

Donor Advised Funds and Private Foundations Under Scrutiny

A Cambyses Public Policy Analysis

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Cambyses' Public Policy Notes

Cambyses' Public Policy Notes present our analysis of social, legislative, and regulatory developments that affect our constituents. We focus on the topic's

- probable economic, operational, and social impacts, and
- policy and implementation dynamics

We attempt to present objective analyses untainted by our personal perspective and values (which, for the record, are generally liberal and progressive). However, we probably won't always succeed. Review our notes and methodology by referring to the numbered items referenced by, for example [*Number] in and following the main text. We appreciate your feedback - and plan to provide a forum for reasonable disagreement as part of our future development.

This Cambyses Public Policy Discussion examines proposed legislation concerning perceived abuses of Donor Advised Funds and Private Foundations. While reforms are probably needed in both arenas, the proposed legislation does not seem (to Cambyses, anyway) to address them in a cost effective and efficient way.

Donor Advised Funds and Private Foundations Under Scrutiny

As many of you know, Steven Roy Management (SJRM) and Cambyses Financial Advisors (CFA) strongly support both Donors and Exempt Organizations that sustain their charitable aims using Donor Advised Funds (DAF) and-or Private Foundations, (PF) to create long-term "quasi-endowments." So, we were surprised and a bit miffed to hear those applications characterized as tax-abuses.

The Accelerating Charitable Efforts Act (ACE) [*1] targets those purported "abuses." ACE

- Creates four DAF classes and a newly defined "Limited Duration Private Foundation" (ACE Sections 2 and 8) and limits or eliminates deductions for non-cash assets donated to DAFs.
- Imposes a "failure to distribute" excise-penalty on DAFs that do not extinguish their resources in a "timely" manner, (ACE Section 3)
- Disallows administrative expenses if paid to Grantor and Disqualified Persons' family members, (ACE Sections 4 and 5)
- Modifies the public support test for 509(a) organizations that receive anonymous distributions from DAFs they themselves sponsor, (Section 6) and
- Exempts Private Foundations from the excise-penalty tax if they meet certain operational performance standards. (ACE Sections 7 and 8)

ACE's avowed purpose is to make monies routed through Donor Advised Funds (DAFs) and Private Foundations (PFs) find their way to "working charities" [*2] expeditiously and with minimal diminution by administrative expenses.

Stated this broadly, ACE sounds like a pretty good idea? Applied narrowly to some “commercial” (brokerage supported) DAFs it might even curb the most egregious abuses we have observed.

However, applying ACE's “baby-and-the-bathwater” approach to existing and future funds and foundations reveals its limitations.

- The classification scheme creates an unnecessarily complex hierarchy based on arguably moot distinctions.
- The fixed minimum distribution schedule penalizes retention of assets and planning for future uses - including preservation of the ability to continue distributions in perpetuity.
- Disallowing administrative expenses presumes, without substantive evidence, that family members perform few valuable services for the foundations they serve.
- The Public Support modifications have no discernable relationship to determining the structure of public or private support for the foundation's exempt purposes.
- The distribution standard and closed-end foundation provisions encourage a "distribution under any events" attitude that may not reflect optimal long term investment or economic conditions.

The notion that "grant-making organizations" (a description that includes most Private Foundations and almost all DAFs) are not “working charities” is more-than-a-little short-sighted and insulting. It minimizes the effort required to evaluate social needs, solicit proposals that address those needs, evaluate the proposals, screen the proposing organizations, raise, budget, allocate and track grant monies and report their use (not to mention the management effort required to sustain a giving program). Dismissing those activities as “just another way for the wealthy to claim a deduction while wealth managers get a commission” [*3] preempts rational discussion, but it does not make grant making activity's necessity disappear.

For more information about ACE and its consequences:

Ace Act:

https://www.king.senate.gov/imo/media/doc/ace_act.pdf

Ace Act Summary:

<https://www.cof.org/content/summary-accelerating-charitable-efforts-act-ace-act>

Ace Act - Supporting Arguments:

<https://acceleratecharitablegiving.org/philanthropic-sector-applauds-the-ace-act/>

Ace Act - Arguments Against:

<https://www.cof.org/news/council-foundations-opposes-accelerating-charitable-efforts-act-ace-act>

<https://www.philanthropyroundtable.org/home/blog/post/roundtable/2021/06/17/national-philanthropic-organizations-voice-concerns-on-ace-act>

Notes and Methodology

[*1] Proposed legislation sponsored by U.S. Senators Angus King (I-Maine) and Chuck Grassley (R-Iowa). We deviate from our usual policy of reserving published analysis and opinion to already enacted legislation while tracking and analyzing, but not publishing, pending legislation. This bill has not yet reached the Senate floor. One of the sponsors of this bipartisan legislation

(Grassley) is the leading Republican on the committee that will consider ACE. The odds favor ACE reaching a floor vote.

[*2] The new pejorative “working charity” assumes that boots on the ground and expenditures, regardless of their effectiveness, count as “real philanthropy.” Everything else, like planning, evaluating, and sustaining resources for future use apparently does not.

[*3] Yeah, someone actually said that – on national television, no less.