

## HOLDING

CRP rental payments (including incentive payments) from USDA to a (1) farmer actively engaged in the trade or business of farming who enrolls land in CRP and fulfills the CRP contractual obligations personally and to (2) an individual not otherwise actively engaged in the trade or business of farming who enrolls land in CRP and fulfills the CRP contractual obligations by arranging for a third party to perform the required activities are both includible in net income from self-employment for purposes of the SECA tax and not excluded from net income from self-employment as rentals from real estate.

## EFFECT ON OTHER REVENUE RULINGS

Revenue Ruling 60-32 is obsolete.

## III. Request for Comments

Comments are requested regarding the interaction of the proposed revenue ruling with the treatment of CRP payments under other Code provisions, such as sections 2032A and 6166. The comments will be available for public inspection and copying. Comments must be submitted by March 19, 2007. Comments should reference Notice 2006-108, and be addressed to:

Internal Revenue Service  
Office of the Associate Chief Counsel  
(Tax Exempt and Government Entities)  
CC:TEGE  
1111 Constitution Ave., N.W.,  
Rm. 4000  
Washington, DC 20224  
Attn: Elliot Rogers

In addition, comments may be submitted electronically via the Internet by sending them in an e-mail to [notice.comments@irscounsel.treas.gov](mailto:notice.comments@irscounsel.treas.gov) and specifying the comments concern Notice 2006-108.

## DRAFTING INFORMATION

The principal authors of this notice are Marie Cashman and Elliot Rogers of the Office of the Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from Treasury

and the Service participated in its development. For further information regarding this notice, contact Mr. Rogers at (202) 622-6040 (not a toll-free call).

## Interim Guidance Regarding Supporting Organizations and Donor Advised Funds

### Notice 2006-109

#### Section 1. PURPOSE

This notice provides interim guidance regarding the application of certain requirements enacted as part of the Pension Protection Act of 2006, Pub. L. No. 109-208, 120 Stat. 780 (2006) ("PPA"), that affect supporting organizations, donor advised funds, and private foundations that make grants to supporting organizations.

Sections 1231, 1241, 1242, 1243, and 1244 of the PPA add sections 509(f), 4943(f), 4958(c)(3), 4966, and 4967, to the Internal Revenue Code ("Code"), and amend sections 509(a)(3)(B), 4942(g)(4), and 4945(d)(4)(A) of the Code. The amendments to section 509(a)(3) and the addition of section 509(f) prescribe new requirements for supporting organizations. The addition of section 4943(f) defines the terms "Type III supporting organization" and "functionally integrated Type III supporting organization." The amendments to sections 4942 and 4945 affect private foundations that make grants or similar payments to supporting organizations under certain circumstances. The amendments to section 4958, among other things, subject substantial contributors and persons related to them (as described in section 4958(c)(3)(B)) to new excise taxes if they engage in certain types of transactions with supporting organizations with which they have a relationship. New section 4966 imposes an excise tax on a sponsoring organization that maintains donor advised funds if it makes certain distributions from a donor advised fund. New section 4967 imposes excise taxes on certain distributions from a donor advised fund that provide more than an incidental benefit to a donor, a donor-advisor, or related persons (as described in sections 4967(d) and 4958(f)(7)).

This notice provides guidance on four aspects of the application of these new provisions of the Code. First, Section 3 provides criteria for private foundations that might make distributions to supporting organizations that can be used to determine for purposes of sections 4942(g)(4) and 4945(d)(4) whether an organization is a Type I, Type II, or functionally integrated Type III supporting organization. Section 3 also provides criteria for determining whether a supporting organization, or any of its supported organizations, are controlled by disqualified persons. Section 3 also provides similar guidance with respect to section 4966 for donor advised funds that make grants to supporting organizations. Second, Section 4 clarifies the date of applicability for the new section 4958(c)(3) excise tax on certain excess benefit transactions involving supporting organizations. Third, pursuant to the authority under new section 4966(d)(2)(C), Section 5.01 excludes certain employer-sponsored disaster relief funds from the definition of donor-advised fund. Fourth, Section 5.02 clarifies how the Internal Revenue Service ("Service") will apply the new section 4966(a) excise taxes with respect to payments made pursuant to educational grants awarded prior to the date of enactment of the PPA.

This notice is intended to address a limited number of issues which require immediate guidance. The Service and the Department of Treasury ("Treasury") expect to issue further guidance, including regulations, under these provisions of the PPA. The rules provided in this notice apply until further guidance is issued. This notice does not affect the substantive standards for tax exemption under section 501(c)(3). This notice also invites comments from the public regarding this notice and suggestions for future guidance implementing statutory changes under the PPA.

#### Section 2. BACKGROUND

Organizations that are organized and operated exclusively for charitable, religious, educational or other specified purposes are generally exempt from income tax under section 501(a) as organizations described in section 501(c)(3). Section 509(a) divides section 501(c)(3) organizations into two subcategories: private foundations and organizations that are not

private foundations, which are commonly known as public charities. To be categorized as a public charity and not a private foundation, an organization must be described in section 509(a). To be described in section 509(a)(1) or (2), an organization must receive a substantial amount of public support to fund its operations. To be described in section 509(a)(3), an organization must have a particular type of structural relationship with a publicly supported section 501(c)(3), (4), (5) or (6) organization.

Private foundations are subject to a different regime of excise taxes than are public charities. For example, private foundations are subject to excise tax if they do not make at least a minimum level of qualifying distributions each year. Private foundations are also subject to excise tax if they make certain taxable expenditures. Taxable expenditures include, but are not limited to, certain grants to organizations unless the private foundation exercises expenditure responsibility with respect to the grants as required by section 4945(h) and Treas. Reg. section 53.4945-5(b).

Section 170(c) describes organizations eligible to receive charitable contributions that are deductible for income tax purposes.

#### .01 Donor Advised Funds and Supporting Organizations before the PPA

##### *Donor Advised Funds*

Prior to the PPA, the Code did not define the term donor advised fund. However, the term was commonly understood to refer to component funds of certain community trusts. See Treas. Reg. section 1.170A-9(e)(10) and (11). The term was also commonly understood to refer to an account established by one or more donors but owned and controlled by a public charity to which such donors or other individuals designated by the donors could provide nonbinding recommendations regarding distributions from the account or regarding investment of the assets in the account.

##### *Supporting Organizations*

Section 509(a)(3) excludes from the definition of private foundation certain organizations that support certain publicly supported organizations. The Treasury

regulations under section 509(a)(3) refer to these organizations as supporting organizations. To be described in section 509(a)(3), an organization must meet several tests: (1) it must be organized and operated exclusively for the benefit of specified publicly supported organizations (generally, public charities); (2) it must have one of three types of relationships with its publicly supported organizations; and (3) it must not be controlled, directly or indirectly, by disqualified persons (as defined in section 4946 other than foundation managers) with respect to such supporting organization.

In general, supporting organizations have been identified by the type of relationship they have with their publicly supported organizations. A supporting organization that is operated, supervised or controlled by one or more publicly supported organizations is commonly known as a Type I supporting organization. A supporting organization supervised or controlled in connection with one or more publicly supported organizations is commonly known as a Type II supporting organization. A supporting organization that is operated in connection with one or more publicly supported organizations is commonly known as a Type III supporting organization.

#### .02 Donor Advised Funds Under the PPA

##### *Definition of a Donor Advised Fund*

Under new section 4966(d)(2), a donor advised fund is defined as a fund or account owned and controlled by a sponsoring organization, which is separately identified by reference to contributions of a donor or donors, and with respect to which the donor, or any person appointed or designated by such donor ("donor advisor"), has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of the funds.

A sponsoring organization is defined under new section 4966(d)(1) as a section 170(c) organization that is not a governmental organization (referenced in section 170(c)(1) and (2)(A)) or a private foundation and maintains one or more donor advised funds.

Pursuant to new section 4966(d)(2)(B), the term donor advised fund does not include a fund or account: (1) that makes

distributions only to a single identified organization or governmental entity or (2) with respect to which a donor advises a sponsoring organization regarding grants for travel, study or similar purposes if:

- a. the donor's, or the donor advisor's, advisory privileges are performed in his capacity as a member of a committee whose members are appointed by the sponsoring organization,
- b. no combination of donors or donor advisors (or related persons) directly or indirectly control the committee, and
- c. all grants are awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the sponsoring organization's board of directors.

Thus, a sponsoring organization that owns and controls a fund that meets these criteria may award a scholarship from the fund to a natural person without subjecting the sponsoring organization or its managers to excise taxes under new section 4966.

##### *Taxable Distribution*

New section 4966 imposes an excise tax on a sponsoring organization for each taxable distribution it makes from a donor advised fund. It also imposes an excise tax on the agreement of any fund manager of the sponsoring organization to the making of a distribution, knowing that it is a taxable distribution. The tax on taxable distributions applies to distributions occurring in taxable years beginning after August 17, 2006.

In general, under new section 4966(c), a taxable distribution is any distribution from a donor advised fund to any natural person, or to any other person if (i) the distribution is for any purpose other than one specified in section 170(c)(2)(B), or (ii) the sponsoring organization maintaining the donor advised fund does not exercise expenditure responsibility with respect to such distribution in accordance with section 4945(h).

Under new section 4966(c)(2), a taxable distribution does not include a distribution from a donor advised fund to: (1) any organization described in section 170(b)(1)(A) (other than a disqualified

supporting organization), (2) the sponsoring organization of such donor advised fund, or (3) any other donor advised fund.

Under new section 4966(d)(4), a disqualified supporting organization includes a Type III supporting organization that is not functionally integrated and any Type I, Type II, or functionally integrated Type III supporting organization where the donor or donor advisor (and any related parties) directly or indirectly controls a supported organization of the supporting organization.

#### *Prohibited Benefit*

New section 4967 imposes an excise tax if a donor, donor advisor, or a person related to a donor or donor advisor of a donor advised fund (as described in sections 4967(d) and 4958(f)(7)) provides advice as to a distribution that results in any such person receiving, directly or indirectly, a more than incidental benefit. The excise tax is imposed on any person who advises as to the distribution or who receives the benefit. A separate excise tax may be imposed on a fund manager who agreed to the making of the distribution. The new excise tax under section 4967 applies to taxable years beginning after August 17, 2006.

#### *Secretarial Authority*

New section 4966(d)(2)(C) grants the Secretary authority to exempt certain funds from treatment as donor advised funds if either (1) the fund or account is advised by a committee not directly or indirectly controlled by the donor or donor advisor (and any related parties), or (2) such fund or account benefits a single identified charitable purpose.

#### *.03 Supporting Organizations Under the PPA*

##### *Supporting Organization Definition*

The PPA incorporates the previously informal nomenclature used to distinguish among types of supporting organizations into the statute. Thus, new section 4966(d)(4)(B)(i) defines a Type I supporting organization as a supporting organization that is operated, supervised, or controlled by one or more section

509(a)(1) or 509(a)(2) organizations. New section 4966(d)(4)(B)(ii) defines a Type II supporting organization as a supporting organization that is supervised or controlled in connection with one or more section 509(a)(1) or 509(a)(2) organizations. (See also sections 4942(g)(4)(B)(i) and (ii) for parallel definitions of Type I and Type II supporting organizations). Finally, new section 4943(f)(5)(A) defines a Type III supporting organization as a supporting organization that is operated in connection with a section 509(a)(1) or (2) organization.

New section 4943(f)(5)(B) defines a functionally integrated Type III supporting organization as one which is not required under regulations established by the Secretary to make payments to supported organizations due to the activities of the organization related to performing the functions of, or carrying out the purposes of, such supported organizations.

New section 509(f)(2), which is effective August 17, 2006, prohibits certain supporting organizations from accepting gifts or contributions from certain persons associated with the supported organization of such supporting organization. This provision provides that any organization that would otherwise meet the requirements of a Type I or Type III supporting organization will be excluded under this provision if it accepts any gift or contribution from a person who directly or indirectly controls (either alone or together with related persons described in section 509(f)(2)(B)(ii) and (iii)) the governing body of a supported organization of such supporting organization or from a related person described in section 509(f)(2)(B).

#### *New Rules Regarding Section 4958 Excess Benefit Transactions and Supporting Organizations*

Section 4958 imposes an excise tax on certain persons if they engage in one or more excess benefit transactions. New section 4958(c)(3) provides that any grant, loan, compensation, or other similar payment from a supporting organization to a substantial contributor or persons related to the substantial contributor (as described in section 4958(c)(3)(B)) is treated as an excess benefit transaction. In addition, any loan from a supporting organization to certain disqualified persons is treated

as an excess benefit transaction. The entire amount of the payment to such persons constitutes an excess benefit subject to an excise tax under section 4958. This excise tax applies to transactions occurring after July 25, 2006.

Under new section 4958(c)(3)(C), a substantial contributor includes any person who contributed or bequeathed an aggregate amount of more than \$5,000 to the organization, if such amount is more than 2 percent of the total contributions and bequests received by the organization before the close of the taxable year of the organization in which the contribution or bequest is received. A substantial contributor also includes the creator of a trust.

#### *.04 New Restrictions on Grants Made by Private Foundations to Supporting Organizations*

The PPA amended section 4942(g) to deny qualifying distribution treatment to grants by non-operating private foundations to (1) Type III supporting organizations that are not functionally integrated and (2) to Type I, Type II, and functionally integrated Type III supporting organizations if a disqualified person of the private foundation directly or indirectly controls such supporting organization or a supported organization of the supporting organization. The PPA also amended section 4945(d)(4)(A) to treat grants to the above entities by all private foundations as taxable expenditures unless the private foundation exercises expenditure responsibility with respect to the grants.

#### **Section 3. GRANTOR RELIANCE STANDARDS FOR GRANTS TO CERTAIN SUPPORTING ORGANIZATIONS**

##### *.01 Treatment of Grants from Private Foundations or Donor Advised Funds to Supporting Organizations*

As stated in Section 2.04, the enactment of the PPA imposes certain limitations if a private foundation makes a grant to (1) a Type III supporting organization that is not functionally integrated, or (2) a Type I, Type II, or functionally integrated Type III supporting organization if one or more disqualified persons of the private foundation directly or indirectly controls such supporting organization or one of its supported

organizations. Specifically, for non-operating foundations, the grant is not a qualifying distribution under section 4942. For all private foundations, the grant is a taxable expenditure under section 4945 if the private foundation does not exercise expenditure responsibility with respect to the grant.

Similarly, the PPA treats as a taxable distribution any distribution from a donor advised fund to (1) a Type III supporting organization that is not functionally integrated, or (2) any other supporting organization if the fund's donor or donor advisor (and any related parties) directly or indirectly controls a supported organization of the grantee if the sponsoring organization does not exercise expenditure responsibility with respect to such distribution.

Until further guidance is issued, for purposes of sections 4942, 4945, and 4966 (as applicable) a grantor, acting in good faith, may rely on information from the IRS Business Master File ("BMF") or the grantee's current IRS letter recognizing the grantee as exempt from federal income tax and indicating the grantee's public charity classification in determining whether the grantee is a public charity under section 509(a)(1), (2), or (3). In addition, a grantor, acting in good faith, may rely on a written representation from a grantee and specified documents as described in A. and B. below in determining whether the grantee is a Type I, Type II, or functionally integrated Type III supporting organization. The good faith requirement is not satisfied if the collected specified documents are inconsistent with the written representation. In each case, the grantor must verify that the grantee is listed in Publication 78, *Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986*, or obtain a copy of the current IRS letter recognizing the grantee as exempt from federal income tax.

A. To establish that a grantee is a Type I or a Type II supporting organization, a grantor, acting in good faith, may rely on a written representation signed by an officer, director or trustee of the grantee that the grantee is a Type I or Type II supporting organization, provided that:

- i. the representation describes how the grantee's officers, directors, or trustees are selected, and references any provisions in governing documents that establish a Type I (operated, supervised, or controlled by) or a Type II (supervised or controlled in connection with) relationship (as applicable) between the grantee and its supported organization(s); and
  - ii. the grantor collects and reviews copies of governing documents of the grantee (and, if relevant, of the supported organization(s)).
- B. To establish that a grantee is a functionally integrated Type III supporting organization a grantor, acting in good faith, may rely on a written representation signed by an officer, director or trustee of the grantee that the grantee is a functionally integrated Type III supporting organization, provided that:

- i. the grantee's representation identifies the one or more supported organizations with which the grantee is functionally integrated;
- ii. the grantor collects and reviews copies of governing documents of the grantee (and, if relevant, of the supported organization(s)), and any other documents that set forth the relationship of the grantee to its supported organizations, if such relationship is not reflected in the governing documents; and
- iii. the grantor collects and reviews a written representation signed by an officer, director or trustee of each of the supported organizations with which the grantee represents that it is functionally integrated describing the activities of the grantee and confirming, consistent with Section 3.02 of this notice, that but for the involvement of the grantee engaging in activities to perform the functions of, or to carry out the purposes of, the supported organization, the supported organiza-

tion would normally be engaged in those activities itself.

As an alternative to relying on a written representation from a grantee and specified documents as described in A. or B. above, a grantor may rely on a reasoned written opinion of counsel of either the grantor or the grantee concluding that the grantee is a Type I, Type II, or functionally integrated Type III supporting organization.

A private foundation considering a grant to a Type I, Type II, or functionally integrated Type III supporting organization may need to obtain a list of the grantee's supported organizations from the grantee to determine whether any of the supported organizations is controlled by disqualified persons of the private foundation. See Section 3.02, below, for the definition of control that may be used. If such control exists, the grant may not be a qualifying distribution and the foundation may be required to exercise expenditure responsibility with respect to the grant.

Similarly, a sponsoring organization considering a grant from a donor advised fund to a Type I, Type II, or functionally integrated Type III supporting organization may need to obtain a list of the grantee's supported organizations from the grantee to determine whether any of the supported organizations is controlled by the fund's donor or donor advisor (and any related parties). See Section 3.02, below, for the definition of control that may be used. If such control exists, the sponsoring organization will be required to exercise expenditure responsibility.

#### .02 Standards for Determining Control and for Defining "Functionally Integrated Type III Supporting Organization"

The Service and the Treasury Department intend to issue regulations regarding the meaning of "control" under sections 4942(g)(4)(A) and 4966(d)(4)(A) and the definition of a "functionally integrated Type III supporting organization" under section 4943(f)(5)(B). Until those regulations are issued, a grantor may rely on the standards described below for purposes of sections 4942, 4945 and 4966 (as applicable). Although regulations may adopt different standards from those referenced below, those regulations will apply to

grants made by private foundations and sponsoring organizations no sooner than the date that the regulations are proposed. The standards set forth below will apply with respect to any grants made prior to that date.

In determining whether a disqualified person with respect to a private foundation controls a supporting organization or one of its supported organizations, the control standards established in Treas. Reg. section 53.4942(a)-3(a)(3) will apply. Under these standards, an organization is controlled by one or more disqualified persons with respect to a foundation if any such persons may, by aggregating their votes or positions of authority, require the supporting or supported organization to make an expenditure, or prevent the supporting organization or the supported organization from making an expenditure, regardless of the method by which the control is exercised or exercisable.

Similarly, in determining whether a donor or donor advisor or a person related to a donor or donor advisor (as described in sections 4967(d) and 4958(f)(7)) of any donor advised fund controls a supported organization of the grantee, the control standards established in Treas. Reg. section 53.4942(a)-3(a)(3) will apply. Under these standards, a supported organization is controlled by one or more donor or donor advisors (and any related parties) of any donor advised fund if any such persons may, by aggregating their votes or positions of authority, require a supported organization to make an expenditure, or prevent a supported organization from making an expenditure, regardless of the method by which the control is exercised or exercisable.

Also, solely for purposes of a representation or opinion of counsel on which a grantor may rely, an organization will be considered a functionally integrated Type III supporting organization if it would meet the test set forth in Treas. Reg. section 1.509(a)-4(i)(3)(ii).

#### Section 4. APPLICABILITY DATE FOR EXCESS BENEFIT TRANSACTIONS BY SUPPORTING ORGANIZATIONS

As stated in Section 2.03, under section 4958(c), as amended by the PPA, any grant, loan, compensation, or other similar payment by a supporting organization to a

substantial contributor or a person related to a substantial contributor (as described in section 4958(c)(3)(B)), and any loan provided by a supporting organization to certain disqualified persons, is treated automatically as an excess benefit transaction, with the entire amount paid to the substantial contributor or disqualified person and those related to them treated as an excess benefit. The statute provides that this new rule applies to transactions occurring after July 25, 2006.

Treasury and the IRS understand that before the PPA was enacted on August 17, 2006, a supporting organization may have entered into a binding contract or other legal obligation to pay substantial contributors, or persons related to substantial contributors, for goods or services, or to provide a loan to a disqualified person. At the time the supporting organization entered into these contracts or other legal obligations, the payments required under them were not necessarily considered excess benefit transactions.

To address the change to the law under the PPA, the IRS will not consider any payment made pursuant to a written contract that was binding on August 17, 2006 as an excess benefit transaction under new section 4958(c)(3), provided that (1) such contract was binding at all times after August 17, 2006 and before payment is made, (2) the contract is not modified during such period, and (3) the payment under the contract is made on or before August 17, 2007. Termination of the contract does not constitute a modification for this purpose.

Similarly, relief is provided with respect to certain arrangements that are not governed by a binding written contract described in the preceding paragraph. With respect to any such arrangement involving an employment relationship in existence, or other legal obligation in effect, on August 17, 2006, the IRS will not consider any payment pursuant to such an arrangement as an excess benefit transaction under new section 4958(c)(3), provided that (1) the terms of such arrangement are not modified after August 17, 2006, (2) any services are performed and any goods are delivered as required by the arrangement no later than December 31, 2006, and (3) the payment is made no later than August 17, 2007. Termination of the arrangement does not constitute a modification for this purpose.

The applicability dates set forth in this section affect only liability for excise taxes under new section 4958(c)(3). Notwithstanding any relief provided in this section, if the supporting organization pays in excess of reasonable compensation for services or in excess of fair market value for goods, it jeopardizes continued tax exemption under section 501(c)(3), and the individuals receiving the payments may be subject to excise taxes under section 4958. In addition, any relief provided by this section does not alter whether a transaction is an excess benefit transaction under section 4958(c)(1).

#### Section 5. DONOR ADVISED FUNDS

New section 4966(c)(1)(A) imposes an excise tax on all distributions to natural persons from donor advised funds effective for taxable years beginning after August 17, 2006. However, pursuant to the authority described in Section 2.02 above, certain funds or accounts are excepted from the definition of donor advised fund.

##### .01 Employer-Sponsored Disaster Relief Assistance Programs

The definition of donor advised fund in section 4966(d)(2)(A) encompasses all funds and accounts owned or controlled by a sponsoring organization separately identified with reference to the contribution of a donor or donors for which the donor, or anyone appointed by the donor, has or reasonably expects to have, advisory privileges. Section 4966(d)(2)(C) grants the Secretary the authority to exempt a fund or account (a "fund") from the definition of donor advised fund.

Certain employers may establish disaster relief funds at a community foundation or other public charity to provide disaster relief grants to employees or their family members who are the victims of a major disaster. The sponsoring organization may receive contributions to these funds from both the employer and its employees. If these employer-sponsored disaster relief funds are within the definition of donor advised funds, any distribution from these funds to employees or their family members would be subject to excise tax under new section 4966.

Pursuant to the authority under 4966(d)(2)(C), the IRS and Department of Treasury exclude from the definition of

donor advised fund any employer-sponsored disaster relief fund that meets the following requirements:

- a. the fund serves a single identified charitable purpose, which is to provide relief from one or more qualified disasters within the meaning of section 139(c)(1), (2), or (3);<sup>1</sup>
- b. the fund serves a large or indefinite class (a "charitable class");
- c. recipients of grants from the fund are selected based on objective determinations of need;
- d. the selection of recipients of grants from the fund is made using either an independent selection committee or adequate substitute procedures to ensure that any benefit to the employer is incidental and tenuous. The selection committee is independent if a majority of the members of the committee consists of persons who are not in a position to exercise substantial influence over the affairs of the employer;
- e. no payment is made from the fund to or for the benefit of:
  - i. any director, officer, or trustee of the sponsoring organization of the fund, or
  - ii. members of the fund's selection committee; and
- f. the fund maintains adequate records that demonstrate the recipients' needs for the disaster relief assistance provided.

Satisfaction of these requirements does not affect the determination of whether any payments made from the fund might result in taxable compensation to the employees.

#### .02 Applicability Date for Educational Grants

As provided in Section 2.02 above, under new section 4966, distributions to natural persons from a donor advised fund

are subject to an excise tax. The PPA provides that section 4966 applies to certain distributions (including certain educational grants) made in taxable years beginning after August 17, 2006. The excise tax applies irrespective of whether the grant is excludable from the recipient's income as a scholarship or fellowship under section 117.

The IRS and Department of Treasury understand that certain educational grants may have been committed to an individual on or before the date of enactment, the payments of which extend beyond August 17, 2006. Pursuant to this notice, section 4966(c)(1)(A) shall not apply to payments made after August 17, 2006, with respect to an educational grant, if the payment is made pursuant to a grant commitment entered into on or before August 17, 2006. A commitment will be considered entered into on or before August 17, 2006, if:

- a. the educational grant was awarded on an objective and nondiscriminatory basis and is reasonable in amount in light of the purposes of the educational grant;
- b. the educational grant was not awarded to, nor are payments made pursuant to that grant, to a donor, donor advisor, or any person related to a donor or donor advisor (as described in sections 4967(d) and 4958(f)(7));
- c. on or before August 17, 2006: (1) (a) the name of the educational grant recipient, the nature of the educational grant, the amount of the educational grant, the date on which it was awarded, and the educational grant period, were entered on the records of the sponsoring organization or were otherwise adequately evidenced, or (b) notice of the payments to be received was communicated to the payee in writing, and (2) the sponsoring organization keeps a record of such information or notice for a period that ends no earlier than three years after the close of the taxable year in which the last payment is made under the grant; and

- d. there is no material change in the amount or in the conditions of the educational grant, such as a required reapplication for the grant.

Notwithstanding the above, section 4967 may apply to any grant that otherwise fits within the criteria specified. Thus, if a sponsoring organization makes an educational grant distribution that results in more than an incidental benefit to a donor, donor advisor, or a person related to a donor or donor advisor, the grant will be subject to excise tax.

#### Section 6. REQUEST FOR COMMENTS

The IRS and the Department of Treasury request comments regarding this notice and suggestions for future guidance with respect to changes in requirements for donor advised funds and supporting organizations or other changes affecting tax-exempt organizations under the PPA.

Comments should refer to Notice 2006-109 and be submitted by February 1, 2007, to:

Internal Revenue Service  
SE:T:EO:RA:G (Notice 2006-109)  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4:00 p.m. to:

SE:T:EO:RA:T:G (Notice 2006-109)  
Courier's Desk  
Internal Revenue Service  
1111 Constitution Ave., N.W.  
Washington, DC 20224

Alternatively, taxpayers may submit comments electronically to [eoppa@irs.gov](mailto:eoppa@irs.gov). Please include "Notice 2006-109" in the subject line of any electronic communications.

All comments will be available for public inspection and copying.

<sup>1</sup> Under sections 139(c)(1), (2) and (3), a qualified disaster means a disaster that results from a terroristic or military action (as defined in section 692(c)(2)), a Presidentially declared disaster (as defined in section 1033(h)(3)), and a disaster that results from an accident involving a common carrier or from any other event which the Secretary determines to be of a catastrophic nature.

## Section 7. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2050. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The requirements to collect information are in Sections 3 and 5 of this notice. Collecting the required information provides private foundations and sponsoring organizations of donor advised funds with relief from excise taxes imposed by sections 4942, 4945 and 4966 of the Code.

The estimated total annual reporting and/or recordkeeping burden is 612,294 hours.

The estimated annual burden per respondent/recordkeeper varies from 7 hours, 53 minutes to 9 hours, 48 minutes, depending on individual circumstances, with an estimated average of 8½ hours. The estimated total number of respondents and/or recordkeepers is 65,000.

The estimated frequency of collection of such information is occasional.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. section 6103.

## Section 8. DRAFTING INFORMATION

The principal authors of this notice are Mary Jo Salins and Robert Fontenrose of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this notice, contact Ms. Salins at (202) 283-9453, or Mr. Fontenrose at (202) 283-9484 (not a toll-free call).

## Recordkeeping Requirements for Charitable Contributions Made by Payroll Deduction

### Notice 2006-110

#### SECTION 1. PURPOSE

This notice provides guidance on how charitable contributions made by payroll deduction may meet the requirements of § 170(f)(17) of the Internal Revenue Code.

Taxpayers claiming charitable contribution deductions for cash, check, or other monetary gifts made in taxable years beginning after August 17, 2006, are subject to the new recordkeeping requirements of § 170(f)(17), as added by section 1217 of the Pension Protection Act of 2006, P.L. 109-280, 120 Stat. 780 (2006) (PPA). To substantiate a deduction, § 170(f)(17) requires a taxpayer to maintain a bank record or a written communication from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution. For a charitable contribution made by payroll deduction, a pay stub, Form W-2, or other employer-furnished document that sets forth the amount withheld for payment to a donee organization, along with a pledge card prepared by or at the direction of the donee organization, will be deemed to be a "written communication from the donee organization" that satisfies the requirements of § 170(f)(17).

The Internal Revenue Service and the Treasury Department expect to issue regulations under § 170 incorporating the recordkeeping requirements of § 170(f)(17). Taxpayers making charitable contributions by payroll deduction may rely on this notice to comply with the new requirements until those regulations are effective.

#### SECTION 2. BACKGROUND

Section 170 generally allows a deduction, subject to certain limitations, for any charitable contribution (as defined in § 170(c)) payment of which is made during the taxable year. For any contribution of \$250 or more, § 170(f)(8) provides that no deduction is allowed unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organ-

ization. The contemporaneous written acknowledgment must contain the amount of cash and a description of any property other than cash contributed; a statement whether the donee organization provided any goods or services in consideration for the contribution; and a description and good faith estimate of the value of any goods or services provided in consideration for the contribution, or, if the goods or services consist solely of intangible religious benefits, a statement to that effect.

Section 1.170A-13(f)(11)(i) of the Income Tax Regulations provides that a contribution made by means of withholding from a taxpayer's wages and payment by the taxpayer's employer to a donee organization (*i.e.*, a contribution made by payroll deduction) may be substantiated, for purposes of § 170(f)(8), by both: (1) a pay stub, Form W-2, or other document furnished by the employer that sets forth the amount withheld by the employer for the purpose of payment to a donee organization; and (2) a pledge card or other document prepared by or at the direction of the donee organization that includes a statement to the effect that the organization does not provide goods or services in whole or partial consideration for any contribution made to the organization by payroll deduction. Section 1.170A-13(f)(11)(ii) provides that the contribution amount withheld from each payment of wages to a taxpayer is treated as a separate contribution for purposes of applying the \$250 threshold in § 170(f)(8) to charitable contributions made by payroll deduction.

Section 1.170A-13(f)(12) provides, in relevant part, that an organization described in § 170(c), or an organization described in 5 CFR 950.105 (a Principal Combined Fund Organization for purposes of the Combined Federal Campaign) and acting in that capacity, that receives a payment made as a contribution is treated as a donee organization solely for purposes of § 170(f)(8), even if the organization (pursuant to the donor's instructions or otherwise) distributes the amount received to one or more organizations described in § 170(c).

Section 1217 of the PPA adds § 170(f)(17), effective for contributions made in taxable years beginning after August 17, 2006. Section 170(f)(17) provides that no deduction is allowed under