



March 5, 2018

Internal Revenue Service  
CC:PA:LPD:PR (Notice 2017-73)  
Room 5203, P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044  
Via email: Notice.Comments@irs.counsel.treas.gov

RE: Response to Notice 2017-73

Dear Ladies and Gentlemen:

We appreciate the opportunity to comment on the suggested positions on Donor Advised Funds of the Treasury Department as outlined in Notice 2017-73. The Community Foundation of St. Joseph County administers hundreds of donor-advised funds and have personal experience with the contribution they make to improving life in our community. We also know the donors who set them up, and admire their sense of civic responsibility and generosity.

Our response to Notice 2017-73 is based on two foundational principles and focuses on Sections 3-6 of the Notice.

First, donor advised funds are public charities; the grants to them are grants to a public charity and grants from them are from a public charity – as donor advised funds are, in fact, component funds of public charities. They are owned by public charities, administered and overseen by the boards and staffs of those public charities, and they have never been controlled or directed by individual advisors.

Second, whatever is deductible if done by an individual should be allowed from a donor advised fund. This is also largely consistent with other tax rules that make grants appropriate from foundations if the grant would have been charitable (and thus deductible) if done by an individual.

Section 3 – ticket/grant splitting - providing more than an incidental benefit to donor, donor advisor or related person

**We oppose the contemplated position of Treasury that DAF grants should not be allowed to be used to pay the deductible portion of an event ticket, membership or even a charity auction item.** The position holds that there is more than an incidental benefit to the advisor who recommends the grant in these situations making the grant improper.

While the Community Foundation of St. Joseph County does not allow bifurcated donor-advised grants, we know that many of our colleagues do. They feel strongly this encourages more donors to support their work and participate in fundraising events if the charitable portion of the ticket can be paid from a donor-advised fund. We have seen no evidence of abuse in this area.

Therefore, we recommend that bifurcated grant/grant-splitting from a DAF, which has been allowed for more than a decade, continue to be allowed.

Section 4 – pledges - distributions from a DAF without regard to a charitable pledge

**We strongly support the position in the Notice that DAF grants should be allowed to be used to pay pledges.** We agree that distributions from a DAF to a charity to which a DAF advisor has made a charitable pledge should not be considered a more than incidental benefit to the advisor, whether or not the charity treats the distribution as satisfaction of the donor's pledge because the donor has received no benefit from either the making of the pledge or the distribution advised from the DAF. We support allowing DAF grants to be used in satisfying pledges and encourage Treasury to state that position simply. There is no need for the additional requirements found in the Notice.

Section 5 – using a DAF to avoid public support limitations

**We oppose the contemplated position that would require aggregation (or “attribution”) of DAF grants to donors for purposes of the 2% cap within the public support test.** DAFs are funds of community foundations that are public charities, and the grants from them should continue to be treated as public support. The contemplated position would impose significant administrative burdens and costs on grantees; and would require significant regulatory guidance as to what grants to “attribute” to a donor. We often raise money for initiatives from a number of sources which we then grant out to charities who partner with us on implementation. All grantee organizations would incur significant additional costs to trace distributions back to donors; if they do not undergo the additional effort and expense, their public support percentage would drop because the DAF support will be considered part of a charity's total support even if not considered public support.

Even organizations that have significant public support in the current year would need to worry, because charitable contributions can vary markedly from year to year in response to market contributions or other community issues. Because the public support test looks back over support provided for the most recent five tax years, disregarding DAF contributions in one year could impact a charity's public support percentage for the succeeding five years.

Section 6 - Qualifying distributions for private foundations

**We oppose any proposed new regulations that would not allow grants from private foundations to donor advised funds to be counted as part of the private foundation's qualifying distributions for the year.** This opposition is based on the longstanding fact that DAF sponsors are public charities and the law has not changed in this regard. Therefore, there should be no change to the longstanding position that any grant from a private foundation to a DAF is a grant to a public charity.

Almost all of our donor-advised funds are endowed and distribute about 5% a year. They are invested to grow with inflation so their real value is preserved over time. The Community Foundation of St. Joseph County works actively to ensure periodic distributions are made from all donor-advised funds. Rare exceptions are made for funds that are building toward a specified target goal or funds that are accumulating their annual distributable amount so they can make a bigger gift to a favorite charity. For this reason, there should not be a time period imposed on the



DAF for making distribution of the funds received from a private foundation (or any other donor), as suggested in the Notice. Often these endowments are created to sustain programs that might cease to operate once initial grant funding is exhausted.

Our Community Foundation's donor advised funds are under the explicit control of our board of directors. Any grant to us from a private foundation cedes control of the further charitable use of those funds to the board of our public charity – removing it from the control of the “private” foundation. Legal decisions have only confirmed that DAF sponsoring organizations do, in fact, have the legal right and ability to do what they want with DAF funds. This change in control from the private foundation to a public charity, the sponsoring organization, should be considered a positive move, not a cause for concern.

Thank you for considering our recommendations on the four sections of Notice 2017-73. These recommendations facilitate the transition of “private” foundation resources to those under the control of “public” DAF sponsoring charities – with independent boards, professional management, and responsiveness to the public -- reasons why public charities have long held favored tax status in the eyes of Congress, Treasury – and the general public. Indiana's community foundations welcome partnering with Treasury and the IRS to maximize the opportunity to have DAFs support charitable community needs while minimizing administrative burdens.

We appreciate your consideration of our response to Notice 2017-73 and welcome the opportunity to provide additional information that can address any questions you may have.

Sincerely,

A handwritten signature in black ink that reads "Rose Meissner". The signature is written in a cursive, flowing style.

Rose Meissner  
President