

INTRODUCTIONS TO THE RISE OF DONOR-ADVISED FUNDS: SHOULD CONGRESS RESPOND?

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TWO INTRODUCTIONS

The purpose of this essay is to provide two introductions. The first introduction is to the substantive material presented: the papers by scholars and practitioners prepared in connection with the conference “The Rise of Donor-Advised Funds: Should Congress Respond?” held in Washington, D.C. on October 23, 2015. Second, this essay introduces the Boston College Law School Forum on Philanthropy and the Public Good, a non-partisan, think tank organized for the purpose of promoting meaningful conversations around the most pressing issues facing the philanthropic sector today.

THE RISE OF DONOR-ADVISED FUNDS: SHOULD CONGRESS RESPOND?

Donor-advised funds (DAFs) have emerged from relative obscurity to become one of the most prominent—and sometimes most hotly contested—charitable vehicles. The subject of donor-advised funds is discussed regularly at conferences and in the halls of Congress as well as in newspapers, newsletters, blogs and every other place where formal and informal conversations about the charitable sector occur.

However, despite their ubiquity, conversations about donor-advised funds are rarely as informative as they might be. Too often they occur in silos—critics in conversation with critics and advocates in conversation with advocates. The result is that policy makers and others seeking to follow the debate are often left at sea by a public discourse that is conflicting and limited by a lack of common principles.

The purpose of this conference, and the papers presented here, is to move the conversation forward. Important policy issues can be better evaluated by policy makers when scholars and practitioners from all sides of the DAF debate can identify points of agreement and explicate points of disagreement.

Participants in the conference are all recognized experts in the charitable field. Many of these individuals are well known for their particular expertise

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in donor-advised funds. Others are informed newcomers: individuals who have been working as scholars and practitioners in the broader charitable area, and who now bring their expertise and insights to the important topics and controversies involving donor-advised funds.

The first essays are designed to provide background and context to the DAF debate. Donor-advised funds were originally a product of the community foundations and mission driven organizations. Lila Corwin Berman traces the history of donor-advised funds through the lens of the history of Jewish philanthropy. Andrea Levere is both a practitioner and scholar of financing the nonprofit sector and she explores how donor-advised funds could play a leadership role in the development of nonprofit capital markets. Insights from behavioral economics have played an important role in explaining what motivates people to engage in charitable giving and how the rules and practices around charitable giving can be modified to produce societal benefits. James Andreoni, the behavioral economist well known for his theories of charitable giving and “warm glow,” extends his analysis to donor-advised funds. Paul Arnsberger, from the IRS Statistics of Income, analyzes the best data we have on donor-advised funds, namely that reported to the IRS on Forms 990, to explore what we know, and don’t know, about the numbers associated with donor-advised funds.

The next group of essays, from Victoria Bjorklund, Alan Cantor, Roger Colinvau and Joanne Florino, address the substantive question of whether and how Congress should respond to the rise of donor-advised funds. Two of the authors (Alan Cantor and Roger Colinvau) argue in favor of congressional intervention; two of the authors (Victoria Bjorklund and Joanne Florino) argue against. Each of these authors has deep professional knowledge of donor-advised funds and each brings his or her own experiences and perspectives to this debate.

The final group of essays, from Thomas Bridge, Howard Husock, Terry Mazany and Alicia Philipp address a subtler question in the DAF debate: should all sponsoring organizations be treated the same? Thomas Bridge and Howard Husock generally take the position that all sponsoring organizations should be treated the same. Terry Mazany and Alicia Philipp suggest that when crafting policies regarding donor-advised funds, we should be mindful of the unique role played by community foundations.

THE BOSTON COLLEGE LAW SCHOOL FORUM ON PHILANTHROPY
AND THE PUBLIC GOOD

This conference has been organized by the Boston College Law School Forum on Philanthropy and the Public Good. As our name suggests, the mission of the Forum is to provide a place for scholars, practitioners and policy

makers to come together to engage deeply with the question of whether the rules governing the philanthropic sector best serve the public good.

Philanthropy and the charitable sector are the institutional embodiments of society's highest ideals: the voluntary commitment of time and resources in pursuit of making the world a better place. It is because of these important ideals that the government chooses to subsidize charitable activities through the tax code.

However, experience teaches us that legislation and regulation do not always produce optimal results. It is vital for society to periodically revisit the enacted rules (as well as carefully study proposed legislation) and ask whether they adequately further the accomplishment of desired goals. This inquiry also serves to strengthen the philanthropic sector, as any real or perceived disconnect between the charitable sector and the public good undermines public confidence and invites reactive legislative intervention.

The Forum on Philanthropy and the Public Good, a time-limited think tank, strives to offer leadership in promoting and sustaining a full and fair airing of issues regarding those ways in which law and regulation promote or frustrate philanthropy's advancement of the public good. While Congress has shown interest in addressing issues of philanthropy and tax policy, too often the only feedback it receives is from interested parties, resulting in too little attention being paid to the broader public good.

The Forum on Philanthropy and the Public Good is committed to a strongly non-partisan approach to its work. Unencumbered by constituent interests, and propelled with the support of many of the nation's leading foundations, the Forum believes that with meaningful policy discussions an ever more thoughtful approach to the formation and amendment of law and regulation can occur.

Supporting the Work of the Forum

Among those supporting the Forum's non-partisan efforts is a diverse consortium of funders, including large and small, public and private foundations. These supporters include: the Ford Foundation, the Carnegie Corporation of New York, the William and Flora Hewlett Foundation, the David Bohnett Foundation, the Barr Foundation, the Lewis B. and Dorothy Cullman Foundation, Inc., the Chicago Community Trust, the Andrea & Charles Bronfman Philanthropies and the Community Foundation for Greater Atlanta. The Forum is deeply grateful for that support.

It is, of course, important to note that the opinions expressed by the Forum on Philanthropy and the Public Good or by participants in its programs do not necessarily represent the views of those foundations.

The Work That Lies Before Us

We thank those whose scholarship and astute policy analysis serve to frame our conversation. We also thank those who have chosen to participate in this meeting.

Going forward the Forum on Philanthropy and the Public Good will continue to address significant national issues in law and regulation involving philanthropy. We believe that a strong and open discussion of these issues will meaningfully support thoughtful policy and ultimately strengthen the role of philanthropy in advancing the common good.