Donor-Advised Funds in the U.S.: Controversy and Debate*

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"It is no longer enough to do nice things with your philanthropy – it is time to do the important things."
– Peter Goldmark, former president, Rockefeller Foundation[1]

GLOSSARY

Charity or **public charity**: One of two types of tax-exempt organizations in the U.S. A public charity is a charitable organization that (a) has broad public support or that (b) actively functions to support another public charity. It may either run its own charitable programs or operate like a foundation and grant funds to other charities. All public foundations are charities.

Commercial gift fund, **commercial fund**, or **gift fund**: A public charity (which acts as a foundation) that is founded or created by a commercial entity, usually an investment management firm or a bank (e.g., the Vanguard Charitable Fund, the Fidelity Charitable Gift Fund) to run an advised fund program.

Community foundation: A public charity that distributes assets to other charities, usually within a given geographical area.

Donor-advised fund or **advised fund**: A fund established by a donor who reserves the right to "advise" how the money from the fund (revenue and/or capital) is spent each year. These terms can be used in the singular, referring to a specific fund, or in the plural, referring to a group of funds (e.g., the Fidelity Charitable Gift Fund, a charity that manages only donor-advised funds, is sometimes called an "advised fund" or a "donor-advised fund").

Donor-advised fund program or **advised fund program**: A set of conditions for establishing a donor-advised fund within a specific charitable organization.

* This article is an edited version of a paper that was written for the McGill-McConnell Program: Master of Management for National Voluntary Sector Leaders.

Endowment: Money that is invested in a fund so that only the revenue is spent on charitable activities. This ensures a regular, indefinite stream of income for the targeted project or charity.

Foundation: In the U.S., a foundation is a tax-exempt organization that makes grants to other tax-exempt organizations. A foundation can be private or public. Private foundations are charitable organizations that do not qualify as public charities. In practice, they are usually nonprofit organizations that were established with funds from a single source or specific sources, such as a family or a corporation. They rarely, if ever, raise funds from the general public. Public foundations are a type of public charity. The sources of funding for public foundations are diverse; public foundations usually raise funds from the general public and distribute them to one or more other charities.

Tax-exempt organization or **organization with 501 (c) (3) status**: In the U.S., an organization that is exempt from paying federal income tax. An organization may qualify for exemption if it is organized and operated exclusively for one or more of the following purposes: charitable, religious, educational, scientific, literary, testing for public safety, amateur athletics, and prevention of cruelty to children or animals. All tax-exempt organizations are divided into two classes: private foundations and public charities. The tax deductibility of gifts to public charities is more advantageous than that of gifts to private foundations. In Canada, tax-exempt organizations are called "registered charities," of which there are three types: the charitable organization, the public foundation, and the private foundation. With some exceptions, the definitions of each type are almost identical to those in the U.S.

Philanthropic intermediary: A charitable organization that raises funds to distribute to other charitable organizations. Public foundations, community foundations, and United Ways are all examples of philanthropic intermediaries.

Introduction

According to the *Chronicle of Philanthropy*'s third annual survey of gift funds, assets held by many of the biggest donor-advised funds in the U.S. more than quadrupled in value in just six years, rising from $2.4 billion in 1995 to $12.3 billion in 2001.[2] Over the same period, overall giving in the U.S. grew from approximately $122 billion to $203 billion,[3] less than half of the growth rate of donor-advised funds.

A startling contrast can be seen in the example of Fidelity Investments, which launched a commercial gift fund in 1992. By 2001, the fund held assets valued at $2.6 billion.[4] That same year, the three largest community foundations in

the U.S., all founded before 1925, had assets totalling $1.7, $1.5, and $1.3 billion respectively.[5] In other words, in less than a decade, Fidelity's gift fund had grown to become not only the largest public foundation, but also the fifteenth largest foundation (both public and private) in the U.S., not as large as the Bill & Melinda Gates ($23.3 billion), Lilly ($12.6 billion) or Ford ($10.8 billion) foundations, respectively the three largest foundations in the U.S., but closely tailing the well-known Rockefeller ($3.1 billion) and Annenberg ($2.9 billion) foundations.[6] The Fidelity Charitable Gift Fund is the third largest public charity in the U.S., after the Salvation Army and the YMCA.[7] It distributed $735 million in grants to charities in 2001, making it the third largest grant-maker in the U.S. Overall, grants totalling $2 billion were made from donor-advised funds in 2001, which represents approximately 13% of total grants made by foundations in the U.S.[8] Kitchen-table charity this is not.

To date, no exhaustive study of the state of donor-advised funds has been done, and figures provided by the *Chronicle*'s annual survey give only a partial picture. For example, there are 560 community foundations in the U.S. Of these, 493 hold assets worth $1 million or more,[9] a portion of which are probably held in donor-advised funds. Yet only 46 of these community foundations responded to the *Chronicle* survey,[10] which made estimating total assets held in donor-advised funds by community foundations difficult.[11] Furthermore, the exact number of commercial gift funds in operation is not known (16 responded to the *Chronicle* survey, but in May 2002 some 100 such funds were awaiting IRS approval[12]). Spurred by the success of the pioneer commercial funds, new funds are blossoming across the country, but no surveys have been able to keep track of this growth. It is therefore reasonably safe to conclude that most surveys on donor-advised funds underestimate the assets that these funds control.

What is particularly remarkable about donor-advised funds, however, is not the amount of assets they hold (after all, assets held by community and other public foundations in the U.S. represent only 15% of assets held by private foundations overall[13]) but rather their astonishing growth rate. A decade ago, they were virtually unknown and were offered quietly by community foundations to a handful of involved and generous donors. Today, they represent one of the fastest growing segments of philanthropy in the U.S. Is this a passing trend or a lasting phenomenon that reflects the new demographics and profile of donors today?

A Heated Debate

Much controversy surrounds donor-advised funds. The reasons for the controversy are complex and stem from various "schools of thought" and philosophical perspectives on philanthropy itself. Some of the controversy focuses on donor involvement and whether the donor involvement encouraged by donor-advised funds is desirable or not. Proponents state that donor involvement

encourages philanthropy. They are backed up by studies that show consistently that involved donors typically give more than uninvolved donors.[14] Opponents question donor motives and experience, and claim that donor involvement tends to cause mission drift, if not mission shift, and often advantages popular causes over less popular ones.[15] Intermingled in these debates are culture and religion and their influence over societal perspectives on what is considered a "good" versus a "bad" gift. To complicate things further, the inception of commercial gift funds has been perceived by many as yet another invasion of the commercial world into the nonprofit environment, with all the accompanying negative feelings and suspicion about motives. Accusations of unfair competition abound.

This article looks at the debates that have surrounded the phenomenal growth of donor-advised funds in the U.S. over the last decade and provides a context for considering the arrival and potential impact of donor-advised funds in Canada.

What Is a Donor-Advised Fund?

A donor-advised fund is a fund established within a charitable organization for which the donor receives an immediate tax receipt but retains the right to advise the charity on how the money in the fund and/or the revenues it generates are spent.

For example, John D. gives $10,000 to charitable organization Y, for which he receives a receipt for income tax purposes. Assuming annual returns of 5% on the fund, each year thereafter John advises Y on how to spend the $500 of revenue generated by the fund he established. In his first year, John might state that he wants Y to make a grant of $250 each to the local YMCA and the local philharmonic orchestra. In the second year, he might decide to make five grants of $100 each to the local Scout group, the SPCA, the local Meals on Wheels program, the Cancer Society, and his local hospital. Y validates John's choices and, if it agrees (which it almost always does), writes cheques to those organizations.

Donor-advised funds are very flexible. Within certain limits, which vary from one organization to the next, donor-advised funds allow donors to choose at what rate the money held in a donor-advised account can be spent and who the advisor or advisors on an account should be. For example, donors can choose to spend only the revenue generated by the donated capital or any combination of both revenue and capital. They can decide not to spend anything at all for a period of time (to grow the fund) or to spend everything all at once and then collapse the fund. Donors can also assign one or more advisors (e.g., a spouse, a child, and/or a group of people who have come together to create the fund in the first place, which is often the case with giving circles[16]). Donors can also transfer their advisory capacity to someone else upon death.

Finally, many donor-advised funds, particularly the commercial variety, allow donors to have some say in how the money in their fund is invested. Donors can determine the level of risk they are willing to take on their fund, what types of investments are permissible (e.g., money-market funds, bonds, stocks or any combination thereof, socially responsible or ethical funds, etc.[17]). Some charities even allow donors to have their own trusted investment advisors manage the fund, provided that it is large enough.[18]

Why Not a Private Foundation?

In many ways, donor-advised funds "look, feel, and taste" like private foundations. In fact, much of their popularity is due to the fact that they offer the advantages of a private foundation – flexibility and control, both in terms of grant making and investing – without any of the disadvantages. Indeed, most lawyers will discourage individuals from setting up a private foundation with an initial investment of less than $500,000 or $1 million.[19] In addition to high set-up and administrative costs and complex IRS reporting requirements, private foundations are subject to an annual excise tax of 2% on net investment income and must distribute a minimum of 5% of their assets to charitable organizations each year. None of these constraints apply to donor-advised funds housed within a charitable organization (which includes both community foundations and commercial gift funds). Furthermore, the tax advantages granted for giving to a donor-advised fund are better than those for giving to a private foundation; gifts to private foundations are tax deductible up to a maximum of 30% of gross adjusted annual income, while gifts to charities are deductible up to a maximum of 50%.[20]

In effect, the advantages of a donor-advised fund over a private foundation are such that some U.S. lawyers have a blanket rule never to recommend establishing a private foundation to a client.[21] Although such a position may seem somewhat extreme, it is true that unless donors are willing to invest a substantial amount of money (several million dollars or more), want their grant-making activities to be undertaken at a very sophisticated level (i.e., guided full-time by professional staff and/or multiple advisors), want complete control over the process, want to be able to make grants directly to individuals (which private foundations can do under certain circumstances) or to be engaged in charitable activities (by running their own programs directly), and expect a high level of visibility for those activities (e.g., with a process for making grant requests, a logo, a Web site, etc.), a donor-advised fund is almost always a better choice.

Donor-Designated and Field-of-Interest Funds

Although the differences are sometimes subtle, donor-advised funds are different from donor-designated funds and field-of-interest funds, two types of funds that charitable organizations, especially community foundations, frequently offer to potential donors.

In a donor-designated fund, the donor specifies that the money from the fund is to be used to support a particular agency or organization, or a particular program within a chosen organization. Examples of donor-designated funds include a fund established at a community foundation to support a specific soup kitchen or a fund created to support a youth program at a YMCA.

In a field-of-interest fund, the donor specifies a general area of interest toward which the proceeds of the fund should go, such as poverty relief, education, or health care. The charitable organization then chooses which organizations within the chosen field will receive grants from the fund.[22]

In both cases, the purpose or area for which the fund is designated is decided upon when the fund is established and does not change unless the purpose becomes irrelevant (e.g., the targeted program or charity no longer exists). Although donors, particularly major-gift donors, often remain involved with the organization after they have made their gifts, they do not become involved in the administration of the fund other than exceptionally and at arm's length. In fact, once a gift is made and the designation specified, donor involvement is very much discouraged. This is the opposite of what happens with donor-advised funds, where donor involvement is the *raison d'être*.

Who Offers Donor-Advised Funds?

Historically, donor-advised funds were the territory of community foundations. Now they are offered by an ever-widening array of charitable organizations.

Community foundations were the first to formally offer advised funds as a giving option to potential donors. The first such fund, in more or less its present format, was created by the New York Community Trust in 1931.[23] Many more community foundations followed suit. Until the arrival of commercial gift funds, however, advised-funds remained only moderately popular with both donors and foundations. For a long time, community foundations did not market donor-advised funds aggressively as they were (and often still are) deemed to be the least desirable way for donors to give.[24] Most community foundations focused their fundraising efforts on building unrestricted endowments, not on building a large pool of advised funds, because donor-advised funds generally resulted in higher administrative costs for funds that were too often directed toward organizations that the foundation had not necessarily identified as in need of support or as a priority for the community. Nor were donor-advised funds within community foundations always attractive to donors, particularly those who wished to direct part of their giving to organizations located outside the area served by the community foundation. For a long time, most community foundations strongly believed that their primary focus and concern had to be the community, not donors, and because they perceived that donor-advised funds steered them away from that fundamental focus, they only rarely promoted such funds.[25]

In 1992, Fidelity Investments, a large financial services corporation based in Boston, established the Fidelity Charitable Gift Fund, a public charity under Internal Revenue Code Section 501 (c) (3) dedicated to managing donor-advised funds. It was the first of what today are more widely known as "commercial gift funds." The fund was designed to operate much like a nation-wide community foundation but offered donor-advised funds as the only giving option to its donors. Because of its flexibility (grants could be made to any charitable organization in the country and, until recently, to international organizations) and relatively low cost (overhead fees charged to donor-advised funds at Fidelity appear at first glance to be generally lower than fees charged by community foundations), the Fidelity fund quickly became popular with donors. Soon many more investment firms, banks, and trust companies (e.g., Vanguard, Eaton Vance, Oppenheimer, SEI, Allfirst Financial, T. Rowe Price, Charles Schwab, Calvert Group, American Guaranty & Trust) followed suit with their own funds.

Charitable organizations have also started offering donor-advised funds. These include some university foundations, including Cornell, Dartmouth, the University of Maine, and Harvard University, as well as other nonprofit organizations such as Rotary International and some of the larger United Ways.[26] However, how much choice donors have with regard to how their donations can be used varies depending on the recipient organization and its mission. University foundations, for example, typically require that at least 25%, if not 50%, of the money donated to a donor-advised fund be dedicated to the university, although often donors can choose which specific activities or areas within the university they will support each year. Despite the restrictions they place on donor choice, such funds offer interesting opportunities for increased stewardship and involvement with top donors and will likely continue to grow in the future.

Finally, the unparalleled popularity of donor-advised funds has prompted many organizations to search for creative ways of hopping onto the bandwagon. Recently we have seen the arrival of "private-label" gift funds, the philanthropic equivalent of President's Choice and other such store-label brands. In this approach, various mid-sized banks and investment management firms that cannot or do not wish to commit resources to start up their own subsidiary charities pair up with existing charities that offer "back office administration" of the funds under the name of either the bank or charity. For example, National City Bank's "Advised-Fund Program" in Cleveland is actually administered by the Cleveland Foundation. The relationship also goes the other way; charities that do not have the necessary infrastructure to manage advised funds make agreements with banks and investment firms that handle the administration for a fee. This was the case when Boston University decided to launch its advised-funds program. Not able (or willing) to handle the administrative tasks associated with such a program (e.g., cutting cheques to designated charities, due

diligence of donor requests, etc.), it contracted out this aspect to Fidelity's National Charitable Services, a new division of the investment giant that was created especially to provide such services to charities across the country.[27] It is not at all implausible to imagine that in the relatively near future, especially if Congress remains favourable to the notion, just about every charity in the nation, big or small, will offer donor-advised funds as a gift giving option.

The Issue of Control: A Legal Perspective

Part of the public debate surrounding donor-advised funds stems from differing opinions on how much control (in the legal sense) over a gift donors have when they "give advice." How binding is a donor's advice? When does "advice" become "direction"? In other words, where does one draw the line between a "donor-advised" fund, which is permissible, and a "donor-directed" fund, which is not?

It is interesting to note that the term "advised fund" or "donor-advised fund" is not used at all in the U.S. Internal Revenue Code, and is only indirectly referred to, mostly in terms of donor control, in relevant Treasury Regulations.[28]

According to Treasury Regulations, for a gift to be eligible for a charitable tax receipt, it must be transferred to a recipient, eligible non-exempt (i.e., 501 (c) (3)) organization free of any "material restrictions." Donors must relinquish all legal ownership of gifted properties and cannot "retain the right to name who shall receive the distribution of funds or decide when the funds will be distributed."[29] The recipient charity must have the ability to "freely and effectively" use the transferred assets.

Treasury Regulations also propose a nine-factor "facts and circumstances" test to determine whether a donor has ceded sufficient control over a fund for it to be accepted as a component fund of a charity (instead of a separate private foundation). The test consists of five positive factors that show that a donor has ceded control[30] and four negative factors that show a donor has maintained control.

The four factors that *negatively* affect an Internal Revenue Service (IRS) determination as to whether a contribution to establish a donor-advised fund qualifies as a valid contribution to a public charity are:[31]

- any statement (e.g., in marketing materials) or pattern of conduct that suggests that the donor's advice will automatically be followed;
- absence of staff investigation (or governing board oversight) to reconcile a donor's suggestions with the charity's program goals;
- absence of a procedure for considering advice of persons other than the donors; and
- following the advice of all donors substantially all of the time.

Another aspect, although not mentioned explicitly in any of the regulations, relates to whether offering investment options to advised-fund donors could be viewed as giving donors de facto control over investment decisions and, therefore, more control than the regulations allow.

Most legal documents on donor-advised funds interpret these nine factors conservatively. In other words, if a charity always follows a donor's advice for making grants from his or her fund or follows advice to make grants to organizations outside of its normal area of activity (such as a community foundation making a grant to an organization located outside of its stated geographical area or a university foundation making a grant to an organization that has nothing to do with higher education), it would be in breach of Treasury Regulations, and the donor-advised fund in question would, in theory, have to be reclassified as a separate private foundation and be subject to the applicable regulations.

It is, therefore, understandable that community foundations have, for the most part, chosen to take a more conservative approach to defining "donor-control" in the solicitation and administration of donor-advised funds and in the due diligence they exercise to ensure that a donor's advice is "acceptable." For example, in "A Guide to Donor Involvement," published in 1992 by the Council on Foundations, it is recommended that foundations allow donors to make grant recommendations on only two thirds of the income on assets held in a donor-advised fund and that the remainder of the income be granted at the discretion of the foundation. The Guide also recommends that foundations show evidence of "refusing donor advice from time to time" so as to not give the authorities the impression that a donor has gained control over his or her fund.[32]

However, some organizations, including the American Foundation, a charitable foundation based in Phoenix, Arizona that publicly supports "the greatest amount of donor direction allowed by law,"[33] view these recommendations as a strict interpretation of the rules. The American Foundation states that the Treasury Regulations (Section 507) that community foundations have used to guide them in managing advised funds were enacted following the Tax Reform Act of 1969[34] solely to govern terminating private foundations that transferred their funds to a public charity (such as a community foundation or what at the time was commonly referred to as a community chest). The purpose was to ensure that former "private" foundations did not continue to operate exactly as they had before but under a new label (that of a public charity) in order to avoid the new and more restrictive rules that applied to private foundations. The American Foundation publicly maintains that there is no justification for applying these rules to newly created donor-advised funds. The phenomenal, virtually unchecked growth of donor-advised funds in the last decade, most of which do not pass any of the Treasury Regulations tests regarding acceptable

levels of donor control, suggests that the American Foundation is not alone in holding this view.

Rules Versus Reality

How does all this legal tennis translate out in the field? Not surprisingly, practices vary widely. But as a general rule, commercial gift funds, as opposed to most community foundations, are applying the most minimal interpretation of Treasury Regulations and allowing donors maximum flexibility in how they manage their advised funds.

Almost anything is possible. For example, in the early years of commercial gift funds, donors could recommend grants to any 501 (c) (3) organization in the U.S., including private foundations, as well as to foreign and other organizations that were not recognized as exempt under the Internal Revenue Code, as long as the donating charity could demonstrate that the distributions were to be used exclusively for charitable purposes. In addition, the funds did not impose any minimum on how much a donor had to spend in any given year, which theoretically meant that advised-funds could lay dormant for years without penalty. Having already received a tax receipt for the money donated, the donor was in no hurry to recommend grants and, given that the gift fund's parent company was earning money on managing the assets of the fund, there was no incentive, at least for the gift funds themselves, to encourage spending. Furthermore, oversight of donor granting recommendations by charitable gift funds was for all practical purposes non-existent: the only due diligence undertaken by the gift funds was (and generally still is) limited to verifying that a chosen organization is indeed tax-exempt. Charitable gift funds are, for the most part, governed by "bare-bones" boards that consist primarily of five or six executives from the parent company[35] rather than a diverse group of community leaders, as is the case with most nonprofits. Finally, by offering increasingly more varied investment options, including the possibility of selecting one's own investment advisor to manage a large fund, there remained no effective difference, in terms of flexibility or control, between an advised fund and a private foundation. This was cause for concern by the IRS.

Given the volume of funds that charitable gift funds manage, there are probably enough exceptions in their day-to-day operations to meet many, if not most, Treasury Regulations tests. For instance, there are probably enough donors who recommend obviously unacceptable grants (e.g., a grant to a non-exempt organization whose purposes are not charitable or a grant to pay for tickets to a fundraising ball) to make it look as if a typical gift fund turns down "many" grant recommendations (therefore demonstrating that gift funds do not follow donor recommendations *all of the time*). And given that their "purpose" (i.e., the purpose for which they were granted tax-exempt status) is so broad, along the lines of "supporting charitable organizations," *any* grant can effectively qualify as meeting the gift fund's charitable purposes.

Government Inquiry

In the spring of 1998, the U.S. Congress began informal discussions with senior community foundation officials and charitable gift fund executives about reviewing policies and practices surrounding donor-advised funds. Community foundations were keen on getting Treasury to seriously consider whether banks and investment companies should even be allowed to operate charitable gift funds, charging that profit, not philanthropy, was the driving force behind the funds. They expressed concern that the commercial funds gave too much control to donors, making them open to abuse.[36] Although these discussions did not lead the government to clamp down on the commercial gift funds per se, as community foundations had hoped they would, they did lead Fidelity and several other gift funds to voluntarily change some of their practices. In the summer of 1998, Fidelity announced that it was setting an overall spending minimum on its donor-advised funds under management and that it would no longer approve grants to private foundations and foreign charities. In return, the IRS confirmed Fidelity's charitable status.[37]

The issue, however, was far from closed, and discussions continued for the rest of 1998 and all through 1999. The Council on Foundations' lobby against its commercial counterparts convinced congressional aides to undertake a broad review of donor-advised funds instead of focusing on the commercial funds, in part because there appeared to be few differences between the operations of the latter and those of certain community foundations.[38] By pressuring the government to pass legislation on donor-advised funds as a way to curb the activities of the commercial gift funds, community foundations had inadvertently shot themselves in the foot. They would not be spared from whatever legislation would eventually come to pass.

Finally, in early February 2000, in the Clinton administration's 2001 fiscal year budget proposal, the Treasury department released its own legislative proposal for donor-advised funds. The proposal essentially stated that a charitable organization whose primary activity was management of donor-advised funds (that is, 50% or more of its assets are in donor-advised funds) could maintain its status as a public charity only if it met three criteria:[39]

1. Organizations must maintain control over how the money in advised funds is spent. Donors can only recommend, not dictate, which charities receive grants from their accounts.
2. Grants can be made only to charities, private operating foundations, and certain government entities.
3. Total annual grants must equal or exceed 5% of the net fair market value of the assets held by the organization (as is the case for private foundations) with a carry forward of excess distributions for up to five years.

If a public charity did not meet these criteria, it would be re-classified as a private foundation and be subject to the stricter rules that apply to private foundations.

The Council on Foundations was quick to reply. Later that same month, it hastily responded to the Treasury proposal, backing off from its aggressive stance against the commercial gift funds and making every effort to salvage the operational freedom that it had been used to for decades. Specifically, in order to appeal to potential donors, the Council asked that public charities with advised funds be allowed to tell donors that they "typically respect donor advice." It tried to discourage the IRS from implementing the 5% minimum payout rule, stating that there were other ways of preventing unreasonable accumulations of funds. It also indirectly suggested that due diligence requirements be kept to a minimum (its only tangible recommendation was that donor advice be given "in a form capable of being preserved in writing"), adding that "community foundations (and other established charities) have diverse practices and diverse philosophies about due diligence … many of which are legally sound," hoping no doubt, to keep things the way they were, that is, as flexible as possible. It also tried, in different parts of its response to the Treasury proposal, to get Congress to enact legislation that would make it easier for community foundations to redirect assets held in donor-advised fund accounts to a sponsoring charity's unrestricted fund,[40] one way, in its view, of compensating, at least partially, for what it felt were the ill-effects of donor-advised funds. Finally, the Council asked that public charities be allowed to maintain their right to make grants to non-exempt organizations and individuals "provided that staff of the public charity satisfy itself that the donee use the grants strictly for charitable purposes," which would not have been allowed under the proposed legislation,[41] again without specifying exactly what kind of due diligence would be necessary for nonprofits to be able to "satisfy themselves" that such charitable purposes were indeed being met. In short, its response consisted of eight pages of back-pedalling.

In May 2000, a group of nine commercial gift funds also submitted a letter to the Treasury department, in which it asked for the same things that the Council on Foundations had, that is, as much flexibility as possible, including the ability to make grants to foreign charities and individuals and to receive gifts from trusts estates and other nonprofit enterprises, including supporting organizations.[42] Unlike the Council, however, it expressed no reservation about supporting the 5% pay-out requirement.[43]

What Now?

Since May 2000, little more has been done or said regarding legislation of donor-advised funds, and no formal decisions have been made. In January 2001, Congress announced that it intended to pass legislation aimed at regulating donor-advised funds,[44] but two years later, as this article was being

written, nothing had yet happened. In its 2002 budget proposal, government administration had proposed to audit donor-advised funds, which suggests that it did not feel it had enough information to enact appropriate legislation. The audit did not happen in 2002 and was re-scheduled for 2003.[45] It appears that U.S. legislation governing donor-advised funds is not exactly around the corner.

Unfair Competition

A lot of the public discussion about donor-advised funds revolves around the legal aspects of donor control and donor involvement, but is this the real issue? Was debate about the interpretation of regulations that were created for another purpose and simply assumed to apply to donor-advised funds something other than a fierce desire by community foundations and other non-supporters of commercial gift funds to stop what they perceived to be competition?

There is nothing illegal about the way commercial gift funds operate, at least not under current legislation. If there were, the IRS would have cracked down on them a long time ago.

So what *is* the real issue? One aspect that no one talks about directly is unfair competition. In all of the literature on donor-advised funds, the issue of competition is addressed only in positive terms, as a good thing, something that has helped "shake things up in the nonprofit world" and that has encouraged nonprofits to "be more efficient."[46] The notion of unfair competition is never directly raised. But that does not mean that it doesn't exist.

There is no question that the playing field for community foundations that are trying to compete against commercial gift funds is far from level. Commercial gift funds typically have generous marketing budgets that allow for broad media and television advertising, a back office infrastructure that allows for prompt and efficient service, wonderfully interactive Web sites, and no qualms about paying commissions to financial planners who direct clients to them. Not even the largest community foundations and nonprofits can offer any of this. Not only do the commercial gift funds benefit from the existing infrastructure, resources, and economies of scale of their parent companies (who pays for the marketing or the commissions and fees paid to financial advisors, Fidelity's Gift Fund or Fidelity Investments?), but they are not bound by the same ethical principles or codes of practice to which most nonprofits adhere, such as the Association of Fundraising Professionals' (AFP) Code of Ethical Principles and Standards of Professional Practice,[47] which forbids agents who raise funds from earning commissions, or the usual nonprofit practice of ensuring that donated funds are used for worthy and urgent charitable purposes that are coherent with the organization's mission.

Even if the arrival of commercial gift funds has helped make certain community foundations more effective and customer-oriented, which is welcome, this

does not make the field level. For example, how many commercial gift funds are questioned on how much they spend on marketing or administration? Although they tell customers that they charge “only” 0.5%, 1% or 2% of assets to administer their funds, one must read between the lines and look not only at the “management” fees charged (to manage the funds) but also at the “administrative” fees (to fulfil grant requests), and the charges for not maintaining a given minimum balance in a fund, collapsing a fund too soon, missing a payment, or making a grant recommendation that could not be fulfilled, as well as the myriad other fees that banks and investment companies typically impose. Moreover, a survey by Russ Prince, a researcher in Shelton, Connecticut, found that for every $10,000 that a typical investment firm generates in revenue from “charitable” products, it can earn an additional $108,000 in revenue from other products, a ten-fold increase.[48] Such profit potential explains why a financial management company like the Pitcairn Trust Company, for example, would be willing to invest over $1 million upfront to create the National Philanthropic Trust, a donor-advised fund.[49]

Where do public charities situate themselves in such a landscape? Most, if not all, nonprofits are in no position to impose “hidden” fees on their advised fund accounts, as do the gift funds, and cannot recoup costs by other means without subjecting themselves to public outcry. Furthermore, because donors, as well as governments, are usually quick to question nonprofits on how much they spend on fundraising and overhead, big marketing budgets are definitely out. This essentially leaves nonprofits with the almost impossible task of trying to offer services and products that compare to the commercial funds with underpaid, overworked staff and inadequate resources. It is not surprising, then, that community foundations reacted in panic when the commercial funds arrived on the scene.

Whose Donor Is It Anyway?

What has also rendered the discussion on donor-advised funds particularly complex are the identity-defining issues for charities that it brought to the fore. Historically, charities have defined themselves in terms of the constituencies they serve and the donors who support them. Donor-advised funds have shifted things somewhat. Not only do they create an intermediary between the donor and the recipient charity, blurring the relationship, but their encouragement of donor involvement also has the potential to put the missions of charities at risk, particularly those charities that are the most desperate for funds. Both issues have many charity executives worried.

Although intermediaries between donors and charities have existed for a long time (United Ways and community foundations are philanthropic intermediaries), the arrival of donor-advised funds has increased their number considerably. This has some charity officials worried that it will become increasingly difficult to build endowments for their organizations and will force them to

rely on annual appeals, which are the most costly of the fundraising techniques available to them.[50] Without endowments and the stable revenues they produce, charities are forced to live hand to mouth, making it even more difficult for them to offer stable employment to staff, plan for the long term, or experiment with untested ideas. This affects the long-term viability of the nonprofit sector as a whole.

Furthermore, the arrival of the commercial gift funds has created a new and interesting ethical dilemma. Although Fidelity's privacy policy explicitly states that any personal information it holds on individuals will not be used for commercial purposes,[51] how long will Fidelity and the other gift funds resist getting into the lucrative direct mail and telemarketing businesses, selling their lists of advised-fund account holders to eager, if not desperate, nonprofits? After all, it is very easy for a company to move from opt-in to opt-out clauses in its privacy policies: check here if you *don't* want us to "occasionally forward your address to carefully screened organizations whose activities might be of interest to you…"[52]

Another issue of concern is that through commercial gift funds, donors are making their gift decisions through their brokers and financial planners.[53] This would not be a problem if advisors were knowledgeable about philanthropy, but unfortunately they are not. A survey by the Philanthropic Initiative in 1996 showed that advisors generally did not ask their clients about philanthropic interests, that the majority discussed philanthropy only if the client raised the issue, that discussions regarding philanthropy focused largely on the tax consequences of giving and, finally, that most advisors felt that any inquiry into a client's philanthropic interests was unprofessional.[54] In another study, financial advisors as a group readily admitted to knowing very little about philanthropy.[55] With no opportunity for charities to enter into sustained dialogue with donors, it is likely that many donor dollars will go to visible, popular, "middle-class" causes (like education, health care or the performing arts) rather than to more marginal, yet critically important causes such as homelessness, support for ex-convicts or substance abuse.[56]

Finally, current giving trends clearly show that money that would have gone directly to charities is being diverted to donor-advised funds. Despite claims that donor-advised funds encourage donors to give more,[57] the overall growth rate of giving in the U.S. (a precise estimate) is still far behind the growth rate of donor-advised funds (a low estimate). And even though donor-advised funds are annually making grants totalling billions of dollars (approximately $2 billion in 2001, the last year for which figures are available), in the short term, what is going in is still far greater than what is coming out.[58]

Mission Shift

The other dynamic occurring as a result of the widespread popularity of donor-advised funds and, by association, the rise in donor involvement, is a

general feeling that charities are increasingly at the mercy of donors. Tension between donor desires and community need has always existed but was kept in check by habit (for a long time, most donors practised cheque-book philanthropy), the small number of major-gift donors who were able to exert pressure, and Treasury Regulations that severely restricted donor control. This has changed.

The impact of donor preference can be significant. It can affect when and if a charity launches a program, how much and what kind of service it provides, the pace of development and expansion, where and to whom it offers services, and whom it hires and fires – in short, almost every aspect of a charity's operations. Although charities will generally refuse gifts that come with unrealistic, irrelevant or unethical conditions attached, most situations are not clear cut. It is in the small, apparently innocuous demands, the subtle threats to pull out, or the passing remarks on "what the guys over there are doing" that shifts occur. And in an environment where many charities are desperate for funding, who will blame them for "making a few concessions" in order to secure a $1-million gift?

Furthermore, with the prospect of a deluge of new philanthropic money as a result of the expected intergenerational transfer of wealth,[59] donor involvement is becoming *the* issue that is most likely to define philanthropy in the future.

Already, many Centraides/United Ways are grappling with issues of mission shift, caused primarily by increased pressures from donors who want and expect more control over their gifts. While traditionally United Ways were established to raise undesignated funds annually to meet the current and most pressing needs of charities within a specific community, increasing pressure to raise ever more funds has caused many to give in to donor designation and to accept endowments and advised funds, which were never part of their *raison d'être*. The numbers are startling. According to 1998 figures, nearly $1 out of every $5 received by United Way of America went to charities that were outside of the United Way system. A survey conducted in 1998 by the *Chronicle of Philanthropy* of 15 of the largest local United Ways in the U.S. revealed that, on average, more than a quarter of the total amount of money raised in 1998 came with donor instructions about where the money should go and that donor designation represented up to three quarters of campaign dollars received in some United Ways. Furthermore, the United Ways that have refused gift designation have seen campaign dollars drop by 10 to 20%.[60] This is a hard bullet for most boards to bite.

Donor designation is causing a fundamental mission shift among many United Ways. This is not without serious consequences. For example, if United Ways across the country begin to use vehicles traditionally within the accepted domain of community foundations (e.g., endowments, designated giving, advised funds) and the features that distinguish one from the other erode, the

question may arise as to whether United Ways can (or should) continue to be the almost exclusive beneficiaries of workplace campaigns across the country, given that exclusivity originally derived from the nature of their mission.

Even more fundamentally, donor involvement, spearheaded by the arrival of corporate America into the realm of philanthropy, has created a worrisome paradigm shift: more and more nonprofits are defining their constituencies not in terms of the populations they serve, but in terms of their donors. Some have even started calling their donors "customers." But who are a charity's clients? Does a charity exist to service and respond to the needs and expectations of donors or to serve a population in need? On paper, these distinctions are usually clear, but in practice they are changing rapidly.

Summary

There is considerable concern that donor-advised funds give too much control to donors and that such control contravenes current Treasury Regulations for allowing advised funds to be qualified as component funds of public charities (and, therefore, subject to more lenient tax provisions) as opposed to qualifying as private foundations. Although the U.S. government has presented a legislative proposal to define operational requirements for donor-advised funds, there is no agreement on many aspects of the proposal, and no final decision has yet been rendered. At the time this article was written, the only plan that the government appeared to have regarding this issue was to conduct an audit of donor-advised funds in 2003.

The arrival of commercial gift funds has also been problematic because most public charities, and community foundations in particular, do not feel that they can effectively compete against these commercial entities, as they do not have the same resources or the same flexibility as the large investment firms and banks. Much of community foundations' reactions against commercial gift funds arise from what community foundations view as an unfair situation.

Finally, donor-advised funds raise questions and concern about their potential to cause mission shift, limit or prevent charities' ability to effectively communicate with donors, and render more difficult the task of raising funds for endowments.

There is no question that the environment for nonprofits has changed considerably over the last decade, and the challenges that lie ahead are enormous. The future, however, is far from bleak. A new generation of wealthy and potentially very generous donors is about to step forward. But if charities are to fully benefit from the generosity of these donors, they will need to rethink how they operate and how they fund themselves.

APPENDIX

Donor-Advised Funds: The Situation in Canada

Donor-advised funds have not made the same headway in Canada as they have in the U.S. In Canada, their existence is generally limited to community foundations. The one exception is the very recently launched Private Giving Foundation by TD Waterhouse.[61]

There are 114 community foundations in Canada that collectively manage $1.4 billion in assets.[62] There is no information available on what proportion of these assets are in donor-advised funds.

Tax legislation regarding gifts and charities in Canada is quite different from, and generally speaking more restrictive than, tax legislation in the U.S. For example, the purposes for which an organization may qualify as a registered charity (and may, therefore, be allowed to issue receipts for gifts for income tax purposes) are more limited in Canada than they are in the U.S. For example, although amateur athletic associations and organizations that work in the area of testing for public safety are deemed to be charitable in the U.S., they are not deemed so in Canada, where they are considered to be nonprofit organizations, are exempt from paying tax, but are unable to issue receipts for income tax purposes. Also, in order for an organization to be granted charitable status, its purposes must be clearly defined in its articles of incorporation. Terms that are too broad or too vague risk being rejected. Examples of purposes that are deemed to be too broad by the Canada Revenue Agency (CRA), as per its information circular, include: "to facilitate and encourage community spirit and development," "to support programs and activities for seniors in the community," and "to assist youth in becoming self-employed."[63] This suggests that under current legislation in Canada, commercial entities seeking to create public charities that are run by boards that are not sufficiently at arm's length and whose purposes are too vague (which is currently the case for most commercial gift funds in the U.S.) would not likely be successful. More specific objects would need to be specified. The Private Giving Foundation is listed as a public foundation operating under the general category of "welfare" on the CRA database.[64] However, it would be interesting to know what specific objects it has indicated in its governing documents, which were approved by the CRA. Unfortunately, it takes four weeks to obtain copies of a charitable organization's governing documents from the CRA and the information was not received in time to meet the deadline for this edition of *The Philanthropist*.

A second difference with the situation in the U.S. is the existence in Canada of disbursement quota rules[65] that apply to all Canadian charities (public and private). These would severely restrict the flexibility of any advised-fund program, thus taking away many of the advantages that have made these vehicles so attractive to donors in the U.S. A disbursement quota is an expenditure test. To keep their charitable status, charities must spend a minimum amount (the quota) on their charitable programs, including gifts to qualified donees. Specifically, charities are required to spend a minimum of 80% of all gifts received in the year following their receipt and 3.5% of all other assets (such as endowments) held. Exceptions to the 80% rule are granted if the donor signs a form directing the charity direction to keep the property

(capital or other) for at least ten years, in which case only the 3.5% quota applies. This latter exception also means that during those ten years of "conservation," the charity is not in principle allowed to spend any of the capital (although more recently, because of poor returns on the market, many charities have had no other choice to meet their quotas). These rules mean that the freedom to spend income or any combination of both income and capital of a fund (whether donor-advised or not) is more constrained in Canada than it is in the U.S. Certain charities, depending on their cash flow and the amount of non-receipted gifts they receive (e.g., funds raised through auctions or gala events), can give their donors some flexibility, as it is aggregate spending that matters from the CRA's perspective, not the specific spending patterns of an individual account. It remains, however, that a charity that does not wish to find itself in the situation of having over- or under-spent at the end of the year must monitor expenditures closely to ensure that spending across accounts is balanced.[66] The Private Giving Foundation appears to be sensitive to this as it indicates in its program material that 100% of gifts that are not subject to the ten-year hold condition (e.g., endowed funds) must be granted to qualified donees in the year following the year that the gift was received by the foundation and that it "*may* [italics added] require (…) that realized net capital gains produced in the current year by property, subject to a ten-year condition be granted to other qualified donees in the following year."[67] Again, flexibility, one of the most attractive features of donor-advised funds in the U.S., is severely limited in Canada. This could curb the growth of such funds here.

On the other hand, donor control is less of an issue in Canada than it is in the U.S. According to CRA rules, a "gift" is a voluntary transfer of property for which the donor receives or expects nothing in return. For a donation to qualify as a gift, it must meet three conditions: it must be a gift of property (i.e., one cannot make a gift of services), it must be given voluntarily, and the donor transferring the property must expect to receive nothing in return. The notion of control is not at all discussed in CRA's rules. Also, current legislation in Canada allows charities to establish what are called "special purpose charitable trusts," which operate very much like independent trusts, but which are housed within a public charity. In establishing such a trust, a donor can determine the precise purpose for which the money within the trust is to be used and, as long as these purposes are coherent with the organization's overall purposes, the agreement is legally binding (unlike the case of donor-advised funds in the U.S., where the charity is the ultimate decision-maker with regard to how the money is to be used). Charities, however, tend to shy away from such agreements because they can be onerous to follow and can sometimes be in contradiction with directors' obligations to the charity overall. (For example, if the trust requires that the charity hold onto a gift of stock, this can pose problems if the given stock starts to lose value. The overall interests of the charity would require that the stock be sold, but doing so would be in breach of the trust agreement.[68])

Even though they remain interesting philanthropic vehicles and will certainly appeal to certain types of donors, because of the reasons suggested above, it is unlikely that donor-advised funds are going to witness the same kind exponential growth in Canada that they have in the U.S. Other factors, however, such as increased wealth of the population and changing demographics, suggest that donors

want to be more involved in their giving. Guy Mallabone and Tony Myers of the Southern Alberta Institute of Technology recently did a study of what they call the "new entrepreneurs." Their conclusions on the profile of these "new wealthy" Canadians are similar to the conclusions of studies of the "new wealthy" in the U.S.[69] This suggests that even though the legislative framework is different, the dynamics of what will drive philanthropy in the future in both Canada and the U.S. appear to be the same. Embracing donor involvement in a way that is coherent with charitable organizations' essential missions of advancing the public good is both the challenge and opportunity of this new century.

NOTES

1. As quoted by Peter Karoff, speech delivered at the Indiana University Center on Philanthropy (August 2000).
2. Marni Larose, "Assets of Donor-Advised Funds Totaled $12.3 Billion Last Year, Survey Finds," *Chronicle of Philanthropy*, 30 May 2002; Harvey Lipman, "Survey Finds Rapid Rise in Assets and Grants to Donor-Advised Funds," *Chronicle of Philanthropy*, 31 May 2001.
3. Janet L. Fix and Nicole Lewis, "Growth in Giving Cools Down," *Chronicle of Philanthropy*, 31 May 2001.
4. "Donor-Advised Funds: Assets, Awards, and Accounts at a Sampling of Big Providers," *Chronicle of Philanthropy*, 30 May 2002.
5. In order: the New York Community Trusts (founded in 1924), the Cleveland Foundation, (founded in 1914), and the Chicago Community Trust (founded in 1915). The Foundation Center, online: <www.fdncenter.org/fc_stats>.
6. The Foundation Center, online: <www.fdncenter.org/fc_stats>.
7. Erin Kelly, "Having Your Cake and Donating Too," *Fortune*, 12 June 2000.
8. It is estimated that in 2001 a total of $2 billion in grants were made from donor-advised funds out of a total of approximately $15 billion in grants made by the top 1,000 foundations in the U.S. There are approximately 56,000 private foundations in the U.S., so the grant figure is probably a low estimate. U.S. Foundation Giving Trends (2002 edition); online: The Foundation Center, online: <www.fdncenter.org>.
9. Information provided by The Foundation Center's online librarian, February 3, 2003.
10. The Foundation Center, online: <www.fdncenter.org/fc_stats>.
11. James L. Luck and Suzanne L. Feurt, *A Flexible and Growing Service to Donors: Donor-Advised Funds in Community Foundations* (Columbus Foundation and The Council on Foundations, 2002). In September 2002, the Columbus Foundation and the Council on Foundations together produced a report on donor-advised funds held within community foundations, in which they collated the *Chronicle* results with their own results to estimate that assets held in community foundation donor-advised fund accounts totaled $7.1 billion. A total of 200 community foundations responded to their survey, as compared to the 46 that responded to the *Chronicle* survey, and yet there were still only 34 overlaps. Assets held by the 12 community foundations that responded to the *Chronicle* survey but not to the Columbus survey totaled $1.9 billion, raising the Columbus results from $5.1 to $7.1 billion. Such huge differences further show how difficult it is to pinpoint exactly the state

of assets held in donor-advised fund accounts. It is probably safe to assume that the figures presented here considerably underestimate actual figures.

12. Emmett D. Carson, “Community Foundations Facing a Crossroads,” *Chronicle of Philanthropy*, 16 May 2002.

13. Foundation Centre, online: <www.fdncenter.org/fc_stats>. $408 billion held by approximately 50,000 private foundations vs. $61 billion held by approximately 4,000 public and operating foundations. Year 2000 figures.

14. Francie Ostrower, *Why the Wealthy Give: the Culture of Elite Philanthropy* (Princeton University Press, 1997); Fidelity Charitable Gift Fund Giving Survey (2000) available online at <http://personal.fidelity.com> under “Miscellaneous.”

15. Several sources including: Lon M. Burns, “Charities Shouldn’t Treat Donors Like Customers,” *Chronicle of Philanthropy*, 7 May 1998; “Donor Direction: How Much Donor Involvement is Too Much?” *Advancing Philanthropy*, November/December 2000; Thomas J. Billitteri, “A Run for the Money,” *Chronicle of Philanthropy*, 20 April 2000.

16. A growing trend in philanthropy, defined as a group of individual donors that pool resources around a common interest or cause. The philanthropic equivalent of investment clubs. For more information, see The Philanthropic Initiative, online: <www.tpi.org> (among other sources).

17. For confirmation of details, see specific charitable gift fund prospectuses. Used for this article: Vanguard and Fidelity (available online at: <www.charitable gift.org> and <www.vanguardcharitable.org>).

18. Ashlea Ebeling, “Charitable Choice,” *Forbes*, 10 June 2000.

19. A new organization called Foundation Source does help take away some of the disadvantages associated with setting up a private foundation. Given an initial investment of $100,000, Foundation Source will undertake all of the legal work necessary for setting up a private foundation for an individual or family, and this for as little as $2,500 U.S. It will also take care of all the reporting, receipting, and other required administrative tasks of a private foundation for a fee ranging from between 0.25% to 1% of assets, which makes it competitive with the commercial gift funds. For additional information, see <www.foundationsource.com>. Fidelity is also interested in this market segment, having launched Fidelity Private Foundation Services in September 2002, which offers essentially the same services as Foundation Source.

20. Department of the Treasury – Internal Revenue Service (IRS): Tax-Exempt Status for Your Organization, Catalog Number 46573C, Publication 557; and Tax Information for Private Foundations and Foundation Managers, Catalog Number 46586F, Publication 578; both available online at <www.irs.gov/charities>.

21. Victoria B. Bjorklund, “When is a Private Foundation the Best Option?” *Trusts & Estates*, August 1993.

22. Definitions from Community Foundations of Canada’s Program Manual (1998) online at <www.community-fdn.ca> (members-only access).

23. Ebeling, “Charitable Choice.”

24. Deecy Gray, “Charitable Gift Funds: A New Avenue for Philanthropy” (1999), online: <www.capitalresearch.org>.

25. Carson, “Community Foundations.”

26. "Fundraising and the New Wealth: A Reality Check," *Advancing Philanthropy*, March/April 2001.
27. Debra E. Blum, "Tailor-Made for Charity," *Chronicle of Philanthropy*, 30 May 2002.
28. Edward J. Beckwith, David L. Marshall, John A. Edie, and Robert Edgar, *Establishing an Advised Fund Program: A Summary of Legal and Management Issues* (Washington: Council on Foundations, 1992).
29. David W. Newman and Jason H. Farber, "A Guide to Donor-Advised Funds," *Trusts & Estates*, November 2002.
30. *Ibid*. The five positive factors are essentially opposites of the negative factors: (1) the sponsoring organization has made an independent investigation of the donor's advice to see if it is consistent with its charitable purpose; (2) the sponsoring organization has issued guidelines which state the charitable needs of the donor-advised fund program and the donor's advice is consistent with these guidelines; (3) the sponsoring organization has instituted an educational program to inform the donors of the issued guidelines; (4) the sponsoring organization distributes funds in excess of the donor's donor-advised fund to the same charity suggested by the donor or to similar charities; and (5) the organization's donor-advised fund marketing materials specifically state that the charity is not bound by the donor's advice.
31. Newman and Farber, "A Guide."
32. Jane C. Nober, *Donor-Initiated Fundraising: Issues and Guidelines for Community Foundations* (Washington: Council on Foundations, 1997).
33. American Foundation mission statement, online: <www.americanfoundation.org>.
34. "The American Foundation's Declaration of Support for Increased Donor Involvement in Charitable Development," American Foundation, online: <www.americanfoundation.org>.
35. See Fidelity and Vanguard annual reports (2001); see note 17.
36. Thomas J. Billitteri, Debra E. Blum and Grant Williams, "Treasury, Congress Review Donor Funds," *Chronicle of Philanthropy*, 8 April 1998.
37. Stephen G. Greene, "Fidelity Gift Fund Modifies Guidelines to Appease Critics," *Chronicle of Philanthropy*, 30 July 1998.
38. Jennifer Moore, "Officials of Funds that Invite Donors' Advice Brace for Federal Scrutiny," *Chronicle of Philanthropy*, 28 January 1999.
39. Thomas J. Billitteri, "Support Grows for Adoption of New Federal Rules on Donor-Advised Funds," *Chronicle of Philanthropy*, 20 April 2000.
40. Council on Foundations, "Council on Foundations Response to the Proposal to Enact Standards for Operating Donor-Advised Funds in a Manner Consistent with the Requirements of Section 501 (c) 3," Legal and Government Affairs Forum (Feb 2000). Practices that ultimately aim to get assets transferred to unrestricted endowment are promoted in several parts of the Council's document. It goes from a desire for legislated limitations on successor advisers (to allow that remaining assets in an advised fund be transferred to the foundation's unrestricted fund after the final designated advisor's death) to the permission to transfer inactive account assets (accounts that have remained with no activity for seven years or more) to unrestricted funds. Although such practices are not problematic per se, and for many reasons are desirable, they should remain a question of internal policy within individual foundations, not a requirement of the law.

41. *Ibid*.
42. A supporting organization is a type of private foundation that has the status of a public charity for tax purposes. Its principal disadvantage is that its public charity status is derived from its close relationship (a relationship which must be stated in the organization's articles of incorporation) with one or more publicly supported charity, which it commits itself to support exclusively and which cannot be changed should the philanthropic interests of the supporting organization's board members change. A way to circumvent this aspect is to designate a community foundation or charitable gift fund as the supported charity and from there make the chosen grant recommendations. It is this practice which Treasury proposed to disallow, but which both community foundations and their commercial counterparts asked be allowed to continue. Definition from David N, Wheeler and Jose Silva, "A Look at Alternatives to Private Foundations," *Trusts & Estates*, August 1994.
43. Billitteri, "Support Grows."
44. "Outlook for Philanthropy: Issues in the 107th Congress," *Chronicle of Philanthropy*, 25 January 2001.
45. IRS Web site, <www.irs.gov/charities>.
46. Carson, "Community Foundations."
47. The full text of the Code is available online: <www.afpnet.org>.
48. Debra E. Blum, "Chasing Charitable Assets," *Chronicle of Philanthropy*, 16 November 2000.
49. Debra E. Blum, "Charitable Fund With Commercial Ties Seeks its Niche in Philanthropy," *Chronicle of Philanthropy*, 23 April 1998.
50. Cost efficient fundraising programs always use at least three if not four different fundraising techniques to raise funds for an organization: an annual program (using direct mail and telemarketing), an individual major gifts program, a corporate and foundation grants program (including federal/government grants, if relevant), and a planned giving program. The first and third techniques generally help a charity raise funds for ongoing operations and program expenses, while the second and last are usually aimed at building endowments. Each program feeds into the other. So, for example, annual appeals are very costly to run (high costs, low average gift) but they feed donors into the major and planned giving programs (low costs, very high average gift). Without this diversity, it is difficult for any fundraising program to be cost-efficient (generally recognized as efficient is a ratio of costs to dollars raised under 20%). Steering donors away from building endowments within charities will potentially break the funding balance that nonprofit organizations have worked so hard to achieve over the last several decades. For more information on this topic, see James Greenfield, *Fundraising Cost Effectiveness*: *A Self Assessment Workbook* (New York: John Wiley & Sons, 1996).
51. Fidelity Charitable Gift Fund Privacy Policy, online: <www.charitablegift.org>.
52. This note was replicated almost verbatim from a magazine subscription form.
53. Billitteri, "Support Grows."
54. The Philanthropic Initiative, "Doing Well by Doing Good: Improving Client Service, Increasing Philanthropic Capital. The Legal and Financial Advisor's Role," March 2000. Accessible online: <www.tpi.org>.
55. Bruce B. Makous, "Ethical Concerns Regarding Asset-Retention Arrangements Between Charities and Donors' Financial Advisors" (unpublished). In this paper, Makous refers to

an article by Rachel Stevenson that appeared in *Money Marketing* on October 25, 2001, which refers to these findings.

56. Henry Goldstein, "Curbing the Shift from Need to Greed," *Chronicle of Philanthropy*, 13 January 2000.
57. Fidelity Charitable Gift Fund Giving Survey (2000), see note 14.
58. Larose and Lipman, see note 2.
59. Although the numbers vary widely, it is estimated that between $41 to $136 trillion is expected to change hands over the next 50 years. From John J. Havens and Paul G. Schervish, *Millionaires and the Millennium: New Estimates of the Forthcoming Wealth Transfer and the Prospects for a Golden Age of Philanthropy*, The Social Welfare Research Institute, Boston College, Boston MA, October 1999 as quoted by Peter Karoff in his report "What's a Donor to Do: The State of Donor Resources in America Today," August 2000.
60. Debra E. Blum, "Moving Away from Donor Designation," *Chronicle of Philanthropy*, 7 October 1999.
61. "There's a new – BIG – kid on the giving block in Canada," *Canadian Fundraiser*, 31 October 2004.
62. Ted Garrard, speech given at the Canadian Association of Gift Planners conference, Winnipeg, April 2002.
63. Canada Revenue Agency, *Registering a Charity for Income Tax Purposes*.
64. Canada Revenue Agency, online database of charities, accessible at: <www.cra-arc.gc.ca/tax/charities>.
65. Canada Revenue Agency, *Completing the Registered Charity Information Return*.
66. Under certain circumstances CRA legislation will allow carryovers of amounts overspent in one year to subsequent years (up to five years); however, this flexibility is granted on an exceptional basis and is not meant to be incorporated as a given in charitable organization spending patterns. CRA also allows "growing" a fund for a specific purpose over a certain number of years (that is, it will allow assets in a fund to accumulate without spending for a period of time, usually for a project that requires a set amount of capital in order to be carried out – such as a building project), but formal permission must be obtained by CRA beforehand and the purposes for which permission is granted are quite limited.
67. Private Giving Foundation Program Guide available online at: <www.tdwaterhouse.ca/privategiving/>.
68. For an excellent discussion on this topic, see Elena Hoffstein and Robin Roddey, "Private Foundations and Community Foundations," *Personal Tax Planning* (49:5).
69. Guy Mallabone and Tony Myers, presentation at the CASE International Assembly, "The Money Givers," July 2002.