Council of Michigan Foundations

ASK CMF

A Technical Assistance Service of the Council of Michigan Foundations

FREQUENTLY ASKED QUESTIONS ABOUT FUND AGREEMENTS

A Resource for Community Foundations and Public Charities Holding Component Funds

Updated as of March 2022

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.

Through Ask CMF, community foundations and other philanthropic grantmakers frequently submit questions that delve into the complexities of managing component funds, oftentimes on behalf of long-time donors and organizational partners. Over time, these funds evolve beyond the scope of their original fund agreements and documentation, leaving foundation staff wondering how they can make adjustments with or without the original donor's consent and involvement. This resource is intended to explore frequently asked questions involved in managing funds and fund agreements over time.

This resource is intended for community foundations and other public charities that manage "component funds" for charitable purposes. These funds are created through the donations of individuals, families and organizations to further charitable efforts in a designated "community" (geographic or thematic) based around numerous categories, such as scholarships, field of interest (thematic) or designated (organization specific), among others.

Within this document, the term "fund" refers to a component fund of the foundation. "Assets" or other terms are used to reference a donor's contribution or the monetary holdings of the institution.

CMF members may access sample fund agreements across a variety of common fund types via the Knowledge Center (https://www.michiganfoundations.org/resources/fund-agreements-sample-documents). These agreements have been pre-approved via the National Standards for U.S. Community Foundation program (https://www.cfstandards.org/). CMF members using these resources should submit a marked copy of any changes they make to these agreements and note at the top that the submitted documents are using the CMF Model Forms approved by National Standards.

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CREATING A FUND

What is a "completed gift"?

Donors who make contributions or establish a fund agreement with a community foundation are frequently interested in receiving an income tax deduction for their donation. In order to receive this benefit, the donor must make what is known as a "completed gift." An income tax deduction must pass a six-part test to be considered a "completed gift":

1. A donor competent to make a gift;
2. A qualifying donee (recipient organization) capable of taking the gift;
3. A clear and unmistakable intention on the part of the donor to absolutely and irrevocably divest himself of title, dominion and control of the property;
4. The irrevocable transfer of the present legal title, dominion and control of the entire gift to the donee, so that the donor can exercise no further act of dominion and control over it.
5. A delivery by the donor to the donee of the subject of the gift or of the most effective means of commanding dominion over it; and
6. The acceptance of the gift by the donee.[1]

[1] For more information see Suzanne S. Friday, "An Overview of the Law Governing Community Foundations," *Mastering Foundation Law: The Council on Foundations Compendium of Legal Resources (Arlington, A: Council on Foundations, 2016), 45-46.*

Sometimes donors holding real estate or closely held securities for which there is a contemplated sale transaction wish to manage their tax liability by contributing the property in advance of the sale. Donors need to be mindful of an "assignment of income" issue in which the IRS will, under certain circumstances in which it deems the subsequent sale of the property to be a certainty, treat the sale proceeds of the property as if they were received by the donor and then contributed to the community foundation, which in most cases is not as favorable a tax treatment for the donor. Again, professional advice is suggested, especially as acceptance of non-cash gifts involves a myriad of concerns for the community foundation.

In addition, the community foundation may also need to consider the potential impact of "material restrictions" on the donor's gift, which may cause it to be considered a non-component fund (rather than component fund) and not a completed gift by the donor. Conditions and restrictions on the gift may also result in the charitable deduction being delayed until those conditions are met.

Whether or not a particular condition or restriction imposed upon a transfer of assets is a "material restriction" depends upon the facts and circumstances, but some of the factors considered are the following:

A. Whether the community foundation is the owner in fee of the assets it receives from the donor;
B. Whether such assets are to be held and administered by the community foundation in a manner consistent with one or more of its exempt purposes;
C. Whether the governing body of the community foundation has the ultimate authority and control over such assets, and the income derived therefrom; and
D. Whether, and to what extent, the governing body of the community foundation is organized and operated so as to be independent from the donor.

Situations that are unlikely to be deemed material restrictions include naming rights, a donor's requirement that funds be used for a particular charitable purpose or even a requirement that ownership of donated property be maintained (but only if such retention is important to the achievement of charitable or other similar purposes in the community because of the peculiar features of such property). An example of a retention requirement would be the gift of a woodland preserve for the purpose of serving as an arboretum for the benefit of the community because that restriction serves a charitable purpose rather than a personal interest of the donor.

Restrictions that may be considered impermissible material restrictions would include the donor's reservation of the right to direct the sub-grantees of the gift (the community foundation must have discretion and control over all gifts and must actually utilize that discretion); if the grantee assumes leases, contractual obligations, or liabilities of the donor; if the donor requires the grantee to maintain investment assets for a particular period of time; or if the donor (or another party) maintains a right of first refusal to acquire the donated property if the grantee proposes to dispose of it. *Please note that whether or not a restriction amounts to a material restriction is a complicated analysis for which professional advise should be sought.*

What documents should be maintained within a fund file?

Each unique fund should have a separate file (digital and/or paper) to maintain appropriate records and documents. This file should include:

- **Fund Agreement**: The original (signed) fund agreement should be included, as well as any amendments or updated versions of that document.
- **Planned Gifts/Gifts of Property**: In the case that a fund was established or supported via a planned gift or a gift of property, insurance, etc., that paperwork should be included in the file.
- **Scholarship Procedures**: If the fund supports a scholarship, it should also include any paperwork related to the scholarship procedures. Scholarships also require paperwork be kept on file for applicants, recipients, etc., although those may be stored separately from the donor-oriented records.
- **Donor Communications**: The file should include any correspondence or documentation regarding the donor's intent for the fund.
- **Advisory Personnel**: Funds with advisory committees or additional generations of advisors (i.e., DAFs) should keep an updated list of those individuals with the main file. Contact information for the donor and/or advisors may be stored with the file or kept separately in a donor database, depending on the foundation's existing donor data privacy procedures.
- **IRS and Governmental Correspondence**: If the fund has ever been involved in a situation concerning the IRS or other government agencies (i.e., attorney general), that correspondence should also be maintained with the appropriate file.

National Standards recommends maintaining signed fund agreements and fund correspondence related to the terms for the fund on a permanent basis, in addition to gift acknowledgements and solicitations for at least 7 years.[2] Approved grants and related documentation should be maintained for 7 years after completion of the funded program or the date of the grant, in the case of general operating support. These files may be able to be maintained in a physical or digital format, with appropriately backed-up electronic copies.

Documentation for donor interactions (gift acknowledgements, evaluations, scholarship letters, annual distribution statements, etc.) may be kept with these files or maintained separately.

What component fund types are available at most community foundations?

Donors can support the creation of a new fund or support an existing one in any of the following categories[3]:

- **Agency Fund**: Established by a public charity to create a fund at the community foundation, often for the purposes of establishing an endowment fund.

[2] See National Standards Form entitled, "Policy on Records Retention and Destruction"

[3] These terms have emerged from use in the field. Donor Advised Funds are the only legally defined fund type.

- **Designated Fund**: Created by donors to support one or more public charities via general or program support.
- **Donor Advised Fund**: Individual donors give to this fund and recommend its use toward charitable grantees. The community foundation board has final authority over the distribution of funds.
- **Field of Interest Fund**: This fund is established by donors to support areas of interest (i.e. arts and culture, health and human services). Grants are usually determined by an advisory committee established by the community foundation.
- **Scholarship Fund**: Donors can give to established scholarships or create a new fund to benefit individuals. Scholarship criteria must be "objective and nondiscriminatory," require a large and indefinite "charitable class" of individuals and may not be designed to benefit pre-selected individuals.
- **Special Project Fund**: This is a fund of the community foundation intended to support a specific project or short-term effort within the local area.
- **Unrestricted Fund**: An unrestricted fund is designed to support charitable grants at the discretion of the community foundation.

Most of these fund types may be categorized as either endowed or non-endowed funds held within the foundation. Each organization may choose to offer endowed and/or non-endowed fund types, depending on their existing infrastructure for component fund categories.

- **Endowed Fund**: A fund whose assets are not wholly expendable on a current basis, as defined by UPMIFA (Uniform Prudent Management of Institutional Funds Act). This may also be referred to as a "permanent" fund.
- **Non-Endowed Fund**: A fund with no minimum amount required to be invested, allowing all of the assets to be spent out in the form of grants. This may also be referred to as a "pass-through" or "non-permanent" fund.

How does the fund type influence who has "control" of the fund?

In all cases, the community foundation board has ultimate responsibility for approving grants made by its funds (subject to compliance with state UPMIFA laws). However, the original contributor and other stakeholders may have some ability to provide advice or recommendations on the use of the fund. The community foundation staff may also have restrictions and policies in place that outline the types of grants that are acceptable, which may also influence the foundation's ability to carry out a donor or advisory committee's requested grants.

- **Agency Funds**: The charitable organization that establishes its fund may make suggestions for grants, even as the community foundation can reject these recommendations at its discretion.
- **Designated Fund**: The donor(s) to this fund can provide future advice or recommendations for use of this fund, as designating the fund to a single charity is an exception to the legal definition of a donor advised fund. Specifically, donors can give advice regarding the amount and timing of

grants from this fund, although the recipient is pre-determined. In the case of designated funds supported by a number of donors, the foundation may want to designate one or two donors who can approve changes to the fund agreement.

- **Discretionary Fund**: Donors cannot provide future recommendations for use of this fund, as it is oftentimes designated for the community foundation's general operations or as an unrestricted fund. In a number of cases, this category may not function as a stand-alone fund or require the use of a fund agreement.
- **Donor Advised Fund (DAF)**: The donor (or successive advisors) may make recommendations for grants made from this fund, which the community foundation can reject with its discretion. DAFs are the only case where a donor and his/her representatives serve as the only advisors for a fund at the community foundation. The community foundation rarely designates committee members to a DAF. (For more information see "What is and is not a DAF?")
- **Field of Interest Fund**: Donors cannot provide future advice or recommendations for the use of their donations, although they may participate as a member of an advisory committee.
- **Scholarship Fund:** Donors may serve on an advisory committee for a scholarship fund. However, they and their representatives can only comprise less than a majority of this committee or else it may be deemed to be a "DAF" which prohibit grants to individuals. Specific rules for donor involvement may vary by institution. (For more information see "Navigating Scholarships and Grants to Individuals.")
- **Special Project Fund**: Donors do not provide future advice or recommendations for use of the fund, although they may participate as a non-controlling member of a committee.

Can a designated fund and agency fund for the same grantee organization be combined?

While a single charitable organization may have both a designated fund and agency fund held as component funds at the same foundation, these funds should not be combined. As stated above, an agency fund derives its assets from the nonprofit itself and designates itself as the beneficiary. In comparison, a designated fund receives its assets from external donors with the intention of benefitting one (or more) nonprofit entities. While stakeholders may be under the impression that a nonprofit has a single fund (of either type) held at the foundation, accounting rules dictate that the foundation create a fund of each type to properly track transactions.

From an accounting perspective, an agency fund is governed by Accounting Standards Codification (ASC) paragraphs 958-605-25-25 and -26, formerly expressed in Statement No. 136 issued by the Financial Accounting Standards Board (FASB). In the situations where a charity transfers a portion of its assets to a community foundation, the charity should in most cases report those transferred assets as its own assets (with a footnote that they are held by the community foundation). The community foundation would report these assets as a liability to the charity. Agency fund grantees should receive a detailed annual fund statement that details its activity.

A designated fund usually follows a different accounting standard than an agency fund. Assets given to a fund at the community foundation but designated for a particular charitable entity (i.e. a designated fund) are reported as assets only for the community foundation (not the designee charity). In theory, the donor could change their mind, or the community foundation could exercise its variance power, and the designee may no longer receive distributions from such fund.

In addition to differing accounting treatment, UPMIFA does not apply to endowed funds created by a charity out of its own funds (as opposed to fundraising from the public for the purposes of an endowment). Also, if the fund agreement needs to be changed, keeping separate accounting of agency versus designated funds makes it clear who can consent to or request such a change.

Can funds be used to support churches and other religious organizations?

Generally, a community foundation and its funds can make grants to support churches and other religious organizations (synagogues, mosques, etc.). In some cases, a foundation may outline certain restrictions on providing grants to faith-based organizations. Most commonly, such restrictions are program-specific or limit the use of publicly-raised gifts to make grants for non-sectarian activities of religious organizations, rather than supporting their primarily-religious functions. In the case of designated or donor advised funds, the foundation can make grants for either religious or non-sectarian purposes, as long as there are not such restrictions within the foundation's existing policies.

Churches that meet certain criteria set by the IRS are automatically considered to be tax-exempt organizations, meaning that they do not necessarily have their own IRS determination letter and are not required to file annual returns to the IRS (Form 990, etc.). They are also not required to secure a charitable solicitation license and therefore are exempt from the related rules for reviewed or audited financial statements. If a church or other religious organization does not have an IRS determination letter, a foundation would need to conduct additional due diligence prior to making a grant to this organization. For churches that are part of a known denomination, the foundation may be able to reference the denomination's letter of determination and a directory that lists all of the congregations affiliated with it. However, not all denominations have a letter of determination or directory.

Can funds be used to support non-501(c)(3) organizations?

A community foundation can make certain grants to non-501(c)(3) organizations, depending on the specific fund types. (This type of activity is most commonly carried out via a field of interest fund).

A non-501(c)(3) organization may include chambers of commerce, local Rotary clubs, mutual aid groups, veterans' organizations, social clubs and other organizations that fall under other subsections of Section 501(c). For a full listing of other tax-exempt organization categories, visit the IRS website (https://www.irs.gov/charities-non-profits/other-tax-exempt-organizations).

Prior to considering such a grant, the community foundation would first need to check its articles of incorporation, bylaws and any grant procedure/policy documents to ensure that it can make grants to a non-501(c)(3) organization or institutions that are not considered to be "public charities." It is common for grantmaking foundations to have their incorporation documents or grantmaking policies clearly limit their grantmaking to 501(c)(3) organizations, so it is important to verify this information.

Grants to non-501(c)(3) organizations (from funds other than DAFs) require a slightly less formal version of expenditure responsibility than required by the IRS for private foundations. A grant to a non-501(c)(3) organization would need to be narrowly defined and directed exclusively to the organization's charitable activities (not general operations). The community foundation has a duty to oversee that the funds are used for charitable purposes. Since the Internal Revenue Code (IRC) does not specify how to carry out this duty, it is advisable to look toward the expenditure responsibility rules as they apply to private foundations, which involves the following basic steps:

- Pre-grant inquiry.
- Developing a written agreement.
- Obtaining reports from the grantee.
- Taking action to recover the grant funds if the grantee fails to comply with these steps, and not granting more funds until the grantee complies with reporting requirements and any other such requirements.

Grants from DAFs can be used to support non-501(c)(3) organizations, but only for particular charitable purposes (no general operations grants). However, they must exercise expenditure responsibility in compliance with the Internal Revenue Code, comparable to the process required for private foundations.[4] In these cases, there can be absolutely no benefit back to any donor, advisor, family members or certain other related parties.

Can funds be used to support international grantmaking?

Generally, legal requirements for community foundations and other public charities conducting international grantmaking are less restrictive than those for private foundations. However, community foundations can use existing rules for private foundations as a guide for best practice in making these types of grants.

Each foundation may have an established policy or procedure regarding whether international grants can be made by certain fund types or may outline a minimum gift amount. DAFs do have extra requirements for international grants, including either expenditure responsibility or equivalency determination.

[4] For information on expenditure responsibility requirements for DAFs and private foundations, see the Internal Revenue Service website for more information (https://www.irs.gov/charities-non-profits/private-foundations/grants-by-private-foundations-expenditure-responsibility).

The Council on Foundations recommends that public charities making international grants should use the following approach:

- Acquire copies of the grantee's organizational documents (in English), as well as a description of its activities and programs.
- Develop a written agreement that outlines the grantee organization's commitments and the use of the grant dollars for a charitable purpose.
- Procure yearly records that account for the use of the grant dollars for each year included in the grant (through the time that the last dollar is expended by the organization).

For more information on international grantmaking, see the Council on Foundation's "Frequently Asked Legal Questions About Global Grantmaking" (https://www.cof.org/content/frequently-asked-legal-questions-about-global-grantmaking#public). Specific questions regarding the foundation's international grantmaking should be directed to qualified legal counsel.

Can funds be used to support advocacy efforts?

Community foundation funds may be used for the purposes of advocacy (activities that inform or advance public policies). However, community foundations and other public charities can only be engaged in limited lobbying activities – those that directly influence legislation.

Organizations of all types (i.e., public charities, private foundations) may engage in an unlimited amount of advocacy-related activity, so long as it does not cross the line into lobbying or political campaign intervention. This may include sharing organizational updates and information with policymakers, inviting policymakers to events and tours of facilities, and visiting policymakers to share about the organization's activities. It is sometimes acceptable to recognize policymakers at events or as part of the organization's communications efforts, although these activities must be undertaken with care, especially during an election season.

Examples of permitted advocacy activity include:

- Educating legislators about your foundation's work (such as Foundations on the Hill).
- Educating the public about public policy issues (e.g. climate change) without including a call to action or discussing specific legislation.
- Nonpartisan analysis or research that is widely distributed (even to a segment of the population) and is independent or objective.
- Attempting to influence legislation that impacts a foundation's existence, powers, duties, tax-exempt status, or deductibility of contributions to it.
- Nonprofit voter engagement, although there are specific rules for private foundations undertaking this activity.

Lobbying under the IRS is defined as any communication with a legislator (or legislative staff) that expresses a view about specific legislation ("direct lobbying," which includes referenda and ballot

initiatives upon which the public votes), or a communication to the public that expresses a view about specific legislation and includes a call to action ("grassroots lobbying").

Public charities (including community foundations) may engage in an "insubstantial amount" of lobbying; private foundations and DAFs may not. Charities may not use federal funds for lobbying and may not use most state funds for lobbying.

501(c)(3) organizations are not permitted to engage in partisan political activity (also known as "electioneering" or "political campaign intervention"). Specifically, they are not allowed to favor a specific candidate or political party, including offering a candidate/party financial or in-kind support, rating candidates or endorsing candidates. Candidates and political parties are also not allowed to use the organization's office space, equipment or mailing lists without it being equally available to all groups at a fair market value. Due to the importance of specific facts in determining if an activity may be considered as a form of campaign intervention, CMF recommends that its members seek advice from external counsel before engaging in any activity that could potentially fall into this category. The IRS can impose excise taxes or revoke an organization's tax-exempt status for engaging in this type of activity.

Community foundations may choose to develop an internal policy that specifically outlines what types of advocacy are permitted for staff, board members and other affiliated persons. Likewise, the organization's template fund agreement language (or grantmaking policy) should provide clarification regarding the extent to which grants made from funds can be used for advocacy and related purposes.

Can a fund be restricted by geography or form the basis of a "geographic affiliate" fund?

A component fund can be created as a "geographic affiliate fund" that focuses on serving a specific community or geographic area within the community foundation's service area. In some cases, an "affiliate" may be a previously-independent community foundation (including one too small to be sustainable) or it can be a component fund that holds gifts from donors interested in supporting activities in a specific location (i.e. a town within a county-wide community foundation). These funds are oftentimes designed to support charitable endeavors within the specific geographic region, in addition to furthering the grantmaking of individuals and organizations within the area (even beyond the borders of their region).

Please note that, unless the larger community foundation adopts a DBA ("doing business as") name of the affiliate community foundation, a geographic affiliate or other component fund should not be called a "community foundation," as that name implies that it is a stand-alone nonprofit organization. All checks to these entities must be made out to the primary community foundation with a note regarding the affiliate fund that should receive it.

Can an organization establish a fund at a community foundation?

Organizations can serve as donors and establish funds at most community foundations. Certain types of organizations may be allowed to create funds, while others are only allowed to contribute to existing funds.

- **501(c)(3) Public Charities**: These organizations have the most latitude to support and establish funds at the community foundation. A public charity can develop an agency fund to further its own operations and programs or be the recipient of a designated fund supported by other donors. In some cases, public charities in the form of schools and educational programs may also be a conduit for scholarships to individuals, managed by the community foundation and supported by its donors.
- **Non-501(c)(3) Organization**: Organizations, such as a Rotary Club, may approach the community foundation to establish a fund. While these organizations may be the recipient of grants made through the community foundation (via expenditure responsibility), they have limited access to developing a fund to support their mission and programs. Agency and designated funds are primarily restricted to supporting public charities. In the case that these organizations are interested in developing a scholarship, especially if they may benefit members, then special rules apply. For more information on restrictions on scholarships, see "Navigating Scholarships and Grants to Individuals" (https://www.michiganfoundations.org/resources/navigating-scholarships-and-grants-individuals).
- **Units of Government:** Within the state of Michigan, community foundations can establish (designated) funds to benefit units of government. In some cases, units of government may also participate in special project funds that are designed to benefit certain short-term community activities and projects. Although units of government in Michigan are generally unable to utilize their funds for charitable gifts, the Michigan Community Foundation Act permits a municipality, school board, intermediate school board or public library to transfer certain assets to a fund at the community foundation. There are restrictions to follow and terms that must be included in the fund agreement, which should be reviewed with qualified legal counsel before accepting these assets.
- **Businesses**: Businesses can make contributions to community foundation-based funds, but should seek external legal and/or tax counsel to best navigate their unique tax situation and desired potential restrictions on charitable gifts. If an employer (or its related foundation) is developing a scholarship hosted at the community foundation that is intended to benefit employees and their children, the scholarship must abide by special rules. For more information on corporate scholarships, see "Navigating Scholarships and Grants to Individuals" (https://www.michiganfoundations.org/resources/navigating-scholarships-and-grants-individuals).

CHANGING A FUND AGREEMENT

What is variance power?

Variance power is a legal means through which the community foundation can modify restrictions on component funds in the case that the existing structure (fund agreement restriction) becomes unnecessary, unable to be fulfilled or no longer consistent with the charitable needs of the geographic community served by the foundation.

Variance power can be exercised in two ways:

1. Michigan's UPMIFA nonprofit statute provides that a donor can consent in advance (in the fund agreement) to agree to the exercise of variance power. In this case, the foundation board can approve situations involving variance power-related changes to fund agreements.
2. Otherwise, exercising variance power requires the foundation go to court to request that a judge (with notice to the state Attorney General) grant the request, except in certain situations as described further below.

Please note that National Standards for U.S. Community Foundations requires that variance power be noted in each fund agreement, in addition to being included within a community foundation's governing documents.

When does UPMIFA apply?

Endowments, including those held by foundations, are governed by a state law known as UPMIFA (Uniform Prudent Management of Institutional Funds Act). Nearly every state within the U.S. has an UPMIFA statute, while Pennsylvania uses a similar UMIFA law. As part of this statute, UPMIFA requires that charitable organizations abide by donor restrictions on gifts. For endowed gifts, UPMIFA only permits public charities to expend a "prudent" portion of the endowment that will still allow the fund to exist in perpetuity.

Generally, donor intent can overpower UPMIFA. In the case that a donor requests the foundation to dip into the corpus of an endowment, the foundation can consider and approve such a request.

How can the foundation change a fund agreement with donor involvement?

In the case that the original donor is alive and can participate in discussions involving changes to a fund agreement, appropriate foundation staff members should discuss the situation with the donor directly.

Even in the case that a donor agrees to a change suggested by the community foundation or the foundation staff determine that a donor's suggested change can be moved forward, the governing board of the community foundation must approve the change. Any changes should be well documented and all records of the original and adapted fund agreement should remain on file with the foundation. While donor intent trumps UPMIFA, too much ongoing donor control over gifts to the community

foundation could cause the IRS to deny the charitable contribution deduction. For that reason, it is advisable that the community foundation board have independent reasons for agreeing to the change, other than to please the donors. The Council on Foundations generally suggests that it is appropriate to agree to lessen restrictions on grants from a fund, but that it is risky to increase restrictions, as that may appear to be too much donor control.

Therefore, depending on the fund and situation, the foundation should also consider seeking advice from qualified legal counsel to ensure all necessary steps are involved in making changes to the fund agreement.

Changes to the name, criteria or process involved with a specific fund can be changed via an addendum to the original fund agreement or via a new fund agreement document. Changes in the type of fund requires a new fund agreement document.

How can the foundation change a fund agreement without donor involvement?

If a donor is unavailable (i.e., because they cannot be reached, have passed away or refuse to agree), the community foundation must abide by UPMIFA when making amendments to the fund agreement as this would entail use of the community foundation's variance power.

If the fund agreement contains variance power language, the community foundation does not need to go to court for permission to effect the change. The community foundation board's decision to exercise variance power is sufficient. Note that the revised use of the funds should be as close to the donor's original intent as practicable. For record keeping purposes, the community foundation should keep those minutes with the original fund agreement noting that variance power was exercised by the board and the effect of the change.

If the fund agreement does not contain variance power language, the community foundation must go to court (with notice to the Attorney General) to request that the restriction be modified. However, if the fund subject to the restriction has a total value of less than $25,000.00 and was established more than 20 years before, then upon 60 days' advance notice to the Attorney General, the community foundation can modify the fund without going to court. Again, the use of the fund must approximate the donor's original intent, and documentation of compliance with UPMIFA procedures should be maintained.

How can the foundation change a fund agreement when multiple donors contribute, or a fundraising event/effort was involved in supporting the fund?

In some cases, multiple donors may make contributions to a fund directly or through a fundraising effort (i.e., fundraising event). If the original donor (signatory for the original fund agreement) wanted to make a change to the fund, the community foundation would be placed in a precarious position. With the inclusion of a number of donors, the foundation would need to have all donors involved agree to a potential change. As this would be considered unlikely, the community foundation should avoid

permitting unnecessary changes to fund agreements involving more than the original donor. For this reason, the CMF Template Fund Agreements suggest appointing one or two of the original signatories (with power of substitution) to agree to amendments to the Fund Agreement.

If the foundation wanted to move forward with a potential change to a fund involving a large number of donors, it could exercise variance power.

Can a foundation change the fund type associated with a fund agreement?

Fund agreements may vary significantly between fund types, which may present challenges for accommodating donor requests to change from one fund type to another. Generally, donors should not be seen to have too much ongoing control over the fund. Likewise, it is generally acceptable to consent to a donor's request to amend an agreement that loosens restrictions, rather than tightens them, so long as the community foundation's board has a reason to consent to the request (other than to "keep the donor happy").

Ultimately, the community foundation board has final determination over whether a fund may be changed. While changes between fund types that seem in keeping with the original intent of the fund agreement may be approved, it may be unwise for the foundation to agree to an amendment that substantially changes the nature or purpose of the original fund agreement or that increases restrictions on gifts.

Decisions regarding changing the fund type or agreement should be considered on a case-by-case basis, as fund agreements and situational details can vary widely. However, some general principles apply to certain categories of funds:

- **Designated Funds**: Changing another fund type to a designated fund may occur as a natural result of other charities included in an initial fund agreement merging or closing operations. However, foundations contemplating changes to designated fund agreements should consider the impact of these changes on the designated nonprofit. Specifically, the designee should not be treated as "owning" the fund and relying on those contributions. Otherwise, the designee may attempt to sue the community foundation claiming that it relied upon those funds being available.
- **Donor Advised Funds**: Generally, other fund types should not be transitioned into a DAF, as that would increase restrictions on the fund and ultimately increase (rather than decrease) donor control. However, it may be appropriate to agree to transition a DAF into other fund types over time, such as a designated fund (if the fund only contributes to a single charitable entity) or a general or field of interest fund (after the predetermined number of advisor generations passes – which is usually spelled out in the DAF policy or fund agreement).
- **Agency Funds**: Generally, agency and designated funds should not be combined or switched between these fund types. (See "Can a designated fund and agency fund for the same grantee organization be combined?")

- **Scholarship Funds**: It is rather unlikely that a fund would transition to or from a scholarship fund, although donors have been known to make such requests. As noted previously, scholarship funds have additional legal requirements and aspects of their fund agreements that are functionally different from other types of funds intended to broadly benefit charitable entities.

Can a foundation change a fund agreement between endowed and non-endowed types?

Fund agreements for endowed (permanent) funds have additional restrictions on the expenditure of the fund's assets. Specifically, these funds are governed by UPMIFA (see "When Does UPMIFA Apply").

In accordance with the advice that it is generally acceptable to consent to a donor's request to amend an agreement that loosens restrictions, rather than tightens them (if there is otherwise a charitable purpose for agreeing to such change, other than "to keep the donor happy"), it may be acceptable to un-endow a previously endowed fund with the donor's consent. However, it is generally inadvisable to endow a previously un-endowed fund, although there could be proper charitable purposes for doing so.

Does a foundation need to change a fund agreement in the case of a nonprofit merger?

In the case of two nonprofit organizations merging into a resulting public charity, no variance power is required. Even if the resulting entity changes its name, it is still the same entity by operation of law. Therefore, the nonprofit would still have the right to access its agency fund. Likewise, a designated fund designed to support this organization (assuming the donor does not request a change) would remain the same for the resulting organization. In the case that the resulting merged organization changes its underlying purpose, a donor could change his/her mind regarding maintaining support for the resulting organization.

If the resulting merger involves a for-profit entity or the resulting organization is no longer classified as a 501(c)(3) public charity, it would likely not be considered an eligible grant recipient of the foundation. As such, the resulting organization would not be permitted to receive funds from its previous agency or donor-designated funds. Depending on necessary changes to the fund agreement(s) and donors' ability to consent, the foundation may need to utilize variance power or seek qualified legal counsel to fully address the specifics involved in such a situation.

How can a foundation change a fund agreement in the case that a nonprofit dissolves?

In the case of a nonprofit recipient announcing its closure, the community foundation should first review the fund agreement document. It is possible that the agreement outlines what should happen to the funds in the case of the nonprofit organization dissolving, especially in the case of an agency or designated fund.

If the fund agreement does not detail which organization(s) should receive the assets of the fund, the board and/or staff should explore how the fund may be used to benefit charitable organizations with

similar purposes. In geographic areas with a small number of charitable organizations, the community foundation may need to consider exploring (1) a broader geographic region than outlined in the original document or (2) a broader version of the original fund agreement's purpose to identify appropriate recipients for the fund. If the donor is not available to consent to such a change, this would constitute a use of variance power.

How can the foundation change a fund agreement, in the case that the previous fund agreement does not align with legal regulation or best practice?

Over time, the community foundation may discover that a fund agreement was developed which does not align with legal regulations or best practice.

As one such example: A foundation discovers that a non-501(c)(3) organization has an agency fund, when legally, an agency fund must be created for a 501(c)(3) organization or unit of government and cannot be established for a non-charity or private foundation. In this example, assets from this fund must only be granted for charitable purposes (not general operations), and a form of expenditure responsibility must be exercised.

As a more common example: An "agency" fund established by a Chamber of Commerce gives the Chamber of Commerce the right to regular distributions from the fund. Chambers of Commerce are exempt under IRC 501(c)(6), not 501(c)(3), and therefore any grants that are made from the fund to the Chamber of Commerce must be limited to particular charitable purposes approved in advance by the community foundation (not general operations), with the exercise of expenditure responsibility. However, it is acceptable for Chambers of Commerce to establish scholarships and other funds that are administered by the community foundation and simply granted out in the name of the Chamber of Commerce.

In the case that the original donor or organization that established the fund is agreeable, the original fund agreement could be updated to accommodate necessary changes to resolve the situation. If not, variance power may need to be exercised in order to bring the fund agreement into legal compliance.

Can the foundation change a fund agreement in the case it changes or updates its fund agreement template language?

In the case that the community foundation changes or updates its fund agreement template language, these changes do not automatically apply to all previously-established fund agreements.

Any changes to fund agreement documents may be made through either creating a new version of the fund agreement or amending it, as appropriate. These changes must be agreed upon by the original donor and the community foundation. In the case that the original donor is no longer alive or able to participate in discussions involving their fund, the foundation board may want to exercise variance power, which may or may not require court approval. (See "What is Variance Power?")

If the community foundation's fund agreements refer to other policies (i.e., spending policy, gift acceptance policies) as external documents, any existing fund agreements that reference these policies will functionally "update" to the newest version of those policies. However, if specific information from those policies are referenced within an old/outdated fund agreement, the language included within the agreement document itself stands.

DONOR ADVISED FUNDS

What is and is not a DAF?

The concept of a Donor Advised Fund (frequently referred to as a "DAF") is outlined in the Pension Protection Act of 2006 and the Internal Revenue Code (IRC) Section 4966. Generally, DAFs are accounts or funds with the following attributes:

1. Separately identified by reference to contributions made by a donor or donors.
2. Owned and controlled by a sponsoring organization, such as a community foundation or other public charity that holds DAFs.
3. The donor (or their designee) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in such fund or account.

Both the Pension Protection Act of 2006 and IRC Sec. 4966 provide for a number of exceptions, which constitute accounts or funds held by sponsoring organizations that are not considered to be DAFs.

1. A fund that only makes grants to a single pre-identified organization or governmental unit.
2. A fund that meets all of the following criteria:
    a. A person serves in an advisory capacity as part of a committee, where all of the committee members have been appointed by the sponsoring organization.
    b. The donor, advisors appointed by the donor and related persons do not control (make up a majority of) the committee advising the fund.
    c. The advisory committee uses a pre-established set of objective and nondiscriminatory criteria for its grantmaking decisions that have been pre-approved by the sponsoring organization's board of directors.[5]

Based on definitions and distinctions established in the Pension Protection Act and IRC Sec. 4966, the following are examples of a DAF:

- A donor establishes a fund in memory or honor of his/her spouse at a local community foundation and maintains direct advisory privileges over grants made from the fund.

[5] This criteria is consistent with the legal language used to describe scholarship funds. However, it also applies to most standard criteria for grantmaking to charitable organizations.

- A married couple establishes a fund at their local community foundation, where they make regular donations into the fund and recommend grants to a variety of charitable organizations out of the fund.
- A donor establishes a fund at a local community foundation and makes a significant initial donation, followed by a series of smaller donations in later years. Over a matter of decades, the donor, their lawyer and adult children recommend regular grants to charitable organizations out of the fund. After the original donor's death, their children, grandchildren and additional appointed representatives continue to advise the foundation regarding grants generated from the fund.
- A donor makes a planned gift through their estate with the intent to establish a fund at a community foundation. The donor's children, grandchildren and/or advisors are designated as members of the advisory committee that makes annual grants out of the fund to benefit local charitable organizations.
- An organization (i.e., chamber of commerce, fraternal organization) establishes a fund at their local community foundation in its own name intended to benefit charitable organizations in the area. The organization establishes an advisory board made up of its members, board or other affiliated individuals.
- A corporation establishes a fund at a community foundation through periodic donations. The corporation establishes an advisory board of corporate leaders and employees to recommend grants benefitting charitable organizations in the community.

The following fund examples are <u>not</u> DAFs:

- A fund that receives contributions from a number of unrelated donors (i.e., a fund created by a giving circle or a fund established by a number of donors in memory or honor of a friend or colleague).
- A fund established at a community foundation that utilizes an advisory committee where the donor and related parties constitute less than a majority of the committee and all committee members are nominated by the sponsoring organization.
- A fund established at a community foundation designed by a donor to support a single charitable organization, such as a local historical society or regional humane society. (This is likely to be categorized as a designated fund.)
- A scholarship fund established by a donor at a community foundation, where an advisory committee is established by the community foundation and the donor (and related parties) constitute less than a majority of the committee members.
- A fund established by a donor at a community foundation where the advisory committee is made up of the donor and the majority of committee members meet expertise-based objective criteria related to the fund's purpose, even if these members are initially recommended by the donor. (The difference here is that the donor appoints the committee member ex officio, or by reason of their position (such as high school principal), as opposed to named individuals.)

- A fund established by a donor's planned or estate gift to create or support a fund at the community foundation, focused on a general field of interest (i.e., arts and cultural organizations, health, environmental concerns in the local area) and where the community foundation establishes an advisory committee (of internal and/or external members) to determine appropriate grants, following objective and non-discriminatory criteria for determining relevant grant recipients and projects.
- A fund established or supported in part by a corporation or organization at a local community foundation and where the corporate leaders and/or staff comprise less than a majority of the advisory board.

Can a DAF be transitioned into a stand-alone private/family foundation at a later date?

Donor Advised Funds (DAFs) are designed to be component funds housed within a community foundation or other public charity. As a result, a DAF cannot function independently of the foundation and the fund agreement put in place with the original donor.

All contributions made to a community foundation (or other public charity) are irrevocable, meaning that they cannot be returned to the original donor. Likewise, a DAF cannot be terminated and given back to the donor in any form, including as a means to set up an alternative charitable instrument or organization, such as a private or family foundation. The assets become the property of the community foundation, which has final determination over all grants and activity associated with those assets.

Families and board members of private foundations that terminate the organization into a community foundation fund, such as a DAF, also cannot reacquire the assets from the community foundation for other purposes at a later date. In the case they wanted to establish a new private foundation, these individuals would need to use a distinctly different set of assets to fund the new charitable entity.

Can DAF advisors be changed or added at a later date?

Depending on the community foundation's specific policies and procedures, DAF advisors may be able to be changed or added at a later date. However, the foundation likely has an established limit on the advisory period beyond the original donor's death, frequently limited to one or two generations. These policies do not permit advisors to be added as a means to extend the donor and their representative's influence over the DAF beyond the limited number of generations. However, there is no legal requirement to limit successor advisors to a DAF or to permit them.

Can DAFs be used to support scholarships?

DAFs are not permitted to make grants to individuals, including scholarships. Therefore, a donor wishing to establish a scholarship fund in which they may participate in the decision making must make sure that it complies with the noted exception for DAFs (see "*What is and is not a DAF?"*). DAFs may make grants to other organizations, such as schools and universities, for the purpose of a scholarship program. For reference, DAFs cannot be used to satisfy binding pledges.

Depending on the foundation's policies and procedures, a DAF donor may be allowed to sit on a scholarship fund selection committee. However, the donor, DAF advisors and their respective family members would not be allowed to constitute a majority of those deciding on scholarship recipients for a fund that they support. This means that the donor (and their DAF advisors/family members) cannot have control over the fund, regardless of whether the funds originate from a DAF or not.

For more information on scholarships, see "Navigating Scholarships and Grants to Individuals" (https://www.michiganfoundations.org/resources/navigating-scholarships-and-grants-individuals).

What is an inactive funds policy?

A DAF may be considered "inactive" if no grants are made from the fund after a set period of time, oftentimes 2-5 years. Community foundations that participate in the National Standards accreditation process are expected to have an inactive funds policy which outlines how inactive funds are handled by the organization. Such policies also provide a mechanism for the foundation to enforce that donors actively make grants from their DAFs held at the foundation. These policies do allow for donors to have years in which they do not make grants, but ensure that the fund remains active in grantmaking to charitable organizations over time.

ADDITIONAL LEGAL CONCERNS REGARDING FUND AGREEMENT LANGUAGE

Do donors receive their donation back in the case that the foundation, fund or recipient organization dissolves?

Regardless of the situation, the original assets do not automatically revert to the original donor or organization that established the fund.

In the case that a fund does not reach a minimum fund size, the community foundation's related procedures would dictate what happens to the assets. (See "*What happens to funds that decrease to an insufficient (asset) size?")* Oftentimes, these assets are directed to a similarly-purposed field of interest fund or a general operating fund of the foundation.

If the intended recipient of a designated or agency fund dissolves, the community foundation staff and/or board may need to determine organizations with similar purposes as the original organization that may be the recipient of the original assets of the fund. Without donor consent, this would require exercise of variance power. For field of interest or other funds that spend down to a relatively small amount, the community foundation may determine to absorb the fund into a similarly-purposed fund or a general operating fund for the foundation.

In the unlikely event a community foundation itself were to dissolve, its funds would be directed to another community foundation locally or a similar institution that could carry out the fund agreements established by the initial organization. Charitable organizations in Michigan are required to have a dissolution clause in their articles of incorporation that may specify the charitable entity to receive their assets upon a dissolution, or more likely, they provide that the dissolving organization's Board of Directors chooses one or more charitable organizations to which to distribute the assets. Those assets remain subject, however, to the donor restrictions upon their grant.

Should fund agreements directly reference the foundation's other policies?

Fund agreements should reference the community foundation's other policies, including those regarding fees. By broadly referencing these policies (rather than detailing them specifically within the fund agreement), the community foundation may regularly update its other policies and ensure that they apply to its existing fund agreements.

Why does a fund agreement reference a 509(a) organization, rather than a 501(c)(3) organization?

Depending on the community foundation's fund agreement template language, this document may reference a 509(a) organization, a 501(c)(3) organization, or both. This leads to the frequent question of whether these are the same designations or not.

A 501(c)(3) organization is either a public charity or private foundation, both designated as charitable organizations within the Internal Revenue Code (IRC). Each organization with a 501(c)(3) tax-exempt status also has a 509(a) designation, which describes the origins of its funding and is listed within the organization's IRS determination letter. Most nonprofit grant recipients have either a 509(a)(1) or 509(a)(2) designation, while supporting organizations may have a 509(a)(3) designation. For community foundations, these differences are most relevant when making a grant from a DAF to a 509(a)(3) supporting organization because expenditure responsibility is required in some limited circumstances.

What happens if a fund agreement or related paperwork goes missing or is incomplete?

The community foundation should keep all active fund agreements on file, with related paperwork attached. It should be maintained within a standardized filing system with redundancy (back-up), whether in paper or digital formats.

A donor may make a contribution (or leave an estate gift) without completing a fund agreement. Often, the donor's attorney or personal representative of their estate will work with the community foundation to complete the donation. If there are no instructions in the estate plan, the community foundation can utilize those assets as undesignated assets or can choose to direct those assets to a fund that is similar to the purposes of the donor's previous gift.

INTERACTIONS WITH DONORS

Can the foundation refund a donation to the original donor or organization that made the original contribution?

All contributions made to a community foundation (or other public charity) are irrevocable, meaning that they cannot be returned to the original donor. The assets become the property of the community foundation, which has final determination over all grants and activity associated with those assets.

Likewise, a DAF cannot be terminated and given back to the donor in any form, including as a means to set up an alternative charitable instrument or organization, such as a private or family foundation. While DAFs are frequently advertised as "charitable checking accounts," giving the impression that the original donor has full control over the movement of assets in and out of the fund (including back to themselves), the assets are fully owned by the community foundation. At this point in time, DAFs may recommend grants to other DAFs, but it is important to note that pending legislation may limit, restrict or otherwise prohibit this activity in the future.

Under limited circumstances, agency funds contributed by a specific charitable organization may make arrangements to reacquire a portion of the fund, beyond the amount that the institution can typically receive annually. However, the community foundation cannot bind itself to provide the funds back to the charitable organization donor upon demand because that would approximate a banking relationship as opposed to the community foundation having legal ownership and control over the assets as component funds.

What is a donor initiated fundraising policy?

A donor initiated fundraising policy is a policy adopted by the community foundation that outlines under what conditions a community foundation will permit donors and others affiliated with component funds to raise money to contribute to new or existing funds held by the foundation. The concern is that the funds will be raised in the name of the community foundation, using its charitable status and tax identification number, resulting in some liability exposure to the community foundation. Most of these policies include a process for donors to approach the community foundation staff and/or board with requests for fundraising activity conducted on behalf of their fund. This document should include such details as what types of fundraising activities are permitted/prohibited, who has the authority to enter into contracts, and how checks and contributions should be written/submitted to the community foundation on the fund's behalf. This policy is required by the National Standards program.

Who is allowed to access donor data?

The foundation should have a policy regarding the use of data throughout the organization, sometimes originating from an IT department or staff person. Typically, access to donor data is limited to internal personnel responsible for engaging with fundraising operations and donor engagement, with limited access to some board members on fundraising or gift acceptance committees. Under normal

circumstances fund holders should not have access to donor data, unless specific arrangements have been made (oftentimes involving a donor-initiated fundraising policy). Fund holders and others should not have access to credit card information, social security numbers and other sensitive donor information that is unnecessary to their role or responsibility working on behalf of the foundation.

The fundraising profession has long held to the principles of the Donor Bill of Rights (https://afpglobal.org/donor-bill-rights) and eDonor Bill of Rights (https://afpglobal.org/principles-edonor-bill-rights), which outline reasonable expectations of donors in their interactions with charitable entities. Within the eDonor Bill of Rights, several principles directly apply to concerns about donor data and privacy:

- To be assured that all online transactions and contributions occur through a safe, private and secure system that protects the donor's personal information.
- To have easy and clear access to an organization's privacy policy posted on its website and be clearly and unambiguously informed about what information an organization is gathering about the donor and how that information will be used.
- To be clearly informed of opportunities to opt out of data lists that are sold, shared, rented, or transferred to other organizations.
- To not receive unsolicited communications or solicitations unless the donor has "opted in" to receive such materials.

Many organizations have a donor privacy policy that outlines how the foundation intends to protect donor information. This policy most often outlines whether or not the organization sells or shares donor information and gives donors the option to opt-in/opt-out from the foundation sharing its information. Within community foundations, it is relatively unusual for the organization to release donor data or rent their donor lists, even as other nonprofits within the community may choose to engage in this activity.

What happens if a fund agreement is signed, but the donor changes their will or does not make the intended gift?

When donors sign a fund agreement for a planned or immediate gift, they should make appropriate plans to move forward with the gift, whether by writing a check, making arrangements with their financial institution or working with an attorney to update their will or estate plan. However, foundations do periodically encounter situations where donors do not update their will, make last-minute changes to estate plans or fail to send a promised gift to a community foundation or other charitable entity. While a fund agreement or other documentation may be in place with the community foundation, even without the assets transferred to the organizations, these situations are not considered completed gifts (see "*What is a Completed Gift?*"). The donor cannot receive a charitable deduction or other benefit for the gift until such time as a gift is considered complete. Within the state of a Michigan, a binding pledge to a charity is considered enforceable, although it is relatively unlikely that the organization would sue a donor or their estate to claim such a donation.

NEXT STEPS FOR FUNDS

What happens to DAF funds after the last generation of advisors?

Depending on the fund agreement template language used by the community foundation, a DAF may be directed to a field of interest or designated (organization-specific) fund after the advisory period ends. The number of advisory generations may vary significantly between community foundations, so donors and advisors should be aware of these limits in advance.

In the case that the fund agreement does not outline where the DAF assets should be directed (i.e., a specific fund), the community foundation can choose to absorb it into a general fund, direct it to organizations that have received prior grants from the DAF or direct it to a field of interest fund or another means of keeping it within the scope of the donor/advisors' previous priorities. Community foundations should have a policy or procedure in place that outlines how these situations are handled, especially in the case that it is not otherwise covered in the fund agreement.

What happens to an agency or designated fund if the nonprofit beneficiary dissolves?

If a nonprofit beneficiary of an agency or designated fund dissolves, the community foundation should first look to the existing (or most up-to-date version) of the associated fund agreement. The agreement should outline whether there is an intended secondary or back-up recipient of the fund. If not, the agreement may direct the foundation board/staff to identify organizations with a similar charitable purpose via direct grants from the fund or by absorbing the fund into a similarly-purposed field of interest fund.

If none of these situations is the case, and if the original donor is unavailable or if there are too many donors from which to secure consent, the foundation board may need to rely on variance power to make necessary adjustments to the fund agreement to fulfill the donor's intent for their gift.

What happens to field of interest funds whose criteria are too narrow or do not apply to any (or an insufficient number of) nonprofits within the foundation's geographic region?

Over time, community foundation staff and board members may discover that a certain fund has a very small number of potential nonprofit recipients, or the criteria is overly narrow. Depending on the language in the existing fund agreement, the foundation may need to explore potential strategies to make changes to the fund agreement grantmaking criteria to ensure the criteria is appropriate to the ecosystem of charitable organizations servicing the local region.

Under Michigan's UPMIFA statute, donors who established the initial gift agreement may consent to change the document's terms. However, there are concerns under federal law about too much ongoing donor control over the assets given to a community foundation, which could cause the gift to be seen as not completed (resulting in denying the charitable deduction). Additionally, some funds may have a large number of donors, beyond the original set of individuals who signed the fund agreement. The

general advice is that it is acceptable to loosen restrictions on grants, but that donors should not be permitted to make them more restrictive.

In the case that the community foundation determines that a particular fund is too narrow in its criteria, the board may need to enact variance power to appropriately broaden the criteria of the fund.

What happens to overly narrow scholarship funds?

Over time, community foundation staff may discover that certain scholarship funds are overly narrow in their criteria, resulting in an insufficient number of qualified applicants or potential recipients. In some extreme cases, too many restrictions may result in the foundation not granting the scholarship each year.

If the original donor is still alive, the foundation may decide to approach the donor about approving changes to the fund agreement, specifically to broaden the criteria for the scholarship fund. Otherwise, the foundation board may need to use variance power to broaden the terms of the scholarship.

What happens to funds that decrease to an insufficient (asset) size?

Community foundations should have a policy dealing with minimum fund size, outlining how a fund with an insufficient amount of assets will be managed by the community foundation, especially in the case of an endowed fund that requires a minimum size. Endowed funds should not typically decrease to this extent, unless the foundation has dipped into the corpus.

The minimum fund size policy may provide that the assets may be paid out to intended specified charitable recipients and the fund closed down at the end of the grantmaking cycle, or it may provide that the remaining assets are moved to the community foundation's general fund.

What happens to funds that do not reach the required minimum size per the foundation's policy?

Community foundation staff should ensure donors understand that certain funds have a minimum size to be established, per the foundation's policies. Oftentimes, these limits are put in place for endowed funds.

The minimum size to open a new fund is the minimum size for a functioning fund held by the foundation, regardless of its age. In other words, donors should not be allowed to make smaller gifts that "sit" in the fund until they can reach the minimum required size to establish a fully-functioning fund. The only time funds are allowed to sit and grow (outside of an endowment) is when there is a charitable purpose being fulfilled that requires a larger amount of funds, such as would be the case in supporting a nonprofit's capital project (i.e., construction on a new building, renovation of an existing structure).

Depending on the organization's policies, funds that do not reach the minimum size for an endowed fund may be maintained as a non-endowed fund and spent down accordingly. Other policies may determine that these funds are directed to a similarly-purposed fund, such as a scholarship with similar or broader criteria. Assets contributed to a community foundation for the purposes of creating a fund cannot be returned to the original donor(s) once they are gifted to the organization.

RECOMMENDED RESOURCES

Council of Michigan Foundations. "Fund Agreements Sample Documents." 2020. https://www.michiganfoundations.org/resources/fund-agreements-sample-documents.

Council of Michigan Foundations. "Navigating Scholarships and Grants to Individuals." 2021. https://www.michiganfoundations.org/resources/navigating-scholarships-and-grants-individuals.

Council of Michigan Foundations. "Options for Your Financial Giving." 2021. https://www.michiganfoundations.org/resources/options-your-financial-giving.

Council on Foundations. "Community Foundations and Grants to Non-Charities." https://www.cof.org/content/community-foundations-and-grants-non-charities.

Council on Foundations. "Faith-Based Grantmaking: A Basic Guide for the Perplexed." https://www.cof.org/content/faith-based-grantmaking-basic-guide-perplexed.

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ABOUT ASK CMF

This document was authored by Brittany Kienker, Ph.D., Knowledge Insights Expert in Residence for the Council of Michigan Foundations (CMF). Legal aspects of this document were reviewed by Jennifer

Oertel, outside legal counsel to CMF. CMF members can find answers to their most pressing questions through CMF's Knowledge Insights division, including Ask CMF, the Knowledge Center and the Sample Documents Hub. Ask CMF is a free service to CMF members, available through the "Ask CMF" link on the CMF homepage or by visiting https://www.michiganfoundations.org/practice/ask-cmf.