



Internal Revenue Service
CC:PA:01:PR (REG-142338-07), Room 5203
Internal Revenue Service
P.O. Box 7604, Ben Franklin Station
Washington, D.C. 20044

Re: REG-142338-07, Taxes on Taxable Distributions from Donor Advised Funds Under Section 4966

Dear Commissioner Danny Werfel:

On behalf of the Association of Fundraising Professionals (AFP), we write to provide the Treasury Department and the Internal Revenue Service with comments to the proposed regulations regarding excise taxes on taxable distributions made by a sponsoring organization from a donor advised fund (DAF) and on the agreement of certain fund managers to the making of such distributions.

The Association of Fundraising Professionals is the professional association of individuals and organizations that generate philanthropic support for a wide variety of charitable organizations. Founded in 1960, AFP advances philanthropy through its 27,000+ members in more than 180 professional chapters around the world. AFP's individual and organizational members raise more than \$115 billion annually for their organizations.

AFP's vision statement is "To stimulate a world of generosity and positive social good through fundraising best practice." We are in support of mechanisms, processes and incentives that stimulate social good through giving and volunteering, so long as they are done ethically, effectively and through the lens of IDEA — inclusion, diversity, equity, and access.

So that it can promote stewardship, donor trust and effective and ethical fundraising, AFP requires members to comply with a Code of Ethical Principles and Standards that is designed to provide concrete guidelines for fundraising professionals in philanthropic organizations and is the only enforced code in the profession. AFP also encourages research on fundraising and philanthropy, including the Fundraising Effectiveness Project and supports legislation and regulations that encourage philanthropic giving and ethical fundraising.

On behalf of AFP and our members, we appreciate the opportunity to provide comments on the proposed regulations.

Donor-Advised Funds (DAFs)

Our focus on ethics means that advocating and lobbying for legislation and regulations that help ensure effectiveness, fairness, and remove the potential for abuse and self-gain are a part of our work. In practice, AFP believe DAFs can help stimulate generosity and positive social good. It is simplistic to say that if people decide not to give to a DAF, they will just give the same amount in a different way. People are looking to give to and support charities, and to be charitable in a variety of ways, they need to see



different options and solutions. A DAF could be a good solution for some individuals who want to give to charity but not all at once. Setting aside funds in a DAF for charity allows individuals to then take their time, ponder their charitable intent and understand how they would most like to make an impact. Fundraisers want to empower donors, and donors want options. DAFs are an important option, one specific way that donors can support charity, out of many.

That said, AFP is open to regulatory changes to DAFs. Overall, AFP is aware of the concern about the potential for abuse in some cases, particularly with some funds just sitting in DAFs and never actually reaching the community. AFP supports empowering donors and giving donors choices in their giving strategy, and regulatory changes need to meet that high bar.

Before commenting on this regulatory proposal, it is worth noting that for self-regulation, the Council on Foundations has an accreditation program for community foundations which addresses DAFs. Some commercial DAFs have rules and standards about when a fund must give to a charity, especially if it has been inactive for a certain amount of time. National Standards requires a fund activity policy that requires at least one grant every three years. There are also a few different initiatives within the sector working to encourage greater giving from DAFs.

We appreciate the intent of these initial proposed regulations to provide more clarity on proposed definitions for who or what qualifies as a DAF, donor, and donor-advisor, as well as exceptions to the definition of a donor advised fund. The draft regulations also propose an "anti-abuse rule" meant to deter donors from using DAFs to avoid excise taxes on donations to individuals. We understand that a national study on DAFs will be released shortly by the Donor Advised Fund Research Collaborative to provide reliable empirical data on DAFs. We expect this comprehensive data to be helpful to policymakers and regulators considering future policy changes on DAFs.

AFP is concerned about the proposed DAF definition having a negative impact on giving. Some other types of funds not currently considered DAFs could be considered DAFs under the new proposal, including certain scholarships, field of interest funds, fiscal sponsorships, giving circles, and disaster relief funds – especially those that use advisory committee models to make grant decisions. For example, under the proposal, if a field of interest fund gets reclassified as a DAF, then it is no longer eligible to be used for Qualified Charitable Distributions, an important non-cash form of giving. The same question has come up about giving circles being impacted as well. Community foundations would need to examine all their fund types and advisory committee models carefully to understand if/where they could be vulnerable to having non-DAFs suddenly be considered and regulated as DAFs.

This is of particular concern now when giving is already in decline. According to the 2023 Giving USA Report done by the Indiana University Lilly Family School of Philanthropy, total charitable giving declined by 10.5 percent in 2022 when adjusted for inflation. This is the largest year-over-year decline in total dollars given to charity since Giving USA began tracking in 1956. Charitable giving fell as a percentage of GDP to its lowest level since 2013. More recent quarterly data signals this troubling downturn could continue; AFP's Fundraising Effectiveness Project found charitable giving declined and the number of donors fell in the first three quarters of 2023 compared to the same period in 2022.



In addition to the impact on giving, other issues of concern are the two slightly different rules for advisory committees which could be confusing (e.g., unclear what is meant by the term “recommend”). For community foundations, the proposed regulations would expand the definition of a donor-advisor to include any investment manager that advises or manages both the personal and DAF assets of a donor, thus prohibiting those advisors from receiving any fees from managing the DAF. This will significantly disrupt if not eliminate the successful programs many community foundations offer that allow donors to use their own investment managers on DAFs of a certain size.

We are concerned that classifying a personal investment advisor as a donor advisor may cause a chilling effect. Finally, there are concerns that the effective date is too soon, and the proposal does not address whether existing funds will be grandfathered.

AFP agrees with our partners at the Council on Foundations that the proposal to provide equivalency determination for foreign charitable grants is positive. Another part of the proposal we support is the clarification of exemptions for scholarship funds and disaster relief funds, as well as funds supporting single charities and government entities.

Community foundations will need to examine all their fund types and advisory committee models carefully to understand if/where they could be vulnerable to having non-DAFs suddenly be considered and regulated as DAFs. Specifically, disaster relief funds that support relief/recovery from a disaster that does not receive a government declaration could be considered DAFs under these new regs if the advisory committee parameters in the proposed regs are not followed properly.

Conclusion

As Treasury and IRS continue to work towards providing further guidance for donor-advised funds, AFP looks forward to being a resource. Thank you for the opportunity to provide these comments and be a partner in supporting policies that help increase generosity and the ability of charities to deliver their programs.

Please contact David Sigman, CFO & VP, Business Operations with AFP, at david.sigman@afpglobal.org with any questions.

Respectfully,

A handwritten signature in blue ink that reads "Mike Geiger". The signature is written in a cursive, flowing style.

Mike Geiger, MBA, CPA
President and CEO