

Who Can Make a Pledge – And Who Can Pay It Off?
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In response to growing debate within institutions – and in some cases between an institution and their donor – the following information is provided as a guide. **The ultimate determination regarding appropriate actions within an institution always rests with the lawyer and auditor tasked with ensuring compliance with legal and financial regulations for that institution.**

A **pledge**, for purposes of this paper, is an obligation by a donor to a donee. The pledge must meet the criteria for “contributions” in the form of **unconditional promises to give** as outlined by the Financial Accounting Standards Board (FASB, who first established the standard – the Government Accounting Standards Board, or GASB, has followed with similar criteria).

The definition of a promise to give, as outlined on page 30 of FASB Statement of Financial Accounting Standards No. 116, is “a written or oral agreement to contribute cash or other assets to another entity. **A promise carries rights and obligations** – the recipient of a promise to give has a right to expect that the promised assets will be transferred in the future, and **the maker has a social and moral obligation, and generally a legal obligation, to make a promised transfer.**” [emphasis added] Once such a promise is made, to the extent it may be recorded as an asset by the nonprofit, the maker of the promise assumes an offsetting liability. Page 31 of the above document – quoting from Concept Statement 6 – states that “liabilities are probable future sacrifices of economic benefits arising from present obligations of a particular entity to transfer assets or provide services to other entities in the future as a result of past transactions or events.”

Thus, a recordable/enforceable pledge or promise to give may only be made by the entity assuming liability and responsibility for satisfaction of that commitment. The maker has no authority to so obligate another entity over whom they have no legal or financial control. They assume full and total responsibility for satisfaction of the obligation.

Amplifying this, page 40 of the 3rd edition of the CASE Management & Reporting Standards states: “A pledge can be made only by the entity exercising legal control over the assets to be given. Therefore, an individual cannot make a pledge that includes anticipated matching contributions from an employer or some other source. Nor can an individual commit funds that may be applied for through a donor-advised fund or community foundation . . . An enforceable, countable pledge includes only those funds that will be given by that legal entity.”

Regarding the above FASB quote pertaining to “a written or oral agreement,” there are wide interpretations among auditing firms stipulating to the form of documentation necessary to consider the pledge “enforceable.” Therefore your own auditor typically makes this determination for each individual institution. As stated in the 3rd edition of the CASE M&RS:

“Pledges of a donor’s assets should be documented, committing to a specific dollar amount that will be paid according to a fixed time schedule. Your institution’s auditing firm will suggest what form the written commitment take for booking purposes, including whether email is an acceptable format. It is advisable that the donor stipulate to the amount, purpose, and payment period in a written document to the nonprofit

organization. Some auditors, however, will acknowledge a letter from the institution to the donor, outlining the same details based on a conversation held with the donor, as a bona-fide commitment from the donor. It is advisable, however, that such a letter require the signature of the donor with a copy returned to the institution. Again, seek guidance from your auditor.”

So an entity may make a binding pledge, or promise to give, only if they are willing to assume full personal responsibility and liability for the entire amount. They generally cannot encumber another entity – they are literally “on the hook” for the entire amount. But does this mean that another entity cannot assist the maker of the pledge or promise towards satisfaction of that commitment? Much depends on the relationship between maker and payer – and much also rests on the legal nature (tax classification) of the entity rendering a payment.

Clearly it is not legally possible for certain categories of foundations or charities, including donor-advised funds, to satisfy another entity’s pledge or promise to give. According to Michael D. Finley, IRS Chief of Branch 3: Income Tax and Accounting, in a private letter ruling dated 6/21/2000:

“A charitable pledge is an obligation of the donor to give money or property to a charity at a future time. Where a charity (including a charitable organization of which a donor advised fund is treated as a component part) relieves a donor of a substantial obligation by satisfying the donor’s pledge, the charity is providing the donor with an impermissible benefit. Accordingly, a donor’s charitable pledge may not be fulfilled by a single payment or a series of payments from the charity.”

Further commentary is provided by an attorney for a large, prominent, private university:

“Although I will not provide an opinion regarding this matter, it would appear that if a donor has a pledge on the books, one way to proceed might be for you to voluntarily cancel the pledge before the gift from the conduit Foundation is made [and without any legally binding agreement tying the cancellation to the Foundation gift]. This could be very risky, however, and the donor is assuming all of the risk. The only safe procedure is to make sure donors understand that a pledge may not be satisfied except by a direct gift. The conduit foundations [e.g. Fidelity, Community Foundations] were established as and intended to be the donee charity and therefore there can be no linkage.”

The preponderance of corporations offering employee matching gift programs clearly state in their guidelines, and frequently in the match application form, that **their** contribution may not be used to satisfy a personal obligation of their employee. In fact, many such programs require that **their** contribution go towards a specific fund or program and not necessarily where their employee made the original gift.

There are some instances, however, where someone other than the maker can make a payment toward another entity’s pledge. A common example is a spouse and other family member. There may also be times when the individual owns a business or is one of its principals and causes a gift to be made toward that pledge. However, given some of the potential tax issues revolving around these situations, it is **always** best to have it stated clearly in writing by the payer that the payment may indeed be applied to that other entity’s pledge.