



# PUBLIC POLICY SUMMIT

APRIL 11-13, 2018  
PHILADELPHIA

- WHEN:** April 11 - 13, 2018
- WHERE:** Loews Philadelphia Hotel, 1200 Market Street
- PRICING:** Member Early-Bird Rate: \$599  
Member Rate after Feb. 28: \$649  
Nonmember Rate: \$799
- REGISTER:** [cof.org/policysummit](http://cof.org/policysummit)

## Upcoming Webinars:

**Jan 23 – Data: Not Another Four Letter Word** | Community Foundation business innovations, community data and transparency (Series 1 of 2)

**Jan 24 – The Bush Approach** | Program strategy and innovative staffing

**Feb 15 – Digital Security and your Foundation: The Good, Bad, and the Ugly** | Community Foundations and cybersecurity

**Thank you for joining us. The webinar will begin shortly!**



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# DAF Regulations and Tax Reform Update

January 17, 2018

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Senior Counsel and V.P. of Legal  
Affairs

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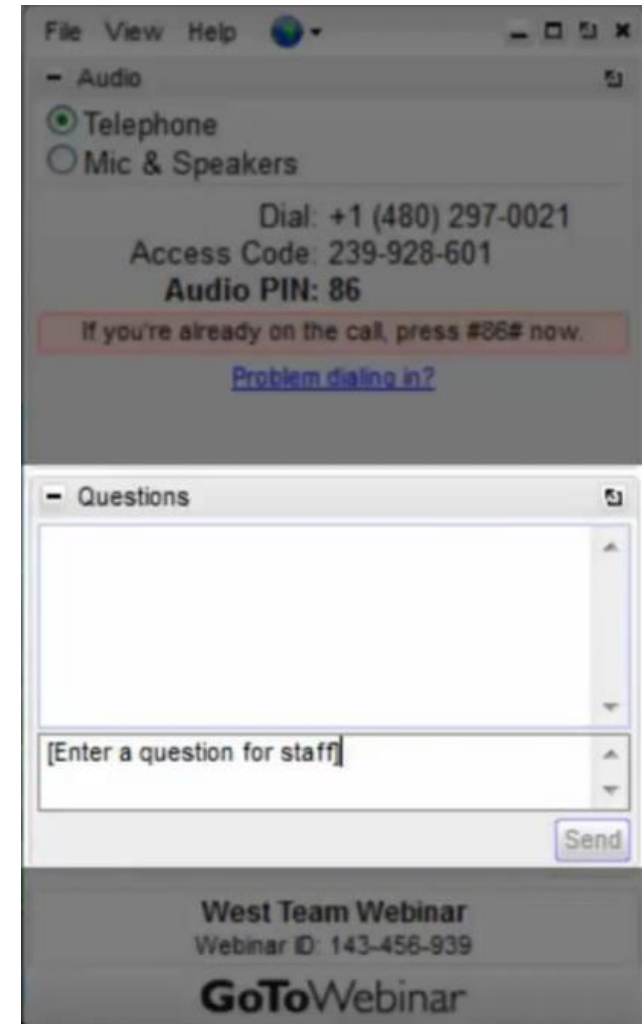
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**We will do our best to address questions as they come in!**





## **Agenda:**

- Notice 2017-73 (DAF Regulations) – the good and the bad
  - Tax reform – has the law changed in a way that might affect my community foundation?
  - What do I need to know when I am talking to donors?
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**Notice 2017-73**  
**“Request for Comments on**  
**Application of Excise Taxes**  
**With Respect to Donor Advised**  
**Funds in Certain Situations”**

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Purpose of Notice is to seek comments from the field to help inform Treasury and IRS in developing proposed regulations for donor advised funds; however, the Notice gives us an idea of what Treasury/IRS is thinking

Comment period open until March 5, 2018

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Item 1: Distributions from DAFs for purchase of tickets to charity sponsored event or to pay for membership fees

Item 2: Distributions from DAFs that grantees treat as satisfying a pledge made by donor

Item 3: Use of DAFs to circumvent “tipping” rules for contributions to smaller charities

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Item 1: Distributions from DAFs for purchase of tickets to charity sponsored event or to pay for membership fees:

Treasury and IRS currently view distributions from DAFs for “charitable” portion of event tickets or membership fees as “a more than incidental benefit” to donor and therefore not allowed under 4967 (no bifurcation)

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## Item 2: Pledges and DAF Distributions:

The Notice provides that a DAF sponsor (such as a community foundation) need not determine whether a donor/advisor has made a pledge before sending a DAF distribution to a charity, and the distribution will not result in an impermissible benefit to the donor/advisor, even if it turns out that the donor did make a pledge to the charity, if the following conditions are met:

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- 1) the sponsoring organization makes no reference to the existence of a pledge when making the DAF distribution;
  - 2) the donor/advisor receives no other benefit as a result of the distribution; and
  - 3) the donor/advisor does not attempt to claim a second tax deduction for the distribution to the charity.
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*“Taxpayers may rely on the rules described in section 4 until additional guidance is issued.”*

Caution not to interpret Notice as a green light to begin paying donor pledges with DAF funds, or to market the ability to satisfy pledges with DAF funds to donors - rather assurance that DAF sponsors and donor/advisors will not be penalized for DAF grants that may be used to satisfy pledges if the sponsoring organization was not fully aware of the existence of a pledge or the status of that pledge as an enforceable obligation of the donor.

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Item 3: Donor's use of DAFs to support smaller charitable organizations but avoid "tipping"

Treasury and IRS are considering treating DAF gifts to grantee charities as coming from the individual donor and not the sponsoring public charity and changing the regulations to reflect this (this matters for grantee's public support test)

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Additionally, all anonymous distributions from a sponsoring organization will be treated as coming from one individual.

Exception to this treatment if sponsoring organization specifies that distribution is not from a DAF and no donor advised regarding the distribution.

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# **What's in the Tax Reform legislation?**

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# What Did, Did Not Make the Cut

What's In	What's Not
Lowered Individual Income Tax Rates*	Johnson Amendment
Increased Standard Deduction	Donor Advised Funds (DAFs)
Fewer Itemized Deductions	Private Foundation Excise Tax
Elimination of Deduction for amounts paid for college athletic seating rights	
Increased AGI Limitation for Cash Gifts	
Doubled Threshold for Estate Tax	
Treat Unrelated Business Activities Separately	
Certain Employee Fringe Benefits Subject to UBIT	
Charity-Executive Compensation Subject to Excise Tax	



## What's in the legislation:

- ✓ Lowered individual income tax rates (except lowest rate)
- ✓ Increased standard deduction (\$12k/\$18k/\$24k)
- ✓ Fewer/limited itemized deductions
- ✓ Elimination of any deduction for amounts paid for college athletic seating rights
- ✓ Increased AGI limitation for cash gifts (up to 60%)
- ✓ Doubled threshold for estate tax (\$5 million to \$10 million)

## The number of...

- Itemizers will decrease significantly; non-itemizers will not have access to benefit of charitable deduction
- Individuals who make bequests is likely to decrease





## What's in the legislation:

- ✓ Treat each unrelated business activity separately for purposes of calculating UBIT
- ✓ Imposes UBIT on qualified transportation/parking benefits and certain on-premises gyms and athletic facilities

Beginning Jan. 1...

- All unrelated business activities must be treated as separate activities for purposes of calculating UBIT
- Any employer-provided transportation/parking benefits, certain on-premises athletic facilities for employees would be subject to UBIT



# Charity-Executive Compensation

## What's in the legislation:

- ✓ Imposes an excise tax on tax-exempt organizations with executives receiving compensation in excess of \$1 million

Beginning Jan. 1, any executive-compensation in excess of \$1 million (including cash and the cash value of benefits) would be subject to a 21% excise tax.



## What's NOT in the legislation:

- ✘ Weakening/repeal of the Johnson Amendment
  - ✘ Provisions that would directly impact or change the administration of DAFs
  - ✘ Simplification of the private foundation excise tax
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## **What does this mean for your day-to-day?**

Talking to donors about tax planning:

- Bundling gifts to utilize charitable deduction in some years and take standard deduction in other years
- Use of donor advised funds to maximize charitable deduction but allow for annual giving plans
- Gifts of appreciated capital gains property is still advantageous
- However, higher AGI limit for cash gifts may make cash gifts more attractive



## Other Considerations:

- Increase in the estate tax exclusion amount will change your planned giving strategy
- IRA rollover provisions stay the same so income avoidance through an IRA rollover may be a better option for donors
- Understand whether your organization will need to begin filing a 990-T for unrelated business income (if you previously had not filed)
- Be aware that grantees may have increased needs – their funding may also suffer
- Crowdfunding platforms may become more relevant/useful



## **With Respect to Grantee Distributions:**

Eventually consider incorporating language in grant cover letter to identify grant from a non-DAF fund vs. grant from a DAF



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# Questions?

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