



## **Donor-advised Funds and Scholarship Funds Legislative Guidelines to Know**

On August 17, 2006, President Bush signed into law the Pension Protection Act of 2006. The enactment of this law (known as H.R.4) has many provisions that affect charitable giving, particularly scholarship funds and donor-advised funds. The law also now allows rollovers directly from Individual Retirement Accounts (IRS's) to charities.

As you know, Congress has increasingly scrutinized both for-profit and nonprofit corporations in recent years due to isolated instances of abuses in both sectors. One of the Delaware County Community Foundation's most important commitments is to maintain the highest standards of integrity, conduct, trust, and ethics in all that we do. We pass this information along to you in the hope so that you may be informed and up-to-date in your awareness of the law as you either establish your own new donor-advised or scholarship fund or simply wish to make grants from an existing fund.

We are honored that you have chosen the Delaware County Community Foundation to facilitate your philanthropy. We look forward to serving you for many years to come.

### **Scholarship Funds**

Congress significantly altered the requirements for administering scholarship funds through its adoption of House Rule #4. The new legislation is designed to increase and strengthen oversight of funds by the sponsoring organization (in this case the Delaware County Community Foundation). Additionally, new regulations narrow the definition of a scholarship fund.

Most scholarships fall into one of several categories:

- **Designated Scholarship Fund** – The fund awards scholarships to the same school each year, and the school selects the recipient.
- **Donor-advised Scholarship Fund** – The donor and a committee of individuals receives and reviews applications and decides on a new scholarship recipient each year.
- **Administered Scholarship Fund** – The donor and a committee make the final decision, but the Foundation handles the administration of processing applications and other tasks.

### *What does the new law say?*

H.R. 4 states that a fund is a scholarship fund *only if it meets the following tests:*

- The sponsoring organization (the Delaware County Community Foundation) appoints all members of the committee and the donor's advice is given solely as a member of the committee.
- A donor, and parties related to the donor, cannot control the committee directly or indirectly.
- All grants are awarded on an objective and nondiscriminatory basis using a procedure that has been approved in advance by the Board of Directors of the sponsoring organization and the procedure is designed to ensure that all grants meet the requirements of the legislation.

H.R. 4 does not allow donor-advised funds to make grants to individuals *even if the grant is issued to the student's school.*

### **Donor-Advised Funds**

For the first time, there is a Congressionally-approved definition of a donor-advised fund.

It states that a donor-advised fund must possess the following characteristics:

- The fund must be separately identified with reference to the contribution of the donor or donors.
- The fund must be owned and controlled by the sponsoring organization (Delaware County Community Foundation).
- The donor or a person appointed by the donor must have, or reasonably expect to have, the privilege of providing advice with respect to the fund's distributions or investments.

One of the most important changes in adoption of H.R.4 is that it prohibits donor-advised funds from paying grants, loans, compensation, and similar payments to donors, advisors, and persons related to them. Reimbursements are considered a "similar payment" under the new law. Under this law, the donor-advised fund can no longer be used to reimburse a donor or any other person for expenses incurred from fundraising or any other activity. Therefore, donor-advised funds held by the Delaware County Community Foundation will also be prohibited from making payments to vendors or other businesses and corporations. *In other words, only grant payments to qualified public charities will be made from donor-advised funds.*

### **The IRA Charitable Rollover**

An estimated \$3.6 trillion is currently invested in IRA's and the total continues to grow. For the first time, IRA owners can give a portion of their retirement savings directly to charity without first counting it as income and paying income tax. As a qualified public charity, the Delaware County Community Foundation can receive such rollovers. New legislation in 2009 is being proposed to expand the opportunities related to gifts of this kind.

We recommend that you consult with your financial advisor or estate planner to get the most recent details and how these might support your charitable goals.

### **Critical Times of Year to Consider Your Charitable Giving and Goals**

Tax time and December are traditionally the times when most people consider their charitable giving. However, it's never too early to make your plans. We at DCCF can help you meet a variety of planning needs:

- You need a year-end tax deduction.
- Your family foundation needs to distribute 4% but no time to evaluate worthy charities.
- You own highly appreciated, low-basis stock or you own depreciated stock and don't want to hold it any longer.
- You want to avoid capital gains tax on the sale of an asset.
- You want to create a private foundation but are concerned about administration and expenses.

All of these scenarios can be addressed by a donor-advised fund, one of the most popular charitable giving vehicles available today. Other options include field-of-interest funds, designated, or unrestricted funds. Call DCCF today to achieve your philanthropic goals.