

DONOR-ADVISED FUNDS GUIDE SHEET

July 31, 2008

INSTRUCTIONS: This guide sheet is designed to assist in processing of Form 1023 applications for recognition of exemption under IRC 501(c)(3) submitted by sponsoring organizations that maintain donor-advised funds. The guide sheet assumes that an organization is otherwise qualified as an exempt organization and focuses on issues that are of special concern for a sponsoring organization. Many items on this guide sheet are written in the present tense; however, answers may be based on past, present, and planned activities.

Note: The guide sheet asks for more information based on changes made by the Pension Protection Act of 2006. However, the guide sheet does not take into account regulations that may be issued. When using this guide sheet, please reference the Guide Sheet Explanation for information that will help explain these questions.

PART I

Part I is directed toward identifying whether the organization is a sponsoring organization because it maintains one or more donor-advised funds. If the answer to questions 1 through 3 is “Yes” and the answer to question 4a is “No,” the organization is a sponsoring organization to which this guide sheet applies. Otherwise, the organization is not a qualifying sponsoring organization, and the guide sheet does not apply.

	Yes/No
1. Is the organization described in IRC 170(c)(2)(B) [a charitable organization], IRC 170(c)(3) [a war veterans' organization], IRC 170(c)(4) [a domestic fraternal organization], or IRC 170(c)(5) [a cemetery company], and is the organization not a governmental organization or a private foundation?	
2. Does the organization maintain one or more accounts or funds that are both (1) separately identified by reference to the contribution of a donor, and (2) owned and controlled by the organization?	
3. Does the donor, or a person appointed or designated by the donor, have, or reasonably expect to have, advisory privileges over the distribution or investments of the account or fund established with the donor's contribution?	
If any of the above questions is answered “No,” this guide sheet does not apply because the organization is not a sponsoring organization. If all three answers are “Yes,” continue using the guide sheet.	

4a. Is the organization excepted from classification as a sponsoring organization because its accounts or funds consist of amounts that may only be distributed to a single identified organization or governmental entity as described in IRC 4966(d)(2)(B)(i)?	
4b. Is the organization excepted from classification as a sponsoring organization because its accounts or funds consist of amounts that may only be distributed as educational grants to individuals as described in IRC 4966(d)(2)(B)(ii)?	
4c. Is the organization excepted from classification as a sponsoring organization because its accounts or funds consist of amounts that may only be distributed as educational grants to individuals that are not excepted by IRC 4966(d)(2)(B)(ii) but made pursuant to a grant commitment entered into on or before August 17, 2006, as described in Notice 2006-109?	
4d. Is the organization excepted from classification as a sponsoring organization because its accounts or funds consist of amounts that may only be distributed as employer-sponsored disaster relief funds as described in Notice 2006-109?	

PART II

Part II asks a number of questions that are directed to whether an organization is in a position to ensure the accomplishment of charitable purposes, including whether it has ultimate authority over its accounts or funds.

1. Did the organization provide a copy of the fund agreement or contract that outlines the terms and conditions for participation by a contributor to a donor-advised fund?	
2. Did the organization provide promotional or informational material that explains how the donor-advised fund operates?	
3. If the organization has an Internet site, is the Internet site information regarding the operation of donor-advised funds consistent with the written information provided as part of the application process?	
4. Does the organization specifically inform donors that they may not impose restrictions or conditions on the assets in their account?	
5. Does a donor receive a separate statement reporting account information about the donor's account, including balances, investments, and distributions?	
6a. Is the donor permitted by the organization to provide recommendations as to charitable <u>distributions</u> made from the donor's account?	
6b. If the answer to question 6a is "Yes," does the organization review all donor recommendations for distributions?	
6c. If the answer to question 6a is "Yes," has the organization provided to us its criteria to help ensure that distributions will accomplish charitable purposes?	

6d. If the answer to question 6a is “Yes,” does the organization have the final decision making authority on how distributions from a donor’s account are made?	
6e. If the answer to question 6d is “Yes,” has the organization explained the procedures and criteria it will use to ensure that the assets in the DAF account are used to accomplish charitable purposes?	
7a. Does the donor have the ability to select <u>investment options</u> from a list of pre-approved options?	
7b. Has the organization provided its list of pre-approved options?	
7c. Has the organization explained how the assets in the funds will be used to accomplish charitable purposes in light of the investment options?	
8a. Does the donor have the ability to recommend <u>investment options</u> for the donor’s account?	
8b. Has the organization explained how it evaluates whether to approve or deny an investment option selected by a donor?	
8c. Does the organization have the final decision-making authority on how investments from a donor’s account are made?	
9. Does the donor have the ability to select successor advisors for the donor’s account?	
10a. Are there provisions in the fund agreement for investments and distributions if a donor’s account is inactive?	
10b. Has the organization explained how often the donor is required to provide advisory recommendations, and what happens if the donor does not offer any advisory recommendations?	
11a. Does the sponsoring organization require a minimum yearly distribution across all DAFs?	
11b. Does the sponsoring organization require a minimum yearly distribution from each DAF?	
11c. If the answer to 11a or 11b is “Yes,” has the organization described its minimum?	
11d. If the answer to 11a or 11b is “Yes,” has the organization explained its mechanism to ensure that a minimum annual distribution from a donor’s account is made?	
11e. If the answer to 11a or 11b is “No,” has the organization explained how it will fulfill its tax exempt purpose including making distributions?	

PART III

Part III asks a number of questions that are directed to concerns regarding prohibited benefits, including private benefits that are inconsistent with exempt status. An organization will be denied exemption if it fails to establish that it satisfies all the requirements for exemption, including furthering private interests instead of public interests.

1a. Does the organization have an agreement or arrangement with any investment or financial company to invest its assets? If the answer is “Yes,” continue to question 1b. If the answer is “No,” skip to question 2.	
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1b. Has the organization identified the investment or financial company and provided all the relevant documentation, such as copies of any contracts or agreements between the organization and the investment or financial company?	
1c. Has the organization described its policies and procedures to ensure that it will not permit excessive brokerage fees, such as the buying and selling of securities on a frequent basis in order to earn brokerage commissions at the expense of serving charitable purposes?	
1d. Are any of the organization's board members related to or associated with the investment or financial companies described in answer to question 1a?	
1e. Will the organization and the investment company share office space, common phone numbers, promotional literature, or common Internet addresses?	
1f. If the answer to question 1e is "Yes," has the organization explained how it will undertake these shared arrangements to avoid impermissible private benefit to the financial or investment company?	
1g. Has the organization used a competitive bidding process for selecting the investment advisor to manage its funds? If not, has it described criteria and a process to select the investment advisor that indicates that private interests are not being served more than incidentally?	
2. If the organization answered "No" to question 1a, has the organization explained who supervises its investments and how they are managed?	
3. Will the organization make distributions from its donor-advised funds to any natural person (i.e., a live person rather than a corporation, trust, partnership, or other artificial legal entity)?	
4a. With respect to distributions from its donor-advised funds, will donors be allowed to recommend grants to individuals for travel, study, or other similar purposes?	
4b. If the answer to question 4a is "Yes," will the organization apply the rules set forth in the exception applicable to certain individual educational grant programs as described in IRC 4966(d)(2)(B)(ii)?	
5a. With respect to distributions from its donor-advised funds, will donors be allowed to recommend grants for employer-sponsored disaster relief funds?	
5b. If the answer to question 5a is "Yes," is the grant program excepted from classification as a donor-advised fund under Notice 2006-109?	
6. Will the organization make distributions from its donor-advised funds to any other person (i.e., corporation, trust, estate, partnership, or association)? If "Yes," continue to question 7. If "No," skip to question 12.	
7. With respect to distributions from its donor-advised funds to other organizations, will the organization make distributions to IRC 170(b)(1)(A) organizations?	
8a. With respect to distributions from its donor-advised funds to other organizations, will the organization make distributions to supporting organizations defined in IRC 509(a)(3)?	

8b. If the answer to question 8a is “Yes,” will the organization only make distributions to supporting organizations defined in IRC 509(a)(3) that are Type I, Type II, or functionally integrated Type III supporting organizations and where the donor who has advisory rights does not directly or indirectly control the recipient supported organization?	
9. With respect to distributions from its donor-advised funds to other organizations, will the organization make distributions to the sponsoring organization of such donor-advised fund, or to another donor-advised fund?	
10. With respect to distributions from its donor-advised funds to other organizations, will the organization make distributions from its donor-advised funds solely to a single identified organization or governmental entity?	
11a. Apart from distributions specified by questions 7 through 10, does the organization make distributions to other organizations?	
11b. If the answer to question 11a is “Yes,” will distribution be for a purpose specified in IRC 170(c)(2)(B) (i.e., a charitable purpose)?	
11c. If the answer to question 11a is “Yes,” will the organization exercise expenditure responsibility as described in IRC 4945(h) with respect to such distributions?	
12. Has the organization provided a copy of policies and procedures that it has adopted to ensure that it will not permit the distribution of funds from its donor-advised funds to be used to directly or indirectly provide more than an incidental benefit to any donor, donor advisor, or related person?	
13. Has the organization provided a copy of policies and procedures that it has adopted to prohibit distributions from donor-advised funds in the form of grants, loans, compensation, or other similar payments, including expense reimbursements, to the donor, donor advisor, a member of the donor or donor advisor’s family, or a 35% controlled entity of the aforementioned?	
14. Has the organization provided a copy of policies and procedures that it has adopted to prohibit excess benefit transactions from donor-advised funds to donors or donor advisors (or related persons) and from sponsoring organizations to investment advisors (or related persons)?	