

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 are writing today to offer our comments on the contemplated positions on Donor Advised Funds of the Treasury Department as outlined in Notice 2017-73. As the largest community foundation in Michigan, we work with hundreds of non-endowed and endowed donor advised funds and the advisors to those funds. In 2017 alone, we awarded more than 2,900 grants totaling more than \$27 million to public charities throughout southeast Michigan – and the country.

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

Second, we support policies that hold that grants from donor advised funds are allowable if the same support would have been deductible if done by an individual directly. To do otherwise would limit the access of monies held in donor advised funds for charitable purposes. This position 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 do not support 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 contemplated in the Notice holds that there is more than an incidental benefit to the advisor who recommends the grant in these situations making the grant improper.

The proposed position of Treasury is inconsistent with its recent attempts to encourage the granting of monies from donor advised funds. In addition, allowing the use of DAF grants to satisfy the charitable portion of these bifurcated grants provides Treasury with the three

benefits relative to allowing the payment of pledges enumerated in the response below to Section 4. Payment of the charitable portion of a bifurcated grant is consistent with the position that grants should be allowable "if deductible" if made by a donor directly.

Treasury has asserted in the past that grant-splitting is not permissible (for private foundations in a PLR) based on a "but for" argument - that being "but for" the charitable portion of the gift the donor could not buy a ticket to the event. However, the other side of this "but for" position cannot be ignored - namely that "but for" the payment of the non-deductible portion, the donor would not have made the charitable gift. If Treasury wants to encourage monies being moved from donor advised funds, bifurcated grant/grant-splitting should be allowed.

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

We support the position in the Notice that DAF grants should be allowed to be used to pay pledges. However, the position as stated seems to be a contrived and strained "don't ask, don't tell" policy and has the potential to raise new issues for DAF sponsors, grantees and advisors to address.

Allowing payment of pledges also: (i) moves monies from DAF's which has been a goal of Treasury; (ii) costs Treasury less currently as it would allow DAF balances for which a deduction was taken in a previous (or current) year to be used to satisfy a pledge, otherwise the donor will pay the pledge directly taking a new charitable deduction costing Treasury current revenue; and (iii) be consistent in the treatment of other DAF grants in that the DAF grant would be supporting something that would be deductible if paid by the donor. Allowing DAF grants to pay pledges would also eliminate confusion on the part of DAF sponsors, charities, donors and Treasury of what is or is not a "legally enforceable pledge", which varies by state.

In summary, 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. *Donor advised funds 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. For example, do grantees count grants from a spouse's DAF? a child's? a corporate DAF when the donor is an executive of the corporation?

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If Treasury moves forward with this position, it could include an exception that any grantee that gets an opinion of counsel that the grantee would be considered a "private operating foundation" if it filed as such would not have to track and aggregate DAF grants and donor gifts. Grantees that qualify as a "publicly supported charity" often also qualify as a private operating foundation. Donor advised fund grants can be made to both of these types of charities. The difference is that a private operating foundation does not need to meet the public support test – which would preclude the need to attribute 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.

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 long-held reality that DAF's are public charities. Therefore, any grant from a private foundation to a DAF is a grant to a public charity.

The Community Foundation for Southeast Michigan supports and subscribes to the National Standards for Community Foundations, which include recommended policies for dealing with Inactive Donor Advised Funds. 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, as suggested in the Notice. Donor advised funds are under the control of the boards of public charities. The grant from the private foundation cedes control of the further charitable use of those funds to that public board – removing it from the control of the "private" foundation. This change in control to that of a public charity should not be a cause for concern.

The contemplated position also ignores the fact that donor advised funds can be endowed to create philanthropic legacies in support of a charitable cause intended to be addressed by the private foundation (or other donors). The contemplated position also does not consider the use of donor advised funds in the termination, both full and partial, of private foundations which can be done for legitimate public policy reasons, including but not limited to; elimination of the administrative costs of operating a private foundation thus making more funds available for charitable purposes, or resolving disputes among private foundation board members to facilitate the use of the foundation assets for charitable purposes.

Thank you for considering our recommendations on the four sections of Notice 2017-73. We support Treasury's goal to ensure that donor advised funds continue to support charitable causes at no additional cost to the Federal budget. Our recommendations also facilitate the transition of "private" foundation resources to those under control of "public" DAF sponsoring

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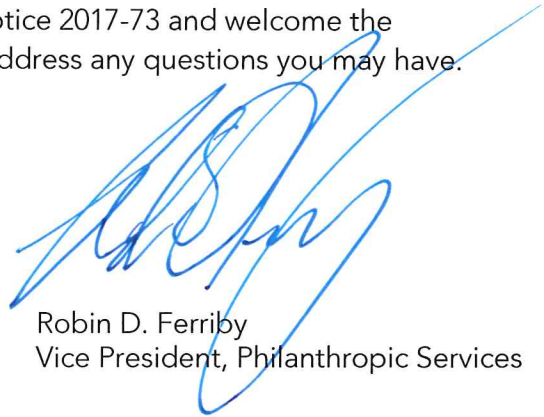
charities which also supports the historic position that public charities have favored tax status in the eyes of Congress, Treasury – and the general public.

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,



Mariam C. Noland
President



Robin D. Ferriby
Vice President, Philanthropic Services