COMMUNITY FOUNDATION
PUBLIC AWARENESS INITIATIVE

March 5, 2018

Internal Revenue Service
CC;PA:LPD:PR (Notice 2017-73)
Room 5203/P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Ladies and Gentlemen:

We are submitting this response to Treasury Notice 2017-73 (the "Notice'), related to the use of donor advised funds (DAFs), on behalf of the **Community Foundation Public Awareness Initiative (CFPAI)**, a group of 115 community foundations (CFs) in 45 states. The CFPAI was formed in 2012 to educate Congress about CFs and the unique role we play in the U.S. philanthropic landscape.

A CF is a tax-exempt public charity that serves people who share a common interest in improving the quality of life in their geographic area. CFs are found in most major cities, and in many counties and smaller towns. Some are also statewide. The simplest way to think about a CF is as a local community's charitable endowment. CFs help donors make wise decisions about their giving and provide ongoing funding and support to nonprofits of all sizes.

Given recent tax changes that *may* reduce charitable giving overall, we believe strongly in promoting legislation and regulations that will make it easier for donors to give to the charitable causes they support. DAFs have become a vitally important philanthropic tool for CFs, their donors, and nonprofit organizations in our communities. We believe it is important to encourage outright grants to nonprofits, and DAFs at CFs are a great way for aspiring and established philanthropists to accomplish that objective.

The general thrust of our comments to the proposed Treasury regulations is that we support changes that will open up more opportunities for charitable giving; and we oppose any regulations that will discourage charitable giving by making the process more complex for donors, sponsoring organizations, and beneficiary charities to understand. That is the spirit in which we submit these comments.

BIFURCATION FOR EVENTS AND MEMBERSHIPS

The comments in this section relate to Section 3 of the Notice, pertaining to Treasury's proposed determination that a distribution from a DAF under the advice of a donor advisor that subsidizes his or her attendance or participation in a charity-sponsored event, or to pay for the portion of a membership that might ordinarily be tax-deductible, confers on the advisor a more than incidental benefit under Sec. 4967. Event and annual membership fundraising, in which a charity raises annual operating support by charging a membership fee, ticket price or table sponsorship fee in excess of the tangible benefit to the attendee, is a very common practice for many charitable organizations in many communities. In addition to the issue of deductible and non-deductible portions of event and membership fees, events and member programs offer opportunities for donors to network with other supporters and learn about the important work of the charities.

In the Notice, the Treasury and IRS claim that a distribution from a DAF to a charity in connection with a donor/advisor's attendance at a fundraising event or payment of a membership fee will be considered, *per se*, an impermissible "more than incidental benefit" under Sec. 4967. In the community foundation field, many CFs have stopped allowing such "bifurcation" (i.e., allowing the portion of an event fee or membership that might otherwise be deductible to be made from a donor's DAF), but some of us still do. In defense of those in the field that still offer this service, and for those of us that would like to, we respectfully request that the Treasury and IRS reconsider its position.

Specifically, we request that the Treasury and IRS issue regulations that mirror the law already in place regarding direct payments by taxpayers for such purposes; i.e., allow for a bifurcation of such payments into charitable/deductible and non-charitable/non-deductible portions.

The Technical Explanation of H.R. 4, the "Pension Protection Act of 2006," prepared by the Joint Committee on Taxation, demonstrates Congressional intent that the DAF distribution rules should track the rules for deductibility of the charitable portion of a bifurcated payment. Specifically, the Explanation provides as follows (page 350):

> In general, under the provision, there is a more than incidental benefit if, because of a distribution from a donor advised fund, a donor, donor advisor, or related person with respect to such fund receives a benefit that would have reduced (or eliminated) a charitable contribution deduction if the benefit was received as part of the contribution to the sponsoring organization. If, for example, a donor advises that a distribution from the donor's donor advised fund be made to the Girl Scouts of America, and the donor's daughter is a member of a local unit of the Girl Scouts of America, the indirect benefit the donor receives as a result of such contribution is considered incidental under the provision, as it generally would not have reduced or eliminated the donor's deduction if it had been received as part of a contribution by donor to the sponsoring organization.

While the quoted language does not explicitly address the matter of DAF distributions for the charitable portion of event attendance and membership fees, *the language indicates Congress' clear intention there should be no distinction made in this context between DAF distributions and direct payments by taxpayers*.

To illustrate with another example: A hospital described in IRC Sec. 170(b)(1)(A)(iii) (i.e., a public charity) hosts a fundraising event where a certain sponsorship level requires a total payment of $5,000. Under IRC Sec. 6115, the hospital's good faith estimate of the value of the benefits, such as the meals and entertainment, associated with such a sponsorship is $1,000. Therefore, $4,000 of the $5,000 payment is regarded as charitable.

As clearly recognized by Congress in IRC Sec. 6115, were a taxpayer to make a direct payment to the hospital out of her own pocket for such an event sponsorship, the taxpayer would not be prevented from taking any deduction at all (and of course, the taxpayer could not take a deduction for the full $5,000).

There is no such "all or nothing" treatment in this context. Instead, the taxpayer would be entitled to a deduction for the $4,000 charitable portion of the $5,000 total required sponsorship payment. This is despite the fact that this $4,000 charitable portion does play some role in arriving at the total required payment of $5,000; the tax law is untroubled by this. *See also*, Rev. Rul. 68-432, 1968-2 C.B. 104, and *U.S. v. American Bar Endowment*, 477 US 105, 117, both of which refer to the possibility of a payment to charity having a "dual character" (i.e., part charitable/deductible and part noncharitable/nondeductible).

The question then is, did *Congress* intend that the matter be analyzed and treated differently in the DAF grantmaking context? The legislative history cited above indicates the analysis should be the *same* in the DAF context as in the direct payment context. By definition, there is no benefit that is "more than incidental" (such as the value of the meal and entertainment) which the $4,000 charitable portion is paying for; the $1,000 noncharitable portion covers those "more than incidental" benefits entirely. (And no one, to our knowledge, is proposing that a DAF distribution ever be made to cover the noncharitable portion of the total payment required for attendance at an event.)

Some have argued that in a situation like the above example, the $4,000 charitable portion of the payment plays a role in reaching the total required sponsorship payment of $5,000, and that fact alone constitutes a "more than incidental benefit." But again, the benefits that the IRS has traditionally regarded as "more than incidental" – the meals and entertainment in this case – are "paid for" with the $1,000 noncharitable portion that the donor would pay for personally. Yes, the $4,000 charitable portion may allow the $5,000 total to be reached, but since the tangible benefits are paid for already, the only benefit associated with the $4,000 should be viewed as recognition-related – and the IRS and Treasury do not regard mere recognition as having any financial value. Therefore, such recognition benefits alone would not rise to the level of a "more than incidental benefit." Rev. Rul. 68-432, 1968-2 C.B. 104 ("Such privileges as being . . . known as a benefactor of the organization are not significant return benefits that have a monetary value…").

Finally, when enacting the Pension Protection Act, *Congress had an opportunity to expressly prohibit bifurcated payments, but it did not*. Congress showed that it knew how to prohibit a practice when it wanted to; an example is the prohibition on grants from DAFs to individuals in IRC Sec. 4966. But Congress created no such prohibition on bifurcated payments.

There are also good policy reasons to treat the two situations as parallel, and not to treat the DAF context less favorably than the direct giving context.

First, the typical sponsoring organization of a DAF, such as a community foundation, knows the web of tax law it needs to comply with, and has professional staff devoted to such compliance and serving as a backstop against abuse. Contrast that situation to that of many individual taxpayers, who have little knowledge of compliance issues and are therefore unlikely to pay close attention to the need to limit the deduction for an event-related or membership fee payment to the charitable portion of that payment. **Thus, the involvement of a DAF sponsoring organization can *increase* the likelihood of the proper bifurcation being made between charitable and noncharitable portions of a total**

payment for an event or membership. This will facilitate more money coming out of DAFs, which is consistent with public policy objectives.

Second, we are unaware of any policy rationale for the notion that paying the charitable portion of an event from a DAF is *inherently* abusive, whereas it is *not* abusive when an individual taxpayer makes such a payment directly to a charity. The argument is sometimes made that the payment of the charitable portion of a total required payment is itself a "more than incidental benefit," because that charitable portion plays a role in getting the donor/advisor "in the door." However, the same thing is true when a taxpayer directly pays for the same event, and yet it is not argued this disqualifies any charitable deduction for any portion of the payment. Even if it is agreed that the charitable portion allows for the "getting in the door" benefit, this can be regarded as a pure recognition benefit, which the IRS already has recognized as having no financial value.

Therefore, for policy reasons as well as Congressional intent, we respectfully request that the Treasury and IRS define "more than incidental" benefit so that both the contexts of DAF grantmaking and direct taxpayer payments are treated the same way.

PLEDGES

The comments in this section relate to Section 4 of the Notice, pertaining to certain distributions from a DAF that the recipient charity treats as fulfilling a pledge made by a donor, donor advisor, or related person, and when such a pledge should cause a more than incidental benefit under Sec. 4967.

CFs welcome regulatory clarity about grants from DAFs to satisfy donor advisor pledges for contributions to recipient charities. **We strongly support the thrust of the Treasury Department's recommendation**, with one suggested modification.

Among U.S. CFs, practices related to pledges vary. Some CFs have attempted to navigate the unwieldly determinative test of legal enforceability to prove or disprove a more than incidental benefit to the donor/advisor. Many CFs spend significant time with donors and charities assisting them in documenting the advisor's intent to make a commitment while trying to avoid possible classification as a pledge. Others have avoided the issue by adopting policies which prohibit distributions from DAFs for pledges altogether.

Determining whether a pledge is legally binding rather than merely indicative of a donor advisor's charitable intent is a virtually impossible task for most CFs. The determination turns on facts and circumstances often unavailable to CF staff or even to the donor. And requiring an analysis of legal enforceability requires knowledge of state law potentially beyond the capacity of CF staff, and the application of laws lacking bright lines tests. For many CFs, this analysis would rest on the strength or weakness of lay interpretation.

The Treasury Department's proposal in Notice 2017-73 appears to offer relief to DAF sponsors and CFs by taking the view that, "in the context of DAFs, the determination of whether an individual's charitable pledge is legally binding is best left to the recipient charity, which has knowledge of the facts surrounding the pledge." *We suggest, however, that pushing down to the nonprofit grantee organization the challenge of this facts and circumstances application of an interpretative point of law, often without a bright line test, perpetuates the conundrum:* Are nonprofit executives or staff readily capable of rendering what amounts to a legal decision on this issue? If CFs have been split, if not paralyzed, in their administration on this issue, often

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with greater resources available to secure a legal interpretation, it is difficult to imagine most grassroots community organizations being better able to address the decision downstream.

We are also concerned about the promulgation of a proposed regulation "sanitizing" distributions from DAFs to charity in circumstances where the donor advisor has made a charitable pledge to the charity, "provided that the sponsoring organization makes no reference to the existence of any individual's pledge when making the DAF distribution." Such a *don't-ask-don't-tell* safe harbor impedes transparency and works counter to the culture of accountability which benefits the sector and is promoted by National Standards accreditation that many CFs diligently pursue and retain. In addition, it imposes administrative burdens CF staff, who would risk subjecting their CF to excise taxes if they inadvertently fail to remove a reference to a pledge that was part of a grant request.

Our recommendation is a regulation explicitly permitting the pledge of a donor advisor to be paid by distribution from a DAF without regard to the enforceability of the pledge or whether the sponsoring organization references or knows of the pledge. Regulatory clarity permitting distributions from DAFs to satisfy pledges will increase the already significant distributions from DAFs to charitable organizations throughout the United States.

In short, we strongly support the direction the Treasury Department is moving on this issue. However, charitable giving will be furthered – and the work of both DAF sponsors and recipient charities simplified – by explicitly stating that distributions from DAFs can fulfill charitable pledges, period, provided that the recipient charity has been approved by the sponsoring organization as a *bona fide* recipient of charitable funds.

PUBLIC SUPPORT TEST

The comments in this section relate to Section 5 of the Notice, pertaining to Treasury's proposed regulations designed to prevent attempts to use a DAF to avoid "public support" limitations. Grants from DAFs are grants from public charities. As a result, we disagree with the contemplated position of the Treasury that would require donor advised grantee organizations to aggregate – for purposes of applying the two percent cap on gifts qualifying as public support in calculating the grantee's public support test – DAF grants with gifts made individually by donors where the advisor and the donor are the same. As summarized below, there are several other reasons why this position should not be adopted, which could also provide guidance to Treasury on drafting proposed regulations should the Department choose to move forward despite our reservations.

The contemplated position is intended to address a perceived abuse that donor advisors are using grants from DAFs, which are considered "public support" not subject to the cap under current law, to qualify grantee organizations of favor to the advisor as public charities themselves, without being more broadly supported by the public. However, there is no showing of evidence that the perceived abuse is so common and widespread as to justify imposing a new rule creating significant administrative burdens on grantee organizations, the clear majority of which would not be affected by this new requirement.

For example, under the proposed rule, grantees would have to track all DAF grants and match them to other donations to determine whether the two percent cap applies to "related" sources of support, even though most of the support received would never reach the cap. For many nonprofits, this would require additional resources to be directed to compliance rather than the causes and issues they are committed to addressing. The proposed regulation would also impose administrative burdens on sponsoring charities, which would be required to either adjust their reporting to expressly identify the DAF advisor(s) or risk being inundated with calls from public charities requesting this information. While many of our DAFs are named for the specific donors, some just include last name of the families, and some don't include any names at all. In the gift instruments to establish a DAF, some donors may require anonymity for all grants.

The proposed regulation would also impose administrative burdens on sponsoring charities, which would be required to either adjust their reporting to expressly identify the DAF advisor(s) or risk being inundated with calls from public charities requesting this information. While many of our DAFs are named for the specific donors, some just include last name of the families, and some don't include any names at all.

The Treasury position also belies a view that donor advised funds are improperly controlled by advisors and are not public charities themselves. That view disregards the significant oversight and commitment made by DAF sponsors in reviewing and approving grant recommendations. Grants from DAFs are grants from public charities – and are public support to the grantee – and this should not be changed or eroded by the adoption of the position contemplated by Treasury.

Moreover, any final regulation would require significant guidance on "attribution." In other words, which DAF grants would be attributed to which donors? Is the attribution just between individual donors and their funds? What about between spouses? What about grants from a DAF established by a corporate executive – do they get bundled with gifts from the corporation? From the corporate foundation? What about grants from DAFs with multiple donors or advisors – do those get aggregated on a prorated basis? Countless other possible scenarios would have to be addressed.

Finally, combining multiple anonymous grants as if they are from one donor could also cause a public charity to tip into PF status even though the donor advisors are unrelated, but simply wanted to remain anonymous for personal reasons. Since there is a possibility this anonymous class of donor advisors could inadvertently capture support that would never have reached the two percent cap, would there be a different cap level for this class? Five percent? Ten percent?

If the contemplated regulation is adopted, it should include a safe harbor exception where the record keeping and aggregation is not required by the grantee, if the grantee receives a letter from legal counsel that it would qualify as a "private operating foundation." Often, a grantee that qualifies as a "publicly supported charity" would also qualify as a private operating foundation. Donor advised fund grants can be made to both types of charities. The difference is that a private operating foundation need not meet the public support test – which would preclude the need to attribute and aggregate donor advised fund grants with individual contributions for purposes outlined in the notice. Providing for such an exception would provide relief from an otherwise unnecessary administrative burden for some charities.

PRIVATE FOUNDATION DISTRIBUTIONS TO DONOR ADVISED FUNDS

The comments in this section relate to Section 6 of the Notice, which pertains to how private foundations may use DAFs to support their charitable purposes, and whether such distributions should be treated as "qualifying distributions" only if the sponsoring organization distributes the funds within a certain timeframe.

We understand Treasury's concern that some PFs may use DAFs as a "work-around" for the five percent payout requirement, keeping family control for a longer period (even though the grant is a completed gift). As charitable leaders, we will concede that if a private foundation (PF) is meeting all (or a substantial portion) of its payout requirement by making grants to a DAF, and then the DAF sits dormant or not making regular distributions, this is an abuse of the public trust and a loophole that should be closed. The difficulty for legislators and regulators, however, is drafting a rule that will stop the bad practices while allowing the good. We are committed to working closely with Treasury officials to craft appropriate language to curtail or eliminate any actual abuse.

We disagree with the implication by some DAF critics that if a private foundation meets a portion of its payout requirement with a grant to a DAF, this is *prima facie* suspect or nefarious. We work with donors at all income levels, and many of our wealthiest donors also maintain a private family foundation. For a PF to make a grant to a DAF at a community foundation is not uncommon – but in the vast majority of cases, these grants fulfill a genuine charitable purpose and are not meant to skirt the five percent payout requirement.

For example, PFs may utilize DAFs during periods of major market fluctuations to provide better stability to grantees. Or a PF with national scope may conduct its local philanthropy in close partnership with community and place-based foundations, directing local giving through donor advised funds. Or a PF may need to temporarily suspend grantmaking during a period of strategic planning or major transition, and may utilize DAFs to meet its minimum distribution requirement during these times, followed by very active grantmaking after the transition period. These distributions further a charitable purpose and should not be curtailed or deemed "nonqualifying."

We thought it might be helpful for the Treasury Department to understand some of the myriad ways a PF might use a DAF in pursuit of a genuine charitable purpose.

> **1. Improving Management and Efficiency.** Sometimes, using a DAF allows a significant grant commitment to be completed with better management and oversight. For example, in 2008, the Robert W. Woodruff Foundation wanted to grant $200 million to Grady Hospital, the largest public hospital in Atlanta, but Grady was going through massive financial challenges and leadership upheaval. It didn't make sense at the time for Woodruff to give the hospital control of the entire $200 million in the first year. Instead, Woodruff established a DAF at the Community Foundation for Greater Atlanta from which funds could be disbursed as needed.
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> In the end, the community and the grantee were both better served by having such an arrangement. By having the flexibility to use the DAF, and by relying on the management expertise of the Community Foundation, Woodruff made their gift more meaningful and efficient than had it granted $200 million directly to the hospital when the management structure was not in place to effectively use the funds.

2. Sustaining Long-Term Commitments. Sometimes, the ability to use a DAF allows a PF to continue long-term commitments. For example, during the 2008 recession, a family foundation in Oregon whose mission is to serve rural communities saw its asset base plunge. The loss in assets was significant enough that it was challenged to meet many of its multi-year grant commitments, which were set as fixed dollar amounts and were put at risk when the payout requirement applied to a much smaller asset pool. The private foundation turned to a DAF at Oregon Community Foundation to augment its five percent payout requirement and keep its grant commitments, and the DAF was more than halved in value during this period. As the market rebounded, the family foundation began rebuilding the DAF's assets with a percentage of its annual payout to create a resource to support rural communities if another market downturn occurs.

If gifts to a DAF could not count toward the payout requirement, it would be much harder for foundations like the one in Oregon to make the sort of multi-year – and often unrestricted – grants that nonprofit organizations so desperately need.

3. Managing a Fluctuation in Family Assets. A family foundation in Minnesota was mostly comprised of privately-held stock in a family business. With the economic downturn in 2009, the foundation no longer had enough liquidity to meet its mandatory payout requirement. Also, based on the restrictions of the corporation, most individual nonprofit organizations could not hold shares of stock. The foundation opened a DAF that could hold these shares under a master trust pool (an allowed entity), and the DAF help it meet its payout requirement until the family could buy back the stock. The ability for the private foundation to make grants of stock to a DAF helped prevent a situation that might have resulted in substantial penalties and complexities for the foundation, and reduced grantmaking in the community.

4. Facilitating Grantmaking After Startup, or After a Significant Liquidity Event. Often, after a family foundation is set up, or after a significant liquidity event (e.g., death of a family member, sale of a business, etc.), a private family foundation (particularly a smaller foundation with little to no permanent staff) is ill-equipped to make the grants necessary to meet the statutory payout requirement efficiently. Sometimes, it can be up to two years before normal operations can resume. During these periods, the family may need the expertise of the staff of a community foundation to facilitate its grantmaking. In these cases, granting a portion of the payout requirement to the DAF and have the community foundation assist with disbursements is an enhancement of the foundation's work because it ensures funds are being spent wisely.

5. Maintaining a Commitment to a Prior Community. Sometimes, a donor family may make their money in one community, but move elsewhere. The family may no longer be familiar with the nonprofit organizations in its prior community that do the best work in its areas of interest. That family may find it advantageous to make a grant to a DAF at the local CF, and the foundation's staff will then provide grantmaking assistance to the PF. It would be possible for these donors to make grants directly from the PF to the local organizations in the former community, but donors want to benefit from the professional (and local) staff of the CF. In this case, the grant to a DAF does the community enormous good by making the philanthropy more targeted and efficient.

6. Making Grants Outside a Focus Area. Many family and/or private foundations have a specific area of focus, but some family members may want the flexibility to make grants to charities addressing other needs, either in their community or elsewhere. Making a grant to a DAF and working with the CF staff allows these donors to address other critical needs.

7. Facilitating Impact Investing or Other "Charitable" Activities That Are Not Grants. Impact investing – or putting money into investment vehicles that promise both a social/environmental as well as a financial return – is one of the fastest growing areas of philanthropy for both private and public foundations. Various estimates show the funds invested in this space increasing at over 30 percent annually. In the CF field, the Cleveland Foundation and the Greater Cincinnati Foundation were pioneers in this space, but many other CFs have begun impact investing programs for their donors. These programs are being driven by client demand, and are another avenue for CFs to serve their donors' interests while enhancing community resources.

Impact investing programs, however, require substantial time and expertise to manage well. While larger private foundations like Ford, Packard, and Kellogg have the staff resources and legal expertise to manage substantial impact investing programs, most small family foundations do not. We're increasingly seeing family foundations in our communities with an interest in impact investing turn to the CF for assistance. The PF can set up a DAF with a CF, make a grant to the DAF, and have those resources added to the impact investing pool at the CF. As these programs grow in importance, we would hate to see this aspirational avenue closed for smaller PFs.

8. Managing Leadership Transitions at, or Terminations of, Family Foundations. Many family foundations are inspired and driven by one or two individuals in a senior generation. As these founders age or pass away, younger family members sometimes do not share the same enthusiasm for the considerable management responsibilities that come with having a PF, or there may be philosophical disagreements among members of the next generation on the specific projects the PF should focus on.

PFs considering termination can "test the waters" by making a substantial distribution to a DAF at a sponsoring organization and seeing whether the simplified administration of a DAF can allow the family to realize its charitable goals at lower cost and with less hassle. If conflicts occur among family members on the charitable goals or direction of a family foundation, such problems sometimes can be amicably resolved by making a substantial distribution of the foundation's assets to a DAF advised by one or more of the family members while the other family members continue the work of the PF with the remaining assets. This approach can not only reduce intra-family conflict, but may also forestall inertia and/or stalemates that can delay actions by a family foundation or counteract a bare minimalistic approach to philanthropic activities by the PF's leadership.

> Sometimes, these family transitions can lead to a decision to terminate the PF and convert it into a DAF. Family members may decide that a DAF offers a family the ability to continue a philanthropic legacy with less cost and overhead, simplified reporting, and greater grant flexibility. Treasury should know that such conversions are growing more common *and* count as qualifying distributions (since the DAF sponsor is a public charity). Should Treasury determine such distributions were no longer "qualifying," it would prevent such conversions and potentially reduce overall charitable giving.

As community foundation CEOs, we concur with the public policy goal of having active donor advisors making regular grants to help those in need. We are all working diligently to improve the quality of life in our local communities. In each case noted above, DAFs can provide a way to quickly and economically affect the PF's charitable goals, and get more charitable dollars out to recipients. *Our concern is if rules are drafted to restrict a PFs ability to use DAFs to meet a portion of its payout requirement, even if the intent is only to target perceived abuse, the end result will be to hamper several activities that fulfill a genuine charitable purpose.*

Timed Payouts. As requested in the Notice, we would also like to address the question of whether PF to DAF grants should be singled out for a special payout rule where all such grants have to be paid out within a certain number of years.

We are strongly opposed to timed payouts, either generally or for PF-to-DAF grants. The whole concept of a timed payout for donor advised funds – whether the timetable is 5 years or 7 or 10 or 12 – is completely anathema to building community endowment, or a family building a philanthropic legacy for future generations to continue. Requiring CFs to pay out DAF contributions in a set number of years – whether all contributions or just those originating from private foundations – would directly impair our impact and effectiveness in the communities we serve. Many potential donors would turn to private foundations or not give to charity give at all. Plus, many CFs use endowed DAFs, which are a permanent gift instrument and *can't be spent down*.

An additional factor to consider is the administrative complexity of (a) having to start the clock over for every single gift; or (b) determining which funds within a family's DAF came from personal versus PF funds. Many of our donors give to their DAFs several times during the year; it would be extremely difficult for a CF (particularly smaller foundations with limited technological capability) to start a separate clock for every gift, or tell a family they had to open a separate DAF account for money coming from their PF, These proposals create strong disincentives for donors to utilize DAFs in the first place, which will cause some people to give less, and others to use PFs with lower average payouts.

In short, a timed payout, no matter how it is applied, would likely reduce giving while greatly increasing complexity. This runs counter to Congressional intent.[1]

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[1] It's worth noting a required *percentage* payout for donor advised funds would be equally bad, because as Treasury undoubtedly knows, "floors become ceilings." The PF payout rate was supposed to be a floor, but few private foundations now give away more than the minimum required by law. Whether a percentage payout was applied fund-by-fund (the worst possible outcome) or by entity (to the whole community foundation or DAF sponsor), the effect of this will likely be to drive the average DAF payout down towards five percent, whereas now it is significantly higher. Is it worth driving down overall

As it relates to a required payout, in our informed (and very strong) view, if average DAF payout is several times that of private foundations *and* the overwhelming majority of funds are regularly active or have a giving plan in place, we don't see the imminent public policy problem requiring Congressional or Administrative action.

Thank you for considering our views on all of the issues above. We want Congress and the Treasury to understand community foundations and the vital role we play, and stand ready and willing to respond to further questions.

Sincerely,

The Steering Committee of the Community Foundation Public Awareness Initiative

Lorie Slutsky
New York Community Trust

Douglas Kridler
Columbus Foundation

Max Williams
Oregon Community Foundation

Alicia Phillip
Community Foundation for Greater Atlanta

Steve Seleznow
Arizona Community Foundation

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giving to make sure all funds are making grants every year? We don't think that's a good result. We think the focus should be on promoting regular fund activity, which many CFs already do.