February 14, 2024

CC:PA:01:PR (REG–142338-07)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: IRS and REG–142338-07

**Comments in Response to Notice of Proposed Rulemaking, Request for Comments in Connection with Taxes on Taxable Distributions from Donor Advised Funds under Section 4966**

Ladies and Gentlemen:

We are writing on behalf of the Community Foundation Awareness Initiative (CFAI), a coalition of prominent community foundations (CFs) working to help policymakers understand CFs and what they do. The undersigned CEOs represent the Advisory Committee of the CFAI, but a list of all CFs participating in the CFAI can be found here. This letter is in response to the above referenced Notice of Rulemaking (the "Notice") regarding "Taxes on Taxable Distributions from Donor Advised Funds under Section 4966."

As you likely know, a CF is a tax-exempt public charity that serves people who share a common interest in improving the quality of life in their geographic area. CFs are found in most major cities, and in many counties and smaller towns. Some are also statewide. There are more than 800 CFs in the country, and they vary widely in size: About 75 percent of CFs nationally are small community organizations with less than $20 million in assets, and around 60 CFs around the country have $600 million in assets or more. The simplest way to think about a CF is as a local community's charitable endowment. CFs help donors make wise decisions about their giving and bring together the financial resources of individuals, families, and businesses to support effective nonprofits in their communities.

For purposes of this response, we want to say something at the outset about donor-advised funds (DAFs) and how CFs use them, because understanding this point is essential to appreciating why we believe Treasury's Proposed Regulations (the "Regulations") would be so harmful to us. CFs operate in a competitive marketplace with many other DAF sponsors. One thing that distinguishes us is we offer many other types of funds, not just DAFs; and we use DAFs as the entry point to building a relationship with a donor that we hope will grow over time and lead to long-term charitable commitments to a community.

**In other words, for us the DAF is the beginning of the relationship, not the end of the relationship – so if the DAF isn't started, that donor may be gone forever.** While we do track charitable assets under management and certainly report that number on our financial statements, it would not be uncommon (or incorrect) to hear a community foundation CEO say, "For us, the asset is the *donor*, not the *asset*." Understanding this distinction is vitally important. We believe if the Regulations become final, many of those relationships will never have a chance to begin, and our communities will suffer long-term damage as a result.

**PRIMARY ISSUES OF CONCERN**

This letter does not intend to go through every one of the legal issues in the Regulations that concern our partner CFs. For more detailed discussions of the legal issues, we want to associate ourselves with the responses submitted by several of our partner organizations, including the Greater Kansas City Community Foundation, The New York Community Trust, The Chicago Community Trust, the Community Foundation for Southeast Michigan, The Pittsburgh Foundation, and a joint submission from more than 30 Texas community foundations. We support and endorse the concerns raised by these CFs in their submissions.

Our response will recap some of the key issues in the Regulations and why they alarm us, but we will also share stories from CF leaders around the country – from foundations of all sizes representing all regions. Sharing these stories of local impact will demonstrate that the impact of the Regulations will go much further than intended and could upset the fundamental economics of what makes CFs work.

**In short, we are concerned that certain provisions in the Regulations would be difficult to administer, impose burdens on DAF sponsoring organizations that would fall disproportionately on CFs, and needlessly discourage the philanthropy and volunteer engagement that a CF can foster.** Contrary to the implications of the Regulations that there is widespread abuse needing correction, in practice we do not see our donors abusing or attempting to abuse the DAFs or other funds they establish.

Instead, we see people from all walks of life and levels of means using these funds as an efficient way to carry out meaningful philanthropy, supporting the causes and, where appropriate, the specific causes they care about in an efficient, low-cost, and better-informed manner.

There are two main issues we want to highlight in our response, which overlap in certain ways and would create a much more difficult environment for CFs:

1. The Regulations related to investment advisors will: (a) make it much more likely that certain donors will pick private foundations (PFs) over public charities, including DAF sponsors, which runs counter to decades of legal jurisprudence and would have the result of less money flowing to end-use charities; and (b) provide an unjustifiable advantage to DAF sponsors affiliated with large for-profit financial institutions, as opposed to CFs whose primary charitable purpose is to support the local communities they serve.

2. The Regulations related to what constitutes a DAF will: (a) potentially reclassify many types of funds used by CFs (e.g., Field of Interest Funds, Designated Funds) as DAFs by reason of amorphous rules that would be difficult to administer, thereby disadvantaging the sponsoring organizations that lack the resources to expand their compliance capacity without increasing fees (CFs are already the highest fee DAF sponsor due to the level of services offered, so we are sensitive to rules and regulations that would cause us to raise fees further and make us less competitive); and (b) consistent with the concern over the investment advisors regulations, create a burden borne disproportionately by CFs, because most other DAF sponsors do not offer these other funds and Treasury is not providing ample guidance on what the exceptions are.

We don't wish to imply that these are the only issues in the Regulations of concern to CFs. For example, we have heard from our colleagues about the new treatment of Designated Funds if a donor is on the board of a grantee; the anti-abuse "Daisy Chain" rule, which impacts the scholarship programs run by many CFs; and the effective date of the Regulations and how as written they could be applied retroactively. We share those concerns, and know other responses from individual CFs and interested parties are addressing these issues. In our response to Treasury, we want to highlight the two issues above and then provide stories from communities around the country explaining how these regulations will affect local philanthropy.

## "PERSONAL INVESTMENT ADVISORS" DEFINED AS "DONOR ADVISORS"

The Regulations' expansion of the definition of Donor Advisor to include a new category, called "personal investment advisors," is problematic for several reasons: (1) it is contrary to the plain language of Section 4966 and moves beyond the regulatory

authority delegated to the Treasury; (2) even if the Treasury possesses the authority to adopt such regulations, the personal investment advisor methodology is impossible to implement as drafted; (3) CFs are already subject to state and common law rules about its supervision of the investment of its charitable assets; (4) the Regulations disproportionately harm CFs and sponsors of smaller DAF programs, which would be detrimental to charitable giving overall; and (5) the Regulations will have the perverse impact of pushing more donors to start PFs, which runs counter to decades of legal jurisprudence. The Regulations will create immense operational and logistical problems for CFs that, unlike DAF sponsoring organizations affiliated with a singular financial firm, typically work with a variety of investment advisors.

CFs deeply appreciate the value investment advisors bring to both the operations of our foundations and their donors. In our experience, investment advisors are not encouraging clients to keep money stagnant in a DAF. If fees were the driving factor, they would have encouraged their clients to keep the assets in personal accounts and not give to charity at all, or set up private foundations (PFs) instead of a DAF, where the IRS's own data has shown that the 5 percent distribution requirement has functioned as a ceiling rather than a floor.

The arguments above are explained in the submission by the Greater Kansas City Community Foundation and others. In lieu of separate responses sent by dozens of CFs, we thought it would be useful for Treasury to understand how the Regulations might affect CFs of all sizes from across the country, so we invited our partner CFs to submit first-person stories, many of which focus on the investment advisor issue. These stories are at the conclusion of these comments in an Appendix.

A few highlighted reasons why the Regulations create bad policy:

**The expansion of the definition of "donor advisor" to include personal investment advisors is beyond the authority delegated to Treasury.** Under the Chevron doctrine[1], if Congress has directly spoken to a precise question in its statutory drafting, then an agency "must give effect to the unambiguously expressed intent of Congress." Relatedly, the U.S. Supreme Court has often noted that when "Congress includes particular language in one section of a statute but omits it in another…[the Court] presume[s]" that Congress intended a difference in meaning."[2] The expansion of the category of donor advisors in the Proposed Regulations exceeds the unambiguous scope of the existing statute and, thus, violates the Chevron doctrine.

Congress understood the distinction between donors and donor advisors and investment advisors, and if Congress wished investment advisors to be disqualified

[1] See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 468 U.S. 837, 842 (1984).
[2] Loughrin v. United States, 573 U.S. 351, 358 (2014). See also, City of Arlington v. FCC, 133 S. Ct. 1863, 1868 (2013); Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 311 (1992); Russello v. United States, 464 U.S. 16, 23 (1983).

persons to DAFs and subject to the automatic excess benefit transaction rules, they would have indicated as such. By including certain investment advisors in the definition of donor advisors under the Regulations, the Treasury has effectively created a new rule that circumvents the statutory framework put in place by Congress.

**Common law and state law already provide a regulatory framework to ensure that financial advisors are properly providing services to sponsors and not donors.** State and common law imposes certain fiduciary duties that require sponsoring organizations to safeguard the investment and use of their charitable assets for exempt purposes. Thus, the concerns identified in the Regulations' Explanation of Provisions regarding investment advisors working with both the sponsoring organization and personally with donors, potentially to the detriment of the sponsoring organizations, are misplaced. These rules require thoughtful engagement with the financial advisors retained to ensure that the portfolio suggested meets the donor's charitable objectives now and over the DAF account's lifetime. We know charitable objectives can change over time, and regular dialogue helps us meet our fiduciary duties under our state's prudent investor laws.

As a nonprofit corporation subject to the rules of our respective states, CFs must already supervise financial advisors and the investment of its assets. While the details of a particular donor's personal financial situation are not reasonably known by the CF, we monitor our foundations' investments and those that are retained to manage them. We take the investment of charitable funds seriously and have processes in place to ensure, to the best of their ability, that charitable assets are utilized under the law and the DAF program's purposes.

In keeping with its fiduciary duties, CFs generally adopt robust policies in connection with the selection of every financial advisor who is retained. As required by state law, we monitor the investment performance of all investment advisors we hire. Monitoring includes determining investment performance and compliance with the CF's policies, and we always retain the right to replace an investment advisor. In cases such as this, the Regulations should be consistent with state law.

**The economic impact of the Regulations is almost exclusively borne by CFs and will have little or no impact on sponsoring organizations affiliated with commercial financial institutions.** Under the Regulations, the only way for an investment advisor serving in a dual capacity with the personal assets of a donor to avoid being considered a donor advisor and, thus, escape the prohibition on receiving payment for investment services, would be to be "properly viewed as providing services to the sponsoring organization as a whole." This means that DAF sponsors associated with a specific investment advisory firm, or DAF sponsors associated with custodial firms, could continue to compensate personal financial advisors under the Regulations because, by design, a single firm typically manages the vast majority (if not all) of the DAF program assets. Investment companies that have not yet established an affiliated

organization that would qualify as a sponsoring organization would have an added incentive to establish such organizations to retain their clients, considering the continued surge in popularity of such programs as facilitators of charitable giving.

*By contrast, CFs do not have the benefit and flexibility to compensate service providers in creative ways from other parts of the budget.* The CF either receives services on a pro bono basis, or it pays what it determines to be the fair and reasonable amount for the services it seeks. Thus, the Regulations related to investment advisors, even if they could be implemented, should not be finalized because the only charities that will be significantly affected are CFs that sponsor DAF programs.

**Concerns about incentives for reduced grantmaking, or an advisor charging a reduced fee for personal assets, are misplaced and there is little real-world evidence of these concerns being borne out.**

Concern has been raised that "a counterincentive may be created for both donors and their personal investment advisors to not advise distributions out of their DAFs to operating charities." However, statistics show annual payouts from DAFs are greater – often several times greater – than annual payouts from PFs and other endowments. Furthermore, once a contribution is made by a donor, a donor has every incentive to make grant recommendations regarding a DAF. Donors receive no additional benefit when assets in their DAFs increase due to market conditions. Regarding financial advisors and their motivations, the same can be said to be true any time a donor wishes to spend any money, like buying a home, that is invested with an investment advisor; such expenditure would also reduce the assets managed by an advisor.

"Significant" concern was also raised that donors would receive more than an incidental benefit if the "investment advisor charges the donor a reduced fee for managing the donor's personal assets because the investment advisor also manages the assets the donor contributed to the DAF." The practical reality of this situation is extraordinarily unlikely. Assets contributed to a DAF are in most cases going to be a small percentage of a donor's overall wealth. Thus, for a financial firm to be willing to agree to an arrangement whereby DAF assets are charged a high fee so personal assets can be charged a lower fee, the overall fee the investment advisor would need to be paid would have to be at least equal to what they would have received otherwise. It seems counterintuitive and unrealistic to suggest a personal fee reduction would be given to the charitable assets. We have never seen this happen at our foundations.

## OVERLY BROAD DEFINITION OF DONOR ADVISED FUNDS

The second major issue we wish to highlight before turning to first-person stories from our partner CFs is the definitional criteria for what constitutes a "donor advised fund." The Regulations raise significant concerns, including that they are overly broad. Most

funds held by many CFs, other than those few specifically excepted under the Proposed Regulations, would likely be classified as a DAF and subjected to a regulatory regime that was not originally intended to encompass such funds.

The exception to what is a DAF articulated in the Regulations ignores the realities of a range of charitable funds commonly administered by CFs including Field of Interest Funds (FOIF), Designated Funds, endowments, and fiscal sponsorships. Treasury should be familiar with these concepts, but to provide brief definitions:

- **FIELD OF INTEREST:** A FOIF is aligned with a distinct program area or community. These funds are funded by individuals, families, and organizations who want to ensure their charitable dollars are used for targeted giving led by the CF. New FOIFs may be formed as an initiative of the CF, or with one or more donors. In either case, the CF sometimes convenes advisory committees that include one or more lead donors to the FOIF. This initial support makes it more likely that FOIF will succeed. Similarly, CFs may include one or more lead donors on an advisory committee that either makes grant recommendations to the CF's Board for distribution or otherwise advises on program impact.

- **DESIGNATED:** Designated Funds support one specific charity, staggering donations to the charity over time. Designated funds are especially popular with certain donors who have an affinity for a specific charity but are reluctant to provide funds all at once. Designated funds are often funded by a limited number of donors, most often by a single donor through a donor's estate. Such funds will often include members of a donor's surviving family on an advisory committee to the fund.

- **FISCAL SPONSORSHIPS:** Fiscal sponsorships generally refer to relationships between a public charity ("Fiscal Sponsor") and an individual or group of individuals ("Project Leaders") seeking to engage in a charitable activity consistent with the Fiscal Sponsor's charitable purpose. While the precise structure of the relationship may vary, generally the Project Leaders will raise funds from the public, which are received and administered by the Fiscal Sponsor.

- **AGENCY ENDOWMENTS:** Agency endowment funds are funds held by a CF, typically in perpetuity, for the benefit of a specific nonprofit organization. Such funds usually set up by the same nonprofit and operate similarly to FOIFs or designated funds.

We can illustrate the problem with the proposed Regulations by looking at the types of Advisory Committees that may be set up at CFs to manage these types of non-DAF charitable funds.

There are two types of advisory committees at a CF. The first is a DAF advisory committee, a committee of advisors who are appointed or designated *by the donor* and with advisory privileges over the DAF within the meaning of the PPA (*See* Code Section 4966(d)(2)(A)(iii).) A DAF advisory committee may act as a committee, or individual advisors may exercise their advisory privileges independently.

The second type of advisory committee arises regarding funds that are *not* DAFs, and it is a committee appointed by the CF to assist the foundation in grantmaking from the fund. Funds that might have an advisory committee of this type include the fund types listed above, where the CF benefits from the input of volunteers and holds the power to appoint suitable volunteers to the committees. The advisory committees that CFs appoint for such funds act as a body; no member of the committee has advisory privileges in an individual capacity, as they would with a DAF.

*The Proposed Regulations muddy this distinction and create situations where the second type of committee is regulated as if it were the first type of committee.* The standards created in the Regulations (in the definition of "donor-recommended advisory committee member" and the definition of "advisory privileges") are confusing, will be difficult to administer as a practical matter, will add new compliance costs, and will disincentivize worthy philanthropy and volunteer engagement.

As an example, consider a donor who establishes an environmental field-of-interest fund and is an issue expert in the environmental area. CF staff may meet with this donor regularly to discuss developments in the field, and it should be clear this activity does not convert the fund into a DAF. What makes CFs distinctive is that our donors are part of the community we serve, and they are sometimes issue experts. In contrast, a DAF is established through a fund agreement with characteristics that distinguish it from these other fund types; if a donor does not set up a DAF, it is not a DAF. (For reference, and for a detailed explanation of these concerns, we refer you to the submission provided by The New York Community Trust.)

We urge Treasury to revise the Regulations to adopt a single concept that would be a category separate and apart from scholarship selection committees (delineated under Code Section 4966(d)(2)(B)(ii)(I) and Proposed Treas. Reg. § 53.4966-4), and would preserve the flexibility of CFs to involve donors and related persons in advisory committees of funds that are not regulated as DAFs.

If Treasury chooses not to adopt our recommended concept of a qualified sponsoring organization advisory committee, we urge Treasury to develop regulations that exempt funds benefitting a single identified charitable purpose from the definition of DAF, so funds of that type at a CF would not risk being swept into the definition. For example, a collaborative fund at a CF stands distinctly apart from the classic DAF in that the CF appoints and manages the committee. Collaborative funds as a class pose an extremely low risk of the type of abuse that Treasury is evidently concerned about, since they are

among the most public and publicized funds CFs offer and tend to involve many different unrelated parties. Under whatever statutory rubric Treasury concludes would be appropriate, we urge it to ensure that this important category of fund not be swept into the definition of a DAF. For more on this concept, please see the separate submissions from The New York Community Trust and The Chicago Community Trust.

## THE UNINTENDED CONSQUENCES OF ELEVATING PRIVATE FOUNDATIONS AS A PREFERRED VEHICLE

You may notice a consistent theme among the CFs that have sent in their own stories (see Appendix) for Treasury to consider: *The concern that the Regulations would lead more donors to pick PFs over DAFs for their charitable giving.* The bias in favor of PFs in the Regulations runs counter to over fifty years of precedent under which Congress and the IRS have expressed a preference for public charities like CFs.

To be sure, for some donors a PF may be a preferred charitable vehicle, and we don't begrudge them their choice. However, as CF leaders, in our experience we know a DAF is a better choice for many donors, and it's a key part of the services we offer. The DAF is often the entry point to the CF, where relationships are built over time and often lead to large, permanent gifts that can transform a community. *We think it is misguided policy for Treasury to create policy that would effectively steer more donors to PFs when decades of jurisprudence have sent the opposite message.*

**Legislative Background on the Preference for Public Charities.** PFs were defined and subjected to significant regulations and controls by the Tax Reform Act of 1969, and these rules were not applicable to public charities. These reforms were prompted by Congressional concern over widespread abuses by PFs of their tax-exempt status. As a result, the 1969 Act imposed an excise tax on PFs; required PFs to distribute a minimum percentage of their assets annually; severely limited the permissible relationship of foundations to their founders or donors; required PFs to supervise how the funds they distribute were used; required yearly reports; and exposed them to severe penalties for failure to satisfy these requirements (see IRC, Sections 4940 through 4945).

Significantly, Congress intentionally excluded public charities from PF status on the theory that their exposure to public scrutiny and their dependence on public support would keep them from the abuses to which PFs were subject. The statutory definition of "private foundation" reflects an underlying congressional philosophy which turns upon a crucial distinction between organizations that are privately financed and those that depend upon the public for their support. In the latter case, the organization is subject to the discipline of public opinion. If it misbehaves, misuses its capital, or engages in questionable practices, the public will presumably learn about it, and by the simple expedient of cutting off contributions, correct that which has become offensive. On the

other hand, the privately financed institution is subject to no such corrective influence and therefore must be regulated in some other way.

The disfavoring of PFs (as opposed to public charities) has thus been made clear in the legislative history, as well as numerous court decisions and government briefs. *Yet the Regulations, while not stating it as an explicit objective of Treasury, would have the clear result of more donors being steered towards starting PFs rather than a DAF at their local CF, because it would be easier for these donors to maintain their relationships with personal and trusted advisors without penalty.* The stories in the Appendix provide many examples of this potential outcome, which contradicts decades of contrary authority. The result will be less charitable giving overall because most DAFs are paying out at a significantly higher percentage than the 5 percent minimum required of PFs (which as noted, often operates as a ceiling, rather than a floor).

**CONCLUSION**

While we applaud the intent behind creating greater clarity under the law – clarity which many sponsoring organizations and DAF program administrators have been seeking for some time – the Regulations as written fail to accurately consider how charities operate. They fail to consider the robust systems already in place to root out bad actors and ensure charitable dollars are used for charitable purposes. The mismatch between the Regulations and the plain facts of how DAF sponsoring organizations operate today creates a chasm between intent and application.

**We encourage Treasury in the strongest possible terms to consider the real-world impact of its recommendations, as illustrated by the stories from the individual CFs in the Appendix:** fewer DAFs, more PFs, less charitable giving, and CFs becoming less competitive with other fund sponsors as they are forced to raise fees, reduce staffing, cut services, and/or raise fund minimums (thereby serving fewer donors).

We recognize and appreciate the role of the Department in promulgating regulations consistent with Congressional action, and we know regulations related to the definitions of DAFs, and other issues arising from the Pension Protection Act of 2006, are long overdue. **However, we feel a responsibility as CF leaders from around the country to speak with one voice and express that the Regulations would fundamentally alter the economic ecosystem in which we operate, with no evidence of widespread abuse that requires such dramatic and corrective action.** With no new rules passed by Congress, the Regulations would hamstring us by doing two harmful things to our sector simultaneously, based only on suppositions of malfeasance: First, they would provide a competitive advantage to large commercial DAF sponsors affiliated with financial institutions; and second, they would provide a strong incentive for our largest donors to seek alternatives for their charitable giving, which in turn harms our smallest donors – not to mention the nonprofit organizations

in our community that rely on us. In many cases, the Regulations will have the exact opposite of any positive intended effect: decreasing philanthropy overall.

We encourage Treasury to revisit the Regulations, especially regarding the investment advisors and the expanded definitions of what constitutes a DAF. Any of us would be pleased to testify at a hearing on the Regulations or make ourselves and/or our General Counsels available to you in any manner you deem most appropriate.

Thank you for your consideration of our comments. We appreciate the extended deadline and the opportunity to respond.

Sincerely,

The Advisory Committee of the Community Foundation Awareness Initiative

**[INDIVIDUAL ADVISORY COMMITTEE CEOS LISTED WITH SIGNATURES]**

Dan Baldwin, Community Foundation for Monterey County

Peter Dunn, Greater Worcester Community Foundation

Amy Freitag, The New York Community Trust

Robert Fockler, Community Foundation of Greater Memphis

William Ginsburg, Community Foundation for Greater New Haven

Roxie Jerde, Community Foundation of Sarasota County

Kristi Knous, Community Foundation of Greater Des Moines

Stephen Maislin, Greater Houston Community Foundation

Christopher Nanni, Community Foundation of Greater Birmingham

Mike Parks, Dayton Foundation

Mary Rutherford, Montana Community Foundation

Andrea Saenz, The Chicago Community Trust

Tonia Wellons, Greater Washington Community Foundation

## APPENDIX

## STORIES OF HOW THE REGULATIONS WILL IMPACT COMMUNITY FOUNDATIONS OF ALL SIZES, IN ALL REGIONS

### Arizona Community Foundation (Phoenix, AZ)

In 2023, the Arizona Community Foundation (ACF) became the philanthropic home for a donor who was selling her business and wanted to be strategic with the proceeds that she was planning to gift to charity. While she considered forming a PF, her wealth advisor referred her to ACF because of its personal approach to philanthropy and knowledge of local nonprofits undertaking impactful work across Arizona. Her advisor had an existing relationship with ACF, having referred a previous client, and understood the mutual benefit of leveraging ACF's philanthropic expertise while the advisor's firm could enter a partnership with ACF to manage the invested assets.

The donor ultimately partnered with ACF to establish a DAF, bypassing the painstaking effort required to administer a PF. The donor felt additional comfort knowing she could recommend investment management outside ACF's standard investment pools while benefitting from ACF's philanthropic services. In less than two years, this partnership has resulted in over $1.2 million in grants to Arizona education institutions, with more grants to come.

Today, a third of ACF assets are held outside its standard investment pools. ACF uses this approach for DAFs and other fund types to maximize the investment and growth of assets under management, while building mutually reinforcing relationships with financial advisors. Due in part to this strategy, the average payout rate over the past three years for DAFs with assets held outside of ACF's standard pools has been 14.5 percent, well above the required and typical PF payout rate.

### Communities Foundation of Texas (Dallas, TX)

At Communities Foundation of Texas, we have found that strong partnerships with wealth advisors, CPAs and attorneys grow and strengthen charitable giving across our region. While CFT provides robust options for donors to invest their funds at our organization, we also allow donors to request the use of an external manager for funds with a value of $1 million or more. If requested, the possible investment manager must complete an extensive application and go through a vetting process through our chief investment officer, investment consultant and be approved by the Investment Committee of our Board of Trustees. The investment manager must be completely

independent from the donor, they must agree to adhere to CFT's Investment Policy and Guidelines, and they must agree to meet with our investment staff throughout the year. Monthly statements are provided on the assets in the fund. All monies held at external advisor firms are held in the name of Communities Foundation of Texas, and CFT always maintains ownership and control over the account.

We currently have 36 of our 900 donor-advised funds managed by external advisors. These funds comprise about $71 million in assets, or less than 14 percent of our DAF assets, and about 5 percent of our total assets. Our DAF grant more than 15 percent of their assets each year, and externally advised funds grant 16 percent on average – higher than the funds without outside advisors. Framed another way, allowing the use of trusted investment advisors provides *more* options and *more* funding for our communities, not less. The Regulations would have detrimental effects on charitable giving across all regions.

**Community Foundation for the Fox Valley Region (Appleton, WI)**

Our CF serves numerous donors introduced to us by trusted investment advisors. Theirs are long-standing financial and investment relationships, where we were invited to join for our expertise in effective philanthropy. These relationships comprise 13 percent of our total assets through six firms, providing tens of millions in grants that make a profound impact in our region with a population less than 300,000.

One notable example is an endowment fund established by an anonymous donor, "Florence Nightingale." This pseudonym originated from her strong interest in remaining anonymous, her vocation as a nurse, her generous spirit, and her interest in making a positive impact with her wealth. Florence valued her relationship with her long-time wealth advisor, and it was important to her to keep it intact. She desired a philanthropic partner to support her charities and to engage with and support her children in the same way.

This endowment has been active for more than a decade, providing millions to address food insecurity and other basic needs. The advisor works with us to provide the investment management of the charitable assets and family wealth, while we steward effective giving, due diligence, and reporting, as well as overseeing the investment performance. Many millions of dollars have been granted, and much more will follow through her children as Florence passed away last year. Not only did Florence give generously during her lifetime, but she also provided an estate gift to grow the long-term support from the DAF she established. Her legacy lives on through funds advised by her children. It is important to philanthropy in our region that we can continue these collaborations with wealth advisors like the one who worked with Florence.

**Community Foundation for Greater Atlanta (Atlanta, GA)**

Following the Great Recession, economic confidence was shaken, and donor giving dipped – not just in Atlanta, but at large charitable institutions throughout the country. To provide for institutional autonomy and ensure our donors' continued philanthropic impact, our CF initiated a program to allow donors with a minimum fund size to request that we work with their own investment advisors. We did not have such a program previously. Fifteen years later, we now have 155 donors paying a minimum fee of $5,000 (mostly funds over $500,000 in assets), and these separately managed funds generate one-third of our total fee revenue, which supports out institution as a whole. The $633 million invested in these funds represents 42 percent of our total funds under management. This shows just how critical the option to allow fund advisors to request that we work with their own advisors is to the work of our foundation.

In 2023, those 155 funds distributed more than $45 million in grants, representing almost a quarter of our total grantmaking. The fees the donors pay fuel the work done by our foundation in pursuit of equity and shared prosperity for all who call Atlanta home, through our focus on regional affordable housing, arts, democracy, and economic mobility, and other issues.

The benefit is two-fold: First, we use these administrative fees to fund our institutional work towards creating a more equitable region; and second, this option gives our donors an option other than setting up a private family foundation. If these donors used PFs instead, not only would our overall payout be far lower, but our grassroots work to change the trajectory for the number one city for income inequality in the country would suffer a dramatic setback.

**Community Foundation of Greater Birmingham (Birmingham, AL)**

At our foundation, the leading CF in a mid-sized Southern city, one way we attract new donors is by communicating the benefits of our platform to professional advisors. These advisors are the number one referral source of new donors and new dollars for our community. It's relatively easy to make the pitch to estate attorneys and accountants, but it is a much harder sell to financial advisors who may initially view the CF as competition. If the advisors can recommend the foundation for their clients' charitable endeavors and still manage the investments, however, this removes a major impediment to them recommending us. Our policy of allowing donors with DAFs over $500,000 to request that their financial advisor manage the DAF's assets allows us to align our interests with the interests of both donors and these local advisors.

Out of our 340 DAFs, 29 of them are now managed by the donor's requested advisor. These 29 DAFs hold almost $35 million in charitable dollars for our community. These higher-end donors granted almost $5 million from their DAFs in 2023, a payout rate of around 14 percent. If these donors went elsewhere, or opened PFs instead, our concern

is less money would be granted overall. This means less money for local nonprofits doing regional cooperation work, striving to make Greater Birmingham a thriving community, helping people here overcome persistent poverty, working to foster equity and inclusion, and creating opportunity for all.

To cite one example, one of our donors whose personal advisor was permitted to manage the assets in the DAF played a critical role last year in supporting the University of Alabama at Birmingham's (UAB) new Science and Engineering Complex, with a grant of $2 million. This new building will allow UAB's School of Engineering to blend advanced hands-on learning and real-world industry experience to prepare students for early-career success, and will include a peer learning lab, mentoring resources, and an Internship and Career Center. This direct investment in our city and its future leaders is what we believe would be harder to accomplish in a world governed by the Regulations.

**Community Foundation of Greater Des Moines (Des Moines, IA)**

At our foundation, we strive to reduce and remove barriers to giving, both in our local community, and beyond. One effective way we've found to accomplish this goal is through our Charitable Investment Partner (CIP) program. Through our CIP program, donors can continue to utilize the services of their trusted financial and investment advisors to consult on the investment decisions of their charitable assets. Since 2006, we have grown this program to 85 Charitable Investment Partners that manage the investment of over $225 million in charitable assets. These CIP partners have become our largest referral source for new charitable donations.

Currently, 528 of our 2,522 funds use an advisor recommended by a donor, and the assets in these funds represent just over half of our total DAF assets. Our DAFs are extremely active, with an average payout rate of 12 percent among all funds and 17 percent among non-endowed funds. Our concern is that if fund advisors could no longer request their own advisors, it would mean more of them would set up PFs, and distributions to charities from those funds would fall to 5 percent. We are also concerned that if we no longer allow fund holders to request that their contributions be invested by their trusted advisors, those funds will be moved to larger national/ commercial firms and fund holders will lose the personalized service and community impact they have experienced through working with us.

**Community Foundation Lorain County (Elyria, OH)**

Our CF doesn't use many outside advisors, so we wanted to raise a few concerns outside of the investment advisor context. One of our biggest concerns is our Affiliate Funds. Looking at our Women's Fund, between 2019 and 2023, the annual donations advised by that fund's Advisory Committee and our Board (in our case around 15 members/donors each year) is less than 3 percent of what the Fund received in

sponsorships, external donations, legacy gifts, and event revenue. None of our Women's Fund Advisory Committee or Board of Directors are founding donors of the main Field of Interest Fund or any of the underlying supporting funds. If we understand the proposed regulations correctly, the idea that these funds would be converted to DAFs over such nominal contributions is frustrating and makes absolutely no sense to us.

Another strange situation that might be prompted by the Regulations: We have a local attorney who created a Designated Fund nearly 20 years ago in memory of his daughter. It supports one hospital that offered her holistic support before her passing. Because it is designated, he cannot change the hospital as the beneficiary. But if the hospital offers for him to join the Board, the Regulations seem to require that this fund becomes a DAF. If it becomes a DAF, can the donor then change the designated charity supported by the fund, if (for example) the donor becomes disenchanted with the hospital while serving on its board? What about after his board tenure ends? Would it then revert to a Designated Fund?

Finally, almost every nonprofit, CF or not, does some board member fundraising. Are those opportunities now off the table because of the DAF recharacterization? It should be noted that for CFs, one of the main opportunities for volunteer engagement is the participation of various boards and/or committees. It will be much more difficult to build trust with our donors if we cannot offer them the ability to see how we do our work first-hand. Most of the volunteer offerings we have at our foundation involve participation in decision making on how we distribute funds out of our unrestricted, field of interest, and designated funds. If these funds are all recharacterized as DAFs because donors are involved with them in some capacity, this alters our business model and affects our ability to get donors engaged in our work.

We believe more consideration needs to be given to these real-world examples and how they will hamstring CFs more than other DAF sponsors, who tend not to offer these other charitable funds.

**Community Foundation of the Ozarks (Springfield, MO)**

The Community Foundation of the Ozarks' (CFO) mission is to enhance the quality of life through resource development, community grantmaking, collaboration, and public leadership. We pursue our mission by deploying multiple strategies including the opportunity for donors to recommend their own financial advisors to manage donated assets. We call this strategy the advisor-managed program.

The program was initially developed in the late 1990s for the CFO to strategically become the charitable arm of local financial advisors. It is a win-win situation when all parties (CFO, donor, and advisor) align for the common good and to pursue our mission by accepting new charitable assets and increasing local impact via qualified

distributions. The financial advisors in the program are some of the strongest advocates for the CFO and for the betterment of communities served. A significant number of advisors already volunteer their time and efforts in some capacity with the foundation via the Board of Directors, Investment Advisory Board, Audit/Operations Committee, Scholarship Committee, and other ad hoc groups.

As of November 30, 2023, the CFO owned and administered $73 million in our advisor-managed program, which is approximately 15 percent of our total assets. Of that, $41 million, or 57 percent of the advisor-managed program, was solely dedicated to DAFs, including 40 charitable funds. Most advisors in the program establish their own charitable pooled account, in which current and new donors recommended by the advisor can benefit from the same administrative and programmatic functions of the CFO. In certain instances, a few funds with balances over $1 million request to work with a particular advisor. After due diligence, if agreed to, these accounts (along with all other advisor-managed accounts) operate under the strict guidance of the CFO's investment policy statement and frequent oversight of asset allocation and performance by our staff and investment committee.

Last fiscal year, the program granted $7.5 million from its DAFs, with a payout ratio of 21 percent, well above PF minimum requirements. The funds in the program generated fees amounting to about 4 percent of our total operating revenues. Administrative fees are a crucial component of the operating budget allowing our CF, a public charity, to hire staff for administrative, fundraising, and programmatic functions.

The Regulations bring challenges to the current and future administration of the program. If fees for investment management are prohibited transactions, this would eliminate any incentives for an advisor to work with the CFO. This would also favor larger investment firms, rather than encouraging partnerships with local with financial advisors who not only know their clients best, but also work, live, and play in the same community.

**Community Foundation for Southeast Michigan (Detroit, MI)**

Our foundation has been helping individuals, families, and businesses in our seven-county region fulfill their philanthropic goals for 40 years. We administer 1,400 charitable funds, including 500 DAFs with more than $1.2 billion in assets. In 2023, we granted more than $117 million to support health, arts and culture, environment, education, youth, caregivers, and economic development. DAFs, including those managed by personal investment advisors, are a vital tool in that effort.

The trusted personal investment advisors to our donors play a critical role in charitable giving by their clients. With a deep understanding of their clients' life goals, values, and passions, they are uniquely suited to discuss their clients' philanthropy. Investment

advisors partner with our staff to achieve their clients' giving objectives because of our knowledge of the needs of communities and the nonprofits in our region.

This point is exemplified in one story: In the 1990s, an advisor, on behalf of a local business owner, approached us to establish DAFs for the donor and his family members with a gift of $10 million. The advisor recommended us as a partner because the donor was committed to supporting the region where his philanthropic resources were first created. As a devout Christian with a strong belief that one's treasure is where one puts his dollars, the donor requested that we invest the DAF assets in investments that aligned with the donor's Christian values.

As our investment advisors could not accommodate the donor, he requested that his personal investment advisor manage the investments. We conducted extensive due diligence involving the advisor and his firm; and as with all engaged investment advisors, we directly contracted with such advisor, holding the advisor to defined performance and ethical standards, requiring reasonable fees, approving investment allocations, and retaining the sole discretion to discharge the advisor. Through our partnership with the donor and his requested advisor, the donor and his family have recommended more than $21 million in grants to support early childhood programs, educational institutions, health causes, and human service organizations in our region.

If the Regulations were in effect in the 1990s, our CF would have been precluded from working with the donor's requested advisor. The donor would have established a PF to invest the funds as he desired, with less oversight, higher expenses, and fewer dollars supporting charities. We strongly contend that oversight by, and partnership with, the CFs across the country is significantly more in the public's interest.

**Community Foundation of Western Massachusetts (Springfield, MA)**

As a midsize but growing CF, the ability to permit donors to recommend that we work with particular investment advisors is an important part of our strategy. For example, a very philanthropic donor was referred to us through her investment advisor with whom she has a longstanding, trust-based relationship. In partnership with this advisor, the donor opened a DAF at our foundation to facilitate her legacy planning. This donor was subsequently guided by her investment manager into increasing gifts into the DAF and committing much of her estate to causes in the community. She can also access a directed investment strategy through her trusted investment advisor that matches her long-term philanthropic commitment and values. For example, this donor has supported causes such as food security and workforce training opportunities, and the average payout rate from the DAF she established over the past seven years has been 22 percent. If this person had opened a PF instead to maintain that investment advisor relationship, their grant recommendations would undoubtedly have been less, with smaller impact in our local communities.

As we grow our Advisor Managed Fund program (open to funds with assets of $100K or more), we anticipate leveraging a donor's charitable dollars with a targeted investment strategy that matches the donor's value system. For example, a donor focused on supporting causes surrounding climate justice could have a dedicated and highly targeted environmental strategy through an individually managed DAF. Because most CFs don't have investment pools targeted to a donor's outcomes (like climate justice), the recommendation and acceptance by the foundation of the donor's requested advisor meets that need for both the donor and the sponsoring organization. However, under the proposed rules, that opportunity would likely disappear.

**The Dayton Foundation (Dayton, OH)**

The Dayton Foundation is one of the oldest and largest CFs in the nation. Established in 1921, our mission is to help the community through philanthropy and community leadership, with DAFs playing a vital role in this work. When our first DAF was established in 1983, we had 17 funds totaling $4 million in assets. Forty years later, we've grown to 4,145 funds totaling $1.09 billion, with DAFs and committee-advised funds comprising 2,442 funds totaling $631.3 million. This represents 58 percent of our current assets, with the remaining assets held in designated, field-of-interest, unrestricted, agency and scholarship funds.

Included among our DAFs are Charitable Checking Accounts,℠ a free DAF option, and Family Foundation *Plus,*℠ a cost-effective, tax-wise and less burdensome alternative to a private foundation. We also offer committee-advised funds as a way for groups of citizens to fundraise for an issue, school, or community with the foundation's oversight. We provide the infrastructure and backroom support so they don't need to create a PF or 501(c)(3). Instead, they can focus on raising money to do the most good. If the Regulations are finalized and committee-advised funds are classified as DAFs, it will be detrimental to the current way we're able to assist these groups. Specifically, we'll be unable to pay their program-related expenses without doing expenditure responsibility, and we'll no longer be able to allow any of the funds' donors to serve on their boards.

A second major issue is the investment advisors section of the Regulations. Donors at our CF may choose from 70 approved investment managers – but we also allow DAF donors with a minimum gift threshold of $250,000 to recommend their personal investment advisor, with whom they have a longstanding and trusted relationship. All investment managers must meet stringent criteria, including compliance with the Foundation's Investment Policy, and be reviewed and approved by our volunteer Finance Committee and Fund Evaluation Group, which provides third-party investment oversight. The performance of each manager must be measured against pooled assets and benchmarks and is reviewed quarterly by Fund Evaluation Group and the Foundation's Governing Board.

We deeply value the longstanding relationships we've built with local managers, who have helped us reach this point in our history and in national rankings. We receive calls daily from advisors who see us as the charitable "expert" and as an extension of their team. Removing the option of clients using their financial advisors to manage their DAF's assets would impact both their and our relationships with advisors, as well as discourage advisors from discussing charitable giving as part of their clients' wealth management and estate plans. Also, most of our DAFs are managed as part of pooled funds, not individual accounts and, therefore, have lower fees and greater diversification of assets. Once a financial manager has a pool, he or she typically continues to encourage more clients to create a charitable plan.

Working closely with financial and estate planning advisors creates win-win scenarios for them and their clients, as well as a win for our community through increased charitable contributions. In our last fiscal year, $124 million was awarded in grants from all Dayton Foundation funds – an all-time high – 60 percent of which ($74.5 million) came from DAFs and committee-advised funds. The average annual payout for all our DAF account types is 22.6 percent, well above the 5 percent required by PFs. If the Regulations are approved, we fear more families will look to establish PFs, which come with significantly higher administrative requirements and compliance costs. It also would greatly harm established relationships with our investment community, create unnecessary and costly administration, and reduce charitable giving to CFs nationwide.

**Fairfield County's Community Foundation (Norwalk, CT)**

Fairfield County's Community Foundation (FCCF) operates within one of the most economically disparate regions in the United States. Our mission to foster a region where everyone has an equitable opportunity to thrive hinges on the trusted partnerships we cultivate with our donors and grantees. DAFs represent a significant source of fee revenue and play a pivotal role in stewarding grants aimed at driving impactful change. FCCF has $250 million in assets, including $19 million invested by external investment advisors. Since July 2020, the funds managed by these advisors have granted $4.6 million, a 24 percent payout.

Central to our new strategic plan is the imperative to educate Fairfield County residents about the pressing needs of our community, and engaging with wealth managers is a critical aspect of our strategic approach. Despite initial unfamiliarity, our local wealth advisors have come to recognize the value proposition in integrating our expertise into their clients' charitable work. Given the importance of these relationships, the proposed Regulations pose significant challenges to our work. More troublingly, they threaten to stifle philanthropic endeavors within our community, diverting funds away from initiatives that serve the common good and reducing charitable giving overall.

**GiveWell Community Foundation (Lakeland, FL)**

Our community foundation in Central Florida allows DAF advisors with assets over $1 million to request that a particular advisor advise the DAF they establish. Twenty-six years after our founding, roughly half our $550 million in assets are in "individually managed accounts" (IMAs), as opposed to participating in our other investment pools. The DAF advisors have cited their ability to request that we work with their own advisor as a key factor in their decision to come to the community foundation.

Calendar year 2023 marked a new granting record: GWCF granted out $88.2 million, $52.5 million of which came from these IMAs. The IMAs had a 19.5 percent payout rate, which exceeds our average payout across all DAFs. We just have not experienced the concern voiced by critics that the use of an outside advisor provides an incentive for lower payouts. Plus, if our IMA fundholders went elsewhere due to the proposed Regulations related to advisor fees, we would have to reduce our staff significantly or increase fees for our remaining donors. This seems shortsighted when other alternatives could address Treasury's concerns, such as a certification process whereby the advisor and the donor acknowledge that the donor is not receiving any personal benefit from the relationship.

**Greater Houston Community Foundation (Houston, TX)**

As the largest nonprofit organization in Houston, our foundation has over $1.35 billion in assets under management in DAFs, Supporting Organizations, Scholarship Funds, and other philanthropic solutions. These assets include $848 million in DAFs at the end of 2023, of which 45 percent – or $606 million – is managed by third-party investment managers. Our donors can recommend a third-party manager if the fund's assets are above $500,000 and the investment manager agrees to abide by our investment policy. As with grantmaking out of a DAF, the donors are not "picking" their advisors; they are "recommending" them, and then the foundation does its due diligence.

We rely on our close relationships with our professional advisors for a large portion of new clients to the foundation. In 2023, our third-party accounts increased by 18 percent. Each year, between 50 and 70 percent of new funds come from professional advisors, who have come to know the value of our philanthropic impact for their clients. Currently, 64 of our DAFs are managed by third-party investment managers recommended by a donor/advisor. Without the referrals on these 64 accounts, our community would not have received $68 million in 2023, causing a significant loss of high-impact philanthropy.

We believe the Regulations prohibiting the compensation of third-party investment advisors would lead to many high-net-worth individuals increasing their donations to PFs, which give significantly less money to charity each year than the average DAF. Consider our recent payout rates as an illustration: In 2023, our foundation received

$212 million in new contributions, and our DAFs granted $193 million, with a 25 percent payout measured against 2023 assets. Our average payout rates of DAFs managed by outside investment advisors was 24 percent, which is essentially the same as the payout across all DAFs. Thus, we see no indication that engaging an outside investment advisor results in lower payout rates. However, enough data exists to suggest philanthropic contributions would decrease significantly if these donors opted for PFs instead of DAFs.

**Greater Kansas City Community Foundation (Kansas City, MO)**

At the Greater Kansas City Community Foundation, we observed for decades that donors would choose PFs over DAFs so they could have their own investment advisors manage the charitable assets. In 2000, we realized the law provides the same investment flexibility for DAFs. Today, approximately 72 percent of our DAF assets ($2.1 billion) are invested by investment advisors. We follow the law by making sure that (1) we, as the sponsoring organization, hire and oversee each advisor's performance, (2) fees are reasonable for the services rendered, and (3) advisors cannot manage DAFs they or their family members establish. This means wealth advisors can do what they do best: investing and growing assets, and community foundations can focus on helping donors make grants.

By partnering with investment advisors, we allow DAF donors to individualize and align their philanthropic investment philosophy with their own grantmaking interests, religious beliefs, and personal values. If donors could no longer request that we work with their own investment advisors, we would need to allocate additional resources to accommodate, for example, faith-based investment requirements and restrictions, which can vary widely among different religions and denominations.

The best part is these donors grant more than they would with a PF. At the end of 2022, we had 4,529 active DAFs, and 2,497 (55 percent) were advised by the donors' preferred financial advisors who were recommended to us. The average payout rate for the 2,497 DAFs over the past three years has been 14.5 percent. That is nearly three times greater than PF payouts. If donors must use PFs instead of DAFs to involve their financial advisors in charitable giving, it could result in decreasing grantmaking by two-thirds, because most PFs typically perceive the 5 percent payout requirement as a ceiling rather than a floor.

**Lincoln Community Foundation (Lincoln, NE)**

Lincoln Community Foundation (LCF) has approximately 650 DAFs. We view DAFs as important tools in fulfilling our mission to facilitate giving at all levels of financial capacity. We believe philanthropy should not have barriers, so we offer DAFs with no

fees, provided the fund is held in cash and not invested. As a result, most of our funds are held in cash, the average balance of which are less than $10,000.

Our ability to offer DAFs at no cost to our community is made possible because of revenue generated on invested assets, such as our endowed funds and our invested DAFs. Donors with at least $100,000 in their DAF are eligible to request that the fund assets be managed by a particular investment advisor. The fees earned from these funds has a material impact on our annual operating budget and gives us the capacity to offer the cash DAFs at no charge. In other words, allowing our higher-end donors to recommend their own advisors allows us to provide services to those of more modest means. Including these larger donors, our DAF grant distribution rate averages 16.5 percent, which is over three times the payout rate of a PF.

In short: The larger donors to LCF – who frequently request to have a particular advisor and who also have payout rates consistently above 5 percent – support our ability to provide no-cost DAFs to other donors. If the Regulations make those higher-end donors go elsewhere, this upsets the apple cart in multiple ways and makes it more difficult for us to provide services to donors at all levels. We will lose the high-end donors to private foundations, and their giving will decline; and at the same time, we will lose the lower-end donors because we won't be able to afford to provide free accounts to them. We are not alone in this dynamic of "the large accounts enable us to provide services to the small ones" – it's something you'll see at many CFs. This is why many CFs argue the Regulations disproportionately affect our field, compare to other national DAF sponsors that can more easily absorb the impact.

On a related topic covered in the Regulations, LCF has a partnership with a local trust company, where we will provide DAFs to their high-net-worth clients in a private label arrangement. These DAF assets are managed by the trust company, who receives a fee to manage the assets. The goal of the partnership is to support the charitable goals of the trust company clients while also supporting LCF; this as opposed to the trust company starting their own commercial DAF program. The proposed rule that all DAFs would need to have the same opportunity for investment in any pool would inhibit this partnership, as only DAFs derived from the partnership would be managed by the trust company. As a result, the trust company would likely start their own DAF program which could harm LCF. We could not generate the fee revenue from these donors, funding our ability to offer cash DAFs at no charge.

**The Minneapolis Foundation (Minneapolis, MN)**

The Minneapolis Foundation initiated a board-approved program in 2005 that enables wealth advisors to propose and manage assets for the foundation that are held in DAFs. These advisors must be approved by our team. In most cases, the advisor referred the mutual client to the Minneapolis Foundation, and the advisor maintains an investment

advisory relationship with the client, in addition to the advisor's relationship with us. In 2014, the foundation had five such investment relationships, comprising 25 DAFs and $12 million in assets (just 2 percent of our assets). Today, there are 27 such investment relationships and 90 DAFs as part of the program, representing $200 million (20 percent) of our assets.

While the asset growth has been important for the operational sustainability of the CF, these new DAF relationships have generated significantly greater grantmaking overall from our DAFs, rising from $33 million in 2014 to $75 million last year. Because these investment portfolios can be closely tailored to the time horizon, risk tolerance, and charitable interests of the fundholder, even more community impact has been generated. For instance, one fundholder who is risk averse, and has a relatively short time horizon for their charitable funds, included Calvert Impact Notes and CDs issued by local CDFI institutions. Another fundholder with a long-term, multi-generational focus has complemented their grantmaking focus in healthcare, conservation, and education with an impact-focused investment portfolio split between publicly traded securities and private impact investments in Africa.

The relationships forged between the fundholders, wealth advisors, and the CF has been a powerful combination to dramatically increase the community impact possible from the DAFs. We are concerned that the regulations would make these relationships much harder to develop and the community would suffer.

**North Texas Community Foundation (Fort Worth, TX)**

North Texas Community Foundation allows donors with funds over $500,000 to recommend an investment advisor to manage assets in their DAF. In such cases, we are the "client" on the account, with exclusive legal ownership and direction over all assets, per the IRS. Such advisors must comply with the Foundation's Investment Policy Statement. Performance is monitored by a volunteer committee of investment professionals and must measure favorably against our pooled assets and pre-determined benchmarks. Outside investment advisors currently manage 25 percent of our $513 million in assets.

Several years ago, an investment advisor introduced us to a charitably inclined client with no heirs. Our foundation now supports her charitable giving and we have been designated as the beneficiary of her entire estate, valued at more than $100 million. Without this referral, these millions could have gone to non-charitable uses, or been directed to a PF that permits the use of donor-chosen investment advisors or family members. Instead, these charitable assets will support local charities that serve veterans, children, art, and animals – forever. Our trusted relationship with the advisor made this endowed gift to our CF possible, and as a result the North Texas region will

benefit for generations. We are concerned that the Regulations will make donors like this one less likely to choose the CF, with less money getting into the community.

**Oklahoma City Community Foundation (Oklahoma City, OK)**

The Oklahoma City Community Foundation has invested time and resources for over twenty years in developing relationships and partnerships with financial institutions and their advisors. Currently, we have 19 DAFs with a total value of $10 million in assets managed by investment managers requested by our donors. We've had more funds in the past that have been spent down, or the advisors have removed themselves from the investment manager role due to low fund balances and/or the compliance required on their end to remain active with the fund. Often, those who have worked with us as an advisor now refer clients to us, even if they don't manage the funds. These relationships have also opened the door to additional donors, such as those interested in establishing scholarships and field of interest funds. We don't allow donors to request a particular investment manager on those funds, but our DAF partnership is key to getting them to the foundation.

These partnerships provide a win-win for the donor/client, the advisor, and our community. Many of our partner firms offer their own DAF platforms, but advisors choose to team with us – primarily because of the value and expertise we bring to their clients regarding philanthropic strategies and charitable opportunities. For those clients looking for a tax deduction to accomplish simple transactional giving, the large national DAF providers are a suitable option. However, those looking for ways to be more intentional in their giving come to us for advice and service. As a philanthropic leader in our community, we pride ourselves in matching donors with causes where they can have maximum impact, whether immediately or in the future.

**Pasadena Community Foundation (Pasadena, CA)**

The Pasadena Community Foundation is a modest-sized CF. We hold about one-third of our assets in DAFs; our other assets are a mix that includes endowments and scholarship funds. DAFs are just one way we engage donors. While the DAF allows them to recommend gifts to charities of their own choice, it also provides us with a way to engage them in our local work. For example, during COVID, we got huge support from our DAF holders for our emergency fund. We have also had many DAF holders support our Affordable Housing Initiative, our Education Grant programs and our Arts & Grants program – all of which benefit our local community.

We have a handful of DAFs that are managed by outside managers requested by donors. These are typically funds in the $1-2 million range. These donors are usually introduced to us by their investment manager as an alternative to a PF. If we did not allow for these outside manager relationships, we know those DAFs would not be

established at PCF, and perhaps their giving would be limited to 5 percent annually, whereas with us these donors tend to give substantially more. Building relationships with these donors has been an important way to enhance our local impact. Losing that flexibility and source of referrals would negatively affect our work and make it much more likely these donors would choose either a PF or a DAF associated with a large private investment firm for their philanthropy.

**The Pittsburgh Foundation (Pittsburgh, PA)**

For our foundation, the biggest potential negative impact of the proposed regulations would be with our Third-Party Investment Manager (TPIM) Program. Charitable assets invested by the donor-requested financial advisors in our program have risen dramatically – from $29 million at its inception in 2008 to $202 million last year. That translates to about $80 million in grants made for community benefit, and another $35 million generating returns in other investment programs at our foundation. In most years' fundraising efforts, new gifts from donors in our TPIM program have outpaced gifts to our internal portfolios.

To illustrate the increased societal benefit made possible through just one of those gifts, consider the Pittsburgh family referred in 2014 to our foundation by the establishing family member's financial advisor in his capacity as a TPIM. The establisher created an endowed DAF advised by each of her three children to engage them in charitable giving. Since their creation, more than $8.6 million has been contributed to the funds, and nearly $5 million has been granted from those funds to organizations dedicated to a range of causes, including: helping residents meet basic needs, removing inequities in underserved communities, advancing social justice, improving public school education, protecting the environment, and elevating arts and culture.

Each of the three children as parents plan to engage their children in the same commitment to charitable giving. Already, they are supporting public-school programs, immigrant and refugee services, and juvenile justice interventions. All this charitable good has been made possible through our foundation's TPIM program. The DAF establisher's financial advisor tells us that if she had not known about the foundation, she would have pursued the same philanthropic goals by creating a private family foundation.

Based on that experience and many others, we view the TPIM program as fulfilling the mission of our foundation at a level that would not be possible without it.

**Quad Cities Community Foundation (Bettendorf, IA)**

As a mid-size CF serving diverse urban to rural populations in America's heartland, engaging donors and their local trusted advisors is key to setting up philanthropic plans

that directly benefit our community's needs. Donors come to us with their advisors, and often by referral by their advisor, for our philanthropic guidance and for our ability to leverage each charitable grant for greatest community impact. Our region's donors don't want the added expense of for-profit philanthropic advisors; they work with us as their local trusted nonprofit resource for community generosity.

Because we are in close relationship with both donors and advisors, we work together to ensure charitable dollars are granted out into the community. The DAFs that participate in our separately managed account program (where donors may recommend that we work with a particular investment advisor) represent 10 percent of our DAF assets and are all permanently endowed, maximizing the impact of principal gifts through smart investing and active granting to community causes. As with all charitable gifts entrusted to us, our foundation maintains complete control over all investments and grants from these funds. Donor requested investment managers, if we agree to work with them, work for us, at our direction. With the ever-increasing array of remote, automated, transactional financial services, we offer low-cost, high-impact, individualized guidance for donors and their advisors, resulting in continued charitable investment. These relationships result in meaningful change for our region.

**San Angelo Area Foundation (San Angelo, TX)**

The San Angelo Area Foundation has a policy that allows donors over a certain minimum fund size to request that we work with their own investment advisors. This policy is for any type of fund we receive, which includes DAFs are over $1 million. The gift is a completed gift, and the donor and investment advisor know our Foundation owns and is responsible for these funds. Both parties know we can terminate an investment advisor if they don't follow our investment policy.

Currently, 8 of our 462 funds have an external investment advisor recommended by the donor. These 8 funds total $11 million, which are set up as DAFs, scholarships, and designated endowments. While this seems small to a casual reader, these 8 funds have provided over $8 million in grants and scholarships over the past 20 years. Our concern is that if our donors could no longer use their own investment advisors, it would mean more of them would set up PFs, and payout from those funds would fall to 5 percent. That would mean less getting out the door to charity every year, as these funds can (and do) grant over 5 percent a year.

As a relatively small CF, it is puzzling to us that the Pension Protection Act passed in 2006 and 17 years later, Treasury's Regulations would provide a distinct advantage to large DAF sponsors. While they would be subject to the same regulations, the real-world result is these larger firms can more easily address "compensation" for outside advisors because they are also managing their clients' personal non-charitable assets. Thus, the impact of the Regulations – intentionally or not – falls on smaller sponsoring

organizations and smaller investment professionals. If they become final, it will cause us to move investment managers around, hurt existing relationships, diminish future charitable giving tools, and hurt future charitable giving.