

**COMMUNITY FOUNDATION
OF SWITZERLAND COUNTY, INC.
GIFT ACCEPTANCE POLICY**

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GIFT ACCEPTANCE POLICY

The Community Foundation of Switzerland County, Inc. (referred to as the “Foundation” in the following sections of this policy), is a publicly supported philanthropic organization governed by a non-compensated volunteer board. The Foundation seeks to enrich the quality of life for each resident of Switzerland County by administering funds entrusted to it, or of funds bequeathed by individuals, or gifted by corporations and other organizations and agencies. The Foundation provides sound management of these contributions as part of the permanent endowment.

PURPOSE

The purpose of this policy is to serve the best interests of the Foundation, its donors, and a healthy, caring community by providing guidelines for negotiating and accepting various types of gifts for various types of funds. Given the increasing complexity of IRS regulations, the volume of real estate and other property gifts, and state and federal environmental laws, the Foundation recognizes the value in carefully screening proposed gifts. The Foundation board and staff must be able to assure that gifts accepted by the Foundation do not place other assets of the Foundation at risk, and that they can be easily converted into assets that fall within the Foundation’s investment guidelines.

The purpose of this Gift Acceptance Policy is to govern the acceptance of gifts and to provide guidance to the donors and their professional advisors in completing gifts. This is to ensure the Community Foundation of Switzerland County, Inc. fulfills its mission.

In order to accomplish its mission, the Foundation seeks to serve the charitable interests of its donors and the community by informing, guiding and otherwise assisting the donor in fulfilling his or her philanthropic wishes.

POLICIES AND GUIDELINES

A. Disclosures to Donor and Donor’s Interests

The Foundation 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 the Foundation. In particular, donors should be made aware of:

- the irrevocability of a gift,
- prohibitions on donor restrictions,
- items subject to variability (market value, investment return, and income yield), and
- the Foundation’s responsibility to provide periodic financial statements on donor funds.

The role of the Foundation 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.

The Foundation assures that the charitable intentions of each donor will be fulfilled. The interests of the donor shall come before those of the Foundation. No program, agreement, trust, contract or commitment shall be urged upon any prospective donor that would benefit the Foundation at the expense of the donor's interest and welfare.

B. Variance Power

All funds shall be accepted subject to the variance power of the Articles of Incorporation and/or Bylaws of the Foundation. "The Board shall monitor the distribution of the Fund, and shall have all powers of modification and removal specified in the United States Treasury Regulations Section 1.170A-9(e)(11)(v)(B). To modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if in the sole judgment of the governing body (without the necessity of the approval of any participating trustee, custodian, or agent), such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served."

C. Legal

For any but the simplest type of gift, the Foundation recommends that prospective donor seek the counsel of their attorney in any and all aspects of a proposed gift, whether by will, bequest, trust agreement or outright gift. The donor will be advised to consult with their attorney or other advisors on matters related to the tax implications of the gift.

The Foundation 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 boards of directors recognize its fiduciary duty to protect the Foundation's assets and to provide guidance to its management.

Review by legal counsel is usually sought in connection with but not limited to:

1. Closely-held securities transfers that are subject to restrictions or buy-sell agreements.
2. Gifts involving contracts, such as those requiring the Foundation to assume a legal obligation.
3. Gifts of patents or intellectual property.
4. Transactions with potential conflict of interest that may invoke IRS sanctions.
5. Instances in which use of counsel is deemed appropriate by the executive director or board of directors.
- 6.

D. Conflict of Interest

The Foundation serves as a reliable professional steward of assets entrusted to its care. The integrity and quality of the Foundation's relationship with its constituency determines the strength of the organization. The Foundation 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 diversity of the community and funding decisions based on moral, ethical, and social attitudes.

The effectiveness of the Foundation 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 the Foundation's affairs is committed to being mindful of their personal conduct when dealing with these important matters. Each member of the board of directors, 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.

The Foundation has met all requirements of the National Standards for Community Foundation as set by the Council on Foundations (See RESOURCES, Page 13), endorses the Model Standards of Practice of the Charitable Gift Planner promulgated by the Partnership for Philanthropic Planning (See RESOURCES, page 13), and the Donor Bill of Rights promulgated by the Association of Fundraising Executives (See RESOURCES, page 13).

E. Confidentiality

All information concerning donors regardless of active, inactive, or prospective status shall be kept strictly confidential by the Foundation 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.

Foundation staff shall maintain strict control over files and information received from or about donors or prospective donors so as to maintain confidentiality of such information.

Each member of the board of directors, each volunteer, and every staff member signs a Confidentiality Statement annually.

F. Standard Form Documents

For administrative ease and convenience, the Foundation has developed standard forms of fund agreements and other documents relating to the Foundation's development program. All such standard forms have been reviewed by legal counsel, and approved by the board of directors. The Foundation will provide standard forms to a prospective donor and the donor's advisor upon request and encourages their use.

G. Authority to Negotiate

The executive director or the development director is authorized to negotiate on behalf of the Foundation with any donor in respect to any gift instruments that follows the format described in this policy. Any real estate or interests in real property or hard-to-value assets of any kind must be approved by the board of directors before any negotiation may begin. Any agreements which involve a legal obligation on the part of the Foundation or its agents which do not follow the forms described in these policies or, are special agreements of any kind, are required to get approval of the board of directors before negotiations may begin.

H. Reports

When a donor establishes a fund with the Foundation, annual reports are provided that detail the activity in the fund for the period.

I. Valuation of Non-cash Gifts

Valuation of non-cash gifts, the preparation and filing of IRS Form 8283, or other forms required for the purposes of obtaining a charitable income or estate tax deduction, will be the responsibility of the donor, or the donor's personal representative.

J. Administrative Fees

The board-approved administrative fee schedule will apply to all funds except in those instances where the board of directors approves a different fee. Administrative fees are subject to change.

K. Investment of Gifts

1. In General

- As donors establish a fund within the Foundation, 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 the Foundation under IRS rules. Donors give up the right to choose investments and investment brokers and to veto investment choices for their gifts.

- It is the policy of the Foundation that assets from current and future gifts will be commingled with other assets of the Foundation for investment purposes. All investments will be selected in conformance with investment policies established by the Foundation.

2. Sale of Assets

- All assets that are accepted as gifts are usually sold immediately, but may be retained by the Foundation as long as such decision to do so serves the interest of the Foundation.

L. Cost of Accepting and Administering Gifts

Generally, costs associated with the acceptance of a gift such as attorney fees, accounting fees, other professional fees as well as other costs to establish a gift such as appraisal, escrow, evaluation, and environmental assessment fees will be borne by the donor.

The direct costs of administering outright and planned gifts of the Foundation will be borne from the assets of the individual funds, except for those special circumstances as determined by the Board of Directors. Custodial, investment, and administrative fees will be paid from the respective funds in accordance with the Foundation's guidelines and fee schedules.

The Foundation will pay no commissions or finder's fees as consideration for directing a gift to the Foundation or to any of the Foundation's affiliates.

M. Acknowledgment

Donors shall receive an expression of sincere thanks and gratitude from the Foundation and an acknowledgement of the gift in accordance with federal regulations.

N. Benefit to the Donor

The legal nature of a charitable gift is that a donor cannot expect or receive financial benefits or opportunities from the gift.

O. Restrictions

In conformance with Treasury Department regulations governing community foundations, gifts to the Foundation may not be directly or indirectly subjected by a donor to any material restriction or condition that prevents the Foundation from freely and effectively employing the transferred assets, or the income derived therefrom, in furtherance of its exempt purposes.

P. Acting as Trustee

By opinion of Legal Counsel, the Foundation may not serve as a trustee. Further, no employee shall serve as a trustee, conservator, executor, or personal representative for one of the Foundation's donors or prospects unless specifically approved by the Board of Directors.

Q. Publicity

No public media exposure with respect to a donor's gift will be generated without the consent of the donor.

GIFTS TO THE FOUNDATION

A. Gifts Not Requiring Board Review

1. Cash or cash equivalents
2. Checks
3. Publicly Traded Securities
 - a. Transferring of Securities:
 - i. If held by the donor's stockbroker or banker, securities are to be transferred directly to the Foundation's account. The donor's broker must be particularly careful not to sell the securities until they are in the Foundation's account or the donor will incur capital gains. The donor's broker should call the Foundation to obtain the correct DTC information.
 - ii. If held by the donor, a stock power for each certificate being contributed must be completed.
 - b. Valuation of Gift:
 - i. The value is calculated by using the average of the high and low price on the date of the gift.
 - c. Date of Gift:
 - i. The day the transfer of ownership actually takes place (when the stock is received in the Foundation's account).
 - ii. The day the Foundation receives the hand-delivered certificate and stock power.
 - iii. The day the certificate and stock power are postmarked (if mailed).
4. Gifts of personal property for use in Foundation offices or programs.
5. Life insurance policies except as noted below.

B. Gifts Requiring Board Review

1. Real Estate

Real estate gifts are evaluated on a case-by-case basis and are subject to board approval. Prior to the acceptance of real estate, the Community Foundation shall require an initial environmental review of the property to ensure that the property has no environmental or other issues, as outlined in the Real Estate Policy. In the event that the initial inspection reveals a potential problem, the Community Foundation 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. Before acceptance of real estate, the attached Real Estate Acceptance Checklist (Appendix A) must be completed and submitted, along with all supporting documents, to the board for approval. Such gifts may require a lead-time of three to six months to prepare for acceptance.

2. Tangible personal property

Tangible personal property is property that can be held physically. Examples are art, furniture, livestock, automobiles, and jewelry. The Community Foundation and the donor must comply with Treasury regulations for obtaining and reporting qualified appraisals. Tangible property is evaluated on a case-by-case basis and is subject to board of directors approval.

Considerations include the following:

- a. Is the property useful for the purpose of the Community Foundation?
- b. Is the property marketable?
- c. Are there any undue restrictions on the use, display, or sale of the property?
- d. Are there any public relations issues related to acceptance of the property?
- e. Are there carrying costs, such as insurance, lease space, maintenance to preserve value, costs of sale, or appraisal that would create a negative cash flow for the Community Foundation?

3. Closely-held and S corporation stock

- a. Gifts of closely held business interest such as C Corporations, LLPs, and LLCs are evaluated on a case-by-case basis and are subject to board approval.
- b. These gifts must be reviewed prior to acceptance to determine that:
 - i. There are no restrictions on the security that would prevent the Foundation from ultimately converting those assets to cash.
 - ii. The security is marketable, and the security will not generate any undesirable tax consequences for the Foundation.
 - iii. Such gifts may require two to four months to prepare for possible acceptance.

4. Excess Business Holdings
 - a. See Appendix B
5. Partnership interests.
6. Accounts receivable
 - a. gifts of loans, notes, mortgages, etc.
7. Gifts of other types of assets carrying their own challenges.
 - a. intellectual property, mineral reserves, precious metals, etc.
8. Gifts that fall outside the ordinary purposes/procedures of the Foundation.
9. Life insurance policies requiring future premium payments by the Foundation.
 - a. The donor must make the Community Foundation both owner and beneficiary of the insurance policy in order for the IRS to regard the transaction as a charitable gift. Indiana Code 27-8-18 passed in 1992 allows a charity to own life insurance on an individual. The Community Foundation will determine on a case-by-case basis if the policy should be kept in force or cashed in. Prior to accepting an insurance policy requiring ongoing premium payments, the Community Foundation will obtain a written agreement with the donor regarding how such premiums will be paid. Under no circumstances will “split dollar” life insurance arrangements be considered as a gift.

10. Charitable Gift Annuity

A charitable gift annuity is a contract under which the Community Foundation, in return for a transfer of cash or marketable securities, agrees to pay a fixed amount of money to one or two individuals for their lifetimes. The contributed property, given irrevocably, becomes a part of the Community Foundation’s assets, and the payments are a general obligation of the Community Foundation. The annuity is backed by the Community Foundation’s entire assets, not just by the property contributed. Unlike a trust, annuity payments continue for the life/lives of the annuitant(s), and not only as long as assets remain in the charitable gift annuity fund. The minimum gift for funding a CGA is \$5,000.

With an immediate charitable gift annuity, the annuitant(s) start(s) receiving payments at the end of the payment period immediately following the contribution unless otherwise stated in writing. With a deferred charitable annuity, the annuitant(s) start(s) receiving payments at a future time, the date chosen by the donor, which must be more than one year after the date of the contribution.

11. Charitable Trusts

Three types of charitable trusts are described below. In each instance, a trust is formed and a trustee appointed to administer the trust. While the Community Foundation is pleased to work with donors and their professional advisors in creating a trust, the Community Foundation 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 establishment of the trust.

i. Charitable Remainder Unitrusts

Under a charitable remainder unitrust, 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 not to exceed twenty years. Upon termination of the income beneficiary's interest, the assets of the unitrust are transferred to the Community Foundation.

ii. Charitable Remainder Annuity Trust

A charitable remainder annuity trust is similar to a unitrust, except that the income beneficiary receives a fixed dollar amount not less than annually from the trust.

iii. Charitable Lead Trust

Under a charitable lead trust, the Community Foundation is given an income interest in the trust assets for a period of years or the lives of one or more individuals, at the end of which time the assets of the trust are distributed to noncharitable beneficiaries designated by the donor. A charitable lead trust could be in unitrust or an annuity trust format.

12. Retirement Plan Beneficiary Designation

Donors and supporters of the Community Foundation are encouraged to name the Community Foundation of Switzerland County, Inc. as beneficiary of their retirement plan. Such designations will not be recorded as gifts to the Community Foundation until such time as the gift is irrevocable. When the gift is irrevocable, but is not due until a future date, the present value of the gift may be recorded at the time the gift becomes irrevocable.

13. Bequests

Donors and supporters of the Community Foundation are encouraged to make bequests to the Community Foundation through their wills and trusts. Such bequests will not be recorded as gifts until such time as the gift is irrevocable. When the gift is irrevocable, but is not due until a future date, the present value of the gift may be recorded at the time the gift becomes irrevocable. A bequest can be for a specific gift, a specific asset, or a percentage of the donor's estate. The Foundation board of directors has the authority to accept or refuse a bequest gift. Donors are encouraged to discuss bequests with the Foundation.

14. Life Estate Agreement

Gifts of real estate are evaluated on a case-by-case basis and are subject to board approval. (See Real Estate page 8, number 1)

A donor may contribute a personal residence or farm to the Community Foundation subject to pertinent items on the attached Real Estate Acceptance Checklist (Appendix B) and retain the right to occupy the property until death. When the Community Foundation receives such a gift, expenses for maintenance, real estate taxes, and any property indebtedness are the responsibility of the donor until the time it passes to the Community Foundation. Upon the donor's death, the Community Foundation will own the entire interest in the property. The net proceeds of the estate must not leave the Community Foundation.

C. GIFTS DECLINED

The Foundation reserves the right to refuse any gift it believes is not in the best interests of promoting a healthy, caring community. In addition, the Foundation will not knowingly accept a charitable gift from a donor who:

- A. Has insufficient income and assets remaining after making a gift to provide for his/her needs such as personal support and healthcare.
- B. Has insufficient income and assets remaining after the gift to provide for his/her heirs for whom he/she is fiscally responsible.
- C. Has an apparent insufficient mental capacity to make a rational decision.
- D. Has insufficient input from competent financial, legal, and/or personal counsel.

D. PUBLIC FUND RAISING

Fundraising undertaken by donors in connection with funds of the Foundation require special consideration. (See Appendix C).

TYPES OF FUNDS

A minimum of \$5,000 is required to create any new endowment fund. This minimum guideline may be waived by the board of directors in circumstances where it is deemed appropriate (such as anticipation that subsequent gifts will be made to the fund by donors or others in amounts sufficient to warrant the creation of the fund). Distributions from an endowment fund will be made in accordance with the Community Foundation's Spending Policy. Funds can be created as an endowment or nonpermanent fund. The Foundation offers the following types of funds to meet the needs of donors:

A. Community Funds

Community Funds provide the Foundation with the greatest flexibility in responding to the ever-changing community needs and grant requests from local nonprofits organizations.

B. Field of Interest Funds

Field of Interest Funds support areas of particular interest to the donor, such as children, the arts, education, or needs of the elderly. The Foundation then selects the agencies or programs that fit the donor's wishes.

C. Advised Endowment and Nonpermanent Funds

With an advised endowment or nonpermanent fund, the donor reserves the right to make periodic grant recommendations to the Foundation's Board of Directors. As required by IRS regulations, an advisor's grant recommendation is not binding on the Foundation, which retains final authority to determine distributions from the fund. The recommendations are verified to ensure the recipient organization is approved by the IRS as a 501(c)(3) charitable agency. Advised fund, may not make grants to individuals. Donors may name their children, or others, as successor advisors. Once all successor advisors, if any, are deceased, the fund becomes part of the Community Fund, a field of interest endowment fund or another type of fund, as specified by the donor, provided a fund agreement is in place. The Foundation will allow successor advisors for a fund for only one generation beyond the life of the original donor.

D. Designated Funds

Designated Funds are created by donors who wish to provide support to one or more specific charitable organizations of their choice. Should the designated organization, or the purpose it serves, cease to exist, the Foundation will re-allocate the fund's income to reflect the donor's original wishes.

E. Scholarship Funds

Scholarship Funds may be tailored to assist students with advanced educational opportunities or to support a specific educational institution of the donor's choosing.

F. Acorn Funds

Acorn Funds are designed to allow a donor to gradually add money to a fund until it reaches the \$5,000 minimum. Once it reaches the \$5,000 minimum, the donor can convert it to any of the types of funds described above.

G. Agency Funds

An agency endowment fund holds assets for a charitable 501(c)(3) organization and may be created by a nonprofit organization as a way to plan for the future. This type of fund is most appropriate for agencies that have moved past the grassroots level.

RESOURCES

National Standards for Community Foundations:

www.cof.org/files/Documents/Community_Foundations/National_Standards/National_Standards.pdf

Model Standards of Practice of the Charitable Gift Planner:

www.ncpg.org/join/ModelStandards.pdf

Donor Bill of Rights:

<http://www.afpnet.org/Ethics/EnforcemetnDetail.cfm?ItemNumber=3359>

IRS Publication 561 Determining the Value of Donated Property:

www.irs.gov/publications/p561/index.html

IRS Publication 526 Charitable Contributions:

www.irs.gov/publications/p526/index.html

APPENDIX A
Real Estate Acceptance Checklist

Donor responsible to complete the following:

1. _____ Provide a written communication of intent of gift.
2. _____ Provide legal description of property, including description of any building or structures located on the land.
3. _____ Obtain completed boundary survey of property with location of all structures and easements appearing on the face of the survey.
4. _____ Agree, in writing, on arrangements for paying all expenses associated with the property, including, but not limited to:
 - a. Taxes and assessments,
 - b. Appraisal fees
 - c. Survey fees
 - d. Environmental evaluations
 - e. Insurance coverage (including title insurance)
 - f. Maintenance costs
 - g. Realtor commissions
 - h. Legal fees and
 - i. Understanding that donor will pay for related expenses if gift is not accepted.
5. _____ Have qualified appraisal performed according to IRS guidelines for valuation of the gift for donor's tax purpose and for Community Foundation valuation purposes. Appraisal must be completed no more than 60 days before the date of the gift.
6. _____ Obtain General Warranty Deed (guarantees clear title).
7. _____ Obtain commitment to provide title insurance from an acceptable title insurance company showing status of title to property. Evidence of title showing property is owned free and clear – supply title search. If mortgage exists on property, must supply information (bargain sale rules apply to donor's deduction).
8. _____ Provide a qualified recent Phase I Environmental Assessment. Obtain Phase II sampling if any "recognized environmental conditions" were identified in Phase I.
9. _____ Provide information regarding existing zoning status.
10. _____ Prior to transfer of title, the donor and the Community Foundation will sign a standard fund agreement, or other form of fund agreement that has been approved by legal counsel to the Community Foundation. Agreement must state the terms of the gift and specify that there are no material restrictions on the Community Foundation's right to use or convey the property.

Community Foundation is responsible to complete the following:

1. _____ Physically observe the real estate.
2. _____ Engage corporate attorney to review and prepare papers as necessary.
3. _____ Obtain copy of leases, if any.
4. _____ Obtain assignment of leases, if any.
5. _____ Obtain copy of service or management contracts, if any.
6. _____ Research likelihood of selling property within one year.
7. _____ Evaluate whether acceptance may result in adverse tax consequences (UBIT, transfer tax).
8. _____ Obtain approval by Community Foundation Board to accept gift.
9. _____ Record deed with county clerk's office (fee to record deed).
10. _____ Obtain title, property, and liability insurance.
11. _____ Sign Form 8283 for donor's tax return.
12. _____ File Form 8282 within three years of date of gift.
13. _____ If necessary, investigate listing property with a realtor and negotiate final sale. Donor should consult their professional advisor before donating property with a pre-existing sales contract, as it could have an impact on the tax treatment of the gift.
14. _____ Cancel Community Foundation insurance coverage after property sells.

APPENDIX B

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

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.

- “Functionally-related” businesses and program-related investments
- 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 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:

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.

- 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.

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

APPENDIX C

Public Fundraising for Endowed Funds of the Foundation

The Foundation is staffed to develop endowment and other funds through the acquisition of major and planned gifts and to cultivate new and existing relationships with donors. The Foundation is not equipped to operate public fundraising events for its funds. In general, the Foundation will administer a public fundraising event in association with a fund only under extenuating circumstances.

Public fundraising events refer to those special events that are intended to raise dollars for funds. For example, a golf outing, fundraising dinner, raffle, or other special event would be considered a public fundraising event. The term is not intended to encompass other solicitations for purely charitable purposes.

Foundation Approval of Events

In the event the Foundation approves a fundraising event, the guidelines listed below must be adhered to. These guidelines encompass the legal and other requirements the Foundation is subject to and, therefore, must be abided by.

Before undertaking public fundraising events, the fundraising event coordinator will define to the Foundation each program, event, or other effort to raise money for the fund. The fundraising event coordinator will then obtain Foundation approval to proceed according to Foundation guidelines. All uses of the Foundation's name in advertising and promotion must be approved in advance by the Foundation's Marketing Communications officer.

Responsibilities of the Foundation

The Foundation is held accountable for all public fundraising events related to funds of the Foundation. It cannot delegate this responsibility to any other parties. In considering whether to approve the event, staff should take into account the following responsibilities:

- Budget and payment of expenses
 - Who will prepare a budget?
 - Who will be responsible for authorization for and payment of expenses?
 - Who will oversee the budget and ensure that the budget is adhered to?
 - Will the Foundation assess a special administrative fee for this service?

- Compliance with laws
 - Is the event included under the scope of the annual solicitation license?
 - Is there a need for a special raffle or gambling license?
 - Are the appropriate sales taxes being collected on items sold and who will file the sales tax return?
 - Is there a clear understanding that the expenses of fundraising events are not exempt from sales tax?

- Liability covering the Foundation
 - Is there a need for additional general liability or other insurance due to the event?
 - Should a letter of credit or a written personal guarantee be provided?
- Acknowledgements
 - If the contributors receive goods or services in return for their payment, who will determine the appropriate charitable portion of the payment so that correct tax acknowledgements will be prepared?
- Management of money and property received from the event
 - Will all checks be made payable to the fund at the Foundation?
 - Where should checks and other forms of payment be sent?
 - If someone else is collecting cash, what safeguards need to be in place?
- Application of income and principal to charitable uses
 - Can the fund be administered in the manner in which it is advertised?