

Proposed Legislation for Private Foundation Minimum Distribution Requirements

A number of philanthropic leaders have voiced support for proposed legislation to increase the amount of distributions from private foundations and donor advised funds. Named the “Initiative to Accelerate Charitable Giving” (<https://acceleratecharitablegiving.org/>), the most prominent initiative is being led by John Arnold, a wealthy hedge fund trader and Ray Madoff, a professor of law at Boston University. The Initiative’s reforms would seek to change certain rules around the private foundation 5% minimum distribution requirement so that salaries or travel expenses paid to foundation family members will not count against the 5% minimum distribution requirement. The proposal includes a provision so that most distributions by private foundations to donor advised funds would not count against the 5% minimum distribution requirement (ending the ability of private foundations to meet the 5% distribution requirement by making a distribution to a donor advised fund). The proposed reforms would also eliminate the 1.39% annual net investment income excise tax for any year in which a private foundation pays out 7% or more of the fair market value of its assets or agrees to limit its life span to 25 years or less. Separately, Professor Madoff has advocated for the minimum distribution requirement to be increased to 10% annually.

The proposal also defers the charitable deductions for contributions to donor advised funds unless the donor agrees to distribute the fund or release the advisory privileges within 15 years. The proposal includes changes to the income tax deduction so that donors who contribute closely-held assets receive a charitable income tax deduction equal to the funds received by the donor advised fund from the sale.

At the moment, it appears unlikely that these proposals will pass (there is focused opposition, including The Philanthropy Roundtable <https://www.philanthropyroundtable.org/home/blog/post/roundtable/2020/12/01/elise-westhoff-responses-to-the-arnold-madoff-proposal>).

Nonetheless, these proposals are indicative of a possible trend toward more scrutiny of philanthropy and of the wealth present in private foundations and donor advised funds.