

DOCUMENT

This document is intended to address the frequently asked questions Foundation Compliance receives regularly with the intention of guiding and advising our campus partners/advancement staff on procedures with which we answer these types of questions/scenarios. Our goal is always to honor donor intent while working with the University to accommodate spending and use of these funds.

SUBMITTING A QUESTION/REQUEST TO FOUNDATION COMPLIANCE

Any questions, concerns or action items may be sent to compliance@cufund.org. Please include with your request the fund number, fund title, and any details/background that would help us answer your question.

For questions received, Foundation Compliance will first review the gift documentation to determine how the original donor intent is to be interpreted, check if the donor is alive, fund balance, and who has given to the fund. The below provides a general insight of how we assess the situation and provide you with guidance on next steps.

PURPOSE CHANGES

Q: We are having trouble spending from this fund due to:

a.) Purpose being too restrictive (can't fundraise, hard to spend)

A: A change to fund's purpose without donor consent is very serious and there must be good reason to do so. If we agree that the purpose of the fund as written, in lieu of present day circumstances, does make it too restrictive then we generally proceed with the following steps:

- If we have a gift agreement and the donor is living, we will suggest an Advancement to reach out to the donor for an amendment to the agreement. If other details are not in the gift agreement, such as a change in School/Department name, or is lacking important policy or administrative details, we may suggest doing an Amended & Restated agreement.
- If we have a gift agreement and the donor is no longer living, we might be able to invoke the Alternative Use Clause if possible. If the fund is over 20 years old and under \$100,000 we might to follow UPMIFA by sending letter to the Attorney General stating purpose change reasons.

b.) School/Department no longer offers this program/major/internship/area of study, etc.



A: Foundation Compliance may ask the following questions:

- In looking at the gift agreement, how is the program/major/internship, etc. being referred to?
- Is the gift agreement listing these details as a preference or as a hard requirement?
- Are the changes going to make awarding the funds impossible?

If the agreement is listing these details as a preference, but the general spirit of the gift can still be accomplished, then a Memo to file may suffice. If the change greatly alters the ability to use the fund, then a purpose change may be needed, in this case see above for listed procedures.

Q: We are no longer using this fund and do not expect to receive additional gifts for this purpose, can this fund be closed?

A: This depends on the type of fund and we will want a reason why this fund can no longer be used.

- If fund in questions is a current fund, we will ask that remaining funds (if any) will be spent down or any funds left will be transferred to another current with a similar purpose.
- If fund in question is a Quasi Endowment, then research will need to be conducted, but requests to liquidate principal may be handed to Foundation Accounting.
- If fund is a Pure Endowment, and HGV has not met the minimum or expected to reach minimum, it will depend on the language in the gift agreement what next steps can be taken. Generally, Advancement will have reached out to living donor to get confirmation that a commitment will not be fulfilled or other reasons for this fund not reaching endowment level. The Foundation's Policy will be followed which includes the possibility of converting the fund to a current fund or transferring current fund with a similar purpose and closed.

Q: True or False: The Foundation should be able to advice on the purpose/fund changes of Custodial funds because we are investing the Custodial funds.

- A: False, custodial fund are gift funds established by the University, the donor is the University and therefore has the final decision on purpose.

Q: Is this expense allowable for this fund even though it is not listed in the purpose language?

- A: Foundation Compliance’s role is not to approve expenses, but to ensure donor intent is followed. Fund managers will have to adhere to campus spending policies first and foremost. While Compliance is happy to assist with the interpretation with what could be deemed appropriate for a purpose outline in the agreement; eg. research expense, it will be up to the campus Controller’s Office to ultimately approve expenses. As with every request, we will review all documents related to fund and provided guidance on the interpretation of the stated purpose. This is very much a case by case analysis, but we are always happy to look and see what is possible. If expenditures are totally out of scope we will help identify a fund that is more appropriate.

Q: Can a donor be involved in selecting a scholarship recipient?

- A: In order for a donor to take a tax deduction, s/he must make a “completed gift” to the Foundation/University, and cede all control as to how to use the contribution (subject to the scholarship award criteria in the fund agreement) to the Foundation/University. Allowing the donor to select the scholarship recipient, or having a requirement to seek donor approval for scholarship recipients violates the completed gift rule.

GRANT CHANGES

Q: We received a grant and have remaining funds that we would like to use for another purpose, can we do this?

- A: Grants usually come with agreements when they are accepted. Compliance will review the grant agreement to see what terms the Grantor has listed for unspent funds or for other requirements. The Grantor may need to be contacted to notify them of the change that has occurred. Compliance would then need the Grantor’s written approval before allowing funds to be used outside of the original purpose.

Q: We received a grant for a specific purpose (research, acquiring a collection) that we are no longer able to utilize, what do we do with the remaining funds?

- A: If the grant agreement includes a claw back clause unused funds will need to be returned to the funder. Generally, the first step is for the unit to contact the funder and discuss what they would like to do.

Q: A professor/doctor received a grant that established this fund. They are now leaving the University, can they take the balance of the fund with them when they leave?

- A: No, the gift funds belong to the University and not the individual, therefore funds will stay at the University even when said individual leaves. In very rare cases an exception is made, for example when a grant is given for specific research and this research is only done by this individual, and it may be allowed to be transferred to another institution with donor approval. The
- Reasoning: if the research cannot be conducted once that person leaves by anybody else at CU it would go against donor intent to keep the funds if that purpose cannot be fulfilled.

CODING CHANGES

Q: The fund is listed under a certain School/Institution/Department, but it should actually be under a different School/Institution/Department. Can we change this?

A: Any such requests need to be submitted by the fund manager with the explanation of why such a change is needed. If fund managers also need to change, new fund manager needs to also be included on request.

- If the administrative change does not go against donor intent, the request will be approved without further documentation needed.
- If a fund is moving within the same College/School a Memo to file is all that is needed to document the change.
- If a fund is moving to an entirely different College/School/Institution an MOU will be created and both Deans will sign acknowledging the change.

We will expect that all discussion/conversations with all affected parties will have already happened and that everyone is on board with changes before we proceed with any review or approvals on the Foundation side.

Q: Our School/Department/Division/Institution is changing its name, therefore all related fund title/purpose languages need to be updated. How can we get this updated?

A: If change does not go against donor intent, the request will be approved. Foundation Compliance will create a Memo to file to document change and make necessary system updates on the Foundation side. Foundation Compliance will also communicate with the campus Controller's Office.

OTHER CHANGES

Q: My donors got divorced, can the husband remove the wife's name from the fund?

A: A fund name may be modified with approval from all donors of the original agreement.

Q: A unit is interesting in collecting donations to then donate to another organization. Can we accommodate this?

A: No, once funds are given to CU, they cannot be donated to another organization. Donations should be sent directly to the intended organization directly.

FACULTY GIVING**Q: Can a faculty member performing research donate to a fund befitting their research?**

A: As long as the fund is to support only research (as opposed to their own salary) we see the gift as research benefiting the greater good and not the individual directly, and therefore is philanthropic in nature.

Can they also be the fund manager?

A: University policy needs to be followed, generally a second fund manager is add to the fund.

FUND TRANSFERS**Q: True or False: If a donor gives to a Department's general scholarship fund they are giving to any of the scholarship needs of that department. Therefore, the department can move money from a general scholarship fund into a more restricted scholarship fund (more scholarship criteria) without donor consent.**

A: False, a donor has given to this gift to be spent from this fund. This is not an invitation from the donor to allow the department/unit to move funds into whatever they want.

Q: Can gifts be moved from a current use fund into an existing endowment?

A: Yes, with proper donor approval/direction as only a donor can permanently restrict funds.

- Gifts given to a multi-donor fund older than 3 years may not be moved (see Current Fund Policy)
- Written approval from the donor (email, letter, etc.) will be needed to place a gift into an endowment. Notes written in contact reports are not considered sufficient documentation.
- Principal/program managers need to be consulted to ensure remaining funds are sufficient to carry out purpose of the original fund.



- It is Advancement's responsibility to communicate to the donor that once a gift is placed into a different allocation, the purpose will be guided by the corresponding gift agreement. If the signor of the agreement decides to change the purpose of that fund, there is no obligation to inform other donors to the fund.

Q: Can gifts be moved from a current use fund to establish a new endowment?

A: Possibly, but not without donor approval/direction, as only a donor can permanently restrict funds.

- Gifts given to a multi-donor fund older than 3 years may not be moved (see Current Fund Policy)
- A new (and fully executed) endowment agreement will be required (listing applicable gifts as funding source), unless other acceptable documentation is provided. Notes written in contact reports are not considered sufficient documentation.
- Principal/program managers need to sign off to ensure remaining funds are sufficient to carry out purpose of fund.

Q: Can a donor take their gift out of the principal of their endowment to establish a new endowment? Or current fund?

A: Possibly, but not without proper documentation.

- We would need a very compelling reason to do this.
- As endowment minimums and yearly distribution amounts for the original endowment will be impacted, the principal/program manager of the original endowment needs to be notified.

Q: Can multiple current funds be combined to meet the minimum to create a new endowment?

A: Not without donor approval and proper documentation, including a new endowment agreement. See above.

TRANSFERS BETWEEN UNIVERSITY ST AND FOUNDATION ALLOCATION

Q: Can funds from a University speedtype be moved to a gift fund on the Foundation side (endowment (principal, distribution) or current fund)?

A: Any utilization of university funds require CU System/legal approval via a Regent Action or Presidential Action Memo.

Q: Can funds from a University speedtype be used as matching funds?

A: Any utilization of university funds require CU System/legal approval via a Regent Action or Presidential Action Memo. Any match needs to be clearly stated in a gift agreement.

MATCHING PROGRAMS

Q: What gift funds held at the Foundation may be used to offer a University/Dean's/Chancellor's/SoM "match" (financial incentive to give) to a donor to establish an endowment or current use fund?

A: Generally, only discretionary funds held at the Foundation (e.g. a Dean's Fund) may be used a source for "matching" funds and the gift has to be contingent on the match.

- Reasoning: Discretionary funds are considered to be available to the University/Dean/Chancellor at their discretion, so if a match is considered to be their highest priority then that is an acceptable usage, including permanently restricting current use gifts.
- Allocations established by and/or named after a specific donor cannot be used.
 - If the named allocations has the same purpose, we will question as to why a new allocation is needed.
- Allocations established for a different purpose cannot be used.
- Gifts already received are not eligible for a match.
- Proper gift documentation is required and needs to include language that makes it clear that the donor's gift is motivated by the match, the matching details and allocation number of the allocation that is being used for the match.

DISTRIBUTIONS

Q: Can a principal/program manager request to move funds from the distribution account to a current fund account or speedtype?

A: No. Distributions, while technically sitting in a separate account, are considered a part of an endowment and therefore can only be used for that endowment's purpose.

Q: Can a principal/program manager request to move a balance of a current fund into a distribution fund?

A: No. Distributions, while technically sitting in a separate account, are considered a part of an endowment and therefore can only be used for that endowment's purpose.

What if the purposes are the same?

A: We still want to respect the donor who gave to the current fund gave to that fund specifically and did not place their in an endowment.

Q: Can a principal/program manager request to move funds from a distribution account to a different endowment's principal or distribution account?

A: No. Distributions, while technically sitting in a separate account, are considered a part of an endowment and therefore can only be used for that endowment's purpose. In addition, as only a donor can permanently restrict funds, a fund manager is not in the position to make such request.

Q: How about if a donor requests such move?

A: Generally no. Distributions are considered out of the Donor's control and therefore cannot be directed by the donor. As stated above, distributions exist solely to be used for the linked endowment's purpose.

Q: Can a donor give directly to the distribution fund of their endowment for immediate/additional support for the purpose?

A: Yes. All that is needed is clear direction from the donor (e.g. on the check, email, letter). Notes written in contact reports are not considered sufficient documentation.

Q: Can a donor give directly to the distribution fund of somebody else's endowment?

A: No. We generally do not place gifts of donors who did not set up the endowment into the corresponding distribution account.

- Reasoning: Distribution accounts are not and should not be treated the same as current use funds. They are part of an endowment, which is governed by an agreement, signed by a specific donor, and are only in existence for that endowment's specific purpose.
- In addition, adding random gifts to the distribution account will make the annual ESR or any utilization reports from the unit difficult to understand for the endowment "owner".
- Exception: if the other donor is a family member or otherwise related and we can reasonably assume that the original donor would have knowledge of who was adding what to the distribution account. Be aware that the receipt will not state that the receiving allocation is actually a distribution fund. This can cause confusion.

Q: We received one gift that happens to have the exact (or similar) purpose as an existing endowment. Instead of setting up a new current fund for this one gift, can we place it into the endowment's distribution account?

A: No – see above.

- Exception: Advancement may choose to obtain written consent from the endowment "owner" (email, letter), to add the gift. Notes written in contact reports are not considered sufficient documentation.

Q: There is a large balance in the distribution account and the Department cannot fulfill the purpose at this time (can't fill Chair, etc.), what are our options?

A: The principal/program manager may submit the applicable form to Foundation Accounting, requesting to either: a) skip/pause distributions for an upcoming fiscal year (preferable) OR b) return all or some distributions already made back to principal (one time)

- Reasoning: Skipping a distribution is a prudent and therefore acceptable measure as it allows a balance to be spent down while the endowment continues to grow (pending market performance), instead of growing the cash balance in the distribution account.
- Following donor intent includes the timely spending of a gift, so the above options require an understanding of why funds cannot be spent right now as well as a spending plan to ensure donor intent is being honored. Simply not spending to have a rainy day fund is not an acceptable reason.
- The request is valid for one year. If an extension is needed, a new request will need to be submitted.
- Donor approval is not required for either, but as both of these scenarios will affect the numbers on the corresponding ESR, we recommend that Advancement notify the donor each time a request to skip or return distributions has been made.

Q: What is the difference between pausing distributions and returning distributions back to principal?

A: Pausing distributions means skipping the regularly scheduled distribution for the next fiscal year (July 1) while returning distributions to principal means placing a portion of the available balance in the distribution account into the endowment's principal account.

FUND PURPOSE OR TITLE CHANGES

Q: Can a donor request to change the purpose and /or title of their fund (endowment or current)?

A: Yes. Depending on the type or number of changes, formal documentation may be required, most likely an amendment or amended and restated agreement, but Compliance might accept an email or letter. Notes written in contact reports are not considered sufficient documentation.

Q: Can a principal/program manager request to change the purpose of a current fund with multiple donors?

A: Probably, but every case is different and will need to be reviewed by Foundation Compliance.

- Compliance will particularly review the following:
 - What is the type of change?
 - What is the reason for the change?
 - What documentation do we have?
 - If we have an agreement, are the signors alive?
 - What is the allocation balance?
 - When was the last gift received?
 - How old is the allocation?
 - Has the fund been utilized?
- Depending on the level and type of change requested as well as existing documentation (agreement/no agreement), Compliance might require that all donors to the fund be notified of the change or that written approval is needed.
- If the purpose becomes impossible or impractical (e.g. a program is no longer active) we may be able to invoke the Alternate Use Clause. CUF Compliance will review and advise.

Q: Can a principal/program manager request to change the purpose of a current fund with a single donor?

- A: Yes. Generally, Compliance will ask that Advancement contact the donor to either request the change or provide written approval for the change. Depending on the change request and if a gift agreement exists, an amendment may be required. Also see above.

Q: Can a principal/program manager request to change the purpose of an endowment?

- A: No, unless we have proper documentation from the "owner" (the signor(s)) of the endowment agreement.
 - Depending on the type or number of changes, formal documentation may be required, most likely an amendment or amended and restated agreement or MOU.

Q: Can a family member request to change the purpose of a current or endowed fund?

A: No, just being related to a donor does not mean you can request a change to a fund's purpose or title, unless clearly stated in the gift instrument or existing documentation. Notes written in contact reports are not considered sufficient documentation.

- Reasoning: Only signors of gift agreements can amend the terms, including titles, unless otherwise stated in the documentation.
- If there are multiple signors and if one party is deceased, generally no change can be made.
- Nevertheless, Compliance will review each request and consider the type and significance of the requested change to determine if and what may be changed.
- If the purpose has become impossible or impractical (e.g. a program is no longer active) we may be able to invoke the Alternate Use Clause. CUF Compliance will review and advise.

Q: Can a family member request to change a fund title? E.g. husband established a memorial fund in his wife's name. After his passing, children would like to add his name to the mother's memorial fund.

A: Generally, family members do not have a legal right to make changes, including adding/subtracting a name from a title.

- However, adding a name generally is allowed, while removing a name is not.
- Reasoning: removing someone's name is a significant change that would not be allowed without proper documentation and unless the family members are legally able to amend an agreement, this is not allowed.
- A letter or email from the children stating their desire for the name change is required. Notes written in contact reports are not considered sufficient documentation.
- Advancement should work with the principal/program manager to make the request.

PROCESS WORK FLOW

