

CENTRAL INDIANA COMMUNITY FOUNDATION, INC.
POLICY FOR GIFTS OF
PARTNERSHIP INTERESTS

Approved by the Boards of Directors of:
Central Indiana Community Foundation, Inc.
December 8, 2016
Legacy Fund, Inc.
December 6, 2016
The Indianapolis Foundation, Inc.
December 8, 2016

I. PURPOSE.

As a trusted philanthropic partner, the mission of Central Indiana Community Foundation, Inc. and its affiliates, Legacy Fund, Inc. and The Indianapolis Foundation, Inc. (collectively, "CICF"), is to inspire, support and practice philanthropy, leadership and service. The purpose of this policy is to govern the acceptance of gifts of partnership interests to best serve the interests of CICF and its donors, as well as to provide guidance to professional advisors in completing gifts of partnership interests. The purpose of the gift must be charitable. CICF must ensure that its donors' wishes will be fulfilled through the acceptance of any and all gifts.

II. GENERAL GUIDELINES.

A. Gift Review. Proposed gifts of partnership interests, whether current or deferred, will be evaluated on a case-by-case basis in accordance with CICF's policies and procedures. The Chief Financial Officer and/or Vice President for Development & Philanthropic Services, with the assistance of the Director of Charitable Gift Planning & Legal Affairs Counsel and appropriate staff, will have the overall authority to handle inquiries, negotiate with donors, assemble documentation, and execute agreements on behalf of CICF. Gifts of partnership interests will be accepted only after the requirements of CICF's policies and procedures have been satisfied and with the prior approval of the gift acceptance committee. CICF may refuse any offered gift that is judged not to be in the best interest of CICF or the donor.

B. Evaluation of Potential Gifts.

1. *Type of Interest.* CICF will only accept contributions of limited partnership interests. CICF cannot accept general partnership interests, due to the exposure to claims of creditors and other liabilities.¹

a. *Family Limited Partnerships.* In the case of family limited partnerships (FLPs), the donor shall assume full responsibility for assuring

¹ In the case of general partnerships, the tax-exempt status of CICF may be jeopardized if the IRS takes the position that participation by CICF in the partnership as a general partner constitutes non-charitable activities. See Hoyt, *Legal Compendium for Community Foundations* at 90.

that the FLP was validly formed and properly valued, and that the FLP interest meets all requirements for qualification for a charitable deduction.

i. *Endowment Requirement for Gifts of FLP Interests.* In light of publicity about increased Internal Revenue Service (IRS) scrutiny of FLPs, the due diligence required of CICF prior to accepting FLP gifts is substantial. Consequently, if the proposed gift involves a transfer of FLP interests, the donor must agree in writing that at least \$100,000 of the assets contributed shall remain in a component fund of CICF, either (i) as a permanent “floor” of a donor advised fund, or (ii) in a permanently endowed designated, field of interest, or Community fund.

2. *Nature of Activity.* Unless approved by the gift acceptance committee, CICF will only accept interests in passive, investment- type partnerships, such as those holding rental real estate, stocks, bonds, and other investments. In addition, CICF will not accept contributions of limited partnership interests where the nature of the partnership’s activities is judged not to be in the best interests of CICF.

3. *Documentation.* CICF will review any relevant documentation in consideration of the proposed gift which may include, but is not limited to: the partnership agreement, income tax returns, most recent schedule K-1, a qualified appraisal, a description of the partnership’s activities, proposed transfer instruments, and any proposed agreements or arrangements pertaining to the property. Such documentation may be reviewed by legal counsel.

4. *Encumbrances.* Many partnerships have debts. If a partnership interest that is encumbered by debt is accepted, those partnership interests subject to encumbrances may be evaluated as a “bargain sale” (a bargain sale is an arrangement whereby a donor offers property to CICF for an amount less than its current fair market value).

5. *Sale or Liquidation.* It should appear reasonably certain that the partnership interest(s) proposed to be transferred to CICF will be sold or liquidated for a fair value and proceeds received into a component fund of CICF within a specific time frame, which by law may not exceed five years.

In the alternative, it should appear reasonably certain that the partnership interest(s) proposed to be transferred to CICF will, through regular distributions, generate annual income sufficient to provide a reasonable rate of return for the component fund into which it is received.² For purposes of this policy, the definition of

² Treasury Regulations require that CICF assure that its funds produce a reasonable rate of return. This can be particularly important for property held in designated funds, because while this requirement is

“a reasonable rate of return” shall be determined by CICF, in its sole discretion. The Chief Financial Officer and/or Vice President for Development and Philanthropic Services shall have the authority to determine whether the requirements of this paragraph have been met.

If the partnership interest is sold, liquidated, or otherwise disposed of within three years of receipt, per the IRS, CICF is required to file IRS Form 8282 (“Donee Information Return”), unless the gift was valued below \$500 or was distributed for charitable purposes. See Treas. Reg. 1.6050L-1.

Note: Excess Business Holdings. Gifts of business interests to a donor advised fund may raise the issue of excess business holdings under the Pension Protection Act and Internal Revenue Code section 4943. Excess business holdings exist when the holdings of a donor advised fund together with the holdings of disqualified persons exceed 20% of the voting stock of the incorporated business, 20% of the profit interest of a partnership or joint venture, or 20% of a beneficial interest of a trust or similar entity. In such a case, CICF must divest of the excess business holdings within a period not exceeding five years. Ownership of unincorporated businesses that are not substantially related to the fund’s purposes is also prohibited.

5. *Administrative and Investment Fee Schedule.* Prior to accepting a gift of partnership interests, CICF will negotiate with the prospective donor an appropriate fee schedule for the administration and investment of the component fund that will receive the gift. If the transferred interests have not been liquidated or sold within five years from the date of the initial gift, and if CICF determines that annual distribution income is insufficient to produce a reasonable rate of return for the recipient component fund, CICF may re-negotiate with the donor and impose a higher fee schedule on the recipient component fund.

6. *Tax Deductibility.* The allowable tax deduction for gifts of partnership interests will be subject to the rules of the IRS relating to partnership interests and bargain sales, if relevant. CICF will provide the donor with any substantiation required for the donor to obtain a tax deduction.

III. RESPONSIBILITIES OF THE DONOR.

A. Documentation. The following documentation must be submitted to CICF before a proposed gift of a partnership interest can be accepted (Documentation should be submitted sufficiently in advance of the anticipated date of the gift. For gifts that are to be made at or before the end of the calendar year, the required documentation should be submitted no later than November 15):

1. *Partnership Agreement.* CICF’s staff or legal counsel must review the limited partnership agreement to determine the nature of the interest being contributed, the

applied based on the aggregate performance of most funds, it is made on a fund-by-fund basis for designated funds. See Treas. Reg. 1.170A-9(e)(11)(v)(F) and 1.170A-9(e)(13)(x). See Hoyt, *Legal Compendium for Community Foundations* 90.

activities of the partnership, and whether there are any potential liabilities associated with holding the limited partnership interest, such as capital calls or contingent liabilities.

2. *Income Tax Return.* Donor must provide a copy of the most recent federal income tax return for the partnership (Form 1065) and the most recent Schedule K-1 that the donor has received from the partnership. The Schedule K-1 will be reviewed to determine the nature of the income generated by the partnership (active versus passive).

3. *Appraisal.* If required, the donor is responsible for obtaining a qualified appraisal complying with IRS regulations for the purposes of establishing the value of the gift for federal income tax purposes, including the preparation of Form 8283 ("Noncash Charitable Contributions") See Treas. Reg. 1.170A-13(c). For all proposed gifts of FLP interests, a qualified appraisal will be required.

4. *Description of Activities.* Donor must provide a description of all activities in which the partnership engages. If the partnership owns real property, this description should include a description of the property, its location and the current and past use(s) of such property.

5. *Transfer Instrument.* Donor must provide a copy of the proposed instrument that will be used to transfer the partnership interest(s) to CICF. The transfer instrument should include a warranty that the interest is free and clear of all claims and liens.

6. *Confirmation of Sale or Liquidation.* Donor must provide a written statement from the general partner of the partnership, confirming the likelihood that the proposed contribution of the partnership interests will be sold or liquidated for a fair value and proceeds received into a component fund of CICF within five years following the date of the transfer and a written statement from the general partner of the partnership estimating the value of the anticipated annual distributions relating to the interests that are proposed to be contributed.

7. *Acceptance Agreement.* Prior to or upon acceptance of the gift, the donor and CICF must agree in writing to all the terms of the gift which will include the following (See Attachment 1 for a Sample Agreement for the Terms for a Gift of Partnership Interests):

a. *No Material Restrictions.* Prior to or upon transfer of the interest to CICF, the donor and CICF will sign an agreement (approved by legal counsel) stating the terms of the gift, which shall specify that there are not restrictions on CICF's right to use or convey the property.

b. *Administrative Fees.* Prior to acceptance of the partnership interest, CICF and the donor must agree on an appropriate fee schedule for the administration and investment of the component fund that will receive the gift. The donor should provide CICF adequate assurance that the affected fund will have

sufficient cash to pay any administrative fees either from the investment itself or from further contributions from the donor.

c. *Expenses Associated with the Gift.* Prior to acceptance of the partnership interest, CICF and the donor must agree in writing on arrangements for paying expenses associated with the partnership interest. In general, it is expected that the donor will agree that UBIT⁴, if any, and any administrative costs related to the gift or the recipient component fund (e.g., accounting expenses, tax return preparation, etc.) will be charged against the fund holding the partnership interest. In some cases, partnerships will not distribute sufficient cash to pay the tax, and in these cases, the donor should agree, in writing and prior to CICF's acceptance of the initial gift, to contribute additional cash to the fund to pay any tax and costs.

B. Expenses in Preparation of Gift. The donor is responsible for all expenses incurred during the preparation of the transfer of the partnership interest.

C. Discuss Gift with Professional Advisors. The donor is encouraged to and responsible for discussing all benefits, liabilities, and tax consequences derived from the gift of the partnership interest with their professional advisors before the gift is made.

D. Discuss Gift with Family or Interested Parties. Donors will be encouraged to discuss contemplated gifts of real property with their family or other interested parties before the gift is made.

IV. WHAT CICF WILL NOT DO.

a. Donor Expenses. In general, CICF's Operating Fund will not pay for legal assistance, appraisals or other services on behalf of the donor. In extraordinary circumstances, the expenses will be deducted from the proceeds of the sale or charged against the fund holding the partnership interest.⁵

b. Corroboration of Value. CICF will not establish or corroborate the value of any property for the purpose of substantiating the donor's income tax charitable deduction.

c. Transfer of Assets. After receiving a gift of FLP interest(s), CICF will not subsequently sell, transfer, or redeem all or any part of such assets to any buyer for less than fair market value. Any costs associated with determining the fair market value and paid by CICF will be charged against the fund.

³ In general, partnerships that hold only investments paying interest, dividends, rental, and other passive income will not give rise to UBIT. However, where the partnership holds investments that give rise to debt-financed income (such as mortgaged real estate or securities purchased on margin), holding the partnership interest may subject CICF to UBIT.

⁴ Discharge of such expenses by CICF may be treated as taxable income if the payment of the liability would not have given rise to a deduction. See 26 U.S.C. section 108. Discharge of such expenses may also create a material restriction on the gift. See Treas. Reg. 1.507-2(a)(8)(iv)(B). See also Hoyt *Legal Compendium for Community Foundations* 69-70 FN 356.

d. Best Interest. CICF will not accept any gifts that would not be in the best interest of CICF or the donor. CICF will consider issues including but not limited to (i) exposure to creditors' claims and contingent liabilities; (ii) CICF's obligations to obtain a reasonable rate of return and to invest prudently; (iii) possible exposure to the unrelated business income tax (UBIT); (iv) possible adverse effects to CICF's tax-exempt status; and (v) the nature of the partnership's activities.

Attachment 1
Sample Agreement for the Terms for a Gift of Partnership Interest

[DATE]

Mr. Robert A. MacPherson, Vice President of Development
Central Indiana Community Foundation
615 N. Alabama Street, Ste. 119
Indianapolis, IN 46204-1498

Re: Gift of partnership interest in [ENTITY NAME] (the "Partnership Interest")

Dear Mr. MacPherson:

In connection with my irrevocable gift of the Partnership Interest listed above to the [CICF/IF/LF], please be advised:

1. It is likely that the Partnership Interest will be sold or liquidated at fair value and proceeds received into a component fund at [CICF/IF/LF] within a reasonable timeframe not to exceed five years.
2. I agree that there will be adequate cash in the fund holding the Partnership Interest to pay administrative fees and any other costs to [CICF/IF/LF], such as Unrelated Business Income Tax, accounting expenses, and tax return preparation expenses, or any financial obligation to [ENTITY NAME] or related entities incurred by [CICF/IF/LF] by reason of becoming the owner of the Partnership Interest.
3. There are no material restrictions which would prevent [CICF/IF/LF] from freely and effectively using or conveying the Partnership Interest in furtherance of its charitable purposes.
4. I acknowledge that I am responsible for obtaining a qualified appraisal complying with IRS regulations for the purposes of establishing the value of the Partnership Interest, and that if the Partnership Interest is sold, liquidated, or otherwise disposed of within three years of its receipt by [CICF/IF/LF], [CICF/IF/LF] is required to file IRS Form 8282 ("Donee Information Return").

Sincerely,

[DONOR NAME],
Current Owner and Donor

Agreed to and Accepted by:
[CICF/IF/LF]

By _____
[NAME, TITLE]