



Smithsonian Institution

Guidelines for Handling Special Giving Sources

**Donor-Advised Funds
Foundations**

Individual Retirement Accounts (IRAs)

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Table of Contents

Introduction.....	3
Donor-Advised Funds (DAFs).....	3
Benefits	3
Credit and Recognition	4
Pledges	4
Documentation from the Sponsoring Organization	5
Foundations.....	6
Benefits	6
Credit and Recognition	6
Pledges	7
Documentation	7
Individual Retirement Accounts (IRAs)	8
Appendix A - Summary of Guidelines for Handling Special Giving Sources	9
Appendix B – Recommended Sample Letter for Donor Advisors	10
Appendix C - Frequently Asked Questions	11
Appendix D - Contact Information	14

Introduction

The following are guidelines to provide information needed when working with donations from donor-advised funds, foundations, and individual retirement accounts. Because the Internal Revenue Service (IRS) updates its guidance on the tax treatment of these types of contributions from time to time, please check the Advancement Portal on the SI PRISM site to ensure that you have the latest version of these guidelines.

Donor-Advised Funds (DAFs)

DAFs are increasingly popular philanthropic vehicles that raise some special tax issues. While the IRS has yet to issue guidance on some of the tax consequences of giving through DAFs, the following guidelines will be used to comply with current tax law. These guidelines may be revised in the future should the IRS issue guidance that differs from the information provided below.

DAFs are not independent charities. Instead, DAFs are *accounts* established by donors at a charity known as a “**sponsoring organization.**” Examples of sponsoring organizations include community foundations, Fidelity Charitable, and Schwab Charitable. In establishing a DAF, a donor relinquishes ownership and control of the assets contributed to the sponsoring organization but retains the right to advise the sponsoring organization on distributions from the DAF. As a practical matter, sponsoring organizations rarely disregard the advice of a “**donor advisor.**”

Individuals using DAFs receive a charitable deduction for the full amount of their contribution to the DAF’s sponsoring organization, and no additional deduction is available for a distribution from the DAF to a charity. Therefore, consistent with the tax rules, the Smithsonian will not send a donor advisor a tax receipt for a gift made from a DAF.

Benefits

The charitable deduction available for gifts to DAFs results in restrictions on what benefits and recognition a charity can offer to a donor advisor. Because the donor advisor has already received a full charitable deduction for the gift to the DAF sponsoring organization, the donor advisor may not receive “a more than incidental benefit” as a result of the distribution of funds by the DAF to a charity. This is because “valued benefits,” such as invitations to events featuring food and refreshments, reduce the amount of a charitable deduction, which the donor has already taken. Thus, a donor advisor may not receive any valued benefits because of a distribution from a DAF.

DAF funds may also not be used for the contribution portion of an event ticket or a membership with valued benefits, even if the donor advisor is “bifurcating” their payment by using personal funds to cover the value of the benefits. **This limitation is based on current IRS guidance, and sponsoring organizations generally require charities to follow this rule.**

Violations of the tax rules applicable to DAFs can result in the imposition of penalty taxes on the person advising or making a payment from a DAF and the parties receiving any benefit from that payment.

The Smithsonian may recognize donor advisors like it recognizes donors generally so long as valued benefits are not promised in return for a DAF distribution. Thus, for example, donor advisors may be invited to donor recognition events, so long as that invitation is not promised in return for DAF distribution. Please note that promises do not need to be in writing to run afoul of the tax rules, so all communications with donors about DAF distributions should be consistent with the standards described above.

Credit and Recognition

When recording DAF gifts, hard credit should be provided to the sponsoring organization. Soft credit should be provided to the individual donor advisor(s). Recognition for a DAF gift could be listed as “The Smith Family Fund” (the DAF name), “The Smith Family” (the donor advisor name) or “The Smith Family Fund at State Community Foundation” (the DAF name and sponsoring organization name.) When naming recognition for spaces, programs or positions may be offered for a DAF gift, please contact OA.

Pledges

A donor advisor does not have the authority to bind a sponsoring organization to a pledge or use DAF assets to fulfill a personal pledge. Based on current IRS guidance and the requirements of sponsoring organizations, a DAF may not be used to fulfill a pledge by a donor advisor for two reasons:

First, only the legal owner of assets may commit them in a pledge, and in the case of a DAF, the sponsoring organization is the owner of the assets. The Smithsonian cannot enter into a pledge agreement with an advisor, who no longer legally owns the assets.

Second, because a pledge creates a personal legal liability, and the use of DAF funds to relieve a donor advisor of that liability is currently considered to be a use of charitable funds for the personal benefit of the donor advisor. Therefore, in accordance with current IRS guidelines, the Smithsonian does not permit donor advisors to fulfill personal pledges with DAF funds.

When a donor advisor proposes to recommend a gift from a DAF, this recommendation should be documented with an Intent to Advise (ITA) letter instead of a gift agreement. Please contact OA for assistance. **It is extremely important to discuss with donors their interest in using DAF funds to fulfill a pledge before presenting the gift agreement. This will ensure that the appropriate form of documentation is used.**

There are rare instances when a DAF sponsoring organization may work with a donor advisor and enter into a pledge with a charity. In this case the gift agreement would be between the Smithsonian and the DAF sponsoring organization.

In some instances donors may not know in advance whether a pledge will be fulfilled with personal assets or by a DAF.

In these instances, the Office of Advancement should be contacted to review and approve the appropriate agreements and documents.

Documentation from the Sponsoring Organization

To ensure compliance with the tax rules, sponsoring organizations may send a “Grant Agreement” or letter asking the Smithsonian to certify that “no goods or services” are being provided to any individual as a result of a DAF distribution. These documents should be forwarded to OA Gift Registration for review and execution. If a contribution results in only insubstantial and low-cost benefits that do not need to be valued in a tax receipt, the Smithsonian may generally execute these forms.

Any forms that suggest that the Smithsonian cannot provide ANY benefits (including recognition) to a donor advisor or that raise other compliance concerns should be forwarded to OA for review, and the contribution should not be processed until that review is complete. In such cases, the donor advisor may not be eligible to receive any of the benefits otherwise associated with a gift, even if they are considered insubstantial for tax purposes. Compliance with the terms imposed by a sponsoring organization is important because a failure to meet those terms may cause the sponsoring organization to demand the return of the gift.

Foundations

These guidelines relate to foundations that are “private foundations” within the meaning of the tax law. A “private foundation” is a type of nonprofit organization that typically receives most of its support from one or a small number of individuals or companies.

Family foundations and **corporate foundations** are generally private foundations. Like DAFs, private foundations are subject to restrictions that prevent the use of funds for the benefit of the donors to the foundation, and any related parties such as family members and executives.

Benefits

There are some instances where a private foundation *may* be able to use certain benefits that the Smithsonian provides in return for gifts. The IRS has issued guidance providing that individuals may benefit from a private foundation’s gift when those benefits are reasonable and necessary to the performance of activities furthering the foundation’s purposes.

If a foundation supports a membership program, the member will be the foundation and not any individual associated with the foundation, and the benefits associated with that membership must be conveyed to the foundation and not to an individual personally.

A foundation may be able to use an invitation to an event it receives to enable a member of its board or staff to monitor how the foundation’s funds are being spent.

The determination of whether a private foundation may accept a benefit in return for a gift rests with the foundation. Therefore, foundations should always be provided with the option to decline benefits.

Please note that the IRS has specifically ruled against “bifurcated” gifts through which a private foundation is to cover the contribution portion of a ticketed event or membership, while an individual donor covers the value of the benefits provided. Bifurcation has been interpreted by the IRS as an act of self-dealing resulting in the application of penalty taxes.

When working with a **corporate foundation**, it is particularly important to confirm prior to finalizing a gift agreement that any benefits will be provided to the foundation rather than the corporation that established the foundation, and that the foundation is able to accept any valued benefits.

Credit and Recognition

A gift or a pledge from the foundation must be recorded to the foundation. Soft credit may be applied to a corporation establishing the foundation or to officers of a family foundation, but generally not to the corporation’s executives.

Pledges

As the legal owner of the assets, only the foundation is authorized to enter into a pledge committing the foundation's funds, and, as is the case with DAFs, private foundations may not fulfill personal pledges made by individuals associated with the foundation. The use of a private foundation's funds in such a manner would be an act of self-dealing subject to penalty taxes.

Therefore, it is important to ascertain a donor's intent to give through a family foundation in advance of executing a gift agreement to ensure that the agreement is entered into with the appropriate entity and is not in conflict with the tax rules. When in doubt, please contact the Office of Advancement.

Documentation

As with DAFs, private foundations may also send a "Grant Agreement" or letter asking the Smithsonian to certify that "no goods or services" are being provided to any related parties in return for a gift. These documents should be forwarded to OA Gift Registration for review and execution.

If the only benefits provided are insubstantial and low-cost benefits that do not need to be valued in a tax receipt, the Smithsonian may generally execute these forms.

Any forms that suggest that the Smithsonian cannot provide ANY benefits (including recognition) to any associated parties or that raise other compliance concerns should be forwarded to the OA Gift Registration for review, and the contribution should not be processed until that review is complete.

Please note that failure to comply with the terms imposed by a private foundation may require the return of gift funds to the private foundation.

Individual Retirement Accounts (IRAs)

Under current law, individuals who are 70 ½ or older may annually distribute up to \$100,000 from an IRA directly to a qualifying charity and exclude the distribution from their taxable income (a “**charitable rollover**” or a “**qualified charitable distribution**”).

Donors thus have two options for contributing from IRAs:

- 1) The donor may, if eligible to make a charitable rollover, exclude the entire distribution from their taxable income, in which case the donor is prohibited from receiving benefits that have fair market value.
- 2) The donor may otherwise elect to pay income tax on the amount distributed and claim an offsetting charitable deduction against their taxable income, in which case benefits with fair market value are allowed and must be reported on the gift receipt.

The Smithsonian is not able to differentiate between the two options unless it is specifically advised by the donor or the financial institution holding the IRA. As a result, when benefits are involved, the following language must be included in tax receipts for IRA distributions:

“If you made your contribution from your Individual Retirement Account (IRA), please note that your acceptance of goods and services in connection with your contribution may limit your ability to treat it as a qualified charitable distribution. Please consult your tax advisor. In that context, we affirm that the Smithsonian is a public charity, and your contribution was not transferred to either a donor advised fund or a supporting organization.”

When working with a donor on such contributions, it is important to recommend that the donor consult with a tax advisor if benefits with a fair market value are involved. IRA contributions may be received via a check issued by the financial institution holding the IRA or from the owner of the IRA if the financial institution has offered check writing privileges to the donor. In the case where the donor has check writing privileges, there may be IRA distribution requirements that require checks to be deposited by December 31st for the contribution to fall into that calendar year. In such cases, donors should ensure that the checks are sent with ample time to be received and deposited. Donors should be encouraged to contact their financial institutions or tax advisors regarding such requirements.

A donor may use an IRA distribution to fulfill a personal pledge because the donor is the legal owner of the assets in the IRA.

For guidance on the use of IRA contributions by membership programs and the treatment of associated benefits, please consult The Membership Programs Guidebook, found on the Advancement Portal on PRISM.

Appendix A - Summary of Guidelines for Handling Special Giving Sources

	Memberships*	Personal Pledges	Invitations to Events
DAFs	<ul style="list-style-type: none"> Allowed if benefits have no value under IRS rules Donors should have the option of joining through a DAF membership category or otherwise be notified that they may not receive benefits Donors may not use DAF funds to pay for the gift portion of a membership with valued benefits 	<ul style="list-style-type: none"> Not allowed Sponsoring organization may make and fulfill a pledge 	<ul style="list-style-type: none"> Allowed if the events have no value under IRS rules (see the Membership Programs Guidebook) Donors may <u>not</u> use DAF funds to pay for the “gift” portion of any ticket
IRAs	<ul style="list-style-type: none"> Allowed if IRA disclosure on the acceptance of benefits is included in the tax receipt.** Donors should be advised to consult their tax advisor if they indicate they plan to claim their contribution as a charitable rollover and they will be receiving valued benefits. 	Allowed	<ul style="list-style-type: none"> Allowed if IRA disclosure on the acceptance of benefits is included in the tax receipt.** Donors should be advised to consult their tax advisor if they indicate they plan to claim their contribution as a charitable rollover.
Private Foundations	<ul style="list-style-type: none"> Allowed if the member is the foundation Foundation should be offered the opportunity to decline benefits 	<ul style="list-style-type: none"> Not allowed Foundation itself may make and fulfill a pledge 	<ul style="list-style-type: none"> May be accepted by the foundation at its discretion Donors may <u>not</u> use foundation funds to pay for the “gift” portion of any ticket

*For additional details see the Membership Programs Guidebook

** Language is included in standard tax receipt issued by Gift Registration

Appendix B – Recommended Sample Letter for Donor Advisors

Explanation of the Limitation on Benefits. The following is a form of response to an inquiry from a donor advisor regarding their inability to receive benefits that have a value under the tax rules.

Dear *[Name]*

Thank you for your support of *[the Smithsonian/unit]* by advising a contribution to the *[name of membership program]*.

Consistent with IRS rules and the requirements imposed by many donor-advised fund sponsors, the Smithsonian does not provide individuals recommending DAF contributions with benefits that have a value for tax purposes. We encourage you to speak with *[name of sponsoring organization]* or your tax advisor regarding the potential tax consequences of your receipt of such benefits in connection with a distribution from your donor-advised fund.

Please know that the policy described above is not a reflection of your importance to us as a supporter of *[the Smithsonian/unit]*. We deeply value your support, and look forward to maintaining your engagement with *[the Smithsonian/unit]* in the years to come.

Thank you again for your support.

Thank You Letters to Donor Advisors. Although the Smithsonian does not send donor advisors a tax receipt, their support may be acknowledged in a thank you letter that does not imply that the donor advisor was the donor of the assets contributed. Such thank you letters do not replace a substantiation letter when required. A sample thank you letter to a donor advisor appears below:

Dear *[Name]*

We recently received a contribution from the *[name of donor-advised fund]* at *[name of sponsoring organization]* in the amount of \$____, made at your recommendation. The contribution will be used to support the *[Smithsonian/unit/project]*. It is our pleasure to thank you for your support.

This letter confirms that no goods or services have been provided to you in connection with the contribution.

Thank you again. We are very grateful for your generous support of and interest in *[the Smithsonian/unit]*.

Appendix C - Frequently Asked Questions

1. Can my donor make a pledge to my unit if he/she intends to fulfill the pledge with a DAF?

No. In accordance with IRS guidelines, the Smithsonian does not permit donor advisors to fulfill personal pledges with DAF funds. It is extremely important to discuss with donors their interest in using DAF funds to fulfill a pledge *before* presenting the gift agreement. In an instance where the donor does not know in advance whether a pledge will be fulfilled with personal assets or by a DAF, the Office of Advancement and the Office of General Counsel should be contacted to review and approve the appropriate agreements and documents.

ACTION: *Proposed gifts from DAFs should be documented with an Intent to Advise (ITA) letter instead of a gift agreement. Contact OA for more information.*

2. Can my donor make a pledge to my unit if he/she intends to fulfill the pledge through a foundation?

Yes, but only if the pledge is made by the foundation. As is the case with DAFs, private foundations may not fulfill personal pledges made by individuals associated with the foundation. It is extremely important to ascertain a donor's intent to give through a foundation in advance of executing a gift agreement to ensure that the agreement is entered into with the proper entity.

ACTION: *Execute a gift agreement for the pledge with the foundation.*

3. Can my donor use his/her DAF or foundation to pay for an existing pledge?

No. A DAF's assets may not be used to fulfill a pledge by a donor advisor. Using DAF funds to relieve a donor of the personal legal liability of a pledge is considered to be a use of charitable funds for the personal benefit of the advisor and is not allowed under current IRS guidance. Like DAFs, private foundations are subject to a regime of penalty taxes that prevent the use of their funds for the benefit of their donors and related parties.

ACTION: *To avoid situations in which a contribution to the Smithsonian would be considered in violation of the tax rules, advancement offices should proactively alert donors that SI does not accept DAF payments for personal pledges. Allow the donor to determine the best course of action. It is recommended that the advancement officer contacts the donor directly when a DAF gift is received for a personal pledge.*

4. Can my donor pay for a membership to my unit with a DAF?

Not if the membership includes benefits that are valued for tax purposes. The donor advisor has already received a full charitable deduction for his/her gift to the DAF sponsoring organization and may not receive "a more than incidental benefit" as a result of the distribution of funds by the DAF to a charity.

ACTION: *To avoid situations in which a contribution to the Smithsonian would be considered in violation of the tax rules, membership programs should proactively alert current and potential members of their inability to receive many of the benefits associated with membership if they give through a DAF. Consult the Membership Programs Guidebook for details.*

5. Can a foundation pay for a membership to my unit?

Yes. The member will be the foundation and not any individual associated with the foundation, and the benefits associated with that membership must be conveyed to the foundation and not to an individual personally. The determination of whether a private foundation may accept a benefit in return for a gift rests with the foundation.

ACTION: *Payments may be recorded with quid pro quo, and benefits should be issued in the name of the foundation. Foundations should always be provided with the option to decline benefits on the membership form. Consult the Membership Programs Guidebook for more details.*

6. What special consideration do I need to give to gifts from a family foundation?

ACTION: *Generally, there are no changes to accepting gifts from family foundations. They may be considered outright gifts or payments on the family foundation's pledge. Family foundations may not fulfill personal pledges made by individuals associated with the foundation. If benefits are being provided for the gift, foundations should always be provided with the option to decline benefits.*

7. Can my donor use a DAF to pay for the charitable portion of a membership or fundraising event and personally pay for the value of the benefits?

No. This limitation is based on current IRS guidance, and sponsoring organizations generally require charities to follow this rule. Violations of the tax rules applicable to DAFs can result in the imposition of penalty taxes on the person advising or making a payment from a DAF and the parties receiving any benefit from that payment.

ACTION: *Ask your donor to use personal funds to pay for a membership or fundraising event if they intend to use the benefits offered or attend the event. A donor may use a DAF to make an outright gift and not receive benefits or attend an event.*

8. Can my donor use a foundation's funds to pay for the charitable portion of a membership and personally pay for the value of the benefits?

No. The IRS has specifically ruled that this type of "bifurcated" giving by a private foundation is an act of self-dealing resulting in the application of penalty taxes.

ACTION: *Ask your donor to use personal funds to pay for a membership or fundraising event if they intend to use the benefits offered or attend the event. Foundations may pay entirely for both the charitable and benefits portions, but the foundation is then treated as the member (see above guidance) and only qualifying individuals are eligible to attend a fundraising event.*

9. What should I do if I receive split payments for a membership or a fundraising event?

ACTION: *If the payments relate to a DAF or private foundation, the unit advancement professional should contact the donor regarding alternate arrangements. If the split payments are from an IRA and an individual account, the payments may be processed, with the value of any benefits assigned to the individual payment. If the IRA donor has indicated that they want their contribution to be a "charitable rollover" or a "qualified charitable distribution," they should be advised to consult their tax advisor.*

10. What language should my gala/event invitation include pertaining to DAFs and foundations?

ACTION: *Please use suggested language on all invitations, “Consistent with current IRS regulations, gala tickets may not be purchased through donor-advised funds; please consult your DAF sponsoring organization regarding the limitations on using DAF distributions for fundraising events. Private foundations should consult their tax advisors to ensure their purchase of tickets is consistent with regulations applicable to those organizations.” If this recommended statement is too long for printed invitations, the following, shorter version may be used: “Please note that tickets may not be purchased through donor-advised funds. Private foundations should consult their tax advisors to ensure their purchase of tickets is consistent with applicable regulations.”*

11. How will donors who pay through DAFs be recognized? What information should I supply for soft credit?

ACTION: *DAF sponsoring organizations are always recorded as the hard credit donor. Soft credit may be provided to the individual donor advisor(s). Recognition for a DAF gift could be listed as “The Smith Family Fund,” “The Smith Family” or “The Smith Family Fund at State Community Foundation.” Please contact OA when there is naming recognition being given for spaces, programs or positions.*

12. How do I get help for my specific situation quickly?

ACTION: *Send your questions to [REDACTED] with the subject line: Gift Acceptance. Your questions will be routed to the appropriate OA staff for resolution.*

Appendix D - Contact Information

Questions not addressed here should be directed to the Office of Advancement (OA) and the Office of General Counsel (OGC).

[Redacted contact information]

[Redacted contact information]