Forward

Fast-Growing Charity Funds Raise Issues

By Paul Berger
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Donor-advised funds are the fastest growing method of philanthropy that you've probably never heard of.

Nationwide last year, these funds had assets totaling $30 billion. Almost $3 billion was held by Jewish institutions, the largest of which — the Jewish Communal Fund of New York — had assets of almost $1 billion, making it among the wealthiest fund programs in the country.

Joe Imberman, associate vice president of planned giving and endowments at the Jewish Federations of North America, said that donor-advised funds have been among the fastest-growing segments of Jewish philanthropy in the past decade, partly because they make giving easier for donors. As a result, the community has benefited from hundreds of millions of dollars in grants, Imberman said.

But critics say donor-advised funds make it *too* easy for donors to reap the rewards of making a tax-deductible contribution without the money actually going directly to a charity. Technically, donors can hold on to assets or money in their donor-advised fund for decades before they pay out grants; in some cases, they pass on the funds to future generations.

"The public is harmed in more than one way: not just reduced revenue to the federal government, but a delay of resources reaching the charitable sector," said Ray Madoff, a professor at Boston College Law School, where she is a specialist in trusts and estates.

Fund executives disagree. Marjory Kaplan, president of the Jewish Community Foundation of San Diego, said the majority of donors open funds with the best of intentions.

irs records

Kaplan said that donors' ability to store up philanthropy was especially useful during the recent recession. Although donations to the donor-advised funds she administers shrank during the past five years, annual grant making increased.

According to tax records, the San Diego foundation paid out $53 million in grants in 2010, compared with $44 million in 2007.

"So many people told me they would never have been able to help if they hadn't had money in their funds," Kaplan said, adding that grants went to a swath of causes — local and national, Jewish and secular.

For some, though, the level of secrecy surrounding donor-advised funds compounds mistrust. Charities that administer funds must report all recipients of their grants, but donors can choose whether to

withhold their identities to recipients. In effect, this allows individuals and even foundations, which usually have to operate at a greater level of openness, to make unlimited, anonymous donations.

So, for example, during 2010, the Jewish Communal Fund of New York awarded more than $1 million to pro-settler groups such as the Hebron Fund and the Central Fund of Israel. It also awarded $5,000 to a group that aims to cure Jews of their sexual orientation, Jews Offering New Alternatives to Homosexuality.

Jewish Communal Fund executive vice-president Susan Dickman said she saw no problem with such grant making. "Our goal is to facilitate our donors' philanthropy and to do it within strict legal parameters," Dickman said, adding that it was not her organization's job to judge which were the right or wrong grantees.

Yet one of the reasons donor-advised funds have such generous tax breaks is that, technically, donors cede control of their money once they put it in a fund — but in practice that rarely happens. There are questions, too, about the performance of Jewish funds, which appear to have lagged behind their peers in recent years, in terms of contributions, assets and grants.

The National Philanthropic Trust, which analyzes the year-end filings of donor-advised funds, found that in fiscal year 2010, the average U.S. fund had regained its assets to almost equal pre-recession highs. But a Forward analysis of tax returns from almost 80 Jewish donor-advised fund programs found that assets among the largest 10 funds during the same period fell 10%. Among Jewish funds nationally, assets fell by almost 20%.

Jewish funds also fared poorly in terms of contributions. While contributions to donor-advised funds fell 16% nationwide between 2007 and 2010, in the Jewish community they fell by 30%.

And although grant making by donor-advised funds nationally is higher now than it has ever been, among Jewish funds it was 10% lower in 2010 than in 2007.

Many Jewish fund executives blamed the recession and low investment performance for the slowdown, though it is unclear why those conditions did not similarly affect the non-Jewish funds.

They pointed out that, particularly for smaller funds, numbers can be skewed by the whim of a single, wealthy family moving money in or out. "The needle can be moved so easily by one major donor," said Alan Secter, director of institutional advancement for Yeshiva College.

Donor-advised funds have been around for about 80 years. They really took off during the 1990s, when commercial banks started to offer them, attracting billions of dollars in contributions and the unwelcome attention of lawmakers and the federal government.

Between 2005 and 2007, the Internal Revenue Service included donor-advised funds among its annual list of "dirty dozen" tax scams because of the ease with which unscrupulous taxpayers were able to maintain control of assets while taking a tax deduction.

A Treasury report published in December found that rules governing donor-advised funds and the tax incentives for contributing to them were largely appropriate. But Senator Chuck Grassley, a former chairman of the Senate Committee on Finance, called the study "disappointing."

"Treasury and the IRS missed an opportunity to shed light on loopholes that taxpayers heavily subsidize yet result in financial gains for a few principals and very little money for charities," Grassley said in a statement.

One such loophole allows foundations to circumvent IRS requirements that they donate 5% of their assets annually to maintain their charitable status.

In a recent article in On Wall Street magazine, Baruch Littman told potential donors that "in the eyes of the IRS," once a private family foundation's assets have been transferred to a donor-advised fund they "have been given away for proper charitable purposes."

Littman, vice-president of development at the Jewish Community Foundation of Los Angeles, continued: "Once in the donor-advised fund, your client can then take as long as he or she likes to determine how and where to distribute."

In an investigation last year, the Forward found that one Jewish foundation, the Morris Morgenstern Foundation, regularly awarded about two-thirds of its annual giving to donor-advised funds. A spokesman for one of those funds, run by Agudath Israel of America, said the money was dispersed in full each year but declined to reveal the recipients.

Not all Jewish funds suffered in 2010. That year, contributions to the Jewish Communal Fund of New York shot up 162%, from $145 million to $380 million. Its assets in 2010 almost topped its record 2007 high of $980 million.

Dickman, of the Jewish Communal Fund, said the enormous growth was thanks mostly to stock market performance and "a number of substantial gifts we received primarily in the form of appreciated securities" (assets held for more than one year).

Joshua Rednik, executive director of the Jewish Community Foundation of MetroWest NJ, said large banks often offer better online services and lower fees than their Jewish counterparts, two possible reasons why Jewish funds lag the general trend.

Rednik also pointed out that Jewish funds offer some specialized services that are often missing in their secular counterparts. These include an emphasis on generational support, such as bringing families together to discuss the values that drive their giving and expertise in the area of Jewish causes.

"Because of our affiliation with the Jewish Federation movement, we believe that our knowledge base in this area is second to none," Rednik said.

Indeed, donor-advised funds have made a significant contribution to Jewish causes. Many Jewish funds automatically donate a percentage of grants to the community.

JFNA's Imberman said about 12% of fund grants go to the annual federation campaign. Based on 2010 tax returns, that would mean federations received $300 million from Jewish donor-advised funds that year.

Critics might point out that a considerable portion of donor-advised fund grants go to secular causes, too. Steve Gross, JFNA's senior director for endowment management, said almost 50% of grants from donor-advised funds last year went to secular charities.

But fund executives point out that secular causes, such as arts institutions, education and human rights, reflect Jewish values, too. They also point out that by working with donors to help them fund secular needs, Jewish organizations have an opportunity to educate donors about Jewish needs.

Jewish fund executives said some grant requests are denied, although such cases are rare. The Jewish Community Federation of Cleveland turned down a grant for an assisted-suicide promotion group because administrators were said to be uncomfortable with it coming from the federation.

Michael Friedman said the Associated Jewish Charities of Baltimore turned down a grant to a human rights organization "that was, at the time, very publicly criticizing Israel."

Friedman said Associated steered the family toward a "more palatable" human rights organization that was not "in direct conflict with our interests." He declined to name the groups involved.

Dickman said making judgment calls was "a very slippery slope."

"We don't pass judgment on grantees," she said. "But if it was antithetical to the Jewish community or something that was going to cause harm to the Jewish community, that's a different issue."

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