



NONPROFITS: LEGISLATION

New Senate Bill on DAF Reform Sparks Fireworks

06.29.21 | Linda J. Rosenthal, JD



In early June, “[t]wo key U.S. senators introduced legislation ... designed to spur faster payouts from donor-advised funds and foundations, giving new momentum to an effort that has deeply divided philanthropy.”

And it’s not just *any* senators: One is Chuck Grassley (R-IA), the former Chair of the Finance Committee who continues as a member of that influential panel; the other is Sen. Angus King (I-ME), who caucuses with the Democrats. They “have teamed up on legislation that closely tracks a plan put forward by a group of prominent wealthy donors, foundations, and scholars of charitable giving.”

Initiative: From Theoretical to Action

Late last year, we wrote about that audacious plan in [Important Charitable Giving Initiative Launched](#) (December 22, 2020). “America’s charities are in a state of crisis” according to the powerhouse coalition that unveiled the [Initiative to Accelerate Charitable Giving](#) on Giving Tuesday, last December 1st. What can help?: Prying loose the “1,120,000,000,000 charitable dollars sitting around untouched” in private foundations and donor-advised funds, they explained.

These sponsors of the [Initiative to Accelerate Charitable Giving](#) attribute the problem to outdated tax laws, written decades ago, that don’t “sufficiently incentivize these philanthropic vehicles to distribute their funds to charities in a timely fashion, even though donors receive tax benefits upfront.”



Their goal has been to spur serious and immediate action in Congress. As expected, opponents including the “conservative-leaning” Philanthropy Round Table, quickly criticized the Initiative. See an article by that group’s president: [The Left Wants a Philanthropy of the Few](#) (December 14, 2020) Elise Westhoff, *The Wall Street Journal*. See also, [Conservative Groups Criticize Effort to Urge Higher Payout Rates From Foundations and Donor-Advised Funds](#) (January 27, 2021) Dan Parks, *The Chronicle of Philanthropy* [“leaders of 65 conservative-leaning philanthropy organizations sent [letter to Congress](#) urging legislators to reject tax proposals intended to speed up distributions from foundations and donor-advised funds.”]

Senate Bill 1981

Now, six months later, the first concrete legislative step has been taken with the introduction of new Senate Bill 1981, the [Accelerating Charitable Efforts \(ACE\) Act](#). The next move is to garner additional bipartisan sponsors.

What’s in the proposed legislation? It would [amend the Internal Revenue Code](#) to “reform private foundations” and “ensure Donor-Advised Funds make resources available to working charities in [a] reasonable period of time.” There would be new “mandates and restrictions....” See [Donor-Advised Fund Legislation Introduced](#), (June 14, 2021) *Nonprofit Advocacy Updates*, National Council of Nonprofits.

More particularly, the ACE Act “would [create two types of DAFs](#): (1) a 15-year DAF that would provide immediate deductibility of donations if all donated funds are spent within 15 years; and (2) a 50-year DAF that could take up to 50 years to spend down donations, but the donor would not get an immediate income tax deduction. The DAF provisions include a carveout for donations of less than \$1 million to community foundations.”

There are [separate provisions](#) in the legislation that would “prohibit private foundations from satisfying their 5% payout requirement by ‘donating’ to a DAF which is categorized as a public charity, or by paying salaries and travel expenses of family members of donors.”

Taking Sides

“Proponents argue that [a payout requirement is needed](#) to accelerate charitable giving – “getting more money to our nation’s charities faster” – that is commensurate with the generous charitable deduction that donors receive. See [Statement on the Introduction of Bipartisan Bill to Accelerate Resources to America’s Charities](#) (June 9, 2021) Initiative to Accelerate Charitable Giving.

Opponents in the philanthropic community sent a [Letter to Congress](#) countering this view, stating “there is no data to indicate whether these measures would propel more charitable giving.” [Coalitions of Foundations and Donors Line Up to Oppose New Senate Measure to Speed Up Giving](#) (June 10, 2021) Dan Parks, *The Chronicle of Philanthropy*. The letter signers include: Community Foundation Public Awareness Initiative; Council on Foundations; Independent Sector; The Philanthropy Roundtable; and United Philanthropy Forum.



See, for additional background: [How Long Should It Take to Give Away Millions?](#) (June 9, 2021) Nicholas Kulish, *The New York Times*. “The promise of philanthropy was that the wealthy could enjoy tax breaks for their charitable contributions,” Mr. Kulish opens his article. “The pandemic laid bare how accumulation can trump getting money to those in need. A Senate bill aims to change that.”

Conclusion

According to the newsletter of the National Council of Nonprofits, “[m]ost tax policy observers believe that it is unlikely that the reforms as proposed in the ACE Act will be fully implemented in the near future.” NCN adds: “However, portions of the bill could be added to other tax legislation and nonprofits and donors are advised to consider their potential impact on their situation.”

— *Linda J. Rosenthal, J.D., FPLG Information & Research Director*