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

LEGAL PROCESSING DIVISION
PUBLICATION & REGULATIONS BRANCH

Re: (Notice 2017-73)

Private foundations ("PF") use DAFs for many reasons, including to achieve anonymity for grants, to provide giving accounts to family members and others (for various reasons and without involving those people in the management of the private foundation), for administrative convenience and efficiency in fulfilling charitable goals, to avoid solicitations and wasteful marketing expenditures by donee charities, and to fulfill distribution requirements when it is believed that the combination of current investment and future grants to end-charities will maximize the foundation's charitable purposes.

A transfer of funds by a PF should continue to be treated as a qualifying distribution without additional restrictions for several reasons, in certain cases consistent with section 4942 and its purposes and in other cases notwithstanding section 4942 and its purposes.

--Donors to PFs have made decisions based on the current regulatory regime that permits grants to DAFs to fulfill distribution requirements without further restrictions; in the absence of highly compelling reasons, change should be avoided. If the rules were to be changed as floated, there should be a ten year forward start-date so that PFs can operate as expected for the intermediate term and donors/PFs have a reasonable period to accomplish their goals as contemplated when the donations to PFs were made.

--Tax benefits available to donors to DAFs are more favorable than to PFs; accordingly it makes little sense to prohibit grants from PFs to DAFS from counting towards distribution requirements when the same outcome could be achieved with a direct donation to a DAF—and with potentially more favorable tax treatment for the donor and no tax excise on income. Despite these disadvantages, certain donors prefer PFs—including for family philanthropic reasons, investment choices, emotional reasons, and lower administrative costs. PFs have served the public extremely well (and often better and/or more efficiently than the government could or would if the funding was available, and in an important supplemental manner), and there should be a high hurdle to make them less attractive to potential donors.

--Gifts to PFs create a pool of assets dedicated to charitable purposes for society's considerable benefit. The 5% rule encourages minimum distributions, a reasonable but not absolute policy goal that has both pros and cons. In certain cases, PFs (and donors to DAFs) may wish to defer grants until "optimal" end charitable uses are identified. Permitting transfers to DAFs in the current manner supports this reasonable PF goal in a manner available to DAFs. The public is well-served by "The Giving Pledge" asked of billionaires by the likes of Bill Gates and Warren Buffet, and similar donations by others. It is difficult for many to give up their wealth for the public interest before they are "ready"—a time that in many cases easily may not come. And they may not be ready to give currently because they are not ready to commit themselves to distribute the money as carefully as the efforts they made to make the money even if they are able to commit a portion of their savings to a PF now. Others may want to continue to invest the funds before distributing to end-use charities. The public will not be well-served by adding impediments to a system that is providing such benefits to society—and especially at a time of greater accumulation of wealth and lesser public support for science, education, health, poverty etc.

--Certain PFs and their donors may believe that greater good can be accomplished through investment and later distributions of larger amounts—something that the current regulatory regime permits provided that distributions to public charity DAFs are made. They may be right.

--The 5% rule fulfills a policy purpose adequately served by the current regulatory regime; but it is not an immutable and absolute policy goal without offsetting negatives. Our society has a paucity of savings—both at the federal government level where social security investments are a bookkeeping fiction and deficits and debt are high and growing; and at the non-governmental level where savings rates are among the lowest in the developed world. The use by certain foundations of DAFs that do not promptly redistribute the funds adds to savings for another day—something that serves society well in multiple ways. And while the rest of the world that saves better than we do, wealthy Americans give generously to PFs and other charitable organizations in a manner that sets the global standard. Don't clip the wings of (or even chisel away at) the golden goose.

Sincerely,

John A. Motulsky