Congress of the United States
Washington, DC 20515

April 19, 2024

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

Dear Secretary Yellen:

As supporters of the charitable sector and philanthropic organizations in our communities, we write in response to the recent Notice of Proposed Rulemaking pertaining to definitions and rules related to donor-advised funds, REG-142338-07 (the "Regulations"). We are concerned these regulations could have the unintended consequence of impeding charitable giving in our communities, particularly at our local community foundations. We urge Treasury to adequately respond to the concerns raised by the respondents to Treasury's request for comments before issuing final regulations.

Donor-advised funds (DAFs) are charitable giving vehicles that allow individuals and families to contribute to local charities. DAFs provide flexibility to donors in their grantmaking, as some donors grant out all or most of their contributions in the first few years, while others may let the charitable funds grow prior to being disbursed. DAFs are now a key tool utilized by community foundations, national sponsors, faith-based and single-issue charities, and other nonprofits to help donors maximize the impact of their charitable giving. Grants from DAFs to charities increased to $52.2 billion in 2022, more than doubling in the past five years, and DAFs have an annual distribution rate regularly exceeding 20 percent.

Given the rising popularity of DAFs, we are concerned the Regulations could limit their appeal and potentially undermine charitable giving for several reasons.

First, the Regulations are overly broad, and may cause a chilling effect on charitable giving to DAFs. By making an investment advisor a donor-advisor, the Regulations could severely restrict the role of an investment advisor, and thus lead to donors choosing other vehicles. For instance, the Regulations could lead donors to pick alternative charitable vehicles with lower annual payouts, thereby negatively impacting the many charities that have come to rely on such funding.

Second, under the Regulations' broad definition of the term "donor-advised fund," many funds held by certain public charities could be classified as a DAF, and thus be subject to a more complicated regulatory regime. For example, counting field of interest funds (FOIFs) as DAFs would be particularly harmful at community foundations, where these funds support important local initiatives, often in perpetuity. Subjecting FOIFs, designated funds, or funds with advisory committees to the same substantiation requirements and limitations as what have been

historically considered DAFs could be confusing for donors, expensive for sponsors, and lead to less money getting to end-use charities.

Third, the broad definition of the term "taxable distribution" could infringe on a DAF's charitable operations and objectives. Generally, under the Regulations, any distribution to an individual, or not for a "charitable purpose," is subject to penalty. By broadly defining a "distribution" as any grant, payment, disbursement, or transfer from a DAF, the Regulations could subject payments made to cover necessary operating charitable expenses – such as payments to philanthropic advisors and due diligence expenses – to an excise tax.

Finally, the proposed effective date could apply to DAF sponsors retroactively. This is particularly onerous given that the Regulations would alter several longstanding industry practices in the DAF and charitable sectors. While the preamble of the Regulations states that they are informed by comments collected in 2006 and 2007, both the DAF landscape and the regulatory frameworks under which it operates are significantly different from 17 years ago.

The charitable sector plays a crucial role in all our districts, and DAFs are critical to those efforts during good economic times and bad. When the economy is good, donors can make substantial gifts to charity, both in cash and stock, and essentially "pre-fund" years of charitable giving. During challenging economic times, the data show DAFs make grants at record levels and ensure local charities have the requisite resources to maintain their level of services. We have seen DAFs be especially effective during times of crisis and immediate need, like the COVID-19 pandemic, natural disasters, social unrest, and economic downturns.

For these reasons, future regulations should not impede the success of this thriving and flexible charitable tool. In February, many community foundations, national DAF sponsors, and other charitable groups submitted comments to Treasury laying out their objections to the proposed Regulations. We urge your full and fair consideration of their concerns, consistent with applicable statutes and regulations, before issuing final regulations that could undermine the charitable giving that so many of our communities depend upon.

Thank you for your consideration.

Sincerely,

Jimmy Panetta
Member of Congress

Vern Buchanan
Member of Congress

Danny K. Davis
Member of Congress

Carol D. Miller
Member of Congress

Terri A. Sewell
Member of Congress

Michelle Steel
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