



COUNCIL *on* FOUNDATIONS

Guidance for U.S. Community Foundations on Hate Screening as an Institution and Sponsoring Entity of Donor-Advised Funds (DAFs)

- I. Proposed field level action against hate (National Public Policy)**
- II. Board/Staff Level Conversation Guidance (Governance/Strategy)**
- III. Crafting Balanced Procedures for Hate Screening (Operational)**
- IV. Policy on Values-Based Grantmaking**
- V. Steps for when called out as an Institution for funding Hate**

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I. Proposed Field Level Action Against Hate (National Public Policy)

Objective:

Support nationally community foundations in delivering a unified voice to ensure that we keep IRS up to its word and standard of ensuring organizations filing for exemption do not violate any federal laws in espousing discrimination or prejudice.

Background:

Last March 2019, the Amalgamated Foundation and its partners launched the [Hate Is Not Charitable Campaign](#), an initiative to prevent funding groups that promote hatred. To date, the campaign includes more than 70 donor networks, foundations, and Donor Advised Funds (“DAF”) providers that collectively represent over \$1B in assets. The campaign calls for DAF providers to exercise their legal discretion over grants recommended by their donors and adopt proactive policies to ensure that funds do not flow to organizations that promote hatred. Amalgamated defines “hate” organizations as those deemed as such by the Southern Poverty Law Center, Change the Terms, Color of Change, and GLAAD, who are charged with identifying and updating information regarding potentially hateful activities.

Amalgamated’s policy statement reads “the Foundation prohibits any support of organizations engaged in “hateful activities” defined to mean activities that incite or engage in violence, intimidation, harassment, threats, or defamation targeting an individual or group based on their actual or perceived race, color, religion, national origin, ethnicity, immigration status, gender, gender identity, sexual orientation, or disability. These activities are contrary to the Foundation’s mission and its charitable status.”

501 c 3 Determination:

The IRS provides tax exemptions under the 501 C 3 determination to organizations that are “charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals. The term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

The IRS is tasked with providing the tax exempt 501 c 3 determinations to organizations that fall within this definition. It is reasonable then to assume that espousing discrimination or prejudice would be counter to the intent of the law or the statutory role of this federal agency.

II. Board/Staff Level Conversation Guidance (Governance/Strategy)

Objective:

Assist the field in addressing how philanthropy acts in the polarizing times of our nation and the proliferation of 501c3 charities being identified as espousing discrimination or prejudice.

Background:

There is a mounting shift in the environment and climate in which we find ourselves operating as grantmakers of broad-based donors and divergent community values. The critique is more poignant with vocal opposition that blurs the lines between supporting opposing viewpoints in the community and funding groups or activities defined as hate.

Assessment of the problem in the field:

Polarization can exploit the actions of funders for various agendas in the current landscape and environment. The goal of a community foundation is to facilitate individual and community philanthropy. An internal assessment identified over 400 grantmakers made grants in the past five (5) years to one of the primary groups identified on the Southern Poverty Law Center's (SPLC) hate list, which included community foundations. This reference challenges the desire of the community foundation to serve as a platform for all donors who will have divergent viewpoints and values from one another but avoids directly funding activities that could be defined as discriminatory or prejudice. This inherently challenges the balance between *advisory rights* of the donor, with the *ethical standards* of the sponsoring entity.

Moving forward in the complex landscape of today:

What set of questions do we raise to ensure an adequate response, behavior, and actions in times of shift? How do we adapt our policies, procedures, and actions to adequately align with the shift in our polarized environment and climate?

It is complicated and more so depending on the political and social norms of the communities you serve. Adequate response can be assessed with dialogue at the staff and governing board level:

- Do you routinely, as a foundation, approve all grants recommended to IRS qualified orgs?
- Are such approvals irrespective of mission – including hate groups – without screen for mission?
- If you do screen for hate among IRS qualified orgs and do not approve such grants, what and whose definition of hate are you using—SPLC, Change the Terms, GLADD, US DOJ, your state attorney general, your own?
- Do you let any IRS qualified org set up a charitable fund (DAF, support org, scholarship, etc.) at your foundation even if their mission is hate? On what basis would you determine this?
- Could a community foundation be sued if it were to deny an IRS qualified org the opportunity to set up a charitable fund under the same conditions as they allow all others?
- How do you reconcile the values of the field or sector or national media vs the belief, definitions and values of a specific community or individual?
- How do you protect the First Amendment of donors supporting causes important to them that might conflict with your own institutional values?

III. Crafting Balanced Procedures for Hate Screening (Operational)

Objective:

Establish a policy that is values-based for institutional grantmaking, including guidance on procedural approaches to accommodating donors of their first amendment right to support causes aligned with their values and viewpoint that may differ from our own institutional values.

Further, to not be complacent in supporting such individualized grantmaking that is inherently at odds with the institution, but to educate and inform at the same time respecting all perspectives of the community when it comes to how one sees to improve the world.

Problem Statement

The Southern Poverty Law Center, Change the Terms, Color of Change, and GLAAD are third party organizations that are viewed as left-leaning and not neutral (e.g. SPLC has determined that many Christian groups that are supporting anti-abortion campaigns are “hate” groups). Using them as a filter may take us to a place where we infringe on the First Amendment rights of conservative donors.

Proposal

- That a community foundation maintain a policy to only grant to nonprofit organizations in good standing with federal agencies and that we complete due diligence procedures on every U.S. nonprofit organization to which we make grants through [GuideStar](#).
- That a community foundation flags organizations to their donor advisors that appear on the Southern Poverty Law Center’s list (or any other group in which your foundation believes has a process that can be used administratively) and ultimately, process their grants.
- In such process, the foundation has vocalized its value stance and urged for consideration of the potential harm such grants make on society, but ultimately do not impede first amendment rights of the donor given the grant is going to a registered 501c3 in good standing with the federal agencies that ultimately determine such status.
- Finally, that a community foundation is open and transparent about their position and when an organization that gets flagged, they notify the IRS.

IV. Policy on Values-Based Grantmaking

The _____ Foundation is committed to the highest standards of conduct and integrity within the field of philanthropy. The Foundation has adopted the values highlighted below to guide its work and the decisions it makes with respect to its charitable dollars. The Foundation

also expects its grantees to practice responsible, effective and ethical philanthropy. As a diligent steward of its assets, the Foundation may review grant applications and vet grantees for consistency with these values and make grant decisions based on the Foundation's values. On occasion this may result in a grant denial to an organization that is otherwise an approved 501(c)(3) charity per the IRS. The Foundation understands that by adopting a values-based grantmaking policy, it is going above and beyond the minimum legal requirements for due diligence, and at times, the Foundation may be required to refuse a donor's grant recommendation or refuse a new fund that is not consistent with its values. However, the Foundation's Board of Directors has carefully considered the implications of this policy and has determined that adoption of this policy is in the best interests of the Foundation and the community it serves.

Insert Values Statement, for example:

The Foundation strives to operate with the highest professional and ethical standards.

The Foundation is committed to diversity and inclusion in everything it does. The

Foundation will not support activities or organizations that condone or foster hate or divisiveness.

The Foundation values collaboration and collective effort to address community problems.

The Foundation may use a variety of methods as part of its due diligence to determine whether a grant recommendation is consistent with its Values Statement, including but not limited to:

- Review of narrative statements regarding charitable purpose and activities on grantee website and IRS Form 990
- Review of grantee advocacy and/or lobbying activity as evidenced by IRS Form 990 and other information contained on grantee's website or publications
- Review of grantee's own grant activity as evidenced by IRS Form 990
- Review of unbiased charity "watchdog" websites such as Charity Navigator • Review of social media and other communications sources that may indicate discriminatory practices and/or messages

V. Steps for when called out as an Institution for funding Hate:

1) Dissect the information:

- a. What fund made the grant?
- b. What organization received the grant?
- c. What is the report using as a source to determine that the organization is hateful?

2) What policies are in place / were in place at the time relating to donor advised fund grants? a.
For general statements – Was the organization was a bona fide 501c3 in good standing as

determined by the IRS?

b. Did the due diligence process identify any flags that this was a hate-based group, espousing discriminatory or prejudice?

3) The Community Foundation works with donors on all sides of the aisle – a. It is our mission to facilitate conversations for the health and well-being of our community, which includes viewpoints and values that do not align with the majority, even the institution's own values.

b. Community Foundations welcome diverse viewpoints as an essential key to building a healthy community, and to ensure good health, is a neutral facilitator of donor's philanthropic interests that may conflict with the institution.

c. Community Foundations are not to police perspectives, but to welcome diverse opinions of donors, so long as it is legal.

4) Define the difference between donor advised fund grants vs discretionary grants a.

Community Foundation-led grantmaking can be more selective in what it supports, irrespective of 501c3 status and more focused on the full context of a mission. b.

Provide your values statement.

i. (Here is one: The Community Foundation is committed to building a community that works for everyone. Our community is stronger when all people are respected, welcomed and invited to share their assets and contributions in community building. We work to bring about a more equitable and inclusive prosperity that marries our economic strength with the full breadth of our diverse community. We are wholeheartedly devoted to our neediest neighbors and most vulnerable and marginalized populations and work tirelessly to better meet their needs.)

5) Finally, look at revising our donor advised fund grants policy with language that includes not to prohibit self-expression but to monitor extreme hate. Inform donors, but do not dictate your values on them in the process of supporting validated 501c3.

a. Commit to notifying the IRS when a grant is made to an organization that you flagged in a hate screening so that espousing discrimination or prejudice is clearly denoted as being counter to the intent of the law or the statutory role of this federal agency.