

# DAF Discussion: Summarized Questions

**Updated: December 4, 2023**

On November 30, 2023, the Council hosted a pop-up conversation to walk through the proposed regulations and answer questions. More than 80 questions were submitted. Below are common themes among the questions with responses drafted by Ben McDearmon, Director of Legal Resources at the Council.

Individuals and organizations can submit comments on the proposed rules by January 16, 2024. The Council's Government Affairs and Legal Resources team will be submitting comments based on the feedback, insights, and reactions of our membership. To help inform our comments, please reach out to [Eddie Shimkus](#) or [Jenn Holcomb](#).

## **Question 1: Can government entities, like public universities, donate to a DAF under the proposed exemption?**

Under the current proposal, these entities would be exempt from the definition of a "donor" under 4966, so funds set up exclusively by those entities would not qualify as a DAF, even though they might function similarly. These organizations can still contribute to DAFs established by other donors, but those funds would not qualify for this new exception to the definition of a DAF created by the proposed regulations.

## **Question 2: Does a gift to a community foundation without specifying a fund but requesting gifts to charities qualify as a DAF?**

If the donor retains any advisory privileges, such as the ability to recommend recipients or amounts of grants, then the fund is likely a DAF.

## **Question 3: Can advisory committee members for a DAF only be appointed by the donor with community foundation approval?**

These proposed regulations provide some additional clarification around the appointment of committees and other exceptions to the definition of donor-advisors that help determine whether or not a fund should be considered a DAF. However, the traditional DAF model where donors appoint themselves or other individuals to serve as advisors to the fund would not change under these regulations. Most existing DAFs would continue to function much like they have for the last 17 years since the Pension Protection Act.

## **Question 4: How do proposed rules affect a 501(c)(3) setting up a fund for individual donations?**

A fund established by a 501(c)(3) public charity over which only that organization has advisory privileges would not be considered a DAF, even if the fund receives contributions from other individual donors.

**Question 5: Can donor-recommended investment advisors continue under the proposed changes?**

Under this proposal, donor-recommended investment advisor programs at many sponsoring organizations would likely need to be revised significantly. Investment advisors who manage both the DAF's investments and personal investments of the donor would be ineligible to receive compensation for managing the DAF, so donor-recommended investment advisors would likely need to choose between managing the DAF and personal assets, or they would need to be willing to manage the DAF without receiving a fee. The only exception to this is where the investment advisor provides services to the sponsoring organization as a whole rather than to just the DAF.

**Question 6: Elaborate on the implications of the excise tax in the proposal; Highlight what is new in these regulations and what is different from what the current regs are.**

There are no current regulations under section 4966, so these proposed regulations would be the first. They would not implement any significant changes to the basic tax framework beyond what is provided in the existing statutory language: an excise tax of 20% of the amount of the taxable distribution will be imposed on the sponsoring organization for each taxable distribution, and a 5% excise tax (capped at \$10,000 per taxable distribution) may be imposed on any fund manager who agreed to the making of the taxable distribution knowing that it would be a taxable distribution. However, the proposed regulations do clarify what "agreement" and "knowledge" mean for purposes of determining whether a fund manager is subject to the 5% excise tax on fund management, and they clarify that if multiple fund managers are involved they are each jointly and severally liable for the excise tax

**Question 7: Can community foundations agree to DAFs where the donor's original investment advisor continues to earn a fee if they only manage the DAF account?**

Yes, under this proposal if the investment advisor manages only the DAF that would be allowed because the investment advisor would not fall under the regulations' definition of "Personal Investment Advisors". If the investment advisor manages the donor's personal assets as well as the DAF, then the investment advisor would fall under the proposed regulations' definition of "Personal Investment Advisors".

**Question 8: What concerns exist regarding the impact on investment advisor arrangements?**

See #5 above for background, but if these proposed regulations are adopted as written, sponsoring organization with donor-recommended investment advisor programs will need to take steps to ensure that donor-recommended advisors are not managing investments for both the DAF and the donor's personal assets unless the advisor is providing services to the organization as a whole; otherwise, the investment advisor cannot receive compensation from the DAF or will need to choose between managing the DAF or personal investments.

**Question 9: Can a commercial DAF manage assets with different in-house investment managers, and how does this affect big banks managing both personal and DAF assets?**

This is not entirely clear from the proposed regulations, but our understanding is that different investment advisors working for the same firm could manage the investments of DAF assets and the donor's personal assets without being considered a "Personal Investment Advisor" under the regulations.

**Question 10: What is "significant" in terms of a contribution?**

The proposed regulations do not define "significant contributor". Treasury is seeking comments to help determine what should constitute a significant contributor under these rules.