

SUPPORTING STATEMENT
Internal Revenue Service (IRS)

Taxes on Taxable Distributions under Section 4966
OMB Control Number **1545-New**

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Some charitable organizations (including community foundations) establish accounts to which donors may contribute and thereafter provide nonbinding advice or recommendations about distributions from the account or the investment of assets in the account. Such accounts are commonly referred to as “donor advised funds” or “DAFs.” Sections 1231–1235 of the Pension Protection Act of 2006 (PPA), Public Law 109–280, 120 Stat. 780, 1094–1102 (August 17, 2006), enacted various amendments to the Internal Revenue Code (Code) regarding DAFs. Among these, section 1232 of the PPA amended section 4958 of the Code to add special rules relating to excess benefit transactions with DAFs; section 1231(b) of the PPA added section 4967 to the Code, which imposes an excise tax on prohibited benefits resulting from distributions from DAFs; and section 1231(a) of the PPA added section 4966 of the Code, which imposes excise taxes on taxable distributions made by sponsoring organizations from a DAF, and on the agreement of certain fund managers to the making of such distributions.

This document contains proposed regulations regarding excise taxes on taxable distributions made by a sponsoring organization from a donor advised fund (DAF), and on the agreement of certain fund managers to the making of such distributions. The proposed regulations would provide guidance regarding DAFs and taxable distributions. The proposed regulations generally would apply to certain organizations, including community foundations and other charitable organizations, that maintain one or more DAFs, and to other persons involved with the DAFs, including donors, donor-advisors, related persons, and certain fund managers.

This notice of proposed rulemaking contains proposed amendments to 26 CFR part 53 (Foundation and Similar Excise Taxes) under section 4966 (proposed regulations).

2. USE OF DATA

The information collections are recordkeeping and third-party disclosures, that is used and will be used by the IRS to enforce the Internal Revenue laws discussed above. The IRS may review the information during examinations.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS has no plans to offer electronic filing as these are recordkeeping and third-party disclosure requirements.

4. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available for use or adaptation from another source.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

The collection of information is not expected to have a significant economic impact on a substantial number of small entities.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Consequences of less frequent collection would affect the IRS ability to enforce laws governing such donor advised funds and similar funds or accounts would suffer. The collection of information is required by law to establish compliance with the laws governing such donor advised funds and similar funds or accounts.

Consequences of less frequent collection on federal programs or policy activities would consist of decreased amount of taxes collected by the IRS, inaccurate and untimely filing of tax returns, and an increase in tax violations.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 C.F.R. 1320.5(d)(2)

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

In December 2006, the Treasury Department and the IRS issued Notice 2006–109, 2006–2 C.B. 1121, to provide interim guidance on certain requirements enacted by the PPA, including those that affect DAFs¹. Notice 2006–109 also requested comments regarding the notice and suggestions for future guidance.

In February 2007, the Treasury Department and the IRS issued Notice 2007–21, 2007–1 C.B. 611, requesting comments in connection with a study conducted by the Treasury Department and the IRS on the organization and operation of DAFs and supporting organizations, as required by section 1226 of the PPA.

In December 2017, the Treasury Department and the IRS issued Notice 2017–73, 2017–51 I.R.B. 562, describing approaches being considered to address certain issues regarding DAFs and requesting comments on those approaches. In particular, Notice 2017–73 stated, among other things, that the Treasury Department and the IRS are considering developing

¹ For example, section 5.01 of Notice 2006–109 excludes from the definition of a DAF an employer sponsored disaster relief fund that meets certain requirements. To be excluded, the fund must: (1) serve a single identified charitable purpose, which is to provide relief from one or more qualified disasters within the meaning of section 139(c)(1), (2), or (3); (2) serve a large or indefinite class, i.e., a charitable class; (3) select recipients of grants based on objective determinations of need; (4) select recipients of grants using either an independent selection committee or adequate substitute procedures to ensure that any benefit to the employer is incidental and tenuous; (5) make no payment from the fund to or for the benefit of any director, officer, or trustee of the sponsoring organization of the fund or for the benefit of any member of the fund's selection committee; and (6) maintain adequate records that demonstrate the recipients' needs for the disaster relief assistance.

proposed regulations under section 4967 that would, if finalized, provide that (1) certain distributions from a DAF that pay for the purchase of tickets that enable a donor, donor-advisor, or related person under section 4958(f)(7) to attend or participate in a charity sponsored event result in a more than incidental benefit to such person under section 4967, and (2) certain distributions from a DAF that the distributee charity treats as fulfilling a pledge made by a donor, donor-advisor, or related person, do not result in a more than incidental benefit under section 4967 if certain requirements are met.

A notice of proposed rulemaking (NPRM) published on November 14, 2023, at 88 FR 77922, soliciting comments and requests for public hearing. Comments will be addressed in the final rule.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

No personally identifiable information (PII) is collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

This proposed rulemaking involves the collection of five types of information.

The collections of information in these proposed regulations are as follows. *Section 53.4966-4(a)(4)(ii)* allows a sponsoring organization to rely on a certification from the donor that all distributions satisfy the special rules relating to the single identified organization exception. *Section 53.4966-4(b), (c), and (d)* require an organization with a fund excepted from the definition of a DAF to maintain records regarding recipients and the selection process for recipients. *Section 53.4966-4(c)* also requires the organization to approve in writing the selection committee whose members are nominated by a section 501(c)(4) organization. *Section 53.4966-5(c)* allows a sponsoring organization to avoid a taxable distribution to certain foreign organization distributees if it makes a good faith determination regarding their tax-exempt status. *Section 53.4966-5(a)(1)(ii)(B)* requires a sponsoring organization to exercise expenditure responsibility with respect to certain distributions.

The expected recordkeepers are sponsoring organizations of DAFs described in section 4966(d)(1), other organizations described in section 4966(d)(1)(A) and (B) that maintain funds excepted from the definition of a DAF under section 4966(d)(2)(B) or (C) (and certain donors to funds described in section 4966(d)(2)(B)(i)), foreign organization distributees that are the subject of equivalency determinations by sponsoring organizations, and recipients of expenditure responsibility distributions.

Authority	# of Respondents	# Responses per Respondent	Annual Responses	Estimated Hours per Response	Total Burden
Reg 142338-07 (Third-party disclosure and recordkeeping burden)	13,961	1	13,961	3 hours and 47 minutes (3.787 hr.)	52,874
Totals			13,961	3.787	52,874

13. **ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

The IRS estimates the total burden cost per response at \$228.83. To arrive at this figure, the estimated hours per response of 3.78726 were multiplied by \$60.42 per hour. IRS anticipates that taxpayers may use an accountant in meeting these regulatory obligations.

Estimated Annualized Respondent Cost and Hour Burden

Total Responses	Total Burden (Hours)	Hourly Wage Rate	Estimated Hours per Response	Estimated Total Burden Cost per Response
13,961	52,874	60.42	3.78726	228.83

The above Hourly Wage Rate is the [May 2022 Bureau of Labor Statistics](#) mean wage for “Accountants and Auditors” (Major Group (13-2011)) of \$41.70 times the wage rate benefit multiplier of 1.4488 (to account for fringe benefits) equaling a fully-loaded wage rate of \$60.42.

The benefits multiplier is estimated by dividing total compensation of \$43.26 by salaries and wages of \$29.86, based on Employer Cost for Employee Compensation, June 2023 data, released September 12, 2023 (<https://www.bls.gov/news.release/ecec.nr0.htm>).

14. **ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT**

There are no annualized cost to the federal government as these are recordkeeping and third-party disclosure requirements.

15. REASONS FOR CHANGE IN BURDEN

This is a proposed new collection:

	Approved	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses for this IC	13,961	0	13,961	0	0	0
Annual IC Time Burden (Hours)	52,874	0	52,874	0	0	0

IRS is making this submission to request a new OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis, and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it would cause confusion by leading taxpayers to believe that the revenue procedure sunsets as of the expiration date. Taxpayers may not be aware that, if needed, the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

Note: The following paragraph applies to all the collections of information in this submission.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to the collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential as required by 26 U.S.C. section 6103.