



## *Milestones in the History of DAFs*

**1931** – *New York Community Trust establishes the first donor advised fund.*

**1969** – *Tax Reform Act –Section 170(b)(1)(F) (originally Section 170(b)(1)(E)) was added to the Internal Revenue Code by the Tax Reform Act of 1969.*

- The 1969 Tax Reform Act created distinctions between private foundations and public charities, including a more favorable tax deduction for contributions to public charities and the public support test (170(b)(1)(A)(vi).
- However, it also recognized a subset of private foundations that were entitled to the more favorable tax deductibility rate for donors. One of those private foundation types is described as a private foundation that has donations “pooled into a common fund.” While the term donor advised fund was not used, this language provides the first regulatory recognition of funds that are held by a foundation but that are not contributed by a single donor.

**1972** – *Treasury Reg. Sec. 1.170A-9(f)(11)(v)(B) – creates the public support test for a public charity, including community foundations.*

- **Treasury Reg. Sec. 1.170A-9(f)(11)(ii)(B)** - previously Treasury Reg. Sec. 1.170A-9(e)(11)(ii)(B) – Establishes a single entity with component funds and permits a private foundation to terminate and transfer its assets to a fund at a public charity, provided the transferor did not impose any material restriction with respect to the transferred assets.
- **Treasury Reg. Sec. 1.170A-9(f)(11)(ii)** - requires that the name of the organization convey the concept of a capital or endowment fund to support charitable activities.
- **Treasury Reg. Sec. 1.170A-9(f)(11)(iv)** - states that all funds of the organization must be subject to a common governing instrument or a master trust or agency agreement.
- **Treasury Reg. Sec. 1.170A-9(f)(11)(v)** - requires that the organization must have a common governing body or distribution committee which either directs or, in the case of a fund designated for specified beneficiaries, monitors the distribution of all the funds exclusively for charitable purposes.



## **1986** – *Tax Reform Act.*

- Imposed more stringent reporting obligations and payment deadlines on private foundations for unrelated business taxable income and the excise tax.
- As a result, DAFs at a sponsoring organization like a community foundation became a more attractive giving option than private foundations that required substantial management and oversight.

## **1987** – *National Foundation, Inc. v. United States, 13 Cl. Ct. 486, 493 (1987).*

- The court held that an organization that raised and distributed funds to other charities and administered a wide variety of charitable projects, mostly recommended by its donors, qualified for exemption under section 501(c)(3).
- The court found that National Foundation, Inc. (“NFI”) could refuse to administer a project if it did not meet five stringent standards:
  - that it be consistent with the charitable purposes specified in section 501(c)(3);
  - that it have a reasonable budget;
  - that it be adequately funded;
  - that it be staffed by competent and well trained personnel;
  - that it be capable of effective monitoring and supervision by NFI.
- The court also found that donors had relinquished all ownership and control over the donated funds or property to NFI and that NFI exercised its discretion in authorizing charitable distributions of the funds. NFI’s standard form of agreement provided that NFI had control of all donations, and it was free to accept or reject any suggestion or request made by a donor.

## **1991** – *The Gift Fund is established by Fidelity Investments® as an independent public charity, which is governed by a Board of Trustees, the majority of whom are independent of Fidelity Investments.*

## **1996** – *A series of opinion pieces, legal publications, and articles begin to emerge on donor advised funds, spurring increased debate on how they are regulated. Criticism is focused on commercial gift funds in particular. At the same time, the Fidelity Gift Fund voluntarily adopted and reported to the IRS operating procedures in 1998, including mandating that its aggregate annual giving exceed 5% of the fund’s average net assets and that donors would be educated about the impermissibility of using grant*



*funds for private benefit. Vanguard and other national donor advised fund also adopted these operating procedures. During this time, the Council on Foundations hosted meetings with community foundations leaders about public policy and donor advised funds and met with Hill staffers.*

**2000** – *The President’s Budget message to Congress calls for legislation regulating donor advised funds. The Council on Foundations responds with a statement to the House Ways and Means Committee, urging that the nature and operations of community foundations be taken into account in this regulatory process. A Coalition of Jewish Federations submit a statement supporting the Council’s position and a coalition of charities created by financial institutions also respond.*

**2006** – *Pension Protection Act (PPA) – provides additional clarity on donor advised funds, but the field is still awaiting IRS guidance on some pieces of the Act. The PPA provides:*

- Legal definition of a donor advised fund in the IRC for the first time.
- List of prohibited payments to donors (pledges, tickets to events).
- New rules about what grants can be made from donor advised funds (scholarships are separate).
- Documentation required for all distributions from donor advised funds (expenditure responsibility).

**2014** – *Tax Reform Act – Excise tax on failure to distribute within 5 years contribution to donor advised funds.*