

# Presentation Transcript

May 14, 2020 – Webinar Donor Advised Funds and Their Critics

The Effective Philanthropy Learning Initiative at Stanford PACS hosted an online webinar with Q&A. Law, business, graduate, and undergraduate students shared their learnings, research, and recommendations from the winter Policy Lab practicum on donor advised funds led by Stanford Law Professors Joseph Bankman and Paul Brest, and Visiting Scholar Daniel Hemel.

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## Restrictions DAF Sponsors Impose on Grantees and Donor Anonymity

ERINN ANDREWS: My name, is Erinn Andrews, and I'll be presenting on the topic of restrictions on grantees and donor anonymity on behalf of one of the policy labs students who prepared these materials.

Another interesting aspect about DAFs has to do with which non-profits receive their funds and how funding decisions are made. So, legally, DAFs sponsors have absolute discretion in determining which public charities to support. But the Tax Code still acknowledges donors advisory privileges.

As a practical matter, DAF sponsors almost always respect their donors' wishes. As long as the recipient organization has 501(c)(3) status. This is especially true for the nationals, such as Fidelity, who have repeatedly confirmed they are cause-neutral when it comes to grantees. This perspective is seen by some as ideal because the donor has full discretion over which charity to support with their dollars. However, some critics have argued that by not imposing restrictions on donations to certain non-profits, the nationals are there... the national sponsors are thereby helping support hate groups.

With these national sponsors, the most common form of restriction we saw being imposed on the DAF holder was if the recommended grantee was under investigation, usually at the federal level, but sometimes at the state level, as well. Some DAF sponsors will perform additional due diligence to check if the organization or leadership has been receiving negative press, though this is usually just as a courtesy flag to the donor and not an outright restriction. For some DAF sponsors, however, the activities of the groups that enjoy 501(c)(3) status, may be inconsistent with this DAF sponsor's mission.

So how do DAF sponsors deal with requests by donors to give to such organizations? This is where grant restrictions come in. Again, so far, we only see these with faith-based special interest DAFs, and, increasingly, community foundations. Grant restrictions can be as broad as forbidding donations to any charitable organization working in a certain field or promoting a certain agenda, for example, a charitable organization, which promotes a two-state solution in Israel or an organization that advocates for abortion rights. Or they can be as specific as forbidding donations to specific charitable organizations, for example, Planned Parenthood or the NRA foundation.

Most DAF sponsors that impose these kinds of restrictions will disclose these requirements upfront, but much of this language is quite vague pertaining to the grant approval process. More rare would be the scenario where a DAF sponsor performs due diligence on a DAF holder's requested grantee and after that process denies the request.

Many DAF sponsors tell donors that their chosen grantees will be subject to internal due diligence, which may sometimes result in the denial of a grant. Others, such as the East Bay Community Foundation rely on third parties, such as the Southern Poverty Law Center's hate map, to determine which groups are off limits for funding.

Because grant restriction policies can create controversy it's best for DAF sponsors to be transparent with their donors throughout the process. In the due diligence scenario it's also good practice to offer some form of appeal to a donor, after a grant has been denied.

Recently, there have been criticisms of DAFs giving to hate groups. These are often coupled with the concern that DAF holders' donations can be anonymous. The main objection here is that donors can shield their preferences from public view. We don't find this a particularly compelling criticism because there are other ways that a donor can give anonymously to a charity and receive a tax deduction. And, importantly, anonymity protects donors from retaliation, which is an important right to protect. Consider a citizen supporting the Planned Parenthood Federation of America or making a gift to pro-life across America, these individuals have a right to support these organizations and not fear retaliation.

Two other concerns about donor anonymity are that the recipient organizations may not wish to accept a gift they believe is tainted by a donor's conduct or ideology, and that they don't want to lose the opportunity to steward the gift with the individual responsible for directing it and future funds. In fact, through our investigations, we found that the vast majority of gifts were not anonymous. Something DAF sponsors could do to ensure even fewer anonymous donations is to make disclosure of the donors named the default, which most of the DAF sponsors with whom we spoke already do. In any event, if an organization is truly concerned about the source of an anonymous gift, they can always decline it.