

# POLICIES & PROCEDURES

*for establishing and operating donor advised funds  
and corporate advised funds*

COMMUNITY FOUNDATION OF UTAH



The Board of Directors (Board) of the Community Foundation of Utah (CFU) has authorized the establishment of Donor Advised Funds (DAFs), including Corporate Advised Funds (CAFs). This document (DAF Policy) sets forth CFU's policies and procedures for establishing and operating DAFs. This DAF Policy may be amended by the Board at any time and for any reason.

## **DONOR ADVISED FUNDS AT CFU**

DAFs are established when a person or legal entity gifts or transfers money or property to CFU retaining 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 a donor. Although donors may maintain such advisory privileges, each DAF is the property of CFU; CFU has the ultimate authority and control of all property in the fund and the income derived therefrom. DAFs may only be used to further CFU's charitable purposes, as set forth in its Articles of Incorporation and Bylaws, as amended from time to time (collectively, "Governing Documents"). Each DAF is a component part of CFU and is subject to the Governing Documents, notwithstanding any provision to the contrary contained in this DAF Policy, the applicable fund agreement, bequest, deed, or transfer instrument. CFU maintains the right to take any actions at any time which, in its discretion, it deems reasonably necessary or desirable for the proper administration of any DAF.

## **VARIANCE POWER**

All grants from DAFs are subject to the Board's variance power as outlined in the Governing Documents. This variance power allows the Board to modify any condition or restriction on distributions, including grants, from any fund at CFU if, in its sole judgment (without the approval of any donor advisor), such condition or restriction becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable purposes and functions of CFU. All grants from DAFs must also be ratified by the Board.

## **ROLE OF THE DONOR ADVISOR**

CFU welcomes the involvement and recommendations of donor advisor(s) with respect to grants from DAFs, but such recommendations are advisory only. To recommend a grant, donor advisor(s) must complete a written Donor Grant Recommendation Form for every grant requested. This form can be submitted by mail, fax, email, or online.

## **CFU EVALUATION OF DONOR RECOMMENDATIONS**

While CFU's goal is to serve the Utah community by supporting an extremely broad range of charitable work, CFU reserves the right to reject any requested grant or to refuse to support any recommended organization or group if CFU believes doing so would be inconsistent with the law

or CFU's purposes, or for any reason at all, in its sole discretion.

Because of the IRS's rules and reporting requirements under the Internal Revenue Code (the Code) and applicable Treasury Regulations, CFU generally will make grants only to certain types of tax-exempt charitable organizations, including:

- Churches (Code §170(B)(1)(A)(i));
- Schools (Code §170(B)(1)(A)(ii));
- Hospital or medical research organizations (Code §70(B)(1)(A)(iii));
- Organizations operating for the benefit of a college or university owned by the government (Code §70(B)(1)(A)(iv));
- Government units (Code §170(B)(1)(A)(v));
- Organizations receiving substantial support from a government unit (Code §170(B)(1)(A)(vi));
- Other publicly supported organizations (Code §509(a)(2));
- Private operating foundations; and
- Some supporting organizations (Code §509(a)(3)).

Other organizations, including those doing great work in the community, require additional due diligence and reporting requirements, so CFU will only make grants to these types of organizations in special circumstances and subject to certain conditions. These excluded organizations include:

- Private non-operating foundations;
- International charities;
- Supporting organizations that are not functionally-integrated (Code §509(a)(3));
- Organizations without Code §501(c)(3) exempt status; and
- Organizations who have filed for but not yet received their Code §501(c)(3) exempt status.

## **PROHIBITED GRANTS**

- Distributions inconsistent with CFU's charitable purposes;
- Distributions to reimburse expenses, loans, compensation, grants, or other similar payments to a donor advisor, fund representative, or related party;
- Distributions to individuals or to an entity for the benefit of a specified individual (including but not limited to scholarships for specific students);
- Distributions to directly or indirectly support or oppose candidates for public office or if any portion of the distributions would be considered spent on an attempt to influence legislation or on a purpose other than the exempt charitable purposes listed in Code § 170(c) (2)(B);-

- Distributions that violate federal, state, or local laws;
- Distributions inconsistent with CFU's charitable purposes; and
- Distributions creating "Prohibited Benefits" to the donor, a donor advisor, for fund representative, or their family members or businesses in which they have substantial interests (35% or more) (or "Disqualified Persons" as defined by applicable tax rules and regulations). Examples of Prohibited Benefits include, but are not limited to, the payment of a donor's binding pledges, event tickets, meals, dues, membership fees, sponsorships, registration fees, discounted merchandise, preferred parking and/or seating, and memberships unless the membership confers nothing of value. Distributions resulting in such benefits are impermissible even if the donor pays separately for the non-tax-exempt portion. Mere public recognition as a donor is not considered an excess benefit.\*

## **PROHIBITION ON EXCESS BUSINESS HOLDINGS**

DAFs may not have "excess business holdings." This means that a DAF, together with any donor advisor(s), fund representative, Board member, or Disqualified Person, as defined by the Internal Revenue Service, (including any family members), may not hold more than twenty percent (20%) interest in a business enterprise.

## **MINIMUM INITIAL GIFT AND MINIMUM BALANCE**

The minimum amount to establish a DAF or CAF is \$25,000 within a three-year period. Once established, the fund must maintain a \$2,500 minimum balance. If the fund drops below this minimum, CFU may, at its sole discretion, close the fund and transfer the balance to another CFU fund.

## **INACTIVE FUNDS**

CFU requires that DAFs remain "active." A fund becomes inactive if the following occurs:

- The donor advisor(s) die(s), resign(s), or is/are incapacitated, and no Successor Advisor (see Section 13) has been named;
- All named or subsequently appointed Successor Advisors are unable or unwilling to serve as Successor Advisor; or
- No grant recommendations are made with respect to the fund for a period of two years and, during such period, the donor advisor(s) and Successor Advisor(s) do not respond to CFU's attempts to contact them.

If a DAF becomes inactive, CFU may terminate the applicable fund agreement and initiate distributions in accordance with terms of the applicable DAF agreement. In the absence

of a distribution provision, CFU may transfer fund assets to another CFU fund, in CFU's sole discretion.

In order for a fund to remain active, if there is no fund activity (money deposited or granted out), CFU will enter a \$500 grant to the Utah Legacy Fund, CFU's endowment fund, every two years.

\* Under applicable rules and regulations, any Disqualified Person (including the donor advisor) who receives an excess benefit is personally subject to an excise tax equal to 25% of the value of the excess benefit. The IRS may impose an additional tax in the amount of 200% of the excess benefit involved if the initial tax was imposed, and the Disqualified Person did not make correction within the taxable period.

## **ADMINISTRATIVE FEES AND DIRECT COSTS**

As a non-profit, CFU depends on donations to cover its operating costs and to support its important community initiatives. However, donations do not come close to covering CFU's actual costs. Accordingly, CFU currently charges an administrative contribution on all its funds to help CFU defray its costs and to make sure CFU can continue supporting the community. CFU maintains a contribution schedule that it may change, amend, or revoke at any time.

Further, CFU charges the direct costs incurred by a DAF, including but not limited to taxes, investment charges, due diligence costs, and legal fees (including but not limited to any legal fees incurred as result of legal challenges to the DAF or CAF agreement by the donor or a donor advisor or to CFU's administration and any legal inquiries relating to grants or investments, such as mission-related investments, etc.).

CFU will automatically deduct any and all administrative fees and costs of a DAF from the DAF without providing prior notice to the donor advisor.

In the event that you choose to close the DAF and send it to another DAF Provider for administration, the Fund will be assessed a 1% fee on the balance of the Fund.

## **INVESTMENT OF ASSETS**

CFU has the responsibility and authority for the investment of the assets of each DAF. The funds will be invested according to CFU's Investment Policy Statement (Investment Policy) and the advice and counsel of the Finance Committee (Committee). Management of a DAF by an outside professional advisor will be considered on a case by case basis, and any decision to use an outside professional advisor may be revoked at any time at the sole discretion of CFU.

If a donor advisor does not initially select an investment option, and CFU, in its sole discretion, deems the intent of the fund to be long-term in nature, the fund will be placed in the Mid-Term pool. The donor advisor may advise CFU in writing of such donor advisor(s)' desire that CFU change investment allocations once annually or upon a significant change in grant goals.



Should the donor advisor not initially select an investment option for the fund, and CFU, in its sole discretion deems the intent of the fund to be short-term in nature, CFU may invest the fund in a money market or similar interest-bearing or investment account until such time as the donor advisor advises that CFU grant out funds, or the fund be closed in accordance with the DAF agreement or this DAF Policy. In such event, CFU may retain any and all investment earnings for CFU's discretionary use in furtherance of its charitable exempt purposes.

Should any residual investment earnings accrue after the fund's closure, the residual earnings will be granted to the Utah Legacy Fund, the Community Foundation of Utah's endowment.

## **ENDOWED DAF**

Endowed gifts will be considered unrestricted unless expressly stated otherwise in the applicable fund agreement, meaning CFU may invade the principle if deemed necessary by the Committee and CFU's Board. All funds are distributed according to the terms of the Investment Policy, including the Spending Policy.

## **ADVISORS**

The person(s) identified in a DAF agreement as the donor advisor(s) and those designated by the donor advisor as Additional Advisor(s) or Successor Advisor(s) will have advisory privileges with respect to the distribution or investment of amounts held in the DAF. The original donor advisor may revoke existing Additional Advisors or Successor Advisors and/or appoint new Additional Advisors or Successor Advisors at any time upon written notice to CFU.

An Additional Advisor and a Successor Advisor has the same right to make non-binding recommendations with respect to grants and investments as the original donor advisor(s). An Additional Advisor retains such rights only while the donor advisor(s) continues to have his/her advisory powers and has not revoked the Additional Advisor's status. A Successor Advisor obtains advisory privileges only upon the termination of the predecessor advisor's rights.

Unless expressly stated otherwise in the applicable Donor Advised Fund Agreement, Additional Advisors or Successor Advisors may not appoint additional or replacement Additional Advisors or Successor Advisors. Each Additional and Successor Advisor's rights are contingent upon the Successor Advisor first agreeing in writing to abide by the terms of the applicable fund agreement and this DAF Policy.

In the case of CAFs, the entity establishing the fund (the Company) (acting through its CEO or other duly authorized representative as per the applicable fund agreement) may designate one or more other individuals as authorized to make recommendations on its behalf, including a primary contact who will receive communications from CFU. The Company may also specify a corporate Successor Advisor. All designations must be in writing.

A donor advisor's, Additional Advisor's or Successor Advisor's relationship with the fund shall terminate upon death, incompetence, incapacitation, inactivity, voluntary relinquishment, revocation, or any other similar concluding event. CFU may also unilaterally terminate any Advisor(s)' rights at any time and for any reason. For example, CFU may terminate advisory privileges of anyone who repeatedly or flagrantly abuses such privileges by making misrepresentations to CFU, intentionally advising grants in violation of this DAF Policy or the applicable fund agreement, subjecting CFU staff to derogatory or abusive treatment, being convicted of a crime of moral turpitude, or otherwise acting in a manner that could cause the continuation of advisory privileges to result in significant harm to CFU's reputation or tax status. Similarly, in cases of divorce or unresolved conflict, CFU may divide a fund with two or more current donor advisor(s) or Successor Advisors into separate funds, each advised by one of the advisors in conflict. Unless the applicable fund agreement provides otherwise, CFU shall divide the assets in the fund equally.

The policies and procedures in this section may be varied only by specific provision in the applicable fund agreement.

## **AMENDMENTS**

CFU may amend or revoke this DAF Policy at any time and for any reason. CFU will provide written notice to the donor advisor. Email qualifies as written notice under this Section.

## **CONFIDENTIALITY**

CFU recognizes that protecting donor confidentiality is an essential part of providing good service to donors. CFU generally presumes that donor and operational information in the possession of CFU is confidential. However, CFU does make certain exceptions, including but not limited to the following:

- Unless the donor(s) requests anonymity, the names of all donor advisor(s) may appear in CFU materials, including on its website and/or in its annual report. CFU will not publish the amount of any gift without first obtaining permission of the donor advisor(s).
- Names of donors of memorial or tribute gifts may be released to the honoree, next of kin, or appropriate member of the immediate family, unless otherwise specified by the donor(s). Gift amounts will not be released without the express written consent of the donor(s).
- In certain instances, CFU may be required to disclose certain information to comply with requirements of the Internal Revenue Code, by court order, or as required by a lawful request or order of a government department or agency.

## CONFLICT OF TERMS

In the event of an inconsistency between the DAF Policy and any policies, procedures, terms, or conditions appearing elsewhere in connection with any fund, the terms of the applicable fund agreement, as amended and as interpreted by CFU, shall govern first with this DAF Policy, as amended and as interpreted by CFU, governing second.