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Advocates Poised for Capitol Hill Battle on Donor-Advised Funds

By Alex Daniels

Lobbyists are gearing up for the biggest fight in a decade over tax rules affecting nonprofits. One potential change, affecting donor-advised funds, is bringing out some of biggest players on K Street.

It isn't clear whether Congress will attempt a total revamp of tax law, which could have sweeping implications for nonprofits. But a lot of the groundwork was laid last year in a plan by the former chairman of the House Ways and Means Committee, David Camp (R-Mich.), which will be used as a starting point in the new Congress, many experts say.

Nonprofits welcomed some of Rep. Camp's proposals, like a lower excise tax on foundation investments. But other items have vexed nonprofits, including proposed rules to place a ceiling on executive compensation at charities, further limits on the charitable deduction, and a reduction in the incentive for donors to give cash instead of stock or real estate.

Many groups were especially alarmed at another proposal in the bill that would have forced donor-advised fund managers to pay out their assets to charities within five years or face a tax penalty. Currently, donors get an immediate tax deduction when they make a contribution to such funds, but they are not required to parcel out their gifts to charities within a specified time.

"To say we were surprised is an understatement," says Diana Aviv, president of Independent Sector, a nonprofit association. Ms. Aviv warns that attempts to force donor-advised funds to pay out their assets could mean trouble for how Congress treats all nonprofit endowments and reserves.

A proposed payout requirement would draw heavy lobbying from financial firms who benefit from the fund's management fees, says Ray Madoff, a professor at the Boston College Law School and a critic of the funds.

"The accumulation of charitable dollars financially benefits lots of people," she says. "They're going to lobby to maintain that protection."

Mr. Camp's replacement at the helm of the Ways and Means Committee, Paul Ryan (R-Wis.), has not indicated whether he will attempt a total tax rewrite. His Senate counterpart, Orrin Hatch (R-Utah), chairman of the Senate Finance Committee, hasn't announced a game plan either. But with the 2016 presidential race beginning in earnest soon, tax experts say any big tax bill must make significant progress in the next 12 months.

"It's go time," says Sandra Swirski, a partner at Urban Swirski & Associates who lobbies on behalf of the Philanthropy Roundtable, an organization that represents charitable donors.

Ms. Swirski says that until lawmakers signal how big a bite they want to take on a tax bill, lobbying activity among nonprofits is difficult to predict. But like Ms. Aviv, she sees Rep. Camp's bill as a threat to charitable giving and has already started meeting lawmakers, especially newly elected senators and representatives, to press her case.

"Until you have something in front of you and can read the text that says you are screwed, it's very difficult to mount a big campaign," she says. "But waiting until the last moment is not a lobbying plan."

Nonprofits boosted their Capitol Hill presence in 2005 and 2006 to lobby on the Pension Protection Act of 2006, a law that, among other things, regulated donor-advised funds. In the years since, donors have poured money into the giving vehicles; three of the nation's top 10 charities are funds spun off by large financial firms.

Since passage of the Pension Protection Act, only one of the top funds, the Fidelity Charitable Gift Fund, has lobbied Congress, and its presence in Washington has been sporadic. In 2005, the fund spent $460,000 on lobbying, according to the Center for Responsive Politics, a group that tracks lobbying spending. Eight years later, the fund zeroed out all lobbying activity. During the first three quarters of 2014, the fund spent $20,000 engaging Congress.

The other top donor-advised funds—Vanguard Charitable Endowment Program, Schwab Charitable, and Fidelity Charitable—have not lobbied Congress in the past 10 years. The for-profit financial-services giants that created them have spent millions trying to influence Congress, but they lobby on a wide variety of issues and disclosure forms often are vague about which issues they are pursuing.

The Vanguard Group has spent more than $1-million annually on lobbying for each of the past four years, but Benjamin Pierce, Vanguard Charitable's president, says his office maintain separate operations from the corporation, and they don't discuss lobbying issues.

"We don't talk to them at all," he says. "There's a big firewall."

Silicon Valley Steps In

Some newer donor-advised funds also are starting to chime in about legislation, albeit at a small scale.

Last year, the Silicon Valley Community Foundation, which manages a donor-advised fund created by about $1.5-billion in gifts from Facebook founder Mark Zuckerberg and his wife, Priscilla Chan, lobbied Capitol Hill for the first time when it spent $20,000 trying to influence lawmakers.

"We will utilize all means available to us" to educate lawmakers and the broader public during the current session of Congress, Vera Bennett, the foundation's chief operating officer, wrote in an email.

How much the foundation spends on lobbying will depend on action in Congress, but Ms. Bennett said there is "significant" work to be done informing lawmakers about donor-advised funds.

Fidelity Charitable and Schwab Charitable both declined interview requests. Given their dramatic growth in recent years, nonprofit leaders say the funds will be an easy target for lawmakers looking for new sources of revenue.

"Financial institutions will be more engaged than ever," says William Daroff, senior vice president for public policy at the Jewish Federations of North America. "If the private sector can help us meet our goals, it's a win-win."

"Some of those conversations are already taking place," adds Vikki Spruill, president of the Council on Foundations. "They're on Capitol Hill already."

Partisan Battles

Although Republicans now control both the House and Senate, nonprofit lobbyists fear that partisan battles during the last Congress will spill into the current session.

Last year, Congress frustrated many nonprofit leaders when it did not make permanent a slate of tax provisions, known as "tax extenders," that are usually renewed on an annual basis.

Included among the extenders were several items cherished by nonprofits, like provisions to encourage food and land donations and a tax incentive to make charitable donations from retirement accounts.

"That political wrangling could not be put aside to help the charitable sector was a bit hard to swallow," says Sue Santa, the council’s senior vice president for public affairs. "If that’s a signal for what’s going to happen going forward, it’s very discouraging."

Charities are likely to spend even more this year attempting to influence Congress than they did during the run-up to passage of the Pension Protection Act, predicts Lloyd Mayer, associate dean of the University of Notre Dame Law School.

Mr. Mayer, who lobbied on behalf of nonprofits 10 years ago, said the prospects of a donor-advised fund payout rule and the possibility of broad changes that could affect every corner of nonprofit tax law will likely increase activity.

He offered some advice from his previous life as a lobbyist. "In educating the member, you have to tell them how this effects the local hospital or the churches and houses of worship in their district," he says. "Those stories will have traction with members, but you have to go out and find those stories."