



To: United States Treasury

From: Sean Parnell, The Philanthropy Roundtable

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Re: Use of Donor Advised Funds by Private Foundations

On December 4, 2017, the Internal Revenue Service and US Department of the Treasury released *Notice 2017-73, Request for Comments on Application of Excise Taxes With Respect to Donor Advised Funds in Certain Situations*. The Notice requests comments on a variety of issues, including the use of Donor Advised Funds by Private Foundations:

Sec. 6 REQUEST FOR PUBLIC COMMENTS

The Treasury Department and the IRS request comments regarding the issues addressed in this notice and suggestions for future guidance with respect to DAFs. In addition, the Treasury Department and the IRS request comments with respect to the following:

- (1) How private foundations use DAFs in support of their purposes.
- (2) Whether, consistent with § 4942 and its purposes, a transfer of funds by a private foundation to a DAF should be treated as a “qualifying distribution” only if the DAF sponsoring organization agrees to distribute the funds for § 170(c)(2)(B) purposes (or to transfer the funds to its general fund) within a certain timeframe.

The Philanthropy Roundtable would like to submit comments on this particular topic.

The Philanthropy Roundtable is America’s leading network of charitable donors working to foster excellence in philanthropy, protect philanthropic freedom, assist donors in achieving their philanthropic intent, and help donors advance liberty, opportunity, and personal responsibility in America and abroad. Our 660 members include individual philanthropists, family foundations, and community foundations located throughout the country who support a broad range of charitable causes.

Donor advised funds are a valuable tool for private foundations, which use them for a wide variety of purposes consistent with their purposes and federal law. When a private foundation gives to a donor advised fund, the fund sponsor still must ensure the money is spent on legitimate charitable purposes, and comply with regulations governing expenditure responsibility and prohibitions on funding of terrorism, among other restrictions.

The following examples have been provided by approximately fifteen private foundations, community foundations, and donor advised fund sponsors, and demonstrate how important donor

advised funds can be for private foundations in sustaining our nation's diverse, abundant and vibrant civil society.

Safety and Security

1. A national faith-based sponsor of donor advised funds reports that one private foundation makes grants to it to support charities in foreign countries where the private foundation has staff working in the country, accompanied by their families. Many of these countries are unstable and dangerous, and the lives of the foundation's staff and family members would be in jeopardy if the foundation made the grants directly. The use of a donor advised fund keeps the identity of the foundation private and protects the safety and well-being of those connected to it.
2. A foundation in the Southeast provides money to a donor advised fund to support overseas organizations that have been the target of violence. Utilizing the donor advised fund provides security by preventing the foundation's name from being directly associated with the grantees.
3. A foundation in the East makes grants to a donor advised fund to support organizations that oppose terrorism, some of which have had fatwas against them. Giving to a donor advised fund protects the foundation's trustees from the threat of violence.

Collaboration Among Foundations

4. A foundation in the West utilizes a donor advised fund at a community foundation as part of a collaborative effort with several other foundations that also contribute to the donor advised fund in order to jointly fund local economic development projects. The donor advised fund provides a vehicle that can accept and manage contributions from multiple sources without the need for establishing an additional management structure for the collaboration.
5. A foundation in the Southwest makes grants to donor advised funds at community foundations in order to participate in multi-foundation collaborative funding efforts, which it finds more efficient than simply coordinating direct grants by the participating foundations. It also allows grantees to have a single entity to report to rather than deal with conflicting reporting formats and timelines.

Support Local Projects

6. A foundation in the Southeast gives to a donor advised fund at a community foundation in geographic region they lack significant local knowledge of. Giving to the community foundation allows it to access the local knowledge and experience of the community foundation's staff and their familiarity with potential grantees.
7. A foundation in the Southeast supports, in collaboration with other local foundations, a project collecting data about city and county governments. There is no independent tax

exempt entity to give to, so all of the foundations fund the project through a donor advised fund at the local community foundation.

Funding Outside Normal Areas

8. A foundation in the East uses a donor advised fund when it supports organizations and projects outside of its typical grant areas in order to avoid “Opening up a Pandora’s Box of applications.”
9. A foundation in the Southeast normally does not provide support to fundraising events, and its published guidelines for grant seekers specifically states this. Several years ago the foundation decided to make a one-time exception and fund a major fundraising event for a charity. By giving to a donor advised fund and recommending a grant to the charity, it avoided sending a signal to other charities that might encourage them to request similar support.
10. A foundation in the East allows board members to make discretionary grants, and keeping those gifts private reduces unsolicited proposals from similar organizations that might otherwise waste time and effort to submit grant requests that won’t be considered.
11. A foundation in the Southeast allocates annual gifts to a donor advised fund for innovative programs that board members wish to pursue outside the foundation’s normal grant-making guidelines. The focus of the foundation is providing grants to higher and post-secondary education, but the board decided that funding economic opportunity grants would be appropriate to its mission. The board established a \$1M donor advised fund to be paid out over three years to help drive economic opportunity programs that align with increased post-secondary success.

Align Funding With Program Schedule

12. A foundation in the Southeast made a grant to a donor advised fund to support a large capital campaign commitment to a university. The foundation wanted to fund the commitment in a year where the investments had performed well, and distribute it out over several years as elements of the project are completed and the grant contingencies are met.
13. A foundation in the Southwest makes grants to donor advised funds at community foundations because doing so allows the foundation to make distribution decisions related to the project based upon the project’s timeline and achievements rather than the annual distribution requirement.

Maximize Funding & Efficiency

14. A foundation in the Southeast uses a donor advised fund to make international grants directly to the international organization. This is a much more efficient use of the capital earmarked for philanthropy as fees are nominal.

15. A foundation in the Southeast supports programing at a state university's law school that provides training and professional development for federal judges. The organization providing the programing will apply for tax-exempt status at a later date but has not yet done so. The foundation finds it less efficient and more costly to make expenditure responsibility grants, so the foundation provides funding to a donor advised fund at a community foundation that is able to make such grants.
16. A foundation in the Southeast used its donor advised fund to support a new consumer education project sponsored by a local 501(c)(6) organization. The foundation provided seed money for the new organization, but because it had not yet received an IRS 501(c)(3) determination, and the foundation felt it would be less efficient and more costly to make an expenditure responsibility grant, made a grant through its donor advised fund to get it started.

Instill Family Giving

17. A family with a private foundation uses a donor advised fund to engage the next generation to be more philanthropic. The family decided to open a donor advised fund with their children as advisors to help provide the children with a simple giving vehicle that they could leverage to learn about philanthropy. Due to the children's busy lives, the donor advised fund turned out to be the ideal giving vehicle for the children to learn about funding philanthropy and making an impact prior to involving them directly in the management of the family private foundation.
18. A foundation in the Southeast terminated and distributed assets to a donor advised fund in order to bring multiple generations of family members into the grant-making process and document and create the vision for the family's legacy in philanthropy in perpetuity without the continuing administrative burden of the private foundation. The donor advised fund will become an endowed fund that distributes income each year to causes the family members care about during their lifetime.

Other Purposes

19. A foundation in the West uses a donor advised fund during times of economic downturn in order to maintain giving levels without triggering adverse tax consequences as a result of the private foundation excise tax.
20. A community foundation in the Southeast that offers donor advised funds had a foundation create a donor advised fund to, over time, create an endowment for an impact investment fund at a state university's business school. This fund allows students to make investments and learn from the experience.
21. A foundation in the West will occasionally establish a donor advised fund at community foundations that are just getting started in order to encourage others to use the group. The funds deposited are spent out over a one or two-year period.

22. A foundation in the East allows board members to make discretionary grants to a donor advised fund of which the foundation is the advisor. By keeping these grants separate from the general accounts at the foundation, the use of the donor advised fund made accounting easier because the discretionary ledger was managed by the donor advised fund sponsor.
23. A foundation in the East allows board members to make discretionary grants, and utilizes the due diligence screening capacity of the donor advised fund sponsor to ensure the grantee is a qualified non-profit organization with a mission aligned to the foundation's donor intent.

The examples above represent just a few of the many reasons a private foundation might consider using a donor advised fund in support of its purposes, and demonstrate just how valuable a tool they can be. Any potential statutory or regulatory changes should be considered with this in mind, and adopted only if they are narrowly targeted at known and serious abuses and do not diminish the ability of foundations to use donor advised funds in furtherance of their legitimate philanthropic purposes.