NASCO

National Association of State Charity Officials

February 4, 2022

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2021-56) Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044
Submitted electronically via www.regulations.gov

RE: NASCO Comments to Notice 2021-56

To Whom It May Concern:

The Board of Directors of the National Association of State Charity Officials (NASCO)[1] respectfully submits this letter in response to the Notice 2021-56 invitation to comment on standards that a limited liability company (LLC) must meet to obtain recognition as tax-exempt under section 501(a) and described in section 501(c)(3) of the Internal Revenue Code.

We appreciate the opportunity to engage on this important topic. State regulators play a unique and key role in overseeing charitable assets, and effective and efficient state regulation of charities is essential to promoting public trust and confidence in the sector. States' approaches to charitable LLCs vary widely. With this context, and given the interstate nature of charitable activity, the use of the LLC form to operate charities - even where permitted under governing state law - can introduce unnecessary hurdles and complications in the efficient oversight of charitable assets and governance over the operators.

NASCO is an association of state charity officials, including state Attorneys General offices, Secretaries of State offices, and other state offices charged with preventing the misuse of charitable assets, ensuring that trustees of charitable trusts fulfill their fiduciary duties, and enabling donors to make informed choices about which charitable causes to support. Attorneys General are charged with the unique and important duty of defending the public's interest in

[1] This letter reflects the views of the NASCO board. It does not necessarily reflect the views of any individual Attorney General, Secretary of State, or other state official.

charitable assets and protecting the hundreds of billions of charitable assets donated every year. In most states, only the Attorney General has the power and standing to intervene and investigate misappropriation of charitable funds, breaches of fiduciary duty and self-dealing by fiduciaries, and fraud in charitable solicitations. In some states, Attorneys General, Secretaries of State and other state offices promote compliance with statutory filing requirements, supporting good charitable fiduciary practices and consumer education. All our member states and agencies work toward the goal of upholding the integrity of the vitally important charitable sector through ensuring transparency and accountability.

We support the standards that the Department of Treasury and the Internal Revenue Service currently apply to LLCs seeking tax-exempt status as documented in Section 3 of Notice 2021-56. We request that as these standards are executed and any revisions are considered, the Department of Treasury and the IRS consider the importance of state oversight over public charities and the variation of state law applicable to state charity oversight of LLCs and formation of charitable LLCs.

As Notice 2021-56 indicates, charitable status and corporate form are creatures of state law. State corporate law may provide for opportunities for state charity regulators to oversee life cycle events of public charities, such as notice upon formation, major asset sales, mergers and dissolutions. State charity oversight over these fundamental transactions helps ensure *inter alia* that charities have appropriate governance policies and procedures in place, that assets are sold to for-profit entities for fair market value, and that charitable assets are distributed upon dissolution in a manner consistent with state law (e.g., to another charity to use for similar purposes).

Much of state oversight complements IRS rules for tax-exempt organizations. To the extent that state LLC statutes do not provide notifications to state charity officials that are consistent with notifications required under state nonprofit corporations law or trust law, any increase in the number of charitable LLCs formed could result in fewer opportunities for state charity regulators to execute their duties and ultimately risk harm to the public's trust in charitable organizations if, as a result, misconduct goes undetected. It would serve our collective goals of transparency and accountability for any tax-exempt standards for LLCs to support similar notifications to state Attorneys General as those that nonprofit corporations have under state law.

Again, we appreciate the opportunity to provide comments on standards for Section 501(c)(3) status of limited liability companies. If you have questions about any particular state's application of its LLC statute to the issues referenced in your notice, we urge you to reach out to the individual state charity regulator office. We are happy to provide contact information if helpful. And please feel free to reach out if you would like to discuss.

[Signature on next page]

Sincerely,

*Yael Fuchs*

Yael Fuchs
President, National Association of State
Charity Officials (NASCO)