

**Mark D. Sutton**  
Executive Vice President and Chief Financial Officer

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

March 5, 2018

RE: Notice 2017-73 (Request for Comments on Application of Excise Taxes with Respect to Donor Advised Funds in Certain Situations)

To whom it may concern,

United Way is a worldwide network operating in 41 countries and territories, including approximately 1,150 local organizations in the United States of America. Each local United Way in the USA is a separate legal entity, under Section 501(c)(3) of the Internal Revenue Code, each is governed by its own volunteer board and maintains its own financial records.

In order to promote consistency and transparency in financial reporting, United Way Worldwide has created the Financial Issues Committee (FIC), a group of Chief Financial Officers from member United Ways, charged with acting as a policy advisory and educational body to address United Way network accounting and financial issues from a national perspective. These issues are identified by local United Way Presidents and/or Chief Financial Officers and the United Way Worldwide Chief Financial Officer. The FIC acts as a policy recommendation body guiding work teams that "flesh out" the extent and nature of the issue, produce recommended standards, guidelines, policy guidance or research useful to the United Way Network.

The following comments were prepared by a FIC work group and endorsed by the full FIC. They are intended to represent the consensus view of the member United Ways in the USA though individual United Ways were encouraged to offer their own comments, which may vary from those outlined in this letter.

**Comments on Section 3 (Certain Distributions from a DAF providing a more than incidental benefit to a donor, donor advisor, or related person)**

Generally we agree with the argument put forth in the example (e.g. a donor paying directly for the market value of the ticket and the DAF paying the contribution portion) that this would not constitute a more than incidental benefit to the donor, donor advisor, or related person because the donor is not increasing his/her tax deduction value from what it would have been if he/she had paid the full amount (value plus contribution) directly.

However, such an approach would add an element of administrative burden to the recipient charity (that sponsors the event) which likely outweighs the benefits and in the end will prove to be a little used solution at all for the recipient charity. Therefore, the impact of the proposed solution will ultimately reduce charitable contributions rather than encouraging them... which is the opposite of what the charities involved, and likely Treasury & IRS, intended to accomplish by considering this possible change.

The United Way network believes that a better approach may be to allow the recipient charity to follow existing requirements for gifts from an individual donor, where the donor receives a benefit that is more than incidental, regardless of the fact that the payment come via a DAF distribution. By allowing the recipient charity to provide the donor with documentation of the value of the non-deductible benefit received, there is no additional administrative burden on the DAF sponsoring organization or the recipient charity. At the same time, this solution delivers to the Treasury the taxes they are due for the non-deductible portion of the contribution when the donor reduces their charitable contribution deduction for the tax year of the event.

Granted, the donor will have benefit of the unpaid tax between the year of contribution to the DAF and the year of the distribution from the DAF, but that cost to Treasury will be small compared to the administrative cost born by the charities under the current or proposed regulations.

If Treasury and the IRS are concerned that donors may be likely to not reduce their charitable deductions based only on notification from the charity that received the DAF distribution, an alternative could be for the recipient charity to issue the individual a form 1099-MISC for the non-deductible portion of the DAF distribution. This approach will be a bit more administratively costly for the charity but should still prove to be lower in overall cost than the current proposal.

**Comments on Section 4 (Certain distributions from a DAF permitted without regard to a charitable pledge made by a donor, donor advisor, or related person)**

We agree with the Treasury Department and the IRS proposed resolution of this issue.

While the debate over whether a pledge constitutes a legally binding obligation to a donor has raged on for years, the simple fact of the matter is that many, perhaps most, charities would be very reluctant to enforce a pledge in the courts. The result of such action would in, almost every case, be irreparable damage to that charity's relationship with the donor and potentially with other donors who hear of it. Thus, the potential loss of future contributions would far outweigh the benefits of pressing the issue in the courts and it would not be pursued, making legal enforceability in essence a moot point.

We agree that the proposed solution releases the DAF sponsor organization from the burden of determining whether or not the donor is intending to fulfill a pledge to another organization by recommending a distribution. We further agree that allowing the recipient charity to simply apply a DAF distribution as satisfaction of an existing individual pledge, does not in itself result in the donor receiving any tangible benefit that is more than incidental.

We do note however that the change does not relieve the DAF sponsor organization and the recipient charity from ensuring that the donor hasn't received "other benefits that" are "more than incidental on account of the DAF distribution", for example, the case discussed in section 3 above where the pledge is one that includes tickets to an event. We look forward to engaging with the Treasury Department and the IRS in discussion of what "future proposed regulations" might be considered to reduce the burden of charities relative to this issue. That said, the solution to this question of benefits received may be as simple as the recommendation we made in section 3 (above), to allow the recipient charity to issue the individual a statement of the non-deductible portion or issuance of a 1099-MISC for the taxable benefit received.

### **Comments on Section 5 (Preventing attempts to use a DAF to avoid “Public Support” limitations)**

While local United Ways are increasingly the recipient of DAF distributions, encouraging donors to make contributions via a DAF in order to avoid public support limitations would be considered a violation of our network’s ethical principles. Therefore, we support the Treasury Department and the IRS proposal to discourage all charitable organizations from considering such a path. Considering distributions from a DAF to be indirect contributions from an individual donor, for purposes of the public support test, seems a reasonable approach to the problem.

However, we would note that it does place a new burden on the recipient charity to determine who the DAF donee is, particularly when (point 2) “anonymous contributions are received (including a DAF distribution for which the sponsoring organization fails to identify the donor that funded the DAF)”. By definition, the DAF sponsor has donor identification information so providing that information to the recipient organization constitutes very little additional burden.

Therefore, to reduce the burden on the recipient organization, we recommend that the regulation include a requirement for the DAF sponsor supply the recipient organization with the donor’s identification. We further recommend that the regulations specifically allow a recipient charity to treat any distribution lacking donor identification information as separate donations from distinct individuals rather than having to consider the combined total of all such distributions as a single donor for purposes of the support test.

### **Comments on Section 6 (Additional comments requested for specific questions)**

**Question 1:** How do private foundations use DAFs to support their purposes?

United Way Comments – While United Ways are Federated Fundraising Organizations, not private foundations, some are currently sponsoring organizations for DAFs and still others are seriously considering becoming DAF sponsoring organizations. The reason is simple... just as giving an annual gift to a United Way campaign does, the DAF can be a valuable giving option for the donor who wishes to support their community through a more than one gift to more than one charity. Thus, were the question to be how do United Ways use DAFs to support their purposes, the answer is very clear.

**Question 2:** Should a transfer of funds by a private foundation to a DAF be treated as a “qualifying distribution” only if the DAF sponsoring organization agrees to distribute the funds for 170(c)(2)(B) purposes (or to transfer the funds to its general fund) within a certain timeframe?

United Way Comments: The goal of all United Ways is to put donations to work in in the fight for the education, health, and financial stability of all people in all communities as quickly and effectively as possible. For this reason, United Ways that are DAF sponsoring organization on typically require donors to make their recommendations within a reasonable time period. We therefore strongly encourage the Treasury Department and the IRS to consider placing a timeframe on private foundation contributions to a DAF in order to be eligible for treatment as a qualifying event as this will serve to ensure that there is indeed charitable intent related to the gift.

**Question 3:** Are there any additional considerations relating to DAFs with multiple related donors under the proposed changes described in Section 5 of this notice?

United Way Comments: See specific recommendation included in our comments on Section 5.

**Question 4:** Can you recommend any methods to streamline any required recordkeeping under the proposed changes described in Section 5 of this notice?

United Way Comments: See specific recommendation included in our comments on Section 5.

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In addition to answering the specific questions raised by the Treasury Department and the IRS, we wish to reiterate that overall, we believe the proposed changes are important for making DAF regulations clearer and bringing about greater consistency in practice. We are encouraged by the fact the Treasury and IRS have taken such a broad view of the potential parameters of this topic and are providing us with this opportunity to share our ideas and feedback.

United Way Worldwide appreciates the opportunity to participate in any discussion of improving the clarity of the tax regulations surrounding charitable contribution and would be happy to provide additional observations for the Treasury Department and IRS consideration if needed.

If either or both departments would like to discuss our responses further, please feel free to contact me or Kenneth C. Euwema, Vice President - Controller, United Way Worldwide.

Thank you for your consideration of our comments. We look forward to the opportunity to discuss them further

For the United Way Worldwide Financial Issues Committee,



Mark D. Sutton  
Executive Vice President and Chief Financial Officer  
United Way Worldwide

**UNITED WAY WORLDWIDE  
FINANCIAL ISSUES COMMITTEE  
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