ATTRACTING GIFTS FROM DONOR ADVISED FUNDS

PG CALC WEBINAR

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I. INTRODUCTION

The growth of donor-advised funds (DAFs) may be the biggest story in the charitable sector during the last decade. The largest charity in the country in terms of money raised in 2015, according to the *Chronicle of Philanthropy's* "Philanthropy 400" list, was Fidelity Charitable, and five of the top 11 spots on the list went to donor-advised fund sponsors.[1] This is an extraordinary turn of events, though not surprising, as DAFs have grown remarkably and steadily during recent years. Total assets of donor-advised funds exceeded $78 million at the end of 2015.[2] This leaves charitable organizations chomping at the bit: how can they get their share of the donor-advised fund money?

There's no silver bullet to cracking the donor-advised fund code. Accessing the wealth held within donor-advised funds requires many strategies and techniques. First of all, attracting gifts from donor-advised funds requires an understanding of what they are and how they work, along with an appreciation of the motivations for donors and donor-advised fund sponsors. And to understand donor-advised funds fully, it's helpful to understand how these entities came into being, and how they evolved over the years.

II. THE HISTORICAL ROOTS OF DONOR-ADVISED FUNDS: THREE TURNING POINTS

Donor-advised funds are a strange sort of hybrid. They are often referred to as having most of the attributes of a private foundation, but without the expense, bureaucracy, regulations, and hassle. From the donor's perspective, that's fairly accurate. Not only are donor-advised funds simpler and less expensive to operate than private foundations, but they offer better tax advantages to the donor, no spending requirements, and a high degree of anonymity.

Meanwhile, the fastest growing donor-advised funds are those affiliated with the financial services industry. The first-, fourth-, and eleventh-largest charities on the most recent "Philanthropy 400" list were Fidelity Charitable, Schwab Charitable, and Vanguard Charitable, respectively. None of these entities even existed 26 years ago, yet now they bring in more money than stalwarts of the nonprofit world that have been around for decades. It's fair to say that when Congress first introduced the charitable income tax deduction a century ago, the entities they intended to benefit did not look and act the slightest bit like the commercial donor-advised fund sponsors of today.

So how did donor-advised funds come to have such an enormous influence in the charitable sector? There are three critical moments that have led to this point in time.

A. 1931: Creation of Donor-Advised Funds

The first donor-advised funds (though that term did not come into use until many decades later) were first created in 1931 at the New York Community Trust, and other community foundations followed suit. Before that time, community foundations like the New York Community Trust had relied primarily upon charitable bequests to build their assets.

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Community foundation leaders saw donor-advised funds as a means of engaging living donors and promoting lifetime giving.

The notion behind DAFs was both attractive and a bit self-contradictory, presaging the ambiguity that hovers around donor-advised funds today. A gift to a community foundation establishing a donor-advised fund was considered an outright donation, with control of the funds passing fully to the community foundation and its board. This structure provided the donor with an immediate full charitable deduction. Yet there was an understanding that donors retained an ongoing privilege to direct where and when those funds would be eventually distributed. The architects of DAFs were careful not to call these entities "donor-*directed* funds," as that would have indicated a legal right to exert control (as opposed to an understanding of the parties), thereby negating the charitable deduction. And yet the donor's explicit influence in the decision-making was baked into the structure.

From the beginning, there has been what some have called a "wink-and-nod" flavor to how donor-advised funds have been treated in tax law: the contribution to a donor-advised fund is an outright gift without any strings so far as the charitable tax deduction is concerned, but the donor retains significant influence over the distribution of the grants from the fund. Over the years this ambiguity didn't bother many people, or even gain much attention, perhaps because not all that much money was involved. For decades, donor-advised funds resided mostly in the relatively obscure confines of community foundations, with several national religious federations joining in to create donor-advised programs of their own. That said, the number of community foundations mushroomed in the 1970s, 1980s, and 1990s, and donor-advised funds served as a major driver of that growth. The newer community foundations did not have the large asset base of the older community foundations, and they needed to attract donors with an irresistible kind of offering. Donor-advised funds filled the bill.

Donor-advised funds became the flagship product for community foundations new and old – a have-your-cake-and-eat-it-too way for donors to get a full charitable deduction at an advantageous moment, while retaining effective control of the assets after the gift was complete. In the early years, there typically was a genuine sharing of responsibility for donor-advised fund grantmaking. Community foundations and their donors would talk with one another about grantmaking from the funds, nudging each other toward the best possible use of the grants. Community foundations remain in touch with their donors today, of course, but by many accounts there was a far greater sense of shared decision-making before the 1990s, and the grant decisions were not nearly so exclusively the prerogative of the donor. A longtime community foundation staff member told me that in the 1980s there was discussion on the staff level about whether they even needed to send donors a year-end report on their donor-advised funds. The sense then, far more than now, was that donor advice was just that. The funds and final decisions belonged to the donor-advised sponsor: that is, the community foundation.

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B. 1969: The IRS Grants Public Charity Tax Status to Donor-Advised Funds

Scholars of charitable tax law look to the 1969 Tax Reform Act as a defining moment in American philanthropy. And for no aspect of charitable giving was that truer than for donor-advised funds.

Temple University Professor Lila Corwin Berman has undertaken remarkable research to show that, were it not for the actions of an otherwise obscure attorney named Norman Sugarman, donor-advised funds may never have survived the 1969 Tax Reform Act – at least not in their current form.[3]

The 1969 Tax Reform Act for the first time demarcated a division in the charitable world between public charities and private foundations – a bifurcation that was largely predicated on Congressional suspicion of the power and autonomy of private foundations. Congress recognized that private foundation boards – often comprised of members of the donors' families – exerted near-complete control on the foundations' activities, and prior to 1969 expectations for grantmaking were vague at best.

In exchange for allowing boards of private foundations to exercise control, Congress required for the first time that private foundations make a minimum charitable distribution each year (five percent of assets) and to pay excise taxes on their investment returns. Meanwhile, beginning in 1969 gifts to private foundations offered donors lower tax advantages than gifts to public charities, most notably in limiting tax deductions for illiquid assets to the cost basis, rather than the market value. Consequently, the gift of real estate or closely-held stock that had grown in value from $100,000 to $1,000,000 would give the donor to a private foundation a tax deduction of $100,000, while she would get a $1,000,000 tax deduction for a gift of the same asset to a public charity. Additionally, the 1969 Tax Reform Act demanded transparency of private foundations: every grant, investment, and honorarium needed to be recorded for all to see in the annual 990-PF filing with the IRS.

Norman Sugarman was a Cleveland-based attorney deeply knowledgeable of the tax code and nonprofits. He had worked for years at the IRS; his law practice focused on community foundations and Jewish federations; and he even testified before Congress and gave input into the charitable provisions of the 1969 Tax Reform Act. Sugarman saw more clearly than anyone else at the time that there would be enormous advantages for community foundations and religious federations if donor-advised funds landed on the public charity side of the regulatory divide, rather than being considered private foundations. If donor-advised funds could avoid required annual payouts, provide its donors with better tax advantages, have tax-free investment returns, and offer anonymity to its donors and grantees, this would give DAFs an enormous competitive advantage over private foundations. And that, in turn, would fuel the asset growth of his clients: religious federations and community foundations.

To secure and solidify this advantage, in 1969 Norman Sugarman sought a private letter ruling from the IRS on behalf of a client, the Cleveland Jewish Federation, which the IRS

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duly provided. In that private letter ruling, the IRS acknowledged that funds we now know as DAFs were indeed to be considered part of the public charities in which they were housed, and that donors could indeed make recommendations to the organization on grants from the funds they established. As the IRS wrote, "Such recommendations shall be solely advisory, and you [the sponsoring organization] may accept or reject them, applying reasonable standards and guidelines."[4]

The work of Norman Sugarman contributed to today's donor-advised fund explosion in two ways. First, clearly, it established donor-advised funds (the name by which they came to be known in the 1980s) as a favored alternative to private foundations. Second, as Lila Corwin Berman makes clear, Sugarman's success pushed community foundations and Jewish federations into altering their prior model. Rather than having a committee of distinguished trustees directing the use of the consolidated funds (as was the founding premise and the *modus operandi* of community foundations and religious federations before 1969), now the model would increasingly rely on attracting donors who, through their grant recommendations, would largely determine the funding priorities of the organization. Rather than donors giving money for others to distribute, community foundations and religious federations found themselves thrust into a new business model, where they would provide public charity tax umbrella to donors who would retain *de facto* control over the charitable use of their funds.

C. 1991: The Creation of Fidelity Charitable Gift Fund

If the work of Norman Sugarman in 1969 created the model for the modern donor-advised fund, the decision in 1991 by the IRS to grant 501(c)(3) public charity tax status to the Fidelity Charitable Gift Fund turbo-charged the industry. Donor-advised funds were no longer the exclusive province of community foundations and religious federations. Now donor-advised funds were integrated with a mutual fund powerhouse, complete with Wall Street's marketing power, technological expertise, and efficiencies of scale.

The volume of money moving into donor-advised funds grew vastly larger, and the nature of donor-advised fund marketing and operations quickly transitioned to a model that bore little resemblance to the world before 1991. The effect of Wall Street's arrival in the donor-advised fund industry was dramatic. Donor-advised funds became a commodity, compared on the basis of cost and efficiency, with little regard for the niceties of collaboration and consultation between sponsor and donor that characterized their early community foundation years. Donor-advised funds were reduced in large part to transactional entities. One click and the donor could establish a fund. A second click and the donor could choose the investment vehicles. The donor clicked a third time to make a grant. Fidelity did not ever pretend to provide in-depth advice to its donors on their grantmaking, nor did it make an effort to provide any sort of check on donors' decision-making, other than to ensure that the beneficiary was in fact a public charity. Fidelity (and, soon, Schwab and Vanguard and dozens of other commercial funds) left the grantmaking to the donors and kept the costs competitive. The original rationale for donor-advised funds – that this was a mission-driven partnership between the donor and the sponsoring organization, with the sponsoring

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organization providing philanthropic guidance and expertise – fell by the wayside in the rush for volume, efficiency, and market share.

III. Understanding the Growth of DAFs and the Motivations of the Players

There are two driving factors in the growth of donor-advised funds: their hard-to-beat attractiveness to donors, and the fees and profits they generate for sponsors. Here's a deeper look.

A. The Donors' Mindset

Donor-advised funds provide donors with the fullest possible tax deductions – the same as with gifts to operating public charities. DAFs also provide donors with convenience and all-but-official control of the funds. Donors can time their gifts to donor-advised funds for the years when they have the greatest tax liability, and they receive full market value for gifts of illiquid assets. (Though any public charity can accept illiquid assets, donor-advised fund sponsors, particularly commercial gift funds, assert that they have great expertise in this area, and they have been very successful at attracting gifts of non-cash and non-publicly-traded assets.) DAFs can grow tax-free; there is no federal requirement that they distribute grants in a particular year, or ever (though many DAF sponsors do impose a requirement for some sort of distribution); and the donors retain *de facto* control over the distributions. (DAF distributions are "advised," rather than "directed," but many critics aptly consider this differentiation a legal fig leaf. Certainly, the marketing of most DAFs makes it clear that the funds are the donors' to distribute.)

There are some donors who approach their DAFs as convenient ways of quickly passing funds on to charity. These donors might make a large contribution to their DAFs (often with appreciated assets) and then get the bulk of the funds out the door within two or three years. These donors appreciate that they can get the significant tax deduction at the time of the initial gift (presumably when they were seeking a major deduction), and then the distributions to charity are both very simple to authorize and easy to track.

Many other donors gauge their distributions to be more or less at a fixed percentage each year. Often, donors set the distribution at five percent, or the same minimum rate that is imposed upon private foundations, even though – as we have discussed – private foundations rules do not apply to DAFs.

And other donors, whether by design or neglect, allow their donor-advised funds to grow, without making any distributions of note for years at a time. Certainly, many DAF sponsors police their funds for inactivity, and they have policies for encouraging charitable distributions. But many of these policies require only the most minimal of activity (one commercial donor-advised fund sponsor requires one grant of $50 or more every five years – hardly a major injection of capital into the nonprofit world). Meanwhile, federal guidelines require no distributions whatsoever. From a tax standpoint, the "charitable event" was the original gift of

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money into the donor-advised fund, which is, after all, part of a public charity. What happens to the money afterwards has been of little concern to the federal government.

How many donors give all their money away in two or three years? How many give away five percent a year and no more? How many give away nothing at all? We don't know. That's because donor-advised fund sponsors are public charities, and as such (unlike private foundations) they don't have to reveal their inner workings to the public. We may know from their tax returns that the DAF sponsor made grants of $50,000 to a particular charitable organization, but we don't know which particular DAFs provided those grants, and we certainly don't know how many DAFs made no grants at all.

This anonymity may be infuriating for fundraisers trying to understand their donors' behavior. After all, scanning the 990-PFs of private foundations has long been the source of helpful targeting information for grant-seekers. But we need to keep in mind that many donors love the lack of transparency. These donors don't want to be traced and targeted, and donor-advised funds give them cover to make the kind of anonymous grants that they wouldn't have been able to do through a private foundation.

B. **The DAF Sponsors' Mindset**

Donor-advised fund sponsors – mostly community foundations, religious federations, and commercial gift funds, though also "single-issue DAF sponsors" like universities – assert that they exist to help their donors be philanthropic. Certainly, DAF sponsors publicly emphasize their grantmaking reach and charitable impact. But, in fact, the business model of donor-advised fund sponsors depends upon the bulk of DAF funds remaining invested for the long haul rather than granted out to charity.

For commercial gift funds (Fidelity, Schwab, Vanguard, and dozens of other DAF sponsors that are aligned with financial services firms), the growth in recent years has been driven by fees and profits. It's important to recognize that donors' financial advisors generally draw a management fee when their clients donate assets to a commercial donor-advised fund. That is, the financial advisors can continue to receive management fees much as if the money had remained in their clients' investment accounts and had never been donated at all. Moreover – and more to the point – the financial advisors (and the firms associated with the commercial donor-advised fund sponsors) continue to derive income each year when assets remain in the DAFs, undistributed.

All of this is to say that financial advisors have a personal vested interest in encouraging their clients to donate to commercial donor-advised funds, rather than directly to operating charitable organizations. The financial advisors – and their firms – then have a continued interest in having the bulk of the funds remain invested (and generating fees) for years to come. Actual charitable distributions hurt their bottom line. This without a doubt influences how financial advisors speak to their clients about philanthropy.

Community foundations have a different set of incentives – up to a point. Community foundation staff do not receive personal financial benefit when DAF assets accumulate. And, in

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fact, most community foundations do a good job of policing their DAFs and encouraging distributions. More to the point, community foundations take seriously their role of supporting important causes in the community and helping local donors find worthy projects for their philanthropy. But the business model of a community foundation relies on drawing management fees from its funds, and those fees pay for the operating expenses of the foundation. If a significant proportion of donor-advised fund assets were to go out the door in grants, community foundations would struggle to meet their own operating needs.

Consequently, both commercial gift funds and community foundations either subtly or explicitly encourage their donors to treat their funds as permanent entities. Commercial gift funds borrow language from their for-profit cousins to describe the wonder of watching the funds grow tax-free, from acorn to seedling to oak. Some community foundations go so far as to present their donors with a “suggested spending rate” – usually four or five percent of the total fund – as a guide for not “overspending” if they’d like to maintain the purchasing power of their DAF. (Though these community foundations readily *allow* “overspending,” this terminology is certainly a check on their more generously inclined donors. Who would want to be labeled as an overspender?)

DAF sponsors of all kinds speak of the value of passing on a “family philanthropy” to the next generation. This message is persuasive, and many donors approach their donor-advised funds as permanent entities to be left to children and grandchildren. This language also resonates with the lessons of financial frugality that most of society holds dear: not to spend the principal, and to save for the future – even if that spending were to go to vital and important charitable causes.

This attitude without a doubt presents challenges to fundraisers.

IV. Potholes to Avoid: Donor-Advised Funds Providing Personal Benefits Or Fulfilling Donors’ Pledges

Donor-advised funds are often promoted as "giving, simplified" or charitable checkbooks. But as the number of donor-advised funds has increased, so too have the challenges for nonprofits and the donors themselves.

That’s because there are some very real legal restrictions on how grants from donor-advised funds can be distributed. These restrictions are increasingly causing headaches and inefficiencies for nonprofits, while giving rise to misunderstanding and resentment between those organizations and their donors.

What’s behind the confusion? Well, as I’ve described, donor-advised funds are, technically, just that – funds whose use is *advised*, not *directed*, by donors. The final decision-making about grants is legally up to the sponsoring organization, whether a community foundation, a religious federation, or a commercial gift fund.

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Of course, in practice the donor-advisers pretty much have *carte blanche* to recommend grants to any charitable organization they want – fund sponsors make that very clear in their marketing materials – but there are two lines that cannot be crossed even by the most pliant of sponsors. First, grants from donor-advised funds cannot be used if the donor gets any sort of personal benefit. Second, a donor cannot use a donor-advised fund to redeem a personal pledge.

Those seem like modest restrictions, but as they play out, significant issues arise. Here are some examples, not ripped from the headlines, but taken from actual examples people have brought to my attention over the years.

A. Missing Premium Syndrome

A national conservation group has traditionally offered premiums to people who make big gifts. Recently the organization tempted their supporters by letting them know that donors who gave at least $2,500 would receive a particularly attractive thank-you gift. The donors responded generously, but many of them did so through their donor-advised funds — the source they have come to rely on for charitable gifts of that size.

Many of these donors then grew livid with the organization when staff members explained that because the donors had given through their donor-advised funds, they were ineligible to receive the gift. If the organization had sent the premium to the members, they explained, it would have violated the rule against providing personal benefits for a donor-advised fund gift.

I asked the membership director how many upset members the organization has on its hands. "About a dozen a week," she answered. "Dealing with angry donors is pretty much my full-time job. And nearly all of the anger revolves around misunderstanding about giving through their donor-advised funds."

B. Not-Such-A-Gala-Event Tension

Nonprofits make the big money at gala dinners not from people paying $100 or even $250 a head to attend, but from sponsorship gifts of $5,000, $10,000, $50,000, or (in gala meccas like New York City or San Francisco) even more. Sponsorships provide the donors with perks, of course, the most common being a table or two of guests in exchange for, say, a $5,000 gift.

A few free meals in return for a $5,000 gift would seem like an incidental benefit, but the rules governing donor-advised funds make it clear that those plates of *coq au vin* constitute an inappropriate benefit for the donor-adviser. A staff member at a major cultural organization told me there are a growing number of donors who want to make sponsorship gifts through their donor-advised funds, but who are reluctant to give up any of the perks.

That's creating a challenging dynamic. "People no longer want to write a big check," the development director explained to me. "They like the simple, painless aspect of giving through their donor-advised funds. And when they find out the rules prohibit the DAFs from underwriting sponsorships with benefits, they're either a) mad at me, b) unwilling to be a sponsor any longer, or c) both of the above."

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C. The Pledge-That-Isn't Accounting.

In the good old days (I'm talking about all of 20 years ago), donors to a capital campaign would sign a three-year pledge at $100,000 a year. Today, if that same donor is ready to commit to a three-year, $300,000 gift but wants to use her donor-advised fund to pay it – well, she can't, because of the prohibition against using such funds to fulfill a personal pledge. (That's because, legally, the donor-advisor is only making a recommendation. The final decision is with the DAF sponsor's board of directors.) A lot of organizations ask the donor to sign an "intention-to-recommend-a-grant" form that might be considered a "pledge form-lite" – a moral obligation, but not a legally binding one, and it is not recorded as a pledge in the institution's financial statements. The language would center on phrases like, "It is my intention to make a recommendation to the Johannsen Fund of the East Bubble Community Foundation for grants of $100,000 each in 2017, 2018, and 2019."

Along with the annoyance of essentially having to keep two sets of books (one for tracking the campaign progress, which would list this as a $300,000 gift or pledge and one for the official financial statements, which would only list the $100,000 portion of the gift that arrived in year one), the intent-to-recommend-a-grant can create real financial challenges for the nonprofit.

Most notably, if the gift is for a building campaign and the organization needs to borrow funds to keep the project running on time and under budget, it can't use the commitments from donor-advised funds as collateral because the intention to recommend a grant is not a legally binding pledge. And as more and more of the major gifts take this form, the project can get delayed and the costs can escalate.

When I mentioned these challenges to a friend who works for a donor-advised fund sponsor, he minimized the problem. "None of these are big deals," he said. "It's all part of donor stewardship. Smart nonprofits can and should finesse this."

But finessing takes time and money. And at a time when nonprofits are facing pressure from many sides (rising demand for services, reduced government funding, decreased corporate contributions, and increased reporting requirements), overworked staff members now need to spend extra time and energy stilling the waters with donors who increasingly want to give through their donor-advised funds.

V. POSITIONING YOUR ORGANIZATION TO RECEIVE DONOR-ADVISED FUND GRANTS

By now I've described a landscape that readers may find depressing or intimidating.

To recap: A large and growing share of charitable dollars are going into donor-advised funds, entities that evolved by historical circumstance to offer donors maximum tax benefits, considerable control, and enormous flexibility. This growth has been turbo-charged in recent years by the intrusion of the financial services industry into the sector, so that many of the largest fundraising

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entities in the charitable world are actually nonprofit donor-advised fund sponsors affiliated with major Wall Street firms. The financial incentives at these commercial gift funds, as well as, to a lesser extent, at community foundations, is for the assets from the donor-advised funds to be distributed cautiously, with donors encouraged to make their funds perpetual and multi-generational. And then, assuming nonprofits are successful in receiving grants from DAFs, they must be certain that the money is not providing a personal benefit to the donor (gala tickets or a thank-you gift). Nor can a DAF grant be used to redeem a personal pledge.

So there are major obstacles, for sure, to pulling in grants from donor-advised funds. That being said, here are some strategies for helping your organization be as successful as possible under the circumstances:

1. **Keep in mind that a DAF grant may legally be from the DAF sponsor (the community foundation, Fidelity, et al.), but in essence it's from the individual donor.**

   Thank the donor as you would with any gift (though without the tax deduction language), and provide careful stewardship to the donor. Use your energy to thank Dr. Jones or Ms. Konahara: they are responsible for the gift, not Vanguard or the community foundation.

2. **Recognize that a gift from a DAF is an indication of financial capacity.**

   The size of the average donor-advised fund is $235,000. (At community foundations, the average account is $431,000.)[5] Though DAFs are often referred to as the "poor man's private foundation," or a philanthropic vehicle for the average person, the average asset size indicates that donor-advised fund is very much a vehicle for wealthy families. Similarly to how nonprofits might target donors of securities as likely to have significant assets and financial sophistication, they should also take note of their donor-advised fund donors. Even a modest grant from a DAF should trigger a mechanism for paying attention to that donor.

3. **Highlight DAF donors in your materials – especially for large gifts.**

   Nonprofits, where appropriate and where they have the donors' permission, should highlight donor-advised fund gifts in their materials. This is especially true for large gifts. Providing attention to a $100,000 or $1,000,000 donor who gave through a DAF will encourage other DAF holders to think ambitiously about their own gifts to your institution. And it will subtly remind your donors that the principal in their donor-advised funds can and should be distributed to charity – especially yours!

4. **Get to know your community foundation gatekeepers – but keep your expectations modest.**

   Alone among DAF sponsors, community foundations can be helpful in facilitating gifts from both unrestricted and donor-advised funds. Smart nonprofits will certainly want to be known and liked by community foundation staff, who, when asked by their donors, could suggest grants from DAFs. That said, do keep in mind the dynamics of the community

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foundation world. The staff are referred to as gatekeepers for a reason: to protect the donors from being besieged by nonprofit solicitors. Moreover, vastly more recommendations for DAF grants come from the donors, not from the staff, and, while community foundations certainly want to facilitate grants to good causes, their primary loyalty is to their donors.

Some donors use the community foundation staff explicitly as gatekeepers, asking that any grant requests flow through them. It may be frustrating for nonprofits to have to reach their donors through community foundation staff, but rather than railing against this reality, skilled fundraisers need to recognize the system and work within it.

Meanwhile, realize that no community foundation officer will ever provide what naïve nonprofits consistently ask them for: a list of their donor-advised fund holders. Nonprofits would, of course, love that information, but they won't get it.

5. **Gently remind your donors that their donor-advised fund assets are theirs to spend down.**

   A familiar drum beat of DAF sponsor marketing is that donor-advised funds should be managed to last forever – or certainly long enough to pass the funds along to the next generation. Subtly remind your donors that it does not have to work that way, and that donor-advised funds can actually be spent down. Speak publicly of large DAF gifts that have had a major impact on the lives of people you are serving today. Be sure to honor major donors in a way that will get DAF holders' attention.

6. **Remind yourself that charitable deductions play no role in distributions from donor-advised funds.**

   Old habits die hard. One of the oldest in the charitable world is pacing payments to a campaign over several years. While sometimes this is done for cash flow purposes, often it's specifically to spread the tax deductions over several years.

   With gifts from DAFs, tax years and charitable deductions are irrelevant. The donor took his tax deduction when he first made his gift *to* the donor-advised fund. Your donor may plan on sending you, say, $10,000 a year for three years from his DAF. Suggest that he think about paying it all up front. (This also avoids the challenges described above with making and redeeming pledges from a donor-advised fund.)

7. **Consider a DAF-specific communications campaign for past donor-advised fund donors.**

   When you look at ways of segmenting your donor list, think about adding communications specifically directed at donor-advised fund donors. Your communications can highlight major gifts from DAFs, as well as clarifications on the rules for using DAF grants.

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8. **Make it easy for DAF holders to execute a gift with a single click.**

   If you want to attract DAF gifts, make it easy by installing a widget on your website near your "Donate Now" button. "DAF Direct" (www.dafdirect.org) puts donors a click away from making a donor-advised fund gift to you, but it only works for Fidelity, Schwab, and the Kansas City Community Foundation. A new widget is scheduled to come on line later this spring – www.DAFwidget.org – that is supposed to connect the donor to dozens of DAF options.

9. **Pay attention to – and weigh in on – legislative and regulatory efforts to reform donor-advised funds.**

   This paper and presentation should have made clear that the unique evolution of donor-advised funds has been the result of happenstance, cleverness, and quirks of the tax law (and its interpretation by the IRS). This is not to say that donor-advised funds, as currently constituted, will never change. In 2014, Rep. Dave Camp, the then-chair of the House Ways and Means Committee, included a provision in his tax reform proposal that gifts to donor-advised funds would need to be spent down within five years. The Camp proposal went nowhere (nor did his larger bill), but the fact that DAF reform made it into a major legislative proposal shows that some Congressional staffers and elected leaders may be thinking that donor-advised funds are, indeed, too good to be true – and they're interested in changing the rules so that the funds go out more readily to the charitable community.

   Along with the proposed imposition of a spend-down requirement, some observers have suggested that private foundations should not be able to make grants to donor-advised funds. This is because of accusations that some foundations do this a) as a way to meet the five-percent spending requirement (without actually granting all the funds out to operating nonprofits), or b) to avoid scrutiny, particularly when channeling grants to controversial causes.[6]

   It's important for nonprofits to know that they do not have to be passive in the policy debates around donor-advised funds. I would contend that it would be better for nonprofits and society if DAF funds found their way to charitable purposes sooner than later. If you agree – or even if you disagree – speak up and reach out to your Congressional offices.

VI. Conclusion

Donor-advised funds have shaken up the philanthropic world. Their growth, driven by both their inherent attractiveness and the incentives of the financial services industry, have fundamentally changed the relationships, expectations, and rewards of charitable giving.

Regardless of your opinion of this phenomenon, all nonprofits need to be deeply aware of donor-advised funds, and they need to work to receive DAF grants. It is my hope that you are a bit closer to that position after reading this paper and attending the related webinar. Thank you!

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[1] *Chronicle of Philanthropy*, 27 October 2016, Drew Lindsay, Peter Olsen-Phillips, and Eden Stiffman, "Fidelity Charitable Pushes United Way Out of Top Place in Ranking of the 400 U.S. Charities That Raise the Most"
[2] National Philanthropic Trust, "2016 Donor-Advised Fund Report"
[3] "Donor-Advised Funds in Historical Perspective," Lila Corwin Berman, paper presented for the Boston College Law School Forum on Philanthropy and the Public Good.
[4] Berman, ibid. p. 20.
[5] National Philanthropic Trust, "2016 Donor-Advised Fund Report," Comparison by Sponsor Types.
[6] "Donors Use Charity to Push Free-Market Policies in States," Paul Abowd, The Center for Public Integrity, February 14, 2013.

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