Definition of Donor-Advised Fund: Summary of Statutory Provision (Code section 4966)

• Code section 4966(d)(2) defines a donor-advised fund as any fund or account:
  • which is separately identified by reference to contributions of a donor or donors,
  • which is owned and controlled by a “sponsoring organization,” and
  • with respect to which a donor or any person appointed or designated by such donor (i.e., a “donor advisor”) “has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in such fund or account by reason of the donor’s status as a donor.”

– A sponsoring organization is any organization described in Code section 170(c), excluding a governmental unit, which is not a private foundation and which maintains one or more donor-advised funds.
Definition of Donor-Advised Fund: Exclusions

• Code section 4966(d)(2)(B)(i) excludes from the definition of donor-advised fund a fund or account which makes distributions only to a single identified organization or government entity.
  – However, the Code does not contain express limitations as to what activities or organizations such a fund or account may support.

• Code section 4966(d)(2)(B)(ii) excludes from the definition of donor-advised fund any fund which makes grants to individuals for travel, study or other similar purposes if:
  – the fund is advised by a committee all the members of which are appointed by the sponsoring organization;
  – the committee is not controlled by the donor or donor advisor to the fund (or any persons related to the donor or donor advisor); and
  – all grants from the fund are awarded on an objective and non-discriminatory basis pursuant to a procedure approved in advance by the governing board of the sponsoring organization, provided that the procedure meets the requirements for private foundation grants to individuals for travel, study or other similar purposes.
Definition of Donor-Advised Fund: Proposed Guidance – Exemptions

- Code section 4966(d)(2)(C) provides that Treasury may exempt from the definition of donor-advised fund (i) a fund or account that is advised by a committee not directly or indirectly controlled by the donor or any person appointed or designated by the donor for the purpose of advising with respect to distributions from such fund, and (ii) a fund or account that benefits a single identified charitable purpose.
Definition of Taxable Distribution: Summary of Statutory Provision (Code section 4966(c))

- **A taxable distribution includes any distribution from a donor-advised fund:**
  - to an individual; or
  - to any entity:
    - if the distribution is not for a charitable purpose; or
    - over which the sponsoring organization does not exercise expenditure responsibility.

- **A taxable distribution does not include distributions to:**
  - Code section 170(b)(1)(A) organizations;
  - foreign public charity equivalents; or
  - distributions for charitable purposes made subject to expenditure responsibility, including distributions to:
    - a private non-operating foundation,
    - a foreign organization for which an equivalency determination has not been made,
    - a non-functionally integrated Type III supporting organization, or
    - A Type I, II or “functionally integrated” Type III supporting organization the supported charity of which is directly or indirectly controlled by a donor or donor advisor to the fund (or any related persons of the donor or donor advisor).
Definition of Taxable Distribution: Summary of Statutory Provision – Excise Taxes

• A taxable distribution is subject to an excise tax of 20% of the taxable distribution amount, imposed on the sponsoring organization.

• Any fund manager who approves a distribution from a donor-advised fund knowing it to be a taxable distribution is subject to an excise tax of 5% of the taxable distribution amount, up to $10,000 for any one taxable distribution.
Definition of Prohibited Benefit: Summary of Statutory Provision (Code section 4967)

- Code section 4967(a)(1) imposes an excise tax on a donor, donor advisor or related person if such person receives a “more than incidental benefit” from a donor-advised fund distribution resulting from advice provided.
- Code section 4967(a)(2) imposes a separate excise tax on a fund manager who knowingly agrees to make a distribution which is taxable under Code section 4967(a)(1).
Intermediate Sanctions: Summary of Statutory Provision (Code section 4958(c)(2))

• The PPA added a category of automatic excess benefit transactions under Code section 4958 that applies only to transactions involving donor-advised funds.
  – Code Section 4958 applies to public charities, not private foundations.

• Code section 4958(c)(2) provides that the term “excess benefit transaction” will include any grant, loan, compensation or other similar payment from a donor-advised fund to a donor, donor advisor, a family member of either, or a 35% controlled entity of either.
Excess Business Holdings: Summary of Statutory Provision (Code section 4943(e))

• The PPA also added Code section 4943(e), which applies the “excess business holdings” provisions previously applicable to private foundations to donor-advised funds.

• Code section 4943(e) treats donors, donor advisors, family members of each and 35% controlled entities of each as disqualified persons for purposes of the excess business holdings provisions.