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What Private Foundations, Donor-Advised Fund Donors, and DAF Sponsors Need to Know About the Proposed “Accelerating Charitable Efforts Act” (aka ACE Act)

Earlier this month, US Rep. Chellie Pingree (D-ME-1) introduced [HR 6595](#) as a companion bill to an identical proposal, [S 1981](#), that US Sen. Angus King (I-ME) introduced last June. If passed, these bills, known as the “Accelerating Charitable Efforts (‘ACE’) Act”, would amend the Internal Revenue Code (“IRC”) to alter, in some significant ways, certain rules regarding donations to and payments from donor-advised funds (“DAFs”), as well as certain private foundation distributions.

Some provisions of these bills, if passed, **would apply to payments made during 2022**, even if made **before the ACE Act is enacted into law**. Specifically, if the ACE Act passes, then for payments or filings made after **December 31, 2021**:

- › Section 4 would disallow as a “qualifying distribution” under IRC Section 4942 (“QD”) any payment of administrative expenses to certain disqualified persons.
- › Section 5 would:
 - › disallow as a QD any grant to a DAF; and
 - › require disclosure on Form 990-PF of the amount of contributions made to DAFs.

Thus, if a private foundation makes a large grant to a DAF now, it may later find that the grant does not count toward the foundation’s minimum distribution requirements, and if the private foundation filed Form 990-PF before passage, it may need to amend its return to disclose that payment.

Other new requirements that the ACE Act would impose have effective dates **after the date of enactment**, permitting donors, foundations, and advisors to wait and see if they actually are implemented. These provisions include:

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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.

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- › new IRC Section 170 deduction rules that define different categories of DAFs and impose limitations on donor deductions for contributions (Section 2 of the ACE Act);
- › a new IRC Section 4967A excise tax on undistributed contributions held in DAFs after 14 or 49 years, depending on the type of DAF (Section 3 of the ACE Act); and
- › new public support rules essentially requiring public charities that receive a grant from a DAF to treat the grant, for purposes of the grantee's public support calculations, as a contribution from a private foundation rather than from a public charity (Section 6 of the ACE Act).

In better news, Sections 7 and 8 the ACE Act would provide an exemption from the IRC Section 4940 tax for private foundations making significant excess qualifying distributions or for certain limited-duration foundations. These changes would also be effective after the date of enactment of the Act.

We do not have a crystal ball and cannot predict the likelihood that the ACE Act will be adopted in its current form, or that, even if adopted, the retroactive effective dates would remain.

Nonetheless, private foundations, DAF sponsors, and donors considering either making contributions to DAFs or advising contributions from DAFs, should be aware of the ACE Act's potential effects on their plans for 2022.