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April 13, 2007

Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20004

Submitted Via E-mail

Re: Notice 2007-21

To Whom It May Concern:

The American Bankers Association (ABA) appreciates the opportunity to respond to a request for comments issued by the Department of Treasury and the Internal Revenue Service (hereinafter collectively referred to as Agencies) regarding, among other things, Section 509 (a) supporting organizations. The Agencies are conducting a study of these organizations, as required under section 1226 of the Pension Protection Act (PPA), Pub. L. No. 109-280, 120 Stat. 780 (2006). We would like to share the experiences of our member banks who serve as trustees for these types of trusts.

The ABA, on behalf of the more than two million men and women working in the nation's banks, represents every category of banking institution in this rapidly changing industry. The ABA membership includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks, making it the largest banking trade association in the country. Nearly 2,000 banking institutions offer trust and fiduciary services for over 19 million accounts.

A supporting organization is a charitable organization that is classified as a public charity as a result of the supporting organization's close relationship to one or more publicly supported organizations, as that term is defined under the Internal Revenue Code (IRC). The PPA added several provisions to the IRC to improve the accountability of supporting organizations. The new rules include excise taxes on certain payments; limitations on transactions between a supported organization and certain donors; a grant of regulatory authority to adopt a new payout requirement; limits on the permitted business holding of certain supporting organizations, and new organizational, operational and reporting requirements.

The PPA also called for the Secretary of the Treasury to study the organization and operation of donor advised funds and supporting organizations. Specifically, Treasury was asked to study whether the deductions allowed for contributions to sponsoring organizations of donor adviser funds or supporting organizations were appropriate; whether donor advised funds should be required to distribute a specified amount; whether the ability of donors to donor advised funds or supporting organizations to retain certain rights relating to the funds was appropriate, and whether any of these issues should also apply to other forms of charities or charitable donations. Donor advised funds are defined for the first time as a result of the PPA. New section 4966(d)(2) was added to define a donor advised fund as a fund or account that is owned and controlled by a sponsoring organization, separately identified by reference to contributions of a donor or donors, and that donor or donors reasonably expect to have advisory privileges with respect to the distribution or investment of the assets in the fund.

In discussing these types of charitable entities, one should note that Type III Supporting Organizations and donor advised funds are very different from each other. We disagree with the decision of Congress to link these two types of entities together, since the rules that apply to each, as well as the uses of each, are very different. Our comments focus on the system of oversight currently in place for Type III Supporting Organizations, which protects beneficiaries of these charitable organizations from any potential abuse.

Type III Supporting Organizations

Type III Supporting Organizations, for which many of our members serve as trustees, perform many legitimate and valuable functions in support of public charities. Supporting organizations function in a complementary capacity to that of the supported organization insofar as supporting organizations allow donors an opportunity to provide measured and continuing support and guidance of one or more public charities. For example, one of our members - a typical large Midwest financial institution that serves as corporate trustee for approximately 350 Type III Supporting Organizations - reports that 95% of these trusts made substantial annual contributions to local charities in 6 Midwestern states. (The other 5% was for large public charities.) The types of cultural, educational and religious organizations that benefited from these contributions included children's homes, old age homes, hospitals, local hunger programs, food banks, Christmas gifts to needy children, shoes for children, churches, programs sponsored by YMCAs and YWCAs and other types of family services programs. In 2004, these 350 supporting organizations distributed over $24 million to local charities to provide for programs and services that might not otherwise have been available to the communities.

Supporting organizations are part of an existing regime of checks and balances that permits a donor to support a charitable enterprise in a responsible way. There are multiple levels of reporting and oversight in place to regulate Type III Supporting Organizations. An extensive and longstanding body of trust law imposes strict fiduciary responsibility on trustees with respect to management, investments and distributions of trusts. Furthermore, trusts are overseen by the Courts.

Another layer of oversight is provided by current tax law. For example, Type III Supporting Organizations are currently required to file a Form 990 annually. This requirement ensures transparency in that certain important information is provided to the government and is made available to the public. Further, the PPA has added other provisions to improve the accountability of these organizations.

A third level of oversight is provided by various state and federal regulatory agencies that supervise banks serving as trustees. To serve as trustee, banks must be chartered under state trust law or section 92(a) of the National Banking Act. As such, trustee banks are subject to federal and state fiduciary laws.

In addition, bank trust departments and trust companies are regularly examined by the banking regulators (the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, as well as the state supervisory agencies) for compliance with fiduciary standards and principles. These examinations occur every 12-18 months, or more often if deemed necessary. When examining a bank, the examiners look for compliance with banking laws and manuals, fiduciary standards and principles, and any other guidance, including compliance with tax laws.

As a result, significant oversight is in place for Type III Supporting Organizations to protect beneficiaries from any potential abuse. We would urge the Agencies to recognize this fact, as well as the benefits provided by these trusts, and not to impair or eliminate the valuable benefits these entities provide local communities.

Conclusion

Supporting organizations provide many benefits, as described above. They allow the various charities to devote more resources to the charitable activities to which they are dedicated than they might otherwise be able to. We are concerned that without the ability to provide support to public charities through a supporting organization, many donors would reduce their support for important public charities, including many smaller charitable organizations targeted to local communities.

Please do not hesitate to contact the undersigned should you wish to discuss this matter further.

Sincerely,

Lisa J Bleier

Lisa J. Bleier