

Senate Bill Proposes Revisions to Rules Governing Donor Advised Funds and Private Foundations

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On June 9, 2021, U.S. Senators Angus King (I-Maine) and Chuck Grassley (R-Iowa) introduced the [Accelerating Charitable Efforts Act](#) (the "Act") which, if adopted, would revise current laws dictating the pace and transparency of resources flowing from private foundations and donor advised funds ("DAFs") through a series of incentives and penalties. A [joint press release](#) states that the purpose of the Act is to ensure that "philanthropic funds are made available to working charities within a reasonable period of time."

Generally, the Act would impose: limitations on the deductibility of certain contributions to DAFs; excise taxes on portions of contributions not distributed by certain types of DAFs within a requisite period of time; restrictions on what may be treated as a qualifying distribution for private foundations; and, for purposes of the public support tests for public charities, limitations on when a public charity may treat support from a DAF as so-called "public support."

Donor Advised Funds

A DAF is a fund or account that is maintained and operated by a section 501(c)(3) organization referred to as a sponsoring organization. Each account is composed of contributions made by individual donors. Once the donation is made, the sponsoring organization has legal control over it, but the donor retains advisory privileges with respect to the distribution of funds and the investment of assets in the account. Under current law, there is no time limit on a donor's advisory privileges and a donor can generally claim a charitable contribution deduction in the tax year in which they make a contribution to a DAF. Unlike private foundations, DAFs are not required to meet annual distribution requirements.

The Act would divide DAFs into three different categories: (1) Qualified DAFs, (2) Qualified Community Foundation DAFs, and (3) Nonqualified DAFs. DAFs would fall under one of these three categories based on factors established in the Act, including the duration of advisory privileges conferred upon donors by the DAF sponsor and whether the sponsoring charity is a geographically limited community foundation or a DAF sponsor with a national issue area focus.

The Act would create varying restrictions on the deductibility of contributions to each of the three types of DAF. For example, contributions to a Qualified DAF would be deductible only if the donor identifies a preferred organization to receive contributions before the donor's advisory privilege terminates, and a contribution to a Nonqualified DAF would not be deductible as a charitable contribution until the DAF distributes the amount of the contribution and, in the case of a contribution of a noncash asset, until the contributed asset is sold for cash.

In some circumstances, the Act would also create a new excise tax in an amount of 50% of any portion of a contribution not distributed within a requisite period of time.

Private Foundations

Under current law, a private grant-making foundation is required to distribute annually, through grants and grant related expenses, at least 5% of the total fair market value of its noncharitable-use assets from the preceding year in order to avoid excise taxes.

The Act would modify the rules applicable to private foundations, disallowing distributions made to DAFs and administrative expenses that are paid to disqualified persons of the private foundation from being treated as qualifying distributions, with some limited exceptions.

The Act would also exempt from the annual 1.39% excise tax those foundations with a limited duration or which make distributions in excess of 7%.

Public Charities

There are two public support tests for public charities: one for organizations described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Internal Revenue Code, and one for organizations described in section 509(a)(2). Both tests measure public support over a five-year period.

Generally, the 509(a)(1) test requires that the organization receive at least one-third of its support from contributions from the general public, and the 509(a)(2) test requires that the organization receive more than one-third of its support from contributions from the general public and/or from gross receipts from activities related to its tax-exempt purposes. For purposes of these tests, contributions to a public charity from a DAF constitute support from the general public. Furthermore, under current law, a DAF can be used to facilitate anonymous gifting, as the ultimate distribution comes from the charitable organization sponsoring the DAF, which does not have to disclose the details regarding the source.

Under the Act, for purposes of applying the public support tests of section 509(a)(2) and section 170(b)(1)(A)(vi), when a contribution is made by a DAF sponsoring organization, and the original donor is not identified by the sponsoring organization, the support would not be treated as public support. Instead, the support would be aggregated with all unidentified amounts coming from all DAF sponsoring organizations as if a single person provided such support, lessening the impact of these contributions on the public support test. If the sponsoring organization identifies the original donor, then the support would be treated as provided by such donor.

Effective Date

The proposed rules for restrictions on the deductibility of contributions to DAFs would be effective after the date of enactment of the Act. The effective date for reforms relating to entities, including DAF sponsors, private foundations, and public charities, are with respect to tax years beginning after December 31, 2021.

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