

GIFT ACCEPTANCE POLICY

Adopted by HCCF Board of Directors: December 3, 2012

I. PURPOSE OF POLICY

The Hendricks County Community Foundation, Inc. (HCCF) has established a development program to further the charitable purposes and mission of the Foundation. Specifically, the development program seeks to help donors meet their charitable goals while benefitting the community and organizations served by the HCCF. This requires an active effort on the part of the HCCF Board of Directors, Board of Advisors and staff to promote the programs and opportunities offered by HCCF and to respond promptly and appropriately to the needs and circumstances of donors and prospective donors to HCCF.

II. GENERAL GUIDELINES FOR ACCEPTING GIFTS AND FUNDS

a. Disclosures to Donor and Donor's Interests

- i. HCCF staff will disclose to a prospective donor the benefits and liabilities that could reasonably be expected to influence the donor's decision to make a gift to HCCF. In particular, the donor will be advised that all gifts are irrevocable, and items subject to variability (such as market value, investment return, and amount of income payments) should be discussed fully. It is the responsibility of HCCF staff to keep detailed written notes (including all contacts with donor) to supplement written correspondence relating to each gift transaction in order to ensure documentation of donor intent and/or wishes. The role of HCCF staff is to inform, serve, guide, or otherwise assist the donor in fulfilling his or her philanthropic wishes, but never to pressure or unduly persuade.

b. Legal Counsel

- i. For any but the simplest type of gift, HCCF recommends that donors consult their attorneys, tax advisors, financial or estate planners. HCCF shall consult with its legal counsel in appropriate matters pertaining to its asset development and shall consult legal counsel if contract language varies from the standard. The Board of Directors recognizes its fiduciary duty to protect HCCF's assets and to provide guidance to its management.
 1. Review by legal counsel is usually sought in connection to gifts involving various planned giving instruments, closely-held securities, contracts, tangible personal property, real estate and any transactions with potential conflict of interest that may invoke IRS sanctions.
 2. Legal counsel will be consulted for any instances in which use of counsel is deemed appropriate by the Executive Director, the Executive Committee or Board of Directors.

c. Conflict of Interest

- i. HCCF serves as a reliable professional steward of assets entrusted to its care. The integrity and quality of HCCF's relationship with its constituency determines the

strength of the organization. HCCF accepts its responsibility to perform to the highest standards in every activity:

1. Fair and equitable treatment of its donors, grantees, and applicants.
 2. Prudent fiscal management of funds with complete financial reporting.
 3. Maximum disclosure to the community of pertinent information about grants, policies, and procedures.
 4. Continuous assessment of the cultural diversity of the community and funding decisions based on moral, ethical, and social attitudes.
- ii. The effectiveness of HCCF is demonstrated by the quality of its governance, its adherence to the highest standards of service, and to the spirit of these ethical principles. Each person working on HCCF affairs is committed to being mindful of their personal conduct when dealing with these important matters. Each member of the Board of Directors, Board of Advisors, each volunteer, and every staff member signs a Conflict of Interest Statement annually. This statement is intended to supplement, but not replace, any applicable state laws governing conflict of interest applicable to nonprofit and charitable foundations.
 - iii. HCCF has met all requirements of the National Standards for Community Foundations as set by the Council on Foundations (See RESOURCES, page 11), endorses the Model Standards of Practice of the Charitable Gift Planner promulgated by the Partnership for Philanthropic Planning (See RESOURCES, page 11 -or- Appendix A, page 12), and the Donor Bill of Rights promulgated by the Association of Fundraising Executives (See RESOURCES, page 11 -or- Appendix B, page 14).

d. Confidentiality

- i. All information concerning donors regardless of active, inactive, or prospective status shall be kept strictly confidential by HCCF and its personnel, unless the donor grants permission to use selective information for purposes of referral, testimonial, or example at the discretion of authorized personnel. This permission must be documented in writing.

e. Authorization for Negotiation

- i. The Executive Director or designee is authorized to negotiate on behalf of HCCF with any donor in respect to the planned gift instruments that follow the format described in these policies. All such types of gifts shall be reviewed by legal counsel. Any real estate or interests in real property or hard-to-value assets of any kind must be approved by the Executive Committee or the Board of Directors. Any agreements which involve a legal obligation on the part of HCCF or its agents which do not follow the policy described in herein or, are special agreements of any kind, require the approval of the Executive Committee or Board of Directors.

f. Standard Form Documents

- i. For administrative ease and convenience, HCCF has developed standard forms of fund agreements and other documents relating to the HCCF's development

program. All such standard forms have been reviewed by legal counsel, and approved by the Executive Committee. HCCF will provide standard forms to a prospective donor and the donor's advisor upon request and encourages their use.

g. Reports

- i. When a donor establishes a fund within HCCF, bi-annual financial reports are provided.

h. Valuation of Non-cash Gifts

- i. Valuation of non-cash gifts and the preparation and filing of various tax forms for the purpose of obtaining a charitable income or estate tax deduction will be the responsibility of the donor or the donor's legal/tax advisor. The Internet link to the following publication can be found on page 11, RESOURCES: IRS Publication 561 ***Determining the Value of Donated Property.***

i. Acknowledgement of gifts

- i. HCCF will provide all donors with a gift acknowledgement letter within 10 days of receipt of the gift. This information will assist the donor in the preparation of federal and state tax returns. The Internet link to the following publication can be found on page 11, RESOURCES: IRS Publication 526 ***Charitable Contributions.***

j. Administrative Fees

- i. Fees are assessed at the fund level and the board-approved administrative fee schedule will apply to all funds. Exceptions to the fee schedule must be approved by the Executive Committee or Board of Directors. The fee schedule can be found in the ***Administrative Fee Policy and Minimum Fund Balance Requirements*** document (Appendix C, page 15).
- ii. Administrative fees are subject to change upon approval by the Board of Directors.

k. Investment of Gifts and Funds

- i. In general, assets from current and future gifts will be commingled with other assets of HCCF for investment purposes. All investments will be selected in conformance with investment policies established by HCCF.
- ii. All noncash assets accepted as gifts are usually sold, but may be retained by HCCF as long as such decisions to do so serve the interests of HCCF.
- iii. Unrestricted memorial gifts shall be placed in an Endowed Fund of the Community Foundation.

l. Separate Investment of Fund Assets

- i. As donors establish a fund within HCCF, they give up all right, title, and interest to the assets. As such, gifts may contain no material restriction that would prevent the funds from being considered as component funds of HCCF under IRS rules. Except as noted in the investment policies, donors give up the right to choose investments and investment brokers and to veto investment choices for their gifts. HCCF will endeavor to accommodate requests from donors for separate

investment management of fund assets or for use of a particular investment broker or agent when the initial gift to establish the fund exceeds \$500,000. However, HCCF's Board of Directors must approve the addition of any new investment manager. HCCF may apply additional administrative fees to separately-invested fund assets to cover the additional expenses associated with such investments.

- ii. Investment results will be reviewed by the HCCF Finance Committee for adequate investment performance. If performance is found to be inadequate or not within the Investment Policy, the manager may be terminated at the sole discretion of HCCF, followed by notification of the the donor(s).

m. Serving as Trustee for Charitable Trusts

- i. It is the policy of HCCF to **NOT** serve as trustee for charitable trusts.

III. ACCEPTANCE POLICIES FOR OUTRIGHT GIFTS

Except as noted below, HCCF will accept the following types of outright gifts assuming they meet the general guidelines outlined above:

a. Cash and checks

Checks should be made payable to Hendricks County Community Foundation or HCCF with the name of the particular fund written in the memo line. It is recommended that all gifts be accompanied by a written document (fund agreement, donor envelope, letter or other written instruction) signed by the donor.

b. Pledges

Pledges to make gifts may be made applicable to any fund at HCCF. A schedule of pledges payable should be included in the fund agreement, letter or other written instruction from the donor and signed by the donor. Reminder notices for future pledge payments due will be distributed by HCCF either by mail or e-mail.

c. Gifts of Securities

Gifts of securities include publicly traded stocks, mutual funds, treasury bills, bonds and closely-held securities. Gifts of securities generally allow the donor a charitable deduction for the fair market value of the gift, as determined by IRS rules. It is the donor's responsibility to obtain any necessary appraisals of securities. As stated above, donors should understand that securities donated to HCCF will, as a general rule, be sold upon receipt.

- i. Securities may be conveyed to HCCF in certificate form or by electronic transfer to HCCF's accounts. Detailed instructions for transfer of securities are available from the HCCF office.
- ii. Valuation of publicly traded securities is calculated using the average of the high and low price on the date the securities are received into HCCF's account, or the date the certificates are hand-delivered or postmarked, per IRS rules. Any change in valuation of securities from the date of receipt by HCCF and date of sale shall accrue to the appropriate Fund or charitable purpose.

- iii. Securities that will not be accepted include those which are assessable (those in which HCCF is liable, or could be liable, for additional capital), or others which in any way may create a liability; those, which, by their nature, may not be assigned or which have no apparent value.
 - iv. Gifts of closely-held business interests are evaluated on a case-by-case basis and are subject to Executive Committee approval and the Excess Business Holdings Regulations set forth by the IRS (See RESOURCES, page 11 -or- Appendix D, page 19).
 - 1. There can be no restrictions that would prevent HCCF from ultimately converting the closely-held assets into cash.
 - 2. The closely-held asset will not generate any undesirable tax consequences for HCCF.
 - 3. Gifts of closely-held assets may require six to eight weeks to prepare for acceptance by HCCF.
- d. Gifts of IRA Charitable Rollover**
- i. This simple method of giving was been extended by the IRS through the calendar year 2013. For donors who are required to take distributions from their IRA accounts, this is an option to meet the distribution requirements and make a gift to your favorite charity.
 - ii. The donor (IRS owner) instructs the IRA Custodian to transfer a specific dollar amount directly to HCCF. This transfer can be made by check or electronic transfer directly to HCCF's account. Please contact the HCCF office for mailing or account information.
- e. Gifts of Tangible Personal Property**—includes such things as autos, boats, airplanes, jewelry, art, collectible items, intellectual property, etc.
- i. The simplest way to contribute tangible personal property is outright, though the donor should be aware that, for federal income tax purposes, the deduction for a contribution of appreciated tangible personal property is generally limited to its cost basis (the original value or purchase value), not the fair market value of the item.
 - ii. As stated above, donors should understand that tangible personal property donated to HCCF will, as a general rule, be sold upon receipt.
 - iii. Any costs incurred by HCCF to sell the tangible personal property will be deducted from the sale proceeds before being deposited to the specific fund at HCCF.
- f. Gifts of Real Estate**
- i. Real estate gifts are evaluated on a case-by-case basis and are subject to approval by the Executive Committee or Board of Directors. Prior to the acceptance of real estate, HCCF shall require an initial environmental review of the property to ensure that the property has no environmental or other issues. In the event that the initial inspection reveals a potential problem, HCCF shall retain a qualified inspection firm to conduct an environmental audit. The cost of the environmental

audit shall generally be an expense of the donor. Such gifts may require a minimum of six to eight weeks to prepare for acceptance.

- ii. Any costs incurred by HCCF to sell the real estate will be deducted from the sale proceeds before being deposited to the specific fund at HCCF.

IV. ACCEPTANCE POLICIES FOR DEFERRED OR PLANNED GIFTS

Deferred or planned gifts encompass all forms of gifts in which benefits do not fully accrue to HCCF until some future time such as the death of the donor or other income beneficiaries, or the expiration of a predetermined period of time. Deferred or planned gifts accepted by HCCF are detailed below and are evaluated on a case-by-case basis and are subject to approval by the Executive Committee or Board of Directors.

a. Bequests

- i. Donors and supporters of HCCF are encouraged to make bequests to HCCF through their wills and trusts. A bequest is an instruction in your written will or trust that states how to distribute some or all of your estate.
- ii. If the donor will be establishing a new fund with the bequest, it is recommended that donor work with HCCF to finalize the fund agreement when the bequest is written into the will, to ensure the donor's wishes are clearly documented.
- iii. There are four types of bequests:
 1. A **Specific** bequest is a gift of a particular asset or dollar amount (e.g., 100 shares of XYZ Corporation).
 2. A **Percentage** bequest is a gift of some part of the value of the distributed estate (e.g., 20% of my net estate).
 3. A **Residual** bequest is a gift of the remainder of the estate after all taxes, expenses and other bequests have been satisfied.
 4. A **Contingent** bequest is a gift that will be made to a second beneficiary in the event that the original beneficiary is deceased or does not accept that gift.

The type of bequest language that you choose should fit what you want to accomplish by that gift. Sample bequest language can be found in Appendix E on page 22.

b. Retirement Plan Beneficiary Designation

- i. Donors and supporters of HCCF are encouraged to name HCCF as beneficiary of their retirement plan. This is usually accomplished by completing the beneficiary information form for the donor's retirement plan.
- ii. If the donor will be establishing a new fund with the beneficiary designation, it is recommended that donor work with HCCF to finalize the fund agreement when the beneficiary designation is made, to ensure the donor's wishes are clearly documented.

c. Charitable Gift Annuity

- i. A charitable gift annuity (CGA) is a contract under which the donor agrees to contribute cash, marketable securities or other assets to HCCF, in return for fixed annuity payments to one or two individuals for their lifetimes. The contributed property, given irrevocably, becomes a part of HCCF's assets, and the payments are a general obligation of HCCF. The annuity is backed by HCCF's entire assets, not just by the property contributed. Unlike a trust, annuity payments continue for the life/lives of the annuitant(s) regardless of the remaining value of the original assets contributed by the donor.
- ii. At the death of the annuitant(s), the remaining value of the original assets contributed will be deposited into a component endowment fund at HCCF as directed by the donor.
- iii. With an immediate CGA, the annuitant starts receiving payments at the end of the payment period immediately following the contribution date unless otherwise stated in writing.
 - Minimum age for immediate CGA's is 65.
- iv. With a deferred CGA, the annuitant starts receiving payments at a future time, the date agreed upon by the donor and HCCF, which must be more than one year after the date of the contribution.
 - Minimum age to begin receiving annuity payments for deferred CGA's is 65.
- v. Advantages of CGA's include the following:
 1. Make a gift and retain an income stream
 2. Increased cash flow when using low-yielding investments to fund the CGA

d. Charitable Trusts

The main types of charitable trusts accepted by HCCF include **charitable remainder trusts** and **charitable lead trusts**. In each instance, a trust is formed and a trustee appointed to administer the trust. While HCCF is pleased to work with donors and their professional advisors in creating a trust, HCCF cannot serve as a trustee or provide legal advice regarding the creation or administration of a trust. The donor will be responsible for all expenses related to establishing of the trust. If the donor will be establishing a new fund with the remainder interest or income stream of the charitable trust, it is recommended that donor work with HCCF to finalize the fund agreement when the trust is established, to ensure the donor's wishes are clearly documented.

i. Charitable Remainder Trust (CRT)

There are two main types of CRT's accepted by HCCF as follows:

1. **Charitable Remainder Unitrust (CRUT)**—the donor irrevocably transfers money, securities or other property to a trustee selected by the donor. The trustee pays the donor (or one or more income beneficiaries designated by the donor) **a fixed percentage** of the net fair market value of the trust's assets, as determined each year. The payments are made for the life or

lives of the income beneficiaries or for a fixed period of years. Upon termination of the income beneficiary's interest, the remaining assets of the unitrust are transferred to an endowment fund at HCCF as designated by the donor.

2. **Charitable Remainder Annuity Trust (CRAT)**—this trust works the same as the CRUT above, except the trustee pays the donor (or one or more income beneficiaries designated by the donor) **a fixed dollar amount** of the trust's assets each year.
3. Advantages of CRT's include the following:
 - a. Make a gift and retain an income stream
 - b. Increased cash flow when using low-yielding investments to fund the CRT
 - c. Avoid potential capital gains taxation when using highly appreciated assets to fund the CRT

ii. **Charitable Lead Trust**

There are two main types of CLT's accepted by HCCF as follows:

1. **Charitable Lead Unitrust (CLUT)**—the donor irrevocably transfers money, securities or other property to a trustee selected by the donor. The trustee pays HCCF **a fixed percentage** of the net fair market value of the trust's assets, as determined each year. The payments are made for a term of years or for the life of an individual. Upon termination of the trust, the assets of the trust are distributed to noncharitable beneficiaries designated by the donor.
2. **Charitable Lead Annuity Trust (CLAT)**—this trust works the same as the CLUT above except the trustee pays HCCF **a fixed dollar amount** of the net fair market value of the trust's assets each year.
3. Advantages of CLT's include the following:
 - A. Make a gift and transfer wealth to next generation
 - B. Attractive when interest rates are low to facilitate a tax-efficient way to pass wealth

e. **Gift of Life Insurance**

Gifts of life insurance provide donors with an excellent opportunity to make a potentially significant future gift to HCCF at modest after-tax costs to the donor. The key is making HCCF both the owner and beneficiary of the insurance policy. Gifts of life insurance can be made with new or existing policies.

- a. For existing policies with no remaining premiums, the donor simply transfers physical possession of the policy to HCCF and files an absolute assignment-of-ownership form with the insurance company. Your company then will send an endorsement to HCCF showing that HCCF is the sole owner and beneficiary of the policy.

- b. For existing policies with remaining premiums due, the donor can still transfer the policy as stated above. The donor shall make future contributions to HCCF for the amount of the premium payments due and HCCF will remit the premium payments directly to the insurance provider.
 - i. The donor is allowed an immediate tax deduction for the fair market value of the policy transferred (or the donor's cost basis in the policy, whichever is less).
 - i. For new policies, HCCF will work with the donor to establish a life insurance policy with HCCF as the owner and beneficiary. The donor shall make a contribution to HCCF for the entire premium due, or for a series of premium payments, and HCCF will remit the premium payments directly to the insurance provider.
 - ii. Upon redemption, the value of the policy may establish a new fund, or contribute to any existing fund at the Foundation. If the donor will be establishing a new fund with the remainder interest or income stream of the charitable trust, it is recommended that the donor work with HCCF to finalize the fund agreement when the trust is established, to ensure the donor's wishes are clearly documented.
 - 1. If the insurance proceeds will be contributed to an existing fund, the donor should document this in writing to HCCF to ensure the donor's wishes are fulfilled.

RESOURCES

National Standards for Community Foundations:

http://www.cfstandards.org/all_tabs/tabs21-24/Tab21.asp

Pension Protection Act of 2006:

<http://www.nasra.org/federal/PPA%20Ice%20Miller.pdf>

Model Standards of Practice of the Charitable Gift Planner (Appendix A, page 12):

<http://www.pppnet.org/pdf/modelstandards.pdf>

Donor Bill of Rights (Appendix B, page 14):

http://www.afpnet.org/files/ContentDocuments/Donor_Bill_of_Rights.pdf

Council on Foundations: Excess Business Holdings (Appendix D, page 19):

<http://www.cof.org/files/Documents/Government/Charitable%20Reform%20Resource%20Center/ExcessBusinessHoldings.pdf>

IRS Publication 561 Determining the Value of Donated Property:

<http://www.irs.gov/pub/irs-pdf/p561.pdf>

IRS Publication 526 Charitable Contributions:

<http://www.irs.gov/pub/irs-pdf/p526.pdf>

Appendix A

MODEL STANDARDS FOR PRACTICE FOR THE CHARITABLE GIFT PLANNER

Preamble

The purpose of this statement is to encourage responsible gift planning by urging the adoption of the following Standards of Practice by all individuals who work in the charitable gift planning process, gift planning officers, fund raising consultants, attorneys, accountants, financial planners, life insurance agents and other financial services professionals (collectively referred to hereafter as "Gift Planners"), and by the institutions that these persons represent.

This statement recognizes that the solicitation, planning and administration of a charitable gift is a complex process involving philanthropic, personal, financial, and tax considerations, and often involves professionals from various disciplines whose goals should include working together to structure a gift that achieves a fair and proper balance between the interests of the donor and the purposes of the charitable institution.

I. Primacy of Philanthropic Motivation

The principal basis for making a charitable gift should be a desire on the part of the donor to support the work of charitable institutions.

II. Explanation of Tax Implications

Congress has provided tax incentives for charitable giving, and the emphasis in this statement on philanthropic motivation in no way minimizes the necessity and appropriateness of a full and accurate explanation by the Gift Planner of those incentives and their implications.

III. Full Disclosure

It is essential to the gift planning process that the role and relationships of all parties involved, including how and by whom each is compensated, be fully disclosed to the donor. A Gift Planner shall not act or purport to act as a representative of any charity without the express knowledge and approval of the charity, and shall not, while employed by the charity, act or purport to act as a representative of the donor, without the express consent of both the charity and the donor.

IV. Compensation

Compensation paid to Gift Planners shall be reasonable and proportionate to the services provided. Payment of finder's fees, commissions or other fees by a donee organization to an independent Gift Planner as a condition for the delivery of a gift is never appropriate. Such payments lead to abusive practices and may violate certain state and federal regulations. Likewise, commission-based compensation for Gift Planners who are employed by a charitable institution is never appropriate.

V. Competence and Professionalism

The Gift Planner should strive to achieve and maintain a high degree of competence in his or her chosen area, and shall advise donors only in areas in which he or she is professionally qualified. It is a hallmark of professionalism for Gift Planners that they realize when they have reached the limits of their knowledge and expertise, and as a result, should include other professionals in the process. Such relationships should be characterized by courtesy, tact and mutual respect.

VI. Consultation with Independent Advisers

A Gift Planner acting on behalf of a charity shall in all cases strongly encourage the donor to discuss the proposed gift with competent independent legal and tax advisers of the donor's choice.

VII. Consultation with Charities

Although Gift Planners frequently and properly counsel donors concerning specific charitable gifts without the prior knowledge or approval of the donee organization, the Gift Planner, in order to insure that the gift will accomplish the donor's objectives, should encourage the donor early in the gift planning process, to discuss the proposed gift with the charity to whom the gift is to be made. In cases where the donor desires anonymity, the Gift Planner shall endeavor, on behalf of the undisclosed donor, to obtain the charity's input in the gift planning process.

VIII. Description and Representation of Gift

The Gift Planner shall make every effort to assure that the donor receives a full description and an accurate representation of all aspects of any proposed charitable gift plan. The consequences for the charity, the donor and, where applicable, the donor's family, should be apparent, and the assumptions underlying any financial illustrations should be realistic.

IX. Full Compliance

A Gift Planner shall fully comply with and shall encourage other parties in the gift planning process to fully comply with both the letter and spirit of all applicable federal and state laws and regulations.

X. Public Trust

Gift Planners shall, in all dealings with donors, institutions and other professionals, act with fairness, honesty, integrity and openness. Except for compensation received for services, the terms of which have been disclosed to the donor, they shall have no vested interest that could result in personal gain.

*Adopted and subscribed to by the National Committee on Planned Giving (now the Partnership for Philanthropic Planning) and the American Council on Gift Annuities, May 7, 1991. Revised April 1999.
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Appendix B

A Donor Bill of Rights

PHILANTHROPY is based on voluntary action for the common good. It is a tradition of giving and sharing that is primary to the quality of life. To ensure that philanthropy merits the respect and trust of the general public, and that donors and prospective donors can have full confidence in the not-for-profit organizations and causes they are asked to support, we declare that all donors have these rights:

- I. To be informed of the organization's mission, of the way the organization intends to use donated resources, and of its capacity to use donations effectively for their intended purposes.
- II. To be informed of the identity of those serving on the organization's governing board, and to expect the board to exercise prudent judgment in its stewardship responsibilities.
- III. To have access to the organization's most recent financial statements.
- IV. To be assured their gifts will be used for the purposes for which they were given.
- V. To receive appropriate acknowledgement and recognition.
- VI. To be assured that information about their donations is handled with respect and with confidentiality to the extent provided by law.
- VII. To expect that all relationships with individuals representing organizations of interest to the donor will be professional in nature.
- VIII. To be informed whether those seeking donations are volunteers, employees of the organization or hired solicitors.
- IX. To have the opportunity for their names to be deleted from mailing lists that an organization may intend to share.
- X. To feel free to ask questions when making a donation and to receive prompt, truthful and forthright answers.

The Donor Bill of Rights was created by the Association of Fundraising Professionals (AFP), Association for Healthcare Philanthropy (AHP), Council for Advancement and Support of Education (CASE), and the Giving Institute: Leading Consultants to Non-Profits. It has been endorsed by numerous organizations.

Appendix C

**Administrative Fee Policy and
Minimum Fund Balance Requirements**

Please see separate document

Appendix D

Council on Foundations: Excess Business Holdings

Under the Pension Protection Act of 2006 (PPA), the private foundation excess business holdings rule apply to donor-advised funds as if they were private foundations.¹ That is, the holdings of a donor-advised fund in a business enterprise, together with the holdings of persons who are disqualified persons with respect to that fund, may not exceed any of the following:

- Twenty percent² of the voting stock³ of an incorporated business
- Twenty percent of the profits interest of a partnership or joint venture or the beneficial interest of a trust or similar entity

Ownership of unincorporated businesses that are not substantially related to the fund's purposes is also prohibited.

Donor-advised funds receiving gifts of interests in a business enterprise after the date of the PPA's enactment (August 17, 2006) will have five years to divest holdings that are above the permitted amount, with the possibility of an additional five years if approved by the Secretary of the Treasury. Funds that currently hold such assets will have a much longer period to divest under the same complicated transition relief given to private foundations in 1969.⁴

What is a donor-advised fund?

See [What is a Donor-Advised Fund?](#) on the Council's website.

What is a business enterprise?

A "business enterprise" is the active conduct of a trade or business, including any activity which is regularly carried on for the production of income from the sale of goods or the performance of services. Specifically excluded from the definition are:

- Holdings that take the form of bonds or other debt instruments unless they are a disguised form of equity
- Income from dividends, interest, royalties and from the sale of capital assets
- Income from leases unless the income would be taxed as unrelated business income
- "Functionally-related" businesses and program-related investments

¹ The language is clear that it is only the donor-advised fund—not the sponsoring charity—that is to be treated as a private foundation. Accordingly, it appears that this section does not apply to assets held by the sponsoring charity's investment pools, or assets held by funds that are not donor-advised.

² Thirty-five percent if it can be shown that persons who are not disqualified persons have effective control of the business.

³ Additionally, the donor-advised fund will be barred from holding non-voting stock of an incorporated business unless the disqualified persons collectively own less than 20 percent of the voting stock.

⁴ Excess holdings acquired by purchase must be disposed of immediately. If purchases by disqualified persons cause the donor-advised fund to have excess holdings, the donor-advised fund will have 90 days to dispose of the excess.

- Businesses that derive at least 95 percent of their income from passive sources (dividends, interest, rent, royalties, capital gains). This will have the effect of excluding gifts of interests in most family limited partnerships, and other types of holding company arrangements.

What is a disqualified person?

Donors and persons appointed or designated by donors are disqualified persons if they have—or reasonably expect to have—advisory privileges with respect to the donor-advised fund by virtue of their status as donors. Members of donors’ and advisors’ families are also disqualified, but the section does not define “family” and does not cross-reference either section 4958 or 4946 for the definition. Finally, the term includes 35-percent-controlled entities as defined in section 4958(f)(3).

What contributions will be affected?

The new rule will mainly affect contributions of closely-held businesses and in most cases will require the donor-advised fund to dispose of the contributed interest within five years of the date of gift because the disqualified persons will generally own more than 20 percent of the business.⁵ The rule will not apply to assets held by the sponsoring charity—as long as they are not held by the donor-advised fund—apparently permitting a sponsoring charity to keep a contributed asset as part of its overall investment portfolio. It will also not apply to gifts to funds—such as field-of-interest or designated funds—that are not donor-advised.

Because they are not “business enterprises,” the rule will not apply to most gifts of real property. The most important exception will be undeveloped land, which may become a business enterprise if the charity that owns it takes extensive steps to subdivide it and prepare it for sale. This is a particularly dangerous situation because this could require immediate divestiture. Interests in investment partnerships and LLCs—including family partnerships, hedge funds, REITs, and so forth—are excluded from the definition of business enterprise as long as 95 percent or more of the entity’s income is from passive sources. Examples of other property gifts that are excluded because they are not business enterprises include:

- Oil and gas interests (non-working)
- Life insurance
- Tangible personal property (as long as it is not inventory)
- Remainder interests in personal residences and farms

What about existing holdings?

The rules that will apply to donor-advised funds holding business interests on the date of enactment of the PPA are quite complex. In Phase one, donor-advised funds that together with their disqualified persons hold more than a combined 50 percent interest in a business will be required to reduce their

⁵ Under the de minimis rule, the donor-advised fund could continue to hold an interest that did not exceed two percent of the voting stock and two percent of the value.

combined holdings to 50 percent, and, in most cases reduce the foundation's share of the holdings to 25 percent. The time period for doing so is:

- Twenty years if the donor-advised fund and disqualified persons collectively own 95 percent or more of the voting or profits interests of a business enterprise
- Fifteen years if the combined total is 75 percent or more, but less than 95 percent
- Ten years if the combined total is more than 50 percent, but less than 75 percent

Phase two is the 15-year period that begins at the end of phase one. During this period, the combined holdings are limited to 50 percent, but if the disqualified persons' share is two percent or more the foundation may own no more than 25 percent of the total. At the end of phase two, the combined holdings may not exceed 35 percent and the foundation's share may not be more than 25 percent if the disqualified persons' share is two percent or more.⁶

When does this provision take effect?

At the start of the first full tax year following the date of enactment (August 17, 2006)—January 1, 2007, for calendar-year taxpayers. Note that the transition rules for existing holdings will apply only to assets held on the date of enactment.

DISCLAIMER

The information provided in this booklet is based on our continuing analysis of the bill. Every effort has been made to ensure accuracy of these documents. Please understand, however, that due to the complexity of the bill and the fact that many of these provisions introduce issues that are new to the Internal Revenue Code, this information is subject to change. The information is not a substitute for expert legal, tax or other professional advice and we strongly encourage grantmakers and donors to work with their counsel to determine the impact of this legislation on their particular situations. This information may not be relied upon for the purposes of avoiding any penalties that may be imposed under the Internal Revenue Code.

Appendix E

Sample Bequest Language

1st paragraph: I give, devise and bequeath to the Hendricks County Community Foundation Inc., an Indiana nonprofit corporation, [*the sum of/percentage of/residue of my estate*] to be used in furtherance of the charitable purposes of the Community Foundation as defined in and subject to the provisions of its Articles of Incorporation and By-Laws.

⁶ Additional rules apply to cover situations such as mergers, redemptions, and acquisitions.

2nd paragraph-Sample wording #1: This devise will be used to establish a component fund to be known as the [insert name of fund] Fund. I direct that the annual distributions of the Fund be used for [*insert charitable purpose*] by the Foundation pursuant to its guidelines and criteria.

2nd paragraph-Sample wording #2:

This devise will be added to an existing component fund known as the [insert name of fund] Fund to be used for the intended purposes of such fund and by the Foundation pursuant to its guidelines and criteria.

2nd paragraph-Sample wording #3:

This devise will be added to the **Deedee Daniel Opportunity Fund** to be used to make grants to worthwhile projects and organizations in Hendricks County as directed by the Community Foundation Board of Directors and pursuant to the Fund's guidelines and criteria.

2nd paragraph-Sample wording #4:

This devise will be added to the **HCCF Operating Endowment Fund** to be used to sustain and support the operations of the Community Foundation to fulfill its mission of connecting caring people with causes that matter.