

Donor Advised Funds: Do's and Don'ts

The extraordinary popularity of donor advised funds (DAFs) in philanthropy has resulted in non-profits receiving increasingly generous grants from these funds, now estimated to be in the billions of dollars annually.

However, charity staff are well advised to become educated around the IRS regulations regarding grants received from DAFs. A review of IRS "do's and don'ts" will assist with compliance and may save your organization from an expensive and embarrassing violation. See IRS Donor-Advised Funds Guide Sheet Explanation: https://www.irs.gov/pub/irs-tege/donor_advised_explanation_073108.pdf

A grant from a DAF will not entitle the donor to an income tax charitable deduction

The donor received a charitable deduction when the gift was made to her DAF. This is important for the charity receiving a grant from a DAF when issuing an acknowledgment for the gift. The acknowledgment should be different than the gift receipt customarily issued for outright gifts, and should clearly state that the gift was a grant from a donor advised fund and will therefore not be eligible for a tax deduction. Phrases such as "tax-deductible to the full extent of the law" is a poor way to address this important distinction.

A grant from a DAF cannot be used to fulfill a legally enforceable pledge of the donor

However, if the donor has entered into an agreement stating her intention to make a gift and the intention is not legally binding, the intention can be satisfied by a grant from the DAF. Organizations should check with donors to ascertain if they plan to pay a commitment from a DAF, in which case the charity may wish not to make the commitment legally binding.

A grant from a DAF cannot result in the donor, advisor, or any related party receiving more than incidental benefit

Goods or services such as a cap, key chain, mug, etc. are permissible. If the goods or services are more than of de minimis value, it violates IRS regulations and subjects the donor to the 125% excise tax. Meals, discounted merchandise, free event admission, and material quid pro quo benefits are prohibited.

A grant from a DAF cannot be used to pay for membership benefits, if any portion of the fee is not tax deductible

If more than incidental benefits are provided along with the membership, a grant cannot be made from the DAF to pay for the cost of the membership.

A grant from a DAF is not permitted to confer benefits for items such as raffle tickets, tickets to galas and other special events, and auction items

Preferential seating or parking at athletic events generally cannot be given. IRS has specifically ruled that any category of costs associated with fundraising events cannot be separated, a practice known as "bifurcation." For example, if the ticket breaks out the cost for the dinner and the gift to the charity, the donor must pay for the full value of the ticket from sources other than her DAF and not just for the non-charitable amount.

A grant from a DAF cannot be made to or for the benefit of a certain individual, such as for tuition, a scholarship, or other required fees

Grants cannot be made directly to individuals. This includes scholarships, unless the grant is made through a scholarship committee appointed by the sponsoring charity that the donor does not control.

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