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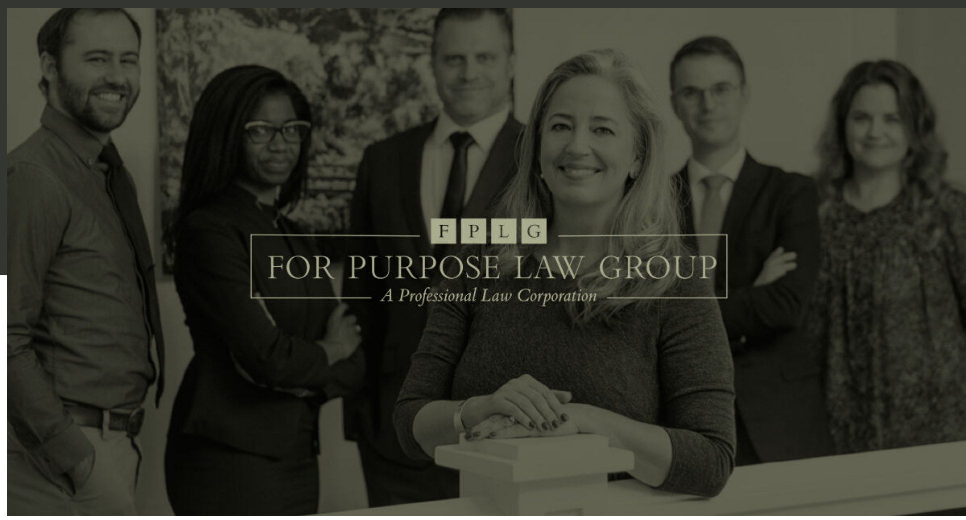
NONPROFITS: DONOR ADVISED FUNDS

Donor-Advised Funds: New Criticisms

08.18.17 | Linda J. Rosenthal, JD



The donor-advised fund (DAF), a charitable-giving format which has been around for many decades, has been surging in popularity for several years. But this massive growth has sparked a recent wave of critical comment from academics and other observers about the implications of the widespread use of DAFs on philanthropy and charitable giving.

In The Better Choice?: A Foundation or a Donor-Advised Fund," we explained the basics of DAFs, a " choice midway between an outright donation to an independent 501(c)(3) organization and establishing a private foundation":

> *In this model, the philanthropist makes a charitable contribution, relinquishes legal control over the contributed money or assets to an independent public charity, the 'supporting organization,' and receives an immediate tax deduction. But the benefactor is permitted from time to time to recommend specific grants from the fund. 'An easy way to think about a donor-advised fund is like a charitable savings account: a donor contributes to the fund as frequently as they like and then recommends grants … when they are ready.'*

Why have donor-advised funds become such a popular alternative to establishing a family foundation? Philanthropists are increasingly "frustrated by the upkeep of a foundation. " There are pros and cons to each format, but the key distinctions relevant to well-to-do individuals and families making this choice are: time and cost; control and prestige; and financial benefit, including level of deductibility of contributions.

The final decision is a matter of weighing and balancing the many pros and cons.

Choosing a DAF allows the wealthy "to park … money in a variety of diversified investments, take an immediate tax deduction and recommend where grants should go later….Privacy is another potential benefit. Foundation tax forms, which contain details on grants and other revealing information about a donor, are easy to find on the Web. The public forms filed by donor-advised funds don't list individual accounts."

Too Many Donor-Advised Funds?

The number of donor-advised funds is growing exponentially at the same time that "lawmakers, government regulators, and the philanthropy community grapple with questions and unresolved issues."

How popular are they? Nonprofit law experts Philip Hackney, Esq. of LSU and Brian Mittendorf, CPA of Ohio State University often begin discussions of DAFs with their students by asking if they can "guess which U.S. organization raised the most money through charitable contributions in 2015?" The students get it wrong. "…(M)ost figure it was the United Way, the Salvation Army or the American Red Cross. However –

> *according to the Chronicle of Philanthropy, while these traditional charities raise a lot of cash, a 'donor-advised fund' known as the Fidelity Investments Charitable Gift Fund topped the list that year, the most recent for which data are available. Fidelity's perch at the top – a first for a donor-advised fund – is no aberration. Fidelity is joined on the list by similarly named 'charities' that sound unfamiliar, such as Schwab Charitable, the fourth-largest; and Vanguard Charitable in 11th place. All told, more than 13 percent of donations to the nation's top 400 charities flowed into the coffers of donor-advised funds in 2015, the Chronicle found.*

"These tax-exempt behemoths – Fidelity alone raised US$4.6 billion in 2015 and held assets of $15 billion – are increasing in prominence, yet have largely avoided the public eye."

New Scrutiny for Donor-Advised Funds

Recently, the growth of the DAF as a leading vehicle of charitable giving has caught the eyes of lawmakers as well as philanthropy leaders. A key issue, of course, is whether "they spur more giving" and if they are effective, responsive ways to get much-needed money into the charitable community.

In July 2016, philanthropist Lewis Cullman and Boston University law professor Ray Madoff published

"The Undermining of American Charity" to expose "…a major flaw in the financing of charities today."

> *We now write because we are alarmed about a major new force that has entered the field of charitable giving. It has so far been hardly noticed by the general public. But now it is threatening to undermine the American system for funding charity. This force is the commercial 'donor-advised fund,' the fastest-growing, but still largely unknown, charitable vehicle. Donor-advised funds (or DAFs) give donors all of the tax benefits of charitable giving while imposing no obligation that the money be put to active charitable use.*
> *The rise of DAFs is a matter of grave concern because of the heavy reliance on charitable contributions in the US…. The American system depends on an adequate flow of private donations to working charities, and anything that disrupts this flow can have critical consequences for charitable organizations and the people they serve.*

For additional thoughtful and provocative commentaries, check out as well: "Opinion: Donor-Advised Funds a 'Bad Deal' for Society" (June 2016, Chronicle of Philanthropy) and "Donor-advised funds: Charities with benefits" (April 2017, Hackney & Mittendorf).

Conclusion

This is now, and should continue to be, an important – ongoing – conversation among all stakeholders: the charitable community, lawmakers and regulators, and the general public.