

Payout Reform Bill Continues to Generate Heat

09.30.21 | Linda J. Rosenthal, JD



When Senators Chuck Grassley (R-IA) and Angus King (I-ME) introduced a bill on June 9, 2021, to “[spur faster payouts](#) from donor-advised funds and foundations,” it immediately grabbed the attention of the nonprofit community. See [New Senate Bill On DAF Reform Sparks Fireworks](#) (June 29, 2021).

This is an issue that “[has deeply divided philanthropy](#)” in recent years. The Fourth of July is well behind us, but the clamor over new [Senate Bill 1981](#), the Accelerating Charitable Efforts (ACE) Act has continued and become louder over the summer months. There are also two just-published independent research studies that appear to poke some holes in the anti-SB 1981 camp’s arguments.

What’s It About?

By way of brief review, Senator Grassley – formerly chair of the Senate Finance Committee who continues as a member of that key panel – and Senator King – who caucuses with the Democrats – “teamed up on legislation that [closely tracks a plan](#) put forward by a group of prominent wealthy donors, foundations, and scholars of charitable giving.”

We wrote about that bold 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.”

A key problem, [they assert](#), is obsolete tax laws that have insufficient incentives for DAFs and private foundations to pay out the money to charities “in a timely fashion, even though donors receive tax benefits upfront.”

The Initiative to Accelerate Charitable Giving” last December sparked an immediate response. See, for instance, *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.”]

The reaction to the June 9, 2021, introduction of Senate Bill 1981 has been the reiteration of those arguments in formal statements of opposition or support. See *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*.; *Critics take aim at charitable money sitting in donor funds* (July 20, 2021) Haleluya Hadero, *AP News*.

See also, for example: (Oppose)

- [*Community Foundations Public Awareness Initiative*](#) (June 10, 2021)
- [*Council on Foundation Opposes the Accelerating Charitable Efforts Act \(ACE Act\)*](#) (June 10, 2021)
- [*Philanthropy Roundtable Joins 285+ National and Community Groups to Oppose King-Grassley Bill to Restrict Charitable Giving*](#) (August 2, 2021)

On the other side see, for instance: (Support)

- [*Statement on the Introduction of Bipartisan Bill to Accelerate Resources to America’s Charities*](#) (June 9, 2021) Initiative to Accelerate Charitable Giving
- [*This Spin Won’t Wash*](#) (August 17, 2021), Alan Cantor
- [*CalNonprofits Endorses ACE Act for Philanthropic Reform*](#) (September 10, 2021) [“In most areas, nonprofits and grantmaking foundations share goals and values....But sometimes [they] find themselves institutionally on different sides of a public policy issue. We are currently at such a point of divergence.... Although the ACE Act isn’t perfect, we believe it will free up resources currently being held in philanthropic institutions and will help bring much-needed additional resources to nonprofits and the communities we serve.”]

New Research

Over the summer, the publication of two studies caught the particular attention of the proponents of Senate Bill 1981.

First, “in a recent analysis of the tax returns of commercial donor-advised fund (DAF) sponsors, the Institute for Policy Studies has discovered that in 2019 alone, at least one billion dollars in commercial DAF grants went to other commercial DAFs.” [*More than One Billion Dollars In DAF Grants Went to Other Commercial DAFs in 2019*](#) (August 19, 2021) Helen Flannery & Chuck Collins, Charity Reform Initiative, Institute for Policy Studies.

These researchers observe that this “is an enormous amount of money cycling between giving vehicles rather than being distributed outright to charity.” But it only likely scratches “the surface of DAF-to-DAF giving, as it doesn’t capture transfers to or from DAFs held at community foundations

and other mission-driven DAF sponsors.” This data is relevant to, and rebuts, the argument of critics of reform that “it isn’t necessary to impose payout rates on DAFs because DAF donors are already transferring a great deal of money to charity.”

Second, see *Analysis of Donor Advised Funds from a Community Foundation Perspective* A Study Commissioned by the Council of Michigan Foundations (June 2021). This research considered data “from more than 2,000 funds held at community foundations across [Michigan]” and “is the first major report that has looked at DAFs on an account-by-account basis.”

According to Halleluya Hadero of AP News, this report “... showed that 35% of DAFs sponsored by Michigan community foundations distributed no money in 2020, a year marked by enormous need because of the viral pandemic.”

Alan Cantor concurs. “The report narrative picks and chooses among its many findings to amplify those favorable to DAFs, but this core fact is damning: In the midst of the greatest combination of public health, economic, and racial justice crises in our lifetime, more than a third of DAF holders [in that Michigan study] did not make a single grant.”

He asserts this is powerful evidence to rebut the argument by opponents of reform that there is too much concern about alleged “inactive donor-advised funds” and that “...[n]early all DAFs make grants regularly.” If anything, he adds that “the proportion of funds that are inactive may be larger than even the harshest critics have suggested.”

Summary of Arguments

In mid-September 2021, The Chronicle of Philanthropy sponsored a debate on the ACE Act moderated by its own Stacy Palmer. Among the panelists were proponents Professor Ray Madoff, philanthropist Melanie Lundquist, and philanthropy advisor Stephanie Ellis-Smith. Opponents of the proposed legislation were Kathleen Enright of the Council of Foundations and Steve Taylor of United Way Worldwide.

Lucky for all of us, Gene Takagi, Esq., was on hand and has provided a detailed summary of the major points made, amplified by his own expert analysis. See *Accelerating Charitable Efforts Act* (September 18, 2021), *NEO Law Blog*.

In connection with the “fundamental premises underlying this issue,” it’s generally “agreed” that DAFs are hugely popular and “increase the overall amount of funds given to and received by” 501(c)(3)s, and that DAFs, “which are housed within public charities, provides major donors with far more beneficial tax advantages than giving to private foundations (which has a public cost).”

But two key points remain in contention:

- Whether “DAFs **either increase or decrease** the overall amount of funds used to further charitable activities (used by so-called working charities” and
- Whether “many donors to DAFs are motivated **either more or less** by the tax benefits, reputational benefits, and benefits associated with having practical control over charitable funds in a DAF than by the public good that can be advanced with those funds.”

Conclusion

Of course, as SB 1981 opponent Steve Taylor aptly points out, Congress has a lot on its plate and is unlikely to tackle this contentious proposal any time soon. His suggestion is that the nonprofit sector focus its unified “political capital” instead right now on a legislative push for a “universal charitable deduction.” It has broad support in our community as well as on both sides of the Senate aisle.

Fair point.

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