



Changes That May Impact Donor-Advised Funds or your Private Foundation

Tina A. Myers, CFP®, CPA/PFS, MTax, AEP®, Director of Financial Planning

On June 9, 2021, Senators Chuck Grassley (R-IA) and Angus King (D-ME) introduced the Accelerating Charitable Efforts (ACE) Act. If enacted, the legislation would heighten transparency and expedite the pace of resources flowing from donor-advised funds (DAFs) and private foundations to working charities.

Introduced in the 1930s, the use of DAFs did not begin to take off until the 1990s. Since then, DAFs have grown exponentially as convenient, streamlined vehicles for individual donors to invest in communities strategically. The popularity of DAFs has risen further due to the changes brought about by the Tax Cuts and Jobs Act passed in 2017 that resulted in fewer taxpayers benefiting from their charitable gifts and more promotion of the bunching strategy for charitable gifting. However, policymakers have been debating the need for further regulation of DAFs since the 1990s.

Donor-Advised Fund Provisions of the ACE Act

The DAF changes would attempt to address a timing mismatch perceived between the income tax deduction and the production of charitable goods and services.

New DAF categories created. The ACE Act would create different categories - Qualified DAFs, Qualified Community Foundation DAFs and Nonqualified DAFs.

Limitations on Charitable Deduction for DAF

Contributions. For contributions to nonqualified DAFs, there is no deduction until the sponsoring organization sells any donated property, cash contributions or proceeds from the sale of donated property are distributed to charities, and the amount of the deduction matches that of the distribution.

For contributions of non-publicly traded assets to a qualified DAF or qualified community foundation DAF, no charitable deduction is allowed until the sponsoring organization sells the asset and is limited to the amount of gross sales proceeds.

No deduction is allowed for the contributions described above unless a taxpayer receives a contemporaneous written acknowledgment of the sale or distribution amount.

Undistributed contributions are subject to a 50% excise tax in year 15 for qualified DAFs and in year 50 for nonqualified DAFs.

Additional Requirements for Qualified Community

Foundation DAFs. DAF accounts established at qualified community foundations would be required to distribute at least 5% of their value each year. An exemption is made for any such accounts having a value of \$1 million or less.

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Treatment of DAF Contributions to Public Charities.

As proposed, for determining a recipient charity's level of public support, contributions from a DAF would be treated as received from one person, which may include the donor of the DAF if identified by the sponsoring organization. In contrast, under current law, contributions from a DAF to a charity are treated as made by other public charities for the purposes of determining the recipient charity's level of public support.

Private Foundation Provisions of the ACE Act

If enacted, the proposed legislation would introduce several changes that would affect private foundations. To calculate compliance with the private foundation annual payout requirement of 5%, the following expenses are disallowed:

- Administrative expenses paid to a disqualified person, including certain family members and significant contributors.

Distributions made to DAFs.

To calculate private foundation excise tax obligations, no excise tax is owed if:

- The foundation pays out 7% or more of its value in any given year, or
- The foundation's governing documents specify a duration for the foundation of not more than 25 years.

Private foundations are required to include information about distributions to DAFs on their annual form 990, including the amount, the name of the sponsoring organization, and any donation advice included.

This disclosure would need to be made on any returns filed after December 31, 2021.

Effective Date if Passed

If passed, the proposals affecting the availability of the charitable deduction for contributions to DAFs and the proposal regarding the treatment of contributions from DAFs for purposes of the public support test would apply to contributions made after the date of enactment.

The changes regarding the treatment of private foundation administrative expenses would apply to tax years beginning after December 31, 2021, while the changes affecting private foundation distributions to DAFs would apply to distributions made after December 31, 2021, and returns required to be filed after December 31, 2021. The remaining proposals would apply to tax years beginning after the date of enactment.

Outlook

Prior proposals to accelerate distributions from DAFs and private foundations were considered controversial and have divided the charitable sector. Proponents of changes argue that increased transparency is needed to build public trust and improve the timely flow of resources to working charities. Opponents argue that changes may negatively impact the administrative flexibility required to invest thoughtfully in communities.

Experiences resulting from the pandemic may have reshaped views on the role of DAFs and private foundations in the charitable sector. As a result, any proposed legislation may garner more support than in the past. We will continue to monitor the legislation and keep you apprised of developments.

For more information, please contact your Key Private Bank Advisor.

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