

IRS 2027 Priority Guidance Plan

Quick-Take: It appears that the IRS will be issuing new or updated Regulations in the coming months on charitable giving and heightened scrutiny of nonprofits.

Background: In late September, the IRS released its 2026-2027 Priority Guidance Plan. These annual releases alert the public as to what areas of taxation the IRS is taking a closer look at, often resulting in the form of new or revised Regulations. The most recent Priority Guidance seems to focus on Regulations regarding the nonprofit sector and charitable giving. This appears to be the first step after the Administration's April 2026 Transparency Initiative which is directed at nonprofits. A few of the topics covered in the 2026-2027 Priority Guidance follow.

Johnson Amendment: There will be guidance on the 'Johnson Amendment' that broadly bans all IRC 501(c)(3) tax exempt organizations from endorsing or opposing political candidates.

Form 990: New Regulations will provide guidance to IRC 6033's reporting requirements of a nonprofit organization, with a specific focus on *fiscal sponsorship arrangements* with the nonprofit organization which was identified in the April Transparency Initiative. This is part of the concerted effort to force a nonprofit to report more clearly the source of tax-deductible contributions to it (or to ferret foreign sources of contributions to the nonprofit.)

Donor Advised Funds: Back in 2023 the IRS's Priority Guidance raised some anxiety about potential abuses with a donor advised fund (DAF.) It suggested that changes might be made to IRC 4966 (DAF contribution and distribution rules) and IRC 6033 (DAF annual reports.) That 2023 Guidance triggered a large volume of concerned comments to the IRS from donors and nonprofit sponsors of donor advised funds. Nothing happened with the 2023 Guidance inclusion of DAFs. However, those Tax Code sections that address DAFs are back in the most recent Priority Guidance, once again triggering fears that proposed changes in the Regulations to these Tax Code sections will deter or reduce charitable giving through DAFs. There was no indication in the Guidance the direction the prospective Regulations might take.

IRC 68: The One Big Beautiful Bill Act (OB3) created a nightmare with its changes to IRC 68, which limits the income tax deduction for individuals or trusts and estates in the highest marginal federal income tax bracket (37%.) A trust or estate is in the highest marginal federal income tax bracket once its income exceeds \$16,000 for the year in 2026. The result of this limitation is to reduce the IRC 651 and IRC 661 distribution deduction by of a trust by 5.4%, which creates an income tax liability for the trust (or estate) on *phantom income*. IRC 68 also creates a limitation on a federal income tax deduction when a trust makes a

distribution directly to a tax-exempt entity. The 2026-2027 Priority Guidance promises to issue Regulations to implement IRC 68, but it does not provide any indication as to what, or how, those Regulations will address the hardship created by IRC 68. [IRC 68 creates double taxation on the same income dollars (the trust beneficiary pays the income tax on each dollar that is distributed to him/her, while the trust pays an income tax on the phantom income it must report, since 5.4% of the amount of income distributed by the trustee to the trust beneficiary cannot be deducted by the trustee.)

Topics Not Covered: The 2026 Priority Guidance did not include in its list of topics to be reviewed other OB3 tax law changes that affect charitable giving incentives, such as the non-itemized charitable deduction ('above-the-line') for cash gifts by individuals (up to \$1,000 per individual) and new floors on individual and corporate charitable income tax deductions.

Conclusion: As mentioned in the past, Congress (and the Administration) seem to have several concerns with donor advised funds, but without a lot of evidence to support those concerns. Some want to curtail the immediate income tax deduction associated with a contribution to a DAF, while others want to expand the number and use of DAFs (arguably to replace federal grants to nonprofits.) Maybe we will get lucky and through bipartisan compromise, Congress will expand the use of DAFs for all taxpayers.