ALLIANCE FOR CHARITABLE REFORM
A Project of The Philanthropy Roundtable

15 April, 2015

Senator Chuck Grassley
Senator Michael B. Enzi
Senator Debbie Stabenow
Individual Income Tax Reform Working Group
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senators,

On behalf of the Alliance for Charitable Reform (ACR), we strongly encourage the Senate to protect philanthropic freedom and expand charitable giving in the United States. As tax reform moves forward, we are hopeful that Congress will consider policies that will lead to more giving while carefully guarding against policies that could unintentionally thwart giving. Towards that end, we ask that you support the following:

## I. Preserve the Value of the Current Charitable Deduction

We strongly believe that the current charitable deduction is unique and should be considered separately from all other tax deductions and credits. It is the only tax provision that encourages an individual to give away a portion of income for the benefit of others – a portion that the charitable deduction rightfully removes from that giver's tax base.

It is a tax incentive that works to reinforce and extend American generosity, and studies have shown that proposals to limit the deduction through caps or floors would harm the beneficiaries the most. Yet elected officials continue to entertain floors or caps on the value of the charitable deduction as a way to solve our government's fiscal crisis or punish donors.

For example, former Ways and Means Committee Chairman Dave Camp's Tax Reform Act of 2014 modified the charitable deduction in several detrimental ways. Specifically, we believe the proposed two percent (of adjusted gross income) floor for deductible contributions would discourage lower and middle-income donors from giving. While it is true that these individuals and families are not the majority of itemizers, and the proposed enhanced standard deduction would be beneficial for these groups, a two percent AGI floor could greatly diminish small gifts to local human-service charities that depend on these donations.

Furthermore, Chairman Camp's proposed upper AGI limits on deductible contributions would have an adverse effect on philanthropy by essentially raising the price of giving. Under current law, donors receive a deduction for cash gifts up to fifty percent of their AGI and for capital assets gifts up o thirty percent of their AGI. The Camp proposal streamlined those limits to forty

percent, effectively discouraging gifts of cash (which will have lower limits) and encouraging gifts of capital assets (which will have higher limits). Charities typically prefer cash gifts, which can be more quickly absorbed and put to work, especially by human service charities. For closely held stock and real estate, the proposal generally limited a donor's charitable deduction to the donor's basis in the asset, not the fair market value that is current law. Such a restriction will negatively affect major gift programs, and seriously limit the amount of large non-cash gifts.

And finally, President Obama has repeatedly called for a twenty-eight percent cap on the charitable deduction, most recently in his FY2016 budget proposal. Estimates show that capping the charitable deduction at 28 percent would reduce giving by up to $9.4 billion a year, according to the American Enterprise Institute.

In January 2014, thirty-three Senators – led by Senators Wyden and Thune – recognized "the importance of protecting the full value and scope of the charitable deduction during a comprehensive rewrite of the tax code." We urge you to follow their lead and, at a minimum, do no harm to the current charitable deduction.

## II. Carve Out Donations from the Pease Limitation

While cuts, caps or limits to the charitable deduction are ill advised, so are other taxes on charitable giving, like the Pease limitation. This tax raises the price of giving and is an excellent example of needless complexity in the tax code. It requires taxpayers to make a series of calculations on a 10-line worksheet for Form 1040 Schedule A. At a time when lawmakers are trying to simplify the tax code and reduce compliance cost, this provision does the exact opposite.

But most important, ACR believes that Pease sets a dangerous precedent because it covertly chips away at the charitable deduction. This hidden tax could be an easy target for raising more revenue from charities in the future, either by increasing the amount of the Pease haircut on deductions or by lowering the applicable income thresholds. We strongly urge Congress to carve out the charitable deduction from the Pease limitation.

## III. Streamline the Private Foundation Excise Tax to a Flat One Percent

A simple way to encourage more grantmaking from private foundations is to streamline their excise tax on net investment income to a flat one percent. The America Gives More Act of 2015, which passed the House earlier this year, contains a streamlined one percent tax and we encourage you to take up and pass this bill.

Current law requires private foundations to pay an annual excise tax equal to two percent of their net investment income. However, the tax is reduced to one percent in any year in which a foundation's distributions exceed the average payout rate of the foundation, calculated over the preceding five years.

This two-tiered tax provision is simply a disincentive for foundations to increase the overall size of grants in any one year – due to disasters, recessions or compelling projects – because the

higher level of giving binds the foundation to higher levels of giving in the future, which may not be possible. For example in 2009, in the wake of a forty-percent drop in the value of one of our member's endowments, the board decided to increase their payout rate to nearly six percent. To maintain the then-current base rate of five percent would have required devastating cuts in their community grant making, cuts which the board could not imagine making. In 2010, the board again agreed to a payout rate higher than the one required to maintain a one percent excise tax rate. Those decisions raised their five-year average so that in 2013, their required distribution rate was approximately five and a half percent. Taking into account both the needs of future generations and the anticipated growth of the foundation, the board reduced the foundation's grantmaking and opted to pay the two-percent excise tax rate in both 2013 and 2014 in order to bring down their average distribution rate.

Such actions are too common among private foundations and serve as a clear example of the unintended consequences of the two-tier excise tax system. And so to encourage increased giving now, and to insure that private foundation assets will be available in our communities in the future, we ask that in the context of comprehensive tax reform you consider simplification or even elimination of a provision that has served as a deterrent to the growth of philanthropy.

## IV. Oppose Restrictions on Donor Advised Funds

With respect to donor advised funds (DAFs), proposals requiring mandatory pay outs within a confined timeline – such as the 5-year window included in the Tax Reform Act of 2014 – also send a negative signal about long-term philanthropy. DAFs are a proven tool to grow charitable giving. According to the National Philanthropic Trust, 2012 saw a large increase in the number of DAF accounts to more than 201,000 nationwide and contributions to DAFs reached an all-time high, totaling over $13 billion. And what's more, the National Philanthropic Trust found that on average, DAFs disburse eighteen percent of their assets each year.

This data shows that DAFs are often a gateway to long-term philanthropy and truly an investment in community relationships. Because funds from DAFs can quickly be disbursed, they are ideal for funding emergency situations and disaster relief. DAFs can serve as a great way for a community with no established philanthropic vehicles, like a private foundation, to start the process of long-term philanthropy; and they can also be used to hold funds and assets that need time to mature, such as funds for a challenge grant or privately-held stock.

Forcing DAFs to pay out assets would stifle charitable donations by depleting assets earmarked for charity before they had time to grow. For example, DAFs can be used by families and private foundations to train future generations of philanthropic leaders. A five-year payout window would not foster more charitable giving, and would instead limit a donor's freedom to give.

## About ACR

As background, ACR was founded in 2005 as a project of The Philanthropy Roundtable, which represents over 600 private donors and foundations across the United States. ACR educates legislators and policymakers about the central role of private giving in American life and the

importance of protecting philanthropic freedom – the ability of individuals and private organizations to determine how and where to direct their charitable assets. Active in Washington, D.C. and throughout the states, ACR seeks to prevent policies that would diminish private giving, limit the diversity of charitable causes Americans support, or place undue government regulations on philanthropic organizations.

**Facts About Charitable Giving in America**

In 2013, charitable giving from individuals, corporations, foundations and bequests totaled over $335 billion. Individuals gave over two-thirds (72%) of that amount – over $241 billion – while private foundations accounted for over $50 billion. The 2013 total represents a 4.4 percent increase over the previous year – a trend that benefits all Americans and continues to make our country the most generous.

**Conclusion**

We view philanthropy as an indispensable laboratory for innovation to address many of our nation's greatest challenges. Indeed our members are demonstrating a growing commitment to apply an entrepreneurial mindset to the philanthropic causes they most care about and to do most – if not all – of their giving during their lifetimes. And we see individual donors choosing to give in ways that can increase impact – through family collectives, giving circles, and donor advised funds. Every day our charities, and the generous individuals, foundations, and corporations who support them, are offering creative solutions to meet the diverse needs of our communities. We urge you and your colleagues to do everything you can to protect, promote, and expand charitable giving in the United States.

Thank you for the opportunity to submit input and we welcome any questions you and your staff may have.

Sincerely,

Sandra Swirski
Executive Director
The Alliance for Charitable Reform

CC: Senator Mike Crapo
Senator John Cornyn
Senator Patrick J. Toomey
Senator Charles E. Schumer
Senator Bill Nelson
Senator Robert Menendez
Senator Michael F. Bennet