REGULATING DAFS WILL NOT INCREASE FUNDING TO END USER CHARITIES

REYNOLDS CAFFERATA AND SUSANNA KIM

Greater DAF distributions to end user charities cannot be achieved with compulsory legislation — in fact, such legislation will have the opposite effect.

Donor advised funds ("DAFs") are characterized negatively by the press. Some members of Congress have responded with convoluted legislative initiatives based on the erroneous belief that DAFs are diverting large sums from charities to investment accounts that generate money management fees for financial institutions. The effort to increase funds available to charities from DAFs through legislation is bound to fail, and likely will have the opposite effect. As we explain in the following section, legislation that discourages the use of DAFs almost certainly will result in decreased overall funding for end user charities. While some regulation of DAFs is worth considering, it is not an effective way to get more funds to end user charities. Those who seek to regulate DAFs will need to provide a justification for regulation other than increasing funds available to end user charities, or they will need to look for other options to achieve their goal. Eliminating the current prohibition on DAFs bifurcating payments for quid pro quo gifts and simplifying the use of DAFs to satisfy enforceable pledges are two ways to increase distributions from DAFs to end user charities.

REYNOLDS T. CAFFERATA, through a professional corporation, is a partner in Rodriguez Horii, Choi & Cafferata, LLP. He regularly advises charitable organizations and high net-worth donors regarding the structure of charitable contributions. He is the chair of the American College of Trust and Estate Counsel Charitable Planning and Exempt Organizations Committee.

SUSANNA KIM is an associate at Rodriguez, Horii, Choi & Cafferata LLP. Her practice is concentrated in the area of tax, charitable organizations, and trust and estate law. Prior to joining RHCC, Ms. Kim was a tax specialist at the IRS and a tax associate at Pricewaterhouse-Coopers.

Donor advised funds

DAFs are charitable giving accounts that allow a donor to make a current charitable gift and obtain an income tax deduction, but decide at a later date what charities will benefit from the gift. The terms of DAFs allow the donor to identify and recommend charities to make distributions to. The donor's advice is not legally binding on the charity that holds the DAF, but, so long as the designated charities are legitimate charities with tax exempt status from the IRS, the charity holding the DAF generally will follow the donor's advice. With a few exceptions, gifts to DAFs receive the most favorable treatment under the tax code, including the ability to deduct the appreciated fair market value of gifts of real estate and non-publicly traded stock. For example, a donor who bought non-publicly traded stock with a current fair market value of $1 million can generally claim a $1 million income tax deduction for a gift of stock to a DAF. However, DAFs are subject to some related party transaction limits and cannot compensate the donor or parties related to the donor.[1]

There is no time limit on when funds must be distributed from the DAF to other charities. DAFs can hold a wide variety of assets, and many assets can be held indefinitely by the DAF. However, under the excess business holdings limit, a DAF cannot hold more than 2 percent of a company that is 20 percent or more owned by the donor or parties related to the donor.[2]

Private foundations are the true DAF alternative

In order to understand the DAF controversy, it is first important to understand the alternative to the DAF that most donors consider — the private foundation. A private foundation is a charitable organization over which a donor has legal control. While the donor is entitled to an income tax deduction for a gift to a private foundation, the deductions are limited to a lower percentage of adjusted gross income than gifts to DAFs.[3] Also, the donor is limited to deducting the donor's basis when claiming a deduction for a gift of appreciated property to a private foundation.[4] Using the previously mentioned example, a donor who bought non-publicly traded stock for $200k that has a current fair market value of $1 million can only claim a $200k income tax deduction for a gift of this stock to a private foundation. Private foundations are also prohibited from engaging in most transactions with the donor or parties related to the donor, although in limited circumstances, the donor or a family member may be employed by the private foundation.

In order to understand the DAF controversy, it is first important to understand the alternative to the DAF that most donors consider — the private foundation.

Private foundations must distribute 5 percent of the value of their assets to charities every year.[5] The foundation's reasonable administrative expenses can be counted toward the 5 percent distribution requirement, so for many private foundations the assets passing to charity are less than 5 percent. Private foundations are more limited than DAFs with respect to the variety of assets that they can hold.[6] However, both private foundations and DAFs are subject to excess business holdings limit and cannot hold more than 2 percent of a company that is 20 percent or more owned by the donor or parties related to the donor.[7]

DAFs and giving

The total giving to charities in 2020 was $471 billion.[8] DAFs held $159 billion in 2020, compared to $1.1 trillion held in private foundations in 2020.[9] DAFs received $48 billion in gifts in 2020 and paid out $35 billion, retaining $13 billion.[10] $13 billion is 2.76 percent of total giving. Included in the DAF outflows are transfers from one DAF to another. A recent California attorney general survey found that DAF to DAF transfers represented around 11 percent of DAF distributions.[11] If that is correct, then the total percentage of overall giving staying in DAFs is $3.85 billion, or about 0.9 percent of total giving. At most, if advocates of DAF regulation could achieve their goal of forcing all money out of DAFs on a current basis without any decrease in DAF giving, then annual revenue directed to charities would increase by about $16.85 billion. This is not an insignificant amount, but no regulatory option exists that would force these dollars out of DAFs and maintain overall DAF giving at its current level. All current proposals would either shift gifts to private foundations or cause the gifts not to be made at all. As explained in the following section, these funds cannot be forced out because the donors who are using DAFs are not ready to select the ultimate recipients of their gifts. The proposals to force DAF payouts would thus decrease overall charitable giving to end user charities. If DAF payout rates are to be regulated, a justification other than increasing funds to end user charities needs to exist.

Philanthropy is individuals subsidizing public good, not government subsidizing individuals

DAF regulations that will decrease overall giving should be avoided. Many public goods that are funded by the government in other counties are funded by philanthropy in the United States. Education[12] and health care[13] receive substantial funding from philanthropy in the United States. The arts in the United States are almost exclusively funded by philanthropy.[14] When a donor makes a gift to charity, regardless of the level of tax benefit, public good receives more funding than if the donor did not make the gift and instead paid higher taxes. If a donor makes a gift of $1 to charity and receives an income tax deduction that decreases their taxes by $0.40, the public good has $0.60 more than it would have had if the donor

had not made the gift and paid the $0.40 in tax. Even when a donor funds a gift with $1 of appreciated property and resides in a high-income tax state, such as California, public good receives $0.18[15] more than would have been the case if the donor had sold the appreciated property, paid taxes, and kept the after-tax proceeds. The public good never wins when tax policy results in reduced charitable giving. Critics of DAFs like to point out that tax revenue is lost in the year of the gift to the DAF and that public benefit is delayed until the DAF makes distributions. On this point, there is no material difference between DAFs versus private foundations. With private foundations, the donor also gets the tax deduction in the year of the gift, and only 5 percent of the public benefit is required to be paid out starting the following year.[16] However, one of the significant differences between DAFs and private foundations is the fact that funds in a DAF are also subject to legal control independent from the donor. Therefore, DAFs should be given greater flexibility than private foundations in making distributions.

Data on DAFs and DAF donors

Until recently, there were not much data on DAF donations other than aggregate figures. Two recent studies, one by university researchers[17] and one by the California attorney general,[18] shed light on how individual donors use DAFs. Both studies are limited because they each address different subsets of DAFs. Thankfully, a larger study of a much broader set of DAFs is upcoming.[19] Nevertheless, the current studies are consistent in their findings regarding DAF users and can help inform policy decisions regarding DAFs.

DAF donor types

The studies find that there are three types of DAF donors.[20] One type of DAF donor uses the DAF to simplify their annual giving. These donors generally make a large contribution to their DAF at the end of the year, and then give out most of the DAF funds to end user charities in the following year. Using a DAF makes it easier for the donor to use an asset like appreciated stock to fund their giving, and they need only obtain one receipt from the DAF sponsor to substantiate their charitable deduction. These donors are already pushing their funding out to end user charities within a short time of the gift to the DAF. The existence of the DAF simplifies their giving and allows them to easily use appreciated stock and other beneficial assets to fund their giving. This increases overall giving from these donors.

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A second type of donor is using the DAF to endow their giving over a long period of time. These donors make rare, but large, gifts to their DAF. These donors annually distribute the earnings of the DAF, determined in the same manner that a university or other charity determines how much to spend from its endowment. Generally, these donors pay out 3.5 percent to 4.5 percent of their DAF. They want their initial large gift, or gifts, to

1 IRC Section 4958(c)(2).

2 IRC Section 4943(e).

3 IRC Section 170(b)(1)(B) and (D).

4 IRC Section 170(e).

5 IRC Section 4942.

6 IRC Section 4944.

7 *Op. cit.* note 2.

8 "2021 Annual Report," Giving USA (2021).

9 "Donor Advised Fund Report," National Philanthropic Trust (2021).

10 *Ibid.*

11 "Donor advised funds: an overview," California Department of Justice (2023). Available at: https://oag.ca.gov/system/files/media/donor-advised-funds-overview.pdf.

12 *Op. cit.* note 8 (2020 charitable giving for education $71.34 billion); "Charitable Gifts to Colleges Top $52 Billion," Inside Higher Ed (Feb 2022), ($52 billion in gifts to US colleges and universities in 2021).

13 *Ibid* (2020 charitable giving to healthcare $42.12 billion).

14 *Op. cit.* note 8 (2020 charitable giving to arts, culture, and humanities is $19.47 billion); "Public Funding for Arts and Culture in 2020," Grantmakers in the Arts (2020), Available at:https://www.giarts.org/public-funding-arts-and-culture-2020#:~:text=2020%20Funding%20Levels,increase%20of%204.7%25%20from%20FY2019 ("The federal government, states, and localities appropriated a combined $1.47 billion to the arts in FY2020.").

15 If the $1 is entirely appreciation, gift avoids about 32 percent state and federal tax, or $0.32. The $1 deduction reduces state and federal ordinary income taxes by about $0.50. The tax saving of $0.82 means donor is out $0.18 as compared to a taxable sale of the asset and not deduction.

16 *Op cit.* note 5.

17 Vance-McMullen, D., and Heist, D.H., "Donor-advised fund account patterns and trends," DAF Research Collaborative (2017–2020). Available at: https://www.dafresearchcollaborative.org/dafrc-research.

18 *Op. cit.* note 11.

19 "Project overview." DAF Research Collaborative. Available at: https://www.dafresearchcollaborative.org/national-study-dafs.

20 Heist, H.D., Cummings, B.F., Farwell, M.M., Cnaan, R., and Andrews, E., "Tubs, tanks, and towers: donor strategies for donor-advised funds giving," Nonprofit Management & Leadership (Nov 9, 2022). Available at: https://onlinelibrary.wiley.com/doi/10.1002/nml.21544.

fund a constant level of charitable giving indefinitely — possibly for future generations of their family. These donors are not focused on making immediate gifts to end user charities. These donors are experiencing a liquidity event or benefiting from significant appreciation of an asset and are looking to use that benefit to fund their giving for many years. If the DAF was not available, these donors likely would form a private foundation. The author has received hundreds of calls from donors who start the call asking to form a private foundation. After learning the benefits of a DAF, the donors often decide to set up a DAF instead of a private foundation.

The final group of large DAF donors are unpredictable in their distributions. They tend to start in a similar place as the endowment DAF donors — they had a liquidity event or single appreciated asset that they wish to use to fund future philanthropy. The gift is significantly larger than the donor's prior giving. This type of donor does not yet have intent of regular giving and may not be certain about what charities to support. The idea of philanthropy may have been introduced to the donor by an advisor while discussing how to handle the liquidity event or the disposition of the appreciated asset. The donor is interested in the idea of charitable giving but has not identified the causes to support. That identification process can take some time depending on the causes competing for the donor's attention. These donors may irregularly distribute funds from the DAF, may make lumpy large distributions from the DAF, or may wait several years before making any distributions from the DAF.

Although DAF sponsors follow donor recommendations to distribute to charities recognized as tax exempt by the IRS, a DAF is not the same as a private foundation over which the donor has legal control.

While it is not addressed in the studies, most endowment donors — and often the unpredictable DAF donors as well — want some portion of the charitable giving fund they have created to fund their children's philanthropy. Knowing that they fund both their own philanthropy and their descendants' philanthropy is an incentive for these donors to make larger charitable contributions. Many donors are more willing to shift funds from an outright gift to their children into a philanthropic fund their children can use for charitable giving. A gift to an end user charity takes any connection to the funds completely away from the donor's children.

Donors ready to commit to charity, but not a particular charity

A key to understanding DAF donors is knowing that those who are likely to make relatively immediate distributions from their DAFs are already doing so. DAF donors that are not making large, immediate distributions from their DAFs will not do so in response to any new regulation. If endowment donors and donors who don't know how they want to use philanthropic funds are faced with large, compelled DAF distributions, they will opt for a private foundation. They might not make the gift at all if the private foundation does not provide adequate tax benefits. In the long run, donors who form private foundations will not direct any more to end user charities than DAF donors who treat the DAF like an endowment. Although the 5 percent distribution for private foundations is greater than the 3.5 percent to 4.5 percent that typically is distributed from an endowment, this 5 percent includes charged administrative costs. According to one source, private foundations on average pay out 7 percent to 8 percent of the value of their assets annually.[21] However, private foundation donors also fall into the same three types as DAF donors — some grant out virtually all the assets of the private foundation annually, some pay out only the 5 percent, and some have no predictable pattern of giving. In any event, a DAF donor who is looking to create an endowed DAF would pay out only 5 percent of a private foundation, including administrative costs for tax returns and other costs. An endowed private foundation will yield essentially the same amount to end user charities as an endowed DAF. Donors who don't have distribution plans may opt not to give at all if their only option is a vehicle with mandatory payouts, and those gifts will never reach the charities.

If DAFs had a mandated payout, donors who were willing to accept the mandate likely would opt for a private foundation to have the total control it provides. Yet, a private foundation is only an option for donors of either cash or publicly traded stock that is not subject to any trading restrictions. A donor to a private foundation can only claim a fair market value deduction for a gift of cash, or a gift of publicly traded stock if the donor is not a company insider.[22] If the gift is real estate, non-stock securities, or non-publicly traded securities of any kind, a donor to a private foundation

is limited to deduction of the basis of the asset, not its fair market value.[23]

These assets represent classes of assets where the donor is not ready to commit to the particular charity, or charities, that will receive the gift. If the flexible payment DAF is not available to these donors, they may elect not to make a gift at all. Even if a gift is made after the disposition of the asset, the taxes paid on the sale will never reach the charities.

The DAF donors that are not ready, or willing, to immediately commit their charitable gifts to end user charities are the donors that create the $13 billion gap between the funds contributed to DAFs and the funds paid out of DAFs annually. Given the objectives of these donors and the legitimate reasons why they are not looking to make an immediate gift to an end user charity, no set of DAF regulations can compel that result. Such regulation will simply drive some of these donors to form private foundations and others to not make a philanthropic gift at all. Had these donors formed DAFs, the funds eventually would have flowed to charities. The result of regulations that make DAFs less flexible or subject to a forced payout will ultimately be less funding for end user charities, not more.

DAFs are not the same as private foundations, and donors do not view them as the same

Those who promote regulation of DAFs to require payouts in some fashion tend to assume that a DAF and a private foundation are functionally the same. Although DAF sponsors follow donor recommendations to distribute to charities recognized as tax exempt by the IRS, a DAF is not the same as a private foundation over which the donor has legal control. DAF assets in 2021 were $159 billion compared to private foundation assets of $1.1 trillion.[24] Contributions to private foundations continue to grow because clients perceive the difference between advice and legal control as significant. The knowledge that a grant request will be screened and reviewed results in an amount of self-regulation by donors who simply do not submit certain requests to begin with. Managers of DAF sponsors are risk averse with respect to investment management and non-typical grant making from DAFs. Any related party transaction involving a DAF is reviewed by a board of independent directors who could face personal liability for any improper transaction. DAF transactions are also reviewed by sponsors, which carries risk for the reputation of the sponsor. Donors do not ignore these realities, and it is simplistic to say that DAFs are the same as private foundations or should be treated the same as private foundations. Such an approach would drive some donors to form a private foundation that they can control and drive other donors to not make a gift at all. Both responses will reduce net giving to charity.

Some see DAF to DAF transfers as gaming the system, but since DAFs do not have a required payout there is no system to game.

Transfers among entities

In addition to the rate of payout from DAFs, three other concerns have been expressed: DAF to DAF transfers, transfers from private foundations to DAFs to satisfy the minimum distribution requirements, and using DAFs to increase a charity's public support.[25]

Some see DAF to DAF transfers as gaming the system, but since DAFs do not have a required payout there is no system to game. At worst, these transfers somewhat inflate the apparent payout rate for DAFs. The recent California attorney general report indicates DAF to DAF transfers may represent 11 percent of DAF distributions.[26] DAF to DAF transfers are allowed in the IRC,[27] and there are many valid reasons for a DAF to DAF transfer. For example, donors sometimes move their DAFs if they relocate. If donors change financial institutions, the donor may change the DAF sponsor affiliated with the former financial institution. Certain DAF sponsors have been formed to liquidate more challenging illiquid assets. After the asset is sold, the DAF that made the sale often grants the net proceeds to a DAF of the donor's choice. A donor who wants to use the

[21] "How Much do Foundations Give Per Year?" Foundation Advocate (2019). Available at: https://www.foundationadvocate.com/foundations-payout/.

[22] Ltr. Rul. 9825031 (donor required to limit volume of personal sales so that the private foundation was free to sell its shares subject to Rule 144 trading limits for stock donated to private foundation to be qualified as appreciated stock under Section 170(e)(5)).

[23] IRC Section 170(e)(5).

[24] "Donor Advised Fund Report," National Philanthropic Trust (2021). Available at: https://www.nptrust.org/wp-content/uploads/2021/11/2021-Donor-Advised-Fund-Report-NPT-Single-Page.pdf.

[25] IRS Notice 2017-73.

[26] *Op. cit.* note 11

[27] IRC Section 4966(c)(2)(C).

DAF to satisfy a pledge, as allowed under IRS guidance discussed in the following section, may move funds to a DAF sponsor that will allow the payments to be made. None of these reasons for DAF to DAF transfers present any policy concern. These transfers may increase the reported payout from the DAFs, but adjustments to reporting could address those concerns.

Private foundations distribute to DAFs for a variety of reasons. Their responses to an IRS inquiry regarding this included:

1. grants to DAFs to facilitate board member discretionary grants where board members are given the right to designate a certain amount of grants, often in lieu of compensation;
2. anonymous grant making where the private foundation either does not want the public to know it was the source of a grant or where the private foundation does not want the charity to know the private foundation supplied the grant;
3. to minimize concerns that a grant will impact a smaller charity's public support test;
4. to set aside funds for a grant without the burdens of the formal set aside rule; and
5. the foundation realized it had not made its required minimum distribution and was not able to identify a qualified recipient within the required distribution time.

Another way to get more money distributed from DAFs to end user charities is to make it easier for donors to use a DAF to satisfy their enforceable charitable pledges.

None of the general private foundation uses of DAFs are nefarious. There are not comprehensive data on private foundation to DAF transfers, but the California attorney general's study found that it represented 5.3 percent of grants to DAFs.[28] If that holds true for DAFs and private foundations nationwide, it will represent $2.544 billion of total DAF giving. This implies that DAF giving represents about 3.5 percent of all private foundation grantmaking.

Policy changes worth considering

If policymakers want to get more money from DAFs to end user charities, two policy changes would increase the flow of money. First, donors should be allowed to pay the deductible portion of charitable gala tickets and memberships from their DAFs. Second, the rules regarding the payment of enforceable pledges from DAFs were simplified.

Allow bifurcation of ticket and membership payments. The IRS has said that DAFs cannot be used to pay the deductible portion of a charitable gift if part of the total payment would not be deductible.[29] This comes up in two situations generally — event tickets, and membership programs where the charity provides a meal or membership benefits in exchange for a gift. These are known as quid pro quo gifts. The value of the benefit provided by the charity is less than the amount of the payment from the donor. The donor is entitled to an income tax deduction for the difference between the payment and the value of the benefit provided by the charity.

When a charity holds a fundraising event, the tickets generally cost substantially more than the value of the meal or other benefits provided at the event. For example, an event with a $500 ticket price may include dinner and drinks worth $60. If the donor writes a check to the charity for $500, the charitable receipt will thank the donor for the $500 payment and advise the donor that the charity provided $60 in goods and services. Only the difference between the payment and the value of the goods and services is tax deductible. The donor in this example can claim an income tax deduction of $440.

A DAF is prohibited from making a payment that would not entitle a donor to a deduction for the full amount of the payment if the donor makes the payment directly.[30] Donors frequently ask DAF sponsors if they can split the cost of gala tickets and other quid pro quo gifts so that the DAF will pay the deductible portion of the gift, and the donor will pay for the non-deductible benefit. Using the previously mentioned example, the donor is asking if the DAF would pay the deductible $440 portion of the ticket price while the donor would pay the $60 cost of the dinner.

As previously noted, the IRS has ruled that a DAF cannot pay even the deductible portion of a quid pro quo gift. The result is not mandated by the statute, as a DAF can make a payment that would not be fully deductible. The IRS based its DAF ruling on a prior private letter ruling for private foundations.[31] The laws governing DAFs and private foundations, however, are completely different. Given the number of donors that ask to pay the deductible portion of quid pro quo gifts from DAFs and the prevalence of fundraising events and membership programs, if donors could use DAFs to pay the deductible portion of these gifts, more funds would flow from DAFs to end user charities. The

amounts in question are clearly documented, so there is little risk of abuse in allowing bifurcation of these payments between the donor and the DAF.

Simplify rules for payment of pledges from DAFs. Another way to get more money distributed from DAFs to end user charities is to make it easier for donors to use a DAF to satisfy their enforceable charitable pledges. The IRS has, under limited circumstances, indicated that a DAF payment can be applied to enforceable pledges. However, the guidance is in a notice that does not have the weight of a law or a regulation, is cumbersome to apply, and may not apply to some DAF sponsors.[32]

This situation arises when a donor makes a legally binding commitment to make a gift to charity over time. For example, the donor might commit to giving the charity $100k, payable $10k per year over 10 years. The donor may wish to satisfy the pledge payments with gifts from a DAF by advising $10k a year from the DAF to the charity when each payment is due. The IRS has issued guidance that, in limited circumstances, the DAF payments can satisfy the pledge. However, the IRS rules require that the DAF sponsor may not make a reference to the pledge when making the payment to the charity. The pledge also cannot be for a quid pro quo payment where the donor is receiving back some benefit, such as a meal. Finally, the donor cannot attempt to claim a deduction for the payment from the DAF.

The problem with the IRS guidance is that the prohibition on referencing the pledge creates compliance confusion for sponsors and tracking challenges for charities. The guidance is in a notice, which is not as reliable for donors and DAF sponsors if the IRS or a court took a different view of the law. These two factors have made some DAF sponsors reluctant to follow the guidance and prohibit their DAF donors from advising distributions to satisfy pledges, even if the conditions of the notice are satisfied. Some DAF sponsors were also required by the IRS to agree not to allow DAF payments to satisfy pledges as a condition of granting tax exempt status to the DAF sponsor. The notice does not indicate if it supersedes specific conditions of these exemption rulings. The prohibition on the DAF referencing the pledge also creates accounting complications for the charity receiving the payment, because the reference may be needed to apply the payment to the donor's enforceable pledge.

If the guidance regarding payment of pledges from DAFs was simplified so that all sponsors and donors had certainty that a DAF can satisfy a pledge and the procedure for doing so was clear, including allowing the DAF sponsor to reference the pledge agreement when making the payment, more funds would flow from DAFs. Several DAF sponsors, considering the current regulatory uncertainty, are keeping funds in DAFs by refusing to allow donors to satisfy charitable pledges with their DAFs. If the rules regarding pledge payments from DAFs were simplified and made part of a binding type of guidance, such as a regulation or a revenue ruling that addressed DAF sponsors who had agreed not to pay pledges as part of the condition of their exemptions,

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more funds would flow from DAFs to end user charities. Many of the commercial DAFs received their determination letters when the IRS had a policy of requiring DAF sponsors to not satisfy pledges as a condition of their exemption. Thus, many large DAF sponsors presently do not allow their DAF donors to satisfy pledges with DAF grants.

If there is to be a policy to make sure funds do not remain in DAFs indefinitely, it should be far less restrictive than the required minimum distribution of a private foundation. One reason some DAFs do not make distributions is that they are funded with an illiquid asset that has not been converted into cash. The studies show that only larger DAFs have a material impact on the overall distribution from DAFs. Smaller DAFs generally pay out to end user charities at a higher rate than large DAFs. Any minimum distribution rule should be confined to large DAFs — $10 million and larger — so that it can make a material difference in distributions. Private foundations can have up to 10 years to dispose of a closely held business interest.[33] If large DAFs are to be subject to a payout requirement, then a greater than 10-year time frame should

[28] *Op. cit.* note 11

[29] *Op. cit.* note 25.

[30] IRC Section 4967; Joint comm staff tech expln of the pension protection act or 2006 (JCX-38-06), p. 350 (Nov 3, 2006).

[31] Ltr. Rul. 9021066.

[32] *Op. cit.* note 25.

[33] *Op. cit.* note 2.

be allowed. From that point forward, a more modest distribution requirement should be applied — such as a 3.5 percent minimum distribution — to allow endowed DAFs to spend at the same rate that many end user charities draw upon their endowments. This will eventually get the few large outlier DAFs that do not distribute anything for decades to distribute at least a net amount, like a private foundation's distribution net of its administrative costs. Such a rule is unlikely to discourage many donors from using a DAF, in contrast to complicated proposals in the ACE Act that would make DAFs unattractive to many donors.[34]

However, any legislation may be unnecessary because many DAF sponsors already have procedures for encouraging donors to make gifts from their DAFs and for notifying donors of pressing needs. Studies indicate that DAF donors responded to the COVID-19 crisis with increased funding.[35] Whether donors made larger distributions on their own or in response to appeals by DAF sponsors is not known. Further study of DAF responsiveness and effective appeals that sponsors can make to encourage donors to increase distributions is needed. Helping DAF sponsors improve these tools would be an effective way to increase the distributions from DAFs to end user charities without having to resort to heavy-handed legislative mandates. This in turn would make DAFs an even more effective resource when the country faces challenges that can be addressed with increased charitable giving.

Conclusion

Greater DAF distributions to end user charities cannot be achieved with compulsory legislation. In fact, such legislation will have the opposite effect and will reduce overall giving to end user charities. On the other hand, law changes that make it easier for donors to distribute from their DAFs for the deductible portion of quid pro quo gifts and to satisfy enforceable pledges likely will increase distributions from DAFs. Possibly, a flexible rule targeted at large outlier DAFs that make no distributions for decades will prevent a material loss of the time value of the charitable deduction without detrimentally affecting overall charitable giving. ■

[34] Accelerating Charitable Efforts Act, P.L. 117-2, 2/3/2022.
[35] *Op. cit.* note 17; *Op. cit.* note 24.