

Orange County Community Foundation

POLICIES AND GUIDELINES FOR DONOR-ADVISED FUNDS

Revised October, 2018

What is a donor-advised fund?

A donor-advised fund defined by federal legislation possesses the following three characteristics:

- The fund is separately identified with a reference to the contributions of a donor or donors.
- The fund is owned and controlled by a sponsoring organization, e.g. a community foundation.
- The donor or persons appointed by the donor expect to have the privilege of providing advice with respect to the fund's investments and distributions.

Getting started

A donor-advised fund can be created with the mutual signing of a fund agreement between the donor and the Orange County Community Foundation. Donors may be individuals, families, businesses or charitable organizations. A donor-advised fund is activated upon receipt by OCCF of an initial gift of \$5,000 or more. Donor-advised funds are typically endowed, allowing the original donor to suggest grants made from investment interest according to OCCF's payout policies. The advisor(s) named in the fund agreement may also recommend grants from the fund to qualified charitable organizations. Once all advisors, or successor advisors if any, are deceased, the fund becomes part of OCCF's unrestricted funds, a field of interest fund, or a designated beneficiary fund, depending on the donor's intent at the time the fund is established. The donor may name the fund, subject to approval by OCCF. Unless the donor requests that a fund be anonymous, it will be listed by name in OCCF's annual report and other documents. The fund and its advisors will be identified to grant recipients unless the advisor requests anonymity, on a case-by-case basis.

Contributing to a fund

The assets of donor-advised funds are owned and controlled by the Orange County Community Foundation. Contributions made to a fund may be made in any amount, although a fund must accumulate and maintain a balance of \$5,000 to be activated and remain active. Contributions may be made using cash, publicly traded securities, or other property, including closely held stock, partnership interests, real estate, personal property, trusts and life insurance. Contributions may be added at any time and in any amount, subject to acceptance policies of the Orange County Community Foundation. Contributions should be clearly designated by fund name. Many donors make contributions using appreciated, publicly traded stock that has been held for longer than a year, to enjoy maximum tax benefits. Contributions of property that may not have immediate liquidity are accepted at the discretion of the Orange County Community Foundation, and are subject to completion of our due diligence procedures. Donors considering a gift in any form other than cash should contact OCCF to discuss its appropriateness and to obtain delivery instructions.

The Orange County Community Foundation Board of Directors reserves the right to vary the terms of any gift if continued adherence to any condition or restriction is, in the judgment of the Board, unnecessary, incapable of fulfillment, or inconsistent with the charitable or other exempt purposes of the Foundation or the needs of the community served by the Foundation.

Recommending Grants

Once a donor advised fund has been activated and as long as it maintains a fund balance of at least \$5,000, the advisor(s) named in the agreement may recommend distributions to qualified charitable organizations. Grants may be recommended out of investment income each year, in compliance with the Foundation's established payout process for that year. Grant recommendations may be made when the annual payout is available. Recommendation forms will be made available to the advisor(s), and recommendations will be made via the form provided, either through email or regular mail.

Qualified charities generally include those described in Section 501©(3) of the Internal Revenue Code that are not also private foundations, and certain governmental organizations. These include charitable, religious, and educational organizations, as well as school districts, public libraries and other units of government. Examples of organizations not eligible for contributions from a donor advised fund include organizations whose primary purpose is lobbying, cemetery associations, and individuals. If an advisor is concerned about a particular recommendation, OCCF can pre-screen the organization for eligibility.

Once a recommendation is received, OCCF staff will perform due diligence to verify that the organization is a qualified charity and that its status is current. For most organizations, this process can be completed in a few days, depending on the volume. For grants to unfamiliar organizations, OCCF requires an affirmative response from the organization before awarding a grant. This process may take longer. It is the Foundation's practice generally to follow the advisor's recommendations. However, the final decision concerning all recommended grants is determined by the OCCF Board of Directors. Following approval by the Board of Directors, a check will be issued and letter prepared for the grant recipient.

No distribution from the Fund which may personally benefit any donor or donor advisor will be allowed.

Grant restrictions and prohibitions (IRS regulations)

- Grants from a donor advised fund cannot result in the donor, advisors, or any related parties receiving an exchange of goods or services to any personal or material benefit that is not provided to the general public. Prohibited benefits include tickets, memberships, meals, preferred parking, preferred seating, discounted merchandise or other preferential treatment from a recipient organization.
- Donor advised grants also cannot be used to satisfy all or a portion of a pre-existing personal pledge or other financial obligation of the donor, advisors, or any related parties. Advisors may, however, recommend that a grant be paid out over multiple years, subject to grant approval and annual due diligence.
- Provisions of the Pension Protection Act of 2006 prohibit donor advised funds from making any grants to individuals, such as scholarships, emergency hardship grants, or disaster relief grants. This includes checks written directly to an individual or checks written to an entity for the

benefit of a specified individual. For example, a grant to a university for the benefit of a designated student is prohibited.

- Donors, advisors, or any related parties may not receive grants, loans, compensation or similar payment (including expense reimbursements) from donor advised funds.
- No distribution will be made from the Fund that may, in the judgment of the Foundation, jeopardize or be inconsistent with the Foundation's Code section 501(c)(3) status or result in the imposition of any excise tax, penalty, or other tax, fine, or assessment under the Code (e.g. taxes on Code section 4966 taxable distributions to "disqualified supporting organizations").
- No distribution from the Fund will be made to the benefit of any donor or donor advisor.

Grant acknowledgement

Unless other arrangements have been made (e.g. anonymity requested), the grant letter will indicate that the contribution is from the Orange County Community Foundation and that it has been given upon the recommendation of the named advisor(s). The recipient organization is encouraged to acknowledge the gift to the advisor(s) and also to OCCF. Additional language confirms that no benefits have been offered or provided to OCCF or the advisor(s) in exchange for the accompanying grant. If the recipient organization publishes a news release or list of donors, it is asked to indicate the contributions as a grant from the Orange County Community Foundation.

Partners in philanthropy

From time to time, OCCF may bring to the advisor's attention grant-making opportunities in which the advisor may have an interest. The advisor is not obligated to recommend a grant for the identified program. Donors may also be furnished with lists of unmet charitable needs of the community as determined by the Foundation upon occasion, as well.

Successor advisors and ultimate use *(applies to individuals and family donors)*

The original donor—who is, most often, the original advisor—has the opportunity to name successor advisors at the time the fund is established. Frequently these are the children of the original advisor.

Generally, when an advised fund is established, the fund may, upon the donor's request, be advised by persons representing up to two generations—the donor's and one additional generation.

At such time as advisors from the second generation become active advisors, the fund, if not already endowed, will become an endowed fund and the Foundation's spending policy will determine the amount available for distribution annually.

In addition, the donor—and the successor advisors—will be encouraged to take advantage of the knowledge and expertise of the Foundation's grant-making staff, who will suggest that the advised fund grants remain within Orange County.

The Foundation will consider an exception to the successor advisor policy upon the request of the donor to involve a third generation, but its assets will be co-mingled in a pool of unrestricted assets from which the income is used to meet community needs as determined from time to time by the Foundation's Board of Directors. The original donor has the option, however, at the time the fund is created, to name

a field of interest or to designate certain organizations that should benefit from the income of the fund following the death of the last advisor, subject to the Foundation's variance power.

Restrictions and limitations

Advisors are not required to recommend grants from their funds; but, unless other arrangements have been made, a fund will be subject to annual distribution of income if it has been dormant for an extended period of time.

Endowed donor advised funds are customarily invested and co-mingled with assets of other funds of the Foundation. However, when the size of a fund warrants separate investment consideration, typically for funds over \$1,000,000 (one million dollars), the Foundation will endeavor to accommodate requests from donors for separate investment of fund assets, or use of a particular investment manager, broker, or agent in accordance with the OCCF's investment policy, and may consult with donors on investment options for such funds.

OCCF's investment objective is to provide a net return that equals or exceeds the sum of the endowment distribution rate established from time to time by the OCCF Board of Directors and the long-term rate of inflation. OCCF appoints an investment consultant and investment managers from time to time to carry out some of its investment management responsibilities with respect to its invested asset pool.

Non-endowed donor advised funds are invested according to the specific investment strategies of the Foundation as from time to time are determined for non-permanent assets.

Donor advised funds bear their proportionate share of the fees and expenses of the invested asset pool. In addition, each donor advised fund is assessed an annual service fee subject to the Foundation's most current fund fee schedule as determined by the OCCF Board of Directors.'

You may obtain additional information about Orange County Community Foundation investment advisors and practices by calling 812.723.4150.

The financial activity and balance information for each donor advised fund is reported in an annual audited financial statement distributed to the advisor.

Acceptable types of fund activity

The following are definition of fund activity that leads to fund distributions that apply to funds that have more than the Foundation's minimum required balance to maintain a donor-advised fund. If this policy conflicts in any way with federal or state law (including UPMIFA), the relevant law controls.

A fund is considered active when there is regular communication between a donor (or named successor or successors) and the Orange County Community Foundation, Inc. regarding the existence and purpose

of that fund. Examples of some of the activities that would deem a fund active include (but are not limited to):

Regular Grant Recommendations. Donor advisor(s) generally recommend grants at least annually to qualified charitable organizations. The amount of grantmaking can vary from year to year.

Developing a Philanthropic Program. Donor advisor(s) make a substantial contribution to donor-advised funds, for example, upon the sale of a business, and refrain from recommending grants for a given initial period while the fund advisors consult with the sponsoring charity and/or does research to determine what types of grants will best meet community needs and philanthropic goals.

Long-term Giving Plan. Donor advisor(s) deliberately reduce the frequency or size of grant recommendations from fund, for example:

- During working years with the intention of increasing the donor-advised fund balance to support grantmaking during retirement, when the advisor(s) expect personal income to change.
- A donor may want to build a fund over time so the donor's children can make grants later (the idea being the donor is leaving a charitable legacy for the next generation to administer).
- Donor advisor(s) refrain from recommendation grants for a given period because the fund is invested in an illiquid or undervalued investment. Donor advisor(s) intend to begin making grant recommendations when the investment can be sold at a reasonable price.

Project Grants. Donor advisor(s) make a substantial contribution to a donor-advised fund and determine to recommend grants to a specific qualified charitable organization over an established period of time so that the donor(s) can monitor how the charitable organization performs, and to consider whether another organization would better achieve the donors' charitable objectives.

Starter Fund. Donor-advised funds may need time to build the fund balance to make substantial grants to the community. Therefore, there may be no distribution made until the fund balance reaches an amount stated in the donor-advised fund agreement.

Specific Occasion Grant. Donor advisor(s) refrain from the recommendation of grants for a number of years with a specific charitable goal of recommending a grant upon a specific occasion. Examples include:

- Donor is incapacitated with no successor advisor(s) named so the community foundation waits until the donor's death to distribute the fund according to the donor's original intent.
- Fund has transitioned to named successor advisor(s) but they are minors and no adult representative is named to represent them (so grants resume when successor advisor(s) are adults).
- Founders of the fund who are also the donor advisors are getting divorced so that grants are suspended until both the husband and wife agree on grants, which may include splitting the

fund into two separate funds, one for each spouse to advise, or eventually dissolving the fund through the making of charitable grants.

- Grants are suspended during litigation involving a fund (e.g., the donor has left his/her estate to a fund, but the donor's children are disputing the bequest so the community foundation does not allow grants until the litigation is resolved).
- Donor leaves a bequest to a fund and distributions are made periodically to the fund during the estate settlement process, but grants are not made until the estate is fully settle.

Other Means of Effective Grantmaking as approved by the Orange County Community Foundation, Inc. Board of Directors and subject to all federal, state, and local laws.

Activating Grantmaking

Should grant activity stop for more than a three-year period, steps will be taken by the staff or the board of the Orange County Community Foundation, Inc. to activate that fund. These step may include such activities as:

- Notifying the fund advisor regular and periodically (for example, three times over a period of three years) to encourage the fund advisor(s) to activate the fund.
- Distributing grants from the fund to qualified grant recipients that align with donor intent, but if the community foundation determines such intent is obsolete, incapable of being fulfilled, impractical, or inconsistent with the community's charitable needs, then exercise the Orange County Community Foundation, Inc.'s overriding variance power to enable the community foundation to continue to use its resources to meet the needs of the community and to address the charitable purposes for which the funds were committed.
- Closing a "starter" fund if the "starter" fund balance does not reach the community foundation's required minimum amount within a stated period of time, and, for example, but not limited to, re-allocating the fund proceeds to the Orange County Community Foundation, Inc.'s unrestricted fund or issuing the balance as a charitable grant to a qualified recipient.

Definition of Terms

Qualified Charitable Organizations

Donors may deduct charitable contributions in accordance with federal and state tax codes only if donations are made to a qualified organization. Most organizations, other than churches, governments, and public schools must apply to the IRS to become a qualified organization. Refer to the Orange County Community Foundation, inc.'s grantmaking policies for local grantmaking protocol.

Sponsoring Organization

An organization, like a community foundation, that owns and controls donor-advised funds.

Donor Advisor (sometimes referred to as "Fund Advisor")

A donor or person appointed or designated by the donor who has or reasonably expects to have advisory privileges with respect to the fund's distributions. The donor retains the privilege to recommend grants from the charitable fund for which he or she has been designated as fund advisor.


Donor-Advised Fund

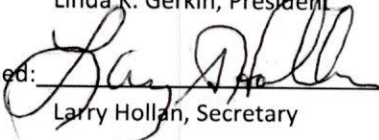
A fund may be classified as donor-advised if it has at least three characteristics: (1) a donor or person appointed or designated by the donor(s) has, or reasonably expects to have, advisory privileges with respect to the fund's distributions, (2) the fund is separately identified by reference to contributions of the donor(s), and (3) the fund is owned and controlled by a sponsoring organization, such as a community foundation. A fund possessing these characteristics may be exempt from the donor-advised classification if it grants to one single public charity or government unit, or if the fund meets certain requirements applicable to scholarship funds.

Disqualified Person

As applied to public charities, the term disqualified person includes (1) organization managers, (2) any other person who, within the past five years, was in a position to exercise substantial influence over the affairs of the organization, (3) donors and donor advisors with regard to transactions with a particular donor-advised fund, (4) investment advisors to assets of donor-advised funds, (5) and disqualified persons of supporting organizations who are also disqualified persons of the supported organization, (6) family members of the above, (7) businesses they control. Paying excessive benefits to a disqualified person will result in the imposition of penalty excise taxes on that person, and, under some circumstances, on the charity's board of directors (see "intermediate sanctions": <http://www.cof.org/content/glossary-philanthropic-terms#sanctions>).

Approved by the Orange County Community Foundation Board of Directors
October 25, 2018

Signed: 
Linda K. Gerkin, President

Signed: 
Larry Hollan, Secretary