NONPROFITS: LEGISLATION

# Donor-Advised Fund Bill in CA Stalled

11.07.19 | Linda J. Rosenthal, JD

Set against the background of the continuing, high-profile, debate about donor-advised funds (DAFs), the California Assembly in 2019 considered – but temporarily tabled until early next year – the nation's first attempt at proposed regulation.

Assembly Member Buffy Wicks (D-15) introduced AB 1712, "donor-advised funds," on February 22, 2019, as a "spot bill" to meet an end-of-month legislative deadline for new filings for the session. That type of "placeholder" filing – to be amended in days or a few weeks – is ordinarily brief and limited to general parameters and intent only.

Nevertheless, the extensive language in this spot bill was enough to spark immediate attention – and controversy.

*Donor-Advised Fund Bill Pending*

The hugely influential California Association of Nonprofits (CalNonprofits) was a major force behind AB 1712, together with NextGen California and philanthropist Kat Taylor. CalNonprofits had conducted a poll of its membership "discussing their own experiences with DAFs as well as their views on possible DAF regulations." Over 400 organizations responded to this question:

"Which ONE of the following statements do you most agree with?

- DAFs are good but they need to be regulated – 63%
- DAFs have some problems but regulation is not the solution – 19%
- I am 100% in favor of DAFs as they are now – 14%
- I'm 100% against DAFs; they should not be allowed to exist – 4%"

In *California Association of Nonprofits Sponsors Bill to Regulate DAFs* (March 19, 2019), Ruth McCambridge, editor-in-chief of *The Nonprofit Quarterly*, observed that "… it's very unusual for an association of nonprofits to back a call for regulation of a funding source." But here, "… CalNonprofits had done its homework in terms of gauging the interest of its constituency on the issue."

Assembly Member Weeks explained the rationale of her proposed legislation; namely, to make sure that charitable-donation tax benefits are "being used as they were intended: to directly benefit the people and causes of service providers" instead of "… as a vehicle to benefit a few wealthy individuals while depriving the general public of the benefits that result from direct gifts to charitable service providers."

More specifically, Ms. Weeks explained, the bill's purpose is calling attention to "two important public policy aspects of donor-advised funds": first, the lack of a time requirement for funds to be distributed out of the DAF to donors; second, the ability of "… DAF sponsors (whether a commercially affiliated fund or a community foundation)" to "… make anonymous gifts to nonprofits without reporting any activity for individual funds." The second element causes concern, she added, because DAFs are sometimes used as "vehicles for dark money" to flow" to 501(c)(4) organizations or to political action committees without leaving a trail to the individual donors.

*Progress of CA Donor-Advised Fund Bill*

The bill's author and the co-sponsoring organizations emphasized at the outset their aim has been to "bring stakeholders together so we can explore options to increase transparency."

But, as originally written (even as an interim "spot bill"), the preamble declaring legislative findings and intent was harsh and pejorative enough to warrant amendment twice by the bill's author. Compare text versions here.

AB 1712 also originally included a "mandate" for "greater transparency and accountability" including annual reporting and minimum-distribution requirements. As amended, the minimum yearly distribution requirement was dropped.

Currently, AB-1712 "focuses only on DAF transparency" including a requirement that the California Attorney General write certain rules and regulations for disclosure of information by DAF sponsors, including "about the individual funds or accounts they maintain." The purpose is to help officials "… ascertain whether those funds are properly administered."

But even with these and other changes, AB 1712 did not make it out of committee in the 2019 legislative session. Instead, it has been designated a "' two-year bill'; it is still open to amendment and will have to move through the Assembly by early 2020 or die."

*What Now?*

In *Donor-Advised Funds Debate Intensifies with Proposed California Legislation* (September 5, 2019), Jeanne Bell writes for *The Nonprofit Quarterly* that "…the bill's sponsors are in active conversation with

stakeholders." Ms. Bell discusses a 90-minute forum in late August 2019: "*Shedding Light on DAFs: Pros & Cons of New Legislation*" [currently still available on YouTube].

This videotaped forum with a (then-live) audience comprising nonprofits, DAF sponsors, and donors, was hosted by Candid (formed recently by the merger of GuideStar and Foundation Center). Guest panelists included Jan Masaoka, CEO of CalNonprofits, Daniel Baldwin of the Community Foundation for Monterey County, and Nageeb Sumar, Vice President of Philanthropic Strategies at Fidelity Charitable. Neither Mr. Baldwin nor Mr. Sumar support AB 1712 even as currently amended.

For those so inclined, the YouTube video is a worthwhile hour and a half. For those not included to view the entire presentation on tape, Ms. Bell's written commentary in NPQ is insightful and important.

*Conclusion*

The debate on donor-advised funds generally – and about AB 1712 specifically – rages on and will likely pick up in intensity early next year when this proposed law moves front and center.

If AB 1712 – in whatever form amended – is enacted and signed into law by Governor Gavin Newsom, it will become the first (and for a time at least, the only) law governing donor-advised funds in the United States. Any such statute will be influential beyond the California borders.