The ACE Act is Misguided and Unnecessary

What are some problems with the ACE Act, and why do donor-advised fund sponsors of all types oppose the bill?

Supporters of the Accelerating Charitable Efforts (ACE) Act (H.R. 6595/S. 1981) are promoting the idea that the Act will help speed up charitable grantmaking from private foundations and donor-advised funds (DAFs). The purpose of this document is to give a high-level explanation of why DAF sponsors of all types are strongly opposed to the reform structure of the ACE Act.

1. Unnecessary to Promote Grantmaking. Charitable grants from DAFs have more than doubled in the last five years, and the average DAF has an annual payout of over 20 percent. Most sponsors have inactive funds policies to ensure DAF funds do not sit dormant. *It's a myth that donors everywhere are opening DAFs to get tax deductions and then letting the money sit.* Often, if a donor hasn't made a grant in a year or two, it's because they have a strategic plan in place to make a large gift in the future, and there's nothing wrong with that as a long-term giving strategy. In addition, DAF assets are invested and have the potential to create more charitable giving than the original gift.

2. Ineffective at "Accelerating Giving." Proponents of the ACE Act often fail to explain that the bill's complicated structure requires it to exempt all current DAFs. *If your goal is to get more money out of DAFs now, this bill simply cannot work because it exempts all current funds.* There would be little impact for the next 10-15 years. In fact, if this bill were to become law, there would likely be a rush to set up new DAFs before the effective date, further blunting any long-term benefit. Better to have a simpler set of changes that includes current DAFs, such as those proposed by the Strengthening Community Philanthropy Ad Hoc Working Group, convened by the Council on Foundations.

3. Expensive Compliance. Any payout requirement over a specific number of years – the ACE Act says for donors to receive a tax deduction for their DAF contributions, they would have to agree to grant out all donations within 15 years – would force DAF sponsors to implement a first-in, first-out (FIFO) system for tracking gifts in and grants out. This is the only way to measure how "old" certain money is that is coming out of the DAF. This would be very expensive to administer, particularly for small DAF sponsors, for very little public benefit. Recent DAF research shows most donors – nearly 80 percent – are meeting this timeline anyway.

4. Dramatic Shifts in Donor Behavior. The ACE Act's proponents fail to account for how changes in tax policy may impact the size and timing of gifts. To outline just one example, consider the donors who wish to set up a DAF for their children and/or grandchildren to advise. They want to pass their philanthropic values on to the next generation(s), but they do not have enough wealth for a private foundation, or simply prefer the simplicity and lower expenses of a DAF. The ACE Act says: If you don't commit to granting out your entire gift in 15 years, you don't get a tax deduction at the time of the gift. *It's impossible to overstate the impact this will have on donor behavior.* Many of those gifts will go away; smaller charities will bear the brunt. Disruption of the current DAF regulatory ecosystem, without adequate research into the resulting donor behavior, may very well have a detrimental effect on overall charitable giving.

5. Poorly Crafted Exemptions. The ACE Act's leading proponents designed a hastily drafted exemption for DAFs at community foundations which in practice would exclude many of them, including in some of the country's fastest growing cities. Now some advocates argue the exemption in the bill is broader, but they haven't settled on how broad. DAF sponsors don't support breaking up the field into different categories. We are open to sensible policy changes applying equally to all sponsors.

6. Failure to Distinguish Abuse from Sound Practice. The ACE Act's proponents argue whenever a private foundation (PF) makes a grant to a DAF, this is somehow *prima facie* evidence of abuse because PFs have a payout requirement and DAFs don't. But PF-to-DAF grants, while not a major fundraising strategy, are sometimes necessary for good charitable outcomes. DAF sponsors generally support a time limit to distribute PF-to-DAF grants, but we strongly oppose the one-year requirement in the ACE Act and the argument pushed by advocates that all such grants are evidence of abuse.

7. Misguided Changes to Complex Gifts. Sometimes, Congress passes reforms where certain activities stay legal, but no one does them anymore. The ACE Act states charitable gifts of complex assets (business interests, real estate, etc.) to a DAF would no longer get a deduction in the year of the gift, but it keeps current tax law treatment for such donations to other public charities and endowments. Under these rules, while such gifts would stay legal, no donor would donate a complex asset to a DAF ever again. This is nonsensical policy. Any changes to complex gift rules should apply to all public charities equally.

For these reasons and others, DAF sponsors are unified in their opposition to the ACE Act.

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