COMMUNITY FOUNDATION
PUBLIC AWARENESS INITIATIVE

April 13, 2015

TO: Senate Finance Committee Members and Staff
FR: Community Foundation Public Awareness Initiative
RE: Tax Reform Comments to Working Groups

As the 68 community foundations that participate in the Community Foundation Public Awareness Initiative (CFPAI), we appreciate the Senate Finance Committee's invitation to provide comments on our views of tax reform to the various Working Groups. We know that some of the issues we care about will be addressed in different groups, so we ask that Committee staff please forward our comments to the appropriate Members and staff.

Here are some of the key issues that our group of community foundations cares about in tax reform:

Maintain the Charitable Tax Deduction's Link to the Top Marginal Tax Rate. As Committee members know, based on the outreach community foundations (CFs) have done over the past two-plus years, CFs are very different from private foundations. A community foundation is a tax-exempt public charity that serves people who share a common interest in improving the quality of life in their geographic area. There are more than 760 CFs in the United States (compared to more than 80,000 private foundations), and they are active in every state represented on the Senate Finance Committee. Perhaps one of the most important differences is that unlike a private foundation, all community foundations both accept donations and make grants. A community foundation must meet the public support test every year, which generally requires it to receive at least one-third of its annual support in new contributions from the general public, or meet the "facts and circumstances test." So CFs are public charities that operate by the same set of tax rules as any other public charity.

Because of this public charity status, maintaining the charitable deduction is very important to community foundations. *As the Congress considers changes to individual tax incentives, or broad reforms to the tax-exempt sector, we believe the charitable deduction should continue to be linked to one's marginal tax bracket and not have an artificial limitation imposed by Congress.* We know that there is strong bipartisan support for this position on the Finance Committee; we simply want to reiterate that as public charities, community foundations are among the wide array of organizations that care about the deduction for charitable gifts.

Extend the IRA Charitable Rollover and Pass the Public Good IRA Rollover Act. The IRA Charitable Rollover is a very important tax provision for public charities of all

types, but it expired at the end of 2014 and it needs to be extended. Sens. Schumer and Collins have introduced the Public Good IRA Rollover Act in previous Congresses (S. 1772 in the 113th Congress), and it will likely be reintroduced soon. The bill would make a number of important changes to the current statute: (1) make it permanent; (2) reduce the eligible age from 70½ to 59½; (3) eliminate the $100,000 annual cap; (4) expand the rollover to allow it to be used for split-interest entities; and (5) repeal the prohibition on making charitable gifts via the rollover to donor-advised funds and other charitable entities. *The community foundations participating in the CFPAI strongly support all of the provisions in the Public Good IRA Rollover Act; if it is not possible to do all of them, there is one particular fix that is especially important to CFs all across the country (see below).*

Promote Parity for Donor-Advised Funds in IRA Rollover and Other Charity Legislation. When Congress originally passed the IRA Charitable Rollover in 2006, donor-advised funds (DAFs) were excluded even though they are a legitimate means for those with IRAs to increase their charitable giving and make gifts to a number of different charities (as opposed to making one large gift to a single charity). Similar exclusions for DAFs have since been included in other legislation; for example, in bills promoting additional charitable giving after natural disasters such as Hurricane Katrina. These explicit exclusions convey the sense that donor-advised funds are somehow "less charitable," even though the average payout from DAFs is significant and they represent the fastest-growing means by which people (particularly those with some means, but not significant wealth) become engaged in philanthropy. Given that the DAF reforms from the Pension Protection Act of 2006 (PPA) have now been in place for a number of years, we strongly believe DAFs should now be treated on par with other charitable gifts. In a 2011 study, the Treasury Department agreed that it no longer made sense to treat DAFs under a different set of rules.

Therefore, our community foundations ask that when Congress extends and/or makes permanent the IRA Rollover, it should allow gifts to DAFs to qualify. This small and inexpensive change would be vitally important to the more than 760 community foundations – and the donors and charities they serve – throughout the country. This fix can be accomplished later in 2015 as part of the extenders package, but the CF field would also appreciate the issue being referenced in a Working Group report so as to convey the view that DAFs are not somehow suspect or less valuable than other forms of charitable giving.

Maintain Current Treatment of Gifts of Appreciated Property. Under current law, gifts of appreciated property to a public charity (including a community foundation) receive a fair market value deduction, and the capital gains taxes on the appreciated value are not taxed. (This is different tax treatment than with gifts of property, other than publicly-traded securities, to a private foundation, where the allowable tax deduction is the taxpayer's basis in the asset.) In recent years, some in Congress have looked at this area as a possible revenue offset, either by requiring

capital gains taxes to be paid, or by restricting the amount of the deduction.

CFs want to emphasize that maintaining the current tax treatment of appreciated gifts – whether publicly-traded stock, closely-held businesses, real property, art or collectibles, land or oil leases, or other gifts – is vitally important to the charitable sector, particularly community foundations. In fact, in many small towns and rural areas, the local community foundation is the *only* charitable entity that is equipped to accept a property gift and dispose of the asset. Moreover, at a time when demands on the charitable sector are rising, we are greatly concerned that any federal revenues that would be gained by changing the law in this area will be more than offset by a decline in charitable gifts and the services that the sector can offer. The CFPAI strongly encourages the Working Groups not to alter the tax treatment of property gifts to public charities.

Reform the Excess Business Holdings Rules for DAFs. Under PPA, the private foundation excess business holdings rule applies to donor-advised funds as if they were private foundations. That is, the holdings of a donor-advised fund in a business enterprise, together with the holdings of persons who are disqualified persons with respect to that fund, may not exceed certain limitations and any excess must be divested within five years.

While we understand the original motivation for the change, in practice these rules can create unreasonable burden for a public charity (as opposed to a private foundation) because they require the charity to determine, with respect to a contribution of an interest in a business enterprise, whether more than 20 percent of the shares are owned by the DAF, the donor, and his family, directly and indirectly. While a private foundation can be expected to identify its donor's family members – spouse, ancestors, children, grandchildren, and great-grandchildren; the spouses of children, grandchildren and great grandchildren; and brothers and sisters (both by full-blood and half-blood) – public charities cannot readily obtain this information about their donors, let alone how much of a company they may own. Another factor to consider is that in the public charity context, where there is public board oversight, the opportunities for tax abuse are greatly reduced. As a result, not only are the current rules a step toward treating DAFs like private foundations, but they also reduce overall charitable giving.

We urge Congress to understand that charitable gifts of business interests are legitimate ways for entrepreneurs and other small business owners to direct assets to charity; and by making these gifts, donors are permanently relinquishing control of the asset (unlike a private foundation, where a family maintains significant control). *Therefore, our CFs recommend that as part of tax reform, DAFs should be specifically excluded from the excess business holding rules of Section 4943.*

Consider Ways to Facilitate the Making of PRIs or Other "Impact Investments." One common misperception about philanthropy is the belief that foundations must distribute money *only* in the form of grants to 501(c)(3) charitable organizations in order to meet their annual distribution requirements. As more and more private and community foundations are coming to understand, however, this is not the case; foundations can provide assistance in other forms, including to non-charities, as long as a charitable purpose and/or social return is pursued.

Program-Related Investments (PRIs) are one such alternative strategy, and they date back to the Tax Reform Act of 1969. The PRI opportunity allows a private foundation to make an investment in an organization (not-for-profit or for-profit) and have that investment count as a qualifying distribution, so long as certain conditions are met (most importantly, that it must "significantly advance the foundation's charitable purpose"). The problem is that continued uncertainty over what qualifies as a PRI means that a few large foundations – which have the experience and in-house counsel to review each transaction – dominate the space. In the 113th Congress, bipartisan legislation was introduced in the House that would facilitate the ability of more small-to-midsize foundations to make PRIs and promote social enterprises and "impact investments" (i.e., where a financial and social return are sought at the same time) in local communities around the country, but that bill received no Congressional action.

While most community foundations are not yet engaged in impact investing, it is a rapidly-growing field, and several community foundations that participate in our Initiative (Cincinnati, Atlanta, San Diego, Oregon, Minneapolis, Arizona, New Hampshire, Utah, and Arkansas, among others) have impact investing programs or are considering them. *Even though PRIs as defined in the tax code are technically made only by private foundations, if the rules governing PRIs were simplified or clarified, it could lead to more CFs and individual investors making impact investments in local social enterprises, with the assurance that their activities would be considered charitable.* We urge the Working Groups to consider that impact investments are a growing component of the philanthropy landscape, and adjust the tax laws as necessary to foster their growth.

For more information, please contact:

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Current Participant List (as of April 2015)

Akron Community Foundation

Alaska Community Foundation

Arizona Community Foundation

Arkansas Community Foundation

Austin Community Foundation

Baltimore Community Foundation

Baton Rouge Area Foundation

Central Carolina Community Foundation (Columbia, SC)

Central Indiana Community Foundation (Indianapolis, IN)

Central New York Community Foundation (Syracuse, NY)

Chicago Community Trust

Columbus Foundation

Community Foundation for Southeast Michigan (Detroit, MI)

Community Foundation Lorain County (Elyria, OH)

Community Foundation of Acadiana (Lafayette, LA)

Community Foundation of Greater Atlanta

Community Foundation of Greater Birmingham

Community Foundation of Greater Des Moines

Community Foundation of Greater Dubuque

Community Foundation of Greater Memphis

Community Foundation for the National Capital Region

Community Foundation for Northeast Florida (Jacksonville, FL)

Community Foundation of North Texas (Fort Worth, TX)

Community Foundation for Southeast Michigan (Detroit, MI)

Communities Foundation of Texas (Dallas, TX)

Community Foundation of Tampa Bay

Community Foundation of Tompkins County (Ithaca, NY)

Community Foundation of Utah

Community Foundation of Western North Carolina

Community Foundation Serving Richmond and Central Virginia

Community Foundation Sonoma County

Dayton Foundation

East Bay Community Foundation (Oakland, CA)

East Tennessee Foundation (Knoxville, TN)

Erie Community Foundation

Foundation for the Carolinas (Charlotte, NC)

Fresno Regional Foundation (Fresno, CA)

Greater Cedar Rapids Community Foundation

Greater Cincinnati Foundation

Greater Houston Community Foundation

Greater Milwaukee Foundation

Greater Saint Louis Community Foundation

Hawaii Community Foundation

Lincoln Community Foundation (Lincoln, NE)

Marin Community Foundation (Novato, CA)

Minneapolis Foundation

Minnesota Philanthropy Partners (St. Paul Foundation and Minnesota Community Foundation)

Nevada Community Foundation

New Hampshire Charitable Foundation

New Jersey Community Foundation

New York Community Trust

Oklahoma City Community Foundation

Omaha Community Foundation

Oregon Community Foundation

Philadelphia Foundation

Pittsburgh Foundation

Racine Community Foundation

Rhode Island Foundation

Rochester Area Community Foundation

San Diego Foundation

San Francisco Foundation

Santa Fe Community Foundation

Seattle Foundation

Silicon Valley Community Foundation

South Dakota Community Foundation

Toledo Community Foundation

Wichita Community Foundation

Winston-Salem Foundation

Wyoming Community Foundation