



Digesting Proposed DAF Regulations

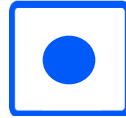
November 30, 2023

Reminders



Q&A

Use the chat function at the bottom of the screen to pose questions to the panelists.



Call Recording

This call is being recorded and will be shared with you and posted to our website later this week.



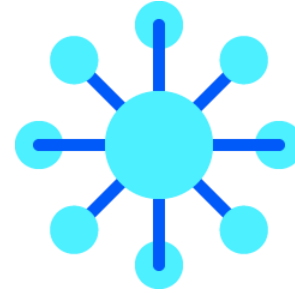
Live Transcript

To view, click “Live Transcript” and select “Show subtitles” or “View full transcript.”

**Taxes on Taxable Distributions From Donor
Advised Funds
Regulations Under Section 4966**

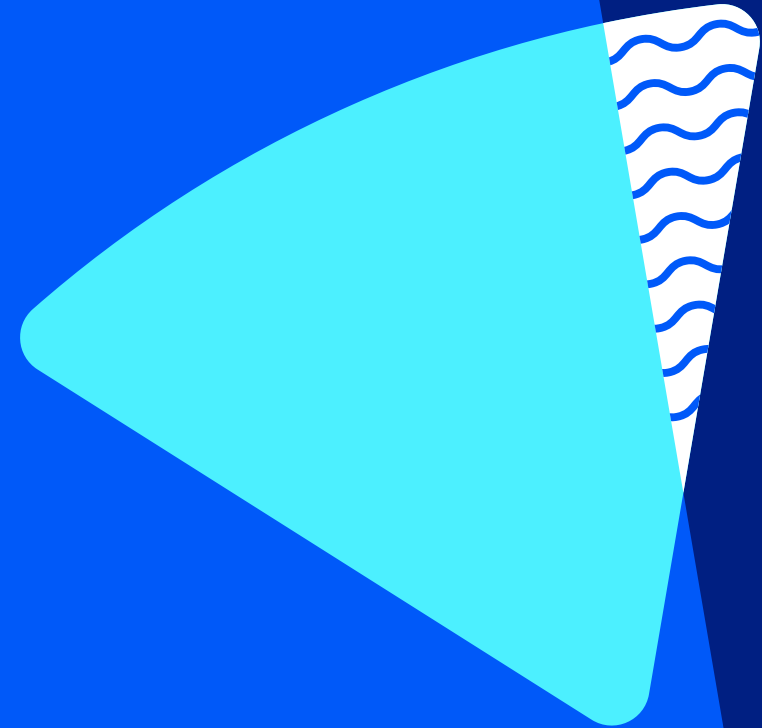
Notice of proposed rulemaking
Published in the Federal Register on Nov. 14, 2023

Comments are due January 16, 2024



Welcome!

- ❖ Brief Overview of the Proposed Rules
- ❖ Questions & Discussions
- ❖ We Want to Hear from YOU!



Speaker



Elinor Ramey

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What are these Regulations (and what are they not)?

Primarily Definitional:

- Donor Advised Fund
- Donor
- Donor Advisor
- Advisory Privileges
- Taxable Distributions





What are these Regulations (and what are they not)?

Do not provide guidance on other issues:

- Private Foundation use of DAFs
- More than incidental benefit (pledges and bifurcated payments)
- Public support
- Payout



A decorative graphic on the right side of the slide. It features a dark blue line that starts at the top, curves down into a sharp V-shape, and then curves back up. To the right of this line is a large, solid blue shape that resembles a stylized mountain peak or a large letter 'A'.

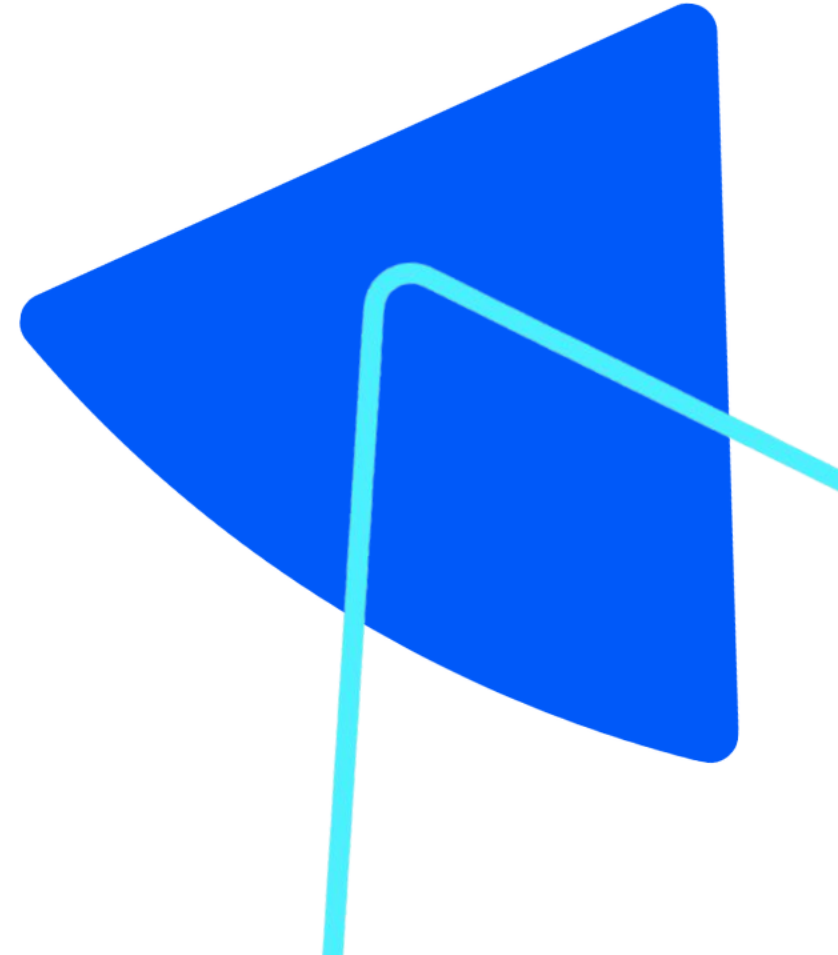
Summary of the Proposed Rulemaking

What is a DAF?



DAF is a Fund or Account

1. That is **separately identified** by reference to contributions of a **donor or donors**;
2. Owned and controlled by a sponsoring organization; and
3. At least one donor or **donor-advisor** has, or reasonably expects to have, **advisory privileges** with respect to the **distribution or investment** of amounts held in the fund by reason of the donor's status as a donor

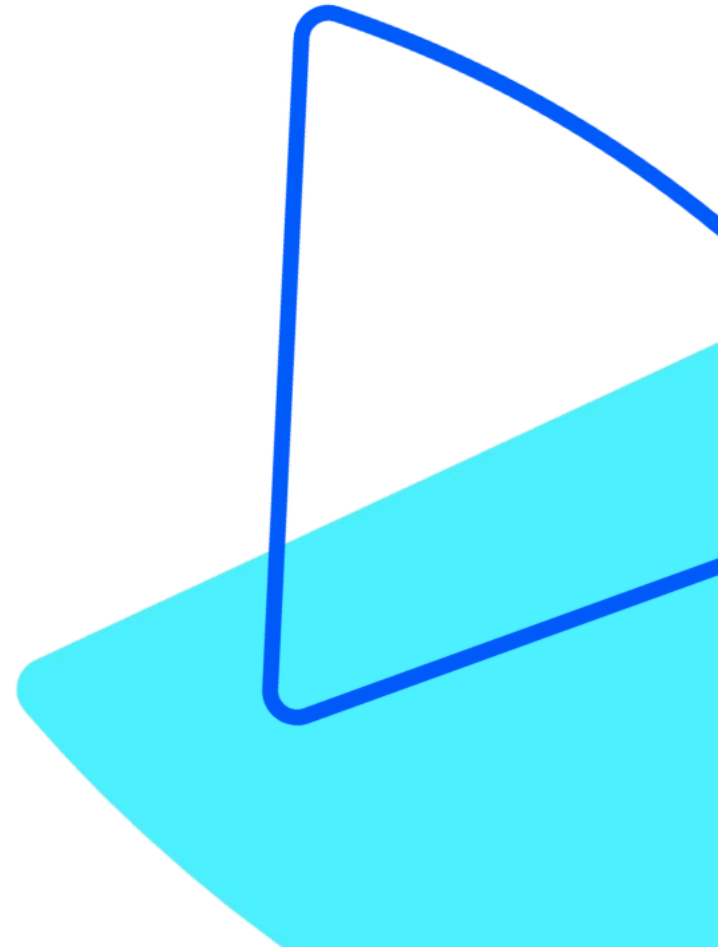




What is a DAF?

Excise taxes are imposed on taxable distributions from a DAF

- 20% Tax on the sponsoring organizations
- 5% on fund managers who knowingly agree to making a taxable distribution





What is a DAF?

Separately Identified

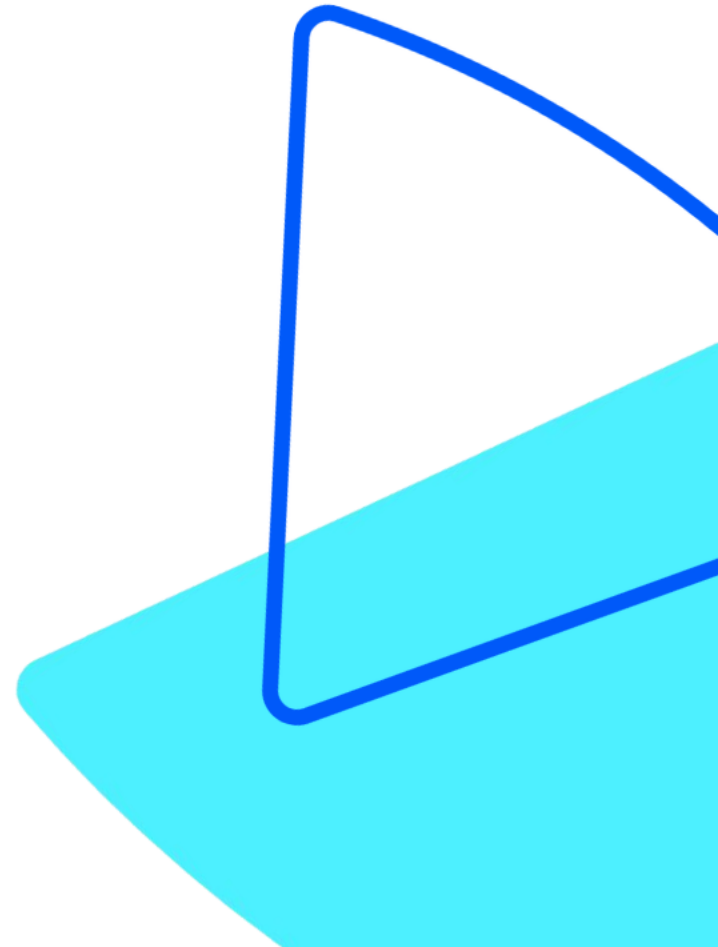
- Formal record of contributions of a donor or donors or
- Facts and circumstances
 - Account balance reflects contributions, dividends, distributions, expenses, gains and losses
 - Named after a donor or related person
 - Referred to as a DAF or agreement with a donor that it is a DAF
 - At least one donor regularly receives a fund or account statement
 - Sponsoring organization generally solicits advice before making distributions





Who is a Donor?

Any person, except does not include a governmental unit or a section 501(c)(3) public charity (except disqualified supporting organizations)





Who is a Donor?

If there is no “donor” then the fund is not a DAF, so any fund that is solely funded by entities that are not donors then it is not a DAF and none of the other limitations apply.

For example, a (c)(3) can set up a scholarship fund at a community foundation and not have to fall within the DAF scholarship fund exceptions.





Who is a Donor Advisor

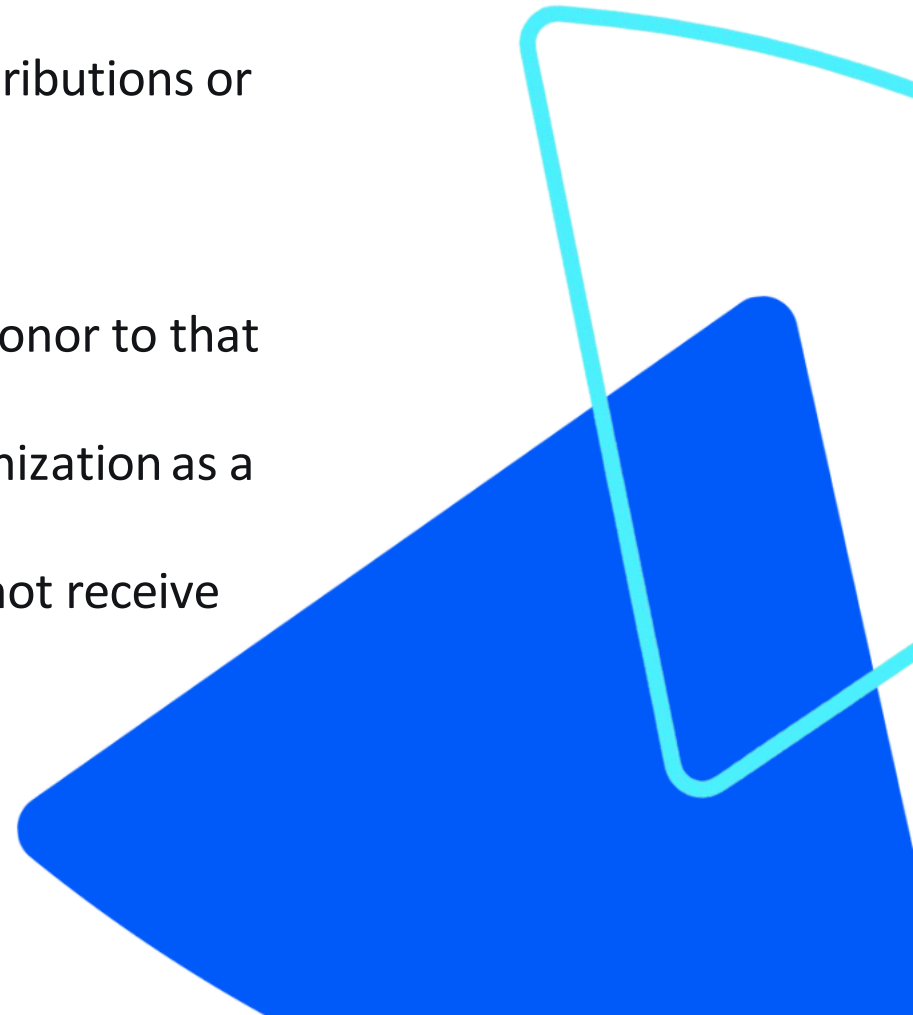
- Person appointed or designated by the donor
- Person who establishes the fund or account and advises as to distributions or investments (memorial fund, wedding fund)

Personal Investment Advisors

Manages both the assets in a DAF and the personal assets of a donor to that DAF

Not a donor-advisor if providing services to the sponsoring organization as a whole

Effect of this definition is that personal investment advisors cannot receive compensation from the DAF (under section 4958)



Exception: Advisory Committees

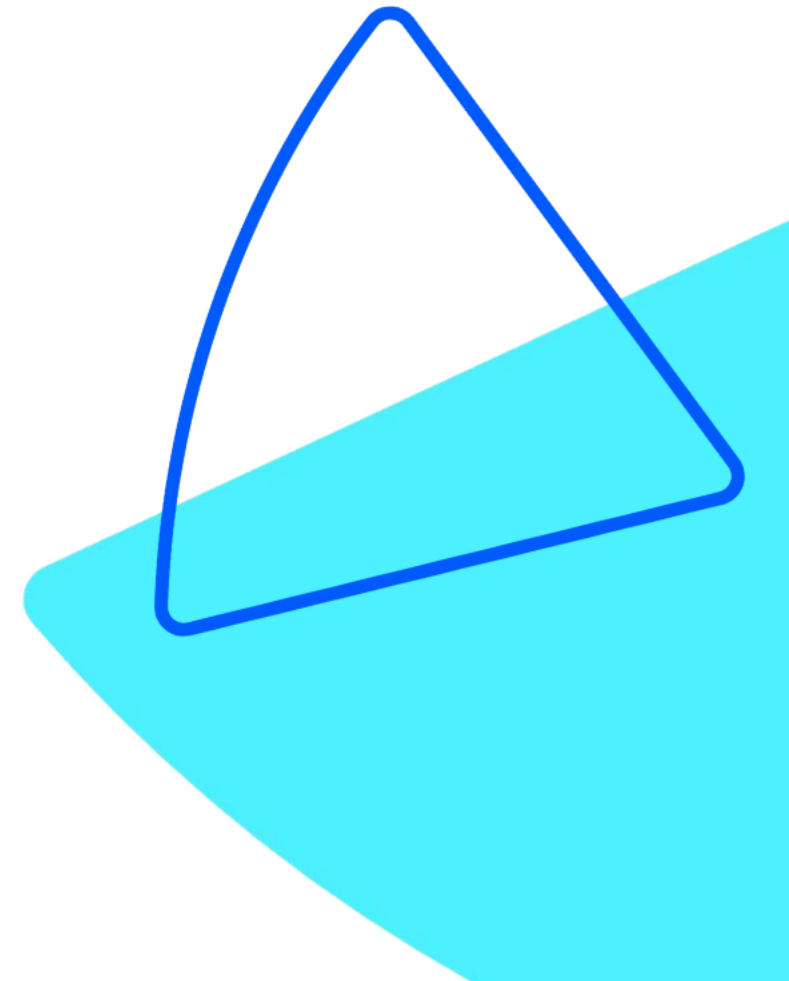
Donor-recommended Advisory Committee Member unless:

- Objective criteria
- Committee of 3 or more and majority not recommended by the donor
- Not a related person



Advisory Privileges

- Facts and circumstances
- Include privileges from service on an advisory committee
- Applied to the entire fund – if one donor or donor advisor has advisory privileges then the fund is a DAF
- Does not generally include officers, directors, or employees of the sponsoring organization
- If donor has advisory privileges, then it is deemed to be by reason of their status as a donor



Exception: Advisory Committees

- Appointment based on objective criteria
- Three or more individuals on the committee and no more than one third are related persons
- Appointee is not a significant contributor to the fund or account at the time of appointment



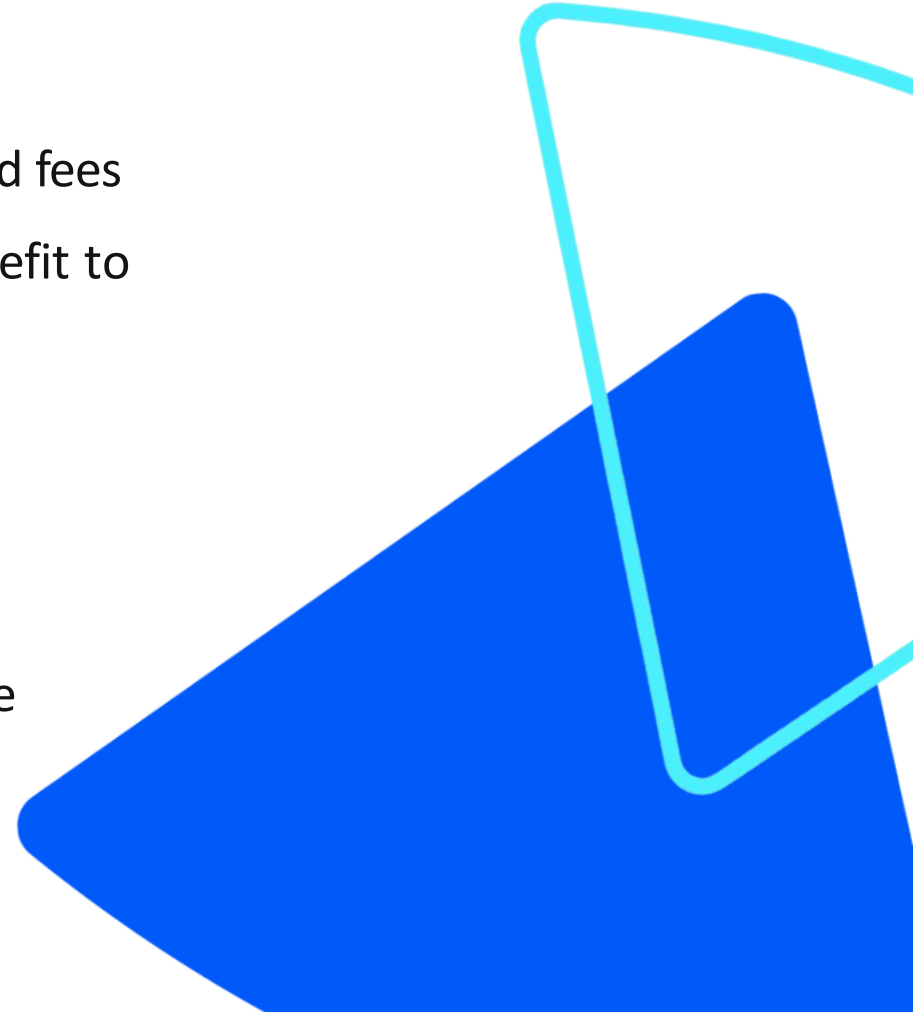
What is a Distribution?

Distribution

- Any grant, payment, disbursement, or transfer from a DAF
- Not investments and reasonable investment or grant-related fees
- Use of DAF assets that results in a more than incidental benefit to a donor

Taxable Distribution

- To a natural person; or
- To any other person if it is not for a charitable purpose; or
- If the sponsoring organization does not exercise expenditure responsibility





What is a Distribution?

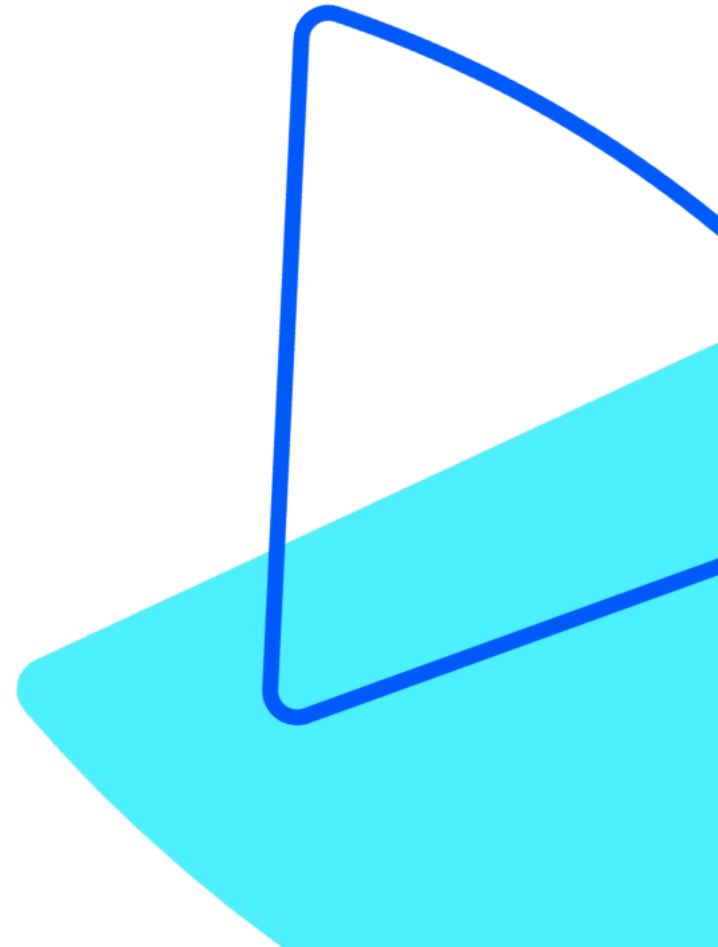
Non-taxable Distributions

- Distributions to an organization described in 170(b)(1)(A) (but must be for a charitable purpose)
- The sponsoring organization of the DAF
- Any other DAF

Distributions to Foreign Charities

- Can follow the equivalency determination rules to avoid the need for expenditure responsibility

Daisy Chain Anti-Abuse

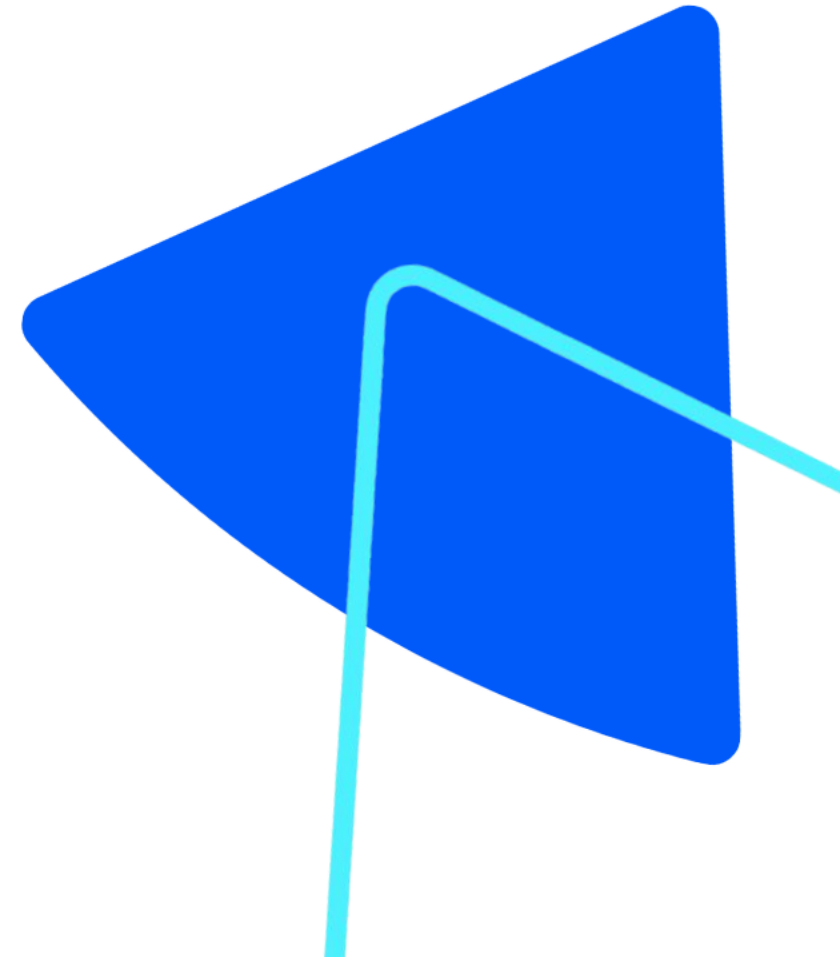


Funds Excepted from the Definition of DAF



Single Identified Organization

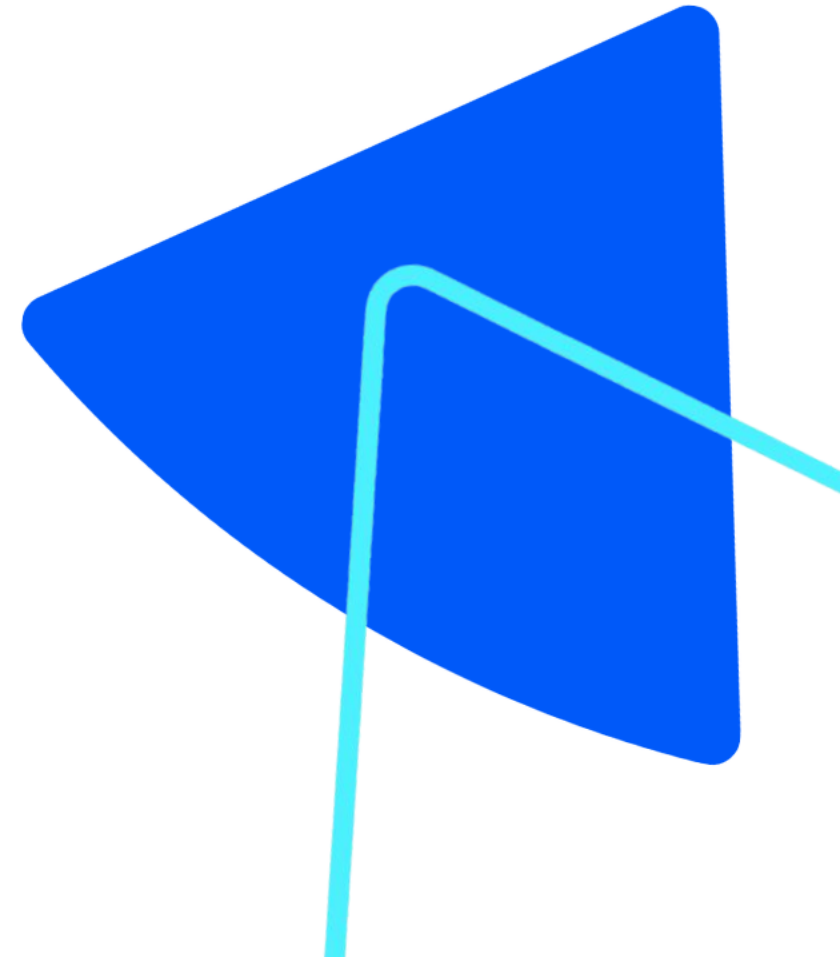
- Fund only makes distributions to a single governmental entity or public charity (except disqualified supporting organizations)
- Cannot give to third parties on behalf of the organization
- Cannot daisy chain (i.e. give to a single identified organization but retain advisory rights over the funds)



Funds Excepted from the Definition of DAF

Disaster Relief Funds (broader than employer funds that were previously allowed)

- Charitable class
- Selection committee is not controlled by donors, donor-advisors or related persons
- Majority of the committee does not include persons in a position to exercise substantial influence over the employer (if employer related)
- Objective and nondiscriminatory selection
- No more than incidental benefit

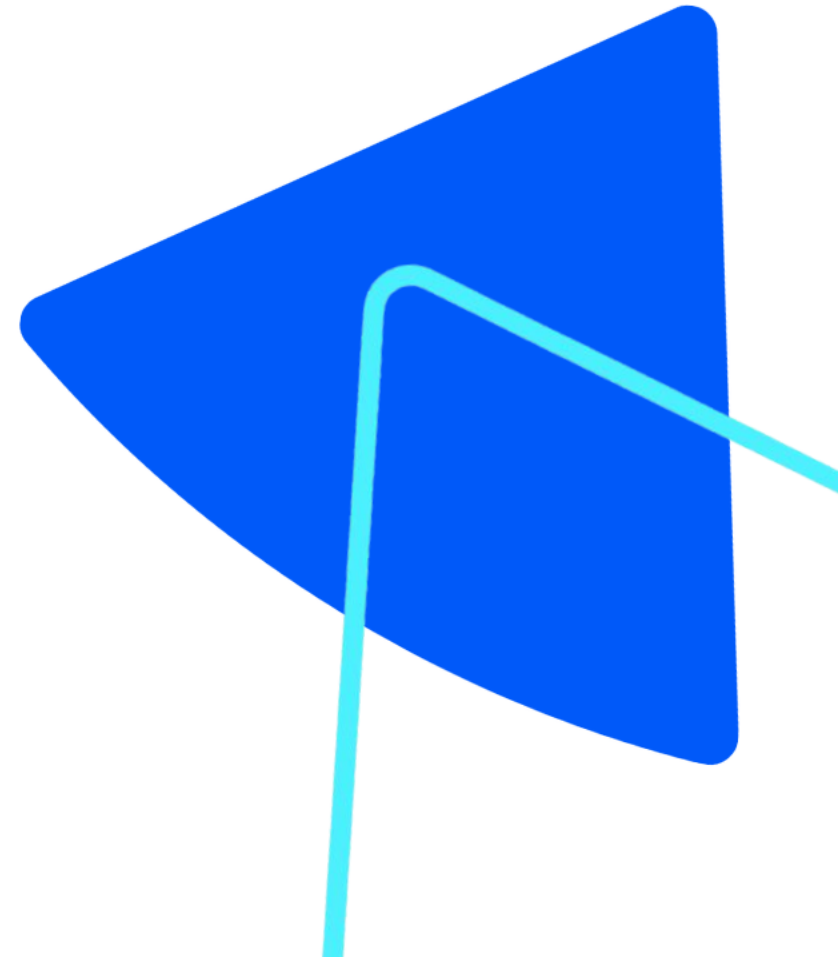


Funds Excepted from the Definition of DAF



Scholarship Funds

- Advice of the donor is part of a committee and the members of the committee are appointed by the sponsoring organization
- Donors do not control the selection committee
- Nondiscrimination, objective selection, and adequate records

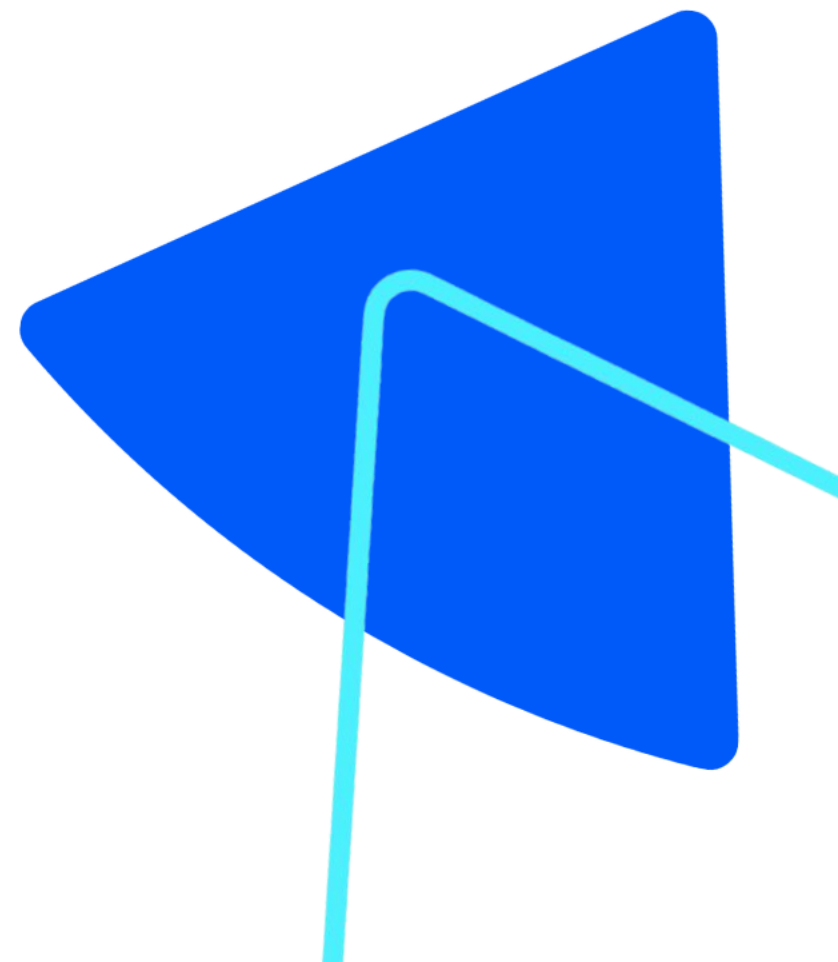


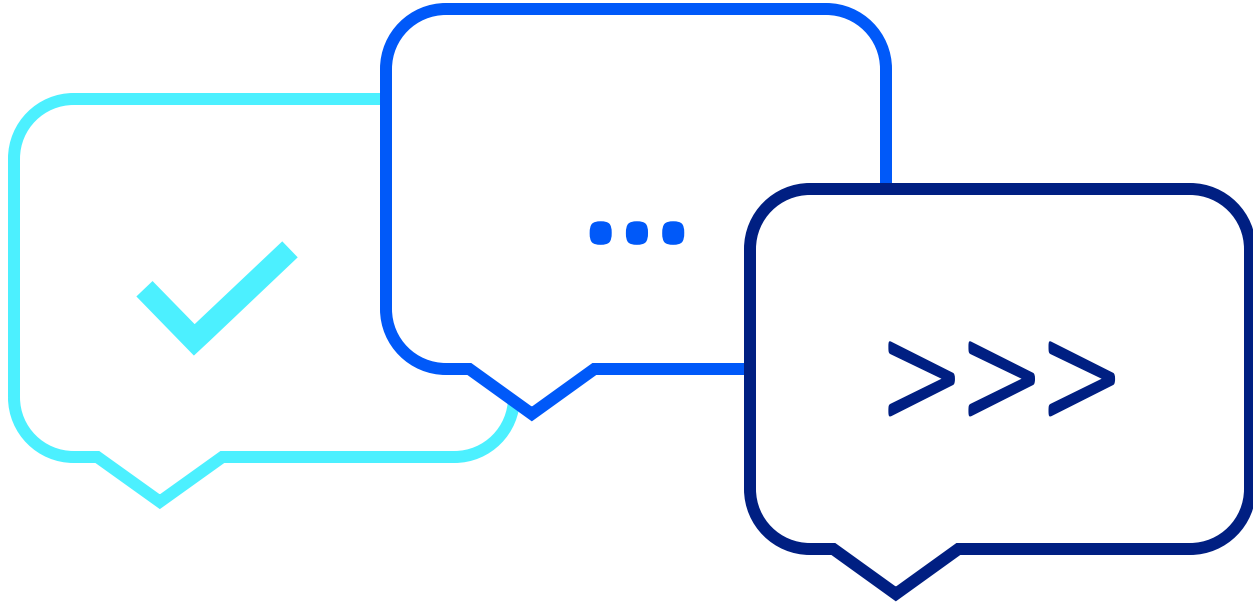
Funds Excepted from the Definition of DAF



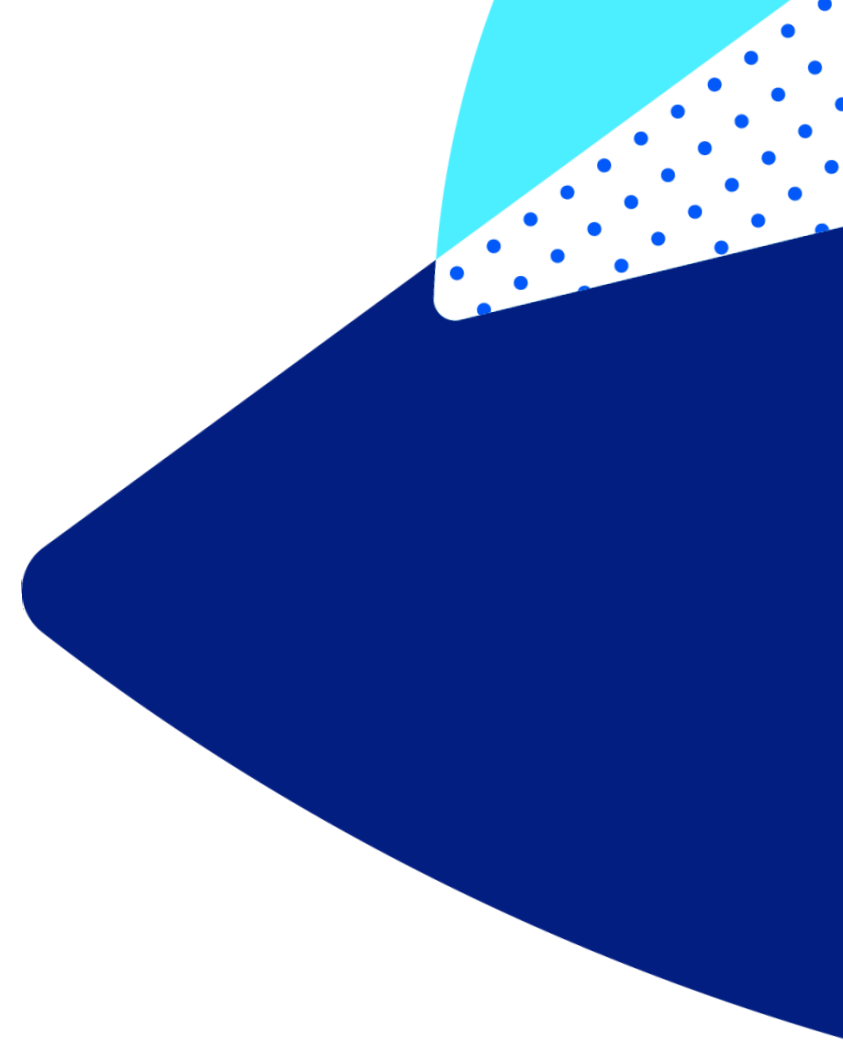
Scholarship Funds Established by (c)(4)

- Broad-based membership organization
- Committee can be chosen by the (c)(4)
- Objective nondiscriminatory selection
- Charitable class
- No benefit to officer, director, or trustee of the sponsoring organization of the fund or account or any member of the (c)(4) organization or related persons





**We want to hear
from you!**

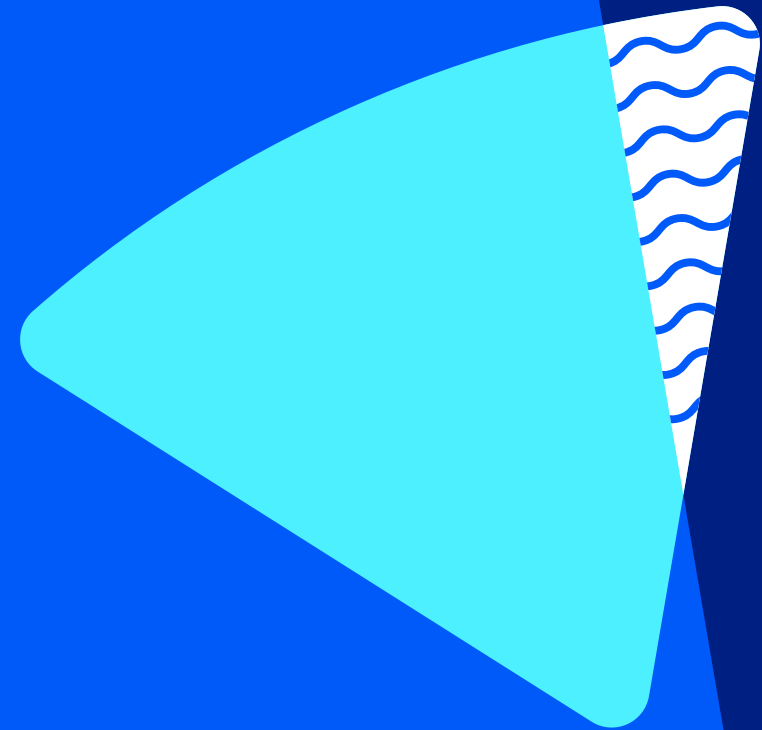


And Remember...

Let us know what you think and
how it will impact YOU!

- Edward.Shimkus@cof.org
- Jenn.Holcomb@cof.org

Comments are Due January 16



Thank you for attending!