Gratiot County
community foundation℠

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@irscounsel.treas.gov

Re: Response to Notice 2017-73

Dear Ladies and Gentlemen:

Thank you for the opportunity to comment on the suggested positions on Donor Advised Funds of the Treasury Department as outlined in Notice 2017-73. As a community foundation with several donor advised funds, we have a deep understanding and respect for the importance of such funds in promoting the welfare of the communities we serve. For more than 25 years we have assisted caring people in our community in using these highly effective philanthropic vehicles.

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 component funds of public charities. Gifts to them are therefore gifts to a public charity, and grants from them are grants from a public charity. 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 also 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 do not support the contemplated position of Treasury that donor advised fund grants should not be allowed to pay the deductible portion of an event ticket, membership or even a charity auction item. The Treasury's position improperly assumes that there is more than an incidental benefit to the advisor who recommends the grant in these situations, thus making the grant improper.

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For many years, many community foundations have allowed distributions to be made from DAFs for any additional amount over the fair market value of tickets that may be treated as a charitable contribution for which no benefit was received. The Notice argues that a Donor that pays a charity directly for the fair market value of the event ticket and advises their DAF to distribute the charitable contribution portion receives a more than incidental benefit because the DAF distribution has relieved the donor's obligation to pay the full price of the ticket. It must be noted that there is no such obligation. Donors or advisors to DAFs are never under any obligation to purchase tickets, make charitable contributions or attend events. Decades of experience have confirmed that the only ones receiving benefits from these events are the beneficiaries served by the charities hosting the event because these events raise awareness and significant funding for their mission.

In addition, concerns have been raised by the charitable organizations in Michigan communities that rely on fundraising dinners and other events for a significant portion of their revenue that the proposed treatment of distributions from DAFs may have negative consequences on their fundraising. Many donors use DAFs to consolidate their charitable giving, finding it easier to comply with the tax, administrative and recordkeeping burden of keeping track of a single large contribution than myriad smaller contributions throughout the year. If donors are pressed to choose between the ease of advising a distribution from a DAF and attending a fundraising event, they may well skip the event. This reduces the opportunity for added contributions at the event when donors can learn more about the services the charity is providing. Our experiences also confirm that "but for" the DAF distribution of the deductible portion, the donor would not have made the charitable gift.

Allowing the use of DAF grants to satisfy the charitable portion of these bifurcated grants provides Treasury with the two 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 also consistent with the longstanding policy position that distributions should be allowable "if deductible" if made by a donor directly.

In sum, we recommend that bifurcated grant/grant-splitting from a DAF, which has been allowed for more than a decade, continue to be allowed. Without actual evidence of significant abuse, Treasury should not change longstanding practice or impose additional burdens on charities that will make it more difficult to raise funds. Future guidance should confirm that a distribution from a DAF that pays only the deductible charitable contribution amount does not confer a more than incidental benefit to the advisor.

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. We agree that distributions from a DAF to a charity to which a DAF advisor has made a charitable pledge should not be considered more than an 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.

Allowing DAF grants to pay pledges would also eliminate administrative confusion on the part of DAF sponsors, charities, donors and Treasury of what is or is not a "legally enforceable pledge", which varies from state to state. Allowing payment of pledges also 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 and costing Treasury additional current revenue. This position is also consistent with the position on split/grant splitting noted above, in that the DAF distribution would only be paying an amount that would be deductible if paid by the donor.

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. *DAFs are funds of community foundations that are public charities*, and the grants from them should continue to be treated as public support. Furthermore, 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? Distributions from DAFs continue to grow annually, and failing to count DAF support as public support is not neutral. 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 fluctuations 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.

Finally, the proposed position would require a charity that wishes a community foundation grant to count as public support to request documentation from the community foundation that the grant is not from a DAF. As a practical matter, this would place a burden on the community foundation to specify in writing whether every grant is or is not from a DAF, another administrative burden for the foundation staff.

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.

We have joined with the Council of Michigan Foundations and our community foundation peers in supporting and subscribing to the National Standards for U.S. 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 sponsored by community foundations are under the control of the community boards of these public charities. A grant from a 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. Legal decisions have 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.

Donor advised funds can be endowed funds, intended to create philanthropic legacies in support of a charitable cause supported by the private foundation (or other donors). Donor advised funds are also used in connection with the terminations, both full and partial, of private foundations, which are 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. Indeed, we have received significant dollars from a private foundation that terminated its existence in order to achieve these efficiencies by allowing the community foundation to distribute grants from those funds. These distributions from private foundations to DAFs should be encouraged, not discouraged, by any future regulations.

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. We join with the Council of Michigan Foundations and Michigan's other community foundations in welcoming the opportunity to partner with Treasury and the IRS to maximize DAF support of 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.

Respectfully,

Tina M. Travis
Executive Director