

Common Operating Procedures for Donor Advised Funds

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I. Introduction.

The charitable community has recently seen tremendous growth in the area of Section 501(c)(3) public charities operating donor advised funds. In a donor advised fund, a donor makes a charitable contribution to a sponsoring charity that maintains the donor's contributions in a separately-identified account (each of which is referred to as a "donor advised fund account"). The sponsoring charity receives and retains exclusive ownership and legal control over amounts contributed to and investment returns of each donor advised fund account. The sponsoring charity allows the donor and persons designated by the donor ("donor advisers") to have advisory privileges with respect to grants from each donor advised fund account. In addition, the sponsoring charity may allow the donor and donor adviser to have advisory privileges with respect to the investment allocation of assets in each donor advised fund account.

Sponsoring charities, including those that operate donor advised fund programs as their principal activity (often known as "national donor advised funds" or "NDAFs"), play an important and growing role in the world of philanthropy. In the past few years, NDAFs have raised and granted billions of dollars for charitable purposes. As they have evolved, NDAFs have developed a number of common operating procedures. These procedures are continually being improved by NDAFs in response to changes and developments in charitable giving and in response to guidance from the IRS, the U.S. Treasury Department and other sources of legal authority.

This document describes the common operating procedures currently being used by many NDAFs. The procedures discussed below cover a broad range of potential activities by a NDAF, and not every NDAF participates in all of these activities. This document is intended to be a general resource for new and existing sponsoring charities. Each sponsoring charity should consult its own advisers as it develops its own operating procedures.

II. Governance of a Sponsoring Charity.

A. A Sponsoring Charity Has an Independent Board.

A sponsoring charity is governed by a board, the majority of whose members are independent from any for-profit organization that provides goods or services to the sponsoring charity. The board is responsible for all aspects of the sponsoring charity's operations, including (i) overall stewardship of the charitable mission, (ii) grants and expenditures from each donor advised fund account, (iii) investment of funds maintained in each donor advised fund account; (iv) grantmaking from the sponsoring charity's general fund, and (v) the reasonableness of its contractual and other relationships with third parties.

B. A Sponsoring Charity Has a Written Conflicts of Interests Policy.

A sponsoring charity adopts a written conflicts of interest policy governing participation by board members and officers in matters involving the sponsoring charity

C. A Sponsoring Charity is Subject to an Annual Audit.

A sponsoring charity's financial records are audited annually by an independent public accounting firm.

III. Roles and Privileges of the Sponsoring Charity, the Donor and the Donor Adviser.

A. Roles of the Sponsoring Charity.

A sponsoring charity has exclusive ownership and legal control over amounts contributed to or earned by each donor advised fund account. This means that contributions made to a donor advised fund account of a sponsoring charity are irrevocable and that advice regarding grant recommendations and investment allocation is not binding on, and is subject to review and approval by, the sponsoring charity.

B. Privileges of a Donor.

The donor makes charitable contributions to a donor advised fund account, and has the privilege of (i) naming the donor advised fund account, (ii) designating donor advisers and successor donor advisers, (iii) making recommendations regarding grants paid out of a donor advised fund account, and (iv) advising on the investment allocation of assets in a donor advised fund account.

C. Privileges of a Donor Adviser.

A donor adviser (who may also be the donor) may have the privilege of (i) making recommendations regarding grants paid out of a donor advised fund account, (ii) advising on the investment allocation of assets in a donor advised fund account, and (iii) naming successor donor advisers.

IV. Interaction between a Sponsoring Charity and Donors and Donor Advisers.

A. Solicitation and Ongoing Communications.

Solicitation materials for a sponsoring charity's donor advised fund program and ongoing communications with donors, donor advisers and other third parties make explicit that (i) the sponsoring charity has exclusive ownership and legal control over amounts contributed to and investment returns of each donor advised fund account, (ii) contributions to the sponsoring charity are irrevocable, and (iii) a donor or donor adviser's recommendations regarding grants and advice regarding investment allocations are not binding on, and are subject to review and approval by, the sponsoring charity.

B. Education of Donors and Donor Advisers.

A sponsoring charity educates its donors and donor advisers on an ongoing basis about charitable giving and ways to increase philanthropy. These educational endeavors can take a wide variety of forms, including one-on-one counseling, technology-based communications, efforts to provide broader access to sources of information about charitable organizations, and communications regarding grants from the sponsoring charity's general funds.

C. Certain Transactions with Donors or Donor Advisers

Most sponsoring charities that are NDAFs have elected not to engage in certain transactions with donors or donor advisers in part because of the significant additional review that would be required. A sponsoring charity that does engage in these transactions with donors or donor advisers must ensure that such transactions serve exclusively charitable purposes and do not result in any impermissible benefit. Such transactions might include, for example, the purchase or sale of assets, the lending or borrowing of funds, the payment of compensation or reimbursement of expenses, or the receipt of contributions of property that is illiquid and cannot be converted to use for charitable purposes within a reasonable period. In the unusual case where a sponsoring charity determines that a proposed transaction with a donor or donor adviser is appropriate and in the charity's best interest, it will document the basis for such determination, including appropriate data used by the charity to determine that such transaction is on a fair market value basis.

V. Grantmaking Procedures.

A sponsoring charity adopts procedures and safeguards with respect to grantmaking to ensure that funds are used exclusively in furtherance of charitable purposes. A sponsoring charity does not necessarily engage in all the grantmaking activities described below. In certain circumstances, a sponsoring charity may have made specific representations to the Internal Revenue Service that it will not engage in a particular type of the grantmaking described below.

Most sponsoring charities that are NDAFs have elected not to engage in the following activities in part because of the significant additional review that would be required in order to assure that such activities serve exclusively charitable purposes and do not result in any impermissible benefit: (i) grants to individuals; (ii) grants to U.S. private foundations; and (iii) grants to foreign organizations.

However, other sponsoring charities, including some NDAFs, currently engage in these grantmaking activities or may choose to do so in the future. If so, significant review should be conducted and documented, as described in section V.B.2. below.

A. In General.

A.1. Grant Recommendations Are Not Binding On, and Are Subject to Review and Approval By, a Sponsoring Charity.

Grant recommendations made by a donor or donor adviser are not binding on, and are subject to review and approval by, a sponsoring charity, and any recommendations that fail the sponsoring charity's grantmaking criteria will be declined.

A.2. A Sponsoring Charity Will Not Make Grants That Confer an Impermissible Benefit.

A sponsoring charity will not make any grant that would confer an impermissible benefit on a donor, donor adviser or other third party. A sponsoring charity obtains a representation from the donor or donor adviser that neither the donor, the donor adviser nor a third party will receive an impermissible benefit if the grant recommendation is approved by the sponsoring charity. A sponsoring charity also notifies the grant recipient that, by accepting the grant, the grant recipient acknowledges that the grant will not be used to provide an impermissible benefit to the donor, donor adviser or other third party.

A.3. A Sponsoring Charity Makes Grants Only In Furtherance of its Charitable Purposes.

A sponsoring charity makes grants only in furtherance of its charitable purposes.

B. A Sponsoring Charity Reviews Grant Recommendations in a Manner Appropriate to the Status of a Proposed Grant Recipient.

B.1. Grants to U.S. Public Charities, Private Operating Foundations and Governmental Units.

Grants may be recommended to organizations formed under the laws of the United States and its territories that are public charities described in Section 509(a)(1), (a)(2), or (a)(3) of the Internal Revenue Code, or private operating foundations described in Section 4942(j)(3) of the Internal Revenue Code. A sponsoring charity reviews such recommendations by verifying a proposed grant recipient's exempt, public charity or exempt, private operating foundation status, as appropriate, in IRS Publication 78.

In addition, depending on the particular circumstances, the sponsoring charity may perform additional review of grant recommendations to U.S. public charities and private operating foundations. Such additional review may include: (i) requesting relevant documents from the proposed grant recipient (e.g., IRS determination letter, audited financial statements, IRS Forms 990 or 990-PF), (ii) requiring the proposed grant recipient to provide information on its operations (e.g., charitable objectives, operating budget, directors), (iii) obtaining additional assurances that the donor or donor adviser will not receive an impermissible benefit from the proposed grant, and (iv) obtaining a current address and the name of a contact person from the grant recipient.

Furthermore, grants may be recommended to governmental units defined in Section 170(c)(1), if the grant funds are used for exclusively public purposes.

B.2. Grants to U.S. Private Foundations, Foreign Organizations, and Individuals.

Most sponsoring charities do not currently make grants to U.S. private foundations, foreign organizations or individuals. Where a sponsoring charity chooses to make grants to individuals or to entities other than public charities and private operating foundations, additional review procedures are appropriate to ensure that funds are used for charitable purposes.

B.2.1. Grants to U.S. Private Foundations and Foreign Organizations.

A sponsoring charity choosing to make grants to a U.S. private foundation or a foreign organization requires that the proposed grant recipient provide the sponsoring charity with information specifying the charitable purposes for which the grant funds will be used, including information on the proposed grant recipient's charitable objectives and how use of the grant funds will further those objectives. A sponsoring charity generally enters into a written grant agreement with the U.S. private foundation or foreign organization providing (i) the charitable purposes for which the grant funds will be used, and (ii) that the grant recipient will periodically submit reports describing the expenditure of grant funds and the grant recipient's progress in accomplishing the charitable purposes for which the grant was made. The sponsoring charity monitors the performance of the grant recipient under the terms of such agreement. The sponsoring charity may follow other appropriate procedures where the foreign organization is the equivalent of a U.S. public charity.

B.2.2. Grants to Individuals.

A sponsoring charity choosing to make grants to individuals within a charitable class adopts procedures to assure that there is no impermissible benefit being conferred on the individual. A sponsoring charity also keeps records specifying (i) the name and address of the grant recipient, (ii) the amount of the grant, (iii) the charitable purposes for which the grant funds will be used by the individual, (iv) the manner in which the sponsoring charity selected the grant recipient, and (v) the relationship (if any) between the grant recipient and (a) members, officers or trustees of the sponsoring charity, (b) the donor or donor adviser, or (c) a family member or controlled corporation of either.

VI. A Sponsoring Charity Maintains a Minimum Level of Activity in its Donor Advised Fund Accounts.

A. Aggregate Grant Distributions Will Exceed a Minimum Threshold.

Grant distributions from the aggregate of a sponsoring charity's donor advised fund accounts exceed a minimum threshold of, for example, 5% of the sponsoring charity's net assets on a fiscal five-year rolling average basis.

B. A Sponsoring Charity Has a Policy Ensuring a Minimum Level of Activity in Each Donor Advised Fund Account.

A sponsoring charity has a policy ensuring that a minimum level of activity occurs in each donor advised fund account. The Internal Revenue Service, for example, has approved a policy requiring activity, in the form of contributions or grant recommendations, within a seven-year period.

**Adopted and approved by National Philanthropic Trust Board of Trustees
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