

# Philanthropy and the Professional Advisor

By  
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Janet Nava Bandera discusses the primary charitable giving methods and why this information is important to your clients.

## Trends in Giving

Because America fosters diversity, it is logical that our philanthropists come in a variety of shapes, sizes and relative net worth. It stands to reason, then, that there is no “typical” American philanthropist.<sup>1</sup> Charitable planning has evolved into an art, rather than a science. It is the process of helping people paint a complete picture that includes estate, tax and financial planning as well as their philanthropic hopes and dreams.<sup>2</sup>

In spite of a recession, charitable contributions in 2001 stayed above two percent of gross domestic product (GDP). This is comparable to the economic boom years in the late 1990s, when giving as a share of GDP rose to levels not seen since 1973. Total charitable donations in the United States totaled \$210.89 billion in 2000 and \$212 billion in 2001, according to the American Association of Fundraising Counsel in their annual report, *Giving USA*.<sup>3</sup> Of this, gifts made to relief and recovery after September 11 came to slightly less than one percent of the total estimated \$212 billion in contributions.

“Americans’ commitment to philanthropy remained strong even in the face of downward economic pressures. The \$212 billion total is the highest level of giving ever reported. Even adjusted for inflation, the total is the second highest on record. Once again sustaining a string of increases each year since 1955 except for 1987,” according to John J. Glier, chair of the American Association of Fundraising Counsel (AAFRC).<sup>4</sup>

But despite these dollar amounts, planned giving has lagged behind so-called “check-book giving.” In a survey by Giving Capital, a developer of charitable investment and giving programs for financial services companies, only 27.3 percent of survey participants had made a planned gift. Bequest

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giving is estimated at \$16.33 billion for 2001. This is a drop of 4.5 percent (a decrease of 7.1 percent adjusted for inflation). Bequest gifts made up only 7.7 percent of total giving in 2001.

## The Advisor's Role

Many advisors have the access and opportunity to influence the way their clients think about, use and allocate their wealth. The estate planner working on a will, the financial advisor sorting through investment strategies and the family business advisor helping a family prepare for succession has multiple reasons to raise the subject of philanthropy with their clients.<sup>5</sup>

Typically, however, many professional advisors are reluctant to discuss philanthropy with their clients. This reluctance comes from the thought that such conversations are unprofessional or unethical or that it is simply not the advisor's role.

### Top 10 Reasons Why You Should Discuss Philanthropy with Your Clients

1. It's good for society, it's good for your clients, it's good for your business, and it's good for you.
2. You'd be surprised how many of your clients are searching for a way to give back to society, to memorialize a loved one or simply to do good.
3. Discussing philanthropy with your clients can be done unobtrusively, in a way that respects their privacy, values and autonomy.
4. It expands the menu of services available to your clients, thereby increasing their level of satisfaction with you and your services.
5. It adds to your areas of expertise as a professional advisor.

6. It increases the potential for new referrals and thus opens the door to many new clients.
7. It marries your chosen profession with your desire to do something good for the world.
8. It helps address important social needs and helps make your community a healthier, more vibrant place to live—a real legacy for future generations.
9. It puts you in touch with a supportive network of new colleagues who are willing to share their time and expertise.
10. It's easy to do ...<sup>6</sup>

## Methods of Charitable Giving

In a survey conducted by The Philanthropic Initiative, Inc., over half of advisors interviewed reported that they do not discuss charitable or social values with clients or help them develop a philanthropic mission. Most advisors want more and better materials, templates and resources to counsel clients about philanthropic options, but perceive that methods and materials are difficult to find.<sup>7</sup>

Similarly, donors say they want advisors to provide information to equip them to create cohesive giving programs, do real due diligence on potential donees and evaluate the impact of their gifts. Many feel that their advisors lack the tools and comfort level to assist them.<sup>8</sup>

The following are many of the primary charitable giving methods. Advantages, disadvantages and key points of comparison are identified as well as resources for finding more information.

### Donor Advised Funds

A donor advised fund (DAF) is a fund managed by a third party that

has qualified as a public charity. Through a written agreement with the charity, a donor creates a specially named fund to which contributions are made. Depending on the terms and conditions of the agreement, the fund can be a permanent endowment from which the principal is not distributed or a provisional fund that may distribute principal. The terms of the agreement provide the donor or others with the privilege of making nonbinding recommendations regarding charitable distributions that the charity makes from the fund.<sup>9</sup>

A donor advised fund offers donors a way to remain deeply involved in determining how to distribute their wealth to operating charities without the annual tax on investment income, minimum annual payout, limits on business holdings and other restrictions that apply to a private foundation. Contributions to a donor advised fund benefit from the more generous annual limitations on deductibility that apply to contributions to public charities. Furthermore, the public charity that holds the donor advised fund takes responsibility for all administration, including filing of all annual returns and preparing financial statements. The public charity typically charges an administrative fee for these services calibrated to the size of the fund. Professional staff at the public charity is available to help donors pursue their individual charitable interests and identify charities that can use grants in efficient and effective ways.<sup>10</sup>

The principal disadvantage of setting up a donor advised fund boils down to control. With a donor advised fund, final authority for grants and investments is reposed in the board of the public

charity that holds the fund, and the board technically has the power to override any recommendation the donor might offer. In practice, this rarely happens, but donors who care about retaining full control should think carefully before pursuing this option.<sup>11</sup>

There are many DAFs available within the following general categories.

**Financial Services Company Gift Funds.** Many financial services companies sponsor donor

delivered by check or wire only. It does not accept contributions of real estate, fine art or property.<sup>14</sup>

**Organizational Donor Advised Funds.** Many DAFs are offered through a charitable organization that is not affiliated with a financial services company. These organizations typically contract with outside financial advisors including the donor's own advisors in some cases. The organization may be dedicated to one cause, such as the Nature Conservancy, or a community organization such as the Rotary Foundation.

One such fund is the Global Gift Fund (GGF).<sup>15</sup> The GGF is a service of the Million Dollar Round Table

(MDRT) Foundation, an association of financial professionals. Just as with all other DAFs, through this program, individuals can establish their own gift fund and the foundation will assist them in fulfilling their charitable goals.

**Financial Management by the Donor's Advisor.** Some funds such as the Global Gift Fund allow the donor's advisors to maintain a role in the investment of funds. Typically, the advisors must be Registered Representatives or Registered Investment Advisors. Depending upon the organization, there are various requirements from simply being nominated by the client to registering with the organization and paying an annual fee. Typically, the advisor must agree to follow the organization's investment guidelines.

But, advisors beware. A 1997 study conducted for the CHRONICLE OF PHILANTHROPY found that many

donors reported that too many financial advisors treated planned gifts as financial opportunities, rather than as vehicles for expressing philanthropic and charitable values.<sup>16</sup>

**Private Label Donor Advised Funds.** For larger financial planning firms, Giving Capital<sup>17</sup> works with the National Philanthropic Trust (NPT) to provide a turnkey private label donor advised fund. The financial services firm is the custodian of the donor advised fund assets, managing them on behalf of the nonprofit organization. NPT receives all contributions from the firm's clients, invests them in the firm's investment vehicles and distributes grants to other nonprofit organizations as recommended by the donor.

The fund program provides the back office operation of a donor advised fund including:

- accounting and reconciliation;
- sub-accounting;
- data interfacing;
- high volume and diverse contribution processing of stocks, bonds, cash, mutual funds, etc.;
- contribution liquidation and reinvestment order systems;
- grant processing; and
- management and support.

According to Giving Capital, private label donor advised funds are cost effective only to the largest financial planning service companies with expectations that assets invested in the fund will approach \$1 billion over a five-year period.

**Comparison.** Not all DAFs are created equal. Fees are the biggest variable. Most donor advised funds charge at least two layers of fees—one for managing the money put into the fund and one for administration. At the Vanguard Charitable Gift Endowment Program, those fees combined run a modest 0.30

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advised funds. Among these are Fidelity, Vanguard Group and Charles Schwab & Company. Generally, the company has established a charitable foundation to accept donations from the public. The foundation then contracts with the financial services company to manage the donations.

The Fidelity Charitable Gift Fund specializes in facilitating gifts of securities, including restricted stock, with a minimum contribution of \$10,000.<sup>12</sup> The Vanguard Charitable Endowment Program requires a minimum irrevocable donation of \$25,000 in the form of cash, publicly traded securities or mutual fund shares.<sup>13</sup> The Schwab Fund for Charitable Giving™ accepts contributions of cash, publicly traded securities, including stocks, most mutual fund shares and bonds. Some restricted or privately held stock may be accepted. Cash contributions must be made in U.S. dollars and

to 0.75 percent of assets per year. (The more in the account, the lower the percentage.) But at the Smith Barney Charitable Investment Fund, combined fees eat up 2.04 to 2.42 percent of assets per year. At Eaton Vance's U.S. Charitable Gift Trust, brokers get up to one percent of the balance each year on top of administrative and investment fees. The Fidelity Advisor Charitable Gift Fund uses mutual funds that pay a commission to brokers. Also watch out for additional charges. The T. Rowe Price Program for Charitable Giving, for example, imposes a \$500 fee on new accounts that distribute all their money in the first six months.<sup>18</sup>

For the donor, the key points of comparison are:

- What is the minimum initial investment?
- Is there a minimum for later additional contributions?
- What are and how many investment options are available?
- Who is managing the assets?
- Are the assets separately managed or pooled with other funds?
- What is the minimum dollar amount allowed for grants?
- Is there a maximum number of grants allowed per year?
- Are there restrictions on the type or location of recipient organizations?
- Must a portion of the funds be distributed to certain recipients?
- What type of assets does the custodian accept?
- What are the fees and expenses?
- To whom are the fees and expenses being paid and how will these be used?
- How easy is it to use? (online availability; phone; facsimile)
- Is recordkeeping provided by the charity?

### Community Foundations

For civic-minded clients, a community foundation may be the answer. Community foundations can be established by a group of citizens interested in serving a particular geographic community or region, or by a group of individuals interested in supporting a specific interest or cause. Once established, community foundations can help existing nonprofits to build endowments, hold funds designated by donors for specific agencies and make grants to charitable organizations. Community foundations may also have a mission to establish and increase flexible permanent funds that can be used at the discretion of the foundation board to meet the needs of the community it serves. Community foundations require a great deal of work and technical expertise to start and maintain.<sup>19</sup>

Many community foundations have also established donor advised funds. These funds may bear slightly higher fees than other donor advised funds, as the foundation pays itself in addition to its investment managers. In exchange for this fee, however, the donor aids his or her chosen community by funding the foundation's activities and benefits from the foundation's expertise and knowledge about the needs of the chosen community. Many community foundations will work with advisors to compensate them for their clients' business.

You can find a comprehensive list of community foundations across the country at [www.communityfoundationlocator.org](http://www.communityfoundationlocator.org).

### Private/Family Foundations

Private foundations are generally founded by an individual, a family or a group of individuals, and are organized either as nonprofit

corporations or as charitable trusts. The donor(s) makes a gift of cash or other assets that constitutes the initial "endowment" of the foundation. This endowment is invested and the foundation's governing board makes grants available to charities using the income earned from the investment. The donor(s) may appoint themselves, family members or friends to sit on the foundation's governing board.

As a charitable organization, a private foundation is exempt from federal income tax on its income, but it must pay an excise tax on net investment income. Gifts to establish a new foundation or grow an existing foundation may offer income, gift and estate tax deductions. There are, however, limits on contribution deductions for gifts to private foundations. Because these limits do not apply to estate or gift tax charitable contributions, a testamentary gift to a private foundation works extremely well. There are many advantages and disadvantages to private/family foundations. The following is a summary:

#### Advantages:

- A private foundation allows flexibility in framing an organization in accordance with special preferences and purposes.
- Unlike DAFs, the organization can carry on its charitable activities without the approval of an independent institution rather than ceding control to an independent group.
- Requirements for advance IRS approval of grants is rare and usually only applies when grants are made for travel, study or a similar purpose.

#### Disadvantages:

- There is a cost to establish and operate a private foundation

including attorneys' fees to draft the governing documents; prepare Form 1023, specifying what the foundation will do, its budget and the like; and request an Employer Identification Number.

- Form 990PF must be filed annually with an average annual cost of \$700 to \$1,500.
- Recordkeeping is critical, and an accurate summary of capital gains and losses, dividends and interest is required.
- There is a two-percent excise tax on private foundation investment income. This tax is imposed on the aggregate of dividends, rents, royalties and capital gains. (As a practical matter, in most situations, this amounts to a very minor cost.)
- There are restrictions on "self-dealing" between the foundation and "disqualified persons" (officers of the foundation, the donor, the corporation whose shares are owned by disqualified persons, etc.).
- There is an annual payout requirement of five percent of the investment portfolio value by the end of the year following the year from which the contributions are made (unless the foundation actually "operates" charitable activities rather than making grants to other 501(c)(3) organizations).
- Private foundations, together with all of their disqualified persons, cannot generally hold in aggregate more than 20 percent of the voting stock of a business operation (foundations have five years from the time of funding to reduce their holdings to below the 20-percent level).
- Lifetime gifts of appreciated assets to a typical foundation

that will use the gift for endowment (nonoperating) purposes have the income tax charitable contribution deduction reduced by the amount that would have been taxed had the donor sold the asset unless asset is qualified (readily marketable on an exchange).

### Frequently Asked Questions About Family Foundations.

**Can My Children Be Paid to Act as Directors/Trustees?** The typical answer is yes. The children of the primary donor can be paid a *reasonable* salary to act as directors/trustees. Reasonable is defined differently by various courts, but an example may be the average for individuals in similar positions or the published fee schedule of an independent third party trustee customarily engaged in such management.<sup>20</sup> According to the 2001 Grantmakers Salary and Benefits Report, the median annual salary (excluding benefits) for a CEO/President of a foundation is \$100,000, with the median salary for a program officer at \$66,100 (the salaries vary by size and type of grantmaker and by region of the country).<sup>21</sup>

**How Much Money Does It Take to Start and Run a Private Foundation?** Without sufficient principal to generate income for grantmaking, it may not be worthwhile to incur the costs of forming and operating a private foundation. One factor to consider is the amount to be made available for grantmaking. This amount may be generated by the income earned by the foundation's endowment, annual contributions or a combination of the two. Another factor relevant to start-up size is whether or not future gifts to the initial endowment are anticipated. The amount necessary to justify a foundation depends on the donor's interests.<sup>22</sup>

The Giving Forum has a variety of information on its Web site including the Private Foundation Calculator. This calculator allows a donor to either determine how much he needs to start a foundation or how much in grants the foundation will be able to make each year, based upon the anticipated start-up capital. The donor inputs information and the calculator gives the answer.<sup>23</sup>

### Charitable Remainder Trusts

A charitable remainder trust is a trust to which a donor irrevocably transfers money or property, reserving for him or herself or others an income interest for a period of years, or for his or her life expectancy. Code Sec. 664(d)(2) defines a charitable remainder unitrust, generally, as a trust—

(A) from which a fixed percentage (which is not less than 5 percent nor more than percent) of the net fair market value of its assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in §170(c) and, in the case of individuals, only to an individual who is living at the time of creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals,

(B) from which no amount other than the payments described in subparagraph (A) and other than qualified gratuitous transfers described in subparagraph (C) may be paid to or for the use of any person other than an organization described in §170(c) ...

With a charitable remainder unitrust (CRUT), a "fixed" percent-

age payout is established and the income amount to be paid to the individual is redetermined each year based on the fair market value of the trust. If the investment return is greater than the payout rate, the annual distribution will increase. If the investment return is less than the payout rate, the annual distribution will decrease. The donor may also make later additions to the trust. The donor may reserve the right to change the ultimate beneficiaries so long as the new beneficiaries are qualified charities.<sup>24</sup>

With a charitable remainder annuity trust (CRAT), the income amount is set at the time of funding the trust and will not change. This type of trust creates a level stream of income regardless of the investment return on the asset base. A donor may not make additional contributions to the trust. The trust must meet two IRS tests:

1. The charity must reasonably be expected to end up with at least 10 percent of the beginning trust assets.
2. Based on the applicable federal rate and the payout amount of the trust, there must be less than a five-percent chance that the charity will receive no benefit based on the life expectancy of the income beneficiaries.

There are also advantages and disadvantages to a charitable remainder trust.

#### **Advantages:**

- Capital gains tax is deferred if appreciated securities or property are used to fund the charitable trust.
- Cash flow from the assets used to fund the charitable trust may be increased.
- There is a current income tax deduction.
- There is a reduction in estate tax.

#### **Disadvantages:**

- Assets transferred to the trust are not available to the donor or his or her heirs.
- If more than the annual distribution is needed for living expenses, additional money cannot be withdrawn.

#### **Net Income Makeup Charitable Remainder Unitrust**

A net income makeup charitable remainder unitrust (NIMCRUT) is a variation on the standard CRUT where the payout to the income beneficiary is structured to pay the lesser of a fixed percent (not less than five percent) or the actual ordinary income generated by the trust. The authority for such a trust is found at Code Sec. 664(d)(3), which provides an exception to paragraphs (2)(A) and (B) above for a trust that provides for payment to the income beneficiary for any year of—

(A) the amount of the trust income, if such income is less than the amount required to be distributed under paragraph (2)(A), and

(B) any amount of the trust income which is in excess of the amount required to be distributed under paragraph (2)(A), to the extent that (by reason of subparagraph (A)) the aggregate of the amounts paid in prior years was less than the aggregate of such required payments.

This is coupled with a make-up provision that allows the trustee to “make up” deficiency payments from the earlier years when the actual income did not meet the fixed payout requirements.

The primary use for such a trust is where assets such as closely

held stock and real estate, that may not be expected to produce enough income in the early years, are contributed to the trust. Because the NIMCRUT provides that no payout must be made if there is no ordinary income for the year, the trustee does not have to be concerned about meeting the payout requirement until the asset is sold and sufficient cash can be invested to meet the payout needs.

#### **FLIP Charitable Remainder Unitrust**

The FLIP charitable remainder unitrust (FLIP trust) allows the income beneficiary to have the best of both worlds. Under this variation, the CRUT starts out as a NIMCRUT as defined above. However, it changes or “flips” to a standard CRUT on a date fixed by the donor at the beginning of the trust term—for example, when the income beneficiary reaches a certain age, on a particular date or at some other definable point in time. This has the advantage of allowing the trust to grow in value tax-free during the time that the income beneficiary does not need income and maximize the payout as a standard unitrust at the time the need for income is greatest.

Under both the NIMCRUT and FLIP trust, the charitable income tax deduction is calculated on the date the gift is made to the trust based on the present value of the assets that are ultimately going to pass to the charitable beneficiary.

The FLIP trust has become popular for transfers of real property to charity. The purpose is to avoid the necessity of payment of nonexistent income to the donor before the real estate or other nonliquid property is sold. When the trust flips, the “make-up” income is lost. However, the income beneficiary is entitled to percentage CRUT pay-

ments rather than NIMCRUT payments, which are limited by the lesser of actual trust income or a percentage of trust assets.

**Taxation of Charitable Remainder Trusts.** The income paid by a charitable remainder trust is taxable according to what is known as the “four-tier system.” In general, when highly appreciated assets are contributed to a charitable remainder trust, the income distributed by the trust will—depending on when the assets are sold and how the proceeds are reinvested—be taxable to the income recipients as a combination of ordinary and capital gains. The payout order known as the “worst-in, first-out” system is as follows:

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- Ordinary income (current year as well as any past year carryover)
- Capital gains (short-term then long-term)
- Other income (normally tax-exempt income)
- Corpus

### Charitable Lead Trust

The charitable lead trust (CLT) is the reverse of the charitable remainder trust in that the “lead” income interest is first paid to one or more charitable beneficiaries, while the remainder is either returned to the donor (a grantor charitable lead trust) or distributed to an heir or a third party (a nongrantor charitable lead trust). A CLT can be structured as a charitable lead annuity trust (CLAT) or a charitable lead unitrust (CLUT). The CLAT pays out a fixed

amount each year to the charitable beneficiaries; the CLUT pays out a fixed percentage of the trust’s value as revalued each year. Either trust may be structured as a term of years, one or more lifetimes or a combination.

If the trust is a grantor trust, the donor is entitled to a charitable income tax deduction for the present value of the stream of income that will go to charity over the length of the trust. However, under such circumstances, the donor will be taxed on the income generated by the trust in each year of the trust’s term.

If the trust is a nongrantor trust, the donor will be entitled to a present gift tax charitable deduction or an estate tax deduction if the trust is funded at death. Because the present value of the charitable interest is subtracted from the fair market value, the asset may be passed to future generations at a reduced gift or estate tax cost.

### Pooled Income Fund

The pooled income fund (PIF) is a “pool” of gifts made by various donors that provides an income for life based upon the overall return of the pool. Donors make irrevocable gifts to the pool, typically of cash or marketable securities. Tax laws do not permit the fund to accept or invest in tax-exempt securities, real estate or depreciable assets. Typically, participating units in the fund, similar to a mutual fund arrangement, represent a donor’s life income gift. Each quarter, the proportional share of the fund’s income is distributed to the income beneficiaries. The amount distributed varies with the fund’s investment performance. In-

come is taxed to the donor as ordinary income. *It is possible for the agreement with many institutions to provide income for both the donor and another.*

Depending on how the fund is set up, payout can be structured a number of ways including “level income now and in the future,” “low income now and moderately higher income later,” “very low income now and potentially very substantially higher income in the future,” etc.

The donor also is entitled to a charitable income tax deduction based on the present value of the gift that ultimately will be paid over to the charity that is maintaining the pooled income fund. The value of the charitable remainder gift is based on the fair market value of the securities contributed, not the donor’s cost basis. There is no capital gains consequence to the donor when appreciated securities are transferred to the fund or later sold. The pooled income fund pays no capital gains taxes on sales of securities if the donor’s holding period was longer than one year because the fund takes over the donor’s holding period.

Generally, if a gift to a fund is in money, the donor is allowed a charitable deduction of up to 50 percent of adjusted gross income. If the charitable gift is over the permissible annual contribution deduction, the donor is allowed to carry the excess over into the next five succeeding tax years. If the gift is of long-term appreciated securities, the donor is entitled to a 30-percent deduction of adjusted gross income, with a five-year carryover of any excess charitable contribution.

If the agreement is based on a single life income alone, the total value of the donor’s interest in the fund is removed from the taxable

estate. If the income interest is for the donor's life and that of a non-spouse survivor's life, the value of the income interest is subject to federal estate tax based on the survivor's age at the donor's death. Should the other beneficiary be the donor's spouse or fail to survive the donor, no part of the donor's interest in the fund is subject to tax in the donor's estate.

Where the life interest is for two lives or for someone other than the donor, one thing to be aware of is the implication of making an irrevocable gift that may trigger gift tax or use of the donor's unified credit. To avoid an irrevocable gift, the donor must reserve the right to testamentarily revoke a successor's income interest.

**Important Differences in Pooled Income Funds.** Most institutions have a minimum initial investment requirement of \$5,000. Some, however, such as Fidelity, have a minimum initial investment requirement of \$20,000. There is typically no minimum for additional contributions. Depending upon the institution, there may or may not be an annual trustee fee or a fee for custodial or investment advisors. Typical administrative fees are one percent of the investments. One fund with no such administrative fee is the Shriners Hospital Pooled Income Fund.

#### Key Points of Inquiry Regarding Pooled Income Funds.

- Minimum initial investment
- Minimum additional contributions
- Investment options/strategies provided by the fund
- Annual trustee fee
- Annual custodial or investment fee
- Maximum number of measuring lives
- Ultimate distribution to benefit one institution or several,

and if several, how many are allowed by the custodian?

#### Supporting Organizations

A supporting organization is a separately incorporated nonprofit entity classified as a public charity under Code Sec. 509(a)(3). Depending upon its structure, it can have many of the advantages of a private family foundation with few of the disadvantages.

In order to be classified as a public charity, thus not subject to private foundation rules, the supporting organization must demonstrate that it was created to support one or more public charities named in the Articles of Incorporation or other trust document that created it and that neither the donor nor other disqualified persons control the board. Supporting organizations are classified as public charities so gifts qualify for the same tax treatment as gifts to other public charities.

#### Charitable Gift Annuities<sup>25</sup>

A gift annuity is a contract between the donor and a sponsoring organization, such as the American Cancer Society or Cardinal Glennon's Children Hospital, in which the donor exchanges an asset (typically cash or securities) for fixed payments for his or her life or the life of another person. The donor is entitled to a charitable income tax deduction based on the difference between the present value of the annuity that will be paid to the annuitant and the fair market value of the assets transferred to the charity. The payments may begin the year of the donation or be postponed until a future time, such as retirement.

Deferring the income stream is advantageous if the donor's income tax bracket is higher now than it will be later. A deferred

payment gift annuity may be used to replace or supplement future income. One of the major benefits of a charitable gift annuity is that a significant portion of the annuity payments may be considered a tax-free return of principal.

**Example.** Dick and Caroline are both 45 years old. Dick transfers \$2,000 annually to a series of joint and survivor gift annuities, arranging for payments to start when he reaches 65. He and Caroline are in a 28-percent tax bracket, and they itemize their deductions. The first year they deducted \$1,418 (70.9 percent) of the \$2,000 transferred. The amount of their deduction decreases slightly each year thereafter. Based on then-current rates, they would receive \$4,120 each year (partly tax-free) beginning at age 65, a return rate in excess of 10 percent on their contribution totaling \$40,000.<sup>26</sup>

The rates paid on gift annuities largely depend upon the age of the donor or the person whom is to receive the payment stream. Many organizations set their rates based upon those published by the American Council on Gift Annuities. A donor interested in more information or determining the potential rate of return for a gift annuity can visit their Web site at [www.acga-web.org](http://www.acga-web.org).

#### Key Areas of Inquiry Regarding Charitable Gift Annuities.

- What type of assets may be transferred?
- Is there a minimum holding time on assets to be transferred?
- Is there a minimum age for an income beneficiary?
- What is the available annuity payout rate?

## Conclusion

As advisors educate themselves, they are able to foster increased support of nonprofit organizations that enrich lives and make communities a better place to live. The goal of this article is to assist both advisors and donors in developing a philanthropic plan by equipping them to do due dili-

gence on the best plan for making and evaluating charitable gifts. The appendices that follow provide information on Web sites, publications and organizations to assist advisors and donors.

**A Note from the Author.** The appendices that follow are substantially derived from information contained on the Web site of The Baltimore Giving

Project (BGP).<sup>27</sup> The BGP Web site also contains a free color brochure entitled *The Art of Charitable Planning—A Resource for Advisors* that allows an advisor to insert his or her name. Inclusion in the following appendices is not an endorsement of a Web site or organization. Reviews of charity Web sites can be found at [www.forbes.com](http://www.forbes.com).<sup>28</sup>

### ENDNOTES

<sup>1</sup> See [www.baltimoregivingproject.org](http://www.baltimoregivingproject.org).

<sup>2</sup> *Id.*

<sup>3</sup> American Association of Fund Raising Counsel, *Giving USA 2001: The Annual Report on Philanthropy*. *Giving USA* is researched and written by the Center on Philanthropy at Indiana University. Created in 1955 by the American Association of Fundraising Counsel (AAFRC), *Giving USA* is offered as a public service by the association and its affiliate, the AAFRC Trust for Philanthropy.

<sup>4</sup> See [www.aafc.org](http://www.aafc.org).

<sup>5</sup> The Philanthropic Initiative, Inc., *Doing Well by Doing Good, Improving Client Service, Increasing Philanthropic Capital: The Legal and Financial Advisor's Role* (2000).

<sup>6</sup> See [www.givingforum.org/giving/top10.html](http://www.givingforum.org/giving/top10.html).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Craig Wruck and Helen Monroe, *Family Foundations: Donor Advised Funds and Supporting Organizations as Alternatives to Private Foundations*, GIFT PLANNER'S DIGEST, Feb. 1, 1999. Available online at [www.pgdc.net](http://www.pgdc.net).

<sup>10</sup> Catherine E. Livingston, *Donor Q&A*, THE PHILANTHROPY ROUNDTABLE, Mar.–Apr. 2002. Available online at [www.philanthropyroundtable.org/magazines/2000-09/donorqanda.html](http://www.philanthropyroundtable.org/magazines/2000-09/donorqanda.html).

<sup>11</sup> *Id.*

<sup>12</sup> See <http://web.fidelity.com/legacy/eplanning/charitable.html>.

<sup>13</sup> See [www.vanguardcharitable.org/index.htm](http://www.vanguardcharitable.org/index.htm).

<sup>14</sup> See [www.schwabcharitable.org/schwab\\_home.html](http://www.schwabcharitable.org/schwab_home.html).

<sup>15</sup> See [www.mdrtfoundation.org/GGF.html](http://www.mdrtfoundation.org/GGF.html).

<sup>16</sup> THE CHRONICLE OF PHILANTHROPY: THE NEWSPAPER OF THE NONPROFIT WORLD. The Chronicle of Philanthropy, 1255 Twenty-Third Street, N.W., Washington, D.C. 20037 or visit their Web site at [www.philanthropy.com](http://www.philanthropy.com).

<sup>17</sup> A developer of charitable investment and giving programs for financial services companies.

<sup>18</sup> Ashlea Ebeling, *Investment Guide, Charitable Choice*, FORBES, June 10, 2002. Available online at [www.forbes.com/forbes/2002/0610/232.html](http://www.forbes.com/forbes/2002/0610/232.html).

<sup>19</sup> Minnesota Toolkit for Giving: Ways to Give,

*Create a Community Foundation*. Available online at [www.minnesotagiving.org/options/commfound.htm](http://www.minnesotagiving.org/options/commfound.htm).

<sup>20</sup> In LTR 200135047 (June 7, 2001), a private foundation requested a ruling regarding the payment of compensation to trustees. In its document, the foundation referenced a fee schedule of an independent trustee based on a sliding percentage of assets under management (in the ruling request, the foundation proposed to pay its trustees less than such fee). The IRS stated that a private foundation may compensate its two individual trustees for personal services rendered on its behalf and that such compensation would not constitute a prohibited act of self-dealing. The foundation in question made direct grants to public charities, private operating foundations and other qualifying Code Sec. 501(c)(3) organizations. The services provided by two individual trustees included the physical custody and management of the assets, accurate record keeping, responsibility for personnel matters and investment decisions, and investigating, making and monitoring grants to other charitable institutions as well as the duties customarily performed by a chief executive officer. It was also stated that the trustees may provide other normally contracted professional services.

<sup>21</sup> *2001 Grantmakers Salary and Benefits Report* available to members and nonmembers from the Council on Foundations, 1828 L Street, N.W., Washington, D.C. 20036, (202) 466-6512 or online at [www.cof.org](http://www.cof.org).

<sup>22</sup> See [www.givingforum.org](http://www.givingforum.org).

<sup>23</sup> See [www.givingforum.org/giving/guide](http://www.givingforum.org/giving/guide).

<sup>24</sup> In LTR 200034019 (May 25, 2000), the IRS approved a charitable remainder unitrust with provisions not addressed in the sample trust forms found in Rev. Proc. 90-31, 1990-1 CB 539. One individual was to be grantor, trustee and sole noncharitable beneficiary of the trust. The provisions of the trust specified that (1) the grantor would receive each year until the termination of the trust at the grantor's death a unitrust amount equal to the lesser of the trust's net income for the taxable year or five percent of the net fair

market value of the trust's property valued on the last day of the taxable year; (2) the grantor could appoint trust property to qualified charities during the grantor's lifetime by a signed and dated written instrument that specifically refers to this power of appointment; and (3) the grantor could appoint trust property to qualified charities at death by a provision of the grantor's will, codicil or other signed and dated written instrument that specifically refers to this power of appointment. Any trust property not appointed by the grantor at the termination of the trust would be distributed to certain qualified charities. Citing Rev. Rul. 76-8, 1976-1 CB 179, and the exceptions found in Code Secs. 664 and 674 and the applicable regulations, the IRS ruled that such provisions will not disqualify the trust as a charitable remainder unitrust.

<sup>25</sup> Recent media coverage has highlighted the inclusion of the abuse of charitable gift annuities on a list of "investment scams" by the North American Securities Administrators' Association (NASAA). The American Council on Gift Annuities and National Committee on Planned Giving have written a letter to the editors of the publications that reported on the NASAA statement, and have also jointly issued the following statement for posting on their respective Web sites. "Unfortunately, [media] coverage has mischaracterized the charitable gift annuity. Although a few persons have abused this charitable gift vehicle by commercializing it and misusing funds, it is this abuse of the charitable gift annuity—not the charitable gift annuity itself—that is the problem. Thousands of charities issue gift annuities, and default on payments to beneficiaries is exceedingly rare." ACGA and NCPG Issue Joint Statement Regarding NASAA Report, Sept. 26, 2002, available online at [www.pgdc.net](http://www.pgdc.net).

<sup>26</sup> Cardinal Glennon Children's Hospital Implementation Guidelines; Charitable Gift Annuity. Available online at [www.pgdc.net](http://www.pgdc.net).

<sup>27</sup> See [www.baltimoregivingproject.org](http://www.baltimoregivingproject.org).

<sup>28</sup> Best of The Web: Charitable Giving. See [www.forbes.com/bow](http://www.forbes.com/bow).

## Appendix A

### Charitable Planning Resources for Advisors

#### **Planned Giving Design Center—[www.pgdc.net](http://www.pgdc.net)**

A free state-of-the-art research and educational tool for professional financial and estate planning advisors. The PGDC can be used to research, design, illustrate and implement advanced charitable, financial and estate planning strategies.

#### **The Center on Philanthropy at Indiana University—[www.philanthropy.iupui.edu](http://www.philanthropy.iupui.edu)**

The Center increases the understanding of philanthropy and improves its practice through programs in research, teaching, public service and public affairs.

#### **The Foundation Center—[www.fdncenter.org/](http://www.fdncenter.org/)**

The Foundation Center fosters public understanding of the foundation field and has vast resources for advisors. The Center offers free classes at various locations and has an online tutorial. Address: 79 Fifth Avenue, New York, NY 10003, Tel: (212) 620-4230

#### **Council on Foundations—Philanthropic Advisors Network—[www.cof.org/about/panpas/index.htm](http://www.cof.org/about/panpas/index.htm)**

The COF is a national association of foundations and corporate giving programs that serve the public good by promoting and enhancing responsible and effective philanthropy. Address: 1828 L Street, N.W., Washington, D.C. 20036, Tel: (202) 466-6512

#### **Institute of Certified Financial Planners—[www.fpanet.org/](http://www.fpanet.org/)**

Publishes Journal of Financial Planning. Address: 3801 E. Florida Avenue, Suite 708, Denver, CO 80210, Tel: (800) 322-4237

#### **National Association of Philanthropic Planners—[www.napp.net/](http://www.napp.net/)**

NAPP recognizes the need for qualified financial professionals to include philanthropic planning in their practices. NAPP is committed to supporting the philanthropic planning practices of its members through a variety of association programs and benefits. Address: P.O. Box 6081, San Antonio, TX 78209-0081

#### **National Center of Family Wealth Counselors—[www.nafwc.org/](http://www.nafwc.org/)**

The NCFWC is an organization for family wealth counseling in the United States that provides opportunities for ongoing education and networking in the family wealth-counseling field.

## Appendix B

### Charitable Planning Resources for Clients

#### **National Center for Family Philanthropy—[www.ncfp.org](http://www.ncfp.org)**

The NCFP was established by group of family philanthropists to focus solely on the matter of importance of families engaged in philanthropy and their effective giving.

#### **National Charities Information Bureau—[www.give.org](http://www.give.org)**

The NCIB promotes informed giving and enables contributors to make sound giving decisions.

#### **The Philanthropy Roundtable—[www.philanthropyroundtable.org/](http://www.philanthropyroundtable.org/)**

The Philanthropy Roundtable is a national association of individual donors, corporate giving representatives, foundation staff and trustees, and trust and estate officers. The Roundtable is

founded on the principle that voluntary private action offers the best means of addressing many of society's needs, and that a vibrant private sector is critical to creating the wealth that makes philanthropy possible.

#### **The Newtithing Group—[www.newtithing.org/](http://www.newtithing.org/)**

The Newtithing Group is a philanthropic research organization committed to increasing charitable giving, personal fulfillment and the productivity of donations to the world's charitable sectors.

#### **The Philanthropic Initiative—[www.tpi.org/](http://www.tpi.org/)**

TPI is a nonprofit organization formed in 1989 to help donors increase their impact through the development of innovative and strategic approaches to philanthropy. TPI's consulting services for families, foundations, corporations, individuals and advisory institutions include strategic plan-

ning, facilitation and training of trustees and staff; research on social issues of concern to TPI clients; and development, implementation and evaluation of programmatic initiatives.

#### **The Forum of Regional Associations of Grantmakers—[www.rag.org/](http://www.rag.org/)**

Regional associations of grantmakers (RAGs) are nonprofit membership associations created by private grantmakers to enhance the effectiveness of philanthropy in their cities, states or regions. To locate your local RAG and/or New Ventures coalition, call the Forum at (202)467-0383, or visit the Forum's Web site. Address: 1828 L Street, N.W., Suite 300, Washington, D.C. 20036

#### **Other Resources (publications/news sources with helpful information)**

■ **Forbes Magazine:** The online magazine has an en-

tire section devoted to philanthropy that provides Web site reviews and other articles that alert potential donors about issues to be aware of.

- **Chardon Press:** A Web bookstore on philanthropy.
- **Chronicle of Philanthropy:** This bi-weekly newspaper highlights the field of nonprofits and philanthropy.

Provides information on trends in the field, grants by foundations and others, and updates on management and technology issues. Tel: (800) 728-2819

- **Planned Giving Today:** Planned Giving Today serves the planned giving community as a practical resource for education, information, inspiration and professional linkage.

- **Trust & Estates Magazine:** Trust & Estates looks at philanthropic and investment topics pertaining to trusts and estates.
- **The National Center for Family Philanthropy**
- **Philanthropy Journal Online**
- **Philanthropy News Network (PNN)**
- **Worth.com:** Worth magazine online has a large section on philanthropy.

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