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November 5, 2015

Ruth Madrigal
Office of Tax Legislative Counsel
Regulatory Affairs
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW, Rm. 3049
Washington, D.C. 20220

Dear Ruth:

Recent public discussions have reflected the need for the promulgation of Treasury regulations or rules that interpret the provisions of the Pension Protection Act of 2006 ("PPA") that impact donor-advised funds ("DAFs"). We continue to believe that it is important for these to be as clear as possible without impeding the flow of charitable dollars to and from robust public charities. Among the most important issues that need clarification is the proper legal standard to apply the excise tax regime, including when fund operations result in a "more than incidental benefit."

The Jewish Federations of North America ("JFNA") is the national organization that represents and serves over 150 Jewish federations, their affiliated Jewish community foundations and over 300 independent Jewish communities in more than 800 cities and towns across North America. In their communities, the Jewish federations and Network volunteers (collectively, the "JFNA System") are the umbrella Jewish fundraising organizations and the central planning and coordinating bodies for an extensive network of Jewish health, education and social services.

JFNA has previously submitted several letters and accompanying documents to you and your predecessors at Treasury that details our long history in the development and administration of transparent fundraising through donor-advised funds as well as our involvement in the legislative process during the enactment of the PPA.

In our presentations to both the relevant Congressional committees and staffs and in subsequent correspondence with the Treasury, JFNA has continued to advocate for the adoption of "the Internal Revenue Code ("IRC") section 170 standard ("Section 170 standard")"as the proper legal rule for determining whether or not there is a "more than incidental benefit" under IRC section 4967(a)(1). Although

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the PPA does not define what is a "more than incidental benefit," the legislative history analyzes the question based on income tax rules stating "there is more than incidental benefit if, as a result of a distribution from a donor-advised fund, a donor, donor advisor, or related person with respect to such fund receives a benefit that would have reduced (or eliminated) a charitable contribution deduction if the benefit was received as part of the contribution to the sponsoring organization. (See Joint Committee on Taxation, Technical Explanation of H.R. 4, "The Pension Protection Act of 2006," as passed by the House on July 26, 2006 and as Considered by the Senate on August 3, 2006 (JCX-38-06), August, 3, 2006, at p. 350.

As we have stated in prior correspondence we believe that the distinction between a donor-advised fund operated by a robust public charity and a private foundation is clear and that such distinction should be reflected in the adoption of the Section 170 standard rather than the private foundation excise tax rules found in Internal Revenue Code section 4941. An important example of this clear distinction can be seen in Rev. Rul. 77-160, 1977-1 C.B. 351 where church dues that are a permissible deductible contribution under Internal Revenue Code section 170 for an individual (and should be permissible by DAFs) were held to be an act of self-dealing if paid by a private foundation on behalf of a disqualified person. For a variety of reasons already fully documented in prior correspondence, the Section 170 standard would provide a bright-line test that could be easily understood by donors and readily administered by donor-advised fund managers, grant recipients, and the Internal Revenue Service. (Prior correspondence on this subject including letters dated May 4, 2007 and January 6, 2009 that are attached as an appendix to this letter.) JFNA continues to assert that the legislative history is clear that a DAF should be permitted to make the same type of distribution **if the trustees** of the sponsoring organization authorize such a distribution. This conclusion is consistent with the concerns underlying many of the provisions of the PPA that donors not be allowed to maintain control over assets contributed to DAFs or to be able to use them for personal gain and that such control is fully vested in the sponsoring organization.

It is also important to clarify the status of the treatment of satisfaction of pledges. While the application of the "more than incidental benefit" test of IRC section 4967 is broader than the issue of the status of the income tax treatment of satisfaction of pledges, we again note that the legislative history of the PPA provides guidance on what is a "more than incidental benefit" for distributions from a donor-advised fund by relying on the income tax rules under Section 170.. We attach, as another appendix to this letter, a previously-submitted memorandum that discusses the interrelationship of these two distinct issues in

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which we conclude that a "a donor whose charitable pledge is satisfied by a donor-advised fund realizes no benefit in the nature of cancellation of indebtedness, or an economic benefit cognizable for tax purposes." During the legislative process, we suggested that the legislative history should reflect that satisfaction of a pledge does not constitute more than an incidental benefit or "at worst, the question should be ignored and left to present law." In the end, the statute and legislative history makes no reference to pledge and leaves preexisting law applicable.

During previous meetings with Treasury and in prior correspondence we have emphasized several reasons why a pledge should be ignored as a debt for federal income tax purposes and why the satisfaction of a pledge should not result in a finding of "a more than incidental benefit." Those reasons include: (1) lack of uniformity among states as to the definition of a "legally binding pledge" and potential difficulties for the IRS to properly determine abstruse questions of contract law; (2) difficulty of determining "what is a pledge" rather than an announced intention; (3) administrative difficulties for charities and the Internal Revenue Service in applying vague legal concepts; (4) the importance of pledges to the proper administration and allocation of fundraising activities by robust public charities; and (5) ease of evasion by sophisticated taxpayers, leaving only a trap for the uninformed.

We hope this summary is helpful to you as you endeavor to provide guidance on these and other important issues. We would welcome the opportunity to answer any questions that you might have regarding these as well as our prior comments or meet with the appropriate officials at Treasury and the IRS to discuss these issues further. Please feel free to call Steven Woolf, JFNA Senior Tax Policy Counsel, at 202-736-5863, regarding any specific questions.

Sincerely yours,

Paul S. Berger, Chair, JFNA Charitable Giving Incentives Committee

Edward J. Beckwith

Donald Lubick

cc: Steven Woolf

1720 I Street, NW
Washington, DC 20006-3736

Phone 202.785.5900
Fax 202.785.4937
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