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The Meteoric Rise of Donor Advised Funds

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Definition of a Donor Advised Fund

The Pension Protection Act of 2006 includes the first comprehensive regulation of donor advised funds. These requirements generally took effect at the beginning of the tax year following enactment of the Act, for charities that hold assets in such funds. However, a provision barring the payment from donor advised funds of grants, compensation and similar payments to donors, advisors, and persons related to them took effect immediately on August 17, 2006. Understanding the definition of what is a donor advised fund also is important to the implementation of the Act's charitable IRA rollover provision ([link](#)) because rollovers are not permitted into donor advised funds.

What is a donor advised fund?

A fund must possess three characteristics to be a donor advised fund:

- It must be separately identified with reference to the contribution of a donor or donors
- It must be owned and controlled by a sponsoring organization
- The donor or a person appointed by the donor must have, or must reasonably expect to have, the privilege of providing advice with respect to the fund's investments or distributions

If any one of these characteristics is absent, the fund is not a donor advised fund.

What does it mean for a fund to be separately identified with reference to the contribution of a donor or donors?

Examples of separate identification include naming the fund after a donor or persons related to the donor or tracking contributions to the fund with respect to the specific donor or donors on the organization's books.

Are funds for a single designated organization or a single governmental entity donor advised?

No. These funds are exempted by the legislation even if a donor provides advice with respect to investments or distributions. This exemption covers both designated funds and agency endowments.

Are field-of-interest funds donor advised?

Funds that attract contributions from several donors are not donor advised as long as the fund is not tracked with reference to the gift of any particular donor. This remains the case even if the fund is advised by an advisory committee that includes some donors to the fund.

Is any fund with a specific charitable purpose a field-of-interest fund?

No. A fund that is tracked by the gift of a particular donor is a donor advised fund if the donor reasonably expects to provide advice about the fund's investments or distributions, even if the fund agreement restricts grants to a particular purpose, such as supporting the arts or improving the environment.

I have a donor who would like to create a restricted fund to protect the environment. Apart from specifying the fund's purpose in the gift agreement, the donor will not provide advice about the fund's investments or distributions nor will she appoint anyone else to do so. Does specifying the fund's purpose make it a donor advised fund?

No. Even though the fund will be tracked by reference to the donor's gift, the legislative history clearly differentiates between advisory privileges and legal obligations. Legal restrictions, such as a designated purpose, are not advice and will not make the fund that results a donor advised fund.

A donor would like to create a fund, to be named for the donor, to benefit arts organizations. The donor would like to recommend three individuals with expertise in the arts to serve as an advisory committee to the fund. Is this a donor advised fund?

No. As long as the donor only recommends the individuals, and they are persons with expertise that can be documented, the donor will not be considered to have designated or appointed them. Therefore, the fund is not donor advised.

Are funds, such as those for giving circles or Social Venture Partners, which are established by groups of unrelated donors, donor advised funds?

No. As in the case of field-of-interest funds, these funds pool the contributions of several unrelated donors, the funds are not tracked by reference to the gift of any individual member of the group, and grant recommendations are a group decision. These funds are not donor advised.

Memorial funds usually have many donors. Are they donor advised?

A memorial fund generally is a separate fund tracked by reference to the decedent. Although the decedent is not a donor, the legislative history makes clear that contributions by related persons, such as the decedent's spouse or a child, can constitute a fund that is separately identified by the contribution or a donor or donors. If the fund is one for which family members of the decedent will provide advice, the fund should be treated as a donor advised fund even though it has multiple contributors unless it is otherwise exempt because it is, for example, an exempt scholarship fund or a fund designated for a single charitable organization.

Are scholarship funds donor advised if a donor is a member of the selection committee?

A scholarship fund is not a donor advised fund, even if a donor or fund advisor is a member of the selection committee, if it meets the following tests:

- The sponsoring organization appoints all of the members of the committee and the donor's advice is given solely as a member of the committee;
- The donor, and parties related to the donor, do not control the committee directly or indirectly; and
- All grants are awarded on an objective and nondiscriminatory basis using a procedure that has been approved in advance by the board of directors of the sponsoring organization and the procedure is designed to ensure that all such grants meet the requirements of paragraphs (1), (2), or (3) of section 4945.

What are the requirements of paragraphs (1), (2), or (3) of section 4945?

Grants to individuals for travel, study or similar purposes must fit into one of three categories:

- Paragraph (1) allows grants that are qualified scholarships and fellowships. These are scholarships that pay for tuition, books, room and board and so forth.

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