

When Your Donor Has a Donor Advised Fund

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Agenda



Donor Advised
Funds – The
Current Landscape



Donor Advised
Funds – The
Mechanics & Rules



DAF Planning Tips
& Considerations



DAF succession
planning as legacy
gift opportunity



Final Thoughts...

Why Donor Advised Funds? (DAFs)

Donor Advised Funds as a Giving Vehicle

National Philanthropic Trust

	2016	2017	% change
Charitable Assets	\$ 86.45 Billion	\$ 110.01 Billion	27.3%
Total Contributions	\$ 25.09 Billion	\$ 29.23 Billion	16.5%
Total Grant Dollars	\$ 15.91 Billion	\$ 19.08 Billion	19.9%
Grant Payout	20.6%	22.1%	1.5%
Total Number of DAF Accounts	289,478	463,622	60.2%
Average Size of DAF Account	\$ 298,628	\$ 237,356	-20.5%

A Stewardship Conundrum: From “The Whiny Donor”



The Whiny Donor

@thewhinydonor

Follow

In December, we gave through our DAF to several nonprofits that we had supported for many years with direct donations. I suspect several of them won't have the capacity to make the connection, and will now consider us lapsed donors.

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The Whiny Donor @thewhinydonor · Jan 26

Which means they will change the way our relationship moves forward. They will think we didn't support them; we will think we have. It's a stewardship conundrum.

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The Whiny Donor @thewhinydonor · Jan 26

I hate the DAF for this reason. My husband is a numbers guy and insists it makes sense financially, but I dislike the distance it creates between me and the nonprofit.

Donor Advised Fund Benefits

DAFs are simple, flexible & efficient giving vehicles



Donor makes irrevocable contribution of assets

- ✓ Acceptance of noncash assets by DAF sponsoring organization (real estate, business interests, etc.) is attractive
- ✓ Match philanthropy with liquidity event



Donor receives tax benefits

- ✓ Immediate income tax deduction up to IRS deductibility limits
- ✓ Avoid capital gains taxes on contributions of appreciated property



DAF grantmaking can continue over time; anonymously if desired



DAF assets can be invested & grow tax free



Low cost alternative to private foundation



Engage multiple generations

Donor Advised Fund (DAF) Defined

IRC §4966(d)(2) says a Donor Advised Fund is a fund or account:

1. Which is separately identified,
2. Which is owned and controlled by a sponsoring organization,* and
3. Which a donor (or any person appointed or designated by such donor) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of assets held in such fund or account.

All three prongs must be met.

*Source: IRS as defined by IRC §4966(d)(1)

DAF Grantees

- Grants can be made domestic 501(c)(3) charitable organizations and 509(a)(1) and 509(a)(2) public charities without following special rules.
- Grants can be made to other domestic charitable organizations, foreign charities using “Expenditure Responsibility.”

Source: Internal Revenue Service

Rules of the Road:

“More than Incidental Benefits” are Impermissible

Per the IRS, excise taxes* will be imposed on distributions that are not permissible.

- Donors and advisors are prohibited from receiving “more than incidental benefits” from grants made through their DAF.
- Events & Galas
- Memberships
- Pledges

*Source: IRS as defined by IRC §§ 4966-67 & Notice 2017-73

Rules of the Road

For “Incidental Benefits,” 100% tax-deductible donation is key



- Donors and advisor are prohibited from receiving more than incidental benefits from grants made by their donor advised funds.
- Impermissible benefits are those which are “more than incidental.”
- There are no regulations defining these terms. Case law, legislative history and other charitable laws give more context.

Generally ask:

Would the donation be fully tax-deductible if the donor had given it directly instead of through a DAF?

If the answer is YES:

Great! You’re not offering the donor an impermissible benefit.

If the answer is NO:

You are offering the donor an impermissible benefit. Do not accept the DAF grant unless you are able to waive or withhold the impermissible benefits.

Rules of the Road

DAF Grant Challenges – More than an “Incidental Benefit?”

- Fundraising events - galas, dinners, etc.
- Cultural or other memberships
- Pledges

Notice 2017-73

Rules of the Road – Notice 2017-73

Guidelines for Grants – More than an “Incidental Benefit?”



Charity Fundraising Event Tickets, Dinners & Galas Not Allowed Unless Benefits are Waived / 100% deductible

- DAF grants may not be used to pay for all or any portion (whether or not tax-deductible) of the admission price to attend an event or gala because the donor receives more than incidental benefit as a result of some portion or all of the grant.
- Donors must pay the entire cost of attending the event personally (both deductible and nondeductible portions) OR buy tickets and donate tickets back to organization, which effectively “waives” benefits.



Cultural & Other Memberships Not Allowed Unless All Benefits are “Incidental” / 100% Deductible or Benefits are Waived

- Certain membership levels at cultural organizations (like museums) provide benefits including free admission, free tickets to special events, and other items of value. Certain benefits provided may be considered by the IRS as more than incidental. DAF grants may not be used to pay for membership levels that provide more than incidental benefits.
- Grants may be used to pay a 100% tax-deductible membership level fee as determined and specified by the institution. All must be “incidental” benefits.
- Donor can waive membership benefits. Grant recipient organization must have a special membership category for members that “waive benefits.”

Notice 2017-73 – More than an “Incidental Benefit”?

Guidelines for Grants – Charity Events & Galas

Charity Fundraising Event Tickets, Dinners & Galas Not Allowed Unless Benefits are Waived / 100% deductible

Issue: Donor recommends a DAF grant to purchase tickets to Charity’s gala event.

Example:

Tickets are \$250 for Charity’s fundraising event (banquet, gala, golf tournament).
The value of the meal and entertainment the attendee will receive is \$100.

- Donor wishes to pay \$100 out of pocket and \$150 from a DAF (“bifurcation”)*.

OR

- Donor wishes to pay \$150 from a DAF as a donation and then get discounted tickets at cost (\$100).

Rule: DAF grants may not be used to pay for all or any portion (whether or not tax-deductible) of the admission price to attend an event or gala because the donor receives more than incidental benefit as a result of some portion or all of the grant.

Solutions: Donors must pay the entire cost of attending the event personally (both deductible and nondeductible portions) OR buy tickets and donate tickets back to organization, which effectively “waives” benefits.

Notice 2017-73 – More than an “Incidental Benefit”?

Guidelines for Grants – Cultural & Other Memberships

Cultural & Other Memberships Not Allowed
Unless All Benefits are Incidental / 100% Deductible or Benefits are Waived

Issue: Certain membership levels at cultural organizations (like museums) provide benefits including free admission, free tickets to special events, and other items of value. Certain benefits provided may be considered by the IRS as more than incidental.

Example:

- An annual membership is \$500
- The value of the membership benefits (tickets to high-cost special events, extra guest passes, publications, gifts, parking other discounts) is \$150

Rule: DAF grants may not be used to pay for membership levels that provide more than incidental benefits.

Solution: Grants may be used to pay a 100% tax-deductible membership level fee as determined and specified by the institution. All must be “incidental” benefits.

OR Donor waives membership benefits. Grant recipient organization must have a special membership category for members that “waive benefits.”

Notice 2017-73 – More than an “Incidental Benefit”?

Guidelines for Grants – Fulfillment of Donor Pledges

Fulfillment of Pledges Allowed

- ☑ **Notice 2017-73:** Grants that fulfill the personal pledge of a donor [...] – *even a legally binding pledge* – would not be treated as “more than incidental benefit” under Section 4967 of the Internal Revenue Code, so long as:
 - ✓ Sponsoring organization makes no reference to existence of a charitable pledge when making a distribution
 - ✓ No Donor/Advisor receives, directly or indirectly, any other benefit that is more than incidental on account of the DAF distribution
 - ✓ Donor/Advisor does not claim a charitable contribution deduction for the DAF distribution (even if receiving charity mistakenly sends tax acknowledgement)

Note:

- ✓ Similarly, where charity relieves donor of pledge obligation after receiving gift from the DAF, there is no excise tax under Section 4967.

**Notice provides that donors and DAF sponsoring organizations can rely on this guidance relating to fulfillment of pledges immediately.*

Working with DAF Donors

- Donor relationship focus, not DAF
- Inform donors that your organization appreciates DAF grants
- Include DAF giving as “Way to Give”
- Discuss DAF giving option early in solicitation process
- Document Donor(s)’ Fund Name
- Create & use MOUs with DAF giving
- Discuss DAF succession planning / potential for legacy gift

Plan for DAF Grants Internally

- Train gift officers on DAF giving
- Review all development & stewardship activities
 - Beware of language which creates enforceable pledges; and
 - Activities that include “more than incidental benefits;”
 - Accurately value “benefits”—goods & services received, which reduce charitable gift value.

Use legal counsel as needed

- Annual reporting
 - Create systems to track DAF grants as revenue source
 - ✓ Plan for DAF giving in annual and campaign MGO metrics
- Special considerations for Campaigns
 - Campaign counting guidelines
 - MOUs / intention to “recommend a grant;” not pledge agreements
 - Gift recognition, naming opportunities and celebrations

DAF Succession Planning:

Legacy Gift Opportunity

- Discuss DAF succession plan with donors
 - Get to know named DAF “successor advisors”
- DAF agreements typically include “Disposition of Assets” plan for assets remaining in DAF upon death of last fund advisor
 - Options will vary by sponsoring organization’s DAF agreement
 - Remaining assets used for:
 - ✓ Final / terminating grant
 - ✓ Creation of an endowment
- Ask donors if they have / would include your organization
 - ✓ Say “thank you” & ensure that plans can be accomplished

Include DAF donors as members of your Legacy Society!

Final thoughts...

Thank you.