

FEBRUARY 7, 2024

Proposed Regulations on Donor Advised Funds: Take-Aways for Fiscal Sponsorship

This is the second in a series of blog posts with our thoughts on different aspects of the **proposed regulations** providing guidance on the federal tax rules governing donor-advised funds (“DAFs”). (See the first post on what the proposed regulations may mean **for impact investments**.) This post explores how the proposed regulations may impact fiscal sponsorship.

Fiscal sponsorship describes the well-established practice of a public charity sponsoring a discrete charitable project under the sponsor’s supervision. For years, fiscal sponsors have navigated the limited DAF rules to ensure that projects avoid classification as DAFs. However, if the proposed regulations are adopted as written, many more fiscal sponsorship projects could be classified as DAFs, significantly limiting the benefits of fiscal sponsorship.

The proposed regulations expand the definition of a DAF in a few key ways that are relevant for fiscal sponsorship. IRC Section 4966(d)(2)(A) defines a DAF as a fund or account that is separately identified by reference to contributions of a donor and over which at least one donor or donor-advisor has advisory privileges by reason of the donor’s status as a donor.

- **Separately Identified:** Under the proposed regulations, a fund is separately identified if the sponsor maintains a formal record of contributions to the fund relating to a donor. Even without formal records, the account may still be separately identified if the account balance “reflects items such as contributions, dividends, interest, distributions, administrative expenses, and gains and losses” and “one or more donors or donor-advisors regularly receive a fund or account statement.” Such accounting and reporting is common for fiscal sponsors.
- **Pooled Funds:** It is common for fiscally sponsored projects to have multiple donors. The proposed regulations state that a fund will be considered a DAF even if contributions from multiple donors are comingled, which is not the current typical practice for DAFs. An example in the proposed regulations states that a fund with fifteen unrelated donors is still considered a DAF even if only one donor has advisory privileges.
- **Advisory Privileges:** The proposed regulations significantly expand who is a “donor-advisor” and what counts as “advisory privileges” to a DAF by relying on a facts and circumstances analysis, taking into account the conduct of the donor, advisors, and the sponsor, and could include people on advisory committees (see below). Many fiscal sponsors interact with project donors and with experts they recommend; those

RELATED CATEGORIES

- Donor-Advised Funds
- Public Charities

AUTHORS



Andrew Schulz
Of Counsel



Shirley McLaughlin
Principal

ABOUT OUR BLOG

Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

EDITORS



Stephanie L. Petit
Principal



Eric K. Gorovitz
Principal

interactions may fall within the new definitions.

- › **Committees:** Some fiscal sponsorship projects are administered in coordination with an advisory committee, appointed by the fiscal sponsor, which may or may not include a donor to the project. Under the proposed regulations, donors may not be on advisory committees except in the limited cases of scholarships and disaster relief funds. Further, members of an advisory committee would be donor-²advisors if, with limited exceptions, the donor or a donor-advisor had a role in selecting them. An exception allows donors to suggest advisory board members based on their expertise, but only if the sponsor then selects them based on objective criteria and those individuals do not make up a majority of the advisory committee.

What can fiscal sponsors do? This may be a good time to take stock of which projects could be reclassified as DAFs and consider next steps, if the proposed regulations go into effect as written. Exceptions in the new rules could help some projects avoid DAF classification. For instance, under the exception for funds that only make distributions to a single entity, many “Model C” projects should not be DAFs. For other projects, sponsors can eliminate advisory privileges for project donors, including removing donors from all advisory committees. Sponsors that have advisory boards that do not include donors but include people recommended by donors should make sure the selection process aligns with the requirements outlined in the proposed regulations. In addition, sponsors should limit discussions with donors to those necessary to comply with grant terms and donor restrictions, and should not otherwise solicit advice.

It may also be a good time to get involved. Comments are due February 15 and anyone can [submit comments](#) to the IRS. They don't have to be long, just tell your story and how the proposed rules would affect your organization.