

HAYS TOD SAMPLE LETTER

You'll need to modify and personalize the text highlighted in yellow

Date

Insert name and address of the financial institution's General Counsel

Dear _____:

Please be aware that our nonprofit organization is currently the beneficiary of a brokerage/TOD account left to us by our deceased donor. However, we have been informed that your company business practice requires nonprofit beneficiaries to first open up a new account in our nonprofit's name before we can be paid our death claim. This then requires us to become a "new customer" and follow rules by FinCEN for opening new customer accounts. We respectfully request either one of two (alternative) exceptions in processing our TOD death claim:

1. Our nonprofit prefers a lump sum distribution and not to first open a new account. It is an inefficient use of our nonprofit resources to spend the time to open up a new account just to be paid on a different account. The paperwork is laborious. Then more of our nonprofit time is required having to complete a second set of paperwork to immediately liquidate the newly created account. It would be more efficient for both your company and us to pay the death claim directly from the deceased's account without forcing us to open the other account. We realize your company goal for individual/human beneficiaries is the hope the new account will remain open for a long-time. We don't disagree with that approach with respect to individual beneficiaries, but please know this company practice doesn't make sense for charities who are beneficiaries. Charities nationwide will in fact withdraw their entire accounts immediately after setup so that we can use our donor's gifted account for our mission.

Moreover, we are aware that neither federal nor state law requires us to open a new account to receive our donor's death benefit. Rather it is your business decision—not a legal requirement. As such, exceptions can be made and we are asking you now to please make that exception to your company claims paying practice.

2. If your company will not grant the exception in #1 above (i.e., you continue to mandate the opening of the new account), please be aware that we cannot and will not provide the Social Security Number (SSN) of a "control person" as requested. According to the April 14, 2023, FinCEN Ruling, a charitable organization is not required to provide the SSN of a control person. Indeed, the charity's tax-exempt number suffices instead of the SSN of the control person. Your tax reporting requirements are fulfilled by using our EIN. I have highlighted this information in the FinCEN ruling and attached it hereto.

Therefore, based on FinCEN's ruling, we request an exception to your company practice of requesting a control person's SSN to open a new account as cannot provide the Social Security Number of any employee to open the required account. We will provide instead -- as indicated by the ruling as an acceptable practice -- our EIN.

It is more than just the fact that FinCEN doesn't require it but also that charities nationwide are not willing to provide their employees' Social Security numbers in light of the numerous data breaches nationwide and the exposure to identity theft. That is a huge risk charities are not willing to take.

We understand that you have these internal requirements for an SSN for individual beneficiaries. However, charitable organizations have different and much easier methods to verify its identity. In fact, we have been thoroughly vetted by the IRS **decades ago** when we applied for our tax-exempt status. We hope that you can see that mirroring the claims paying processes that you use for "individual" beneficiaries for "charity" beneficiaries doesn't appear to be the right approach. Direct payments to charities can be done more easily, efficiently, swiftly, and—further—without burdensome requirements. We are not on a suspected terrorist

list nor are we engaged in money laundering. In fact, I am copying the head of the FinCEN agency on this letter.

With respect to our claim now, we have provided the following documentation so that your company has enough information “to form a reasonable belief that you know our identity” which is the legal standard to comply with government rules about knowing your customer:

1. IRS Form W-9 and W-4P for your tax reporting responsibilities
2. Evidence of our tax-exempt status – further verifiable by your company on-line via IRS Publication 78
3. Corporate resolution
4. Death certificate of account owner

Please liquidate the funds in our deceased’s donors account and send us a lump sum check within 30 days. Further, please include a copy of the beneficiary designation on the account, the date of death balance, and an itemization of any fees deducted from the account since the date of death.

If you are not able to issue a computer-generated IRS Form 1099 because your business practices won’t allow payment to a “beneficiary,” we will accept a manually produced IRS Form 1099.

If we are a partial beneficiary of the donor’s account, we hereby waive and release all rights to divided future interests or odd shares earned after the date of death and request prompt distribution of our proceeds prior to completion of actions by any other beneficiaries we are not aware of.

If you feel you are unwilling to make this prompt distribution as requested, please provide us with your specific legal basis for not granting either exception.

Thank you.

Sincerely,

Your Legal Counsel’s name

Address

Phone/Email

Enclosures: 2023 FinCEN Ruling
IRS Form W-9
IRS Form W-4P
Evidence of our 501(c)(3) tax-exempt status
Corporate resolution
Death Certificate

Cc Senator Ron Wyden, Chair US Senate Finance Committee – sent via fax: 202-228-0554
Senator Mike Crapo, Ranking Member, US Senate Finance Committee – sent via fax: 202-228-0554
Jamie Cummins, Tax Counsel, Senate Finance Committee – sent
via email: jamiescottcummins@gmail.com
Patrick McHenry, Chairman of the House Financial Services Committee, – sent via Fax: 828.327.8311
Andrea Gacki Director, Financial Crimes Enforcement Network (FinCEN) - sent via email
FRC@fincen.gov

(insert the name of your state’s attorney general) Office of Attorney General