



August 31, 2007

The Honorable John Lewis, Chairman
Subcommittee on Oversight
Committee on Ways and Means
U.S. House of Representatives
343 Cannon House Office Building
Washington, DC 20515

Dear Congressman Lewis:

This statement is submitted on behalf of Grantmakers Without Borders (“Gw/oB”) in response to the House Subcommittee on Oversight’s request for written comments on provisions relating to tax-exempt organizations in the Pension Protection Act of 2006. In addition, Gw/oB would like to specifically respond to Congressman Pascrell’s comments regarding charities and terrorism during the July 24, 2007 hearing.

I. Background

Gw/oB is a philanthropic network dedicated to international social change philanthropy in the developing world. Gw/oB’s membership, currently numbering 150 grantmaking entities, includes private foundations, grantmaking public charities, individual donors with a significant commitment to international philanthropy, and philanthropic support organizations. Gw/oB’s members make lifesaving grants to international grassroots organizations that target the root of economic, environmental, and social inequalities within their local communities. Grants range from support to children affected by HIV/AIDS, to reforestation projects in Brazil, to relief for victims of natural disasters.

II. Pension Protection Act

The diversity of Gw/oB’s membership makes it impractical for these comments to reflect every impact felt by its membership due to the Pension Protection Act. However, two recurring matters deserve mentioning.

A. IRA Charitable Rollover

The Individual Retirement Account (“IRA”) Charitable Rollover provision within the Pension Protection Act eliminates the tax that formerly discouraged transfers from IRAs to charities. Consequently, many individuals have chosen to donate their annual minimum distributions to public charities, resulting in millions in charitable donations. Unfortunately, this valuable provision expires at the end of 2007.

Gw/oB has joined Independent Sector, the National Committee on Planned Giving, and many other charities in advocating for the Public Good IRA Rollover Act of 2007. This Bill would make the IRA Charitable Rollover permanent, remove the dollar limit on donations per year, and provide IRA owners a planned giving option beginning at age 59 ½. Furthermore, the Public Good IRA Rollover Act includes

private foundations as eligible to receive donations, thereby allowing a greater number of worthy nonprofits to enjoy the benefits of the IRA Charitable Rollover.

B. Donor Advised Funds

The Pension Protection Act makes significant changes to the operation and management of donor advised funds (“DAF”s). Recognizing the growing popularity of DAFs, Congress responded with needed regulations to offset the potential for abuse. As a result, DAFs now have a statutory definition – a fund that is owned and controlled by a sponsoring organization, separately identified with reference to the donor, and subject to the recommendations of the donor in relation to the fund’s investments and distributions – limits are placed on who can receive distributions, and new requirements are in place on the management of those distributions by the sponsoring organization.

Within the legislative history of the Pension Protection Act, some lawmakers sought to limit the use of DAFs for international grantmaking. Gw/oB finds this proposal deeply disturbing. It unnecessarily and unfairly targets international philanthropy at a time when global U.S. philanthropic engagement is as crucial as ever. We hope the following comments make the case for the enormous value of DAFs to international grantmaking and giving.

Furthermore, many of Gw/oB’s members are finding some regulations within the Pension Protection Act difficult to apply. Here we attempt to describe some of those challenges.

1. DAFs Present Important Advantages to International Grantmaking and Giving

Often, the advantages of DAFs make them an attractive choice for international grantmaking and giving. Although Gw/oB understands and respects the underlying reasons behind recent legislative changes to the operation and organization of DAFs, we urge that these advantages be preserved.

a. The Advantages of Donor Advised Funds to Grantmaking Organizations

International grantmaking, for a variety of reasons, is more complex than domestic grantmaking. Consequently, many organizations that wish to make lawful and effective international grants do not have the capacity or expertise to do so. DAFs provide a valuable mechanism whereby organizations that lack this necessary capacity and expertise may rely on a qualified sponsoring organization to provide the solutions to important international grantmaking challenges.

Federal tax law requires organizations that give international grants to practice 501(c)(3) equivalency determination¹, expenditure responsibility², or a degree of due diligence that guarantees the funds are used for a charitable purpose. Organizations that make few international grants, have a small a staff, or are new to international grantmaking often turn to a DAF to manage the legal obligations inherit to international grants. In addition, the world of international grantmaking is incredibly diverse. Literally, a

¹ A good-faith determination by a grantor organization that a grantee organization is the equivalent of a 501(c)(3) public charity. The grantor should collect the same information the IRS would require if it were to make its own determination of the grantee organization.

²Additional oversight procedures exercised by a grantor to guarantee that its funds are used for a charitable purpose. Expenditure Responsibility typically requires five steps: a pre-grant inquiry whereby the grantor determines the grantee organization to be capable of achieving the charitable purpose of the grant, a written grant agreement signed by the grantee that details the purpose of the grant and commits the grantee to only spend the funds on that purpose, one or more reports from the grantee detailing the use of the funds, a separate account maintained by the grantee that exclusively houses charitable funds, and the grantor organization, when a private foundations, must notify the IRS on Form 990-PF that an expenditure responsibility grant was made during the tax year.

world of funding opportunities is possible. DAFs provide a means whereby organizations new to international grantmaking can learn more about this diverse world, thus acquiring the expertise necessary to make effective international grants.

DAFs often act as a valuable learning tool for grantmaking organizations. By contributing a DAF to a qualified sponsoring organization, the grantmaking organization is able to see what capacity and expertise is needed so that it can eventually make its own international grants.

b. The Advantages of Donor Advised Funds to Individual Donors

Critics of DAFs argue that contributions should be ineligible as charitable deductions. They reason that the retention of advisory privileges declassifies contributions as completed gifts. If accepted, this argument will undermine a core advantage to DAFs in the context of international giving.

Most charitable contributions are given for altruistic reasons, but the promise of a charitable deduction is often an underlying incentive for many individual donors. Since federal tax law disqualifies most overseas contributions by individuals as charitable deductions, DAFs are a valuable alternative that provides the benefits and incentives of a charitable deduction while preserving the possibility that a donor's funds will support a foreign organization. Of course sponsoring organizations must protect against donors that abuse their advisory privileges. However, preventing donor abuse by making contributions ineligible as charitable deductions throws the baby out with the bath water and will, in the long run, stem the flow of U.S. charitable dollars to Haiti, Afghanistan, and elsewhere in the Third World where charitable resources are so desperately needed.

2. The Pension Protection Act Significantly Changes The Due Diligence Required For Those Public Foundations That Give International Grants From Their DAFs.

When a public foundation gives an international grant with its general funds, federal tax law requires the public foundation to ensure the grant is used exclusively for its charitable purpose through sufficient "discretion and control." Public foundations are afforded a fair amount of autonomy in determining what that "discretion and control" will look like. Under the Pension Protection Act, when a public foundation makes an international grant with a DAF, the public foundation must apply due diligence methods traditionally reserved for private foundations: equivalency determination³ or expenditure responsibility.⁴ Consequently, international grants made with a DAF are not easily incorporated into a public foundation's grant portfolio. In addition, it is unclear how expenditure responsibility should be applied by a public foundation. Gw/oB is waiting for further clarification on this issue.

3. The Pension Protection Act Includes Fundraisers As Disqualified Persons With DAFs

The Pension Protection Act expands the list of disqualified persons, automatically instituting an excess benefit transaction tax on any ineligible distribution. However, one category of disqualified persons includes those that wish to be reimbursed for fundraising costs for the DAF. The fact is that not all DAFs are set up by wealthy individuals; there are those that are set up by individuals with modest financial means who raise funding from the public at large and then channel those funds overseas through a DAF. In cases such as these, it is quite reasonable to expect reimbursement for out-of-pocket expenses incurred by necessity in raising funding for the DAF. While excessive fundraising costs, as elsewhere in the non-profit sector, are to be strongly discouraged, completely forbidding reimbursement for reasonable fundraising costs associated with DAFs will jeopardize the existence of an important subset of DAFs.

³ See fn 1

⁴ See fn 2

III. Charities and Terrorism

During the July 24, 2007 hearing on tax-exempt organizations, Congressman Pascrell questioned the repeated accusations by the Department of the Treasury that “charities are a significant source of terrorist funding.” He specifically referenced a recent Treasury Inspector General Report released on May 21, 2007⁵ and noted that the Department of the Treasury seems to be “painting the sector with a wide brush.” Gw/oB applauds Congressman Pascrell for his comments and hopes each Committee member will read the June 8, 2007 letter that was sent to the Department of the Treasury by a coalition of nonprofit organizations, including Gw/oB, opposing the conclusions of the referenced Treasury Inspector General Report.⁶

Every day, Gw/oB works to counter these overbroad and unsubstantiated statements by the Department of the Treasury. Unfortunately, the Department of the Treasury’s statements have inflicted real, ongoing harm on nonprofit organizations, particularly international grantmakers, and caused a loss of public confidence in the charitable sector as a whole.

Furthermore, the “tools” being released by the Department of the Treasury, such as the “Anti-Terrorist Financing Guidelines”⁷ and the “Risk Matrix for the Charitable Sector,”⁸ are doing little to fight terrorism and, in fact, chill important philanthropic aid that often acts as a counter balance to terrorism influences within vulnerable communities. To further frustrate things, these tools exist within a legal framework of draconian penalties that easily intimidate the highly risk adverse charitable sector.

The U.S. charitable community takes the issue of terrorism very seriously and the 1.8 million 501(c)(3) organizations, including 71,000 foundations, that exist in the U.S. work tirelessly to ensure that their charitable services or funding are used for the intended charitable purpose. As noted by Steve Gunderson, the President and CEO of Council on Foundations, within his testimony:

[i]n fact, we have seen no evidence to indicate that U.S. charities are a major source of terrorist support. Out of hundreds of thousands of U.S. charities and billions of dollars given out in grants and material aid each year, only six U.S. charities are alleged to have intentionally supported terrorists. Thus far, Treasury has not identified a single case of inadvertent diversion of funds from a legitimate U.S. charity to a terrorist organization. . . . An even larger issue is that, by exaggerating the extent to which U.S. charities serve as a source of terrorist funding, Treasury is fueling an environment in which wary donors may refrain from making charitable contributions.

Gw/oB’s hope is that a system can be put in place that supports the charitable work of those organizations acting lawfully and provides the necessary due process to those organizations suspected of having links to terrorism.

IV. Conclusion

⁵ <http://www.treas.gov/tigta/auditreports/2007reports/200710082fr.pdf>

⁶ http://www.internationaldonors.org/advocacy/TIGTALetter_Paulson.pdf

⁷ <http://www.treas.gov/press/releases/docs/tocc.pdf> --- Letter released by Gw/oB opposing the “Anti-Terrorist Financing Guidelines” http://www.internationaldonors.org/news/gwob_letter_122206.pdf

⁸ http://www.treas.gov/offices/enforcement/ofac/policy/charity_risk_matrix.pdf -- Letter released by Gw/oB opposing the “Risk Matrix for the Charitable Sector”

http://www.internationaldonors.org/advocacy/GwoB_Treasury_Letter-Risk_Matrix.pdf

Gw/oB thanks you for this opportunity to submit comments regarding the Pension Protection Act and the Department of the Treasury's counter terrorism measures. In summary, Gw/oB would like:

- the IRA Charitable Rollover to be permanent and expanded to include private foundations,
- Congress and the IRS to resist any legal changes to the operation and management of DAFs that unnecessarily impedes their use for charitable giving to the Third World, and
- the House Ways and Means Committee to further explore Congressman Pascrell's questioning regarding charities and terrorism (the Department of the Treasury needs to be held accountable for its counter terrorism measures that affect that charitable sector).

If you have any further questions, please feel free to contact our Advocacy Coordinator at the Washington, D.C. office, Vanessa Dick (Vanessa@gwob.net).

Sincerely,

A handwritten signature in black ink, appearing to be 'JH', written in a cursive style.

John Harvey
Executive Director
Grantmakers Without Borders