

## Donor Advised Fund Charitable Giving Strategies

The objective of a donor advised fund (“DAF”) is to create an efficient charitable-giving vehicle that provides some of the benefits of a private foundation. Some public charities permit a donor to make a gift that is held in a segregated account. The donor is then allowed to recommend grants from the account to other public charities. Some gifts to the DAF may receive more favorable U.S. federal income tax treatment than comparable gifts to a private foundation. The DAF can be a low-cost, relatively hassle-free alternative to a private foundation.

### Structure

A DAF is a charitable giving vehicle owned and controlled by a sponsoring charitable organization, created to manage charitable donations on behalf of organizations, families and individuals. To participate, an account is opened and irrevocably funded with cash, securities or other assets. The donor may receive an immediate U.S. federal income tax deduction for amounts contributed to the DAF. Over time, the donor would make recommendations to provide grants from the fund to qualified nonprofit organizations. A donor advised fund must be a separate account owned and controlled by the sponsoring organization and identified by reference to contributions from the donor(s), and the donor (or someone designated by the donor) must have advisory privileges with respect to the distribution or investment of amounts held in such fund or account by reason of the donor’s status as donor.

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## The Donor's Role

The donor may provide limited guidance on the investment of funds and recommend that grants be made from the DAF to other public charities. The donor may also share his or her powers with family members and/or friends. The donor's powers can only be advisory and the public charity, as the owner of the fund assets, must retain the ultimate authority over the investment, administration and disposition of contributions to the DAF.

## Income Tax

If the donor contributes cash to the DAF, his or her U.S. federal income tax deduction is limited to 60% of his or her adjusted gross income (AGI). If long-term capital gain property is contributed to the DAF, the federal income tax deduction is generally based on the fair market value of the property and limited to 30% of the individual's AGI. Any excess deduction may be carried over for use in the following five years, subject to the AGI limitations.

## Anti-Abuse Provisions

Under the Pension Protection Act of 2006, subject to certain exceptions, distributions from a DAF for a non-charitable purpose and transactions improperly benefiting an expansively defined group of disqualified persons can trigger significant excise taxes. DAFs are also now subject to the "excess business holdings" rules applicable to private non-operating foundations which limit their beneficial ownership of a business enterprise.

## Disclosure

In general, the IRS requires the public charity sponsoring a DAF to make its application for tax exemption and its three most recent annual informational tax returns available to the public. The IRS may impose penalties for noncompliance with

these rules. DAFs need not disclose the names of contributors (so the donor can, if he or she chooses, remain anonymous to the public and to any charity receiving a grant he or she recommended).

## Advantages

A DAF generally does not have the costs (legal and accounting expenses) or administrative complexities involved with creating and maintaining a private foundation. The donor may receive a U.S. federal income tax deduction for the year of the contribution to the DAF and the donated funds are available for distribution to recommended charities in the year of the gift and future years with no minimum distribution requirements. The donor can name the account and any successor advisors. The donor can use the DAF to teach family members fiscal responsibility and encourage philanthropy. Contributions to a DAF can help reduce the size of the donor's estate. The DAF can memorialize the name of the donor forever or the donor can remain anonymous. The DAF can advance the philanthropic goals of the donor after his or her death. A DAF can generally be established without cost to the donor. Generally, no administration is required of the donor in terms of grant making and paperwork with the IRS and state charity officials; the sponsoring public charity handles the administration. Contributions to a DAF may provide a greater charitable income tax deduction than contributions to a private foundation - contributions to a DAF are treated as made to a public charity for federal income tax purposes. Unlike a private foundation, a DAF is not required to make annual distributions equal to 5% of its net investment assets; and unlike a private foundation, a DAF is not subject to an excise tax of 1.39% on its net investment income.

## Disadvantages

The donor surrenders ultimate control over the investment, management and disposition of the assets. A sponsoring charity may prohibit a DAF from making grants to public charities with which its staff is unfamiliar or may limit the DAF's grants to

charities that support certain beliefs or activities. The investment options for DAFs are often limited to mutual funds. Contributions to a DAF are irrevocable and nonrefundable so the donor and his or her family cannot decide to terminate the DAF and take back its remaining assets.

**Important Disclosure**

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