

# Public Hearing on Proposed Regulations: Taxes on Taxable Distributions from Donor Advised Funds Under Section 4966

**IRS Auditorium/Teleconference | May 6 – 7, 2024**

## Summary

On May 6 and 7, the Department of the Treasury and the Internal Revenue Service convened a public hearing on the November 2023 proposed donor-advised fund regulations. More than 40 community foundations, DAF sponsors, and other stakeholders provided testimony on the importance of DAFs to the philanthropic ecosystem and the effects the proposed rule would have on philanthropy, charitable giving, and communities across the country.

With Council members' work as a guide, [Jenn Holcomb offered testimony](#) that highlighted concerns about the proposed rule's broad definition of a DAF, treatment of donors' personal investment advisors as donor advisors, and the proposal's retroactive applicability date. The Council's testimony also detailed the challenge of reviewing thousands of fund agreements and other contracts, in addition to making necessary compliance changes, all without interrupting critical work.

Over the course of both days, participants echoed concerns about those provisions and others. They provided clear, real-world examples of how the proposed regulations could undermine efforts that DAFs, giving circles, and field of interest funds contribute to, chill giving, turn away donors, and damage the philanthropic sector. Testimony also provided officials with insight into how community foundations and sponsoring organizations work with financial advisors, describing processes foundations use to vet, review, and oversee financial advisors to avoid or address issues or conflicts. Participants also demonstrated the value of DAFs, and how resources move into communities with many presenters sharing data about total grantmaking from DAFs and payout rates.

The hearing re-emphasized for Treasury and IRS the immense interest and concern that exists surrounding its proposal. It also demonstrated to officials that DAFs are more than just a giving tool. Fueled by donors who give to causes that are most important to them, DAFs are an important way to support and maintain the work happening in communities across the country.

## Statements by Council Members

Below are quotes from testimony delivered by Council members highlighting how the proposed regulations would impact their funds and the communities they serve.

### **Deborah L. Wilkerson, Greater Kansas City Community Foundation**

"I went to work at the Community Foundation in the late 90s. DAFs had been around a long time, but not very well known. My job was to explain them over and over. I would explain how the gift is irrevocable. We own it, but you, as the donor, get to advise all grants. They got that. The big hurdle was the investments. Donors preferred private foundations over DAFs because they wanted their investment advisor to stay involved. They trust their investment advisors for everything. As a community foundation, we didn't have access to endless investment options. So we spent years building systems and infrastructure to carefully hire and oversee investment advisors following the rules that Congress laid out in 2006. We pay them reasonably and fairly because we need their full attention. Never have we seen an investment advisor suggest that a donor not grant, or even slow down the process. They liquidate and get us cash quickly for grants whenever we ask. Our numbers prove it. Our DAFs managed by investment advisors have a payout rate around 15%. That's three times what donors would have granted through a private foundation."

### **Rose Bradshaw, North Texas Community Foundation**

"Donor-advised funds are a critical tool in our toolbox, and investment advisers are key partners helping us to grow assets for our community. They introduce us to their clients, then help charitable dollars benefit from investment performance and the magic of compound interest, which Einstein called the eighth wonder of the world. Here's how that works for our community's benefit. In 1985, Ella McFadden gave our foundation \$12 million, and she designated it to benefit 13 nonprofit organizations benefiting our community. Those funds are invested, making charities the beneficiary of market performance and compound interest. And fast-forward 40 years later. It turns out Einstein was right again. Those nonprofits have received \$39 million in grants, and the fund stands at \$40 million, making it a perpetual source of support for our community."

### **Andrea Saenz, Chicago Community Trust**

"As a community foundation, The Chicago Community Trust often serves as a backbone for collective philanthropic efforts where foundations, individual donors, and community members come together to address issues of shared concern. These collaborative funding initiatives are unique to community foundations. I'll share an example. At the height of the pandemic, the Trust established a collaborative

initiative called We Rise Together with a goal of ensuring communities hit hardest by COVID-19 could recover from its twin economic and public health crises. Through a combination of gifts from private foundations, corporations, and individual donors, we raised \$54 million for the effort. This amount includes \$23 million in gifts from Donor Advised Funds. Within three years, \$46 million or 85% of the funds, have been granted to 40 community projects, each with visible and quantifiable benefits for vulnerable Chicago communities."

### **Amy Freitag, New York Community Trust**

"In 1931, more than 90 years ago, when Francois Barstow and her husband set up the first-ever donor-advised fund at The Trust, she and her husband intended to leave funds in their estate for the betterment of New York, but they also wanted to suggest grants during their lifetime. Fast forward to today, three important features of the DAF have not changed since the Barstows opened their fund: (1) Donors enjoy the ability to be part of the process that transforms their generosity into grantmaking. (2) The Trust, as the DAF sponsor, retains control over the assets in the DAF. We manage the finances and the grantmaking from our DAFs, just as we do our other types of funds. (3) DAFs can become a permanent part of New York's philanthropic landscape: The Barstows' fund became part of our endowment at their deaths, which means our grantmaking staff can deploy those funds year after year to meet the needs in our community. That is a powerful legacy."

### **Keith Burwell, Greater Toledo Community Foundation**

"...if adopted under the Regulations' broad definition of "donor-advised fund," many [Greater Toledo Community Foundation's] funds could be classified as a DAF. GTCF's current field of interest funds would be of issue. GTCF's decades ago, the Secor Fund was created by the matriarch of the family that started Champion Sparkplug. This fund provides ongoing support for education in the region, as well as support for an education-based park created by her home on the Maumee River – providing free art, horticultural, and education courses. If this fund were to be considered a DAF, neither the community park nor would the fund exist. The assets would have been placed in the family foundation."

### **David Cicilline, Rhode Island Foundation**

"Together with determined nonprofit partners and key community stakeholders, our work helps reduce achievement gaps in education, address health disparities across diverse populations and boost true economic opportunity for all Rhode Islanders. As a community foundation we offer philanthropic Rhode Islanders many ways to give. Our team of grant makers and philanthropic advisors work each day to ensure that the charitable investments entrusted to us have impact, and most importantly, are

put to use to meet the evolving needs of the community we serve. We encourage local philanthropists to invest with us in a variety of ways. "

### **Anna Maria Chavez, Arizona Community Foundation**

"The Arizona Community Foundation's donors and DAF advisors are active, and their involvement establishes a connection that leads to greater impact. By establishing a fund at the Arizona Community Foundation, donors continue to invest in the needs of communities as time goes on and often continue to give to their funds after making their initial contributions. The average payout rate over the past three years for DAFs at the Arizona Community Foundation has been 14.5%, well above the typical private foundation payout of 5%."

### **Eileen R. Heisman, National Philanthropic Trust**

"For the past 15 years, NPT has been publishing the preeminent report on donor advised fund activity. We compile data from all charities that submit a DAF reporting schedule with their Form 990 informational returns. The 10-year trends are compelling: from 2013 through 2022 (the most recent year for which data is publicly available), DAF grantmaking grew 430% from \$9.84B to \$52.16B in charitable grants. The average annual increase in grantmaking over that time period was roughly 19.5%. During this same time period, the payout rate from DAFs across the sector has never dipped below 20%. In 2022, the payout rate was 22.5%, and the \$52.16B granted from DAFs represents more than half as much (52.3%) as granted from private foundations (\$99.67B), while DAFs only have 20% of their assets."

### **Bob Sorge, Madison Community Foundation**

"As a community foundation leader, regarding the definition of advisory privileges, it's important to understand that community foundations are governed by boards comprised of volunteers who make gifts to these institutions to reflect philanthropic leadership. Their generosity sets an example for the rest of the community. For Madison Community Foundation, a \$400 million institution, the amount each board member gives is solely at their discretion, with gifts generally ranging from about \$25 to \$10,000. In 2023, the median gift by our board was \$500. While we ask the board to lead by example in giving, they are not our largest donors. Our board members, together with other community volunteers, fill a variety of roles at the foundation, including oversight of the grant-making program and investment of its endowments. As drafted, their status as one of thousands of annual donors could define them as donor-advisers. There are exceptions to this rule for those who possess expertise in the subject matter of a fund, but there are also prohibitions for significant donors. These restrictions fail to

understand our business model fully and would add unnecessary complication for an organization that already has very strong conflict-of-interest policies in place.”

**Matthew Randazzo, Greater Cincinnati Foundation**

“...community foundations have, I think, one primary superpower, and that is our ability to stitch together donors with similar interests and a common concern for their community to punch above their philanthropic weight. And I think one of the potential impacts of encouraging donors to choose institutions other than community foundations, whether they be commercial gift operators or private foundations, is that you lose the connective tissue and you lose the scale that comes with stitching together sometimes dozens of individual donors to make big investments in community-changing initiatives. We have seen that time and time again throughout the greater Cincinnati region as the superpower and our ability to really drive more equity and vibrancy throughout the region.”

**Michael Parks, Dayton Foundation**

“The Dayton Foundation is the foundation of the greater Dayton area in southwest Ohio and is one of the oldest community foundations in our country, having been founded in 1921. We have over 4,000 charitable funds, of which about half are donor-advised funds. Last year, funds of the foundation granted out over \$140 million to charities throughout our region and country. Unfortunately, Dayton as a community has the fifth-highest poverty rate in America and the needs in our community are great. These gifts from funds of the foundation are absolutely vital and every dollar matters in helping us to meet critical community needs. Today, the number of Americans who give to charity is dropping. Our hope would be that the proposed regulations would encourage even more giving in our community. It's so desperately needed.”