

Key Recommendations from Council on Foundations Comments On Donor-Advised Funds and Supporting Organizations

Proposed Definition of Donor-Advised Fund

1. **General Definition.** A donor-advised fund is any fund or account with the following characteristics:
 - a. It is a separately identified fund or account consisting of assets owned by a section 501(c)(3) organization, other than a private foundation, including but not limited to a trust that is considered a component fund of a community foundation organized in the trust form; and
 - b. There is an understanding between the donor and the public charity that the public charity will take advice from the donor or the donor's designee into consideration regarding either distributions alone, or both investments and distributions, of amounts held in the fund.
2. **Exclusions.** Although they may have advisors, the following types of funds are not donor-advised funds:
 - a. Funds with respect to which donors or advisors may give advice only as to how the public charity itself will use the funds and not as to how the public charity will use the funds to make distributions to third parties.
 - b. Funds for which a majority of the advisors are appointed by a public charity other than the sponsoring charity, or by a governmental entity.
 - c. Funds designated at the time of the gift for the benefit of one or more specified public charities or governmental entities even if the donor or advisors may recommend distributions for specific charitable activities of the designated entity.
 - d. Funds designated at the time of the gift to support a specific charitable purpose if one of the following conditions is met:
 - i. Distributions from the fund are determined exclusively through a process that seeks or accepts proposals or funding requests from applicants that operate programs in the fund's area of interest and selects those applicants whose proposals or requests are judged best under objective criteria; or
 - ii. Funds that if organized and operated as separate legal entities would meet the public support test under section 170(b)(1)(A)(vi) of the Internal Revenue Code.

Gifts of Appreciated Property Other Than Publicly-Traded Stock

- Reforms should apply equally to all charitable organizations that may receive such gifts
- For gifts exceeding a prescribed amount, require donors to secure qualified appraisals no more than 60 days prior or 60 days following the date of gift

- For gifts exceeding a prescribed amount, require donors to provide the donee charity with a fully completed Form 8283 plus a copy of the qualified appraisal, not just the appraisal summary, within 75 days of the date of gift
- For gifts exceeding a prescribed amount, require the donee charity to forward the original signed and completed Form 8283 to the IRS within 60 days of receipt from the donor. The IRS can keep a special file of these 8283s to signal audits of selected taxpayers after the taxpayer files Form 1040 (or Form 1120) and actually claims a charitable deduction. This will place every donor on notice that “the IRS is watching,” and will accelerate the time period within which audits can be started
- For gifts exceeding a prescribed amount, amend section 6501 of the Internal Revenue Code to provide a special six-year statute of limitations for assessing tax and penalties in connection with Form 8283. False or fraudulent returns would continue to have no statute of limitations
- For gifts exceeding a prescribed amount, extend to six years the time period for filing Form 8282
- For gifts exceeding a prescribed amount, require charities filing Form 8282 to attach a copy of the donor’s Form 8283, including the qualified appraisal. Provide a box on Form 8282 for the charity to check when the disposition price is more than a stated percentage less than the appraised value. Allow the charity to explain any special circumstances affecting the disposition price
- Require the IRS to promulgate Circular 230-type standards for qualified appraisers and require the IRS to enforce those standards just as they enforce standards for attorneys, certified public accountants and enrolled agents. Require qualified appraisers to post a bond to secure payment of penalties assessed against them
- Strengthen the penalties for appraisers who falsely or fraudulently overstate the value of a gift
- Limit qualified appraisers to individuals who have been certified by organizations that offer training and certification
- Instruct the IRS to consider instituting review panels, similar to the Arts Advisory Panel, for hard-to-value gifts exceeding a specified substantial threshold. These panels might operate on a regional level
- Prohibit acceptance of gifts of investment assets if donor restrictions would prevent the public charity from freely disposing of the contributed asset

Grants to Individuals

- Bar grants to or for the benefit of donors or advisors, their family members, and businesses they control

Payout and Minimum Activity

- Do not legislate a payout requirement

- Require contacting advisors of funds that have gone for five years without activity and requesting a distribution recommendation
- Require the termination of advisory privileges for donor-advised funds that have not had activity for seven years if the advisor cannot be located or contacted

Grants to Foreign Organizations

- Do not limit grants to only organizations on an approved IRS list or prohibit entirely
- Set a deadline for speedy conclusion by the IRS of the inquiry it began more than a year ago into the need for additional guidance with respect to international grantmaking and international activities
- Impose penalties on donors who engage in “roundtripping” that include loss of deduction plus an penalty equal to twice the amount involved

Expenditures for Grantee Selection

- Clarify to prohibit payments to or for the benefit of donors, advisors, and members of their families (as defined in section 4958(f)(4))

Type III Supporting Organizations

- Do not abolish Type III supporting organizations
- Require new Type III supporting organizations to obtain a statement from the supported organization attesting that the supported organization has consented to be named as such and describing the support each named organization will receive
- Require Type III supporting organizations to obtain a statement from the supported organization attesting to the level of support each year and include that statement with the supporting organization’s Form 990
- Require the IRS to issue a revenue procedure that sets forth guidance on how Type III supporting organizations can substantiate their relationship with the supported entity or, in the alternative, that an annual accounting of support or the reasons for no support be provided to the supported organization and to the Internal Revenue Service as part of the Form 990
- Require the IRS to issue a revenue procedure delineating the process by which a supported organization may notify the Internal Revenue Service of its withdrawal of consent to be named as a supported organization
- Bar loans from a Type III supporting organization to the founder or any other “disqualified person”

Private Foundation Grants to Donor-Advised Funds

- Do not prohibit these grants