.

We believe that donor-advised funds should be held to the same standard on this issue as individual taxpayers claiming charitable deductions. This stems from our long-held commitment to supporting policies that offer the broadest array of options to encourage philanthropy. Because fundraising events provide a crucial source of income for charities, we believe DAFs should be able to support these efforts through the so-called method of bifurcation. In other words, DAFs should be able to pay for the portion of an event ticket, sponsorship or membership for which no value or benefit is received, according to the charity's estimate of the value or benefit. Current law does not ban this practice of bifurcation for individual taxpayers claiming charitable deductions. Donor-advised funds should not be treated differently.

#### Section 4. Pledges

We agree that donor-advised funds should be able to satisfy the payment of charitable pledges and appreciate the attempt to clarify confusion over this issue. However, we believe this newly proposed position will continue to discourage donor-advised funds from paying pledges because of the uncertainty raised by new conditions. Once a donor completes a contribution to a donor-advised fund, it is under the control of a public charity and no longer in a donor's possession. Adding requirements related to the donor will serve to cause more confusion for DAF sponsors and charities. We would urge the Treasury Department to encourage distributions from DAFs by ruling they can be used in fulfilling pledges without adding the language and requirements in the Notice.

#### Section 5. Public Support

We oppose this approach outlined in the Notice for the previously stated reason that donor-advised funds are controlled by public charities rather than donors. Therefore, grants from donor-advised funds should be considered public support and should not be aggregated.

#### Section 6. Private foundations using DAFs

We're opposed to any new measures that would not permit grants from private foundations to DAFs to be considered as qualifying distributions counted toward their annual payout. Grants to donor-advised funds are synonymous with grants to public charities. While it's not a common practice among our members, we know of family foundations that establish one or more DAFs at community foundations when it's no longer practical for new generations of family members to operate as a private foundation. In these cases, an endowed DAF provides a lower cost and less burdensome solution and we therefore oppose requiring all of the funds to be expended within a short period of time. In cases when private foundations run out of time to meet fully their 5% payout requirement by the end of the year, distributing money to a DAF allows them a little extra time to make more informed and prudent decisions about their grantmaking. Those community foundations who from time to time do hold a small number of DAFs for private or family foundations report that these funds are typically spent within a very short period given the high demand for funding. In other cases, our community foundations work with private foundations to help them get their funds distributed to local nonprofit agencies before a DAF needs to be established. Without evidence of widespread or abusive practices, we oppose the imposition of new rules in this area.

Thank you for considering our comments related to Notice 2017-73. We look forward to providing additional information or answering any questions you may have.

Sincerely,

A handwritten signature in cursive script that reads "Joanne Kelley". The signature is written in black ink on a white background.

Joanne Kelley, Chief Executive Officer