Dear Chairman Hatch and Ranking Member Wyden,

On behalf (Ha0 G 0.0038t)5[(On)e009 12 0 612 792 reW* nBT/F2 11.04 Tf1 0 0 1 165.98 554.5 Tm0 g0 G[(a)] TJETQ 0.

At the outset, we would like to address several common — and highly misleading — critiques of DAFs.

Madoff/Colinvaux and other DAF critics frequently cite two key statistics to make their case for additional DAF regulation. First, they argue that because overall charitable giving has remained at about 2 percent of GDP, while contributions to DAFs have been increasing steadily, this somehow provides *prima facie* evidence that DAF contributions are (as they say in their letter to the Finance Committee) "attracting dollars that would otherwise be contributed directly to active nonprofits." Second, they posit that high average payout rates from DAFs somehow obscure high levels of inactivity. For example, Madoff has argued that a 16 percent average payout can be achieved if 20 percent of DAFs pay out 80 percent of their balance and 80 percent of DAFs make no grants, with no regard to whether this happens in the real world.

The repeated use of these statistics is grossly misleading. Consider:

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a popular philanthropic tool that is intended to achieve future stability while contribution down the road; the DAF is under advisement by a couple who are going through a divorce; a DAF is established as part of a bequest but cannot make grants until the estate is fully settled, etc.). We would argue

A required payout may increase DAF grantmaking over the first few years as existing DAFs must spend down. But what will happen over the long term? *If Congress's goal is to increase the money "going out the door," the proposal for a forced 10-year payout will not have the desired effect.*

Many community foundations have annual DAF payout rates that are several times greater than the required 5 percent rate for private foundations. *According to the National Philanthropic Trust, the average payout rate for the 2016 community foundations surveyed for its 2016 Donor-Advised Fund report was 15.4 percent.*[4] So even absent a *required* payout, the average payout for community foundation DAFs is still high.

The Madoff/Colinvaux proposal, however, would be to make a DAF very unattractive for donors looking to make a long-term commitment to a community.

A required timed payout proposal for DAFs communicates to the public that the concept of

The donor can then “advise” grants out of this annual spending amount. The principal remains a part of the permanent funds, and donors generally may not grant more than their grantmaking budget for the year. Essentially, endowed DAFs operate like small private foundations, with no separate legal entity.

The proposed 10-year payout is thus of great concern because it

Community Foundation Public Awareness Initiative have submitted [redacted]
Treasury on this issue.

The private foundation-to-DAF issue raises similar questions as the f[redacted]. Madoff/Colinvaux assume that because it is *legal* for a private founda[redacted] grants to a DAF, this is normal practice and **a** *per se* abuse that should be **al**[redacted]d.

CEOs from community foundations across the country will attest, ho[redacted]

. For example, private foundations may use DAFs to:

- Provide better stability to grantees during periods **of** major mar[redacted]s; ET Q q 2 10.56 Tf 1 0 0
- Conduct **local philanthropy** in close **partnership** 912 610174 0 6

In this case, no one could possibly argue the Woodruff Foundation was using the DAF to skirt its payout requirements. By having the flexibility to use the DAF, and by relying on the management expertise of the Community Foundation, the Woodruff Foundation made its gift more meaningful and efficient than had it granted $200 million directly to the hospital when the management structure was not in place to effectively use the funds.

From Max Williams, President and CEO, Oregon Community Foundation

In 2008, when the financial market experienced significant losses, a family foundation in Oregon whose mission is to serve rural communities saw their asset base plunge. Many of Oregon's rural communities also suffered extreme losses during this market downturn, and the nonprofits serving these communities saw a tremendous uptick in the number of people requesting services. The foundation's loss in assets was so significant that it was challenged to meet many of its multi-year grant commitments, which were set as fixed dollar amounts and were put at risk when the payout requirement applied to a much smaller asset pool.

To solve this problem, the private foundation turned to a DAF it maintained at the Oregon Community Foundation to augment its 5 percent payout requirement and keep its grant commitments. The DAF was more than halved in value during this period. As the market rebounded, the family foundation rebuilt the DAF's assets with a percentage of their foundation's payout to create a resource to support rural communities if another market downturn occurs. The DAF's grantmaking supports rural nonprofit organizations that fit the criteria of the family foundation and an average of $1.2 million is paid out from the fund each year.

Allowing the private foundation to make these gifts has resulted in a clear win-win for the community. If this practice was banned or restricted, it would be much harder for foundations to make the multi-year – and often unrestricted – grants that nonprofit organizations so desperately need. The ability of the private foundation to make grants to the DAF makes private philanthropy more willing to make long-term commitments.

From Tim Beaton, Executive Director, Fargo-Moorhead Area Foundation (Fargo, ND)

The Fargo-Moorhead Area Foundation is working with the community foundation and the community foundation will provide regular grantmaking assistance to the donor to ensure that its grants are going to effective nonprofits in the Fargo community.

All or most of each year's distribution are expected to be granted within 12 months. As a result, this arrangement will help local nonprofits almost immediately. The donor plans to work with the community foundation to develop a "community needs list," which will be reviewed at least annually. Based on that list, the community foundation would then vet nonprofit organizations and projects that would address those needs. This arrangement would be contractual– the community foundation would have to do this each year.

While it would be possible for the donor to make grants directly from the private somehow keep the funds sheltered away from public needs. They concede that the average DAF payout is several times that of private foundations, but that somehow this average high payout shields significant inactivity.

If average DAF payouts are three times the private foundation payout rate, and the vast majority of DAF accounts *are* making grants regularly and/or the DAF advisers have plans in place for future activity, there doesn't seem to be a public policy problem requiring urgent action. For these reasons, we urge the Committee to set aside the extreme proposals advanced by DAF