

UNITED STATES DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE

TELECONFERENCE PUBLIC HEARING ON PROPOSED
REGULATIONS

"TAXES ON TAXABLE DISTRIBUTIONS FROM DONOR ADVISED
FUNDS UNDER SECTION 4966"

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1 P R O C E E D I N G S

2 (10:00 a.m.)

3 MS. EDLUND: Hi, I'm Taina Edlund. I'm
4 the Senior Technician Reviewer who is also in
5 Lynne's division.

6 MR. HYDE: Hi, my name is Christopher
7 Hyde. I'm an attorney. I'm also in Lynne's
8 division.

9 MS. MACKENZIE: I'm Amber McKenzie. I'm
10 an Attorney Advisor with the Office of Tax Policy
11 at Treasury.

12 MR. THOMAS: I'm Ward Thomas, also in
13 Lynne's division. I am listed as the primary
14 author of the NPRM for better or worse. And let's
15 see. At least I'm not sitting on top of a dump
16 tank right now. So, I am also going to be the
17 official timer. Anybody that's going to be
18 speaking will be up at the podium here and they
19 will have a ten minute clock with, I think it's
20 yellow at one minute, red's time's up. I will
21 also flash one minute and time's up and hopefully
22 everything will go smoothly.

1 MS. LEVY: Thanks, Ward. I want to
2 thank everyone who submitted comments and also
3 thank those who arranged to speak today. The
4 comments are very helpful to us in preparing the
5 final regulations. We read them all carefully,
6 take them into consideration, and do our best to
7 address them in the final regulations. In
8 addition to those in the room today, there are
9 participants calling in by telephone, but they
10 will be muted in listening mode only. I'd like to
11 get started right away because we do have a full
12 agenda of many speakers today. You should have
13 all been given an agenda showing the scheduling
14 and order of the speakers. Those who do not have
15 a government ID are not permitted to leave the
16 auditorium and walk around the building without an
17 escort. But if you do need to get up to use the
18 restroom, or if you wish to leave the building
19 after you've spoken, or at any point before the
20 end of the hearing, we have IRS employees
21 stationed by the doors. They can arrange an
22 escort for you. We expect the hearing to run all

1 day. There will be a break for lunch at about
2 01:00 p.m. Each speaker will have only ten
3 minutes to speak. We will hold up a sign at the
4 point, as Ward said, when each speaker has only
5 one minute remaining, this will be an indicator
6 that the speaker needs to wrap up their remarks
7 and conclude. We will be cutting every speaker
8 off at the ten minute mark. Please understand
9 we're not being rude, but we won't be able to get
10 through our full agenda if speakers take more than
11 ten minutes. Remember, we do have your written
12 comments. So with that, let's begin with the
13 first speaker, Mr. Ron Ransom from American
14 Endowment Foundation.

15 MR. RANSOM: Good morning. Thank you to
16 the Panel. And ladies and gentlemen, I'm honored
17 to be here with you today. My name is Ron Ransom,
18 Chief Executive Officer with the American
19 Endowment Foundation, also known as AEF. AEF is
20 headquartered in Hudson, Ohio suburb of Cleveland,
21 Ohio and is one of the nation's largest
22 independent Donor Advised Fund sponsors. Despite

1 our considerable scale within the Donor Advised
2 Fund space, at our core we are roughly a 100
3 employee small business. Since our inception in
4 1993, AEF has remained steadfast in our commitment
5 to expanding philanthropy. AEF delivers a best in
6 class client experience to over 14,000 charitable
7 individuals, nearly 6,000 financial advisors and
8 2,500 partnering firms across the financial
9 services industry. We are here today to address
10 the proposed regulations that would impact AEF and
11 the vital public charities we support.

12 The proposed regulations have garnered
13 significant attention as demonstrated by the
14 participation of the folks here today as well as
15 the folks via telephone tomorrow. This attention
16 is likely due to the potential implications to
17 reshape the landscape of charitable giving and
18 philanthropy at large. We at AEF have two main
19 concerns with the proposed, the first is the
20 potential classification of investment advisors as
21 donor advisors. Such a provision would
22 essentially undermine the motivation for the

1 investment advisors recommended to us by their
2 donors. Over 99 percent of our donors rely on
3 investment advisors to help manage and advise on
4 their Donor Advised Fund assets. It's essential
5 to note that AEF operates as a public charity, not
6 as an institutional advisor, making the expertise
7 of these investment advisors truly invaluable. In
8 fact, the funds managed by our donors investment
9 advisors generated \$3.8 billion in charitable
10 dollars over the past five years.

11 Without the experience and support of
12 our investment advisors, achieving this growth in
13 charitable dollars would not have been possible.
14 We believe that with the proposed regulations,
15 investment advisors may be less inclined to manage
16 investments in Donor Advised Funds, but frankly,
17 even recommend a DAF to donors. While
18 acknowledging the importance of regulatory
19 oversight, it's important to ensure that any
20 changes do not inadvertently hinder the vital work
21 of dedicated charitable organizations. Therefore,
22 we ask for removal of this newly proposed

1 classification. The second concern relates to the
2 retroactive application of the proposed
3 regulations. If enacted midyear, AEF would
4 encounter compliance before having the opportunity
5 to adjust our operational infrastructure
6 accordingly. This would unnecessarily harm us and
7 by extension, the many public charities we
8 support. We ask for a manageable timeline that is
9 not retroactive. If you will allow to give you a
10 lens of some of the positive roles and profound
11 impact of Donor Advised Funds, particularly
12 through the AEF lens.

13 Donor Advised Funds are widely
14 recognized as one of the fastest growing forms of
15 giving making a significant difference in our
16 communities. AEF has been at the forefront of
17 fostering philanthropy across charitable sectors,
18 including education, religion, health and
19 environmental initiatives. Over the past five
20 years, AEF has administered more than 393,000
21 grants, providing vital support to causes and
22 charities recommended by donors. This averages

1 over 78,000 grants annually, or 302 grants per
2 day. In 2023 alone, we administered nearly
3 101,000 grants benefiting 32,000 unique charities.
4 Where a few notable instances of AEF's grant
5 administration has generated significant impact,
6 we have again five year totals over \$80 million in
7 grants that have been allocated to environmental
8 causes. One notable charity in this category
9 focuses on ocean conservation. This cause
10 recognizes the importance of preserving our
11 planet's future to safeguard marine ecosystems and
12 ensure the vitality of our oceans. Ultimately,
13 these endeavors in ocean conservation contribute
14 to building a more sustainable society.

15 The second example, more than \$811
16 million have been directed towards education,
17 targeting higher education and other educational
18 opportunities. These investments are geared
19 towards unlocking individual potential while
20 promoting inclusivity within society. And a third
21 example and finally, nearly \$660 million have been
22 allocated to healthcare initiatives spanning a

1 comprehensive array of critical areas, including
2 general mental health support, proactive advocacy,
3 groundbreaking medical research, and multifaceted
4 efforts aimed at disease prevention, detection and
5 treatment. These examples, totaling over \$1.5
6 billion, underscore how AEF has served as a
7 driving force for positive change, amplifying the
8 spirit of giving and empowering impactful
9 initiatives at both local and national levels. As
10 I mentioned, in 2023 numbers, AEF totaled \$1.2
11 billion, or the equivalent of \$4.9 million each
12 business day. Whether it's fostering
13 environmental conservation, advancing educational
14 empowerment, or bolstering healthcare initiatives,
15 Donor Advised Funds have a profound impact on
16 society.

17 As a Donor Advised Fund sponsor, AEF is
18 granting three times the amount of funds compared
19 to current trend or average of private
20 foundations. AEF's support extends beyond
21 offering crucial assistance to numerous charitable
22 organizations. Each grant plays a pivotal role in

1 enriching communities, empowering individuals, and
2 shaping a more promising, inclusive tomorrow.
3 Finally, as we navigate the intricacies of
4 regulatory frameworks, I want to reaffirm AEF's
5 unwavering commitment to understanding the
6 significant issues identified by the Department of
7 Treasury and the Internal Revenue Service.
8 Through open dialogue and continued diligent
9 oversight, we can ensure that any new regulatory
10 action aligns with this shared goal of expanding
11 philanthropy and advancing social good. As I wrap
12 up my time before you today, I'd like to leave you
13 with three points.

14 Number one, Donor Advised Funds like
15 those administered by AEF play a pivotal role in
16 expanding philanthropy across sectors like
17 education, religion, health and environmental
18 initiatives fostering positive change in our
19 communities. Two, the versatility and flexibility
20 of Donor Advised Funds often inspires donors to
21 seek guidance and directing their contributions to
22 the causes and charities they care about or to

1 areas in great need, igniting a cycle of impactful
2 charitable giving. And lastly, regulatory changes
3 must be carefully crafted to ensure they do not
4 inadvertently hinder the vital work of charitable
5 organizations like AEF, especially regarding the
6 proposed regulations affecting investment advisors
7 and the retroactive application of such
8 regulations. Let us see the opportunity to shape
9 a regulatory environment that fosters innovation,
10 transparency, and above all, upholds the noble
11 pursuit of philanthropy. Together, we must
12 preserve the integrity and effectiveness of our
13 nation's philanthropy. Thank you all for allowing
14 us to be with you today.

15 MS. LEVY: Thank you, Mr. Ransom. Next
16 we have Deborah Wilkerson from the Greater Kansas
17 City Community Foundation.

18 MS. WILKERSON: Hello, my name is Debbie
19 Wilkerson and I am the President of the Greater
20 Kansas City Community Foundation. I must say, my
21 first job out of law school was as a tax
22 associate, and I worked for a brilliant attorney

1 who had spent most of his career with the IRS.
2 And he gave me a deep respect for the care and
3 thought put into every notice, ruling and
4 regulation. Thank you for your service and for
5 this opportunity to be with you today. So our
6 Community Foundation in Kansas City is 46 years
7 old, and that's middle aged in the world of
8 community foundations. I've got a lot of my
9 colleagues here today. One that you'll get to
10 hear from later is celebrating their hundredth
11 anniversary. So we had our start in the late
12 eighties, and the first president of our community
13 foundation in Kansas City went about asking donors
14 to give us their charitable dollars and we would
15 take care of this task of giving to the community,
16 because isn't that hard. But by the mid-eighties,
17 that's not the way any donors, in our community at
18 least, wanted to give the bulk of their giving.
19 And she finally had one wise and kind community
20 member that said, I'm having the time of my life
21 giving my money away. Why would I give it to you
22 to do that? She realized with that moment that

1 they had to do something different. So she and
2 the Board were early adopters of Donor Advised
3 Funds.

4 So when I started at Kansas City
5 Community Foundation in the late nineties, donors
6 advise funds had been around for a long time, but
7 they were not very well known. And it was my job
8 to explain them over and over. And I go to people
9 and I'd say, it's an irrevocable gift. You give
10 it to us, you can't get it back. But that's why
11 you get your tax deduction. But what you get to
12 do is you get to keep advising grants out of this
13 fund. And they understood that. They liked that.
14 But the stumbling thought came to the investments
15 because they wanted to keep their wealth advisor
16 involved in their giving. They trusted their
17 wealth advisor and actually fairly stated we as a
18 community foundation, we don't have access to
19 endless investment options. So what we did is we
20 spent years building systems and infrastructure to
21 carefully hire and oversee these investment
22 advisors. And yes, we follow the rules that

1 Congress laid out in 2006 very carefully, and we
2 pay them reasonably and fairly because we need the
3 full attention. And never have we seen an
4 investment advisor suggest a donor not grant, or
5 even slow down the process. As was mentioned in
6 the proposal regs, our numbers show, just like you
7 heard before, that DAF's managed by wealth
8 advisors have a payout rate for us of about 15
9 percent. And yes, that's three times what those
10 donors would have done through a private
11 foundation. I believe the result of including
12 personal investment advisors and the definition of
13 donor advisor will have two results.

14 First, you will see small, unstaffed
15 private foundations popping up everywhere. It
16 will be people with a charitable checkbook and no
17 oversight, making grants to everything they think
18 is charitable. That really isn't. It might be
19 C-6's. It may be the full fair to a charitable
20 event just because they don't know better. With
21 Donor Advised Funds, you have us monitoring and
22 overseeing legitimate grant making in real time.

1 Do we turn down grants? All the time. We tell
2 donors if an organization has the wrong tax
3 status, we tell donors your rules around events.
4 We watch carefully for impermissible benefits.
5 With private foundations, it's all on you. And we
6 don't know until a year and a half later when they
7 file their 990, if they're following the rule.

8 Now, the second result, I believe you
9 will see new captive staff sponsors. And why is
10 that? Because the proposed regs say it's okay to
11 pay an investment advisor if they invest 100
12 percent of the assets. So investment advisors
13 will set up their own DAF entities and advise 100
14 percent of the DAF, and most with no expertise on
15 staff. And what that does, that cuts community
16 foundation completely out of the equation. I have
17 a story about a donor that I'd like to use to
18 explain my last point. There is a couple in
19 Kansas City, and they had spent most of their
20 entire married lives building a business. And
21 when they neared retirement and started thinking
22 about selling the business, their wealth advisor

1 asked them a very thoughtful question. Do you
2 want to set some of the money aside for charity?
3 He was the one that opened their minds to taking
4 some of what they had built all their merry days
5 and having some of it be personal assets and some
6 of it be charitable assets. And they liked that a
7 lot. So they did it. They gave us a small
8 ownership in their business and later when they
9 found that buyer, we sold our interest alongside
10 them. To accept and sell our interest
11 responsibly, we needed to have legal fees. And
12 I've read so many of the comments, maybe not as
13 many as you have, but I know many of them point to
14 the proposed reg definition of taxable
15 distributions as disallowing those reasonable and
16 important expenses that are final, specific, and
17 I'm not sure that was meant to be.

18 But what I really want to bring to life
19 today is the anti-abuse rules. So these donors
20 told me later when I ran into them that maybe
21 their favorite part of retirement was their Donor
22 Advised Fund. They were giving in ways and

1 amounts they never had dreamed possible. They
2 gave to all different kinds of charities and
3 continue to do so. But one that's really
4 important to them is an organization in our city
5 that helps pregnant mothers who have no support
6 system. Now the wife is on the Board and they
7 grant to this organization from their fund. I
8 think of them when I read the anti-abuse rule
9 provisions in the proposed regs. It's the
10 provision that says we as a sponsoring
11 organization must determine if the grantee is
12 doing something with the grant that couldn't be
13 done directly from the DAF. And so the way we
14 read this is, is if this donor is on the Board of
15 the charity and the charity puts money directly in
16 the hands of an unwed pregnant mother, that is
17 impermissible because the donor couldn't have
18 given that young mother money directly from the
19 DAF. Plus, the proposed regs suggest it's
20 implied, not actual knowledge of a taxable
21 distribution that matters. So that means if I, as
22 the fund manager could have known, or should have

1 known, the wife is on the Board and an unwed
2 pregnant mother would receive dollars because of
3 that DAF grant, I'll be hit with a penalty.

4 Grant making is going to grind to a
5 halt, or at least to a crawl. We've been so
6 careful all these years. We remind donors all the
7 time, with every grant no benefit, no more than a
8 coffee mug, ever. But we need to make grants and
9 get the money to the grantees quickly because
10 that's our job. But the fear for the things we
11 don't know and can't control means we need to shut
12 down all the automation we've built and move to a
13 very slow manual system. And for me, worst, it
14 changes the spirit of our work. The joy and
15 encouragement we share with donors around their
16 giving. That's all going to flip in an instant.
17 It's now going to be suspicion and fear. It
18 should be simple. It could be simple if we could
19 just follow the 170 rules. It would be easy for
20 dogs. It would be easy for us. It would be easy
21 for you. If I could have one bright yellow
22 highlighter for the record of my testimony. This

1 is the sentence I would highlight. If a donor can
2 give to a public charity personally and get a tax
3 deduction, they should be able to make that same
4 grant to the charity through their Donor Advised
5 Funds. Retroactivity, lots of comments on it. I
6 just want you to know there's a lot of folks out
7 there making some pretty rash decisions already
8 because of retroactivity. So if there's anything
9 you can do to settle people on this point while
10 you evaluate and consider the regs would be much
11 appreciated. It's a long day ahead. I'm going to
12 sit and listen to the rest of the comments with
13 you. Thank you for the chance.

14 MS. LEVY: Thank you, Ms. Wilkerson.
15 Next we have Rose Bradshaw from North Texas
16 Community Foundation.

17 MS. BRADSHAW: Good morning. Thank you
18 for the invitation to be here with you today. I'm
19 Rose Bradshaw, President of the North Texas
20 Community Foundation, where I'm privileged to
21 represent 323 individual families and a handful of
22 businesses who are giving back to Texas. I'm here

1 today because these generous folks depend on our
2 community foundation and our investment advisor
3 support to help direct their charitable dollars to
4 make sure North Texas, home to the second fastest
5 growing city in the country, Fort Worth, is strong
6 for the long haul. Sorry. I'm here on behalf of
7 35 other community foundations across the state of
8 Texas, each one of which is charged with raising
9 and deploying dollars to meet our community's most
10 pressing needs. Together, we hold assets of over
11 six billion dollars, two point five billion of
12 which are held in Donor Advised Fund accounts.
13 I'm here to let you know how critical DAF's are to
14 our work and investment advisors are really
15 helping us to grow assets.

16 I know there's concern about DAF
17 warehousing money, and I'm telling you, that's
18 just not happening in the state of Texas, where
19 our commissioned Donor Advised Funds have an
20 average payout rate. Like Debbie said, in Texas,
21 it's 16 percent. And what do those dollars get
22 done? Well, in Fort Worth, Texas, they're being

1 deployed to build housing for people who are
2 mentally and physically challenged. They're
3 getting students back on track for college and
4 careers so that they can have successful,
5 productive lives. They're helping our local
6 hospitals deal with a terrible problem we're
7 having around maternal mortality. They're
8 building childcare centers so working parents can
9 send their kids to quality care. And they're
10 saving the prairie, cleaning up the river, and
11 taking care of abandoned dogs and cats. They're
12 supporting first responders who have been killed
13 or injured in the line of duty. And they're
14 helping to build the Medal of Honor Museum in
15 honor of the 3,515 American heroes awarded for
16 their valor in combat. My community foundation
17 more than 80 percent of our funds stay local, and
18 that's where we need to support their growth.
19 When it's time to help others in their hour of
20 need, though, our donors show up and down in the
21 south part of Texas in Uvalde, we all learned
22 about the terrible tragedy in Uvalde. We're so

1 proud when donors in Fort Worth were able to send
2 \$4 million down to help build a new school for
3 those kids and families. As one of our fund
4 holders remarked, it's about Texans helping
5 Texans. That's what it's all about. And Donor
6 Advised Funds help us do that.

7 We are here because we are focused on
8 impact. And I know I speak for all of my peers
9 here when I say warehousing money is not what it's
10 all about. If we wanted to sit in the pile of
11 money, it would be in a different line of
12 business. Donor Advised Funds are a critical tool
13 in our toolbox, and investment advisors are key
14 partners helping us to grow assets for our
15 community. They introduce us to their clients,
16 then help charitable dollars benefit from
17 investment performance and the magic of compound
18 interest, which Einstein called the 8th wonder of
19 the world. Here's how that works for our
20 community's benefit. In 1985, Ella McFadden gave
21 our foundation \$12 million, and she designated it
22 to benefit 13 nonprofit organizations benefiting

1 our community. Those funds are invested, making
2 charities the beneficiary of market performance
3 and compound interest. And fast forward 40 years
4 later. It turns out Einstein was right again.
5 Those nonprofits have received \$39 million in
6 grants, and the fund stands at \$40 million, making
7 it a perpetual source of support for our
8 community. Good investment advisors help us
9 multiply charitable dollars for community benefit,
10 and they help us find new donors to serve. A Fort
11 Worth based investment advisor recently referred
12 an 87 year old wonderful woman with no heirs to
13 our community, resulting in a planned gift valued
14 at \$115 million. These endowed funds will stay
15 local and provide support for young women's
16 education, historic preservation, and local
17 gardens, causes very near and dear to her heart,
18 and now mine, too, as we get to protect those
19 intentions going forward.

20 The proposed would disincentivize
21 referrals such as this, and they appear to be
22 designed to address problems that we are not

1 experiencing. For those concerned about
2 oversight, community foundations already
3 voluntarily comply with rigorous national
4 standards. They require that we have investment
5 committees that are robust and closely monitor
6 performance. They cap our fees, and they require
7 that we regularly audit grant activity to ensure
8 that no accounts are dormant. Our investment
9 advisors are not warehousing charitable dollars.
10 When I talked about the average staff payout in
11 Texas being 16 percent, we did an analysis of all
12 the grants that are going out that are held by
13 investment advisor. They're advised by outside
14 advisors. So the average of 16 percent for ODAF,
15 they actually exceed that rate, and it's 17
16 percent for those that are held in outside
17 accounts. The regs proposed also, as Debbie
18 mentioned, that fees and expenses of adapt be
19 taxable distributions. And I'm telling you, that
20 will only reduce the amount of funds available to
21 support local charities. Our community foundation
22 recently employed attorneys to defend donor intent

1 for a \$1 million estate gift to support education
2 in the community of Mineral Wells, Texas, per the
3 last will and testament of a deceased school
4 teacher. When her estranged son attempted to
5 redirect that gift, we incurred \$50,000 in legal
6 fees to defend her intentions. Making these
7 professional fees taxable distributions would
8 further reduce the funds available for education
9 in Mineral Wells, Texas.

10 Thank you for offering me the
11 opportunity to tell you about the wonderful work
12 underway in Texas and across the country. Thanks
13 to community foundation donors, their DAF's, and
14 the excellent service that we're getting from
15 investment advisors. We applaud your focus on
16 making sure charitable dollars maximally benefit
17 our communities. Please know we're on your side,
18 and Donor Advised Funds and investment advisors
19 are critical to our work. Thank you for your time
20 and your service to our country.

21 MS. LEVY: Thank you, Ms. Bradshaw.
22 Next we have Kendra VanderMeulen from National

1 Christian Charitable.

2 MS. VANDERMEULEN: Good morning. I'm
3 Kendra VanderMeulen. I am CEO of National
4 Christian Foundation, also known as NCF. Thank
5 you for the opportunity to share my thoughts with
6 you today. By way of the introduction, prior to
7 becoming CEO of NCF, I served for 14 years and
8 founded the Northwest office in Seattle, which is
9 where I still live. So thanks for bringing me all
10 the way out here. During those 14 years, I had
11 the privilege of navigating the relationship with
12 givers as they walked the journey of generosity.
13 And prior to that, I worked for three decades in
14 the telecommunications industry, mostly as an
15 executive in the wireless space. But over the
16 years, I've become encouraged by the
17 transformative power of generosity, and that's
18 what concerns me today.

19 I'd like to have a chance to share what
20 I've learned over those years. First, a little
21 background on NCF. National Christian Foundation
22 was founded in 1982 in response to a local

1 community foundation's unwillingness to allow
2 grants to a Christian organization. Over the past
3 42 years, NCS has grown. We are now a network of
4 local offices in 120 places across the country,
5 supported by a national office employing
6 altogether over 400 people. We sponsor 30
7 thousand DAFs and other giving funds, serving 25
8 thousand families, and I said, and serving 120
9 communities around the country. In the process,
10 MCF is granted more than \$19 billion to
11 approximately 90 thousand churches and ministries
12 recommended by our givers.

13 So, what have I learned through all this
14 time? First, most Americans want to be generous
15 with both their time, and their talent, and their
16 treasure. Generosity is life giving. It's life
17 changing, not just for the recipient, but for the
18 giver. Generosity is also relative. It's not
19 about the amount. It's about the heart.
20 Generosity can be challenging as well. The more
21 you have, the harder it can be and the more help
22 you need. Generosity is mobilizing, and it knits

1 communities together. It's part of the American
2 legacy to stand together in times of need. And
3 generosity requires planning. Wealth is often
4 perplexing. And generosity -- giving wisely takes
5 time and thought. So NCF seeks to come alongside
6 individuals and families, to be an encourager, to
7 be a trusted partner, to be a reminder that God is
8 always with us, and this is the core of everything
9 that we do.

10 Second, I witnessed firsthand that
11 generosity inspires generosity. Generous people
12 are rare, remarkable, and life giving and
13 inspiring. And generosity truly inspires more of
14 it. In South Florida, we serve a giving circle
15 like many others across the country, created by
16 individuals who are dedicated to living generous
17 lives and pooling their resources so they can have
18 more impact in the world. This particular group
19 started in 2014 and ten years later had given over
20 \$1.5 million to important causes all over the
21 world, inspiring others along the way. And
22 there's an alliance in the Pacific Northwest that

1 I personally get to participate in, where a group
2 of 165 families, charities, and businesses are
3 working together in sex trafficking in our area.
4 And this has inspired a life line it all over the
5 country. And in Tennessee, where a family gave
6 away a majority of their economic interest in
7 their business, so as the profits could be used to
8 fund charity and to teach the next generation
9 about generosity, that story has inspired hundreds
10 of other business leaders to do the same. These
11 incredible stories inspire hundreds, if not
12 thousands, to be generous.

13 And the DAF. The DAF is the single best
14 giving tool to inspire generosity. It's flexible,
15 allowing the receipt and liquidation of all kinds
16 of assets, as well as grants to all kinds of
17 public charities. It's simple. Individuals and
18 financial advisors can open a DAF in a matter of
19 minutes and begin a lifetime of generosity. It's
20 convening. Multiple people across cities,
21 neighborhoods, and families can join together by a
22 DAF to support all kinds of charitable causes.

1 And it's egalitarian by drawing folks of many
2 income levels into the giving journey.

3 So why am I here today? I am generally
4 concerned -- genuinely concerned, that these new
5 DAF regs will significantly impair generosity in
6 giving. And here are four of my concerns: First,
7 the proposed DAF regulations create tremendous
8 ambiguity. Baseline definitions are vague, and
9 clarity will be reduced, not improved. Non DAF,
10 especially those for single identified
11 organizations, can be turned into DAF for reasons
12 which are confusing and impossible to navigate at
13 scale. In just one case example, this could
14 undermine the use of the IRA charitable
15 distribution provision, which is a heavily used
16 charitable vehicle. The definition of taxable
17 distributions is so broadly defined as to include
18 ordinary costs and expenses, and DAF advisors that
19 people have already mentioned will include people
20 who have no idea that they're DAF advisors. This
21 is confusing even to me, and it will be for our
22 givers.

1 Second, the proposed DAF of regulations
2 would establish multiple unnecessary and
3 debilitating restrictions on DAF sponsors. Two
4 examples. DAF sponsors are precluded from paying
5 their reasonable actual expenses, which are tied
6 to DAP. I don't know how DAF sponsors can be
7 expected to operate if they're not allowed to pay
8 their legitimate costs. And DAF sponsors are
9 barred from hiring investment advisors, which
10 everybody's already mentioned. Improving
11 investment management of DAF resources is
12 essential to our providing fantastic services, yet
13 we'd be intentionally and severely limited in our
14 ability to do that.

15 Third, the proposed DAF regs proposed
16 several impossible requirements for us. The
17 anti-abuse rule, which has already been mentioned,
18 is particularly alarming. Every year, NCF makes
19 hundreds of thousands of grants to tens of
20 thousands of organizations. How can we possibly
21 reasonably be sure how each grant dollar is going
22 to be used? Also, the retroactive nature of the

1 proposed regs, which has already been brought to
2 your attention, are intendable. It would take
3 years for us to become compliant, and we got to --
4 if we started right now, you know, we'd be
5 indeterminate when we could possibly do it.

6 So, finally, the DAF regulations upend
7 the best giving solution available to givers. For
8 reasons that do not make any sense to me, the
9 proposed DAF regulations favor private foundations
10 over donor advise funds in numerous respects.
11 DAFs are an incredibly positive giving tool. They
12 encourage greater generosity, they're available to
13 all Americans, they're efficient, they're cost
14 effective, they're exclusively run by public
15 charities, they have public accountability, and
16 they enable thousands of charities to thrive.
17 Yet, the proposed regs would follow a contrary
18 path, adding requirements and restrictions that
19 even private foundations don't have to live up to.

20 So what's at stake? For over four
21 decades, NCF has been promoting generosity and the
22 excellent work of churches, ministries, and other

1 public charities all over the country. The
2 proposed regs would significantly hamper our
3 ability to continue to do this and would be a
4 significant step backwards, discouraging giving,
5 and harming the incredible work of thousands of
6 givers and public charities. We would be pleased
7 to collaborate with you and the great work that
8 you're trying to do -- we truly would -- to share
9 ideas on best practices for DAF sponsors and other
10 needs that the charitable sector has. And we're
11 happy to work together to identify ways DAFs can
12 best grow generosity and enable charities to
13 flourish, and most importantly, to continue the
14 tremendous strides that givers have been making.
15 Thank you so much for listening, and thank you for
16 your service.

17 MS. LEVY: Thank you, Ms. VanderMeulen.
18 Next, we have Chris Anderson from American
19 Institute of CPAs.

20 MR. ANDERSON: Good morning. My name is
21 Chris Anderson, and I am testifying today on
22 behalf of the American Institute of CPAs. I am

1 currently the chair of the AICPA exempt
2 organization Technical Resource Panel, and I'm
3 very grateful that several of you have
4 periodically visited with our panel. On January
5 29, 2024, the AICPA submitted extensive
6 recommendations and comments to the IRS and
7 Treasury on the proposed regulations. I would
8 invite you to review our written comments for more
9 detail about all of our recommendations.

10 Today, I will focus on three topics, two
11 of which have been very popular so far.
12 Apparently one, the need to postpone the effective
13 date of the proposed regulations. Two, the need
14 to exclude investment advisors, including personal
15 investment advisors, from the definition of a
16 donor advisor. And three, the need to allow
17 donors to make infrequent changes to restricted
18 gifts related to annual distribution amounts or
19 allocation of distributions to recipient charities
20 without causing the account to become a DAF.

21 First, as written, the proposed
22 regulations would be applicable to tax years

1 ending after the date of publication of the final
2 regulations. Taxpayers would have the option to
3 rely on the proposed regs for tax year's ending
4 before the date the final regulations are
5 published. We recommend the Treasury and the IRS
6 change the effective date of the final regulations
7 to tax years beginning on or after the date of
8 publication of the final regulations. The
9 proposed regulations contain many complex
10 provisions. Taxpayers will need additional time
11 to adjust their current operations to comply with
12 the new rules. Allowing taxpayers a full tax year
13 to understand and apply the final regulations will
14 increase compliance efforts and decrease the cost
15 that taxpayers will incur to implement changes to
16 conform their operations to the new rules.

17 I will briefly discuss three examples of
18 provisions that would require additional time to
19 implement. First, if the provisions regarding
20 personal investment advisors being treated as
21 donor advisors are unaltered in the final
22 regulations. Many DAF sponsors will need a

1 substantial amount of time to review agreements
2 with outside advisors to comply with the new
3 rules. Specifically, contracts with personal
4 investment advisors will likely need to be
5 canceled and perhaps more importantly, the DAF
6 sponsor will have to hire employees and or outside
7 third party investment advisors to replace the
8 DAFs -- the personal investment advisors. If
9 these provisions are, based on the recommendations
10 in our written comments, to provide multiple
11 criteria indicative of an investment advisor being
12 viewed as providing services to the sponsor
13 instead of the DAP, the DAAP sponsor will need
14 time to implement those criteria into their
15 operations and agreements with their outside
16 investment advisors.

17 Second, DAF sponsors will need time to
18 implement expenditure responsibility procedures
19 that comply with the final regulations. DAF
20 sponsors may not have these procedures fully in
21 place and will have to create or modify them and
22 then implement them, including creating and

1 attaching expenditure responsibility reports to
2 Form 990.

3 Third, charitable organizations that did
4 not believe that they had DAF accounts under the
5 pension protection definition of DAF may find the
6 regulations now capture some of their accounts.
7 These organizations will have to implement
8 policies and procedures to comply with all DAF
9 requirements, including existing requirements to
10 notify donors in writing that the assets of the
11 DAAF are those of the DAF sponsor, and the funds
12 in the DAF account can only be used for charitable
13 purposes. Drafting and implementing such
14 procedures takes time.

15 Next, I would like to address the
16 definition of a donor advisor, specifically, the
17 inclusion of an investment advisor, including
18 personal investment advisors providing investment
19 management and or investment advice on assets
20 maintained in the DAF and the personal assets of
21 the donor to the DAF. The proposed regulations
22 only provide an exception to including a personal

1 investment advisor in the definition of a donor
2 advisor if that investment advisor is properly
3 viewed as providing services to the sponsoring
4 organization as a whole rather than providing
5 services to the individual DAF. We recommend that
6 investment advisors, including personal investment
7 advisors, be explicitly excluded from the
8 definition of donor advisor. In the alternative,
9 if the definition of the proposed regulations is
10 retained, we recommend that the final regulations
11 include multiple criteria for determining that an
12 investment advisor is properly viewed as providing
13 services to the sponsoring organization, rather
14 than to the DAF under facts and circumstances
15 approach.

16 If an investment advisor selected by a
17 donor to a DAF is the donor advisor, then any
18 compensation paid to that investment advisor is
19 considered an automatic excess benefit transaction
20 under Section 4958(c)(2)A. This result would
21 effectively limit the ability of donors to have
22 advisory privileges with respect to the

1 investments of amounts held in their DAFs because
2 they would be unable to recommend the use of third
3 party investment management companies that would
4 reasonably expect to be compensated for their
5 services.

6 In addition to this proposal, the
7 mounting regulatory challenges facing small
8 practices could lead to reduced options for the
9 public's access to financial advice. Not only
10 will having limited options deter taxpayers from
11 obtaining and making contributions to DAFs, but
12 there could be broader implications for financial
13 inclusion efforts as smaller registered investment
14 advisors often play a vital role in in serving and
15 educating diverse populations. Since a third
16 party investment company can be replaced at any
17 time by the donor, the use of the services should
18 not be considered a true delegation of advisory
19 privileges with respect to the investment of
20 amounts in the fund. Additionally, investment
21 advisors do not typically make recommendations
22 about distributions from the fund.

1 Therefore, we recommend that the final
2 regulations clarify that the term donor advisor
3 does not include third party investment management
4 companies recommended by a donor or a donor
5 advisor to the fund. If the definition of donor
6 advisor in the proposed regulations is retained,
7 we suggest that the final regulations include
8 multiple criteria for determining that an
9 investment advisor is properly viewed as providing
10 services to the sponsoring organization rather
11 than to the DAF under effects and circumstances
12 approach, including factors such as the following:
13 the investment advisor is approved by the board of
14 the sponsoring organization. The investment
15 advisor is included in a list of advisors who have
16 been vetted and pre approved by the sponsoring
17 organization and offered as potential investment
18 options for DAF held by the organization. The
19 investment advisor is required to follow the board
20 approved investment policies of the sponsoring
21 organization, and these policies could include a
22 prohibition on the making of certain types of

1 investments, caps on the percentage of the
2 portfolio that can be invested in certain types of
3 investments, and caps on the percentage of assets
4 that could be charged as a management fee. And
5 lastly, the investment advisor provides services
6 to more than one DAF held by the sponsoring
7 organization.

8 Finally, I would like to address the
9 circumstances in which a gift agreement or
10 advisory rights retained by a donor could create a
11 DAF. We recommend that the final regulations
12 allow donors to make infrequent changes, not more
13 than once every five years, to restricted gifts
14 related to annual distribution amounts or
15 allocation of distributions to recipient charities
16 without causing the account to become a DAF. A
17 donor can impose restrictions on a gift related to
18 fulfilling one or more particular purposes for the
19 duration of time or in perpetuity. Gift
20 restrictions are governed through each state's
21 version of the Uniform Prudent Management of
22 Institutions Constitutional Funds Act, or the

1 UPMIFA. The UPMIFA allows an organization to ask
2 the donor for a release or revision from the donor
3 imposed restrictions, and the organization can
4 petition a court for the same relief.

5 A recipient charity's mission often
6 changes over time. In some cases, a charity no
7 longer pursues one or more causes for which it has
8 funds that have been restricted by donors. Also,
9 some charitable organizations allow a donor to
10 contribute to a so called designated fund in which
11 the donor specifies one or more charitable
12 organizations to receive an annual distribution,
13 often set at no more than 5 percent of the fund's
14 value. Each state's version of the UPMIFA sets
15 this percentage by law. Designated funds
16 generally do not meet the definition of a DAF
17 because the donor does not retain advisory
18 privileges after the fund has been created and the
19 recipients and distribution allocations have been
20 determined.

21 However, just as a single organization
22 may change its purposes and causes, a designated

1 fund can encounter situations in which the
2 recipient charity no longer exists or allocation
3 of annual distributions to recipients are no
4 longer in concert with the donors original wishes.
5 Since the UPMIFA allows for changes to restricted
6 funds with the approval of donors, infrequent
7 changes requested by the donor related to the
8 recipients and or the allocation of annual
9 distributions should be permitted without a
10 restricted fund becoming a DAF. It would be
11 reasonable for such changes to occur not more
12 often than once every five years.

13 The AICPA appreciates the opportunity to
14 testify today's hearing and thank you so much.

15 MS. LEVY: Thank you, Mr. Anderson.
16 Next, we have Andrea Sáenz from Chicago Community
17 Trust.

18 MS. SÁENZ: Good morning. Thank you for
19 this opportunity to testify. My name is Andrea
20 Sáenz. I serve as president and CEO of the
21 Chicago Community Trust, one of the nation's
22 oldest and largest community foundations. Guided

1 by our deep knowledge of Chicago, we fund,
2 convene, collaborate, and partner with many
3 institutions and people to address the most
4 critical issues facing our communities. We build
5 on a legacy of philanthropic leadership, from
6 millions of dollars raised for unemployment relief
7 during the Great Depression to spearheading
8 efforts to help people keep their homes during the
9 2008 foreclosure crisis to more recently
10 mobilizing \$35 million to support our most
11 vulnerable neighbors during the pandemic.
12 Chicagoans see us as a trusted philanthropic
13 resource for our community's wellbeing.

14 In addition to our own grant making, we
15 partner with donors to ensure they can make the
16 greatest impact with their philanthropy. While
17 the Chicago Community Trust offers many ways to
18 give, donors most often choose our donor advised
19 funds as efficient vehicles to support nonprofits
20 and respond to crises. Because DAFs are already
21 earmarked for charity, they can be quickly
22 mobilized for community.

1 I'm here to share two areas of concern
2 about how the proposed regulations on taxes and
3 taxable distributions from donor advised funds
4 would adversely affect the work we do for our
5 community. The first area of concern relates to
6 how the proposed regulations would impede our
7 ability to facilitate collaborative philanthropic
8 giving, should collaborative funds, field of
9 interest funds, be classified as donor advised
10 funds. The second is the potential negative
11 impact on charitable giving in Chicago if
12 investment managers are defined as donor advisors,
13 about which we've already heard but I'll share
14 some examples. I hope that these examples will
15 highlight the consequences that these proposed
16 regulations would have on our ability to serve our
17 community as we have for over a century.

18 I'll begin with the impact these
19 regulations would have on community giving if
20 collaborative funds are reclassified as DAF. As a
21 community foundation, the Trust often serves as a
22 backbone for collective philanthropic efforts

1 where foundations, individual donors, community
2 members come together to address issues of shared
3 concern. These collaborative funding initiatives
4 are unique to community foundations and common
5 among us.

6 I'll share an example. At the height of
7 the pandemic, the Trust established a
8 collaborative initiative called We Rise Together,
9 with a goal of ensuring communities hit hardest by
10 COVID-19 could recover from its twin economic and
11 public health crises. Through a combination of
12 gifts from private foundations, corporations, and
13 individual donors, we've raised \$54 million for
14 the effort. This amount includes \$23 million in
15 gifts from donor advise funds. Within three
16 years, \$46 million, or 85 PERCENT of the funds,
17 have been granted to 40 community projects, each
18 with visible and quantifiable benefits for
19 vulnerable Chicago communities.

20 For We Rise Together Being a
21 collaborative fund housed at the Trust means we
22 provide the infrastructure that creates an

1 environment of collaboration among donors, big and
2 small, that multiplies the impact their charitable
3 giving would have had if it had been done
4 individually. The We Rise Together steering
5 committee is made up of civic, corporate,
6 foundation, and community leaders who together
7 combine funds and expertise to ensure grants are
8 deployed to drive development and opportunity for
9 economically distressed communities. To do this
10 effectively, the team and steering committee of we
11 rise listened to and respond to community
12 identified needs. We supported one such project,
13 a community need, through a million and a half
14 dollar grant that allowed a nonprofit to complete
15 construction of a center, a youth education and
16 social services center, in a distressed
17 neighborhood. Since opening in February 2023, the
18 center served more than 60 thousand youth in after
19 school sports education programs and 12,000
20 adults. And additionally, external evaluators
21 have found that the small businesses within a half
22 mile of the center have seen a lift of \$6.5

1 million in consumer spending, making a tangible
2 difference to the neighbors around the center.

3 This type of collective collaboration
4 enables us to address our challenges and would be
5 hampered if collaborative funds, like We Rise
6 Together, were defined as donor advised funds.
7 Two reasons for one, for DAF distributions are
8 limited to 501(c)(3) organizations, and therefore
9 expenses related to carrying out the
10 collaboratives charitable work by consultants
11 would be considered prohibited distributions. For
12 example, we hired consultants to facilitate We
13 Rise Together community conversations as we tried
14 to truly understand the needs of the North Austin
15 neighborhood and to evaluate the impact of the
16 grants. The work carried out by these consultants
17 had an inherently charitable purpose and value,
18 but these expenses would no longer be eligible.

19 In addition, many of our collaborative
20 initiatives, including We Rise Together, receive
21 contributions from private foundations, and their
22 staff join the steering committees that guide our

1 work. They may be less likely to bring their
2 important perspective to these efforts if they
3 would now be considered a donor advisor as part of
4 a steering committee. They would feel some
5 uncertainty about that role. And reclassifying
6 these collaborative funds as DAFs may also have a
7 chilling effect for private foundations
8 contributing to these efforts because of
9 additional reporting obligations it may create.
10 Reclassifying collaborative funds as DAFs would
11 inhibit our ability to be a strong funding partner
12 and would diminish the role we have long played as
13 a backbone for collective funding efforts to
14 benefit our community.

15 Now I'll talk about our experience with
16 investment managers and our second area of
17 concern. Having ability to work with investment
18 management companies has expanded and enhanced our
19 ability to facilitate charitable giving in
20 Chicago. For the last three years, the Trust has
21 made more than a billion and a half dollars in
22 grants annually, 90 percent of which comes from

1 Trust hosted DAF. Two thirds of these are
2 investor managed DAFs. While it may seem that
3 investment managers would deter grant making from
4 funds whose investments they manage, our
5 experience has not borne that out. In fact,
6 investor managed DAFs at the Trust have a high
7 payout rate every year, much higher than the 5
8 percent payout we typically see from private
9 foundations. In 2023, investor managed multi
10 donor funds held at the Trust had a payout rate of
11 29 percent and for single donor investment managed
12 funds, the rate was 69 percent.

13 The Trust provides significant oversight
14 of external investment management firms for our
15 investor managed DAFs. Before engaging a donors
16 preferred investment management firm, our team
17 goes through a rigorous due diligence and vetting
18 process. Once approved, the investment firm
19 manages the DAF assets in coordination with the
20 Trust investment team, in accordance with our
21 investment policy and with oversight from our
22 board investment committee. Because of our

1 working relationship with many advisors, when
2 their clients are considering an exit from a
3 business, for example, they introduce the idea of
4 philanthropy and introduce often the Trust to
5 their client. In 2018, one such advisors client
6 created a death at the Trust with business
7 interests totaling approximately a million
8 dollars. Since then, \$765 thousand has been
9 distributed to charities from that fund. Those
10 dollars no matter charity at all, if not for the
11 use of a DAF and the ability of the advisor to
12 recommend it as a vehicle.

13 Our interpretation of the proposed
14 regulations is that investment managers would now
15 be disincentivized to recommend DAFs because they
16 could no longer be paid to manage the assets
17 should their client open a DAF with us. This
18 would mean that their clients would no longer have
19 access to the subject matter experts at the Trust
20 who can speak to the philanthropic needs of the
21 community and the nonprofits that are making a
22 difference. Based on our experience, we think it

1 is likely that the proposed regulations would mean
2 less money would be granted to nonprofit
3 organizations and charities in our region.

4 It's important to note that the ability
5 to work with outside investment advisors is
6 particular to community foundations and is
7 critical to the work we do to coordinate
8 philanthropic efforts. Our connection to both
9 community organizations and a wide range of
10 potential donors allows us to highlight the issues
11 and charitable opportunities that need funding.
12 Because we would be penalized if we continue to
13 work with investment management firms, the
14 proposed regulations would significantly hamper
15 our ability to deploy philanthropic capital
16 towards community identified needs and purposes.

17 I hope you can provide some clarity for
18 why we at the Chicago Community Trust are strongly
19 opposed to the regulations as written. As
20 highlighted, we truly play a unique role in
21 philanthropy in helping organize and mobilize
22 resources for community needs with a deep, place

1 based commitment to Chicago. In our estimation,
2 the proposed regulations, if implemented, would
3 lead to fewer dollars swiftly reaching nonprofits
4 we care about.

5 I respectfully ask the Department of
6 Treasury to reconsider its approach in light of
7 the unique role and experiences of community
8 foundations and the effect that these proposed
9 regulations may have on charitable giving. Thank
10 you so much for allowing me the time to be here
11 today.

12 MS. LEVY: Thank you, Ms. Sáenz. The
13 next speaker is Emmanuel Kallina, from Kallina &
14 Associates.

15 MR. KALLINA: Thank you. I appreciate
16 the opportunity to speak today and to submit
17 comments on the proposed regulations. I have been
18 a practicing attorney for over 50 years and has
19 spent much of my professional career in the
20 charitable area. I have created and worked with a
21 number of significant large donor advice funds,
22 some of the individuals who are here today, and

1 have day to day experience in this area. I work
2 regularly with the Government Relations Committee
3 of the National association of Charitable Gift
4 Planners who are concerned about these DAF
5 regulations. I only have ten minutes, so I must
6 forthrightly address the issues. Please forgive
7 any bluntness. I don't mean to be rude in any
8 respect. I'm going to approach it more from a
9 technical aspect than I am a policy. In giving
10 you examples, which are wonderful, of the benefits
11 provided by a Donor advised Fund. My focus is
12 solely on the definition of investment advisor and
13 donor advisor and you can see that in my earlier
14 comments. It's my belief that the proposed
15 regulations violate the distinction in the PPA
16 which created 4956 code section. They violate the
17 distinction that's created by the literal language
18 of the code. That's number one. Number two, that
19 the regulations are not supported by legislative
20 history. Number three, that they ignore fiduciary
21 principles that govern sponsoring charities of
22 das. Four, that they are based on speculation and

1 not on study that has occurred. Number five, that
2 they're not due judicial deference under Chevron
3 since the statute is not ambiguous on the
4 definition and sixth, they establish new policy
5 and violate the concepts underlying the separation
6 of powers.

7 I would like to address the specific
8 statements and concerns voiced by IRS and Treasury
9 in the proposed regs in the section entitled
10 Supplementary Information. The regulations state
11 that an investment advisor who invests assets of
12 the donor and also invests a donor's personal
13 assets would be a donor advisor with respect to
14 the DAF while serving in the dual capacity, rather
15 the donor appointed, designated or recommended
16 personal investment advisor. This statement is
17 inconsistent with fiduciary law which imposes on
18 the Board of Directors or the Board of Trustees of
19 a charity an affirmative duty to manage the assets
20 of the charity. Usually, this fiduciary
21 obligation is undertaken by a finance committee
22 which interviews and hires one or more investment

1 advisors pursuant to an investment policy
2 statement, or IPS.

3 The IPS governs how assets are to be
4 invested, the split between equity and fixed, the
5 expected return, the benchmarks, investment
6 advisor fees and all in fees and accountability to
7 the charity for reporting and investment
8 performance. If a sponsoring charity has multiple
9 investment advisors, it must aggregate their
10 investments in a quarterly review to determine
11 whether the investments as a whole meet the IPS,
12 whether the funds collectively or properly
13 weighted in terms of fixed, however, the portfolio
14 variance is acceptable, the correlation of the
15 various assets is acceptable, et cetera. The
16 advice of the donor or the donors representative
17 cannot override these fiduciary duties that belong
18 to the Board. To treat the contractual
19 relationship between the sponsoring charity and
20 the investment advisors instead being a
21 relationship between the donor and the charity
22 violates 4946 excuse me, 4966 maybe 4969-96, but

1 which states that the assets of a DAF legally
2 belong to the charity.

3 The proposed regs present four
4 theoretical possibilities to justify equating
5 investment advisors with donor advisors. I do not
6 have time to reiterate these in my testimony, but
7 they are not based upon, to my knowledge, any
8 facts. They are based upon possibilities that
9 might exist. I am not aware of any study to
10 support these hypothetical concerns. Absent a
11 study or some type of analysis, it would seem that
12 these regs are overreaching on this point and are
13 not justified. Congress passed the PPA and its
14 restrictions on DAF's based on anecdotal evidence,
15 not on the study or analysis of how widespread the
16 abuses actually were. They sought to curb a few
17 bad actors in the charitable arena. Legislation
18 based on anecdote usually does not produce the
19 best result, but Congress has a right to do as it
20 wishes. IRS and Treasury, on the other hand, have
21 no such privilege to legislate policy upon
22 anecdote. Perhaps a better regulatory position

1 would be one that affirms the fiduciary duties of
2 the sponsoring charity to oversee all investment
3 advisors so that the aggregate result of
4 investments is consistent with the investment
5 policy statement.

6 As proposed, these regulations will
7 increase costs for charities, reduce giving, and
8 favor so called institutional or commercial DAF's.
9 Prior written comments address these consequences,
10 and the other speakers have addressed some of
11 these issues already, so I will not do so.
12 Assuming you issue regulations in this area, one
13 question that arises in my mind is what deference
14 should these regulations have? We are all
15 familiar with the judicial background underlying
16 deference to governmental regulation, including
17 the Supreme Court cases of Skidmore, National
18 Muffler, Chevron and Mayo. Now the subject matter
19 is before the court in relentless and liberal
20 right. If we assume Chevron is the clearest
21 expression of the laws it's stands today.
22 Deference to the regulations does not come into

1 play unless the statute is ambiguous.
2 Unfortunately, one person may consider the statute
3 clear while another view it as ambiguous. So
4 Chevron unfortunately renders the analysis
5 somewhat subjective, not objective.

6 It is reported that the Supreme Court in
7 the cases of *relentless and low proprietors*,
8 concerned whether an administrative determination
9 or regulation is creating policy or implementing
10 policy. I'd like to emphasize creating policy or
11 implementing policy. In particular, Congress
12 obviously understood the difference between an
13 investment advisor and a donor advisor. If they
14 had wanted to equate the two, they could have
15 easily done so. I have reviewed the legislative
16 hearings and other history leading up to the PPA
17 and the two items are not used interchangeably in
18 the hearings or the legislative history. I
19 certainly could have missed something on the
20 subject. My wife and my children tell me
21 frequently I'm not perfect, so I can assure you I
22 may have missed something. But I'm not aware of

1 it.

2 Another important point to consider is
3 in conjunction with the Chevron deference, is
4 whether or not they're interpreting, whether or
5 not the statute is ambiguous or they're attempting
6 to create policy. If IRS and Treasury are
7 attempting to create policy, that is exactly what
8 I believe may be a concern of the Supreme Court as
9 it addresses arguments and relentless in
10 Loporbright, policy is the fiat of Congress, not
11 regulatory agencies. Since there is no apparent
12 authority in the statutory language, there's no
13 legislative history justifying the equating of the
14 terms. There is no statutory authority allowing
15 IRS to issue proscriptive regulations in this area
16 and there are no studies or facts to support the
17 regulations as they now stand. I would urge
18 Treasury and the IRS to not equate an investment
19 advisor with a donor advisor. Thank you for these
20 hearings and your consideration. And once again,
21 the way someone else commented the work you do.

22 MS. LEVY: Thank you Mr. Kallina. The

1 next speaker is Kevin Carroll from Securities
2 Industry and Financial Markets Association.

3 MR. CARROLL: Good morning. My name is
4 Kevin Carroll. I'm a Deputy General Counsel at
5 the Securities Industry and Financial Markets
6 Association, also known as SIFMA. SIFMA is the
7 leading trade association for financial services
8 firms, including investment advisory firms
9 operating in the US and global capital markets. I
10 appreciate the opportunity to testify today and to
11 amplify the comments made in written submission to
12 the IRS dated February 8th, 2024. My testimony
13 will address four key points.

14 The first is that the proposal exceeds
15 the IRS's statutory authority. The proposed
16 regulation seeks to redefine the term donor
17 advisor to include a personal investment advisor.
18 However, the relevant statute, Internal Revenue
19 Code section 4966 already defines it for advisor
20 and it does not include a personal investment
21 advisor. Internal Revenue Code section 4966
22 defines a donor advisor as a person appointed by a

1 donor who has advisory privileges over the donors
2 donated assets. A personal investment advisor,
3 however, which means an investment advisor who
4 advises both a sponsoring organization on assets
5 maintained in a DAF and the personal assets of a
6 donor to that DAF, simply does not meet the
7 statutory definition of donor advisor and the IRS
8 is not free to expand the definition of donor
9 advisor by regulation because the statute has
10 already spoken on this point. Simply stated, the
11 IRS's expanded definition of donor advisor exceeds
12 the IRS's statutory authority under Internal
13 Revenue Code section 4966. Accordingly and
14 respectfully, SIFMA recommends the expanded
15 definition of donor advisor to include a personal
16 investment advisor being stricken from the IRS
17 proposal.

18 My second point is that a personal
19 investment advisor does not, in fact, act as a
20 donor advisor and should not be treated as a donor
21 under the proposal. As discussed, the Internal
22 Revenue Code defines a donor advisor as a person

1 appointed by the donor who has advisory privileges
2 over the donors donated assets. A personal
3 investment advisor, however, does not in fact have
4 and does not exercise advisory privileges
5 regarding his or her donor clients DAF assets.
6 Moreover, a donor doesn't appoint his or her
7 personal investment advisor to serve as an
8 investment manager in the donor's DAF, that is the
9 sole responsibility of the DAF sponsoring
10 organization, and the donor client has no decision
11 making authority in that regard. Thus, a personal
12 investment advisor does not, in fact, act as a
13 donor advisor. Just because a personal investment
14 advisor advises a donor client's personal assets
15 does not create a legal or other relationship of
16 control or influence with respect to the personal
17 investment advisors investment recommendations
18 about DAF assets, which recommendations are made
19 solely to the sponsoring organization and not to
20 the donor client.

21 So this leads naturally to my third key
22 point, which is this a personal investment advisor

1 has two separate and distinct client
2 relationships. The first is the donor client
3 relationship with respect to the donor clients
4 personal assets and the second is the sponsoring
5 organization client relationship with respect to
6 DAF assets. Under the Investment Advisors Act of
7 1940, a personal investment advisor owes separate
8 and distinct legal and fiduciary duties to their
9 donor clients on the one hand, and to the
10 sponsoring organization on the other hand. Under
11 the Advisors Act, a personal investment advisor
12 owes each client a duty of care to provide
13 investment advice in the best interest of the
14 client and a duty of loyalty to eliminate or make
15 full and fair disclosure of all potential
16 conflicts of interest. The IRS should give
17 deference to these long established federal
18 statutory legal duties. As an investment manager
19 of a DAF, a personal investment advisors client is
20 the sponsoring organization and the personal
21 investment advisor must give advice that is in the
22 best interest of the sponsoring organization.

1 With respect to DAF contributions, the personal
2 investment advisor advice is to the sponsoring
3 organization and is intended to maximize the
4 growth of those assets for later distribution.
5 With respect to DAF distributions, the personal
6 investment advisor may have a potential conflict
7 of interest to advise against distributions
8 because it would delete the fees they earn from
9 the DAF. Under the investment advisors duty of
10 loyalty, however, the personal investment advisor
11 is required to disclose and obtain the client's
12 informed consent to this potential conflict and
13 under the Advisors Act duty of care, the personal
14 investment advisor is legally obligated to not act
15 in accordance with this potential conflict, that
16 is, to not give conflicted advice. If a personal
17 investment advisor violated this legal duty, then
18 he or she would be subject to SEC enforcement
19 proceedings, disciplinary proceedings and
20 sanctions, and potentially civil liability as
21 well. The existing investment advisor regulatory
22 regime fully safeguards against the potential

1 conflicts of interest that appear to concern the
2 IRS. The IRS should defer to the existing
3 well-functioning federal securities laws. We urge
4 the IRS against imposing period of excise tax
5 penalties on DAF fees earned by personal
6 investment advisors based upon near potential
7 conflicts of interest. And as discussed, these
8 potential conflicts of interest are already fully
9 regulated, well managed, and duly enforced under
10 the federal securities laws.

11 My fourth and final point is this. The
12 proposal fails to provide underlying data or
13 support and thus deprives the public of meaningful
14 notice an opportunity to comment. The IRS
15 suggests a few potential reasons for its proposed
16 new tax treatment of personal investment advisors,
17 including that one, the donor client can allegedly
18 influence the personal investment advisors
19 investment advice to the sponsoring organization
20 about DAF assets. And second, as discussed,
21 personal investment advisors have a potential
22 conflict to advise against distributions from the

1 DAF. The proposal, however, provides no data or
2 other empirical evidence to support either of
3 these two alleged reasons. Thus, the public has
4 had no meaningful opportunity to review and
5 comment upon whether the IRS's stated reasons are
6 valid or not. If the IRS has data or evidence to
7 back up its reasons, then it should repose its
8 rule, publish its data and evidence for public
9 comment. On the other hand, if such data or
10 evidence does not exist, then the IRS should set
11 aside its proposal and conduct further study to
12 determine whether or not the assumptions that
13 underpin reasons are valid. In conclusion, if the
14 IRS proceeds with the proposal, SIFMA urges it to
15 incorporate our recommended changes. If the IRS
16 chooses not to proceed with the proposal, then
17 SIFMA urges it to immediately withdraw the
18 proposal so it does not have a chilling effect on
19 the activities of DAF's or personal investment
20 advisors with the overhang of a tax rule proposal
21 that leaves them in limbo. This concludes my
22 remarks. Thank you again for your time and the

1 opportunity to testify.

2 MS. LEVY: Thank you, Mr. Carroll. The
3 next speaker is David Shevlin, American Bar
4 Association, Section of Taxation.

5 MR. SHEVLIN: Good morning. Thank you.
6 My name is Dave Shevlin. I'm a partner at the law
7 firm Simpson Thatcher and Bartlett, where I'm head
8 of the exempt organization's practice. I am a
9 past chair of the American Bar Association section
10 of Taxation, Committee on Exempt Organizations.
11 I, along with several other practitioners,
12 exercise principal responsibility for preparing
13 comments on the proposed regulations on behalf of
14 the Committee on Incentive Organizations, and my
15 remarks today are based on those comments. In
16 time, I will not be addressing all of the comments
17 submitted. I will focus on the personal
18 investment advisor definition and certain aspects
19 of the definitions of Donor Advised Funds and the
20 definition of distribution with respect to the
21 personal investment advisor rule.

22 The preamble identified several concerns

1 that motivated the proposed treatment of personal
2 investment advisors as donor advisors, including
3 improper donor influence over investment decisions
4 with respect to assets held in a DAF, a negative
5 impact on distributions, and a more than
6 incidental benefit if the donors charge lower fees
7 for management of the donors personal assets as a
8 result of the services. These concerns, in our
9 view, are not borne out by the existing debt data,
10 including the existing piece of grant making which
11 you have begun to hear about today. But even
12 assuming hypothetically the validity of these
13 concerns, they are currently sufficiently
14 addressed by both code sections 4958 and 4907. In
15 particular, investment advisors are subject to the
16 normal excess benefit transaction rules under code
17 section 4958. That tax the amount by which the
18 economic benefit received provided by a sponsoring
19 organization exceeds the value of the services
20 they provided. In addition, if engaging a
21 personal investment advisor to manage staff assets
22 resulted in a donor or donor advisor receiving

1 discounted fees for the personal investment
2 advisors management of personal assets, then
3 arguably that situation would be subject to excise
4 tax under section 4967. As drafted, the only
5 exception in the proposed regulations relating to
6 personal investment advisors applies only to such
7 advisors providing services to the sponsoring
8 organization, "as a whole".

9 Given the existing excise tax regime
10 described above and the broad array of DAF's of
11 various sizes and complexity, the proposed
12 regulations and the limited exceptions, in our
13 view, respectfully, unnecessarily interfere with
14 the oversight of sponsoring organizations and are
15 likely to cause sponsoring organizations to reach
16 strictly and oversimplify DAF investment options.
17 While limited investment options may be
18 appropriate for some DAF's, in our practical
19 experience, there are many DAF's for which more
20 expansive and sophisticated investment options are
21 appropriate and necessary. Further, Treasury and
22 IRS do not prescribe investment strategies or

1 limitations on engaging expert investment advisors
2 for other types of charitable organizations and
3 shoulder for sponsoring organizations. Human
4 disqualified persons of private foundations, as
5 you know, are permitted to receive reasonable
6 compensation for providing personal services to a
7 foundation that are reasonably necessary in
8 carrying out its exempt purposes.

9 We suggested that if some form of this
10 rule were to remain, that the final regulation
11 should adopt a narrow definition of the term
12 personal investment advisor more specifically, the
13 regulations should provide that an investment
14 advisor is not a personal investment advisor who
15 would be treated as a donor advisor if a number of
16 factors are present. These could include that the
17 sponsoring organization and the investment advisor
18 entering to a written agreement establishing one,
19 a direct fiduciary relationship between the
20 investment advisor and the sponsoring
21 organization. Two, that the investment advisor
22 will not take direction directly from a donor or

1 donor advisor with respect to basis. Three, a
2 right to terminate the engagement of the advisor
3 by the sponsoring organization only. And four, a
4 prohibition on any donor or donor advisor
5 receiving reduced fees or other economic benefits
6 in connection with the advisors services for
7 assets maintained in a DAF. Additional factors
8 showing that an investment advisor is not a
9 personal investment advisor would be where the
10 sponsoring organization relies on appropriate
11 comparability data and where the investment
12 advisor is by the sponsoring organization rather
13 than the donor or donor advisor for services with
14 respect to the assets maintained in a DAF.

15 The preamble of the role that personal
16 investment advisors may have in steering their
17 clients charitable giving through a DAF rather
18 than directly to a grantee public charity and in
19 keeping such assets within the DAF. However, the
20 actual choice for many donors is giving to DAF
21 versus not giving at all. In my and many
22 practitioners experiences, investment advisors

1 often encourage donors to increase their
2 charitable giving through a DAF when the
3 alternative would be to simply leave the money in
4 their personal accounts. Allowing personal
5 advisors to advise on both DAF and personal assets
6 without prohibiting reasonable compensation
7 properly aligns incentives for them to encourage
8 more charitable giving overall, more of which
9 would make its way to the grantee charities. Now,
10 with respect to the provisions affecting the
11 definition of donor advised fund.

12 A graph is defined in section 4966 as an
13 account that's separately identified by reference
14 to contributions of the donor or donors. The
15 proposed regs state that a fund is thus separately
16 identified if, as a general rule, the sponsoring
17 organization maintains a formal record of
18 contributions to the fund or account relating to a
19 donor or donors, the regs provide little clarity
20 on what constitutes a formal record, but the
21 examples illustrate that a formal record can be as
22 simple as maintaining a record of the names of

1 donors and the amounts contributed. Respectfully,
2 the vagueness of this definition of separately
3 identified risks rendering this prong of the
4 definition of the DAF irrelevant as many, if not
5 most, public charities must keep track of their
6 donors and contribution amounts in order to comply
7 with existing requirements of the code. We
8 suggested that the final regulation should clarify
9 that a fund or account is separately identified by
10 reference to contributions of a donor. If the
11 sponsoring organization maintains a formal record
12 of, one contributions made by or on behalf of
13 donors to the fund or account, and two balance
14 adjustments from the amounts that are held in
15 reference to the specific contributions of donors.
16 The added detail would better align the final
17 regulations with the clearest reading of the
18 statute as well as the arrangements most commonly
19 understood in the philanthropic sector to
20 constitute staff.

21 Second, Treasury and the IRS should
22 clarify that a fund held by a single charity that

1 is used solely to cover the expenses of that
2 public charity and furtherance of its charitable
3 mission, whether for its general operations or the
4 operations of a particular project, falls within
5 the single identified organization exception.
6 Consider a capital campaign fund or general
7 endowment fund established at a hospital, museum,
8 or university. The institution would almost
9 certainly keep track of the donors to the fund and
10 donation amounts which under the proposed regs
11 could render the fund separately identified by
12 reference to the contribution of donors.
13 Institution would appoint a committee to oversee
14 the investment and or use of the fund. As is
15 common practice, and even one donor serves on the
16 committee by virtue of their being a donor, the
17 fund would be excluded from the single identified
18 organization exception. This is but one example
19 of a common arrangement in the sector that would
20 be unnecessarily disrupted respectfully by DAF
21 operating restrictions under the proposed regs.

22 Finally, I want to speak to the

1 provisions affecting the definition of
2 distribution. Distribution is defined rather
3 broadly and could significantly expand the types
4 of expenditures from DAF that would be taxable
5 distributions under code section 4966. For
6 example, distributions representing reasonable and
7 necessary expenses for carrying out the exempt
8 purposes of a DAF would be taxable distributions
9 unless they relate specifically to an investment
10 or grant. We assert that this definition is over
11 broad in scope and recapture expenditures
12 generally considered to be appropriate uses of
13 charitable dollars. For instance, DAF may engage
14 third party philanthropic consultants or grant
15 making experts in connection with generally
16 ensuring the effectiveness of such DAF's grant
17 making programs. Such engagements provide
18 material charitable benefits and no impermissible
19 private benefits to the relevant donor or donor
20 advisor. Thank you.

21 The definition of distribution should be
22 revised to provide that, in addition to

1 investments and reasonable investment or grant
2 related fees, payments of reasonable and necessary
3 administrative expenses is accepted from the
4 definition of DAF. Under the proposed regs, any
5 expense charged solely to a particular DAF that is
6 paid indirectly to a donor or donor advisor is
7 deemed to be a distribution under this section.
8 Such expenses would be taxable to the sponsoring
9 organization regardless of whether a fund manager
10 knowingly approved the making of the distribution,
11 considering that 4958 and 4967 both already
12 provide appropriate remedies in the event that
13 payments from the DAF result in excess or
14 prohibited benefits. This automatic tax is, in
15 our view, overly punitive to sponsoring
16 organizations. I thank you for your time this
17 morning.

18 MS. LEVY: Thank you, Mr. Shevlin. The
19 next speaker is Rachel Schnoll from the Jewish
20 Communal Fund.

21 MS. SCHNOLL: Hello, my name is Rachel
22 Schnoll and I'm the CEO of the Jewish Communal

1 Fund, or JCF. JCF appreciates the opportunity to
2 testify on the proposed regulations. JCF is the
3 largest Jewish Donor Advised Fund with a 52 year
4 track record of making charitable giving simple
5 and efficient for our donors. JCF manages
6 charitable assets for more than 4,800 individual
7 DAF funds. In our fiscal year 2023, our generous
8 donors recommended over 80,000 grants to 10,600
9 individual charities in an aggregate amount of
10 over \$900 million. In 2023, our Donor Advised
11 Funds distributed 32 percent of the assets in
12 their accounts to charity. Additionally, the
13 Jewish Communal Fund awards communal gifts of over
14 \$4 million that support charities in the Jewish
15 community in the New York area. These numbers
16 illustrate why deaths are an efficient way for
17 individuals to send money to charitable
18 organizations. JCF values the hard work of the
19 IRS and Treasury in drafting the proposed
20 regulations. However, we are concerned that the
21 proposed regulations regarding DAF, if finalized,
22 may require significant operational changes for

1 sponsoring organizations. DAF's, donors and donor
2 advisors, DAF have been an efficient resource for
3 making grants to charities, and the proposed
4 regulations may serve to slow the speed of these
5 charitable donations.

6 So I'll first talk about investment
7 advisors. We recommend that an investment advisor
8 who provides investment management or advisory
9 services with respect to the assets maintained in
10 a DAF not be considered a donor advisor under
11 section 4966 solely because the investment adviser
12 also provides investment advisory services with
13 respect to the donors personal assets. I'll give
14 three examples of how this proposal could affect
15 fund holders and slow the fund, the flow of funds
16 to charities. Example one, financial advisors
17 provide considerable assistance to DAF fund
18 holders who prefer help with investments, asset
19 allocation, and philanthropic planning.
20 Investments are similar to other tasks. Some
21 people like undertaking them and other people
22 prefer professional guidance. I could mow my

1 lawn, but I'm not good at it, so I choose to hire
2 a professional.

3 Many people feel unsure about making
4 investment asset allocation and philanthropic
5 decisions, and the recommendations of a financial
6 advisor helps to guide them. At JCF, all
7 financial advisors are vetted by our investment
8 consultant and investment committee and must
9 adhere to an investment policy statement. We
10 believe that limiting financial advisors
11 participations in DAF would limit their use, the
12 use of DAF, and slow the flow of funds to
13 charities.

14 Example number two the way that the
15 proposed rule is worded with an exception from
16 donor advisor treatment for personal investment
17 advisors that are, quote, properly viewed as
18 advising the sponsoring organization as a whole
19 rather than providing services to the Donor
20 Advised Fund, unquote, provides an unlevel
21 advantage to DAFs that are sponsored by financial
22 institutions relative to community foundations or

1 mission-driven DAFs like the Jewish Communal Fund.
2 These types of DAFs provide vital support to the
3 communities where we are based.

4 Today, financial advisors who recommend
5 a DAF to their clients are free to choose a DAF
6 that supports the philanthropic values of their
7 clients. For example, an advisor who knows that
8 supporting the Jewish community is important to
9 their client may suggest the Jewish Communal Fund
10 as a DAF because that advisor may not provide
11 advice to JCF as a sponsoring organization, she
12 would not be eligible to be paid. However, if
13 that advisor promoted their proprietary DAF, she
14 would be eligible to receive a fee because she
15 works for the organization advising the sponsoring
16 organization.

17 To the extent that the recommendation to
18 not classify investment advisors as donor advisors
19 is not adopted, we recommend that the exception
20 provide that a personal investment advisor who
21 provides services to one or more DAFs maintained
22 by a sponsoring organization will be properly

1 viewed as advising the sponsoring organization as
2 a whole, so long as the investment advisor has
3 entered into a binding investment advisory or
4 management contract with the sponsoring
5 organization from which fiduciary duties arise.

6 Example number three. If these rules
7 were to be adopted as proposed, we believe
8 financial advisors would be more inclined to
9 recommend private foundations where they can
10 continue to be paid for investment management
11 services rather than DAFs, to their high net worth
12 clients. This direction could be felt most
13 acutely by charitable beneficiaries themselves.

14 A recent study by the National
15 Philanthropic Trust found that while total assets
16 held in DAFs in 2022 accounted to about \$230
17 billion, the total grants from DAFs amounted to
18 over \$52 billion, or 23 percent of the total
19 assets. In contrast, the total assets held in
20 private foundations amounted to over \$1.1
21 trillion, with total distributions amounting to
22 just under \$100 billion, or only 11.6 percent of

1 assets.

2 Therefore, DAF assets comprise just 16.5
3 percent of the total assets in DAFs and private
4 foundations. But the value of DAF grants amounted
5 to over 34 percent, showing that DAFs are a good
6 deployer of philanthropic dollars, with a dollar
7 being contributed to a DAF more than two times as
8 likely to be in service to a charity than that
9 from a private foundation. It is therefore
10 unclear why the proposed regulations would provide
11 for rules that are less favorable to DAFs than
12 private foundation.

13 I next want to address distributions.
14 So, JCF recommends that the term distributions for
15 purposes of Section 4966 be defined as having the
16 same meaning as the term grant in Section 4945.
17 So, an example of how DAFs use these
18 distributions. DAFs frequently receive
19 contributions of illiquid assets, such as limited
20 partnership interests or even pieces of artwork.
21 There may be expenses incurred with the
22 contribution of these assets, such as document

1 review or storage fees for artwork. These are
2 expenses incurred on behalf of the contribution
3 and should not be assessed broadly to the DAF, but
4 to the donor who has made this contribution.

5 If the definition of distribution was to
6 move forward as proposed, this could discourage
7 DAFs from using the full suite of professionals
8 they would otherwise use in fulfilling their
9 fiduciary duties and might cause us to develop
10 capabilities internally, which would increase
11 overhead costs and end up raising costs for all
12 donors at the expense of charitable beneficiaries.
13 It also may favor large corporate sponsored Donor
14 Advised Funds over community foundations and
15 mission driven DAFs because they have more budget
16 to spend on legal and other resources.

17 I'll comment briefly on timing. We
18 recommend that the effective date of any final
19 regulations include a reasonable transition period
20 of at least one full tax year in order to provide
21 sufficient notice and time for DAF sponsors to
22 implement the regulations.

1 An existential reason for DAFs is that
2 the funds are there in times of crisis. With
3 antisemitism on the rise. My Jewish community is
4 in crisis right now, and the Jewish Communal Fund
5 has been there to provide organization of
6 philanthropic funds. I mentioned that last year
7 our donors distributed \$900 million to charitable
8 organizations. This year I expect it to be over a
9 billion.

10 Thank you for listening and your time.

11 MS. LEVY: Thank you, Ms. Schnoll. The
12 next speaker is Lisa Chmiola, Association of
13 Fundraising Professionals.

14 MS. CHMIOLA: Good morning. My name is
15 Lisa Chmiola and I serve in a volunteer capacity
16 as the Chair of the Association of Fundraising
17 Professionals U.S. Government Relations Committee.
18 I'm here to represent AFP, which serves as the
19 professional association of individuals and
20 organizations that generate philanthropic support
21 for a wide variety of charitable nonprofits. Of
22 our 27,000 members around the world, about 85

1 percent, or approximately 23,000, are based here
2 in the United States.

3 We were founded in 1960 and we have more
4 than 180 professional chapters across the globe,
5 with 154 of those here in the U.S. AFP's
6 individual and organizational members collectively
7 raise more than \$1 billion annually. AFP promotes
8 donor trust and effective and ethical fundraising
9 by requiring our members to comply annually to the
10 code of ethical principles and standards. This is
11 the only such enforced code in the profession.

12 In addition to representing AFP, my
13 professional background has helped inform these
14 comments. I have more than 22 years in
15 philanthropic development for nonprofits. I'm
16 currently working in gift planning for a
17 university, but I also have served a major gift
18 and gift planning roles for both public and
19 private educational institutions and for a
20 religious foundation. Following my initial career
21 experience in event based philanthropy for the
22 American Heart Association, I also founded a

1 consulting firm focused on legacy and non-cash
2 asset giving strategies.

3 AFP's members are concerned about a
4 historic drop in charitable giving. Therefore, we
5 are concerned with any proposals that would
6 further decrease giving to the charitable sector.
7 AFP is a key partner in the Fundraising
8 Effectiveness Project, which works with donor
9 management software firms and other partners such
10 as GivingTuesday to track giving trends.

11 According to FEP data, the number of
12 small donations increased in 2020 and 2021 after
13 Congress enacted a universal charitable deduction,
14 but the number of those small gifts decreased in
15 2022, significantly after that temporary universal
16 charitable deduction was not renewed. Our latest
17 data, collected through the end of 2023, found
18 that fundraising dollars, the number of donors,
19 and retention all are down year over year.

20 Additionally, those who are considered
21 micro donors who give between \$1 and \$100
22 decreased the most. And finally, last year's

1 Giving USA Report found that 2022 was only the
2 fourth year that giving was in decline since
3 tracking began in the 1950s.

4 We appreciate Treasury and the IRS for
5 providing clarifying guidance in the proposed
6 regulations on things such as the definitions of a
7 Donor Advised Fund, a donor, a donor advisor, on
8 the exceptions to a definition of a DAF, and on
9 taxable distributions from a DAF. However, AFP
10 shares the concerns expressed by others here today
11 that some of the provisions in the proposed
12 regulations may inadvertently increase compliance
13 burden on DAF sponsor organizations and DAF
14 donors, and therefore may result in unnecessary
15 burdens on the flow of philanthropic dollars to
16 the work of this charitable nonprofit.

17 Allow me to briefly highlight a few
18 points of concern. For example, many
19 organizations have embraced the concept of giving
20 circles, as we've heard today, to inspire
21 philanthropy from donors who may not have
22 previously felt that they had a seat at the table

1 of giving. When I worked for a religious
2 foundation, we had a women's giving circle that
3 employed such giving.

4 This style of giving encourages those
5 like-minded individuals to come together and, with
6 their pool gifts, create a greater impact in their
7 communities than they could individually. The
8 impact of forcing fund types like giving circles
9 to be inappropriately defined as a Donor Advised
10 Fund would cause unnecessary confusion at
11 regulation over the fund management, since in
12 giving circles, all donors give similar amounts
13 and there is no single donor who has exclusive
14 advisory privileges. Often decisions about where
15 to give are made collectively by the group or by a
16 smaller committee, therefore limiting any risk
17 that funds are used improperly. The additional
18 regulation by reclassifying these funds would
19 unnecessarily burden the staff of the
20 organizations managing the circles and slow down
21 the timeliness of the funds being sent to the
22 nonprofits to have an impact on those who they

1 serve.

2 Another type of fund that would be
3 impacted are field of interest funds that are held
4 at many of our community foundation member
5 organizations. For example, Cochrane-Fountain
6 City Schools in Wisconsin and Lewiston-Altura
7 Schools in Minnesota hold funds at the Winona
8 Community Foundation. The population of both
9 these districts were less than 5,000 each in 2022.

10 Significant budget shortfalls in their
11 educational funding motivated the residents to
12 rally around raising funds in support of education
13 in their district. They do not have the
14 population density or the expertise to start a
15 nonprofit foundation to support their schools.
16 Instead, they established a field of interest fund
17 at the Winona Community Foundation, and the
18 advisory boards of these funds make grant
19 recommendations in support of their schools. If
20 these funds were to become DAFs, it would limit
21 the opportunity for community members who are
22 currently eligible to make qualified charitable

1 distributions from their IRAs to these funds in
2 support of their schools, since those
3 distributions are not allowed to be made to DAFs.

4 AFP also shares the concerns of our
5 colleagues about the chilling effect of
6 classifying a personal investment advisor as a
7 donor advisor. We're also concerned determining
8 distributions from DAFs which are used to
9 influence legislation as a taxable distribution
10 will create a misperception that nonprofits should
11 not engage in legally permitted advocacy.

12 And finally, we share the
13 recommendations by several colleagues here today
14 to support the adequate time needed for any
15 changes to be administered. It's important to
16 ensure that our nonprofits have the infrastructure
17 to deliver critical programs and services to our
18 communities. When they don't, individuals across
19 the country suffer.

20 For example, the YWCA, provider of the
21 largest network of domestic and sexual violence
22 survivor services in the country, recently

1 reported that more than three fourths of their
2 local associations are facing funding challenges,
3 and they're bracing themselves for further
4 decreases in 2025. To support their domestic
5 violence, sexual assault and trafficking
6 initiatives, currently, these associations receive
7 37 percent of their funding from federal support.
8 A decrease in corporate and individual
9 philanthropy could lead to increased pressure on
10 public support to fill the gaps in those program
11 deliveries.

12 Additionally, the nonprofit sector is
13 the third largest private workforce in the nation,
14 made up of 12.5 million people who work at more
15 than 1.8 million nonprofits. The sector makes up
16 more than 5 percent of the country's first
17 domestic product. Yet the majority of nonprofits
18 currently have more vacancies now than compared to
19 before the pandemic, as research for the National
20 Council of Nonprofits shows.

21 Going back to the YWCA example, nearly
22 one third of their associations are reporting

1 staffing shortages due to a variety of factors.
2 Budget constraints, burnout, and not paying a
3 livable wage all have an impact. Finally, a lack
4 of quality childcare continues to create barriers
5 to recruiting nonprofit employees, nearly two
6 thirds of which are women.

7 Thank you for the opportunity to share
8 AFP's concern with proposals that would reduce
9 charitable giving at such a precarious time for
10 nonprofit organizations. As we deal with this
11 historic drop in giving and the widening disparity
12 in who gives in this country, it's also always
13 important to highlight the value of the nonprofit
14 sector in our nation and the clients they serve
15 through their missions. While these proposed
16 regulations may seem narrow, any negative impact
17 on charitable giving impacts the ability of
18 nonprofits to serve their local communities.

19 As you consider your next steps, we
20 invite you to consider AFP as a partner to your
21 work, as well as a resource for the nonprofit
22 sector. Thank you for your time, and thank you

1 for your service.

2 MS. LEVY: Thank you, Ms. Chmiola. The
3 next speaker is Stephen King from Gammon & Grange
4 PC.

5 MR. KING: Good morning. Good to be
6 with you today. Stephen King from Gammon &
7 Grange. I think our firm, for those of you who
8 know the history of Donor Advised Funds, was
9 involved in the National Foundation case many
10 years ago. I wasn't around then, but we created
11 the problem basically that we're dealing with
12 today.

13 Obviously, some complicated issues that
14 you've had to deal with, Mr. Thomas and others.
15 The interplay of Sections 4966, 67, and 4958,
16 statutory language that raises a number of
17 questions, trying to regulate a nonentity, a fund
18 within an entity, and the issues of donor
19 influence that are inherent with the nature of
20 Donor Advised Funds.

21 So I'll agree with the comments that I
22 made before regarding the anti-abuse rules,

1 investment advisors, the effective date of the
2 applications. But wanted to drill down a little
3 bit more on one of the issues that has been spoken
4 on some, particularly by Andrea from the Chicago
5 Community Trust, related to, and I'm going to call
6 them fiscally sponsored programs, and how these
7 proposed regulations could inadvertently bring
8 fiscally sponsored programs, and especially what
9 are called model A or direct model FSPs, into the
10 Donor Advised Fund lab, which I don't think it was
11 intended to do here.

12 So, as you're probably aware of,
13 fiscally sponsored programs, which come in many
14 varieties and sizes, are significant in promoting
15 productive charitable activity. By facilitating
16 incubation of new charitable ventures, they ensure
17 that these programs are operated in an effective
18 and compliant manner. They provide on training of
19 exempt organization administration and compliance
20 for those just joining the sector.

21 So, I have many clients who are doing
22 this effectively. We have some representatives

1 from United Charitable, one of my clients here who
2 are exemplary in the way that they, they handle
3 these programs. So, were these intended to be
4 falling under the umbrella of a DAF? Well, let's
5 go through a simple scenario to see how this plays
6 out. Let's suppose we have Mary who has an idea
7 of serving low- income elderly in her town with
8 some educational programs about available services
9 for seniors and activities to meet the social and
10 intellectual needs of the senior sector. So, to
11 do this, she'll need to rent some space to provide
12 her programs and other activity costs. She'll
13 need a fundraiser for this.

14 And in her research and finding out how
15 to get this going, she finds out she could either
16 start her own organization and set up the entity,
17 get through the tax exemption recognition process,
18 or perhaps she could get some help starting out by
19 going to an organization that is already an
20 existing 501(c)(3) organization that provides help
21 in getting going and incubating this. And it
22 could even be her local church or temple or

1 synagogue that would agree to take on this
2 project.

3 So, let's say she chooses number two and
4 needs some help to do this and wants to get it
5 incubated under another organization. Is this a
6 DAF under the proposed regulations? Well,
7 clearly, under the broad definition of a fund in
8 the proposed regulations, any organization must
9 track contributions that come in and if they're
10 designated for a certain program that needs to be
11 tracked. So, it's going to be a fund. But the
12 organization that agrees to take on this project
13 is going to be a sponsoring organization if this
14 project ends up being a Donor Advised Fund.

15 I guess that's sort of a, I forget the
16 word about the quality of those terms. So, we get
17 into the little bit more complicated. Now, if
18 Mary could advise about space to rent for the
19 program and other program expenditures that are
20 going on, that would likely be an advisory
21 privilege, I think, under the proposed
22 regulations, the way that distribution is

1 currently defined, and we've had several comments
2 on this issue of distribution.

3 But I think it's interesting that the
4 term that's used in 4966 and 67 is distribution
5 and not expenditure, which is used in 4945 for
6 private foundations, even though if it is a
7 distribution that doesn't meet certain criteria,
8 the expenditure responsibility requirements of
9 4945 come into play, which, by the way, just
10 speaks to grants and program related investments.
11 So, it's sort of interesting to think about, well,
12 how could those expenditure responsibility
13 requirements apply in a case of a direct
14 charitable expenditure?

15 So, as others have recommended, I think
16 the definition of distribution needs to be thought
17 through a little bit more carefully. I think it
18 seems like the intent of that is grants or
19 disbursements that are not quid pro quo payments
20 for charitable type of activity. So that would be
21 one way that we could help not bring these
22 fiscally sponsorship programs into the ambit of a

1 DAF.

2 Second, Mary, if she has advisory
3 privileges, switch (phonetic) a donor advisor, on
4 the proposed regulations under dash (1)(h)(2), we
5 have a provision that says, a person who
6 establishes a fund and advises as to the
7 distribution or investment of amounts in that fund
8 will be treated as a donor advisor with respect to
9 that fund, regardless of whether the person
10 contributes to the fund or account. So, under
11 that definition, it seems like Mary would be a
12 donor advisor, which, as others have suggested, I
13 think that really goes outside of the statutory
14 bounds of how donor or somebody appointed by a
15 donor is in the statute here.

16 But under this proposed regulation, Mary
17 would become a donor advisor, whether or not she
18 actually contributed herself to this program. And
19 then with these advisory privileges by reason of
20 Mary's status as a donor under proposed dash
21 (3)(c)(2)(1) little roman numeral, I don't know
22 what we call those. But anyway, it says that fact

1 sufficient to find advisory privileges, a donor or
2 donor advisor has advisory privileges by reason of
3 the donor status as a donor, regardless of whether
4 their exercise is the sponsoring organization
5 allows a donor or donor advisor to provide
6 non-binding recommendations regarding
7 distributions from the fund.

8 So, I think in the scenario I put here,
9 Mary would be a donor advisor who, even though she
10 didn't give in by this regulation would be a donor
11 advisor who is considered to be a donor advisor by
12 the fact that she initiated the fund only. So,
13 under the three-pronged test, this would be a
14 donor advice fund. And I don't think that's
15 really what 4966 was intending to regulate here.

16 So, we suggest a few things to fix this.
17 Number one, narrower definition of distribution,
18 at least indicating that it does not include quid
19 pro quo expenditures for charitable purposes.
20 Elimination of the dash (1)(h)(2), donor advisor
21 definition and example 10, which followed up on
22 that. And then under dash (3)(c)(2), and this is

1 the provision that say facts sufficient to find
2 advisory privileges. That really seems to cut the
3 statutory language about advisory privileges being
4 by reason of being a donor or donor advisor,
5 because most things are going to fall under those
6 four subheadings under that section.

7 So, we think that dash (3) (c) (2) should
8 at least be just presumptions and not byline rules
9 as to the reason for a donor status as a donor
10 advisor. And by the way, just as a side note,
11 there's also a provision in the dash (c) (1) (4)
12 that provides a little bit of an exception for
13 somebody acting into capacity as an officer,
14 director, or an employee of an organization.
15 That's a little bit unclear whether that would
16 apply to Mary in this case, if she's just a
17 volunteer. But in any case, there seems to be a
18 little bit of a contradiction between that section
19 which does allow that if the employee happened to
20 give that maybe you could still make the case that
21 they didn't give on the basis of, or they weren't
22 giving advisory privileges on the basis that they

1 were a donor. But then you have the (c) (2) (1)
2 provision that makes the bright line, well, if
3 they are a donor and they have advisory
4 privileges, it's deemed that it's because of their
5 donor status or donor advisor status.

6 Finally, let's choose a scenario just a
7 little bit, and let's say that Mary desires to
8 donate a small amount to the project, although the
9 bulk of the contributions are coming from a wide
10 variety of unrelated sources. So here, even if we
11 got rid of the one provision that Mary is a donor
12 advisor, by the fact of just initiating the fund
13 here, she would be a donor, and if she had
14 advisement privileges under dash (3) (c) (2),
15 assuming that she is the only advisor to the fund,
16 it would be deemed that her advisement was due to
17 her being a donor.

18 And again, that seems like this is
19 contrary to the purpose of these types of funds.
20 Somebody should be able to at least give a little
21 bit. So, we would suggest that there'd be some
22 exception to the definition of donor through a

1 fund to a multi, to a multi-giver fund where there
2 are multiple donors that would provide a unanimous
3 exception that would allow for either maybe on a
4 dollar amount basis or a combination of dollar
5 amount and percentage of perception on the donor
6 advisements.

7 Thank you very much.

8 MS. LEVY: Thank you Mr. King. Next we
9 have Jennifer Bartenbach, Central Indiana
10 Community Foundation.

11 MS. BARTENBACH: Good morning. My name
12 is Jennifer Bartenbach and I'm the CEO of the
13 Central Indiana Community Foundation, or CICF.
14 And I'm here on behalf of the philanthropic
15 collaborative consisting of CICF, the Indianapolis
16 Foundation, Hamilton County Community Foundation,
17 Women's Fund of Central Indiana, and Impact
18 Central Indiana.

19 Indiana is unique in that we have 94
20 community foundations across our state with at
21 least one in every county. So, thank you for this
22 opportunity to testify to the impact these

1 regulations would have on our collaborative if
2 enacted. CICF was created in 1997 when the
3 Indianapolis Foundation, Indiana's oldest
4 community foundation, and Hamilton County
5 Community foundation came together with the
6 understanding that the whole could be greater than
7 the sum of its parts, creating efficiencies and
8 unlocking new opportunities for donor engagement
9 and fund development. Women's Fund of Central
10 Indiana, now a component field of interest fund of
11 CICF, focused on supporting organizations that
12 serve all who identify as women and girls, was
13 founded in 1996.

14 In Impact Central Indiana, the
15 collaborative Impact Investing multi-member LLC
16 was established in 20 -- while each entity has its
17 own initiative and philanthropic priorities, we
18 have a shared mission to mobilize people, ideas
19 and investments to make Central Indiana a
20 community where every individual has equitable
21 opportunity to reach their full potential, no
22 matter their place, race, or identity.

1 Together, our collaborative holds \$1
2 billion in charitable assets and more than 1300
3 Donor Advised Funds along with other fund types.
4 As many others have mentioned, today, our Donor
5 Advised Funds have a payout over 12 percent.
6 Among other things, CICF provides back office
7 administration, including Donor Advised Fund
8 management and donor engagement services, to its
9 affiliates. And the partnership with outside
10 investment advisors and managers is critical to
11 the success of our donor advise fund program.

12 Before we offered the option of outside
13 investing Donor Advised Funds, investment advisors
14 often saw our funds and services as competition,
15 at odds with their most critical metrics of
16 success, their assets under management. Once CICF
17 was able to keep assets invested with donors,
18 investment advisors while providing first class
19 donor service, it became an opportunity for
20 partnership rather than competition. Donors with
21 outside invested Donor Advised Funds do so because
22 they typically have a long standing, trusted

1 relationship with their advisor. When he or she
2 recommends opening a fund with CICF, that
3 prospective donor listens. Not only that, but
4 outside invested funds tend to be larger in asset
5 size than those that are not. These large funds
6 are able to do transformational grant-making in
7 our community.

8 In 2022, one such fund awarded \$4.7
9 million over 126 grants, an average of more than
10 \$35,000 per grant. As an endowed fund, this fund
11 does grant making at a similar scale every single
12 year. We have worked with this family for the
13 entirety of CICF's existence and have established
14 a longstanding relationship of trust with them as
15 we help make their philanthropy impactful for the
16 organizations they support and meaningful to their
17 family.

18 Moreover, over 75 percent of their
19 grants in 2022 went to support their passions for
20 the environment and arts and culture. These are
21 two areas that CICF has not prioritized and does
22 not have the resources to support. By

1 contributing to these interest areas, these
2 sectors continue to be supported in central
3 Indiana and these grants help fill the gap left by
4 CICF and other funders in our region.

5 Another family utilizes outside
6 investment services used their donor-advised funds
7 to create Indianapolis' bike share program,
8 providing an affordable and active transportation
9 option across our city. They continue to fund it
10 with substantial annual support and have funded
11 opportunities for significant expansion reaching
12 areas in dire need of transportation access.

13 A final example is a family that unwound
14 their private foundation into a donor-advised
15 fund. In 2023, they recommended nearly \$500,000
16 in grants to 21 organizations in their home county
17 with an average grant size of over \$20,000.
18 Moreover, this funding aligns closely with the
19 strategic funding priorities of our collaborative,
20 allowing unrestricted endowment funds to be
21 directed to other organizations that otherwise
22 would not receive funding. Without the ability to

1 outside invest their fund, it is quite likely that
2 this family would have elected to keep their
3 private foundation in lieu of a donor-advised
4 fund.

5 Currently, CICF has 62 outside invested
6 donor- advised funds with 29 investment advisors,
7 totaling nearly 200 million in assets. This is
8 almost 20 percent of our total assets. Though
9 some advisors would continue to see donor- advised
10 funds as helpful tools to accomplish their clients
11 philanthropic goals, others would be hesitant to
12 recommend them for fear of losing assets under
13 management. This churn effect would affect the
14 entire philanthropic sector given the sharp rise
15 in popularity of donor-advised funds as a
16 preferred giving tool.

17 The perception of abuse that these
18 regulations seek to remedy is false. As a
19 sponsoring organization, we take our duty to
20 ensure that investment fees charged are reasonable
21 and consistent with industry standards very
22 seriously. We meet with each of our outside

1 investment advisors at least annually, and our
2 finance team diligently reviews fund financial
3 statements quarterly. We measure investment
4 performance and provide information about our own
5 investment pools so that outside investment
6 advisors are aware of our performance and
7 benchmarks. If there is an extended period of
8 underperformance by the advisor, we discuss the
9 situation with the donor and offer investment in
10 one of our pools as an alternative. These checks
11 and balances ensure that investment advisors keep
12 charitable intent and exceptional investment
13 returns top of mind.

14 Thank you again for the opportunity to
15 testify and for taking seriously the sector's
16 concerns.

17 MS. LEVY: Thank you, Ms. Bartenbach.
18 The next speaker is Dennis Buehler, Greater Green
19 Bay Community Foundation.

20 MR. BUEHLER: Good afternoon. My name
21 is Dennis Buehler, and I proudly serve as the
22 president and CEO of the Greater Green Bay

1 Community Foundation. On behalf of my community,
2 our colleagues across the state of Wisconsin, I'd
3 like to thank the panel for this opportunity to
4 testify and for your service.

5 My comments will be brief as not to
6 repeat much of what my colleagues have said here
7 today, but over the past 35 years, we've invested
8 more than \$200 million across northeast Wisconsin
9 to improve our quality of life through grants,
10 community initiatives, and other programming. We
11 collaborate every day with advisors and other
12 professionals to support donors' charitable intent
13 and achieve generational impact. We process
14 complex gifts and steward resources for
15 organizations who do not have the capacity to do
16 so on their own. Administering donor-advised
17 funds is just one of the many things community
18 foundations do to support the geographic regions
19 we serve.

20 Our primary concern with the proposed
21 regulations is their failure to differentiate
22 between nonprofit community foundations and the

1 commercial gift funds created by for-profit
2 institutions. Community foundations use their
3 resources to promote funding and programs and
4 initiatives that address the unique needs of local
5 communities. While we understand the desire to
6 create a uniform set of rules, as written the
7 regulations will have a chilling impact on donors'
8 commitments to their community and will negatively
9 impact the community's ability to leverage
10 important local philanthropic relationships.

11 Our foundations are governed by diverse
12 groups of local volunteers and are not overseen by
13 those with commercial interests in asset-building
14 or warehousing charitable dollars. They model
15 every day how community partnerships can result in
16 greater impacts.

17 One example is our foundation's
18 relationship with the NFL's only community-owned
19 franchise, the Green Bay Packers. And with great
20 respect to my colleagues in Kansas City and
21 Chicago, they have achieved remarkable success on
22 the football field. (Laughter) But it's tools

1 available at community foundations that allow us
2 to partner and support their philanthropic
3 interests and create unmatched collaborative
4 impact in our community.

5 Our joint response to COVID-19 inspired
6 local DA Fund holders to contribute millions of
7 dollars to nonprofits during this unprecedented
8 time. Our staff, our respective boards, our
9 donors, our advisors all work together to ensure
10 these funds reached those who needed them the
11 most.

12 We may be smaller markets in both the
13 terms of football and community foundations, but
14 our ability to plan and create meaningful impact
15 is greater than most. Collaborative approaches
16 between organizations like the Packers, local
17 businesses, public institutions, and individual DA
18 Fund holders alike bring innovative thinking.
19 This includes hosting one of the country's only
20 evolving cohort- designed Giving Day circles
21 called Give Big Green Bay. Over the last seven
22 years alone, this program has delivered \$13.5

1 million of support to 150 unique and important
2 nonprofits. The average amount each of those
3 nonprofits received from this event not only far
4 exceeds national averages, but tops some of the
5 largest foundations in the country.

6 Our tools, the tools that our donors use
7 at community foundations, which would be greatly
8 of these regulations, encourage small donors, DA
9 Fund holders, investment advisors, and corporate
10 partners alike to engage in growing local
11 philanthropy. Relationships matter, fund
12 structures and local fee investments matter. For
13 almost 100 years, community foundations across the
14 country -- or communities across the country have
15 benefited from this type of collaboration. If
16 regulatory goals overreach, they will not only
17 create confusion, but compliance will
18 significantly impact oversight and unnecessarily
19 raise management fees, all of which will drive
20 donors away and diminish the innovative approaches
21 at a time of rapidly changing needs. Responding
22 to the changing needs requires trusted

1 relationships, including those that we have built
2 with our local financial advisors and third party
3 asset managers. We are generally concerned, as is
4 noted here today, these regulations will
5 significantly impact giving to our community
6 foundation by incentivizing advisors to direct
7 their clients to private and commercial funds.
8 This inevitable decrease in local funding
9 commitments with no complementary charitable
10 counsel will have a negative impact on critical
11 grant-making.

12 For example, recently our foundation, a
13 donor, and our third party asset manager assured a
14 \$365,000 grant reached Journey to Adult Success, a
15 local nonprofit that helps former foster care
16 youth transition to adulthood. The facilitation
17 of this community investment came from our
18 longstanding and trusted advisor relationship, and
19 it was critical.

20 We know donors trust their local
21 investment advisors and community foundations to
22 address these community issues together. Honest

1 dialogue, shared values are what help identify
2 charitable opportunities without barriers to make
3 the greatest impact for causes our donors are
4 passionate about. We intentionally build these
5 relationships to leverage our strengths. Funds at
6 community foundations through DA Funds and third
7 party asset pools keep charitable dollars in our
8 communities. The fees generated by these gifts
9 are invested locally. They support program staff,
10 grant-making, training programs, research, and
11 other partnerships to create a remarkable return
12 in our community.

13 Donor-advised funds in Green Bay
14 represent 50 percent of our total funds and
15 one-third of our asset base. Our collaborative
16 approach with these fund holders creates grant
17 spending rates north of 15 percent, as much as 30
18 percent, driving our overall spending rates well
19 above similar foundations, all without the need of
20 new regulation and well within the nationally
21 accepted standards of practice already established
22 in our field.

1 Proposed regulations place the same
2 compliance burden on the community foundation as
3 they do other fund sponsors. These are vastly
4 different funds, but with one or two noticeable
5 distinctions: Our value and our impact. We
6 respectfully ask you to work with us to create
7 innovative approaches that reflect the unique
8 operating models of community foundations and to
9 encourage local investment and impact, not to
10 diminish it. Thank you.

11 MS. LEVY: Thank you, Mr. Buehler. Next
12 speaker is Amy Freitag, New York Community Trust.

13 MS. FREITAG: Greetings from New York,
14 home to the Jets and Giants. (Laughter) My name
15 is Amy Freitag, and I'm honored to serve as
16 president of the New York Community Club, one of
17 the largest community foundations in the United
18 States. This year, we're celebrating 100 years
19 connecting New York's most generous citizens to
20 our highest impact nonprofits.

21 The New York Community Trust has over \$3
22 billion in assets, representing 2,300 funds

1 established by individuals, families, foundations,
2 and businesses to support nonprofits that have
3 made a difference in our community. In the past
4 10 years alone, we've granted out more than \$2
5 billion for a wide range of acute needs in our
6 region, including hunger, housing, healthcare,
7 arts, and social justice. What sets us apart is
8 our deep bench of grant-making expertise focused
9 on our eight county region in downstate New York,
10 the five counties that make up New York City, as
11 well as Westchester to our north, and the two
12 counties in Long Island to our east. Like our
13 community foundation brethren around this room
14 today and across the country, we pride ourselves
15 in our deep knowledge of this community and our
16 ability to match philanthropic priorities of our
17 donors to grant-making opportunities that will
18 have maximum impact.

19 Now, among our accomplishments over this
20 hundred- year history is the creation of the
21 donor-advised fund. Yay. (Laughter) My purpose
22 here today is to explain why we think DAFs are

1 essential to the mission of community foundations
2 and how the proposed regulations could have a
3 detrimental impact on our ability to help our
4 communities.

5 So, back in 1931, when Francis Barstow
6 and her husband set up the first ever
7 donor-advised fund of the trust, she and her
8 husband intended to leave their funds in their
9 estate for the betterment of New York, but they
10 also wanted to make grants during their lifetime.
11 Fast forward to today, three important features of
12 the DAF have not changed since the Barstows opened
13 their fund. One, donors enjoy the ability to be
14 part of the process that transforms their
15 generosity into grant-making. Two, the trust, or
16 the DAF sponsor, retains control over the assets
17 in the DAF. We manage the finances and the
18 grant-making from our DAF, just as we do other
19 types of funds. Three, DAFs can become a
20 permanent part of New York's philanthropic
21 landscape. The Barstow fund became part of our
22 endowment at their death, which means our

1 grant-making staff can deploy those funds year
2 after year to meet the needs that our community
3 has. That is a powerful legacy.

4 So of our 2,300 active funds, 1,300 are
5 donor- advised funds, which come in many, many
6 flavors, as you all know, such as memorial funds
7 to honor a loved one or an endowed DAF or the
8 garden variety of DAFs, which provide a low
9 barrier way for people of all walks of life to
10 engage in philanthropy. The rest of our funds are
11 other types other than DAFs, including funds that
12 support a specific or particular purpose and those
13 who support specified organizations. We also have
14 funds that give out awards and prizes and
15 scholarships, and collaborative funds where we
16 bring donors together around a particular issue.

17 So, similar to my wonderful colleague in
18 Chicago, I want to focus for a moment on
19 collaborative funds, which we're concerned could
20 be negatively impacted by the proposed
21 regulations. For almost 50 years, the trust has
22 been an innovator in philanthropic collaboration,

1 partnering with hundreds of funders to recommend
2 grants addressing areas of broad public interest
3 from more than 40 separate collaborative funds.
4 Examples include our September 11th fund, which
5 pulled over 500 million from individuals living in
6 all 50 states and from 150 countries to respond to
7 the tragic events of that day. Our COVID-19 fund
8 granted over \$70 million to New York nonprofits in
9 the darkest days of the pandemic, receiving
10 contributions as little as \$20 from individuals
11 who just wanted to help.

12 The way these collaborative funds work
13 is that we establish a fund with a specified
14 purpose that we define, and then we invite funders
15 to join us. There are often a combination of
16 individual donors and foundations. We appoint a
17 committee composed of funders to work through the
18 issues and provide recommendations, although we
19 make the final decisions. We also, of course,
20 handle all administration of the fund and provide
21 staff support, which includes the issue experts on
22 our program team.

1 Now, a big part of what makes
2 collaborative funds so effective is the degree to
3 which donors are engaged in the process. When our
4 region is under siege, either due to terrorist
5 attack or global pandemic, New Yorkers are at
6 their best rolling up their sleeves to help their
7 neighbors. We, the trust, control the
8 administration and the grant-making from the
9 funds, but this work benefits enormously from the
10 creativity and the passion of our donors.

11 I want to note that at the trust we have
12 always distinguished collaborative funds from
13 giving circles, where like-minded donors organize
14 themselves and recommend grants to organizations
15 they wish to support based on their values and
16 priorities. We administer giving circles as
17 donor-advised funds.

18 So, how would the proposed regulations
19 affect our work? Put simply, as you've heard
20 already today, they would turn certain funds into
21 DAFs that are not currently DAFs, and other funds
22 would be at risk of becoming a DAF based on future

1 facts and circumstances. Because donor-advised
2 funds are disfavored under the tax code relative
3 to other funds that we administer, affecting both
4 the types and contributions they can accept and
5 grant-making from the fund, anything that causes a
6 category fund to turn into a DAF makes it more
7 complicated to administer, less attractive to our
8 donors, and ultimately less effective.

9 So here are a couple of examples of some
10 funds that would tip into becoming a DAF and what
11 that could mean. A new collaborative fund we
12 recently formed to address 180,000 migrants that
13 have come to New York City in the past two years.
14 Our advisory committee is composed of generous
15 funders. If this became a DAF, we could not use
16 this vehicle to provide cash assistance to
17 migrants, a lifeline for many immigrant families.
18 Another example is a fund supporting social work
19 in New York City, established by a generous donor
20 who spent her life as a social worker. Her joy is
21 a once a year lunch with our staff when she shares
22 her perspectives on the field. If this became a

1 DAF, she could no longer contribute qualifying
2 charitable distributions from her IRA to her fund.

3 So, sorting all this out, communicating
4 it to our donors, and developing systems to catch
5 when a fund tips over into a DAF would
6 significantly disadvantaged community foundations
7 relative to other DAF sponsors that have the
8 capacity to increase compliance without raising
9 fees. Donors will go elsewhere and those in our
10 community who benefit from our funds will lose out
11 the most. The draft regulations seem to
12 presuppose that donor engagement is something
13 suspicious or that stands in the way of sponsor
14 control. But we don't see it like that at all.
15 We think donor engagement is critical to the
16 philanthropy of many, many people.

17 Would the Barstows have set up their
18 fund during their lifetime if they couldn't have
19 been involved? Probably not. Would all of our
20 collaborative fund partners have been willing to
21 contribute post 9-11 if they didn't have a seat at
22 the table? We don't think so. And if these

1 regulations chase away living donors, they're
2 unlikely to make permanent gifts to our community,
3 a compounding loss that will be felt by
4 generations of people in our region.

5 So, as a result, we urge you to consider
6 what we believe must be unintended consequences of
7 the proposed regulations. In our written
8 comments, we lay out which provisions we hope will
9 be struck entirely.

10 We also propose two different solutions
11 to the issues around what it means to have
12 advisory privileges. One solution is for the
13 regulations to define what it means to have a
14 sponsor-appointed advisory committee that includes
15 donor participation, but does not turn the fund
16 into a DAF. An alternative solution is for
17 Treasury to rely on the authority in the law to
18 develop an exception around funds with a single
19 identified purpose that would prevent
20 collaborative funds from being swept into the
21 definition of a DAF.

22 Finally, we ask that there be another

1 round of draft regulations before they are
2 finalized.

3 So, as you've heard today, community
4 philanthropy works in ways that are both complex
5 and delicate, and we stand ready to help Treasury
6 understand what we do to ensure that the final
7 regulations support that philanthropy rather than
8 putting it at risk. Thank you.

9 MS. LEVY: Thank you, Ms. Freitag. The
10 next speaker is Keith Burwell, Greater Toledo
11 Community Foundation.

12 MR. BURWELL: Thank you for your time
13 and your service. I don't think you're going to
14 hear anyone come up and say, great job, we're
15 going to give you an award. (Laughter) I'm Keith
16 Burwell, president and CEO of the Greater Toledo
17 Community Foundation. I've worked with the
18 foundation for over -- in the community foundation
19 world for over 26 years and 20 with Greater Toledo
20 Community Foundation. The Greater Toledo
21 Community Foundation works in northwest Ohio and
22 southeast Michigan. And contrary to a lot of

1 popular belief, most of the over 2,000 funds we
2 have at the foundation, they're created by
3 farmers, teachers, firefighters, small business
4 people, not billionaires that decide to create a
5 fund.

6 That said, let me begin by saying I'm
7 not an attorney and I don't play one on TV. So my
8 comments while they're run through legal advice,
9 take it for what it is from me. We believe that
10 there are many issues to address. You've heard
11 some already in the pronouncement, and I'm only
12 going to touch on three, given the time.

13 First, if adopted under regulations,
14 this broad donor-advised fund, many of the Greater
15 Toledo Community Foundation's funds would be
16 classified as a donor-advised fund. Field of
17 interest funds is one of those issues I'll bring
18 up as an example. Decades ago, a matriarch of the
19 Champion Spark Plug Company created what we call
20 the C corp fund. She then also gave her house to
21 be a area park where you could get education and
22 art in this one facility. That fund then funds

1 educational work across the region and helps fund
2 that part where classes take place. This fund
3 today would be considered in many cases a
4 donor-advised fund under these definitions. I
5 would make the case if that were to be true, she
6 would not have made this C corp fund at the
7 Greater Toledo Community Foundation, but would, in
8 fact, put it in her family foundation.

9 Similarly, the Andersons Fund at the
10 Greater Toledo Community Foundation is a field of
11 interest fund created by the Andersons Inc.
12 Fortune 500 company, a grain commodity company.
13 They created a fund for capital needs within the
14 region. So any capital project coming forward,
15 the fund would look at and then through a
16 specially created committee, determine what
17 capital project should be funded. The fund was
18 created through the sale of land, it then became a
19 business park in the region, and has been very,
20 very successful in the year funding capital
21 projects that normally would not get money because
22 of the nature of building buildings or projects

1 with capital needs. If, in fact, this definition
2 were used today, that you're finding the
3 pronouncement, this fund may be considered a
4 donor-advised fund and I could almost guarantee
5 you that the business, the Anderson Inc. company
6 would not create this fund. Rather, we'd move
7 that fund into the revenue of the company and
8 forget the whole idea of philanthropy.

9 For Greater Toledo Community Foundation
10 mandating field of interest, designated funds, or
11 funds with committees to meet requirements that we
12 see in these pronouncements creates a wall that we
13 think is needless for donors and ultimately less
14 money for charities within my region.

15 The second issue I'd like to address
16 quickly is the overall definition of a taxable
17 distribution, which we believe would hinder
18 Greater Toledo Community Foundation's donor-
19 advised funds, charitable operations, and
20 community initiatives. You've heard several
21 people comment on this already about what is a
22 charitable purpose and the subject that could

1 cause penalty or harm for the Greater Toledo
2 Community Foundation.

3 I'm not going to touch on the advisor
4 side, but you've heard some, or the due diligence
5 expenses. I would like to take it to another
6 level, and that is to the level of what would
7 happen to those that are penalized for using funds
8 from donor-advised funds to address community
9 initiatives and payments, for instance, to
10 consultants?

11 We have many, many issues within our
12 community where we've had to be the lead or the
13 convener to address an issue that is a great
14 concern to the region. And in doing so, we've
15 consulted with advisors, we consulted with
16 consultants, use that term, to help us address
17 that issue. One such area of concern is pre-K.
18 We created a task force, consisting of citizens
19 across the area, and they looked at what would be
20 the best designed pre-K program for the region.
21 In order to do that, we hired a consultant at the
22 national level to come into Toledo and help us

1 look at that. Under some of these pronouncements,
2 if you draw the string to the logical end of the
3 conclusion, payment of that consultant may not be
4 allowed from donors at donor-advised funds that
5 would like to contribute to that issue.

6 Likewise, we have looked now at the area
7 of homelessness and how do we redesign in our
8 region how we address homelessness? Because it's
9 not quite working the way we think it should.
10 Again, we have convened a task force and we have
11 hired a consultant. Many of our donor-advised
12 fund donors have suggested we use their funds to
13 help pay for that consultant. Again, if you draw
14 that logical conclusion to the very end, that may
15 create a penalty for that donor-advised fund to
16 support that campaign of that consultant in some
17 form or fashion.

18 That said, just as has been mentioned,
19 in Toledo, when the COVID outbreak occurred, the
20 Greater Toledo Community Foundation looked at how
21 could we help with several different funds. We
22 created three. One of those was to provide meals,

1 meals for first responders; benefited twofold.
2 First, we provided a warm, nutritious meal for the
3 first responders that were working hours and hours
4 over. And second, it allowed our restaurants,
5 which we contracted with, to keep their line staff
6 and cooks hired when they were actually closed to
7 help provide these meals. Our donor-advised fund
8 holders -- advisors encouraged us to take money
9 from their donor-advised funds to help pay for
10 these commitments (phonetic) and a practice. And
11 these pronouncements, they might be considered a
12 penalty to that donor-advised fund.

13 Finally, it's already been mentioned,
14 looking backwards would provide an undue burden to
15 the Greater Toledo Community Foundation. We're
16 not big in staff, and the deep (phonetic)
17 administrative burden of going backwards would
18 cripple us, frankly, for months as we try to
19 figure out the administrative and the expense side
20 of going backwards in that date.

21 I want to thank you for the opportunity
22 that we've had to speak to you today because

1 without your help, we would not be able to do what
2 we do. But with that said, donor- advised funds
3 play a significant role in addressing social
4 issues and concerns in our community, and we hope
5 that you will not hinder this work with somewhat
6 needless regulations on this philanthropic asset.

7 Thank you for allowing this time. And
8 hopefully, if you have questions, I'm more than
9 eager to have them and answer them later on.
10 Thank you.

11 MS. LEVY: Thank you, Mr. Burwell. The
12 next speaker is Aimee Minnich, Impact Investing
13 Charitable Foundation doing business as Impact
14 Foundation.

15 MS. MINNICH: Thank you all for allowing
16 me to comment. I'm super impressed by your
17 attention span. And if this many people showed up
18 at my office to tell me how to do my job, I don't
19 think I'd be as welcoming, so truly thank you.

20 (Laughter) I'm Aimee Minnich and I'm general
21 counsel and CIO for Impact Investing Charitable
22 Foundation. We go out in the world as Impact

1 Foundation. I resonate with a lot of the concerns
2 that have been shared this morning by others, but
3 I have good news. I'm going to talk about
4 something totally different. And I also think
5 it's almost lunchtime, so we can do it.

6 The proposed regulations contain a broad
7 definition of taxable distribution and it creates
8 a carve out from the definition for investments.
9 The problem with the approach, however, is the
10 definition given for investments is insufficient,
11 and it also contradicts the understanding of the
12 concept in other laws. I would respectfully
13 suggest instead of redefining the concept of
14 investments, the Service and Treasury could best
15 serve our industry by defining investments, at
16 least in reference to the rules for private
17 foundations, specifically program-related
18 investments from Code Section 4944 and associated
19 regulations and mission- related investments from
20 Notice 2015-62.

21 First, a little background. Our
22 organization was founded with roots in our

1 Christian faith. As followers of Jesus Christ, we
2 believe that everything belongs to God and we have
3 a stewardship responsibility for how we allocate
4 our resources, including our investment funds, the
5 businesses we run, and the dollars we donate to
6 charity. In other words, the families we serve
7 believe that they're not only accountable to the
8 IRS, but also to God. And frankly, I'm not sure
9 which is scarier. (Laughter) I tell you this to
10 say we take our work and (inaudible) for it very
11 seriously.

12 In 2015, while working for the National
13 Christian Foundation, we noticed that there's
14 approximately a trillion dollars that's been set
15 aside for charitable giving in foundations, mostly
16 private foundations, and only about 7 to 10
17 percent is given away each year. That means
18 there's over \$900 billion invested purely to make
19 a profit to sustain future grant-making.

20 But there's a rising movement to put
21 those investment funds to work in projects that
22 have a charitable purpose or a mission that aligns

1 with charitable aim, either through program
2 related investments, PRIs, or mission related
3 investments, MRIs, while also providing a return
4 for future grant making activities. It's known as
5 impact investing in the industry, and the rules
6 for PRIs and MRIs are much more spelled out for
7 private foundations than for donor advised funds.
8 But the same practices, if available to all
9 philanthropists, could result in much more funding
10 flowing to projects that bolster local communities
11 and provide access to jobs, fund clean energy,
12 provide education, and much more.

13 One example is Calvert Foundation, who
14 invests in Craft3 to increase the flow of capital
15 into disadvantaged communities. Craft3 is a
16 nonprofit, non bank community development
17 financial institution with a mission to strengthen
18 economic, ecological, and family resilience in
19 Pacific Northwest communities of the U.S. Calvert
20 Foundation's \$2 million fixed rate term loan for
21 capital to Craft3's revolving loan fund, a vehicle
22 which lends to enterprises and individuals making

1 an impact in the community within its target
2 geography, and thanks to global impact investing
3 network for this case study.

4 According to Internal Revenue Code
5 Section 4944, this kind of investment would likely
6 be considered a program related investment for
7 Calvert. Those of us sponsoring donor advised
8 funds would welcome the same kind of clarity to
9 support similar investments that bridge the gap
10 between traditional grant and purely profit driven
11 investments. The Treasury and the IRS could serve
12 donor advise funds by adopting rules that align
13 with those that are already in place for private
14 foundation. However, the proposed regulations
15 suggest the different schemes that the IRS will
16 use to evaluate our investments, and it doesn't
17 align with the existing definitions and the rules
18 above.

19 In particular, the preamble suggests or
20 states, "an investment would not, for example,
21 include a zero interest loan, as there's no
22 purpose of or provision for obtaining income or

1 funds from a zero interest loan. The Treasury and
2 the IRS anticipate that a zero interest loan would
3 be a distribution under the proposed regulations."
4 On the other hand, Treasury Regulations 53.49443,
5 which explains program related investments, refers
6 to a zero interest loan in example number nine and
7 specifically calls that a program related
8 investment. So I'm a little confused so far.

9 Other seminal guidance for the impact
10 investing community is found in Notice 20-562, in
11 which the service explains the application of
12 Section 4944 to investments that are made by
13 private foundations for purposes described in
14 Section 170, but that aren't program related
15 investments. Notably, the service references the
16 alignment of these rules with state rules adopted
17 from the Uniform Prudent Management of
18 Institutional Funds Act or UPMIFA. Practitioners
19 helping donor advised fund sponsors likewise have
20 to comply with UPMIFA and all their investments.
21 Not to mention the rules for excess business
22 holdings, excess benefit transactions, joint

1 ventures, UBIT. I've spent more time than I ever
2 thought possible mapping the confluence of these
3 rules and how they relate to our portfolio of
4 mission advancing investments.

5 In our 2015 application for tax exempt
6 status, we committed to investing assets
7 consistently with the rules in place for private
8 foundations wherever there was not clear guidance
9 for donor advised funds. And since our founding,
10 we have developed -- deployed more than \$535
11 million as loans to public charities and loans or
12 equity investments in mission aligned for profit
13 companies. We spend considerable time and energy
14 collecting data to understand the true impact and
15 influence of these investments. Impact can be
16 measured in terms of clean water delivered,
17 outcomes in education, and so much more. To
18 provide you with just one metric, the companies in
19 our portfolio recently reported creating more than
20 70 thousand good jobs in local communities across
21 54 countries. That's 70 thousand families whose
22 lives are better off because of the investments

1 we've made. Unfortunately, this impact is put at
2 risk by the proposed regulation.

3 Because the definition of investment in
4 the proposed regs can't be reconciled with the
5 treatment of the concept in other laws,
6 practitioners like me are left wondering if the
7 service intends to police our investments
8 differently than we previously thought. But we
9 don't have sufficient guidance to operate clearly
10 within whatever the new scheme might be.
11 Arrangements that would have previously been
12 considered an investment seem now to be considered
13 taxable distributions.

14 I would respectfully request that the
15 proposed rules be withdrawn and new proposal
16 undertaken. If not, at a minimum, the industry
17 needs more time to understand how its activity can
18 come into compliance with the rules. A lot of
19 other people have talked about that, but from
20 where I sit, it is particularly difficult to
21 understand how we would divest of all these
22 investments that we thought were investments that

1 might now be distributions because they're highly
2 illiquid. It's going to take more than a couple
3 of months. Thank you very much for your time.

4 MS. LEVY: Thank you, Ms. Minnich. Next
5 speaker is Dr. Mark Lail, Church of the Nazarene
6 Foundation.

7 MR. LAIL: Thank you for this
8 opportunity. The Church of the Nazarene
9 Foundation, 20 years old, in Lenexa, Kansas, just
10 outside of Kansas City, functions much like a
11 community foundation for the community of
12 Nazarenes. In the United States, there are 4800
13 churches and we serve them all with donor advised
14 funds and various foundation type of activity.
15 But thank you for listening and also hearing us on
16 and taking revisions under advisement. We really
17 appreciate that.

18 With the 4800 churches, the existence of
19 our foundation elevates the compliance competency
20 for the whole denomination and for the churches.
21 So when the complex assets come into donor advise
22 funds through us, we think that they're actually

1 handled more properly than they are likely among
2 the local churches out there. So we encourage the
3 churches to bring their complex asset donations
4 through the Foundation, often utilizing a donor
5 advised fund to help accomplish the goals of the
6 donors. We think that there are less mistakes
7 that way, whether they be inadvertent or abusive,
8 than what they could be if they weren't using us
9 through the donor advice funds. So we solicit
10 these donors by telling them that the donor advise
11 fund is a great option to a private foundation for
12 simplicity, for compliance. Quite a few reasons
13 there. We feel like the proposed regulations are
14 adding complexity to the donor advised fund to the
15 extent that they're coming closer to the family
16 foundation and might actually take some of the
17 donor advised fund business away for that very
18 purpose.

19 So when I read these and began to
20 understand the proposed regulations, I will admit
21 that I had a few heart palpitations on the
22 possibility of a tidal wave of excise taxes,

1 because I think some of these things are normal
2 business for some of our foundations. And I would
3 like to specifically talk about the broad
4 definition of distribution and the longer reach
5 for expenditure responsibility as well as the
6 timing of the implementation.

7 So the definition of these distributions
8 is pretty all inclusive, includes everything.
9 Basically anything going out of a donor advise
10 fund is considered a distribution at this time,
11 with the exception of reasonable management fees
12 and granting expenses. I think there are several
13 expenses or activities that the donor advise fund
14 does that doesn't really fit under these looser
15 definitions of management fees and granting
16 expenses. And that would be the expenses that are
17 involved in receiving a complex asset and actually
18 possessing the complex asset.

19 So for example, an 80 year old donor
20 with a donor advise fund donates his second home
21 in Arizona to our Foundation, and as soon as he
22 does that, expenses start to be incurred, level

1 one EPA inspection, a record recording the deed,
2 insurance while the donor advised fund owns the
3 home, taxes while the donor advise fund owns the
4 home. Perhaps repairs need to be made. We're
5 going to pay a realtor a title policy and all that
6 happens before it gets cash. Once it's cash,
7 we're all because then it's investment management
8 and the fees for operating the office and putting
9 the donor portal up and so forth. And then the
10 grant, there could be grant fees as well, but
11 those would be well extended out there. May not
12 even happen for a few years. It's very distant
13 from the actual expenses of receiving the gift.

14 So, we would feel pain if those
15 expenditures which don't seem to fit the
16 exemptions included right here came under the
17 category of the excise taxes. So we'd like to see
18 that go a little different. The donor had some
19 options. The donor, he hoped to give this money
20 from the home to ten different churches. He could
21 have given the home to ten different churches.
22 That, of course, would be a mess when it comes to

1 selling it and so forth. We feel like the donor
2 advised fund should make generosity easier for the
3 donor and not more complex for the donor. So we
4 hope that these regulations can be made in such a
5 way that things will be easier and beneficial for
6 the donor. I guess I would say, or at least donor
7 friendly.

8 That example of the home would be one
9 such example. But you can take a lot of assets
10 that way. We could potentially receive a business
11 or a limited partnership that would cause the
12 donor advised fund to have an unrelated business
13 income tax, which would be pretty unusual if you
14 paid the UBIT tax out of the donor advise fund,
15 which created an excise tax. And you can just
16 imagine agricultural products get donated.
17 There's transportation sometimes, there's checkoff
18 fees on those various items, and so I think the
19 part that's left out there is the cost and, in the
20 donor, advise fund of having those kind of assets
21 and the expenses related to them.

22 Concerning the long reach of the

1 expenditure responsibility. We have a lot in
2 place in our foundation, and I would guess that
3 we're a lot like other people out there. A lot of
4 checks and balances. We train the donors about
5 appropriate donation -- or appropriate grant
6 requests. We use the nonprofit search tool all
7 the time in our office to check, is this nonprofit
8 in good shape? We look at 990s, we look at
9 websites, promotional material. We make the donor
10 sign a statement that they have no personal
11 anything coming back because of this gift. And we
12 make the -- we have the recipient organization, we
13 give them instructions, don't cash this check if
14 there's any kind of benefit back to this donor, or
15 it could pro quo of any sort out there. And so
16 those are a pretty complete set of avoiding the
17 problems that are out there. We train our
18 employees to watch for clue words in the grant
19 requests. You know, if a grant request comes into
20 university and it says, put in the memo, attention
21 student accounts, there's a red flag. We watch
22 for that. Okay? And it says in the memo, in

1 fulfillment of a pledge, there's a red flag. We
2 watch for that. If it happens to say, re: funding
3 fundraising option, i.e. that is box seats to the
4 Chiefs, the Super bowl champion Kansas City
5 Chiefs, then we say no to those things. So we say
6 no on a pretty regular basis.

7 I said no to a really good donor just
8 recently who put in a request for \$4,000 to go to
9 a funeral home. So the funeral home was a for
10 profit business. We had to say, we can't do that.
11 And so he said, but this is a poor family. This
12 is a poor family. I don't even know the family
13 that's heard about it. It's a friend of a friend,
14 and they're in dire straits, and they have this
15 funeral they have to pay for. We can't do it.
16 Just send the \$4,000 over there. And I said, you
17 know, that's outside of the rules. We can't do
18 that. And that came down to a point where we had
19 an unhappy donor. We choose unhappy donors over
20 unhappy IRS. So that's our preference in that
21 case. And he didn't understand this the first,
22 second, or third time that I explained it to him.

1 And he pretty much stopped using the donor advise
2 fund after that point. But that's the kind of
3 scrutiny that we put on the operation that we have
4 to try to maintain compliance.

5 If that gets extended into the deeper
6 levels that seem to be included in the proposed
7 regulations of what we need to know or even not
8 know about the organization that's receiving the
9 money from the grant and how that works. Our
10 denomination is really, it's kind of like a big
11 family, very tied to one another. Major donors
12 are likely to show up on a local church board.
13 They're likely to be on a college board and a
14 campground board, an admissions board director,
15 all sorts of things out there. It would be
16 irresponsible for us not to pay attention to where
17 the dollars are going, but I can't imagine how we
18 would know the possible ties between, in our
19 denomination, between a major donor and all the
20 various types of leadership and decision making
21 entities that are out there.

22 I can give you an example in my own

1 life. I do have a donor advise fund with our
2 Foundation, and I transfer money from that and a
3 grant to the local church that I attend. The
4 local church that I attend asked me to fill in for
5 the pastor on vacation. So I filled in for the
6 pastor, expecting nothing but they wrote me a
7 check for \$200. That's when it realized, reading
8 these regulations -- but my wife's on the church
9 board. Now, I paid tax on the \$200. It's on my
10 schedule C. It was last year, okay? But those
11 kind of connections and relationships go deep
12 throughout the organizations that we're trying to
13 assist with, and it's going to be nearly
14 impossible for us to try to find a way to make
15 that happen.

16 So I'll throw in my two cent, as several
17 have, that the timing on this regulation, we're
18 going to need some time to gear up for this thing
19 to re-tool, to retrain our employees and
20 essentially retain, train the recipient
21 organizations and retrain the donors as well.
22 Thank you so much.

1 MS. LEVY: Thank you, Dr. Lail. The
2 next speaker is Frank Fernandez, Community
3 Foundation for Greater Atlanta.

4 MR. FERNANDEZ: Good afternoon. My name
5 is Frank Fernandez. I'm the president and CEO of
6 the Community Foundation for Greater Atlanta. And
7 at a high level, we've been around 73 years and
8 our mission is to help create a more equitable and
9 prosperous place for everyone who calls metro
10 Atlanta home, now the 6th largest metro in the
11 country. So what I want to do, because you've had
12 a lot of folks saying a lot of the same things, is
13 really focused on three things, but really talk at
14 length about the third thing.

15 So the first thing was just mentioned,
16 retroactivity. It's bad. Reasonable time frame,
17 good. No need for a dunk tank. We do that. The
18 second is this conflation between donor advisor
19 and investment advisor. You've heard much more
20 eloquently than I could share from attorneys and
21 others why that's problematic. I'll just say for
22 us, it's also challenging. We have over \$600

1 million that would be subject to this new rule and
2 that would really not only negatively impact
3 giving, and would hurt us significantly, but I
4 think would also limit choice for a lot of our
5 donors, which I don't think is something that is
6 intended. And so, I think that's another
7 significant thing to consider. And then the third
8 concern, which a lot of my community foundation
9 colleagues already touched on, but I really want
10 to dig into and give you more use cases for, which
11 is the overly broad definition of a DAF and really
12 needing to make sure you distinguish donor advised
13 funds from Field of Interest Funds, from fiscally
14 sponsored funds, from designated, and so on.
15 Because it's really important. Because one of the
16 things I think I want to really emphasize is that
17 we play a unique role in philanthropy. We create
18 a platform that not only helps inspire donors to
19 give more to their passions and their priorities,
20 but also gives them a platform for flexibility,
21 for leverage, for innovation, and for aligned and
22 strategic giving.

1 So I'm going to walk through a couple
2 examples of that. So first one has been mentioned
3 already. I just think it's worth bringing out,
4 which is COVID response relief funds, we split one
5 up as well. We gave over \$30 million to foreign
6 35 nonprofits across metro Atlanta. And a lot of
7 the kinds of things we did during that time, but I
8 want to take us all back to 2020 when we didn't
9 know what was going on about what you could and
10 couldn't do, what for profits we're doing versus
11 nonprofits, and we've had to use consultants. You
12 had to sometimes go ahead and work with for profit
13 companies. We were doing masks and testing if you
14 wanted to support your local community and if you
15 had had your hands tied, that would have been much
16 harder than you can't. It would have been
17 hampered if that were done through a DAF versus a
18 Field of Interest Fund. So I just think, and as
19 we know, 9/11, global pandemics, these things
20 happen. And that's part of the role of the
21 community foundation, is how do we stand up and
22 respond? And you have a lot of uncertainty and

1 being flexible. So I just think that's an
2 important thing to bring up.

3 A second one for us is around really not
4 just how DAFs affect other things, because there
5 is a lot of a chain effect. And I'll talk about
6 this. One of our biggest priorities is affordable
7 housing. So, affordable housing is complex
8 financially, very complex, because you end up
9 having to put together multiple layers of
10 financing or capital stack to be able to make it
11 work, which requires not just grants, zero percent
12 loans, equity investments, and debt from multiple
13 actors to be able to do that. And so, for us, we
14 stood up a Field of Interest Fund. We raised over
15 \$100 million just for that, over \$100 million for
16 impact investment funds, and then been able to
17 leverage that with the mayor once we announced
18 that committing another \$100 million of public
19 dollars.

20 Now, these dollars are not all pooled,
21 but braided, and we end up having to do a lot of
22 expenses out of our Field of Interest Fund because

1 you have this braided pool of funding, because you
2 have complex transactions that may have an impact
3 investment, a grant investment, a 0 percent
4 forgivable loan. There's a lot of legal
5 documentation, all right? But this is part of our
6 commitment to making the affordable housing system
7 more efficient and more frictionless. If you
8 limit or basically everything to a DAF, at least
9 for the Field of Interest Funds in that example,
10 it really limits our ability to be able to serve
11 as that platform that brings and braids funding
12 together. I think that's a really important
13 example, but I think it's an important one.

14 A third example I'll bring up is we
15 serve as a fiscal sponsor for many initiatives.
16 One of those is this thing called Learn for Life.
17 Learn for Life is a collective impact education
18 initiative where we bring together leaders from
19 our region. We have college presidents, we have
20 school superintendents, we have business leaders,
21 philanthropic leaders, all serving on the same
22 council, and it's really focused on a few high

1 level things. One is just understanding the state
2 of affairs as it relates to education in our
3 community in terms of what's happening with
4 kindergarten readiness, 3rd grade reading, 8th
5 grade math and science, high school graduation.
6 All these things that we know are the key
7 indicators to how we are doing as a community to
8 support kids in metro Atlanta.

9 One of the other things that we do,
10 though, is we amplify bright spots. So we
11 identify what is working. Where is it that we're
12 an outlier in a positive way, whether it's a
13 programmatic or policy decision, made by school
14 districts, and thinking about how do you tire it
15 out and how you scale it. Again, we use for
16 profit and nonprofits to support that. So I'll
17 give you an example of one that is now starting to
18 scale. So one of the huge things that we have in
19 our community, like many communities, I think, are
20 in the audience, is inadequate levels of literacy.
21 So for our metro area, 3rd grade reading level,
22 folks who aren't on level, 41 percent. Four one,

1 all right? Very problematic, and even more so for
2 our black and brown communities. And so we're
3 really focused on interventions that are going to
4 help address that.

5 So we supported this thing called the
6 science of reading in one school district, and we
7 pooled funding together, worked with consultants
8 for profit and some nonprofits, Atlanta Speech
9 School, to develop the curriculum and implement it
10 with the school district. And so now we've done
11 two years of that, and we saw a 16 percent gain
12 across the table in literacy for all, not just the
13 general population, for kids in free reduced lunch,
14 ESL, as well as black students. That is a rarity.
15 So right now, we're trying to accelerate that
16 because we think that can have an impact, a
17 positive impact, on hundreds of thousands of kids
18 in our region. Again, that would be harder if we
19 didn't, weren't able to be served as that fiscal
20 sponsor, because there aren't groups who are doing
21 that right now. This initiative is doing that.

22 And the last example, which is another

1 example of a fiscal sponsorship, is Neighborhood
2 Nexus. Neighborhood Nexus is a data indicator
3 project that, again, looks at all of social
4 indicators in our region, and it's a really
5 important service to our community because, again,
6 it provides us a sense of what is going on in our
7 region as it relates to income and wealth, health,
8 housing, education, all these things that we know
9 are fundamental to well being. And it is critical
10 because it not only provides that to the general
11 public but, again, unique to community
12 foundations, to funders, whether it's our donors,
13 our private foundation partners, or the public
14 sector. And they use this data to help inform
15 both their funding decisions, their policy, and
16 then, for practitioners like nonprofits, how they
17 should go about doing the work and where they
18 should focus. This is a huge value add to our
19 community. Without fiscal sponsorship, that
20 becomes much harder to do.

21 So community foundations play a really
22 unique role in our philanthropic space. And our

1 concern is that the overly broad definition of
2 donor advised funds would really hamper our
3 ability to leverage the platform we have. And so
4 I would urge you to think about coming up with a
5 whole new proposed regulation based on a lot of
6 the feedback you've got here, because this will,
7 if not done properly and if not informed by years
8 of practice, it can have a significant detrimental
9 impact. Thank you for your time.

10 MS. LEVY: Thank you, Mr. Fernandez. We
11 can do, I think, one more before we break for
12 lunch. This is David Cicilline, Rhode Island
13 foundation.

14 MR. CICILLINE: Good afternoon, and
15 thank you very much for your service to our
16 country and also for giving us an opportunity to
17 provide testimony about our concerns about the
18 proposed Treasury regulation. My name is David
19 Cicilline. I'm the president and CEO of the Rhode
20 Island Foundation, which is our state's only
21 community foundation and one of the oldest and
22 largest community foundations in the country. We

1 were founded over 100 years ago in 1916 by a group
2 of local donors. As you well know, as nonpartisan
3 public charities, a community foundation like ours
4 accepts charitable gifts of all shapes and sizes,
5 invest those gifts in financial markets so they
6 grow over time, and use as a responsible portion
7 of the proceeds from those invested charitable
8 dollars each year to make grants, provide
9 scholarships, and support organizations and
10 efforts focused on strengthening our communities
11 and enhancing the quality of life in our state.

12 The design is intended to provide a
13 permanent source of funding to help improve lives
14 now and for generations to come. And at a time in
15 particular when conflict often overshadows
16 collaboration and hinders real progress, community
17 foundations serve a unifying purpose. They
18 possess the unique ability to mobilize generosity
19 and financial resources, build and activate
20 networks of people, provide an enduring safe
21 harbor during times of uncertainty, and celebrate
22 and leverage differing experiences, all with the

1 aim of solving critical community challenges.

2 Our country has benefited from a long
3 tradition of philanthropy, and as you all know,
4 our tax code incentivizes citizens to support
5 nonprofit organizations doing critical work in our
6 communities. Last year, the Rhode Island
7 Foundation awarded \$89 million in grants to over
8 2500 nonprofit organizations. Approximately one
9 third of those grants are foundation directed
10 through our community Investments program, and two
11 thirds are donor directed. Over 60 percent of the
12 total grant dollars awarded in 2023 went to
13 organizations supported by both donor and
14 foundation directed grants, and this alignment and
15 funding represents shared priorities between the
16 foundation and our donors. Many of the grants
17 align with our three strategic priorities:
18 educational success, healthy lives, and economic
19 security. Together with determined nonprofit
20 partners and key community stakeholders, our work
21 helps reduce achievement gaps in education,
22 address health disparities across diverse

1 populations, and boost true economic opportunity
2 for all Rhode Islanders.

3 As a community foundation, we offer
4 philanthropic Rhode Islanders many ways to give.
5 Our team of grant makers and philanthropic
6 advisors work every day to ensure that the
7 travel investments entrusted to us have impact and
8 most importantly, are put to use to meet the
9 evolving needs of the community we serve. We
10 encourage local philanthropists to invest with us
11 in a variety of ways. The oldest and most
12 flexible vehicles we offer are named Unrestricted
13 Endowment funds, which donors set up in support of
14 the fund for Rhode Island and Field of Interest
15 Endowment funds, which are meant to support a
16 broad cause or geographic area in our state.

17 We also offer interested donors the
18 option of opening a committee advice fund. We are
19 volunteer committee members working alongside our
20 grant making experts to offer grants to local
21 organizations or scholarships to assist Rhode
22 Island students. We began offering a donor

1 advised fund product in the late 1970s. As one of
2 the oldest community foundations in the country,
3 donor advised funds compromised 28 percent of more
4 than 2000 funds and represent 27 percent of our
5 \$1.4 billion in total assets. Our donor advised
6 fund product allows local philanthropists to
7 actively participate in grant making and to work
8 alongside us to meet community needs.

9 For example, since its inception as a
10 donor advised fund a dozen years ago, one of our
11 component funds has distributed more than \$37
12 million in Rhode Island's nonprofit sector to
13 support Rhode Island students as they pursue
14 higher education. The truth is that the diverse
15 fund types that we offer are an incredible asset
16 and benefit to the community.

17 Unfortunately, the proposed regulations
18 will cause a chilling effect on charitable giving
19 and are very likely to disrupt the fund resources
20 that the nonprofit sector relies on for support.
21 Having a detrimental impact on the incredibly
22 important work of local charities who are

1 providing on the ground support to our needs and
2 who are working to solve critical community
3 challenges. We're particularly concerned with the
4 regulation's broad definition of the term donor
5 advised fund, which would meet many of the funds
6 that we as public charities steward on behalf of
7 our community.

8 For example, including Field of Interest
9 Funds as donor advice funds would be particularly
10 dental. These funds are typically broad in scope
11 and support sector or subject matter based areas
12 or geographic regions, often into perpetuity. At
13 the Rhode Island Foundation, we're fortunate to be
14 able to steward and leverage Field of Interest
15 Funds, many of which were set up long ago to
16 augment foundation directed grant making to
17 support states most vulnerable populations who are
18 served by community based organizations like the
19 Rhode Island Community Food Bank, Adoption Rhode
20 Island, Sojourner House, Hopes Harvest, and
21 Connecting for Children and Families. Subjecting
22 Field of Interest Funds committee advised funds

1 are designated funds to the same substantiation
2 requirements and limitations as donor sized funds
3 is overreaching and really harmful.

4 Finally, the regulations broaden the
5 definition of the term taxable distribution as it
6 relates to donor advised funds, which is likely to
7 imprint on the donor advised funds charitable
8 operations and objectives and reduce overall
9 support of the nonprofit sector. By broadly
10 redefining the distribution of grant payment,
11 dispersant, or transfer from a donor advised fund.
12 The regulations could subject payments and fees
13 that cover necessary operating charitable expenses
14 to a net size tax.

15 So I want to say we provided a more
16 detailed discussion of the many negative impacts
17 of these proposed regulations in the letter
18 submitted to the Treasury Department by the
19 Council on Foundation, signed by many, many
20 community foundations across the country, and
21 dated February 15, and hope that you consider that
22 part of my testimony.

1 And finally, I want to just say that I
2 concur strongly with the testimony of Mr. Carroll.
3 As a former member of Congress, I think their
4 testimony about safeguarding the right of the
5 legislative body to make these major departures in
6 public policy. And you also -- or the secretary
7 of the Treasury, also received a letter assigned
8 by a broad, more than 30 members of Congress, a
9 fully bipartisan letter from members of the Ways
10 and Means Committee, reflecting the same concerns
11 about what the impact of these regulations would
12 be on community foundations, which are really the
13 lifeblood of supporting really important nonprofit
14 work in communities all across America.

15 So I would ask you again -- thank you
16 for giving us an opportunity to speak to you
17 today. Ultimately, our institutional goal and our
18 charge is to meet the needs of the communities we
19 serve. We hope that you will consider the very
20 serious difficulties that these regulations would
21 pose, and I urge you to withdraw this proposed
22 regulation in its entirety. Thank you.

1 MS. LEVY: Okay. Thank you, Mr.
2 Cicilline. I would like to break for lunch now.
3 You can leave the building if you like, but you'll
4 need an escort because if you don't have a
5 government ID, you're not permitted to walk around
6 in the building. But I ask if, if you do leave
7 the building, that you come back by 1:45 so we
8 have time to sign you in and we can start up again
9 at 2.

10 (Recess)

11 MS. LEVY: Okay, good afternoon
12 everyone. It's 02:00 p.m. so we can start up
13 again. Same rules as this morning. Ten minutes
14 per speaker and I think the next speaker is Tonia
15 Wellons from Greater Washington Community
16 Foundation. Is Tonia here?

17 MS. WELLONS: So good afternoon
18 everyone. Many thanks to the after-lunch crowd
19 for staying the course, and a huge thanks to the
20 Panel for the opportunity to testify regarding the
21 proposed changes to the regulations impacting
22 donor size funds generally and community, our

1 community foundation specifically. My name is
2 Tonia Wellons and I am the President and CEO at
3 the Greater Washington Community Foundation,
4 representing the more than 700,000 residents of
5 this great city, including the commanders, the
6 Wizards, the cats, Nat fanatics and DC United, and
7 over 4 million residents in the broader region,
8 and that includes Northern Virginia, Montgomery
9 County and Prince George's Counties in Maryland.

10 So the Greater Washington Community
11 Foundation celebrated its 50th anniversary just
12 last year, and we are the region's largest local
13 funder, having invested more than \$1.7 billion
14 since 1973 in order to build a more racially just
15 and equitable and thriving greater Washington
16 region where people of all races, places and
17 identities can reach their full potential. We
18 take a lot of pride in keeping our finger on the
19 pulse of the issues and organizations that make a
20 difference in this region. We understand the
21 challenges deeply here, the impacts on
22 neighborhoods and the effective nonprofits that

1 serve on the front lines. Our community
2 foundation is a trusted advisor and navigator,
3 helping thousands of individuals, families,
4 businesses and government make a meaningful
5 difference throughout this region and beyond. We
6 serve as a critical link between caring donors,
7 like many of our partners here, committed
8 nonprofits and the local communities where
9 potential often exceeds resources and opportunity.
10 As a tax exempt public charity, we take seriously
11 our responsibility to be the best stewards of
12 charitable resources in this community. We are
13 accredited by the Council on Foundation for
14 meeting its National Standards for Community
15 Foundations and maintain a four star charity
16 Navigator rating and Candidates Gold Field of
17 Transparency. So we are proud of our
18 institutional payout rate, which on an annual
19 basis lies between 15 and 20 percent and just last
20 year we hit 27 percent.

21 So yes, our community of givers are
22 generous almost to a fault. They help the

1 community foundation rise to the challenge brought
2 on by COVID-19 like many of our other partners in
3 the room, resourcing our ability to provide more
4 than \$90 million in support funds to local
5 organizations, supporting personal protective
6 equipment for frontline medical workers and
7 community organization staff, providing essential
8 food delivery for people in need, addressing the
9 mental health needs of frontline workers and
10 nonprofits whose staff members were also deeply
11 impacted. Our donors have been at the forefront
12 of community response not only in disasters, but
13 in support of the day-to-day operations of
14 thousands of local, national and even
15 international nonprofits. On an annual basis, our
16 donors are providing \$70 to \$90 million in grants
17 to qualified nonprofits, offering a lifeline to
18 many organizations and people who would otherwise
19 struggle to make ends meet. Simply put, our
20 donors make our region a better place for its
21 residents, and this is why we are so concerned
22 about the unintended consequences that the

1 proposed regulations on Donor Advised Funds will
2 bring.

3 First, I'd like to address the proposed
4 rule change that would categorize investment
5 advisors as donor advisor. Our community
6 foundation offers donors at a half million in
7 assets or higher the ability to maintain
8 separately managed accounts. We offer this
9 service as a way of attracting potentially larger
10 funds with the opportunity to become a part of our
11 community of givers, giving them access to our
12 advisory services, including site visits and
13 community engagement forums in a more seamless
14 way. At the greater Washington Community
15 Foundation, our separately managed funds, who are
16 required to align their investments with our
17 investment policy statement, represent 46 percent
18 of our assets and had an effective payout rate
19 last year of 19.5 percent. That meant they
20 granted \$48 million to qualified grant recipients.
21 Should the proposed rules come into effect, the
22 damage could be irreparable, making it likely that

1 the donor would elect to become a private
2 foundation with a payout rate of 5 percent, which
3 would equate to a loss of \$36 million in grant
4 making to this community. We urge you to
5 reconsider the impact that a loss of this level
6 would have right here.

7 So next, I'd like to address the
8 proposed rule change that would reclassify many
9 diverse fund types as Donor Advised Funds.
10 Beginning with our field of interest funds, our
11 family of more than 130 field of interest funds
12 support a wide array of programs and initiatives,
13 from community wealth building to housing and
14 homelessness to disaster relief. These funds are
15 all backed by community advisory committees that
16 help to ensure all investments through the fund go
17 towards a stated field of interest, and they are a
18 vital part of our community foundation's impact in
19 the community. These vehicles offer both ground
20 level community knowledge due to their structure,
21 but are also able to support a wider array of
22 services, like many have said, including funds

1 that can directly support individuals within the
2 field of interest. Taking disaster relief as an
3 example, our donors have historically again been
4 at the forefront of our region's response, from
5 COVID-19 to the 9-11 tax on the Pentagon and rural
6 Pennsylvania to the 2008 and 2011 financial
7 crises. Currently, we house several employee
8 disaster and emergency hardship funds on behalf of
9 corporations. Our three largest funds alone
10 collectively provided \$12.7 million to individuals
11 in need over the past five years, both locally and
12 globally. If these funds were recategorized as
13 DAF's, it would be much more challenging to make
14 grants to individuals in need. Subjecting field
15 of interest funds to the same substantiation
16 requirements as DAF's, even though they are
17 overseen directly by community, would be wasteful,
18 expensive to implement, and really making these
19 programs untenable.

20 Finally, reclassifying fiscal
21 sponsorships as DAFs would have an equally
22 chilling effect on community well-being. We

1 currently host more than 30 fiscal sponsorships, a
2 vehicle for programs and donors who want to do
3 good in the community but lack the infrastructure
4 to do so. So they rely on the community
5 foundation to help facilitate community impact.
6 These funds support programs including maternal
7 health, food, justice, and we're working to combat
8 violence in Washington, DC. These funds also
9 support youth enrichment through opportunities for
10 students from around the country to come to
11 participate in internships right here in
12 Washington, DC, exposing them to global careers.
13 The fund pays their stipends, travel expenses,
14 housing costs, and if the funds were reclassified
15 as DAF, they would no longer be able to pay for
16 expenses, severely limiting the opportunities for
17 students.

18 In closing, we urge Treasury and the IRS
19 to consider the unintended negative consequences
20 that these regulations would create as a place
21 based community hub for philanthropy. Community
22 foundations form the backbone of our nation's

1 regional response on almost every issue and every
2 priority you can think of. We represent and
3 support communities of givers that would be
4 irreparably harmed by the regulations, putting
5 solutions to community problems out of reach for
6 many of us. I'll close by thanking you again for
7 the opportunity, and I'm available for questions,
8 did you have any.

9 MS. LEVY: Thank you, Ms. Wellons. The
10 next speaker is Anna Maria Chavez, Arizona
11 Community foundation.

12 MS. CHAVEZ: Good afternoon. My name is
13 Anna Maria Chavez and I'm the President and CEO of
14 the Arizona Community Foundation. It's an honor
15 and privilege to be here today. I'm excited to be
16 here representing a foundation that was founded in
17 1978 with three individual contributors who each
18 invested \$100,000. And that's how our foundation
19 was created. Our founders believe that charitable
20 giving should be the responsibility of many, not a
21 select few. Burke Goetz, our last living founder,
22 continues to invest and participate in the work of

1 our organization today. I also am excited to be
2 here because our organization serves the entire
3 state of Arizona, which currently houses 7.4
4 million individuals. And speaking on behalf of
5 the thousands of nonprofits that serve the
6 community, I'm excited to be here to share their
7 voice and also from a point of privilege, I'd also
8 say that I'm excited to be here. After 30 years
9 of a career in public service, I started my career
10 here in Washington, DC as an attorney advisor at
11 the US Department of Transportation, where my job
12 was actually to publish rules and to listen to the
13 thousands of comments that were submitted. In
14 addition, I've had the pleasure of meeting three
15 national organizations, the Girl Scouts of the
16 USA, the National Council on Aging and the
17 National School Boards Association during the
18 pandemic and now serving here in Arizona on behalf
19 of foundation.

20 So, as my other community foundation
21 colleagues have stated, we have existed for
22 decades in Arizona. Our foundation was

1 established to help people with day to day needs.
2 In the early 20th century, community foundations
3 focused on building their endowments and
4 discretionary funds. But in the early 1980s, when
5 the Arizona Community Foundation was in its
6 infancy, donors in our state wanted to stay more
7 involved with their giving. So our community
8 foundation became an early adopter of Donor
9 Advised Funds and other charitable giving vehicles
10 that provided more flexibility for donors to give
11 to their chosen causes. Over the years, the
12 Arizona Community foundation has grown to become
13 one of the largest community foundations in the
14 nation, administering more than 2000 charitable
15 funds and managing more than \$1.3 billion in
16 assets. ACF consistently ranks in the top 25 of
17 more than 900 community foundations in the United
18 States based on our asset size, annual grant
19 making and annual contributions. Today, we
20 proudly say our mission is to lead, serve and
21 collaborate to mobilize enduring philanthropy for
22 a better Arizona, and we take that mission very,

1 very seriously. And to deliver this mission, we
2 exist to increase charitable giving for Arizona
3 communities for providing DAF's and other
4 charitable giving vehicles which are established
5 and funded by individuals, families and
6 businesses. Since inception, our generous donors
7 have collectively enabled us to grant more than
8 \$1.3 billion from these charitable funds. Of the
9 \$89.7 million that the Arizona Community
10 foundation and its donors granted to nonprofit
11 organizations in 2023, 47 percent, or \$42.2
12 million, came from DAF's, supporting education,
13 human services, environmental causes, health, the
14 arts, religious institutions and more. DAF's are
15 the Arizona Community Foundation's most popular
16 giving vehicle, encompassing 636 funds that
17 represent \$401 million, or 30 percent of all our
18 assets.

19 In 2023, Arizona Community Foundation
20 Das received \$45 million in contributions, 39
21 percent of our total contributions that our donors
22 choose das for several reasons, including the

1 ability to make a single contribution that can be
2 distributed to multiple charities. Through our
3 DAF's, smaller charities that may not have the
4 expertise to handle non cash gifts are able to
5 receive donations of stock closely held business
6 interests and real estate. Donors also choose
7 DAF's because they provide the option to involve
8 future generations in charitable giving. After
9 the founding, donors are no longer able to do so.
10 Many ACF donors use DAF's to come together for
11 meaningful conversations about family history and
12 values, creating peace of mind that their children
13 and grandchildren will be able to continue to
14 carry out the family's charitable legacy. And
15 I've actually seen this in practice, where the
16 family comes together, and the tenure child has to
17 make a pitch on behalf of their local chair they
18 want to fund.

19 The Arizona Community Foundation's
20 donors and DAF advisors are active, very active,
21 and their involvement establishes a connection
22 that leads to greater impact by establishing a

1 fund at the Arizona Community Foundation, donors
2 continue to invest in the needs of communities as
3 partners as time goes on and often continue to
4 give to their funds after making their initial
5 contributions. And I find that happens when we're
6 able to take these donors out on field visits
7 across the state of Arizona, and they see and they
8 get excited about the impact they've been
9 investing in. The average payout rate over the
10 last three years for DAF at the Arizona Community
11 Foundation has been 14.5 percent, well above the
12 typical private foundation payout of 5 percent.
13 In addition to that, the Arizona Community
14 foundation also administers nonprofit funds,
15 supporting organizations, field of interest funds,
16 designated funds, collaborative funds, and
17 scholarship funds. We happen to be the largest
18 private provider of scholarships in Arizona.

19 All ACFs fund types, including DAF's,
20 are separately identified and tracked. It is our
21 responsibility as a community foundation to ensure
22 that the assets in all of our component funds are

1 prudently managed under state law and as an office
2 of the court in Arizona. I take that very
3 seriously and that grant making is appropriately
4 administered in furtherance of charitable
5 purposes. Since the enactment of the Pension
6 Protection Act of 2006, the Arizona Community
7 Foundation has managed in good faith its staffs in
8 compliance with the provisions of the act based on
9 the guidance that IRS issued over the past 17
10 years. The proposed regulations would potentially
11 eliminate the Arizona Community Foundation's
12 ability to continue its work with donors using
13 DAF's as a charitable giving tool and have a
14 harmful effect on the administration of certain
15 types of non DAF funds that are currently
16 supported through donor and volunteer service.
17 I'd like to give you an example of one in
18 particular.

19 In February, you may notice one of your
20 federal agencies administers what they call the
21 Point in Time Survey. Essentially, we volunteer
22 across the country to count the homeless in

1 Arizona. It happened this year and I went on that
2 count. I used to administer the homeless funds in
3 Arizona at the state level 20 years ago, and I
4 thought, you know, let me go back out. Let me
5 figure out, has the homeless issue gotten worse in
6 Arizona? And I spent many hours in the rain
7 looking under bridges and empty cars, going behind
8 warehouses. At one point, the Mayor of the city
9 of Phoenix showed up with her detail and found me
10 in a tent talking to a homeless couple. And it
11 turns out that this homeless couple had been
12 making their rental payments, but because of COVID
13 one of them had lost their job. And what I found
14 was many of the individuals in the homeless
15 population were just one payment away from keeping
16 a roof over their head. Well, at the Arizona
17 Community Foundation, I'm proud to say that we
18 administer an Arizona Housing Fund. And what's
19 interesting about this is that it offers the
20 opportunity to give during closing when homebuyers
21 are buying a house in Arizona. And that can be
22 matched lending agents, home builders, developers

1 and title companies. We have granted \$1.3 million
2 to fund new, affordable homes in Arizona. If this
3 proposed rule goes into effect, it will actually,
4 unfortunately, have a huge impact on our ability
5 to actually put roofs over people's heads.

6 I will end, since I'm at the end of
7 time, actually, with your own Secretary's words, I
8 have the honor and privilege to be with her in
9 Arizona while she visited us. And she and I were
10 at a convening by the McCain Institute called the
11 Sedona summit. And I was thrilled that in her
12 remarks, Secretary Yellen stated that she believed
13 that lively debate is critical to good outcomes
14 and that such conversations are essential to our
15 country's economic success. She went on to state
16 that she wants to ensure that interested parties
17 are allowed to comment on proposed rulemaking and
18 that she encourages her staff to respond and
19 listen. Finally, Secretary Yellen shared that
20 sometimes the public commenters point out things
21 that would make a regulation better. And I think
22 you've heard today that we do have some feedback

1 to give. And as I say, feedback to give. Growth
2 is optional, but we're here to support you and to
3 support the philanthropic community. And I highly
4 recommend that you take these comments into
5 consideration and republish this role and allow us
6 to comment again. Thank you.

7 MS. LEVY: Thank you, Ms. Chavez. The
8 next speaker is Eileen Heisman, National
9 Philanthropic Trust.

10 MS. HEISMAN: Greetings, everybody. How
11 are you? Good to meet you all. My name is Eileen
12 Heisman. I'm the President, excuse me. And CEO
13 of the National Philanthropic Trust. I'm also,
14 for those football mentioners who were earlier,
15 I'm also related to the Heisman football trophy,
16 but I do, I didn't play football in college. I
17 was too short. I've been at NPT for the whole 28
18 years we've been in existence and I'm stepping
19 down away from my job at the end of June. And so
20 I'm here with a great amount of passion for a
21 field that I've really been working in and devoted
22 to for the last 28 years and beyond. NPT is the

1 largest provider of independent provider of Donor
2 Advised Funds in the country and we were one of
3 the leading grant makers in the country for the
4 last three years. I've been working with DAF
5 since 1987, initially at the Philadelphia
6 foundation and worked with plan giving and
7 hospital philanthropy after that. But between my
8 years at the Philadelphia Foundation at NPT, I
9 have significant expertise with DAF's and how they
10 operate, especially as a giving tool. And I was
11 really motivated to do this work because of the
12 giving part. I really wanted to participate in a
13 job and work that would help give back to the
14 world and especially to the communities that we
15 live in where people are disadvantaged or
16 suffering in all different ways.

17 I've actually witnessed the evolution of
18 this industry firsthand. When I got involved in
19 '87, everything was on paper. Now everything's
20 digital and I know the critical role DAF's play in
21 the charitable ecosystem. I believe that DAF's
22 are really an effective giving tool. The giving

1 flows from DAF's to charities, both large and
2 small, charities all over the country, and it is a
3 substantial amount of money and I believe it's
4 essential to sustaining the charitable sector. We
5 know from our data that DAF provided
6 countercyclical funding during economic downturns.
7 While charitable giving has decreased five times
8 in the last decade, DAF grant making has grown
9 every year, according to the publicly available
10 data. After the Pension Protection Act was passed
11 in '06, DAF sponsors carefully developed policies
12 and practices to fully comply. I know because I
13 was part of that, developing those, and I was also
14 part of consulting with others to make sure that
15 we were in line with how other DAF providers were
16 doing it. Relying on the language of the PPA, the
17 practice of how DAF's work with investment
18 advisors. Drink water while I'm speaking. How
19 DAF's work with investment advisors who have
20 relationships with donors emerged and that change
21 became really important and part of why DAF's have
22 grown.

1 At NPT, we have always understood this
2 practice to be permissible, provided that the fee
3 arrangement is reasonable and represents fair
4 market value. Much of the significant growth of
5 the popularity of DAF's since the Pension
6 Protection Act as giving vehicles have been tied
7 to the relationships with investment advisors.
8 For the past 15 years, NPT has been publishing the
9 primary report that summarizes donor advised fund
10 data from nearly 1,000 DAF sponsors. We publish
11 it every November. We compile the data from
12 charities that submit a DAF reporting schedule
13 with their form 990. After the Pension Protection
14 Act, the ten year trends are compelling. From
15 2013 through 2022, the most recent year which in
16 public data is available, that's grant making grew
17 430 percent, from \$9.8 billion to \$52 billion in
18 charitable grants. That's after the Pension
19 Protection Act. During that same ten years, the
20 average annual increase in grant making was
21 roughly 19.5 percent. Also during that same
22 period, the payout rate from DAF's across the

1 sector never dipped below 20 percent and how our
2 report calculates it. And in 2022 alone, the
3 payout was 22.5 percent. And this is a compelling
4 fact, which was noted by somebody else. The
5 difference between DAF and private foundation
6 grant making payouts. DAF's granted out \$52
7 billion, which is about half as much as private
8 foundations granted 99.6, while DAF's had only 20
9 percent of their assets. There's other research
10 that's done on DAF's. The DAF research collective
11 is an independent group of academic researchers
12 led by Dan Heist of ABringham Young and Daniel
13 Vance McMullen of DePaul. They've been doing DAF
14 research for the last couple of years and recently
15 published a report on when individual DAF donors
16 actually recommend grants. They found that number
17 one, 54 percent of DAF accounts grant over half of
18 their initial contributions by year three, and
19 nearly 60 percent of the saint of those donors
20 grant all of it by year eight. This data
21 corroborates the findings in NPT's donor advised
22 fund report. They also found that 49 percent of

1 all DAF's have balances of less than \$50,000. The
2 proposed regulations being highlighted today would
3 impose a massive shift from the well-developed
4 practices and procedures of the sector created
5 after the PPA, and it's been 17 years that we've
6 been developing these procedures and working
7 together for best practices. The proposed
8 regulations expand and broaden a number of
9 definitions related to DAF's, the definition of a
10 DAF, the donor advisor, and distribution in ways
11 that we think could discourage and diminish
12 charitable giving.

13 Protection act provided the IRS with
14 tools to address many of these concerns, such as
15 prohibiting certain transactions between a DAF and
16 a disqualified person. And we know DAF sponsors
17 have worked together to develop and implement
18 strong and consistent policies and practices to
19 prevent these abuses. We encourage you, and I
20 know this is not -- it's hard to hear this over
21 and over again, so I appreciate your patience in
22 this, but to work with stakeholder communities

1 like those in the room today and beyond to ensure
2 that the final regulations achieve their stated
3 goals. We really wish to encourage robust and
4 sustained grant making charities across the
5 country. I'm going to focus on a few issues
6 within the proposed regulations.

7 The first of my comments are on the
8 personal investment advisor role, which many
9 people have spoken about. We estimate at NPT that
10 about 80 percent of our donors are referred to us
11 by their financial advisors. This was not true
12 when I started the business in 1987. Like many
13 DAF sponsors, NPT allows donors to recommend that
14 their investment advisor manage the in their
15 DAF's. This practice was developed relying on the
16 plain language of the PPA and has grown
17 significantly since its adoption. Financial
18 advisors refer clients to us because of our
19 expertise in philanthropy and because we make it
20 easier or try to make it easier for their clients
21 to achieve their philanthropic goals. We
22 facilitate the grant recommendations online. We

1 handle all the administrative work associated with
2 giving, including managing the due diligence of
3 grantees, issuing grant payments, and doing all
4 the accounting matters. We also have a
5 philanthropic solutions group who help donors in
6 identifying social sector causes that are
7 interested and important to them. However, when a
8 donor recommends an investment advisor to manage
9 the investments of their DAF, we undertake a
10 rigorous review and due diligence process before
11 approving them and not all investment advisors are
12 approved. The investment advisor must complete a
13 detailed questionnaire and submit supporting
14 documentation, all of which are specific criteria.

15 NPT has also adopted a fee policy that
16 prohibits clear guidelines on acceptable fee
17 arrangements. Our procedures ensure that their
18 fee arrangements with advisors are reasonable and
19 represent market value. If an advisor proposes
20 fees that do not comply with our policy, they will
21 not be approved. NPT requires the investment
22 advisor to sign a written agreement with us to

1 formalize the terms and expectations of their
2 work. NPT becomes the client of the investment
3 advisor and not the donor. We maintain a
4 significant oversight on these relationships. We
5 review them regularly and if the accounts are out
6 of compliance with our investment policy or they
7 deviate their investment strategy from what NPT
8 approved or have lagging performance, we will put
9 them on a watch list, we will terminate them if
10 they have not made corrective actions. Because
11 these arrangements involve the contractual and
12 fiduciary relationship between an investment
13 advisor and an NPT, in this case, which is arm's
14 length, we believe they do not present the
15 potential abuse that Treasury and the IRS have
16 identified. One minute. I think I'm -- I'm just,
17 I think everything that I said, and I just want to
18 say that I agree with many of the comments,
19 particularly David Shevlin's.

20 I just want to say that anything that
21 you might consider doing, I would ask that you
22 engage and consult with those of us that have been

1 doing it for a long time and see what we have in
2 place and then ascertain whether or not you think
3 that some of your proposals might be modified or
4 eliminated in ways that we could have a mutually
5 beneficial charitable sector that continues to
6 grow.

7 Thank you very much.

8 MS. LEVY: Thank you, MS. Heisman. The
9 next speaker is Kristin Todd, Community Foundation
10 of Northern Colorado.

11 MS. TODD: Good morning, or actually not
12 good morning, good afternoon. It feels like
13 morning. My name is Kristin Todd and I'm honored
14 to be here representing the Community Foundation
15 of Northern Colorado, where I serve as President
16 and CEO.

17 And as one of my colleagues mentioned,
18 there are nearly 900 community foundations in the
19 United States. And I would imagine our esteemed
20 panel feels like most of us have shown up today.
21 (Laughter.) In our industry, though, we feel if
22 you've met one community foundation, you've met

1 one community foundation.

2 However, a similarity that we all share
3 is that we try to make it flexible and possible
4 for all kinds of donors and generous individuals
5 to come together and address the present and
6 future needs in their community. It's a little
7 reminiscent of the barn raising philosophy of the
8 old pioneer west, where neighbors come together to
9 help neighbors. And herein lies the magic of
10 community foundations.

11 As one of our local donors noted, as a
12 single person, I cannot contribute enough to solve
13 the issues in our community. But when we work
14 together, we can. The community foundation I
15 represent was established in 1975 and has been a
16 cornerstone of our region's generosity for nearly
17 50 years. We work with hundreds of donors, house
18 more than 600 individual funds, about a third of
19 which are Donor Advised Funds, and steward just
20 over \$200 million in charitable assets. We refer
21 to ourselves as a matchmaker working at the
22 intersection of community generosity and community

1 need.

2 In addition to our work with donors, we
3 play a vital role in convening the community to
4 work collaboratively on the really challenging
5 problems of our day, like affordable housing,
6 childcare, homelessness, education, and mental
7 health. We work to ensure that our local
8 nonprofit organizations who are doing this
9 important work day in and day out have access to
10 the financial resources that they need and are
11 connected to the generous donors in our area.

12 Our community foundation serves seven
13 counties in Colorado. The most well-known is
14 Larimer County, home to Colorado State University
15 and Fort Collins and Estes gateway to the Rocky
16 Mountain National Park. But we also serve six
17 lesser known rural counties in the far northeast
18 corner of Colorado. This region is made up of
19 small agricultural communities and numerous
20 farming and ranching families who have made rural
21 Colorado their home for generations.

22 I'd like to share a few stories from our

1 work in Colorado, and I've chosen examples that
2 would have all been negatively impacted or perhaps
3 wouldn't have happened at all if the proposed regs
4 had been in place. And the stories focus on two
5 particular issues, the danger of reclassifying
6 other types of funds as DAFs and the use of
7 outside investment advisors.

8 The first example is a collaborative
9 funding model and is a great illustration of
10 Margaret Mead's quote, "Never doubt that a small
11 group of thoughtful, committed citizens can change
12 the world. Indeed, it's the only thing that ever
13 has." The Sterling Community Committee Advised
14 Fund is an effort born from the dedication of a
15 handful of -- who envisioned a brighter future for
16 their small rural area. The group's vision was to
17 establish an endowment to build a community legacy
18 to endure for generations.

19 So far, they've raised \$2 million and
20 they've been responsible for the creation of a
21 community park, renovations at the local county
22 fairgrounds, and a trail beautification project.

1 This committee advised fund is truly driving
2 transformative change in their small rural area.
3 And as you can imagine, in small areas like
4 Sterling, engaged citizens wear many hats. The
5 folks responsible for building this community
6 endowment have played the role of fundraiser,
7 donor, and grant advisor.

8 And under the proposed DAF regulations
9 which expand the definition of DAFs and donor
10 advisors, these committee members would not be
11 allowed to take part in the grant making portion
12 of this virtuous cycle of local community
13 engagement without triggering and turning this
14 fund into a DAF. And it's not hard to imagine
15 that if they were cut out of this part of the
16 cycle, they would not be as motivated to spend the
17 time building the important community legacy and
18 being part of the small group of thoughtful,
19 committed citizens that Margaret Mead spoke of.

20 The next example I'd like to share is
21 about fiscal sponsorships and what would happen,
22 at least at our community foundation, if those

1 became classified as a DAF. Another example from
2 rural Colorado is when our community foundation
3 helped incubate a recreation center in the small
4 community of Yuma. Yuma is an ag town with a
5 population of about 3400 people on the Eastern
6 Plains of Colorado. And a small group of citizens
7 approached us asking if we would serve as the
8 project's fiscal sponsor.

9 So, for a period of about 10 months,
10 while the group sought their own 501(c)(3) status,
11 we served as their fiscal sponsor and paid
12 expenses on their behalf, provided their back
13 office support and a wide variety of
14 administrative assistance. And this partnership
15 not only provided the group with essential
16 resources and guidance, but also laid the
17 groundwork for something that will benefit the
18 Yuma community for years to come. The regs, as
19 currently drafted, which significantly broaden
20 what constitutes a taxable distribution, would
21 negatively impact our ability to serve as a fiscal
22 sponsor and catalyze important community projects

1 this particular DAF to our local nonprofits,
2 there's been a positive impact on the business
3 model of our community foundation. The fees paid
4 to us by our larger DAFs support our ability to
5 provide services to our smaller DAFs. Our median
6 DAF size is only about \$85,000. So, without this
7 large DAF and others like it, we'd be hampered in
8 our ability to support our smaller donors.
9 Frankly, it would be a double whammy if larger
10 DAFs bypass community foundations altogether and
11 choose alternative vehicles with a lower payout
12 rate, all because the flexibility that's been
13 important to them has been taken away.

14 Also, as has been noted by others. When
15 we do work with an outside investment advisor, the
16 community foundation owns the assets, the outside
17 investment advisor must work and comply within our
18 investment policy statement, and the advisors are
19 not involved whatsoever in the funds grant making
20 decisions.

21 Finally, with regard to the important
22 role community foundations play in times of

1 crisis. We're concerned that the proposed
2 exemption for federally declared disasters is too
3 narrow. There are numerous examples of community
4 -- of disaster funds being established at
5 community foundations for local tragedies that
6 don't rise to the level of a federal disaster
7 designation. I can confidently say that the
8 community foundation response to tragedies and
9 natural disasters in Colorado, such as mass
10 shootings, wildfires and floods, would be
11 negatively impacted if these funds were
12 reclassified as DAFs. The more complex
13 requirements of a DAF would significantly delay
14 our work at the very time we need to be nimble and
15 swift.

16 In summary, the proposed regulations
17 would profoundly disrupt the work of community
18 foundations and our ability to drive positive
19 community change. They would also have a
20 disproportional negative impact on community
21 foundations at a time when it's harder and harder
22 for us to remain competitive with larger

1 commercial DAF sponsors. Perhaps instead of the
2 normal process of going right to final
3 regulations, the department could consider
4 starting from scratch on some of the more
5 problematic provisions. I know I speak for my
6 community foundation colleagues when I say that
7 our field would be pleased to work closely with
8 Treasury on a set of rules that would address the
9 concerns you have without upsetting the economic
10 model of community foundations and stifling
11 charitable giving. Thank you.

12 MS. LEVY: Thank you, Ms. Todd. The
13 next speaker is Matthew Evans. United
14 Philanthropy Forum.

15 MR. EVANS: Good afternoon. My name is
16 Matthew L. Evans. I currently serve as the
17 Senior Director of Public Policy for United
18 Philanthropy Forum. As the largest, most diverse
19 network in American philanthropy, the forum holds
20 a unique position in the social sector to help
21 increase philanthropy's impact in communities
22 across the country. We are a membership network

1 of nearly 100 regional and national philanthropy
2 serving organizations or PSOs, representing more
3 than 7,000 funders who work to make philanthropy
4 better.

5 Through our members and their networks,
6 we reach almost every state and district in the
7 country working to promote a strong philanthropic
8 sector and advocating for vibrant, healthy, and
9 equitable communities nationwide. In February, we
10 provided comments that outlined our concerns with
11 the current recommendations, where we were joined
12 by 15 PSOs from across the country. We are here
13 today to respectfully submit our testimony seeing
14 these regulations and specifically we wish to
15 address a few of the recommendations, including
16 the definition of a donor advisor, the definition
17 of DAF as it relates to different funding
18 arrangements, the definition of a DAF for certain
19 scholarship funds, and the regulatory exception
20 for certain disaster relief funds, the rules
21 addressing the effects of serving on an advisory
22 committee, clarification on certain payments such

1 as those used for lobbying activities, and changes
2 to the effective date of the proposed regulations.

3 We respectively object to the inclusion
4 of a personal investment advisor in the definition
5 of donor advisor, this would be in direct conflict
6 with the statutory language of Section 4958 and
7 the intent of its enhanced excess benefit rule,
8 potentially disrupting and harming terrible
9 activities. These existing sections of the
10 Internal Revenue Code and the fiduciary duties of
11 investment advisors already provide substantial
12 safeguards against any potential abuse. By
13 subjecting all investment advisors to the enhanced
14 excess benefit rule simply due to their role in
15 managing DAF assets, you risk unintended negative
16 consequences. Such action could force donors to
17 abandon DAF in favor of private foundations. This
18 would disproportionately harm local and regionally
19 organizations which rely on DAF, diminishing
20 philanthropy's impact on the grassroots level.

21 For example, as the pandemic unfolded in
22 Michigan, some foundations created COVID-19 relief

1 and response funds to support local, nonprofit,
2 and governmental educational organizations that
3 provided services to their communities in the
4 pandemic. At the Grand Rapids Community
5 Foundation, their COVID Recovery Fund helped the
6 foundation pool resources and quickly dispatch
7 dollars for crisis response and long term
8 recovery. Here, DAF holders played a critical
9 role in the community foundation's COVID-19
10 response efforts to continue advancing toward
11 recovery and reimagining the community's future,
12 with DAFs increasing the amount of grant dollars
13 distributed to nonprofits by 23 percent alone in
14 '20. Through their COVID Relief Fund, the
15 community foundation in Grand Rapids was able to
16 make grants every week, and DAF holders were
17 crucial in supporting these efforts.

18 We recommend that you remove the rule
19 regarding investment advisors or significantly
20 narrow it to address only the specific perceived
21 abuses so that community foundations like this one
22 can go about their work unencumbered. The

1 proposed regulations broad definition of DAF would
2 also encompass collaborative giving projects,
3 fiscal sponsorships, and designated funds. This
4 mischaracterizes the nature of these arrangements
5 and runs counter to the intent of Section 4966.

6 Donors and individuals with advisory
7 roles in such projects lack the broad
8 decision-making authority over distributions
9 typically associated with DAFs. Their
10 recommendations operate with pre-agreed guidelines
11 and frameworks established by the sponsoring
12 organization. Furthermore, arrangements like
13 collaborative giving, or collective giving, and
14 giving circles are often community-led efforts
15 that make giving more accessible and prioritized
16 issues like equity and justice. These accounts
17 are clearly not DAFs, but many of these funds
18 would be classified as such under the proposed
19 regulations, having a detrimental impact on this
20 type of grassroots approach toward giving, making
21 it less accessible to communities across the
22 country.

1 To prevent these unintended consequences
2 to prevent these unintended consequences, we ask
3 for explicit clarification that these
4 arrangements, where recommendations exist but are
5 made with an agreed upon framework, do not
6 constitute DAFs. We appreciate and commend the
7 existing exemptions with regulations as it relates
8 to scholarship and disaster relief funds.

9 We also support additional clarity on
10 the exception for scholarship funds used for
11 post-graduation loan repayment assistance. This
12 should be explicitly included in the regulations
13 as it serves the same purpose as pre-graduation
14 tuition payments.

15 The regulations also includes an
16 exemption for certain disaster relief funds. We
17 request that this be expanded to equalize events
18 with significant impact, even if not federally
19 declared disasters. Limiting the exception would
20 make it harder to deliver aid to communities in
21 need. For example, in December 2023 and January
22 2024, unexpected heavy rainfall quickly led to

1 devastating flooding and mudslides in low-income
2 communities in Southern California. Within
3 several days, the local community foundations in
4 San Diego County and Ventura County respectfully
5 launched emergency relief funds and mobilize
6 hundreds of dollars from donors to help the most
7 vulnerable storm victims. Limiting the exception
8 and potentially subjecting these funds to excise
9 taxes would make it more difficult for aid to
10 reach the people who need it the most in
11 situations like these.

12 The regulations include two separate and
13 slightly different rules for determining who is a
14 donor advisor based on participation on advisory
15 committees. This creates confusion in our
16 opinion. We just recommend a single clear rule
17 incorporating the scholarship committee exception,
18 which requires committee members to be appointed
19 by the sponsoring organization based on objective
20 criteria, with no direct or indirect control by
21 the donor or donor advisor.

22 As it relates to taxable distributions,

1 501(c)(3) organizations are allowed to engage in
2 legally permitted lobbying, including lobbying to
3 influence legislation. As written, the proposed
4 rule would make it more difficult for these
5 nonprofit organizations to engage with
6 policymakers on behalf of communities they serve
7 and the charitable sector. Prohibiting DAF from
8 funding lobbying activities that fall within the
9 legal limits for Section 501(c)(3) organizations
10 creates undue burdens and stifles legitimate
11 advocacy.

12 We recommend that you eliminate this
13 restriction or clarify that it applies only to
14 lobbying expenses incurred directly by the DAF,
15 not funds distributed for permissible lobbying by
16 recipients. Clear guidelines must be established
17 to ensure that organizations can engage in
18 advocacy without fear of punitive tax
19 implications, preserving their ability to affect
20 change through legislative channels.

21 The proposed -- and in closing the
22 proposed immediate effective date will severely

1 disrupt charitable work, and a lot of folks have
2 talked about that here today. We recommend
3 implementing a transition period of at least one
4 year to allow for adjustment or prospectively
5 apply regulations to future taxable years. While
6 we commend the efforts to enhance transparency and
7 accountability in managing Donor Advised Funds, it
8 is crucial that these regulations are crafted with
9 a nuanced understanding of the diverse operations
10 within the philanthropic sector.

11 We look forward to engaging further with
12 the IRS and Treasury to develop regulations that
13 support effective, equitable, and efficient
14 charitable giving that benefits communities
15 nationwide.

16 Thank you for your attention.

17 MS. LEVY: Thank you, Mr. Evans. The
18 next speaker is Jenn Holcomb, Council on
19 Foundations.

20 MS. HOLCOMB: Good afternoon. Thank you
21 for convening today's public hearing. I'm Jenn
22 Holcomb, Vice President of Government Affairs and

1 Legal Resources at the Council on Foundations.
2 The Council is a nonprofit membership association
3 that serves as a guide for philanthropies as they
4 advance the greater good. Building on our 75-year
5 history, the Council supports more than 900 member
6 organizations in the United States and around the
7 world to build trust in philanthropy.

8 The Council is proud to advocate on
9 behalf of our members and philanthropy broadly for
10 a regulatory environment that fosters a thriving
11 and vibrant sector. As you've heard, DAF help
12 individuals and organizations support the causes
13 and charities and communities they care most about
14 today and the long term. As we look at how these
15 proposed regulations will impact community
16 foundations, other sponsoring organizations, the
17 council is concerned that much of what is proposed
18 will cause confusion and disruption. We share
19 many of the concerns you have and will hear from
20 our members and partners during this hearing. And
21 while there actually are parts of the regulation
22 we do support, given my limited time, I'm going to

1 focus on the three areas of concern, clarifying
2 the definition of a DAF, the personal investment
3 advisor provision, and the applicability date.

4 First, as you have heard, community
5 foundations administer a wide variety of funds,
6 but not all of those funds are DAF, and these
7 regulations should not treat such funds as DAF.
8 At the same time, we should all be able to agree
9 that funds that operate like a DAF should be
10 treated as one, as defined in the Pension
11 Protection Act. To be considered a DAF, the fund
12 must have three characteristics separately
13 identified with reference to the contribution of a
14 donor or donors, owned and controlled by a
15 sponsoring organization, and the donor or donor
16 advisor must reasonably expect to have advisory
17 privileges.

18 Now, while those prongs seem fairly
19 clear, our legal resources team routinely fields
20 questions from community foundations asking for
21 clarification regarding whether a fund is a DAF.
22 And since the proposed regulations were released,

1 we have received so many more. Though meant to
2 provide clarity, they have instead caused even
3 more confusion and uncertainty. Staff are asking
4 about whether fiscal sponsorships, giving circles,
5 field of interest funds, and many others, many of
6 the other funds they manage could now be treated
7 as DAFs.

8 Having these funds treated as DAFs
9 limits their effectiveness as vehicles for
10 collaborative giving. And even if some of these
11 funds are ultimately determined to fall outside
12 the regulations, the process of having to analyze
13 each fund is a sizable undertaking. Many of our
14 members manage hundreds, sometimes thousands, of
15 various funds. Analyzing even a fraction of those
16 to ensure each meets an exception or simply not a
17 DAF is costly in terms of time, staff power, and
18 financial resources. These worries are reflected
19 throughout the many comment letters you received
20 and the testimony today from community foundations
21 and other sponsoring organizations.

22 I do want to share an example from a

1 council member about a fund that could be treated
2 as a DAF under the proposed regulations. The San
3 Angelo Area Foundation sponsors a giving circle
4 named the Future Fund. It is composed of younger
5 philanthropists who each give and collectively
6 review grant requests and recommend grants to
7 three or four charitable organizations annually.
8 On average, the group ranges between 40 and 50
9 donors. No one donor's input is greater than the
10 others, but the foundation is concerned that
11 proposed regulations may treat this type of giving
12 circle as a DAF.

13 Today, this fund's endowment continues
14 to support the group's charitable efforts while
15 continuing to add new members and donations. And
16 I know there are many more examples, some you have
17 already heard about and others you will during the
18 hearing.

19 Each fund helps ensure charitable gifts
20 support nonprofit organizations in communities
21 across the country and sometimes around the world.
22 Treating these funds as DAF will not improve the

1 charitable ecosystem, but instead add a new and
2 unnecessary administrative roadblock.

3 Recent public comments by Treasury staff
4 have suggested that proposed regulations were not
5 intended to capture some of these other types of
6 funds. We appreciate this clarification and hope
7 it is reflected in the final regulations. To that
8 end, we urge you to opt for simplicity over
9 complexity. This should include reiterating that
10 all three prongs must be met to be considered a
11 DAF, simplifying the facts and circumstances when
12 considering if a fund is separately identified,
13 and modeling an exception for participation in
14 advisory committees that reflects the established
15 rules for scholarship committees.

16 The definition of a DAF must be clear,
17 simple, and consistently applied throughout the
18 field, which is why getting these regulations
19 right is critically important. Next, the Council
20 echoes many of the concerns you have already heard
21 about considering a personal investment advisor a
22 donor advisor. We believe current and federal

1 laws as well as standards of practice already
2 exist to help prevent and address any instances of
3 abuse that may occur.

4 For many of our community foundation
5 members, outside investment advisors provide an
6 important service. Foundation staff can work with
7 these external consultants to ensure the DAF and
8 investments are appropriately managed so donors
9 can achieve their charitable goals. For many
10 community foundations, using outside investment
11 advisors is a part of their business model.

12 For instance, the Community Foundation
13 of Western North Carolina has 423 DAFs with assets
14 of more than \$131 million. As of March, 19
15 percent of those DAFs were managed by independent
16 investment advisors recommended by donor and donor
17 advisors.

18 The Black Hills Area Community
19 Foundation, a relatively small organization with
20 \$60 million in assets. They recently added DAFs
21 managed by investment advisors recommended by
22 donors to their work. In one instance, they were

1 able to deepen a relationship with a donor who is
2 now comfortable leaving a sizable estate gift to
3 the foundation.

4 Finally, almost 1000 of the funds
5 administered by the Community foundation of
6 Greater Des Moines are DAF. It also runs the
7 Charitable Investment Partners Program, which
8 enables donors to benefit from both the services
9 offered by their local community foundation and
10 the existing relationship with their investment
11 advisor. The CIP program includes 372 DAFs and 85
12 approved advisors.

13 Examining each of these arrangements and
14 then making any necessary changes will take
15 significant time and resources. It simply cannot
16 happen overnight. It is important to note that
17 the investment advisor arrangement can be revoked.
18 A sponsoring organization can and should terminate
19 the agreement if a problem or conflict arises or
20 if the fund is underperforming. Over the past few
21 months, I have talked with several members about
22 this provision. Some have shared stories of

1 having to do exactly that, end their relationship.

2 Now, we believe your goal here is to
3 stop and prevent instances of abuse or conflicts
4 of interest. The Council and our members share
5 that broad goal. Our members take seriously the
6 responsibility of being stewards of the charitable
7 dollars they manage. That responsibility requires
8 that foundations establish and maintain the
9 public's trust. Without it, there's little the
10 sector could accomplish.

11 At the Council, we believe that public
12 trust in philanthropy expands when our field
13 demonstrates high professional and ethical
14 standards. This commitment shows up in all we do,
15 from the ethical principles developed in 2022 to
16 the pledge we launched with partners at the start
17 of the COVID crisis to our community commitment to
18 Community Foundation's National Standards.

19 Since 2009, we have been the supported
20 organization for Community Foundation's National
21 Standards, a voluntary self-regulatory program.
22 The National Standards Accreditation seal

1 represents a community foundation's commitment to
2 rigorous, sector-driven best practices that exceed
3 federal and state law requirements and demonstrate
4 accountability and excellence to communities,
5 policymakers, and the public. To achieve
6 accreditation, foundation policies and procedures
7 are subjected to rigorous review by attorneys and
8 peers. Today, over 440 community foundations are
9 accredited by National Standards, and dozens more
10 are in the process.

11 Last, while we are sure by recent
12 comments, public comments, that the final
13 regulations will not be retroactive, we urge you
14 to go further and ensure the field has adequate
15 time to understand, pivot, and implement the final
16 regulations. Our members vary in asset size,
17 number of desks, and staff capacity. We have
18 heard concerns from the biggest community
19 foundations to the smallest about what
20 implementing this rule will mean for them. The
21 council recommends a period of no sooner than two
22 years starting after the tax year publication in

1 the Federal Register. That time will ensure our
2 members can make the changes to their operations,
3 minimizing any disruption to this sector and
4 charitable giving broadly, while also maintaining
5 the public's trust in the sector.

6 Thank you for letting me share these
7 remarks on behalf of the council and foundation
8 and our members. And please look to us as a
9 partner. We are committed to helping ensure our
10 members and the sector have the information they
11 need to comply with the regulations.

12 MS. LEVY: Thank you, Ms. Holcomb. The
13 next speaker is Roxanne Jerde from the Community
14 Foundation of Sarasota County.

15 MS. JERDE: Thank you. And I'm cleanup.
16 I think I'm the last community foundation you're
17 going to hear from, so I think that's what Debbie
18 said. But anyway, I am Roxy Jerde. I am
19 president and CEO of the Community Foundation of
20 Sarasota County in Sarasota, Florida. I've been
21 in this field for over 20 years, 8 at the greater
22 Kansas City Community Foundation. Go, Chiefs.

1 And I've been 13 in Sarasota County. But thank
2 you for your time today and your service. And you
3 guys are really good listeners. So watching you,
4 we can see that. So thank you.

5 Our community foundation was established
6 nearly 45 years ago in the fall of 1979 by a
7 coalition of professional advisors, including
8 investment advisors, who are managing charitable
9 trusts and wish to establish local, knowledgeable
10 community leadership to make the greatest impact
11 through charitable grant-making. They realized
12 they didn't have that expertise to oversee
13 millions of dollars they knew that came with
14 charitable intentions. So they formed the
15 Community Foundation of Sarasota County.

16 Today, our community foundation oversees
17 the current day charitable goals and lifelong
18 legacies of nearly 1,600 individuals and families
19 and they trust our organization to steward their
20 philanthropic intentions. Over the last four-plus
21 decades, this has meant nearly \$500 million has
22 been provided in grants and scholarships to

1 support the nonprofit organization -- people who
2 make our local communities one where we hope
3 everyone has opportunities to thrive. To date,
4 approximately 70 million of our almost 500 million
5 in assets, or 14 percent, are managed in 28
6 individually managed accounts. We expect another
7 50 million-plus to be contributed through what we
8 know of 12 land gifts in the future which will be
9 (inaudible).

10 If these, you've heard this, proposed
11 regulations were put in place, our community would
12 be very negatively impacted because we would no
13 longer be able to steward charitable assets
14 managed by financial advisors to strengthen and
15 improve the lives of our citizens. We are the
16 local experts to guide charitable dollars, and
17 this would be thwarted.

18 I'm just going to give you one example.
19 In 2019, the largest fund we administer, \$31
20 million, came into existence. Its purpose is to
21 address dyslexia, logical (phonetic) condition
22 that impairs reading for about one in five

1 students, or 20 percent. The fund today is
2 providing resources for more than 100,000 students
3 in our two-county area and their families for
4 helping identify dyslexia, for supporting
5 interventions, and providing teachers the
6 professional skills to equip them to identify,
7 predict, and adjust their classroom teaching for
8 dyslexia. It also incorporates the science of
9 reading. We're on the campaign for grade level
10 reading. We want every child reading at that
11 third grade level by the end of third grade. So
12 this effort, while focusing on dyslexia, is
13 helping all readers.

14 This important work is known as the
15 Strauss Literacy Initiative, and it's named for
16 Ira and Patricia Strauss, a couple without
17 children, who, along with their professional
18 advisors, chose to work with our community
19 foundation because of our ability to affect local
20 change as well as the ways we could work with
21 their investment advisor. It was contingent in
22 establishing the fund that the investment advisor

1 would continue to manage the estate upon the
2 client's passing. This agreement supports
3 millions of dollars being invested in our local
4 school districts and nonprofits.

5 The alternatives to working, as you've
6 heard, with our community foundation would have
7 been to establish a private foundation, which
8 would not have had the grant-making expertise to
9 effectively implement community-wide initiatives
10 of this magnitude or to work with a commercial
11 fund that does not have the local knowledge to
12 effectively manage these dollars to have the
13 greatest impact. There are many misperceptions
14 about donor-advised funds, and I want to clarify
15 two points.

16 First, we are, as you've been hearing,
17 the legal owners of these assets, and they require
18 stringent oversight. These funds must meet our
19 investment policies when they're managed
20 individually as well as our other pool funds. We
21 have fired managers when their performance is poor
22 or failed to meet our guidelines and benchmarks.

1 And second, these individually managed
2 accounts are not part at all of managing -- of
3 doing any grant advisements from the fund. The
4 sole role is to manage the assets in accordance
5 with our investment policies and their client.
6 The grant-making strategy is overseen by our
7 community foundation.

8 I personally knew and got to know Ira
9 and Patricia Strauss, and I'm certain, without the
10 opportunity for their advisor, whom they trusted
11 and relied upon for financial guidance for
12 decades, to continue to manage their estate after
13 their passing that these vital funds would not be
14 making the impact in our community as they had
15 over the last several years. Patty herself was
16 dyslexic. She wasn't diagnosed until her --
17 didn't know she had dyslexia to her early forties,
18 and she talked about herself esteem was so
19 impacted by her inability to read. So the fact
20 her entire estate came to the community foundation
21 to change lives for generations is so, so
22 meaningful. And as I've shared, we will not be

1 overseeing this community-wide initiative if their
2 investment advisor were not part of this.

3 So, these proposed regulations would
4 prevent local oversight of critical charitable
5 gifts that are making a difference in our
6 community and across the country. Disruption in
7 the advisor relationship may cause a donor to
8 revisit their charitable objectives. So, I urge
9 you to please reconsider these proposed
10 regulations. Donor-advised funds are a critical
11 lifeline, helping nonprofit organizations swiftly
12 respond to emerging needs.

13 Unfortunately, we understand about
14 hurricanes in Sarasota, Florida, and have
15 hurricane relief signs, as well as COVID-19 and
16 other immediate needs that we've been able to
17 address really quickly, and wider range issues
18 like dyslexia and community-wide needs that take
19 generations at times to deal with. While the
20 nuances of these proposals are many, one thing is
21 clear: These proposed changes would ultimately
22 dramatically inhibit the opportunity to impact

1 lives of our residents through localized
2 charitable giving.

3 Thank you for your time and
4 consideration.

5 MS. LEVY: Thank you, Ms. Jerde. The
6 next speaker is Richard Mills, American Bar
7 Association Real Property, Trust and Estate Law.

8 MR. MILLS: Well, thank you so much for
9 the opportunity to testify and to address the
10 Service and the Department. It's been very
11 informative for me to hear from all the other
12 speakers as I -- and hopefully, it's been very
13 informative for you.

14 My name is Rick Mills, and I am. I'm an
15 attorney in private practice with the firm of
16 Smith Haughey, and I'm here today as the chair of
17 the charitable planning organizations group for
18 the American Bar Association's Real Property,
19 Trust and Estate Law section. And our comments
20 were written by my esteemed colleague, Professor
21 Chris Hoyt of the University of Missouri, Kansas
22 City. And sadly, you get me to present our

1 comments today.

2 I do have a disclaimer, not to sound
3 like a drug commercial here. The views expressed
4 in our comments are presented on behalf of the
5 section of the Real Property, Trust and Estate Law
6 of the American Bar Association and have not been
7 reviewed or approved by the House of Delegates or
8 the board of governors of the ABA itself. And
9 accordingly, should not be construed as
10 representing the position of the Association
11 itself. And all those side effects that every
12 drug you hear of has, we'll add that to the
13 disclaimer as well. But thank you for that.

14 So, it is -- you know, our section of
15 the ABA is primarily trust and estate law
16 attorneys who are advising charitable donors and
17 advising those who create private foundations,
18 those that established or advised funds. And it's
19 -- you know, many of us, of course, are also
20 active in nonprofit boards and foundation boards.
21 I myself serve as actually the incoming board
22 chair of our small community foundation. So, you

1 know, there are a few, you know, things that to
2 bring out from our comments.

3 You know, donor-advised funds have
4 exploded in popularity, and you've heard why. You
5 know, you've heard why they're so popular, why
6 they're so useful. And I'm, you know, just amazed
7 to hear from the foundation colleagues here about
8 the good work they do with their own advised
9 funds. And, you know, there's concern out there
10 in general that somehow, you know, you've heard of
11 the warehousing of wealth argument that, you know,
12 these funds are being deployed for terrible use.
13 They're set aside irrevocably for terrible use.
14 And every community in the country would look
15 differently if these funds weren't being deployed
16 in the form of a donor-advised fund.

17 It's kind of interesting that you have
18 -- it's an interesting picture here. I love
19 private foundations, by the way. I create them.
20 I advise them, certainly would never discourage my
21 client, who have the means to establish a private
22 foundation, to do that. But they're expensive.

1 They're very expensive and they're very complex.
2 You know, the rules can be arcane. And for many
3 folks, they like the idea of endowment giving.
4 They like the idea of creating a way to involve
5 their children and their grandchildren. You know,
6 they like the fact that they can memorialize a
7 loved one, but they really don't have the means to
8 justify a private foundation. And I would hate to
9 see clients doing that, or anyone for that matter.
10 You know, creating private foundations that, you
11 know, 20 years from now, they're going to be
12 going, you know, I want to go to their local
13 community foundation like they do and say, please
14 take this off my hands. You know, we love the
15 good it does, but we just don't want to be
16 involved in, you know, all the tax compliance and
17 all that stuff.

18 And there -- you know, so we're
19 typically, you're talking millions of dollars that
20 really justifies the private foundation. For, you
21 know, for donor-advised funds, you have this
22 beautiful hybrid option. You have all those

1 benefits without -- you know, you have a
2 professional organization that actually does all
3 this administrative work. You know, in the case
4 of community foundations, they bring the local
5 expertise. They can -- you know, these sponsoring
6 organizations can accept the complex assets.

7 You've heard all these things today
8 about all the great services they provide, and
9 many of them are small. You know, I established
10 one for the benefit of -- or, excuse me, in the
11 memory of my late wife with \$10,000 from a life
12 insurance policy. And, you know, it is --
13 certainly many, most donor-advised funds are like
14 that. You know, they're fairly small. But as
15 you've heard today, many of these -- many of the
16 community foundations particularly are relying on
17 the largest of the donor-advised funds to pay for
18 the small foundations, like the one that was
19 established by my family. And those oftentimes
20 have come, as you've heard today, from the advice
21 and the recommendation of the advisor, the
22 investment advisor. I know as an estate plan

1 attorney, the investment advisor is -- they're the
2 person that knows the client the best. They're
3 the person that can encourage them. They're the
4 ones, unlike me, that can solicit them, you know,
5 you should be thinking about, you know, charity.
6 You should be, you know, setting aside funds.

7 And so the irony is that many of these
8 investment advisors are -- they are bar none the
9 primary reason why hundreds of millions, but, you
10 know, certainly hundreds of thousands in the small
11 community foundations case are coming in -- you
12 know, coming in and, again, to be irrevocably set
13 aside for charitable use. You know, they're not
14 -- they're owned by the sponsor organization.
15 They're subject to various powers. They're
16 subject to all those things that we consider truly
17 charitable.

18 And, you know, so you have this. If we
19 lose those types of large, you know, individually
20 managed funds, is what we call them in our local
21 community foundation, but, you know, these locally
22 investor-advised -- or investment advisor-advised

1 funds, you have, you know, one of two things
2 happening. The largest ones will consider a
3 private foundation and you're going to have a
4 large swath in the middle. They're going to talk
5 to a lawyer like me. I'm going to say, you really
6 don't want a private foundation for even what is a
7 very large gift, you know, because it's just going
8 to be too expensive for you and it's going to be a
9 burden on your family. So, what happens is we
10 don't see all this money pouring into the
11 community.

12 So, I certainly don't want to belabor
13 the point that we have -- you've heard over and
14 over again that the investment advisor rule really
15 could have a staggering effect on the deployment
16 of philanthropy all over the country. And I
17 really think it's going to have, as I'll talk
18 about as far as some of these other proposals,
19 it'll affect all sponsored organizations, all
20 community foundations particularly it's going to
21 affect, as I think many of these rules would,
22 unfortunately, affect our small community

1 foundations in the small communities even more.

2 Excuse me here. Another theme I had is
3 that we just -- it's obviously, for all
4 regulation, we want it to be easy to comply with,
5 to be clear. There's also so many standards in
6 our Tax Code with regard to exempt organizations
7 that are applied to, you know, public charities in
8 general, to scholarship boards, all kinds of
9 things that are crystal clear, well-defined.
10 There's really -- so, to me, a donor-advised fund
11 is such a -- you know, it's -- I don't want to say
12 plain vanilla, but it's sort of a middle-income
13 option. You know, we're not talking about the
14 billionaire foundation, you know, the level of --
15 you know, when they're abused, they're abused at
16 the highest level. You know, we're talking about
17 everyday people, you know, and it does not --
18 makes no sense at all to make the rules for
19 donor-advised funds more stringent than private
20 foundations, because private foundations are
21 intended for larger dollars and, frankly, for a
22 foundation that isn't independent, it's intended

1 to not be independent. It's intended to be the
2 family foundation. Obviously, you know, it's
3 intended to be charitable, but it's not. You
4 know, a donor-advised fund has a sponsored
5 organization with a truly independent charity --
6 or, excuse me, a truly independent board of a
7 public charity overseeing it.

8 So there's no reason to make the rules
9 any more stringent, especially since, as so many
10 of our colleagues have testified today, the giving
11 rates are so much higher. And that's obviously
12 not because the private foundations can't give
13 more, but historically, they really do give higher
14 than that 5 percent required level. And so --
15 and, frankly, the dollars, thank you, the dollars
16 are not, even on some of these large donor-advised
17 funds, are not the Ford Foundation. They're not,
18 you know, they're not hundreds of -- you know,
19 they're not billions of dollars. They can live on
20 into perpetuity, but they're not -- it's not
21 something that requires that level of oversight.

22 I'm particularly concerned about and my

1 closing note on the units. It's in one of the
2 examples with regard to donor-designated funds,
3 example 3 of the proposed regulations would
4 classify such a fund as a donor-advised fund if
5 the donor is on the board of the recipient
6 organization. A small organization, a small
7 community foundation that, you know, the folks
8 that are passionate are passionate in every
9 aspect. They wear, one of the speakers talked
10 about, they wear several hats. They want to be on
11 that board. They want to be on the fundraising
12 committee. They want to be -- you know,
13 obviously, there's times when we have to be
14 careful with conflicts of interest, but it just --
15 it would be too difficult to have to stop and
16 police that.

17 Thank you so much.

18 MS. LEVY: Thank you, Mr. Mills. Next
19 speaker is Alexander Reid, TEGE Exempt
20 Organizations Council.

21 MR. REID: Hello, everyone. I'm
22 Alexander Reid of BakerHostetler, where I won the

1 chair once held by Norm Sugarman, who is a
2 Cleveland tax lawyer who worked at the IRS in the
3 1940s and 1950s and helped establish some of the
4 first donor-advised funds in his work with the
5 Jewish Federation. I participated in the drafting
6 of the comments on behalf of the TEGE Council,
7 which sounds like it's part of the government, but
8 it is not. In fact, TEGE Council was formed at
9 the request of the IRS many years ago to
10 facilitate communication between the IRS TEGE, the
11 real TEGE, and we practitioners who practice in
12 tax-exempt and government entities.

13 In our comments, we called for the
14 withdrawal and reproposal of the donor-advised
15 fund regulations. I'd like to take a moment to
16 explain our reasoning for the request to withdraw
17 and repropose the NPRM, because I believe that
18 withdrawal and reproposal will protect the IRS as
19 much as it will protect the nonprofit sector, and
20 it is in the best interests of tax administration.

21 As you've heard over and over again
22 today, the proposed regulations are both very

1 broad and very vague. In their current form the
2 proposed regulations would change every aspect of
3 the way sponsoring organizations administer
4 donor-advised fund programs which have been
5 developed. But none of us are sure exactly how
6 because we don't know where these rules under
7 Section 4966 will land or what the proposals under
8 Section 4967 and 58 will say.

9 In addition to being broad and vague as
10 applied to DAFs, the proposed regulations would
11 sweep in many customary non-DAF transactions
12 between donors and nonprofits that have never been
13 subject to the donor-advised fund rules. As a
14 result, many members of the regulated community
15 have no idea that they will be affected by the
16 proposed rules and have not had an opportunity to
17 voice their concerns. So, due process has a big
18 issue here.

19 Disruption. DAFs have been around for a
20 century now and hold much of the resources for the
21 nonprofit sector. At no point during that time or
22 the past two decades since the Pension Protection

1 Act has it occurred to practitioners that a DAF
2 should be regulated less favorably than a private
3 foundation. The central premise of DAFs is that
4 they are programs within public charities and they
5 should be regulated as public charities.

6 The law is changing. The state of
7 administrative law is very much in flux right now
8 with forthcoming guidance from the Supreme Court
9 in the coming months about the appropriate scope
10 of interpretive regulations. Sections 4966, 4967,
11 and 4958 are not ambiguous statutes. We in the
12 practitioner community have been applying them for
13 nearly 20 years now, and we have not had a problem
14 doing so. I'd refer you to the robust and highly
15 articulated contracts that are commonly used to
16 define the relationship between the donor and the
17 sponsoring organization, on the one hand, and
18 between the sponsoring organization and the
19 grantee, on the other hand. These are commonly
20 available contracts on the websites of sponsoring
21 organizations, and they represent the state of the
22 art and our understanding of the statute and how

1 it applies.

2 I believe I can speak on behalf of the
3 practitioner community that it has never occurred
4 to us that the statutes were so ambiguous that
5 regulations would fundamentally disrupt these
6 basic operating agreements that we drafted. We
7 did not read the Pension Protection Act to confer
8 a major power to Treasury to remake donor-advised
9 funds, so I fear that a legal challenge is
10 inevitable given, one, the breadth and scope of
11 the proposed regulations; two, the disruption that
12 they would cause to both the known regulated
13 community in donor-advised funds and the unknown
14 regulated community in the rest of the nonprofit
15 sector; and three, the rapid narrowing of the
16 scope of regulatory authority under administrative
17 law, a legal challenge to these regulations is
18 extremely likely. A final regulation that is so
19 disruptive as to invite legal challenge will lead
20 to greater uncertainty overall and is not in the
21 interests of either the IRS or the donor-advised
22 fund community risk. The other reason to withdraw

1 and repropose is the chilling effect of proposed
2 regulations. Proposed regulations establish the
3 official IRS position. They form a sort of safe
4 harbor, and even more than that, it's considered
5 the right approach, the approach that the
6 government sanctions and approves of. Over time,
7 the logic of risk mitigation pushes toward the
8 derisked position. Yet if that is the wrong
9 position, then the proposed regulations harm the
10 interests of the regulated community and the IRS
11 because they push the sector toward a position
12 that will not ultimately correct the position.

13 I'd also like to address for a moment
14 the major premise underlying these proposed
15 regulations. Congress did not delegate a major
16 power to regulate beyond the statute, but, if it
17 did, that power would not include a mandate to
18 shrink the donor-advised fund sector or to create
19 disincentives to their use by donors. There is a
20 common misperception that donor-advised funds
21 involve a mismatch between the deduction and the
22 public benefit, and that such a mismatch requires

1 regulatory intervention.

2 To be clear, there is no such mismatch
3 between the deduction and the public benefit
4 because the public benefit grows over time. I'd
5 like to rid the public dialogue of this false
6 notion of a timing mismatch, which simply it does
7 not exist.

8 What does exist and is incontrovertible
9 is efficiency. The reason so many aspects -- so
10 many assets are moving into donor-advised funds is
11 consolidation and economies of scale. It is not
12 nefarious and does not require a restrictive
13 regulatory approach. On the contrary, I believe
14 it was the French philosopher Voltaire who said,
15 if donor-advised funds did not exist, it would be
16 necessary to invent them. (Laughter) Sharing
17 administrative costs over many donors benefits
18 charity, aids compliance and law-abiding behavior,
19 and should be encouraged rather than killed.

20 I'd like to call out two specific points
21 in the proposed regulations. First, fiscal
22 sponsorships should not be treated as

1 donor-advised funds. These are also efforts of
2 small organizations to give up some of their
3 autonomy in return for efficiency and
4 administrative convenience. The IRS should
5 encourage fiscal sponsorships rather than
6 increasing risk by treating them as donor-advised
7 funds. Having small and under-advised groups
8 partner up with larger and more responsible
9 trustees is in everyone's interest.

10 Lastly, the taxable distribution rule
11 should be limited so that it doesn't harm
12 donor-advised funds' ability to make
13 program-related investments or to prevent
14 customary administrative expenses. The private
15 foundation taxable expenditure rules should be a
16 floor for the DAF rules. Nothing that is
17 permitted to private foundations should be
18 prohibited to donor advisements.

19 That's the substance of my remarks. I
20 thank you for your good work and your attention.

21 MS. LEVY: Thank you, Mr. Reid. The
22 next speaker is Andrew Grumet, Holland & Knight.

1 MR. GRUMET: My name is Andrew Grumet
2 and I'm a partner at Holland & Knight where we
3 represent numerous nonprofits that sponsor
4 donor-advised fund programs of all sizes, along
5 with numerous other nonprofits engaged in
6 communities across the United States and around
7 the globe. Our team includes not only lawyers,
8 but numerous others who have spent years working
9 at nonprofits of all sizes.

10 I'm here today to speak about the
11 practical implications of the proposed
12 regulations. While we appreciate the time and
13 effort at clarifying the law through the
14 regulatory process, we believe that enhancements
15 to the proposed regulations can be made to better
16 achieve the protection of assets dedicated to
17 charitable purposes, while at the same time
18 fostering the philanthropic spirit of this
19 country.

20 Let me begin with a few statistics
21 compiled by the team at National Philanthropic
22 Trust in their 2023 donor-advised fund report. In

1 2022, \$52.16 billion was granted from
2 donor-advised funds. Of that amount, 34.65
3 billion came from what are referred to as national
4 sponsors, 11.92 billion came from what are
5 referred to as community foundations, and about
6 5.59 billion came from single issue organizations
7 like colleges, universities.

8 With those statistics in mind, let's
9 move to our very first topic, proposed regulation
10 53-4966-583 (phonetic), which has come to be known
11 as the daisy chain rule, provides, in effect, that
12 if a series of distributions results in a grant
13 that is otherwise impermissible, then the
14 distributions will be treated as a single
15 distribution. In the event there is any confusion
16 about what that rule means, we get an example --
17 if the donor advises the distribution that the
18 sponsoring organization subsequently makes from a
19 donor advised fund's charity x, and the donor or
20 the sponsoring organization arranges for charity x
21 to use the funds to make distributions to
22 individuals recommended by the donor, the

1 distribution will be a taxable distribution from
2 the sponsoring organization.

3 In light of this rule, the question
4 becomes, how's a charity supposed to know? How do
5 you know? In other words, how's a charity
6 supposed to know whether or not the donor either
7 had the power to take such action and if the donor
8 had such a power, whether or not the power is
9 exercised. We don't know. How in the world are
10 any of these charities here we're supposed to know
11 that? It would appear, based upon the rule, that
12 the sponsor must determine information about the
13 grantee, such as whether or not the donor or
14 related party was on the board of the
15 organization. Was that really important? No, not
16 really. Really, what you need to determine is
17 whether or not the donor in fact took any action
18 with respect to a grantee that would be treated as
19 having arranged "use of the grant funds to be
20 distributed to an individual."

21 Okay, let's stop there and consider for
22 a moment how many charities that sponsor donor

1 advised funds operate today when it comes to grant
2 making. First, it's important to note that many,
3 if not most, sponsors of programs heavily rely on
4 technology in order to make grants possible and to
5 manage virtually every aspect of their program.
6 This includes tools that would allow the sponsor
7 to vet charities, make the issue grant checks,
8 track them. Without these tools, a sponsor with
9 more than a few DAFs could hardly operate with any
10 degree of efficiency. Many people in the audience
11 here today would surely attest that fact. Indeed,
12 most sponsors have and continue to invest heavily
13 in technology to efficiently and effectively
14 administer their programs. I don't think we want
15 to take a survey how much people are paying here
16 for their technology platforms. I can assure you,
17 that we all know it is a very large amount.

18 That said, for those with a tech
19 platform, a grant will begin with a donor or some
20 other authorized person logging into the
21 technology. They're going to make a grant
22 recommendation by selecting a charity. They're

1 going to select the amount of the proposed grant.
2 They'll decide whether or not they want to suggest
3 that the program should be anonymous, whether or
4 not the grant should be in honor of some other
5 person and a bunch of other general information.
6 Okay, now it's in the system. Then what? Okay,
7 once the grant is submitted, then the grant
8 recommendation will go through a series of
9 automated processes confirming the tax status and
10 classification of the grantee to ensure the
11 grantee is permitted. Similar checks will be made
12 with respect to OFAC to make sure that, that the
13 proposed grantees not on an OFAC watch list.

14 Many technologies, in fact, today will
15 also allow the sponsoring charity to vet out
16 certain terms so that, for example, if the donor
17 puts the word pledge in that grant purpose,
18 automatically red flag goes off and we all know
19 about it, right? If you see something in there
20 that says gala, okay, the technology will usually
21 flag that for you. It makes things fast and easy,
22 okay. Does it do everything? Heck no.

1 Definitely not. Wish it did. I bet you everybody
2 else wishes it did, too, right? It doesn't, okay.
3 But it moves things along very rapidly. Okay.

4 Once the technology check is done, now
5 we're in step four, okay. Now things get manual.
6 Every organization has something, and it's usually
7 fairly large, that's going to go and do a visual
8 check on every one of those proposed grants that
9 have already been listed as potentially
10 approvable. Okay? Now you're looking for all the
11 terms that kind of move it through the tech
12 process that didn't get picked up right away.
13 What I'll call the creative grant purposes that
14 raise your eyebrows and say, wait a minute, this
15 may be a problem. Okay? If the grant makes it
16 past that process, then it's going on a grant file
17 of some sort where senior management, along with
18 the board or a committee of the board, is going to
19 actually approve the grant, then it could finally
20 go out, okay.

21 Now, it's also worth noting here, and I
22 think one or two other speakers already mentioned

1 this, typically when the grant goes out, in
2 addition, along with that grant check, will
3 usually be a whole bunch of stipulations to the
4 grantee charity. They'd say something along the
5 lines in short form, if you accept this grant,
6 you're hereby certifying that in fact, the donor
7 is not receiving impermissible benefits. Blah,
8 blah, blah. Okay? All right. Others here
9 probably can regurgitate the words line by line
10 for memory, Ooay.

11 Now imagine the implications of the
12 daisy chain rule. How are charities supposed to
13 comply with this rule to ensure a taxable
14 distribution is not made? I suspect step four
15 will be radically changed. Charities will be
16 required to do what? Hire a fleet of new staff so
17 that they could physically pick up the phone and
18 call charities and say, hey, charity, did a donor
19 who recommended this grant do a, b, and c? What
20 are we supposed to do? Okay, how is this supposed
21 to work? Okay. Alternatively, are we going, our
22 charities now going to send out a written

1 certification system form, so that when the grant
2 gets to the little soup kitchen, the soup kitchen
3 has to sign a document certifying, in fact, that
4 the recommender on this grant in no way
5 recommended that the money should go to this
6 individual. It doesn't strike me as practical,
7 okay?

8 I don't have a reliable amount -- manner
9 to actually determine at what point the actual
10 number of grants that were included in the
11 National Philanthropic Trust report actually
12 covered. That 52.16 billion is the number we
13 know. That's a lot of grants. I can only imagine
14 how many hundreds of thousands of grants it
15 represents. Now imagine what those numbers would
16 look like if we needed to go to a manual process
17 for grant making 100 percent. It seems to me that
18 is not a useful result for anyone would want to
19 have.

20 In the absence of actual knowledge on
21 the part of a sponsoring organization, a taxable
22 distribution under the daisy chain rule seems to

1 be inappropriate. Just my view of the world here.
2 This brings me to my second point. Personal
3 liability to fund managers under proposed
4 regulation 4966-2(c)(3)(iii). While the proposed
5 rule creates personal liability for making a
6 taxable distribution, including those where the
7 daisy chain rule applies in cases where a fund
8 manager has actual knowledge, the rule goes well
9 beyond knowledge. Specifically, the rule imposes
10 liability where the fund manager has facts
11 sufficient to know.

12 Why a new standard? We already have a
13 similar regime under the private foundation rules,
14 Section 4945, and the regulations they're under.
15 I point out here that those regulations actually
16 specify that knowledge means actual knowledge is
17 for all purposes under Chapter 42. So I'm not
18 sure if these proposed regulations now conflict
19 with the existing regulations and how that gets
20 worked out, but it seems to be kind of an issue.

21 But second, more importantly the point,
22 however, the practical question is what does it

1 mean to have sufficient knowledge? I have no
2 idea. Okay. This is not a clear rule by any
3 sense of the words. If I go back to the days
4 where I actually sat in the role and was a fund
5 manager, I certainly wouldn't know what it meant,
6 and I know that I'd be damned careful and scared
7 that I would end up getting a tax bill for a
8 distribution for liability. Thank you for your
9 time, appreciate the opportunity.

10 MS. LEVY: Thank you, Mr. Grumet. The
11 next speaker is Margaret Trilli, ImpactAssets
12 Incorporated.

13 MS. DUKE: Hello, good afternoon. I am
14 actually Ivy Duke. I am speaking in place of
15 Margaret Trilli, our CEO. I am actually the
16 general counsel of ImpactAssets, the public
17 charity sponsor of a \$3 billion donor advised fund
18 serving a national base of 2,000 donors. Our
19 model is based on serving purpose driven
20 individuals and working with their wealth
21 managers, family offices, foundations, and
22 corporations to galvanize and catalyze capital

1 towards impact investing, so that we can
2 effectively activate significantly more of the
3 assets in the donor advised fund towards the
4 donors missions.

5 Before I go further, I must say a plus
6 one to all of the comments that my esteemed
7 colleagues have already raised for you today. I
8 also want to thank Mr. Grumet on going over the
9 list of the steps for going through grants for
10 donor advised funds. That was right on point.

11 I now want to give you some important
12 context on ImpactAssets. All of the
13 organizations, again, that you've heard from
14 today, have a specialty, such as the Community
15 Foundation, with the knowledge of their local area
16 and its charities. It also might be a specific
17 area of philanthropy. For ImpactAssets, our
18 specialty is how we make social and environmental
19 impact with our investments as well as with our
20 grants.

21 Stepping back a bit, on average, donor
22 advised funds give out between eleven to 24

1 percent of their assets every year, and the other
2 75 percent to 90 percent is invested in the
3 account, arguably growing so that the donor
4 advised fund will have more giving power later.
5 This is a perfectly acceptable convention and
6 ImpactAssets was founded on the idea that we can
7 do better. In fact, ImpactAssets donor advised
8 fund accounts, by number, gave an average of 18
9 percent in 2023.

10 We at ImpactAssets, we like to think
11 large. We think globally. We like to imagine how
12 much good we could affect in the world if 100
13 percent of DAF assets were invested in
14 ImpactAssets -- excuse me, impact investments,
15 such as loans to small businesses located in
16 low-income and disadvantaged communities,
17 investments in medical solutions and therapies for
18 the so-called small diseases that affect the
19 majority of humans but do not have solutions
20 expensive enough to attract traditional biopharma
21 companies and investors, or investments in CDFIs,
22 community development financial institutions, who

1 collectively ensure that everyone can be included
2 in our financial system.

3 ImpactAssets was actually founded in
4 2010 specifically for the purpose of managing a
5 donor advised fund program. It works with its
6 clients with donors to place grants and
7 investments made through our assets donor advised
8 fund platform, consistent with its mission and
9 programmatic goals. A few real life examples are
10 investments in, as I just mentioned, nonprofit
11 low-income housing and community development,
12 where ImpactAssets made an investment, and a local
13 initiative support corporation, so it's LISC, a
14 not for profit community development financial
15 institution, CDFI, that redevelops urban
16 neighborhoods and rural communities through
17 investments in affordable housing, health,
18 education, public safety and employment.
19 ImpactAssets has also made low interest loans to
20 small businesses owned by members of economically
21 disadvantaged groups where commercial funds at
22 reasonable interest rates are not readily

1 available.

2 One example is through an investment
3 we've made in Hope Enterprise, a CDFI credit union
4 which creates economic opportunity and
5 generational wealth for underbanked communities in
6 the deep south. We also make investments in
7 businesses in low-income areas, both domestic and
8 foreign, that improve local economies by providing
9 employment or training for unemployed residents.

10 An example here is an investment we've made with
11 Oweesta, the longest running Native CDFI
12 intermediary, offering financial products and
13 development services exclusively to Native CDFIs
14 and CDFI communities, helping Native people assert
15 greater control over their own economic futures.

16 So for us, we often do investments
17 instead of a grant. And why do we do this? First
18 of all, we do not see these as mutually exclusive
19 vehicles. There are times when grants are the
20 appropriate instrument and times when investment
21 is far more impactful. This is due to three
22 reasons. When investments are repaid, the money

1 goes back out again to support another
2 organization, project, or person and rounds of
3 impact. Sometimes a loan is a pivotal vote of
4 confidence. It says I believe in you. I believe
5 what you are telling me is viable and I believe
6 you are able to repay me. And in the end, if a
7 borrower is struggling, loans can be forgiven.

8 I would now like to provide a few
9 industry adoption statistics. My appeal today is
10 more than just about ImpactAssets needs the global
11 impact investing network estimates that \$1.1
12 trillion in assets worldwide are invested with the
13 dual purpose of achieving social and environmental
14 impact alongside of financial goals. The U.S.
15 leads the globe in impact investing, accounting
16 for 37 percent of that trillion dollars, and
17 American organizations account for more than 50
18 percent of impact investors globally.
19 Philanthropists, foundations, and donor advised
20 funds comprise an impressive majority of the U.S.
21 Impact investor demographic. In short, a large
22 and growing number of donor advised funds and

1 community foundations have executed at least one
2 impact investment, in organizations like
3 ImpactAssets, have completed hundreds and even
4 thousands of these important investments.

5 So where am I going with this?
6 ImpactAssets does invest much of its own assets.
7 The reason our firm can have such outsized results
8 is due in part to our partnerships with nearly 300
9 registered investment advisors.

10 With this backdrop on ImpactAssets and
11 our role of donor advised funds in carrying out
12 ImpactAssets, I turned to the proposed rules. As
13 proposed, we see their implementation as having
14 unintended and even adverse consequences on donor
15 advised funds. I just referenced our partnership
16 with investment advisors, and my first comment is
17 just to caution against the rules as drafted. I
18 don't want to belabor the points that were made by
19 numerous speakers here today, but I do want to
20 share our experience with our clients in that
21 personal investment advisors most often have a
22 completely different wealth management investment

1 mandate with their clients private wealth and a
2 completely different private mandate for the
3 impact investments made in the donor advised fund.

4 I also want to stress that it has been
5 our experience at ImpactAssets that the investment
6 advisors associated with our donors in advising on
7 donor advised fund recommendations, are not
8 encouraging clients to keep money growing in the
9 account so they may generate fees. If fee
10 generation were the true impetus of the investment
11 advisor relationship surrounding our DAF, then we
12 would expect to see investment advisors advising
13 their clients to not make any charitable
14 donations, so as to retain those assets in their
15 personal investment accounts, or to establish a
16 private foundation where the level of active grant
17 making is markedly less than we experience on our
18 own platform. Also, if the goal is to address
19 concerns over a personal investment advisor's
20 receipt of any incidental benefit or potential
21 conflicts of interest, we suggest that a more
22 narrowly tailored rule should be considered and

1 promulgated instead.

2 I also want to just address that, as
3 already has been mentioned, we just want to add
4 another plus one to the comments that were already
5 discussed. Specifically, my colleague from the
6 Impact Foundation, regarding the proposed rules
7 where you request comments on how to further
8 distinguish distributions from investments. And
9 we strongly recommend that you consider program
10 related investments, or PRIs, as a comparable
11 metric for distinguishing distributions from
12 investments.

13 My final comment is that I'd like to
14 emphasize with respect to the proposed rule
15 applicability date just to stress that we
16 respectfully request implementation of a
17 transition period upon adoption of the new
18 regulations that will allow us to adopt and change
19 our processes so that we can implement the final
20 regulations properly. In sum, thank you for the
21 opportunity to provide feedback to proposed
22 regulations and for the opportunity to speak with

1 you today.

2 MS. LEVY: Thank you, Ms. Duke. The
3 next speaker is Steven Woolf, Jewish Federations
4 of North America.

5 MR WOOLF: Good afternoon. My name is
6 Steven Woolf and I am representing the Jewish
7 Federations of North America. First, JFNA would
8 like to thank Treasury and the IRS for the hard
9 work over many years in drafting these proposed
10 regulations and recognizing the importance of
11 donor advised funds to the philanthropic
12 community.

13 JFNA is the national organization
14 representing almost 150 Jewish federations, their
15 affiliated Jewish foundations, and over 300
16 independent Jewish communities across North
17 America. The importance of donor advised funds to
18 the federation system cannot be overstated.
19 Approximately 70 Jewish federations and related
20 foundations serve as sponsoring organizations of
21 DAFs, and collectively it is estimated the system
22 holds almost \$11 billion in DAF assets and

1 distributes over \$2.5 billion each year from such
2 accounts to qualified charitable grantees.

3 The federation system has operated donor
4 advised funds and mission based donor advised
5 funds for over 60 years, and I appreciate the
6 reference to Norman Sugarman, who spent many years
7 in this building as the assistant commissioner in
8 the EO division, and then became really the father
9 of the donor advised fund movement throughout the
10 federation system. DAFs have become a very
11 increasingly popular vehicle for facilitating
12 charitable giving fundraising across federations,
13 their affiliated social service and educational
14 institutions, as well as numerous non affiliated
15 charities locally and nationally. Individual
16 federations have long benefited from strong DAF
17 programs based on a close and ongoing relationship
18 with DAF donors, many of whom are now second and
19 third generation donor advisors, resulting in an
20 ongoing dialogue regarding community priorities
21 and challenges necessitating federation funding.

22 The system honors distribution requests

1 from our donor advisors if they are consistent
2 with the overall charitable mission and purpose of
3 the federation system. This ongoing purposeful
4 review is conducted under documented
5 administrative procedures collected in the system
6 wide DAF operating manual. It results in
7 qualified distributions to qualified charities,
8 the hallmark of our DAF programs. An active DAF
9 program enables the federation system to nimbly
10 respond to financial downturns, natural disasters,
11 and even acts of war. It should be noted that a
12 large percentage of funds made available in
13 response to the events of October 7th, came from
14 funds on hand at DAF accounts across the
15 federation system.

16 We recommend four major changes to
17 proposed regulations, all of which have been
18 covered in great detail, so I'll try to be brief.
19 We also remain concerned that the need to revise
20 these proposed regulations will unduly delay the
21 release of additional DAF regulations regarding
22 such important issues as what constitutes a

1 prohibited benefit under Section 4967, as noted in
2 the most recent Treasury IRS priority guidance
3 plan.

4 First, as it pertains to the investment
5 advisor issue, and this has been covered in great
6 detail. We believe the approach of the proposed
7 regulations imposes further restrictions beyond
8 the provisions enacted in Sections 4958 and 4966.
9 In our system, independent investment committees
10 of sponsoring organizations actively review the
11 selection of outside investment advisors, as well
12 as potential donor investment recommendations. We
13 recommend that the regulations either eliminate
14 the inclusion of investment advisors as donor
15 advisors or expand the exception to include
16 situations where management contract between the
17 sponsoring organization and the outside investment
18 advisor imposes certain fiduciary duties and
19 responsibilities on both parties. Here we echo
20 the comments made both by the ABA tax section and
21 the AICPA.

22 Second, the expanded definition of what

1 constitutes a DAF can have unfavorable impact on
2 our system, including the impact on such vehicles
3 as collaborative funds. As noted earlier, the
4 relationship between DAFs and distributions from
5 some such accounts is key to fulfill the donor
6 intent of our DAF holders as well as the mission
7 of the federation system. We recommend, however,
8 that the single identified organization exception,
9 the definition of a DAF, be expanded to include
10 distributions from accounts to dependent agencies
11 that share and integrate their overall charitable
12 mission with that of a sponsoring organization, if
13 such organizations maintain an independent board
14 not controlled by the donor advisor. This is
15 vital to our system because the largest
16 fundraising activity each year for every
17 federation is an annual campaign in which funds
18 are collected and then allocated to a variety of
19 charitable organizations, including related Jewish
20 agencies and others that foster the mission of the
21 overall federation system.

22 Third, the broad definition of taxable

1 distribution could unfairly subject sponsoring
2 organizations to excise penalties, as has been
3 discussed earlier. For example, many of our
4 sponsoring organizations maintain gift exception
5 policies requiring review of potential asset
6 donations that necessitate engagement of outside
7 professionals, such as engineers and appraisers.
8 Such payments should not be subject to the taxable
9 distribution excise tax.

10 Finally, the effective date of any
11 regulation should include a more lenient
12 transition period to permit sponsoring
13 organizations to make sure any required changes in
14 policies and procedures can be in place to protect
15 the resources of the charity during the transition
16 period. For example, we anticipate updating our
17 DAF operating manual, referenced earlier, to
18 reflect such final regulations. At a minimum, we
19 recommend the effective date be no sooner than tax
20 years beginning after the date of publication of
21 the final regulations.

22 In conclusion, we thank you for holding

1 this hearing and reiterate, the federation system
2 has been a leader in the formation and operation
3 of mission based DAFs for over 60 years and has
4 been a worthy steward of donor funds and supporter
5 of thousands of qualified grantees over that
6 period. We stand ready to work with you in the
7 development of guidance that will help further the
8 vital charitable needs met each day by gaps and
9 the robust public charities that sponsor them.
10 Thank you.

11 MS. LEVY: Thank you, Mr. Woolf. The
12 next speaker is Elizabeth McGuigan, Philanthropy
13 Roundtable.

14 MS. MCGUIGAN: Good afternoon. My name
15 is Elizabeth McGuigan and I'm a senior vice
16 president at Philanthropy Roundtable. I want to
17 thank you for the opportunity to testify today and
18 for your amazing endurance in hearing all of these
19 very significant concerns raised throughout the
20 day.

21 The Philanthropy Roundtable represents a
22 community of charitable givers who believe in the

1 values of liberty, opportunity, and personal
2 responsibility. We're a network of donors who
3 come together to collaborate and strategize on how
4 philanthropy can help address our society's most
5 pressing and persistent challenges. So I speak
6 today to support the effort to implement the
7 Attention Protection Act and to encourage changes
8 proposed rules that will help spur more charitable
9 giving, as the rules have outlined.

10 Before I get into our specific concerns
11 with the proposed rules, I would like to again
12 highlight the importance of donor advised funds
13 for our community. The Roundtable unlike many
14 you've heard from today, is not a sponsoring
15 organization, nor do we only represent donors that
16 give through DAFs. But our overarching goal is to
17 protect what we call philanthropic freedom or the
18 right for Americans to give how, when, and to what
19 causes they choose. DAFs are a powerful giving
20 tool, and any efforts to restrict or limit their
21 use warrants careful consideration.

22 I want to briefly discuss three items

1 that are most concerned to the Roundtable: the
2 effective date of the final regulation, the
3 definition of donor advisor as it pertains to
4 personal investment advisors, and the definition
5 of taxable distributions. You've heard some of
6 these concerns throughout the day, but they are
7 significant enough to reiterate once again. And I
8 also want to briefly address additional actions
9 that Treasury and the IRS may be considering under
10 -- separately under Notice 2017-73.

11 Now, first off, the Roundtable is
12 concerned that the dates set forth in the proposed
13 regulations do not allow sufficient time to ensure
14 effective compliance. The changes in the proposed
15 regulations are dramatic and, as currently
16 written, likely retroactive. The top priority for
17 the Roundtable is a later effective date for the
18 proposed regulations. Regardless of the shape of
19 the final rule, the size and the scope of your
20 undertaking is too large for sponsoring
21 organizations, for donors, and for other
22 stakeholders to implement on a short timeline.

1 Depending on the timing of the final rule,
2 affected entities may be faced with retroactive
3 requirements that are impossible to meet. The
4 result would be increased costs for stakeholders,
5 less giving in a time of uncertain rules, and
6 fewer resources ultimately available for meeting
7 charitable missions.

8 The Roundtable recommends an effective
9 date of taxable years ending at least two years
10 after the date of publication of the final rules
11 in the Federal Register. We believe this will
12 allow stakeholders sufficient time to fully comply
13 with the rules without impeding the crucial
14 support for charitable work underway. At the very
15 least, the final rules should not be retroactive.
16 That is, they should be effective as to taxable
17 years beginning after the date the final rules are
18 published.

19 Second, we also urge the department to
20 reconsider its proposed expanded definition of
21 donor advisor that proposes including a donors
22 investment advisor. Under the proposed

1 regulations, a personal investment advisor will be
2 treated as a donor advisor. This means,
3 effectively, that such investment advisors simply
4 cannot continue to serve in their current roles
5 because any compensation that they receive for
6 their donor advised fund services would be subject
7 to penalties imposed under Section 4958 and 4967.

8 This rule is misguided for several
9 reasons. First, it's outside of the department's
10 authority, as the law is written. In section
11 4958(c)(2), as enacted by the PPA, Congress
12 already provided special rules for donor advisors
13 and related parties that are stricter than the
14 general excess benefit transaction rule. Under
15 this strict rule, any payment to such persons is
16 an excess benefit subject to a penalty. Section
17 4958(c)(1) also subjects investment advisors to
18 the general excess benefit rule, which penalizes
19 payments that exceed an arm's length standard.
20 Clearly, Congress did not intend for personal
21 investment advisors to be subject to the enhanced
22 rules that apply to donor advisors and related

1 persons, or they would have explicitly done so
2 under the PPA. Congress chose to subject them to
3 the general rule, which allows personal investment
4 advisors to manage staff assets provided their
5 compensation is arm's length.

6 From a policy perspective, including
7 personal investment advisors in the definition
8 raises concerns about potentially deviating from
9 established tax policy, which has long favored
10 public charities over private foundations. That
11 is, donor advisors currently have the option to
12 use a personal investment advisor to manage their
13 DAF assets rather than manage those assets
14 themselves, and so long as that compensation paid
15 is arm's length. Taking that option away could
16 push those donors toward private foundations where
17 advisor and family member compensation structures
18 are less restricted. And I'll say, as earlier
19 speakers have also said, private foundations are
20 another great giving vehicle, but giving will be
21 more robust when you have more options, not fewer.
22 The proposal could also reduce charitable giving

1 overall by restricting some of the wealth
2 management strategy flexibility that make DAFs
3 attractive in the first place.

4 The last issue that I'll raise is the
5 proposed regulation's definition of taxable
6 distribution to include any "grant, payment,
7 disbursement, or transfer from a donor advised
8 fund." The only accepted transactions are
9 investments in reasonable investment or grant
10 related fees. The (inaudible) for this, I
11 believe, that this is just too broad. As written,
12 it could invariably penalize routine and necessary
13 expenses like legal counsel, accounting, or
14 philanthropic advising, even if deemed reasonable
15 and related to the DAF operation, because it's
16 unclear whether these fees are investment related.
17 Such broad application of the penalty taxes raises
18 questions about how DAF sponsors can fulfill their
19 duty to act in the best interest of donors. It
20 might discourage essential service procurement,
21 hindering efficient oversight, and management of
22 DAFs. If the Treasury and the IRS true aim is to

1 prevent grant funds from being used for non
2 charitable purposes or benefiting disqualified
3 individuals, the proposed rules, scope, and
4 language could benefit from significant
5 clarification. At the very least, explicit
6 exceptions should be added to cover common
7 expenses undertaken by sponsoring organizations to
8 fulfill their fiduciary duties, such as legal,
9 accounting, and philanthropic advisors.

10 Finally, as Treasury and the IRS move
11 forward with additional rulemaking related to DAF,
12 we also advise caution against taking sweeping
13 action on Notice 2017-73, and implementing changes
14 that could have transformational impact on the DAF
15 system and make it more difficult for our nation's
16 charities to count DAF contributions toward the
17 public support test. Limiting the types of
18 grantees that DAFs could support could exclude
19 worthy organizations activities that are deemed
20 non charitable or interpretations of the proposed
21 changes in Notice 2017-73. Constraining
22 individual grants or support for foreign

1 organizations could hinder donors ability to
2 direct their philanthropy according to their given
3 missions. Unwarranted increased scrutiny of donor
4 recommendations will likely lead to delays in
5 grant making, discouraging giving at a time when
6 causes and communities are in great need.

7 With respect to counting distributions
8 from donor advised funds as public support for
9 operating charities, we think that the proposed
10 changes in Notice 2017-73 would result in bad
11 public policy. Congress clearly believes that
12 sponsoring organizations of donor advised funds
13 are public charities, and for decades, operating
14 public charities have relied on donor advise funds
15 to meet their public support scheme. Changing
16 this rule would cause chaos for public charities,
17 as they'll have to reconsider their funding
18 sources and potentially undertake expensive,
19 substantial diligence to trace contributions from
20 donor advise funds. Further, this raises privacy
21 concerns for donor advisors to donor advice funds
22 that support public charities.

1 Coming back to the regulations at this
2 hearing, the unintended consequences of the
3 proposed changes will ripple through the complex
4 ecosystem of philanthropy, as you've heard today,
5 with the ultimate burden falling on those who rely
6 on the generosity of DAF donors. Organizations
7 addressing urgent needs rely on the flexible
8 funding from DAF. The Philanthropy Roundtable
9 supports the general effort to implement the 2006
10 PPA and seeks changes in the proposed rules that
11 will help encourage charitable giving. On behalf
12 of our giving community, we respectfully request
13 consideration of these concerns. Thank you.

14 MS. LEVY: Thank you, Ms. McGuigan. The
15 final speaker Gregory W. Baker, Renaissance
16 Charitable Foundation.

17 MR. BAKER: My name is Greg Baker,
18 president and chairperson of Renaissance
19 Charitable Foundation in Indiana. We submitted a
20 comment letter on the proposed regulations and the
21 foundation appreciates the opportunity to be heard
22 today.

1 Since 2000, Renaissance Charitable has
2 been a foremost sponsoring organization of donor
3 advised funds. Year over year, the foundation
4 grants to charities in all 50 states and we
5 received contributions from donors in all 50
6 states, usually in the first quarter. Renaissance
7 Charitable is the sponsoring organization for over
8 21,000 donor advised funds and has retained the
9 services of numerous investment advisors to
10 provide investment services to the foundation and
11 over 8000 separately managed investment accounts.
12 In 2023 alone, Renaissance Charitable made more
13 than 137 thousand grants to charities totaling
14 more than \$592 million that supported over 57
15 thousand unique charities. 2,108 new donor
16 advised funds were created with the Foundation in
17 the fourth quarter alone. The median donor
18 advised fund value at the foundation is only \$37
19 thousand. A signal that donors of all income
20 levels, not just the wealthy, are using this
21 giving tool. Renaissance Charitable believes that
22 it would be a great disservice to donor advised

1 phones and to charitable giving overall to adopt
2 the proposed regulations as written.

3 For Renaissance Charitable, the three
4 most important items that need to be changed in
5 the proposed regulations are the definition of the
6 personal investment advisor, the applicability
7 date, and the extended definition of donor advised
8 funds. First, is the definition of personal
9 investment advisor. The definition of a personal
10 investment advisor should be completely removed
11 from the regulations. Proposed regulations
12 overstep by including this new term, which is not
13 relevant to donor advised funds. It is
14 inconsequential to a DAF operation if a DAFs donor
15 engages the same investment value for the donors
16 personal financial services needs. Under federal
17 rules and other investment principles and
18 regulations, investment advisors owe a duty to the
19 owner of the investment account, which, in the
20 case of the DAF, is a sponsoring organization, not
21 the donor. Each investment advisor owes fiduciary
22 duties to that account owner, which supersede the

1 investment advisors personal interests and also
2 supersede the investment advisors duties or
3 commitments to other clients, including the DAF
4 donor.

5 The proposed regulations exception to a
6 personal investment advisor further shows flawed
7 rationale. For sponsoring organizations of
8 sufficient size, it is practically impossible to
9 have only one investment advisor for the entire
10 portfolio. The way the modern financial services
11 industry provides its services almost requires
12 that a large sponsoring organization use multiple
13 investment advisors or firms. One reason is
14 because there is no single investment firm that is
15 best at picking stocks, bonds, mutual funds,
16 ETF's, alternative investments, and the rest of a
17 wide range of investment options, while also
18 providing best in class service.

19 Further, by investing a DAFs assets in
20 its own separate investment management account,
21 the DAF investments can be designed specifically
22 for that DAFs charitable goals and granting

1 timeframes. The explanation in the proposed
2 regulation stated the relationship between a donor
3 and a personal investment advisor might give the
4 donor influence over investment decisions and
5 adapt. However, 4966(d)(2)(a)(3) of the code
6 specifically gives the DAFs donor the right to
7 provide investment recommendations to the
8 sponsoring organization. Regulations should not
9 take away from donors a right that is explicitly
10 authorized in the code. In summary, the inclusion
11 of personal investment advisor is harmful to
12 sponsoring organizations and to DAFs, would lead
13 to increased account monitoring costs, higher
14 administrative fees, and will reduce the amount of
15 dollars granted to end charities. Therefore, the
16 definition of personal investment advisor must be
17 completely removed from the regulations.

18 Second is the applicability date. It is
19 our understanding that it was not Treasury's
20 intent for the regulations to apply retroactively
21 to the beginning of the tax year in which they are
22 finalized. However, the proposed regulations are

1 drafted to this effect. Applying regulations
2 retroactively is unreasonable and could
3 potentially violate the administrative procedure.
4 When Treasury issued the private foundation
5 regulations back in 1973, several rules only
6 applied after a reasonable transition period of
7 six years. This multiple year transition period
8 allowed existing private foundations the necessary
9 time to adjust and change their operational
10 relationships. Similarly, there must be a
11 reasonable transition period for existing
12 sponsoring organizations to adjust to new rules
13 after nearly two decades of operating under the
14 current set of rules and regulations.

15 Looking at the burden and difficulty on
16 sponsoring organizations to react to some of the
17 proposed regulations requirements and thinking
18 specifically about the possibly completely new
19 definition of a personal investment advisor as a
20 donor advisor, it may be an absolutely impossible
21 task to identify all of those relationships in any
22 timeframe. It will most certainly be impossible

1 to enact those requirements within a single tax
2 year, and clearly unfair to apply these provisions
3 retroactively. In summary, Renaissance Charitable
4 requests that the final regulations be effective
5 only after a multiple year transition period or a
6 grandfather exception be implemented for existing
7 DAFs. In addition, Renaissance Charitable
8 requests that Treasury immediately issue an
9 official notice that the applicability date will
10 not apply retroactively.

11 Third is the broadened definition of a
12 donor advised fund. Under the proposed
13 regulations, many charitable gifts that are
14 neither currently classified nor administered as a
15 DAF would now be construed as a donor advised fund
16 and subject to DAF regulation. This is due to the
17 expansive definition of DAFs that include nearly
18 any contribution made to the sponsoring
19 organization where the donor has or thinks they
20 may have retained an advisory privilege. In
21 today's world of big data, the DAF test under
22 Section 4966(d) (2) (a) (1) is almost automatic for

1 any gift to a sponsoring organization. Many
2 charities, including sponsoring organizations,
3 hold and manage funds that are not DAFs. Basing
4 the determination of what constitutes a DAP on a
5 donor's unstated belief will make administration
6 of DAFs untenable.

7 It is crucial that donors and sponsoring
8 organizations can rely on the terms of the written
9 agreement between the donor and the sponsoring
10 organization for purposes of determining whether a
11 fund does or does not constitute a DAF. Some
12 examples of charitable gifts that were explicitly
13 created with the attention to not be DAFs include
14 qualified charitable distributions and gifts that
15 could create excess business holdings. In the
16 case of qualified charitable distributions, DAFs
17 are not eligible recipients of a qualified
18 charitable distribution under 408(b)(1). With the
19 currently available alternative to establishing a
20 non DAF, a sponsoring organization may receive a
21 qualified charitable distribution and make
22 subsequent grants to charities, so long as it is

1 clear the donor has no future advisory privileges
2 under Section 4966(d)(2)(8)(3). However, without
3 complete clarity as to what is or is not a DAF,
4 future gifts of QCD will be suspect and
5 problematic for donors and sponsoring
6 organizations alike.

7 Another example is the case of excess
8 business holders. Under Section 4943 of the code,
9 a DAF, along with certain individuals and
10 entities, cannot, as a group, hold more than 20
11 percent voting stock of a business enterprise
12 without subjecting the sponsoring organization to
13 an excise tax. Presently, a sponsoring
14 organization to an excise -- presently a
15 sponsoring organization may receive a gift of an
16 entity which, if received in a DAF, would be
17 subject to excess business holdings excise taxes.
18 However, so long as the sponsoring organization
19 maintains and manages the contribution in a non
20 DAF that is not subject to excess business
21 holdings. Many sponsoring organizations have
22 developed the staffing and procedural knowledge

1 and are uniquely positioned to accept complex
2 gifts, such as business entities that could
3 otherwise create excess business holdings, whereas
4 most other charitable organizations simply do not
5 have the staff or procedural knowledge to accept
6 such gifts.

7 Now let's look at another issue with a
8 lack of clarity around what is a DAF? Under
9 Section 170(f)(18) the code, in order for a donor
10 to claim a charitable deduction for a gift to a
11 DAF, when a contribution is received, the
12 sponsoring organization must issue a
13 contemporaneous written acknowledgment to the
14 donor express stating the sponsoring organization
15 has exclusive legal control over the assets
16 contributed. The same requirement does not
17 presently exist for contributions made to non
18 DAFs. If non DAFs become DAFs, then all donor
19 charitable deductions claimed for such
20 contributions could be in jeopardy without this
21 code required language. Altering the definition
22 of a DAF by both expanding the definition to

1 include non DAFs and also reducing giving options
2 for donors and sponsoring organizations will
3 create confusion for sponsoring organizations,
4 donors, their advisors, and the IRS.

5 Further, limiting fund options for
6 sponsoring organizations would reduce or eliminate
7 many non cash contributions and available donor
8 opportunities. In summary, Renaissance Charitable
9 recommends that Treasury follow what is instructed
10 in Section 4966(d)(2)(c) of the code and clarify
11 charitable gifts that would not be a DAF instead
12 of trying to expand the definition of DAF.

13 As a final note, donor advised funds are
14 attractive and unique giving tools with relatively
15 low administrative costs. Enactments of the
16 proposed regulations as written would increase
17 sponsoring organization administrative costs,
18 thereby directly decreasing grants to end
19 charities. Donors currently enjoy a wide range of
20 choices when creating and funding their DAF. They
21 can choose from a wide menu of assets to
22 contribute. The DAFs have numerous investment

1 options, and there is operational flexibility.

2 In a time when other charitable giving
3 is declining, the federal government should take
4 extra care when redrafting regulations that could
5 lead to further declines in charitable giving.
6 Given the significant number of substantive
7 comments on the proposed regulations, we recommend
8 the Treasury withdraw the regulations and
9 repropose them so that there is opportunity for
10 meaningful comments. Please do not make it harder
11 for donors to make charitable gifts, especially
12 through an effective giving tool such as the donor
13 advised fund.

14 MS. LEVY: Thank you, Mr. Baker. That
15 concludes the hearing.

16 MR. THOMAS: Thanks to everyone who made
17 it to provide their comments. We appreciate them,
18 especially those who had to travel away to get
19 here. Thank you for making the effort.

20 (Whereupon, at 4:18 p.m., the
21 PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

I, Thomas Watson, notary public in and
for the District of Columbia, do hereby certify
that the forgoing PROCEEDING was duly recorded and
thereafter reduced to print under my direction;
that the witnesses were sworn to tell the truth
under penalty of perjury; that said transcript is a
true record of the testimony given by witnesses;
that I am neither counsel for, related to, nor
employed by any of the parties to the action in
which this proceeding was called; and, furthermore,
that I am not a relative or employee of any
attorney or counsel employed by the parties hereto,
nor financially or otherwise interested in the
outcome of this action.

(Signature and Seal on File)

Attorney, District of Columbia BAR #41135

My Commission Expires: May 31, 2024

UNITED STATES DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE

TELECONFERENCE PUBLIC HEARING ON PROPOSED
REGULATIONS

"TAXES ON TAXABLE DISTRIBUTIONS FROM DONOR ADVISED
FUNDS UNDER SECTION 4966"

[REG-142338-07]

Washington, D.C.

Tuesday, May 7, 2024

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18 Telephonic Speakers:

19 BOB SORGE
20 Madison Community Foundation

21 LINDY EICHENBAUM
Lent Rose Community Foundation

22

1 PARTICIPANTS (CONT'D):

2 LAUREN Y. CASTEEL
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American College of Trust and Estate Counsel

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8 MICHAEL PARKS
Dayton Foundation

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10 DAN BLAKE
University Impact

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1 P R O C E E D I N G S

2 (10:01 a.m.)

3 MS. CAMILLO: Okay. Good morning,
4 everyone. Welcome to day two of the public
5 hearing on proposed regulations regarding excise
6 taxes on taxable distributions made by sponsoring
7 organization from a donor advised fund under
8 section 4966. I am Lynne Camillo. I'm the Deputy
9 Associate Chief Counsel, Employee Benefits Exempt
10 Organizations and Employment Taxes in the IRS
11 office of Chief Counsel. First, I'd like to have
12 the other members of the IRS and Treasury Panel
13 introduce themselves, and then I'll go through a
14 few procedural remarks. Taina?

15 MS. EDLUND: Good morning. Yes, good
16 morning. This is Taina Edwards and I'm a Senior
17 Technician Reviewer in Lynne's organization.

18 MR. HYDE: Good morning. This is Chris
19 Hyde. I'm an attorney also in Lynne's division.

20 MS. MACKENZIE: Assuming we're going in
21 the same order as yesterday. This is Amber
22 Mackenzie. I'm an attorney advisor in the Office

1 of Tax Policy at the Department of Treasury. Good
2 morning.

3 MR. THOMAS: And, hi. Ward Thomas.
4 Sorry. Yeah. Ward Thomas. I'm Senior Counsel
5 and under - in Lynne's office. Thank you.

6 MS. CAMILLO: Okay. Thank you. I want
7 to thank everyone who submitted comments and also
8 thank everyone who arranged to speak today. The
9 comments are very helpful to us in preparing the
10 final regulations. We read them all carefully,
11 take them into consideration, and do our best to
12 address them when we issue final regulations. I'd
13 like to get started right away because we do have
14 eight speakers today. You should have all been
15 given an agenda showing the schedule of speakers.
16 I will call each speaker in order. If, when I
17 call the speaker they are not ready to present,
18 I'll move on to the next one and recall the
19 speaker who was not ready. After the conclusion
20 of the other speakers, each speaker will have only
21 ten minutes to speak. You will be given
22 notification when you have one minute remaining.

1 At the ten minute mark, you will be placed on
2 mute. So I advise every speaker to wrap things up
3 when they're notified that they have only one
4 minute left. I also ask that you put yourself,
5 everyone who is not speaking, please put
6 yourselves on mute. If you don't put yourselves
7 on mute, there will be feedback on the call that
8 will make it difficult for others to hear.

9 With that, I will ask if there are any
10 questions, and if not, then I will move to the
11 first speaker. Okay. Hearing nothing. The first
12 speaker will be Bob Sorge from the Madison
13 Community Foundation, and everyone else should put
14 themselves on mute, please. Thank you.

15 MR. SORGE: Thank you and good morning.
16 I have been President and CEO of the Madison
17 Community Foundation in Madison, Wisconsin for
18 eleven years. I'd like to thank the Panel for
19 giving me the opportunity to testify regarding the
20 proposed regulations so I can provide additional
21 perspective on the comments in our letter of
22 February 14, 2024. My primary concern with the

1 proposed regulations is their failure to
2 differentiate between nonprofit community
3 foundations and commercial gift funds that are
4 created by for profit financial institutions.
5 While community foundations and commercial gift
6 funds both administer donor advised funds, their
7 similarities end there. Community foundations are
8 focused on improving the quality of life in a
9 specific geographic area. They typically support
10 a wide variety of causes through grants and often
11 provide other programming to benefit the
12 community, such as professional development for
13 nonprofit leadership or producing local research,
14 or convening nonprofits working on similar issues
15 or processing complex gifts for organizations that
16 are too small to have the capacity for that work
17 or any number of other activities. The fees donor
18 advised fund holders pay Madison Community
19 foundation support this work and help us
20 accomplish our mission to advance a more vibrant
21 and equitable community.

22 Commercial gift funds, on the other

1 hand, are an affiliate of a larger for profit
2 entity. I don't know how their fees are used, but
3 they don't offer the same types of programs as
4 community foundations. They don't really know the
5 local nonprofits they make distributions to, and
6 they don't know the communities those nonprofits
7 serve. Their value proposition is providing low
8 cost fee for service to their clients. It's
9 simply a different business model that requires
10 different regulation. While I understand the
11 Treasury Department's and IRS's desire to apply
12 one uniform set of rules to community foundations
13 and commercial gift funds, as currently drafted,
14 the proposed regulations are overly broad,
15 difficult to apply, and attempt to impose uniform
16 requirements on these fundamentally different
17 organizations, which will result in a major
18 negative impact on community foundations in
19 particular.

20 I'd like to spend the remainder of my
21 time describing those aspects of the proposed
22 regulations I find most concerning. As a

1 community foundation leader regarding the
2 definition of advisory privileges, it's important
3 to understand that community foundations are
4 governed by boards comprised of volunteers who
5 make gifts to these institutions to reflect
6 philanthropic leadership. Their generosity sets
7 an example for the rest of the community. For
8 Madison Community Foundation, a \$400 million
9 institution, the amount each board member gives is
10 solely at their discretion, with gifts generally
11 ranging from about dollar \$25 to \$10,000. In
12 2023, the median gift by our board was \$500.
13 While we ask the board to lead by example in
14 giving, they are not our largest donors. Our
15 board members, together with other community
16 volunteers, fill a variety of roles at the
17 foundation, including oversight of the grant
18 making program and investment of its endowments.
19 As drafted, their status as one of thousands of
20 annual donors could define them as donor advisors.
21 There are exceptions to this rule for those who
22 possess expertise in the subject matter of a fund,

1 but there are also prohibitions for significant
2 donors. These restrictions fail to understand our
3 business model fully and would add unnecessary
4 complication for an organization that already has
5 very strong conflict of interest policies in
6 place. It may sound silly, but the way we read
7 the proposed regulations, they suggest we
8 disqualify those who reflect philanthropic
9 leadership, part of our mission as a community
10 foundation, and instead fill our board and
11 committees with people who are uninterested in
12 philanthropy.

13 We request that the proposed regulations
14 be modified to allow board and committee members
15 acting in these capacities and subject to their
16 normal fiduciary duties and conflict of interest
17 policies to make contributions to the sponsoring
18 organization without creating a donor advisor fund
19 relationship. Second, the proposed regulations
20 place the same compliance burden on a community
21 foundation with \$50 million in assets as a
22 commercial gift fund sponsor such as fidelity

1 Charitable, which had \$57 billion in assets in
2 2023, we have vastly different sized staff
3 capacity, and it would be impossible for our small
4 operations team to monitor the multiple volunteers
5 commitments of donors related to 1,280 different
6 funds. We request you create separate regulations
7 that reflect the different operating models and
8 capacities of community foundations, private
9 foundations, and commercial gift funds. Third, as
10 drafted, the proposed regulations classify an
11 investment advisor managing both the personal
12 assets of the donor and their donor advised fund
13 as a donor advisor, unless that advisor is viewed
14 as providing services to the sponsoring
15 organization as a whole. Practically speaking,
16 this encourages commercial gift funds to
17 self-deal. By design, their donor advised fund
18 assets are primarily managed by their affiliated
19 for profit entity. While commercial gift funds
20 may assert they are not controlled by their for
21 profit affiliates. Note that Vanguard
22 Charitable's website boasts that Vanguard

1 investments underlie the majority of its
2 investment options and they, quote, adhere to
3 Vanguard's investment principles. And currently,
4 both the staff and board at Schwab Charitable have
5 extensive ties to Charles Schwab and company,
6 including the board chair who is also the
7 president of the Charles Schwab Corporation.
8 These relationships pose far greater conflict of
9 interest risks than a community foundation board
10 member who may give \$25 or \$500 or whatever it may
11 be.

12 While the proposed regulations
13 incentivize commercial gift funds to self-deal,
14 community foundations, especially those offering
15 third party asset management, may be penalized for
16 providing donors with a wider variety of options.
17 Community foundations will either need to take on
18 the role of successful successfully marketing the
19 services of their advisors to other fund holders
20 to ensure those advisors are serving the
21 foundation as a whole or be unable to pay
22 compensation to those advisors without triggering

1 the excess benefit transaction tax. The proposed
2 prohibition on paying compensation to advisors of
3 specific donor advised funds will have a
4 significant chilling effect on giving to community
5 foundations. This decrease in funding for local
6 community foundations will have a direct negative
7 impact on their ability to meet the needs of their
8 communities. We request that the proposed
9 regulations be modified to adopt an arm's length
10 standard that is applicable to all investment
11 advisors with any excess benefit transactions
12 remaining subject to the requirements of code
13 section 4958.

14 Finally, as drafted, the proposed
15 regulations would become effective for taxable
16 years ending on or after the date a Treasury
17 decision is published in the Federal Register.
18 Requiring retroactive compliance forces donor
19 advised fund sponsors to go back and review all
20 distribution transactions starting from the first
21 day of the tax year in which the final regulations
22 are published and possibly reclassify or rescind

1 any distributions that are noncompliant in order
2 to avoid paying the excise tax under code section
3 4966. This is impractical and unnecessary. We
4 request that the effective date of any new
5 regulations be forward looking and incorporated
6 transition period of at least two years.

7 In summary, we are concerned the
8 proposed regulations will unfairly impact
9 community foundations, reduce giving to community
10 foundations, and increase their cost to comply
11 with the regulations. For Madison Community
12 Foundation's part, in the last seven years, we
13 have twice successfully lowered our fees and
14 anticipate continuing in this direction. The
15 proposed regulations may not only cease these
16 reductions, but reverse them, increasing the cost
17 for our fund holders. Thank you again for the
18 opportunity to provide testimony. I hope my
19 remarks have been helpful to the Panel and I would
20 be happy to answer any questions you may have.

21 MR. THOMAS: Thank you, Mr. Sorge.

22 MS. CAMILLO: The next speaker is Lindy

1 Eichenbaum Lent, Rose Community Foundation.
2 Everyone else should please place yourself on
3 mute. Is Lindy Eichenbaum Lent ready to speak?
4 Okay, hearing nothing, we're going to move on to
5 the next speaker. Lauren Y. Casteel, Women's
6 Foundation of Colorado.

7 MS. CASTEEL: Good morning, my name is
8 Lauren Y. Casteel and I am the President and CEO
9 of the Women's Foundation of Colorado. Thank you
10 for the opportunity to share our perspective with
11 you. The Women's Foundation of Colorado, also
12 known as WFCO, is a community foundation based in
13 Denver serving the entire state of Colorado. We
14 are the only statewide community funded foundation
15 for protecting the progress in advancing gender,
16 racial and economic equity for all Colorado women.
17 Through complementary strategies, including
18 convening, grant making, impact investing, policy
19 and systems change, and gender lens investing, we
20 address the acute challenges of today while
21 cultivating women and girls unlimited potential
22 for tomorrow. Our most recent audited year end

1 the fiscal year ended March 31st, 2023, WFCO holds
2 \$32,423,293 in total assets made 291 grants for a
3 total of \$2,762,112 between April 1st, 2022 and
4 March 31st, 2023, holds \$6,555,236 in close to 90
5 donor advised funds and eight giving circles. Our
6 team is made up of 15 skilled and values aligned
7 individuals. One individual manager manages our
8 donor advised funds, while staff from other
9 departments play an important support role in
10 donor advised fund administration. Our staff
11 shares commitment to being an ethical and
12 thoughtful philanthropic institution that adheres
13 to the current law and best practices.

14 Thus, we have carefully reviewed these
15 regulations. Our feedback is based on our
16 understanding of the impact of the regulations,
17 the knowledge of our capacity, and the effect it
18 might have on our ability to distribute funds.
19 While WFCO is proud to be a philanthropic steward
20 for millions of dollars and hundreds of donors, we
21 are equally proud of the way we engage individuals
22 in our grant making process, to ensure that grants

1 are efficiently directed to community based
2 nonprofit organizations. We boldly stand in this
3 mission and values with commitment to leveraging
4 100 percent of our resources to do so. We do this
5 through several community involved grant processes
6 and eight giving circles providing community
7 grants in service of our mission. As the wealth
8 gap in our country grows exponentially each day,
9 we believe it is our responsibility to democratize
10 philanthropy through involvement of diverse
11 individuals. DAF's, community advisory
12 committees, giving circles and collaborative funds
13 allow for more individuals to participate in
14 philanthropy through community foundations. We
15 are grateful for the public service the IRS and
16 Treasury provide to our country, and thank you for
17 putting together these important rules.

18 DAF's have been a growing part of not
19 only the philanthropic services we provide as a
20 community foundation, but also an important way
21 nonprofit organizations such as ours receive funds
22 from other community foundations that sustain our

1 operations and ensure we can achieve our mission.
2 With decreasing state and federal funding,
3 community foundations and the nonprofits we fund
4 through DAF's, giving circles, field of interest
5 funds and collaborative funds are increasingly
6 counted on to provide essential services and
7 support thriving communities. The nonprofits that
8 fill crucial gaps and promotes in our communities
9 also play an integral role in our state and local
10 economy, employing 182,000 Coloradans. While we
11 understand the desire to further regulate DAF's,
12 we are providing feedback to ensure that these
13 rules do not impede community Foundation's ability
14 to efficiently and equitably distribute grant
15 funds to communities when they are needed. More
16 than ever before, our desks and giving circles
17 support essential services such as skills
18 training, arts, environment, education,
19 healthcare, childcare and affordable housing.

20 Our top concerns include, one,
21 definition of donor advised fund and exceptions.
22 WFCO uses a number of tools to increase giving in

1 addition to death, including field of interest
2 funds and giving circles to provide more inclusive
3 and accessible philanthropic opportunities. We
4 believe that these regulations might impede our
5 ability to efficiently offer these tools and the
6 impact they provide throughout our state. Field
7 of interest funds, FOIF, it is common for field of
8 interest funds to include grant advisory
9 committees, and in some cases the donors may
10 provide input in a minority capacity as members of
11 the committee. WFCO holds FIOF's and finds them
12 extremely impactful ways to efficiently grant
13 funds to community organizations. This includes
14 our women and girls of color fund. Decisions are
15 made by a group of community leaders on an
16 advisory committee for the fund giving circles.
17 Groups of donors who pool a certain amount in
18 contributions and collaboratively choose the
19 charitable activities to support those funds. All
20 donors give similar amounts, and there is no
21 single donor who has exclusive advisory
22 privileges. Often, decisions about where to give

1 are made by a smaller committee or collectively by
2 the group, limiting any risk that funds are used
3 improperly. WFCO holds eight giving circles and
4 values the opportunity they provide for
5 individuals to engage in philanthropy.

6 Two, expanded definition of donor
7 advisor and advisory committees. WFCO often
8 thoughtfully includes community members in all of
9 our grant making processes. Our understanding is
10 that the expanded definition of donor advisor
11 might impact the ability to more inclusively make
12 decisions about grant making. We encourage
13 Treasury and IRS to clarify that funds where the
14 donor does not maintain control are not DAF.
15 Donors may establish a fund for two or more
16 specified nonprofit organizations, but the donor
17 retains no control after the creation of the fund
18 over distributions, while a donor may continue to
19 receive statements about the fund that by itself
20 does not categorize this fund as a DAF. WFCO
21 works to reduce barriers to charitable giving, and
22 at a time when giving has seen a decline, it is

1 important that the regulatory environment allows
2 philanthropy to thrive while providing reasonable
3 oversight.

4 Distribution, three, distribution for
5 non-charitable purposes, including advocacy and
6 lobbying. Some DAF's make gifts or operating
7 grants to nonprofit organizations, including
8 community foundations, that are permitted to and
9 choose to engage in lobbying. The proposed
10 regulations include language that that would
11 consider distributions from DAF's taxable if made
12 to organizations that influence legislation unless
13 the donations are made with express limitations.
14 Prohibiting use of the funds for lobbying. WFCO
15 is concerned about the practical effect that this
16 provision would have in creating administrative
17 burdens for both DAF sponsoring organizations and
18 the nonprofits they support, as well as the
19 perception that nonprofits should not engage in
20 legally permitted advocacy, including lobbying to
21 influence legislation. WFCO has found that this
22 is an extremely effective tool in advancing our

1 mission including passing bills that improved pay
2 equity in Colorado, exempted essential personal
3 products from sales tax, and bolstered the early
4 care and education workforce. Creating additional
5 hoops for donors, nonprofits and sponsoring
6 organizations will only add costs and prevent
7 critical philanthropic support needed to ensure
8 that policymakers have access to information and
9 are educated as they need to about how policy
10 decisions will impact the community and those
11 directly impacted in their communities, just as we
12 are able to do so in providing this comment. As
13 long as organizations are fully operating within
14 the current rules for advocacy and lobbying, we
15 strongly urge the final regulations do not curtail
16 their ability to do what they are legally
17 permitted to do.

18 Four, effective date. As you've heard
19 from many others who testified, WFCO has serious
20 concerns regarding the final rule's effective date
21 and the need for a transition period. It is
22 imperative that donors, donor advisors, community

1 foundations and their nonprofit partners have
2 adequate time to understand and adjust to the new
3 rules, especially because community foundations
4 and nonprofit organizations operate on thin
5 margins and don't often have additional funds that
6 can be used to address new regulations. An
7 extended effective date would allow for time to
8 transition effectively to a new regulatory
9 environment. We thank Treasury and the IRS for
10 this opportunity to share our perspective. We
11 urge Treasury and the IRS to consider
12 incorporating our recommendations into final
13 rules. Thank you.

14 MS. CAMILLO: Thank you, Ms. Casteel.
15 The next speaker will be Reynolds Cafferata,
16 American College of Trust and Estate Counsel.

17 MS. CAFFERATA: Good morning. This is
18 Reynolds Cafferata. Thank you for the opportunity
19 to testify. I'm testifying on behalf of the
20 American College of Trust and Estate Counsel, a
21 nonprofit association of lawyers law professors.
22 It has more than 2,400 members who are fellows who

1 practice throughout the United States and Canada
2 and other foreign countries, and our members
3 regularly advise both donor advise fund sponsors
4 and individuals making gifts to donor advise
5 funds. I'm the Chairman of our charitable
6 organization committee and the comments that were
7 submitted, the written comments were put together
8 by members of that committee. I'm going to try to
9 adapt and focus on some things that haven't
10 necessarily been covered so much by some of the
11 other presenters. You've heard extensively from a
12 number of the community foundations of the
13 importance of fiscal sponsorship and the impact
14 that the proposed regulations would have on their
15 ability to offer that model.

16 To specifically address that, there are
17 a couple areas in the proposed regulations that
18 seem to be creating the issue that could be
19 adjusted in order to allow the fiscal sponsorship
20 model to continue. The first area relates to how
21 multi-donor funds are defined. The legislative
22 history contemplated that a fund with multiple

1 donors would not be considered to be a donor
2 advised fund. And that seems to speak to the
3 intent of Congress to protect, among other things,
4 fiscal sponsorship, simply by broadening that
5 exception. One possibility would be to treat as a
6 multi-donor fund any fund that would, if it were a
7 standalone fund, pass a public support test.
8 That's probably a bit narrow and technical for
9 organizations to implement. And so, a more
10 simplified version, such as one where no donor
11 contributes more than 5 percent of the value of
12 the fund, will probably go a long ways towards
13 creating a definition of multi-donor funds that
14 community foundations can administer and could
15 conduct fiscal sponsorship.

16 In another regard, the regulations,
17 instead of requiring the donor to designate the
18 advisors to the fund, effectively just creates a
19 knowledge standard that if a donor is aware of the
20 existence of a donor, and in fact the person
21 doesn't even need to be a donor, that will be
22 advising on the fund at the time that they make

1 the gift, the regulations treat them as having
2 designated that, for example, being the memorial
3 fund, where the person who is advising on that
4 fund may not have even made gifts to it, but the
5 fact that the donor is aware of that person when
6 they make their gift, that turns them into
7 designating them. That again is adding to the
8 issues with respect to fiscal sponsorship. The
9 regulations appear to try to create an exception
10 to possibly accommodate fiscal sponsorship with
11 its description of a community advised fund. The
12 challenge with that definition in the regulations
13 is that it doesn't match the reality of how fiscal
14 sponsorship works. The normal way for a fiscal
15 sponsorship to be started is that a group of
16 individuals who are interested in whatever the
17 cause is come together. They often initially are
18 thinking about forming a charity, and then
19 somewhere along the line they get some advice as
20 to all that entails and are told about the fiscal
21 sponsorship model. And that might be a way to
22 start.

1 So by the time the individuals arrive at
2 the community foundation or the organization
3 that's going to sponsor the fiscal sponsorship,
4 they have self-identified who would be on the
5 board or the committee that's going to advise on
6 that fiscal sponsorship. So that makes it very
7 difficult for a community foundation to then
8 satisfy that example. These are also the
9 individuals who were initially most passionate
10 about the cause, and so rules that exclude them
11 from making donations to the fund also are
12 problematic under the fiscal sponsorship model.
13 Another aspect of the definitions under the
14 regulations that creates difficulties with
15 business sponsorship and other areas is how the
16 regulations describe or define a fund as being
17 separately identified. And the definition that
18 the regulations use that refers to any fund where
19 any tracking of the separate contributions of
20 donors is done, essentially just sweeps in every
21 separately identified fund of every organization.
22 Because under standard accounting and tax

1 practices, the organization is required, and for a
2 variety of reasons, needs to know who the donors
3 are to those particular funds.

4 And in looking at what Congress was
5 dealing with at the time that they passed the PPA,
6 in looking at the examples in the legislative
7 history, it's clear that Congress was not
8 intending that definition to sweep in just the
9 regular accounting that any nonprofit does for any
10 particular fund, and that the definition there
11 should require a closer tying of the accounting
12 for the donor and the donors ability to advise as
13 to the money that that particular donor put into
14 the fund. And the joint committee report had an
15 example of a multi-donor fund that they said was
16 not a donor advised fund. And looking back at
17 that, you can see then that it's clear that the
18 intent here was to, when they referred to
19 separately accounting for donors and their
20 contributions to the funds, they meant a much
21 closer relationship where the, the tracking was
22 done so that that particular donor could continue

1 to advise on the money that they themselves put
2 into the fund or the earnings on the money that
3 they put into the fund. So if that definition
4 were narrowed to that purpose, that again would go
5 a long ways to addressing many of the concerns
6 that have been raised.

7 Another concern that has been raised is
8 the definition of distribution and fund expenses.
9 And on that, I can just give a real world example:
10 I presently am representing a community foundation
11 where an heir at law is challenging a trust that
12 is making a gift to what would be a donor advised
13 fund. And it would be particularly problematic if
14 community foundations are basically in a position
15 where they only can defend a contest against a
16 gift to a donor advised fund is to dip into their
17 own unrestricted funds because they aren't allowed
18 to use the funds that are coming from the -- that
19 would be coming to the donor advised fund to
20 defend those -- those situations. I mean, they
21 take some risk as it is if they don't have access
22 to the funds, but if they think they have a good

1 case, then they would normally reimburse
2 themselves the cost of recovering that fund from
3 the heirs at law that were contesting it.

4 The anti-abuse rule, ACTEC, is proposed
5 that that be narrowed to look more like the
6 earmarking requirement that is set forth in the
7 private foundation arena for indirect
8 self-dealing. It's the same concept and some
9 similar concept should be used there. You've
10 heard quite a bit of the confusion and
11 consternation that that rule has created for the
12 community foundations.

13 And finally, just echoing that the --
14 the effective date of the regulations should be
15 made prospective, not retroactive. I didn't hear
16 a cutoff on my time, but my own timer is telling
17 me that I am close. So thank you very much for
18 your time today.

19 MS. CAMILLO: Okay, thank you, Mr.
20 Cafferata. I'm going to move on to the next
21 speaker. If you missed your turn and I called
22 you, don't worry. I'm going to call those, you

1 know, who weren't prepared to speak at the end.
2 The next one on the list is Noah Atencio from
3 Philanthropy Colorado. Is Noah Philanthropy
4 prepared to speak? Okay, hearing nothing, I'm
5 going to move down the list. The next speaker
6 will be Matthew Randazzo, Greater Cincinnati
7 Foundation.

8 MR. RANDAZZO: Good morning. I'm
9 delighted to be here today to provide some
10 insights and perspectives on the proposed
11 regulations. My name is Matthew Randazzo. I'm
12 the president and CEO of the Greater Cincinnati
13 Foundation. For a little bit of context around
14 our work, we are a community foundation that
15 serves a tri-state region that includes
16 Southeastern Indiana, Southwest Ohio, and Northern
17 Kentucky. Like many community foundations, we are
18 a collections of many fund holders. So GCF has
19 nearly 2,000 donor partners who have entrusted GCF
20 as their philanthropic partner and strategic
21 advisor.

22 Again, just for a little bit more

1 context about the size and scope of our
2 institution, as of the 23 year end, we had roughly
3 \$1.1 billion in assets. And since our founding 61
4 years ago, GCF has made over \$1.6 billion in
5 grants to support and improve our region. 2023
6 was really a high watermark for the institution as
7 we saw our donors generously give and make record
8 breaking contributions into their donor advised
9 funds totaling \$240 million in a single year. But
10 what's more important than that is we also saw
11 them give as generously as they ever had, with
12 record breaking grant making out into the
13 community at nearly \$150 million. So we are very
14 much an institution that is rooted in donor
15 partnerships, that works to activate and mobilize
16 our donors against opportunities and needs in the
17 community.

18 I'm going to focus my comments primarily
19 around the proposed changes that would expand the
20 definition of donor advisor to include investment
21 consultants. With this fear, frankly, that this
22 may end up having a dampening effect on charitable

1 giving, not just in our region, but across the
2 country. Roughly 45 percent of GCFs charitable
3 funds of that billion dollars are managed by
4 outside advisors. Our ability to partner with
5 outside advisors has really been a key driver of
6 GCF's growth, really ensuring that investment
7 advisors are centering philanthropy and charitable
8 giving in all of their financial planning
9 activities. This has been just a critical lever
10 for, for introducing the concept of charity and
11 philanthropy and giving back throughout the
12 region. This partnership has greatly accelerated
13 contributions into our donor advised funds and
14 dramatically increased grant making within our
15 region.

16 But I want to give you some specific
17 data. So more specifically, these partnerships
18 have nearly doubled our pace of growth and grant
19 making over the course of the last five years is
20 we really leaned into this concept of separately
21 managed accounts. So cumulatively, in the last
22 five years, donors contributed roughly \$750

1 million into their donor advised funds, and in
2 that same five year period, they granted out about
3 \$580 million. So that's really the equivalent of
4 a 77 percent spend out rate, which is virtually
5 unheard of in philanthropy. So this hand and
6 glove partnership with investment advisors, estate
7 attorneys, and CPAs has really encouraged our
8 donors, one, to ramp up their giving into their
9 donor advise funds. But most importantly, they
10 are taking those resources and very quickly
11 investing them back into the community. With a
12 five year average payout of nearly 80 percent.

13 Over that five years, this half a
14 billion dollars in grant making has truly been
15 transformative for our region, particularly in
16 advancing affordable housing, racial equity,
17 health parity, increasing educational outcomes,
18 and ensuring a vibrant arts, a vibrant arts and
19 culture economy. So there really isn't a place
20 across the greater Cincinnati region, a tri-state
21 area, where our donors generosity has not really
22 lifted up the issues and causes and opportunities

1 of our day.

2 My concern is that the proposed regs may
3 encourage donors to consider other philanthropic
4 tools, such as private foundations or other
5 endowed solutions that tend to spend out
6 dramatically less on an annual basis. We all
7 understand the 5 percent distribution, and I think
8 it's fair to note that there are many private
9 foundations that spend beyond their 5 percent
10 minimum required distribution. But you would be
11 hard pressed to find any private foundation that
12 is spending out nearly 80 percent of the of its
13 inbound income on an annual basis and punching so
14 far above its weight as our donors do in
15 Cincinnati.

16 I think another potential downside
17 effect of the proposed regs is a siloing of
18 philanthropic dollars into smaller private
19 foundations, which will undoubtedly lead to
20 reduced philanthropic collaboration, disparate
21 focus areas, and less grant making directed
22 towards solving the complex issues that our

1 communities face today. You know, community
2 foundations have, I think, one primary superpower,
3 and that is our ability to stitch together donors
4 with similar interests and a common concern for
5 their community to punch above their philanthropic
6 weight. And I think one of the potential impacts
7 of encouraging donors to choose institutions other
8 than community foundations, whether they be
9 commercial gift operators or private foundations,
10 is that you lose the connective tissue and you
11 lose the scale that comes with stitching together
12 sometimes dozens of individual donors to make big
13 investments in community changing initiatives. We
14 have seen that time and time again throughout the
15 greater Cincinnati region as the superpower and
16 our ability to really drive more equity and
17 vibrancy throughout the region.

18 So just in conclusion, I think community
19 foundations are truly stitched into the fabric of
20 every community across our country. I know you
21 all have heard from many folks representing coast
22 to coast and border to border. We as

1 institutions, work hand in glove with donors and
2 nonprofits and businesses and governments to find
3 scalable solutions that improve the outcomes for
4 our friends and neighbors. That is the core
5 mission for every one of the 700 plus community
6 foundations in the United States.

7 I hope that you all will consider how
8 these proposed rules may strain the capacity of
9 small nonprofit institutions like ours and
10 potentially divert critical grant making resources
11 away from the community at a time where we see
12 rising inequality and rising gaps and a clarion
13 call to stand in that gap to create more equitable
14 and vibrant communities. And with that, I thank
15 you all for your time and consideration of my
16 comments.

17 MS. CAMILLO: Thank you, Mr. Randazzo.
18 I'm going to move down the list to the next
19 speaker again. If you missed your turn, I will
20 call you to speak at the end. Please do not
21 forget to unmute yourself when speaking and to
22 mute yourself when you're not speaking. The next

1 speaker will be Michael Parks from the Dayton
2 Foundation.

3 MR. PARKS: Good morning. My name is
4 Mike Parks and I have served as the president of
5 the Dayton Foundation for the past 22 years. I
6 greatly appreciate the opportunity to share
7 comments today on the proposed regulations. The
8 Dayton Foundation is the foundation of the greater
9 Dayton area in Southwest Ohio and is one of the
10 oldest community foundations in our country,
11 having been founded in 1921. We have over 4,000
12 charitable funds, of which about half are donor
13 advised funds. Last year, funds of the foundation
14 granted out over \$140 million to charities
15 throughout our region and country.

16 Unfortunately, Dayton as a community has
17 the fifth highest poverty rate in America and the
18 needs in our community are great. These gifts
19 from funds of the foundation are absolutely vital
20 and every dollar matters in helping us to meet
21 critical community needs. Today, the number of
22 Americans who give to charity is dropping. Our

1 hope would be that the proposed regulations would
2 encourage even more giving in our community. It's
3 so desperately needed.

4 Over the past two days, you have heard
5 numerous comments and concerns regarding
6 classifying wealth advisors as donor advisors of a
7 fund. I'm not going to repeat the concerns that
8 have been shared. I will simply share that our
9 community has worked diligently for over four
10 decades to grow and expand our relationships with
11 wealth advisors here in our community. This is
12 based on the fact that donors have deep trust in
13 their financial advisors. As a result, we now
14 have 53 pools of charitable assets managed by
15 different firms. These firms have contractual
16 agreements with us as the community foundation, as
17 the sponsor of the DAFs, and not the donor advisor
18 of a fund. Donor advisors have no ability to
19 select, influence, or manage investments.

20 Additionally, another complication in
21 classifying wealth advisors as donor advisors are
22 those donor advised funds established at our

1 community foundation in trust form or format.
2 These legal agreements are three ways binding
3 agreements signed by the donor, the Dayton
4 Foundation, and the trust institution. These
5 funds are brought to the community foundation by a
6 financial institution and the funds are managed by
7 the trust institution in perpetuity. Donors trust
8 these institutions and to also classify these
9 trust institutions as donor fund advisors create
10 significant issues. We respectfully ask for
11 consideration to please eliminate the definition
12 of a wealth advisor as a donor advisor of a fund
13 in the proposed regulations.

14 The proposed regulations also stated a
15 concern that wealth advisors would encourage donor
16 fund advisors to not make grants in an attempt to
17 retain assets under management. In my 20 plus
18 years of service, I've never seen this occur.
19 It's unethical and just isn't the reality. As
20 been shared by others, the reality around payouts
21 is just the opposite. Our annual distributions
22 from DAFs are over 20 percent, over four times the

1 private foundation requirement. If inactivity in
2 DAF remains a concern, I would encourage the
3 consideration of an inactive fund policy
4 requirement for DAFs. This is a proactive move to
5 ensure funds are not dormant. Over 440 community
6 foundations have already voluntarily approved an
7 inactive fund policy as part of the National
8 Community foundation standards process. As a best
9 practice, implementation could be as simple as
10 asking two additional questions on the 990. One,
11 are you a sponsoring organization of DAFs? And
12 two, if yes, do you have an inactive funds policy?
13 An inactive funds policy would be a good thing for
14 philanthropy.

15 The regulations also speak to the role
16 of donor advisors on charitable fund committees.
17 Rather than the proposed additional regulations
18 that have been outlined to limit or control a
19 donor's involvement on a committee, I suggest the
20 definition should really be focused on control of
21 the decision making process in the committee. The
22 proposed rules are different and more restrictive

1 than the rules currently in place on scholarship
2 funds. I would suggest and encourage that the
3 control standards already in place around
4 scholarship funds that were established after the
5 PPA 17 years ago also be considered for donor fund
6 advisors participation on a committee. These
7 guidelines work well for scholarships and there's
8 not a need to introduce a second set of separate
9 guidelines. This is just more work and time, and
10 a solution already exists.

11 You have heard a lot of feedback as to
12 why the broader or expanded definition of what
13 constitutes a DAF will severely restrict giving in
14 our communities. I 100 percent agree with the
15 comments that have been shared. I also want to
16 point out, affirm, and thank you for including
17 three specific exemptions or exceptions to the
18 definition of a DAF. One, the exception for
19 certain 501(c)(4) organizations with broad based
20 memberships to nominate selection committees for
21 scholarships. Two, the exception for disaster
22 funds. And three, the exception for funds set up

1 by another charity or government entity.

2 Unfortunately, at the end of the day,
3 the proposed regulations as written will have the
4 unintended consequence of driving more donors to
5 private foundations, a less efficient and less
6 effective option without the safeguards and
7 oversights provided by community foundations and
8 other DAF sponsors. This will result in less
9 funds to meet the critical needs in our
10 communities. Philosophically or from a policy
11 perspective, there's just no need to more highly
12 regulate a DAF that has a responsible sponsoring
13 organization as compared to a more independent
14 private foundation that has less oversight and
15 less regulation.

16 Last, as you can see from the responses
17 to the request for written comments, as well as
18 participation in the two days of public comments,
19 there are a lot of individuals and organizations
20 that care deeply about what the impact of the
21 proposed regs will have on giving in their local
22 communities. As you consider any changes to the

1 proposed regs, I respectfully ask that you please
2 consider an opportunity for charitable
3 organizations, a final opportunity, to comment on
4 any revisions to the proposed regulations.

5 I want to express my appreciation for
6 the opportunity to share my comments and
7 suggestions with you all today and for your
8 consideration. Thank you.

9 MS. CAMILLO: Thank you, Mr. Parks. The
10 next speaker is Dan Blake, University Impact.

11 MR. BLAKE: Yes, thank you. Good
12 morning, and thank you for the opportunity to
13 speak today on a matter of significant importance
14 to the philanthropic sector and the broader
15 communities that we serve. As mentioned, my name
16 is Daniel Blake and I'm the executive director of
17 University Impact.

18 Our mission is to train university
19 students to be the next generation of social
20 impact leaders through hands on learning
21 experiences and exposure to social impact by
22 funding organizations solving the world's most

1 pressing problems. In order to accomplish this
2 mission and reduce barriers to charitable giving,
3 we manage donor advised funds as well as other
4 charitable funds like field of interest funds,
5 giving circles, community funds, and fiscal
6 sponsorships.

7 Currently, we manage approximately \$250
8 million in over 500 accounts. Over the last three
9 years, we've deployed nearly \$100 million for
10 charitable purposes. We support clear and
11 reasonable regulations that protect the integrity
12 of das while also allowing for flexibility and
13 innovation in charitable giving. We believe in
14 the need for regulation to maintain public trust
15 and ensure charitable intent is honored.

16 Today, my comments are directed at the
17 potential implications of broadening the
18 definition of: 1) donor advisor. As well as 2)
19 donor advised funds. First, the definition of
20 donor advisor. The Department of the Treasury and
21 the IRS have indicated that they have concerns
22 about the investment advisor having influence

1 similar to that of a donor advisor and potential
2 conflicts of interest that could lead to assets in
3 a DAF not being deployed for charitable purposes
4 as quickly as they could. Our comments are shared
5 with those concerns in mind. The criteria under
6 which investment advisors are not considered donor
7 advisors needs further delineation. Practical
8 scenarios and examples could offer clarity to DAF
9 and advisors.

10 Here are some practical scenarios from
11 our experience where we believe a personal
12 investment advisor should be viewed -- should be
13 properly viewed as providing services to the
14 sponsoring organization as a whole, rather than
15 providing services to the DAF. Investment
16 advisors should conduct annual reviews not with
17 donor advisors but with the sponsoring
18 organizations. These reviews must encompass all
19 managed accounts, ensuring a comprehensive
20 evaluation of the investment advisors performance
21 and strategy alignment with the organization's
22 goals. Sponsoring organizations, rather than

1 donor advisors, should execute annual risk
2 assessments. These assessments should inform the
3 investment strategies for all assets, aligning
4 with the organization's risk tolerance and mission
5 to ensure the charitable intent of that of the
6 sponsoring organization is preserved.

7 Fees charged by investment advisors
8 should reflect the aggregate assets managed for
9 the sponsoring organization, avoiding individual
10 account based fee structures. This approach
11 promotes a holistic service model focusing on the
12 collective impact of all das under the investment
13 advisors purview. If an investment advisor is
14 working for the sponsoring organization and not an
15 individual, the investment advisor should be
16 managing multiple accounts for the sponsoring
17 organization. However, an investment advisor
18 should not be required to represent all of the
19 accounts at a sponsoring organization.

20 A sponsoring organization should be able
21 to select multiple investment advisors based on
22 their individual expertise, geographic location,

1 et cetera. If a sponsoring organization is going
2 to work with investment advisors, the sponsoring
3 organization should be required to have both an
4 investment policy statement that outlines
5 appropriate management of assets in DAF given that
6 they're meant for charitable purposes, as well as
7 an investment philosophy statement that outlines
8 the spirit in which funds should be managed. It's
9 worth noting that there are items that an
10 investment advisor and their staff will do outside
11 of their normal course of business when working
12 for a sponsoring organization. The ability of a
13 sponsoring organization to engage the services of
14 multiple investment advisors is important in
15 creating scalable and sustainable processes for
16 that sponsoring organization.

17 We recognize that while one single point
18 from the list above may not properly show that an
19 investment advisor is providing services to the
20 sponsoring organization, but the collective
21 implementation of these practices should provide
22 regulators confidence that the investment advisor

1 is indeed providing services to the sponsoring
2 organization and not to a specific donor advisor.

3 Second, the definition of donor advised
4 funds. We are worried about the broadening
5 definitions which might impact the functionality
6 of funds with advisory committees that are not
7 traditionally considered donor advised. While the
8 definition of a DAF did not change, the broadening
9 of the specific components may create unintended
10 consequences. First, the addition indicating that
11 a formal record of the contributions fulfill the
12 requirement of a fund being separately identified
13 by contributions potentially broadens the scope to
14 include just about any fund where donor
15 contributions are tracked. Typically, this
16 tracking is standard practice, not necessarily
17 indicative of donor control or advisory status.
18 This wide net could include numerous funds never
19 intended under the DAF umbrella. Second, the
20 criteria under which a donor is appointed to an
21 advisory committee has expanded to include more
22 merit based criteria. This change creates gray

1 areas such as defining what defines expertise,
2 significant contributions, and the scope of
3 related persons. While these conditions aim to
4 prevent undue influence, the term significant
5 contributor remains undefined, leaving room for
6 interpretation and potential inconsistency in
7 application. Furthermore, the number of donors
8 contributing to the fund does not mitigate the
9 inclusion of the fund as a DAF, which adds another
10 layer of complexity to the definition.

11 In a time where our communities need
12 more engagement, we should not create rules that
13 will reduce that engagement. The implications
14 here are twofold. There's a possibility of
15 unnecessarily broad definition of charitable funds
16 as DAF, potentially reducing their efficacy.
17 Second, the nuance requirement for donor appointed
18 members on advisory committees could discourage
19 skilled donors from taking advisory roles
20 affecting the fund's effectiveness, especially in
21 specialized fields.

22 I urge the reconsideration of these

1 definitions to ensure that they clearly
2 distinguish funds traditionally understood as DAF
3 from other types of charitable funds, avoid overly
4 broad criteria that could inadvertently sweep non
5 DAF charitable funds into these stricter
6 regulations, and provide clear definitions on what
7 defines a significant contributor and clarify the
8 percentage determination related to who is
9 considered a related person in contribution terms.
10 We appreciate the effort to regulate death to
11 ensure they serve their intended purposes without
12 undue donor control. It's crucial that the
13 regulations are crafted to not stifle legitimate
14 charitable activities that operate within the
15 spirit of the law. Thank you for considering our
16 perspectives.

17 MS. CAMILLO: Thank you, Mr. Blake. I'm
18 going to move back and call those who may have
19 missed their turn in case they've joined the call.
20 First, I'll call Lindy Eichenbaum Lent, Rose
21 Community Foundation.

22 MS. EICHENBAUM LENT: Can you hear me

1 this time?

2 MS. CAMILLO: Yes, I can.

3 MS. EICHENBAUM LENT: Fantastic, thank
4 you. Good morning. I am Lindy Eichenbaum Lent,
5 president and CEO of Rose Community Foundation in
6 Denver, Colorado. We aim to advance inclusive,
7 engaged, and equitable metro Denver communities
8 through strategic grant making, policy and
9 advocacy, donor engagement, and values driven
10 philanthropy. The foundation currently has \$396
11 million in total assets under management, a third
12 of which are charitable funds we hold on behalf of
13 others, such as nonprofit endowments, donor advise
14 funds, field of interest funds and fiscally
15 sponsored projects.

16 Thank you for the opportunity to testify
17 on behalf of Rose Community foundation, the
18 communities we serve in the seven county
19 metropolitan Denver Boulder area, and our peer
20 community foundations in Colorado and around the
21 country.

22 Rose is a healthcare conversion

1 foundation formed in '95 when a local nonprofit
2 hospital was purchased by a for-profit hospital
3 corporation. The transaction maintained an
4 important medical asset in our community, while
5 the proceeds from the sale simultaneously created
6 a vital philanthropic asset for our region. In
7 the 29 years founding, we've deployed over \$400
8 million in grant making from our corpus restricted
9 funds and donor advised funds. In 2023, our
10 traditional donor advised funds made 8.6 million
11 in grants, a payout rate of 21 percent,
12 exponentially higher than the minimum distribution
13 required of private foundations. We made 12.4
14 million in discretionary grants from our corpus
15 last year. But most relevant for today's
16 conversation, we also granted out more than 10
17 million from fiscally sponsored initiatives and
18 Field of Interest funds, we housed to address
19 local critical issues. These funds and the impact
20 they generate in our region would be jeopardized
21 by the proposed regulations.

22 As you heard yesterday and today,

1 Community foundations count the ability to house
2 and administer funds in partnership with donors
3 and nonprofits among our most important tools for
4 local impact. The proposed regulations feel like
5 a solution in search of a problem and, if enacted
6 in their current form, would significantly hinder
7 our ability to carry out charitable activities in
8 partnership with others, likely reducing the
9 dollars available to meet critical needs in
10 communities across the country. The expanded
11 definition of a donor advised fund would
12 reclassify many funds at Rose and other community
13 foundations that are currently fiscal
14 sponsorships, Field of Interest funds, giving
15 circles, and other collaborative pools.

16 To give you a sense of the type of work
17 that would be jeopardized, I'll provide a few
18 examples from our work. In December '22, we
19 launched the Newcomers Fund to raise and grant
20 dollars to local nonprofits on the front lines of
21 addressing basic needs and providing legal
22 services support to the more than 41 thousand

1 people who have recently arrived in Denver from
2 Central and South America. To date, the Newcomers
3 Fund has received donations totaling more than
4 \$3.1 million from more than 5,000 foundation and
5 individual donors, some contributing as little as
6 \$5. Grants from the fund are directed by an
7 advisory committee with deep expertise and
8 connections in the immigrant serving community.
9 Some are staff at organizations that have
10 contributed to the funding.

11 If this were to be reclassified as a
12 donor advised fund with its advisory committee
13 defined as donor advisors, the legal obligation to
14 ensure that none of the thousands of donors to the
15 fund receive material benefits would make this
16 fund's work too burdensome and impractical to
17 administer. We would have to cease or
18 dramatically adjust the work of this fund. We may
19 have to stop accepting donations into the fund and
20 would likely need to disband the advisory
21 committee, both of which would reduce the amount
22 and impact of available resources. Additionally,

1 the Newcomers Fund currently pays invoices for
2 legal services provided to immigrants to comply
3 with federal workforce authorization guidelines.
4 Under the proposed regulations, this would not be
5 allowable.

6 Another initiative that would be
7 jeopardized is the Colorado Media Project, a
8 collaborative funding effort focused on
9 strengthening and sustaining local news and
10 information ecosystems for which we are the fiscal
11 sponsor. Funded by individual donors and multiple
12 foundations, Colorado Media Project has granted
13 out more than \$3.8 million since 2020. While we
14 have ultimate oversight as the fiscal sponsor, an
15 executive committee advises on the work and grant
16 making of the project. Colorado Media Project
17 makes grants to local news organizations, some of
18 which are not 501(c)(3) entities and pays project
19 expenses such as consultants evaluating the impact
20 of the work. Given the importance of advocacy to
21 its work, Colorado Media Project also engages in
22 lobbying activities and funds lobbying efforts of

1 grassroots organizations.

2 These activities are all allowable for a
3 fiscally sponsored fund. However, if Colorado
4 Media Project were to be reclassified as a DAF,
5 these activities would no longer be permitted,
6 greatly limiting the effectiveness of this
7 statewide initiative. We anticipate significantly
8 increased staffing costs to keep these types of
9 funds operating at even a fraction of the impact
10 scale to ensure they are compliant with the
11 proposed regulations, wasting philanthropic
12 dollars, diverting them away from community needs,
13 and potentially rendering this type of
14 collaborative philanthropic work unsustainable.

15 Having a community foundation pool and
16 grant out philanthropic dollars in partnership
17 with other foundations and donors increases
18 resources directed toward local community issues,
19 enhances alignment across funders, and minimizes
20 burdensome and often duplicative grant
21 applications for nonprofits. Yet, the proposed
22 regulations would significantly hinder and

1 possibly have a chilling effect on that impactful
2 work. As such, we respectfully request that the
3 Treasury Department exercise cautious
4 consideration of potential unintended consequences
5 of the proposed regulations.

6 The U.S. has an extraordinary history of
7 charitable giving, and community foundations play
8 a critical role in encouraging this giving and
9 growing philanthropic resources dedicated to
10 strengthening local communities. That said,
11 philanthropy is fundamentally a voluntary
12 exercise, and, as you have heard from others, any
13 regulations that add undue complexity and
14 excessive liabilities to the process of giving or
15 make philanthropy less accessible and efficient
16 carry the risk of diminishing charitable
17 participation, harming communities across the
18 country.

19 Finally, the Treasury Department's
20 proposal that the new regulations would be
21 retroactively effective dating back to the
22 beginning of the calendar year of adoption,

1 creates real risk for all institutions that house
2 funds that may be reclassified as donor advised
3 funds. It means that by continuing to operate
4 according to our current practices and policies,
5 we could eventually be held financially and
6 legally responsible for violating rules that do
7 not yet exist. In fact, we estimate that this
8 could be \$150 thousand in penalties for just one
9 fiscally sponsored fund for making expenditures
10 considered newly taxable under the new regulations
11 in 2024. Given that we have at least 20 funds to
12 which this might apply and others in the pipeline,
13 this would be an incredible expense for the
14 foundation, diverting critical funding away from
15 the communities we serve in metro Denver.

16 But regardless of the substance of any
17 new regulations, we respectfully request that they
18 go into effect at least 36 months after the issue
19 date to allow adequate time for proper
20 implementation and compliance. We are also very
21 concerned about language in the proposed
22 regulations that appears to create penalties and

1 liabilities for trustees and staff of community
2 foundations, which would undoubtedly impact the
3 number and quality of people wanting to work or
4 volunteer in these fields.

5 In closing, we join our philanthropic
6 peers in requesting revisions to the proposed
7 regulations to significantly narrow the expanded
8 definition of DAF so that fiscally sponsored,
9 Field of Interest funds, designated funds, giving
10 circles, and other collaborative vehicles are not
11 reclassified as DAF. We would encourage the
12 Treasury Department to work collaboratively with
13 those in the philanthropic sector who've been
14 doing this work for a long time and have a front
15 row seat to the unintended consequences the wrong
16 regulations would create.

17 We would respectfully request an
18 additional public comment period after any
19 additional revisions to the proposed regulations
20 are made. And as we previously mentioned, we
21 request that revisions include the removal of
22 retroactive enforcement and penalties, along with

1 the provision of 36 months notice before
2 implementation of any final regulations.

3 Thank you for the opportunity to testify
4 on these incredibly important matters. We very
5 much appreciate the willingness of the Treasury
6 Department and IRS to listen to and hopefully act
7 upon the feedback provided by so many in the
8 philanthropic sector. Our interests in bettering
9 our communities and by extension, our country, are
10 aligned with yours. Thank you.

11 MS. CAMILLO: Thank you, Ms. Lent. I
12 now call the final speaker, Noah Atencio,
13 Philanthropy Colorado.

14 MR. ATENCIO: Good morning to the
15 representatives of the Internal Revenue Service
16 and Department of the Treasury. I'm Noah Atencio,
17 CEO of Philanthropy Colorado, representing our
18 dynamic statewide network of Colorado
19 philanthropic member organizations. Our members
20 are on the front line of using sophisticated
21 approaches to democratize philanthropic giving to
22 improve the lives of Coloradans. This includes

1 two of the Community foundation speakers you heard
2 from this morning, Rose Community Foundation and
3 the Women's Foundation of Colorado, as well as the
4 Community Foundation in Northern Colorado, whose
5 CEO testified yesterday.

6 Philanthropy Colorado is participating
7 today to convey that these concerns are not just a
8 matter of self interest for those few who have
9 testified, but a concern across our broad
10 membership. Public and private foundations, urban
11 and rural funders, large and small grant makers
12 could all be adversely affected without changes to
13 the proposed regulations. Colorado Community
14 foundations have a demonstrated commitment to
15 excellence, accountability and impact community
16 philanthropy, including through the stewardship of
17 donor advised funds and numerous collective giving
18 instruments. Among many benefits, donor advised
19 funds at community foundations promote community
20 wealth, serve as a gateway to lifelong
21 philanthropy, support the capacity of community
22 foundations to strengthen nonprofits in the

1 communities they serve and unlock assets for local
2 giving. Regulations that disrupt donor advised
3 and collective giving disrupt the critical
4 services of community foundations.

5 As you've heard, there is significant
6 risk from the proposed expansion of what
7 constitutes a donor advised fund and donor
8 advisor. Colorado speakers have highlighted how
9 the proposed changes could undermine their ability
10 to track local donors, reduce the amount of
11 funding available to nonprofits and delay support
12 for crises. At the same time they have shared
13 that burdensome requirements, administrative
14 costs, and legal risk for community foundations
15 would increase. We respectfully question why
16 these regulatory changes are being proposed or
17 what concern they are intended to address, given
18 that community foundations operate with a high
19 level of integrity and transparency and have
20 documented three year payout rates of 18 percent
21 or more for the donor advised funds they hold,
22 translating to over 120 million in annual grants

1 to Colorado nonprofits.

2 Colorado representatives have discussed
3 that funds captured under this much broader
4 proposed definition include Field of Interest
5 Funds, giving circles, and other collaborative or
6 pooled giving vehicles that provide multiple
7 options to incentivize donors. These collective
8 funds clearly do not allow one individual or
9 family to have exclusive advisory privileges as
10 donor advised funds are currently defined. If all
11 of these different giving options are regulated as
12 donor advised funds and potentially subject to
13 punitive taxes, reporting, and other new
14 requirements, fewer local donors will establish
15 funds and give to their local community
16 foundations.

17 Another way in which Colorado
18 foundations anticipate these regulations could
19 undermine local giving comes through defining
20 investment advisors as donor advisors, which would
21 restrict and impose fees on their management of
22 assets held in community foundation donor advised

1 funds. Again, advising on the investment of
2 assets is not analogous to having advisory
3 privileges related to the distribution of funds,
4 as donor advised funds are currently defined.
5 Financial institutions would be discouraged from
6 placing client assets with community foundations,
7 and at the same time, community foundations would
8 incur costs to develop their own expertise and
9 capacity around asset management.

10 Philanthropy Colorado also has a
11 critical concern that the proposed exemption for
12 federally declared disasters is too narrow to
13 cover disaster funds established to address
14 isolated and local emergencies. Colorado is
15 subject to issues such as flooding and wildfires
16 that would not generate a federal disaster
17 declaration, meaning that the proposed rules could
18 eliminate or significantly delay local community
19 relief.

20 Lastly, while we beseech you to consider
21 all testimony today and yesterday and reconsider
22 these regulations, we join in asking that any

1 final rules not be applied retroactively, but
2 instead take effective at least one year after
3 finalization to allow foundations to prepare for
4 the changes. We appreciate the opportunity to
5 testify and thank the Treasury and IRS for your
6 effort to seek feedback and clarify unintended
7 consequences of these proposed regulations. Thank
8 you.

9 MS. CAMILLO: Thank you, Mr. Atencio.
10 Well, that concludes day two of the hearing.
11 Thank you again to all the speakers for your
12 written comments and testimony. I will end the
13 call unless anybody else on the panel has anything
14 to say or any questions. Okay, thanks.

15 MR. HYDE: Yeah, I just second Lynne's
16 statement. Thank you again for your written
17 comments and testimony. We'll certainly take it
18 all into careful consideration.

19 MS. CAMILLO: Have a nice day, everyone.

20 (Whereupon, at 11:14 a.m., the
21 PROCEEDINGS were adjourned.)

22 * * * * *

1 CERTIFICATE OF NOTARY PUBLIC

2 DISTRICT OF COLUMBIA

3 I, Thomas Watson, notary public in and
4 for the District of Columbia, do hereby certify
5 that the forgoing PROCEEDING was duly recorded and
6 thereafter reduced to print under my direction;
7 that the witnesses were sworn to tell the truth
8 under penalty of perjury; that said transcript is a
9 true record of the testimony given by witnesses;
10 that I am neither counsel for, related to, nor
11 employed by any of the parties to the action in
12 which this proceeding was called; and, furthermore,
13 that I am not a relative or employee of any
14 attorney or counsel employed by the parties hereto,
15 nor financially or otherwise interested in the
16 outcome of this action.

17

18

19 (Signature and Seal on File)

20 -----

21 Attorney, District of Columbia BAR #41135

22 My Commission Expires: May 31, 2024

