



September 9, 2024

Edward Killen
Commissioner, Tax Exempt & Government Entities
Internal Revenue Service
1111 Constitution Ave NW
Washington, DC 20224

Sent via Email

Dear Commissioner Killen:

We write to ask you to investigate potential tax compliance issues by Goldman Sachs' donor-advised funds.

In the past few months, each of our organizations has [expressed concerns directly](#) to Goldman Sachs' executive leadership [and board](#) about the contradiction between their statements supporting diversity, equity, and inclusion in their workforce, and their financial contributions to organizations working to make it unlawful for companies to advance diversity, equity and inclusion. In light of these conflicting statements, the National Institute for Workers' Rights has asked the SEC to investigate whether Goldman Sachs has made misleading statements to its investors.¹ In response to these concerns, Goldman Sachs made statements that call into question the tax-exempt status of one of its donor-advised funds, Goldman Sachs Gives—the donor-advised fund for Goldman Sachs employees—and therefore the legitimacy of the charitable tax deductions being taken by donors to the fund.

Specifically, Goldman Sachs disclaimed control over how their fund's money was to be distributed to other charitable organizations. Both NIWR and Color Of Change each attempted to cure this issue before reaching out to your office. Color Of Change, in a May 2024 meeting with President of Goldman Sachs Gives, Ashai Pompey, was told the company "cannot police people's personal leanings" in response to these concerns. NIWR sent a letter to the Goldman Sachs board that went unanswered. In their response to an Axios story about our concerns, a Goldman Sachs spokesperson said "we can't police the politics and ideology of our workforce."² The implication of these private and public

¹ Letter from National Institute of Workers' Rights to SEC Chair Gary Gensler (May 7, 2024), available at <https://niwr.org/2024/05/07/ltr-to-sec-goldman-sachs/>.

² Felix Salmon, Donor-Advised Funds' Identity Crisis, Axios, May 7, 2024.

statements was clear: the donor-employees decide what to do with the money, not Goldman Sachs.

That may be what Goldman Sachs wants both its donors and the public to believe. But it does not comply with the law governing tax-exempt organizations. The law is clear that for purposes of the tax code, a donor-advised fund is “owned and controlled” by a “sponsoring organization” like Goldman Sachs. 26 U.S.C. § 4966 (d)(2)(A)(ii). And yet, in saying that they “can’t police” the views and preferences of their donor-employees, Goldman Sachs is saying they can’t control where the donor-employees want to direct the money.

The law is equally clear about the role of the donors; they have “advisory privileges,” not decision-making authority. 26 U.S.C. § 4966 (d)(2)(A)(iii). Indeed, the proposed regulations governing donor-advised funds make this clear when defining the four circumstances sufficient to establish “advisory privileges”: (1) when the donor is allowed to provide “nonbinding recommendations”; (2) a written agreement explicitly saying “advisory privileges”; (3) a written document or marketing material indicating that a donor “may provide advice” on the distribution funds; and (4) the organization with the fund “generally solicits advice” from the donor on distribution.³ Again, the conclusion is clear: for a tax-exempt donor-advised fund, the donors advise, the company decides.

It is perhaps understandable that Goldman Sachs would want to disclaim responsibility from its own contributions to groups led by Stephen Miller and Edward Blum. In 2022, Goldman Sachs Gives provided a \$100,000 grant to a Blum-led organization, and \$25,000 each to Miller’s America First Legal and its affiliated organizations, the Center for Renewing America (under its original name, the Center for American Restoration) and the American Accountability Foundation.⁴ Together, these neo-segregationist-led organizations have filed a series of legal challenges aimed at deconstructing the laws and policies that allow corporations and higher education institutions to address issues of diversity, equity, and inclusion. Miller’s America First Legal filed a lawsuit against CBS over their efforts to make writers’ rooms more diverse and representative, and have sent letters to law schools across the country threatening to sue them if they do not end efforts to address historically discriminatory admissions practices.⁵ At the same time, Blum’s American Alliance for Equal Rights sued the Fearless Fund, which awards Black women who own small businesses grants, digital tools to help them grow their businesses, and mentorship opportunities, accusing them of racial discrimination for providing this service, using a

³ Taxes on Taxable Distributions From Donor Advised Funds Under Section 4966, 88 Fed. Reg. 77922 (proposed Nov. 14, 2023) (to be codified at 26 C.F.R. pt. 53)

⁴ “Goldman Sachs Charitable Gift Fund”, Instrumentl, <https://www.instrumentl.com/990-report/goldman-sachs-charitable-gift-fund>.

⁵ “Conservative-backed lawsuit takes aim at alleged diversity quotas in Hollywood,” The Guardian, March 4, 2024. <https://www.theguardian.com/tv-and-radio/2024/mar/04/diversity-lawsuit-trump-adviser-cbs-seal-team>; “Conservative legal group threatens to sue law schools over racial preferences,” Reuters, July 5, 2023 <https://www.reuters.com/legal/government/conservative-legal-group-threatens-sue-law-schools-over-racial-preferences-2023-07-05/>.

Reconstruction-era law meant to protect Black people from discrimination.⁶ Through their legal challenges, funded in part by Goldman Sachs' donor-advised fund, these neo-segregationists aim to undo decades of progress toward creating equal access to the work force and higher education for Black and brown people.

But in disclaiming responsibility from its own contributions, Goldman Sachs calls into question whether Goldman Sachs Gives should really be treated as tax-exempt. Given the increasing importance of donor-advised funds in funding organizations that seek to undermine fundamental values in our society, we hope that the IRS will investigate and address this question.

Sincerely,



Jason Solomon
Director, National Institute for Workers' Rights



Evan Feeney
Senior Director of Campaigns and Organizing, Color Of Change

Cc: Lisa Gomez, Assistant Secretary for Employee Benefits Security, Department of Labor

⁶ "Conservative activist behind US affirmative action cases sues venture capital fund," Reuters, August 2, 2023, <https://www.reuters.com/legal/conservative-activist-behind-us-affirmative-action-cases-sues-venture-capital-2023-08-02/>