

CHOOSING A CORPORATE PHILANTHROPY APPROACH

A COMPARISON OF CORPORATE PHILANTHROPY STRUCTURES

This resource is intended to provide an overview of important topics and distinctions among the three primary forms of corporate philanthropy: corporate giving programs, corporate foundations and corporate donor advised funds (DAFs). A business may choose any one of these approaches to their philanthropy or use a combination of these structures to achieve their goals. This information is provided by Ask CMF – a technical assistance service of the Council of Michigan Foundations – for educational purposes only and does not constitute legal advice.

Corporate Giving Program: A corporate giving program is an internal component of an existing business through which a corporate philanthropy program is managed. The corporate leadership oftentimes serve in an advisory capacity and the internal giving program perpetuates the business’s goals within the community. The program’s funds are directly dependent on the corporation’s internal budgets (and profits).

Advantages: Relatively less expense than other options and a simpler way of integrating philanthropy with internal strategies.

Disadvantages: Does not offer the tax-efficient nature of a foundation or DAF. Reliance on a corporation’s profits can lead to inconsistent grantmaking budgets and giving timeframes from year to year.

Corporate Foundation: A corporate foundation is a private foundation¹ separate from the business. While the corporate leadership or owners may be involved in the foundation’s activities, the philanthropic effort is distinct from the corporate structure. Corporate foundations are typically funded via periodic infusions of resources from the business and then use a traditional grantmaking cycle (i.e. quarterly, annual) to distribute grants to the community. Approximately 50% of corporate foundations

¹ Most corporate foundations are currently structured as private foundations and follow the rules and regulations required of this institutional form. In some cases, corporate foundations may be established as public charities in order to permit large-scale donations from employees and other institutions in support of the corporate foundation’s philanthropic mission and programming. Public charities have a different set of rules than private foundations and are not covered in this resource. Those interested in learning more about corporate foundations as public charities should contact CMF for more information.

are considered “pass-through” foundations, while the remainder are endowed or use a combination of the two approaches (hybrid approach).

Advantages: Permits direct awarding of scholarships² and management of tax-efficient giving, and allows consistency of grantmaking regardless of annual earnings.

Disadvantages: As a separate entity from the business, the foundation requires insurance, audits, etc. and is subject to private foundation restrictions. (See “Private Foundations” in Special Topics section.)

Corporate Donor Advised Fund (DAF): A corporate DAF is housed at an external “sponsoring organization” such as a community foundation. Similar to other types of DAFs, this fund receives periodic donations from the corporation, which are then distributed on a regular basis. All donations are legally subject to the approval of the sponsoring organization that holds the DAF.

Advantages: Relatively easy to establish within a sponsoring charitable organization, which also manages specific back office functions of grantmaking (i.e. processing grants, sending funds to grantees).

Disadvantages: Corporation has limited control to advise where these donations will be made (depending upon the rules of the sponsoring organization, many of which do not permit grants to non-charities or to charities that may be seen as controversial); control is held by the supporting organization. Direct scholarship grants are only permitted via a sponsoring organization if donors/advisors and related parties are not in control of the selection committee. There are restrictions on the use of the fund’s name, requiring clarification that it is a fund at the sponsoring organization. Subject to many of the private foundation restrictions.

² See “Scholarships” under the Special Topics section regarding the rules for establishing scholarship programs supported by a corporation or business entity.

A COMPARATIVE CHART OF CORPORATE STRUCTURES

	Corporate Giving Program	Corporate Foundation	Corporate DAF
Legal Structure	Based within the corporation itself. Staff may be housed within a specific division of the corporation, such as communications, marketing or human resources.	Distinct private foundation separate from the corporation. The foundation is responsible for all legal and tax requirements of a private foundation.	Sponsoring organization has ultimate “discretion and control” of the funds once they are donated by the corporation. Corporation can advise how the funds are distributed but does not have legal control over or ownership of them.
Leadership	Advised by internal corporate executives, owners and/or designated staff.	Led by a distinct board of directors which often includes high-level company employees. Company itself cannot make decisions for the foundation. Directors and officers must act in the best interest of the foundation separate from their duties to the corporation. Leadership may designate staff to carry out day-to-day operations of the foundation. (See “Staffing the Foundation” under the Special Topics section.)	Company or its representative can serve as an advisor to the fund, with the ability to recommend grants from the DAF. Depending on the sponsoring organization’s existing policies, the advisor may also make recommendations regarding the general investing strategy for the fund. DAFs have specific rules that restrict any benefit to DAF holders (including the corporation itself), corporate leadership, their family members, advisors and other related entities.

	Corporate Giving Program	Corporate Foundation	Corporate DAF
Administrative Costs and Set-up	Minimal administrative costs. Philanthropic efforts are established internally and can be coordinated in conjunction with tax/finance staff responsible for corporate deductions, or the corporate marketing team.	<p>A complex series of steps are required to set up a private foundation, such as:</p> <ul style="list-style-type: none"> • Creation of Articles of Incorporation • Application to IRS for EIN and 501(c)(3) status • Approval for state-based tax-exempt status • Establishment of a board of directors and required statutory officers. <p>It takes approx. 6-9 months for IRS approval of tax-exempt status.</p> <p>Regular administration of the foundation includes annual filings with the state and federal government, i.e. 990-PF tax return.</p>	Sponsoring organization will have an established process for creating a DAF, which is typically relatively quick and easy. The supporting org will identify administrative fees (typically a percentage of the amount of the DAF). Process and criteria may vary by sponsoring organization.

	Corporate Giving Program	Corporate Foundation	Corporate DAF
Funding	Internal corporate giving program funded directly by the company. Grants may be made from the giving program either (1) shortly after receiving funding through the corporation's profits or (2) through the use of an internal budget designated for this activity. Charitable deduction ³ (greater deductions for some non-cash contributions versus private foundation) available when grants are paid out to 501(c)(3) grantees.	Corporation provides a contribution to the foundation for which it can take a charitable deduction. ⁴ Funds can be invested by the foundation and distributed over time. Required minimum annual distribution equal to 5% of foundation's net investment income or taxes and penalties apply. (See "Private Foundations" under the Special Topics section.)	Corporation can provide a contribution of funds or assets to the sponsoring organization at its convenience, at one time or periodically. (As the sponsoring organization is a public charity, the corporation can take a charitable deduction ⁵ ; greater deductions for some non-cash contributions versus private foundations.) These funds are then held in the DAF and can be distributed over time, in keeping with the rules set by the sponsoring organization, which may include a minimum payout; there is no universal legally mandated payout as with a private foundation.

³ Deductibility rules and limits may vary based on special legislation. CMF recommends that corporations and foundations consult with qualified legal or tax counsel to understand the current limits on charitable deductions.

⁴ Ibid.

⁵ Ibid.

	Corporate Giving Program	Corporate Foundation	Corporate DAF
Grantmaking	<p>Corporate grantmaking can be designated for charitable purposes to allowable organizations, however grants cannot be earmarked or re-granted.</p> <p>Domestic Public Charities: Allowable and deductible.</p> <p>Private Foundations: Allowable and deductible.</p> <p>Foreign Charities: Not typically deductible (unless there is an applicable tax treaty and in that case may only offset taxable income in the corresponding country).</p> <p>Individuals in Need: Not considered deductible (unless generally supported through a public charity; individual recipients may not be known in advance).</p>	<p>Domestic Public Charities: Allowable.</p> <p>Private Foundations: Allowable only with expenditure responsibility (and mandatory spend through if grant is to “count” toward 5% minimum distribution). Considered relatively unusual in the field.</p> <p>Foreign Charities: Allowable with expenditure responsibility or equivalency determination.</p> <p>Individuals in Need: Allowable, with careful record keeping.</p>	<p>Domestic Public Charities: Allowable.</p> <p>Private Foundations: Allowable with expenditure responsibility and so long as there is no control by donor, advisor or their family members. Considered relatively unusual in the field. Many DAF sponsors refuse to make grants to private non-operating foundations.</p> <p>Foreign Charities: Allowable with expenditure responsibility or equivalency determination. Many DAF sponsors refuse to make international grants.</p> <p>Individuals in Need: Not allowed to make contributions to individuals.</p>
Lobbying	Contributions to lobbying are not charitable nor eligible for a charitable deduction.	May not earmark funds for lobbying, however may support other advocacy activities and support charities that lobby.	May not earmark funds for lobbying, however may support other advocacy activities and support charities that lobby.

	Corporate Giving Program	Corporate Foundation	Corporate DAF
Scholarships	Not a deductible contribution by the company unless donated to a charity to conduct the program itself (outside of corporate control). If scholarships are open to employees and their families, there are additional rules that must be followed. (See “Scholarships” under the Special Topics section.)	Can make scholarships, however the IRS needs to pre-approve the scholarship procedures in advance, consistent with rules required of other private foundations. If scholarships are open to employees and their families, there are additional rules that must be followed. (See “Scholarships” under the Special Topics section.)	Not allowable under the IRS regulations for DAFs but would be permitted in another type of fund at a sponsoring organization (like a community foundation) so long as exemptions to the DAF definition provided in IRC 4966 are followed. (See “Scholarships” under the Special Topics section.)
Disaster Grantmaking and Community Relief Efforts	Can assist organizations as an extension of its standard grantmaking. In a federally qualified disaster, corporations may provide direct support (cash or in-kind with products and materials) to assist in disaster relief, as well as coordinate employee expertise and volunteer efforts. (See “Disaster Grantmaking” under the Special Topics section.)	Can implement a disaster grantmaking strategy or use a discretionary grant to address general needs within the community. Self-dealing rules still apply, including restrictions on the disaster program generating business for the company or benefitting a disqualified person. (See “Disaster Grantmaking” under the Special Topics section.)	General rules for DAFs apply, including the ability to make grants for disaster relief. (See “Disaster Grantmaking” under the Special Topics section.)
Disaster/Hardship Relief for Employees	Can assist individual employees for hardship or disaster relief via an Employee Assistance Program maintained by an independent charitable entity. In a federally-declared disaster, the corporation can provide disaster relief support directly to employees. (See “Employee Assistance Programs” under the Special Topics section.)	May support a fund that provides employee disaster assistance for victims of federally qualified disasters. (See “Employee Assistance Programs” under the Special Topics section.)	General rules for DAFs apply, however a federally-declared disaster allows for the one exception to employer-sponsored DAFs to support individuals, specifically employees and their families who are the victims of a qualified disaster. (See “Employee Assistance Programs” under the Special Topics section.)

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Employee Giving and Volunteering Programs	Internal giving programs can be used to focus employee contributions of time, money and expertise. Donations of time are not deductible but can provide a useful means of “giving back” to the community and generating good will affiliated with the company. Corporation may also be involved in matching gift programs; matching gifts made directly to charity are tax-deductible. Direct grants by employees are deductible to the giving employee.	May in some instances support employee giving and volunteering programs of the related corporation, such as with employee matching gift programs. (Substantial contributions from employees and other donors, versus the sponsoring organization, may be considered sufficient for the foundation to qualify as a public charity, rather than a private foundation.)	Generally, not involved with employee giving and volunteering programs, although special arrangements may be made if the sponsoring organization consents to do so. Additional fees may be involved.
Event Sponsorships	Allowable and deductible for the company within the existing corporate sponsorship regulations. (See “Events and Sponsorships” under the Special Topics section.)	Caution should be taken to avoid self-dealing. Company should not receive a benefit for the foundation’s support of the event, although name recognition is permissible. (See “Events and Sponsorships” under the Special Topics section.)	There is a strict prohibition on DAF grants providing any benefit back to the donor or any advisor. DAF sponsoring organization may prohibit payment of sponsorships where tickets are involved or may prohibit acceptance of tickets.

	Corporate Giving Program	Corporate Foundation	Corporate DAF
Marketing and Branding	Branding of philanthropic efforts can fit with corporate marketing and communications strategies.	Company can receive acknowledgement for its grants/donations made through the corporate foundation, as this is considered an incidental benefit. However, best practice indicates the foundation should not imply that their gift comes from the company. Branding the foundation closely with the corporation is permitted by the IRS but should be clearly separate from advertising. A corporate foundation grant that results in advertising for the business would be considered self-dealing and must be “qualified sponsorship” revenues under the IRC. ⁶	While the DAF itself may carry the name of the company, the sponsoring organization likely has restrictions on the use of the fund’s name. Typically sponsoring organizations require that any time the corporation uses the DAF’s name it must clarify that it is as a fund at the sponsoring organization and not imply it is a stand-alone entity.
Donation of Business Products	Allowable and deductible, however rules for donations of inventory vary. ⁷	The foundation can make grants, but this type of donation will likely be more appropriate via the corporate giving program.	Generally does not participate with corporation’s in-kind donations.

⁶ For more information on “qualified sponsorship” see <https://www.irs.gov/charities-non-profits/advertising-or-qualified-sponsorship-payments>. Additional information is available through IRC 513 and related Treasury Regulation 1.513-4.

⁷ Some exceptions may vary based on special legislation. CMF recommends that corporations consult with qualified legal or financial counsel to understand the rules regarding donations of business inventory.

SPECIAL TOPICS IN CORPORATE PHILANTHROPY

Disaster Grantmaking: The declaration of a federal disaster or a national emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act triggers provisions of Internal Revenue Code Section 139. This federal designation allows corporations and other employers to provide certain types of disaster grantmaking, including assistance to employees. (See “Employee Assistance Programs” below). Corporate grantmaking efforts may serve as an extension of its standard grantmaking program or follow a special set of procedures that are only followed in the case of a federally qualified disaster. Often these grants are given to efforts within local communities served by the company. In some cases, corporate foundations or giving programs may use discretionary funds to fast-track disaster grants. Self-dealing rules still apply, as disaster grants should not be intended to generate business for the company nor benefit disqualified persons, and there are other restrictions. Disaster grants for individuals, regardless of their source, may not duplicate FEMA or insurance payments to families, may not be used to supplement income and may not cover something that is the responsibility of the employer. Additional information about disaster grantmaking and forms of employee assistance is available in IRS Publication 3833.

Employee Assistance Programs: The declaration of a federal disaster or a national emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act triggers provisions of Internal Revenue Code Section 139. This federal designation allows companies the ability to provide “emergency relief payments” to staff that are not considered taxable income while also exempting these payments from applicable employment taxes. Internal Revenue Code Section 139 also allows for employer-sponsored DAFs and corporate foundations to be used to benefit employees and their families. (This is the one exception to the DAF prohibition on grants to individuals.) Rule 139 also allows employers to provide relief to employees for certain employee hardships outside of the context of a federally-declared disaster or national emergency, but only if such relief is provided through an independent, public charity. A corporation’s employee hardship/disaster relief fund should follow a pre-existing policy and application process that is available to assist employees, including in situations that extend beyond a federally-declared disaster.⁸ This policy should outline criteria for accessing these funds, the appropriate use of the funds, frequency of an employee’s access to these funds and a description of the team responsible for making decisions for the distribution of funds. Rules regarding charitable class, impermissible private benefit and self-dealing still apply within the context of disaster grantmaking. Additional information about disaster grantmaking and forms of employee assistance is available in IRS Publication 3833.

Events and Sponsorships: When sponsorship of an event includes tickets to attend the event, staff, directors and officers of the corporate foundation may attend the event if they are carrying out the work of the foundation itself. For example, the staff person or board member may attend to monitor

⁸ Disaster relief programs can be established well in advance of a disaster situation (an ongoing employee hardship fund, for example) or after a specific disaster has occurred. However, a newly-established fund of this type would need to have an indefinite class of recipients or be held open to future victims of disaster.

the grantee's programming or use of funds. However, the company itself cannot send employees nor their spouses to the event if they do not have an official position with the foundation nor may the corporation reimburse the foundation for use of a few tickets if an entire table or minimum number of tickets is required to be purchased because the IRS sees this as the foundation subsidizing the corporation, which is prohibited self-dealing. However, if sponsorship is purchased from corporate funds (as opposed to foundation funds), there are no restrictions on who may use the tickets.

Private Foundations: Private foundations are the default category of 501(c)(3) organizations that are not able to pass as public charities due to their limited number of funders. As a result of the potential influence and control by the funders (individuals or entity), private foundations have a less favorable tax position and far more government scrutiny than public charities. Private foundations face a number of specific federal tax rules⁹ that are particular to this type of philanthropic organization, including such regulations as:

- **Required Excise Tax:** Private foundations have a standardized excise tax of 1.39% on net investment income.
- **Restrictions on Self-Dealing:** Private foundations cannot enter into a financial transaction with a disqualified person. (See "Self-Dealing" in this section for more information.)
- **Required Minimum Distribution:** Private foundations are required to spend out 5% of their net investment assets annually. Qualifying distributions that count toward the 5% primarily include grants to qualified charities and necessary administrative costs required to make those grants. Foundations that do not meet the 5% threshold face a tax penalty of 30% of the difference.
- **Restrictions on excess business holdings:** Private foundations cannot control businesses, which means that they, together with all disqualified persons, cannot hold more than 20% of the voting stock of a corporation or ownership interest in a partnership or LLC. If the company is controlled by people who are not disqualified persons, the private foundation may apply to the IRS for the right to hold up to 35% of the business. If a private foundation receives a gift or bequest of business stock that exceeds the 20% ownership limit, it has five years to divest those shares.
- **Restrictions on Taxable Expenditures:** Private foundations can face tax penalties for engaging in lobbying, electioneering and voter registration, grants to individuals and grants to non-charities. There are exceptions to these restrictions, but foundation staff should consult with qualified legal counsel before engaging in this activity.
- **Penalties for Jeopardizing Investments:** Private foundations may not make investments that show a lack of reasonable business care and prudence in providing for the short- and long-term financial needs of the foundation for it to carry out its exempt function.

⁹ Federal regulation of private foundations describes penalties associated with each regulation described in this section. CMF recommends that corporations consult with qualified legal or financial counsel to understand how these rules apply to individual organizations or situations.

Scholarships: Scholarship programs require pre-approval by the IRS. This is typically handled when the foundation receives its charitable status but can be submitted at any time. “Scholarship” for these purposes means:

- Any scholarship or fellowship to be used for study at a qualifying educational organization.
- Certain prizes or awards.
- Grants or fellowships to achieve a specific objective, produce a report or other similar product or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

Scholarship programs should require a large and indefinite “charitable class” of individuals and may not be designed to benefit pre-selected individuals. Additionally, the grant procedures should be objective and non-discriminatory. Corporate-sponsored scholarship programs for the benefit of employees of a particular employer and their families (including those operated through community foundations) have additional restrictions to ensure they are not used as a means of additional compensation or as a recruitment/retention tool, nor can an employee’s continued employment by the company influence their scholarship award or renewal. Companies that do not follow these rules may lead to scholarships being considered a taxable employment benefit for their employees. Additionally, the foundation must limit the number of scholarships awarded to (a) 25% or fewer of the eligible applicants who were actually considered by the selection committee in selecting recipients of grants in that year or (b) 10% or fewer of the employees’ children who can be shown to be eligible for grants (whether or not they submitted an application) in that year, rather than being available to the vast majority of applicants. Scholarship committees should be comprised of independent individuals without connections to the company or foundation.

Self-Dealing: Private foundations are prohibited from engaging in self-dealing, which is defined as any direct or indirect (A) sale or exchange, or leasing, of property between a private foundation and a disqualified person; (B) lending of money or other extension of credit between a private foundation and a disqualified person; (C) furnishing of goods, services or facilities between a private foundation and a disqualified person; (D) payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person; (E) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation; and (F) agreement by a private foundation to make any payment of money or other property to a government official (as defined in section 4946(c)), other than an agreement to employ such individual for any period after the termination of his government service if such individual is terminating his government service within a 90-day period. Disqualified persons, in general, are those who are “in a position to exercise substantial influence over the affairs” of the foundation, including substantial contributors (such as the related corporation), trustees, directors, officers, other foundation managers, the family members of all of them and certain other entities¹⁰. These prohibitions apply even if a transaction is financially beneficial to the foundation.

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1. All [substantial contributors](#) to the foundation,
 2. All [foundation managers](#) of the foundation,
 3. An owner of more than 20 percent of--

There are certain exceptions to self-dealing, such as a 0% loan from a disqualified person to the foundation or the disqualified person permitting the foundation to use property or facilities at no charge (with some potential ability to cost-share on a pro rata basis if the costs are paid to an independent third party vendor). Personal (professional and managerial) services that are reasonably necessary to the foundation carrying out its exempt purposes may be reasonably compensated, which also permits the sharing of employees between the foundation and its related corporation, although this is high risk and must be managed carefully. Disqualified persons may make grants to the foundation, but in most cases they may not be encumbered (such as a donation of property subject to a mortgage). To navigate existing restrictions on this activity, some companies choose to donate employee time for those who also have foundation-related responsibilities. CMF recommends that corporations concerned about potential self-dealing issues consult with qualified legal counsel who regularly work with corporate foundations before entering into an arrangement between the corporate foundation and a disqualified person.

Staffing the Foundation: As noted above, due to self-dealing concerns, sharing of employees between the corporation and corporate foundation must be structured carefully so that the foundation does not subsidize work that is really being performed for the corporation. (An organization’s tax advisors or auditor can prescribe ways to keep track of this.) The corporation may also “lend” the services of corporate employees to the corporate foundation. Staff employed by the corporate foundation or whose salaries are reimbursed by the corporate foundation must receive no more than “reasonable” compensation for professional and managerial services that are necessary to the corporate foundation carrying out its exempt purposes. Only certain services are deemed to be professional and managerial. To determine reasonable compensation, corporate foundations should look to foundation- and philanthropy-related benchmarking reports.

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- a. The total combined voting power of a corporation,
 - b. The profits interest of a partnership, or
 - c. The beneficial interest of a trust or unincorporated enterprise, which is, during the ownership) a [substantial contributor](#) to the foundation,
4. A [member of the family](#) of any of the individuals described in (1), (2), or (3),
 5. A corporation of which more than 35 percent of the total combined voting power is owned by persons described in (1), (2), (3), or (4),
 6. A partnership of which more than 35 percent of the profits interest is owned by persons described in (1), (2), (3), or (4),
 7. A trust, estate, or unincorporated enterprise of which more than 35 percent of the beneficial interest is owned by persons described in (1), (2), (3), or (4),

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