Gift Acceptance Policy

Approved by the ACF Board of Directors on September 09, 2026.

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PART 1: GIFT ACCEPTANCE POLICIES - GENERAL

1. Purpose of Gift Acceptance Policy

The purpose of this Gift Acceptance Policy ("Policy") is to govern the acceptance of gifts by Arizona Community Foundation ("ACF"). Gifts should support the mission of ACF and provide a positive outcome for the donor. The provisions of this Policy shall apply to all gifts received by ACF for any of its programs, initiatives, educational activities, or philanthropic services. This Policy may be used to assist donors and their advisors in their planning.

2. Gift Criteria

Gifts to ACF will be evaluated by the following criteria:

- The charitable purpose, donor intent and ultimate community benefit of the proposed gift;
- Liquidity considerations including any anticipated holding period;
- Liability exposure;
- The nature of any restrictions;
- Whether the gift is to an endowed or spendable fund and, in the case of a spendable fund, the amount of time the fund will remain with ACF;
- Projected costs of managing the gifted asset; and
- Fee revenue to ACF for administering the gift.

ACF reserves the right to refuse any gift that it deems is not in its best interest. The CEO, or any ACF Executive Leadership Team ("ELT") member to whom the CEO has delegated this authority, or the Special Assets Committee ("Committee") is authorized to decline or disclaim any gift that is inconsistent with this Policy, including any gift that:

- Would impose a disproportionate administrative burden on ACF;
- Poses undue risk of liability to ACF;
- When implemented, violates law or regulations, or that jeopardize ACF's Section 501(c)(3) status;
- Would require ACF to violate accepted standards and best practices in philanthropy or would conflict with its Board-adopted grantmaking strategies, policies (including ACF's Nondiscrimination in Grantmaking Policy, or values;
- Would be detrimental to ACF's standing in the community or effectiveness in carrying out its mission; or
- Disclaims ACF's Variance Power.

Whether a potential gift's purpose makes it unacceptable in accordance with these standards shall be evaluated at the time a gift is being considered for acceptance (for planned gifts, this would be at the time of proposed transfer and/or time of disclaimer). Any gift to ACF is irrevocable in nature and must be made in accordance with the Internal Revenue Code (IRC) and Treasury Regulations.

3. Donor Intent

Gifts that establish new funds will be accompanied by a fund agreement or gift agreement that is signed by the donor or his or her appointed representative and a member of ACF's ELT. In the case

of a planned gift that is not shared with ACF prior to the gift's maturity, and where ACF was not in a position to sign an agreement, the donor's intent as expressed in writing signed by the donor will be honored if the gift is accepted in accordance with this Policy and provided the restrictions follow the guidlelines set forth in this Policy.

4. Gift Restrictions

In conformance with Treasury Regulations[1] applicable to community foundations, gifts to ACF may not be subject to any material restriction or condition that prevents ACF from freely and effectively employing the transferred assets or the income derived therefrom, in furtherance of its exempt purposes.

ACF will not accept a gift if the donor:

- Requires as a condition of the gift that ACF retain donated investment assets;
- Requires as a condition of the gift that ACF engage particular brokers, managers or investment advisors to manage the gift or its proceeds;
- Requires as a condition of the gift that distribution be made to an individual or to an organization that doesn't meet applicable regulations and/or ACF's applicable internal policies; or
- Reserves the right to control any aspect of the management, disposition, or distribution of the gift or the fund created with the gift (though non-binding advice and recommendations may be provided in connection with gifts to advised funds and scholarship funds).

Any agreements regarding donor requested restrictions will be in writing, reviewed for viability with ACF's mission and administrative services, and may be subject to legal review.

5. Expectations

a. Professional Guidance

Donors will be encouraged to consult with legal counsel and financial/tax advisors of their choice in matters relating to their gifts, at the donor's expense. This is to ensure that the donor receives a full, accurate, and independent explanation of all aspects of the proposed charitable gift and reminds donors that ACF cannot give them legal or tax advice.

b. Confidentiality

ACF's Confidentiality Policy applies to staff, the Board, the Committee, and others associated with ACF and is available upon request. Confidentiality regarding all gifts, discussions with donors about potential gifts, and the gift review process will be strictly maintained, subject to legally authorized and enforceable requests for information by government agencies and courts. Any confidential or non-public information shared by donors in connection with their discussions with staff about potential gifts shall remain confidential and shared only if permission is obtained from the donor prior to the release of such information.

[1] Treas. Reg. Section 1-170A-9(f)(11)

In some cases, donors may require/request staff to sign a non-disclosure agreement (NDA). In those cases, the NDA shall be approved and signed by a member of the ELT and a signed copy should remain on file at ACF.

c. Conflict of Interest

ACF's Conflict of Interest Policy applies to staff, the Board, the Committee, and others associated with ACF and is available upon request.

Any person making a gift to ACF must disclose the existence of a potential conflict of interest along with sufficient facts for the transaction or arrangement to be properly evaluated. A conflict of interest, real or perceived, does not necessarily rule out a successful gift transaction but mitigating steps may then be proposed to bring the transaction within acceptable legal and industry standards. All potential conflicts of interest will be reviewed by ACF's legal counsel.

d. Appraisal Requirements

Donors are solely responsible for obtaining all appraisals necessary to substantiate the charitable deduction associated with a gift. The donor shall obtain, at the donor's expense, a qualified appraisal prepared by a qualified appraiser in accordance with regulations under IRC § 170(f)(11).

ACF's acknowledgement receipt of contribution does not constitute an endorsement or agreement of the appraised value. ACF makes no representation regarding the fair market value of the donated asset and assumes no responsibility for the donor's charitable deduction. ACF may at its own discretion complete its own appraisal or assessment of any gift.

e. Required Reporting

The IRS requires a donor to complete IRS Form 8283 for the charitable contribution of noncash assets in accordance with Section 170(f)(11) of the IRC and Treasury Regulations Section 1.170A-16. Once completed and signed by the appraiser, the donor will provide Form 8283 to ACF to complete and sign as verification of the receipt of property, confirmation of status as a qualified charitable organization, and ACF's understanding of Form 8282 reporting requirements. Form 8283 will be signed by the CFO or CEO.

The IRS requires the qualified charitable organization to file Form 8282 in accordance with Section 6050L of the IRC. Form 8282 will be signed by the CFO or CEO, and a copy will be provided to the donor.

f. Gift Due Diligence

ACF will provide the donor with a process letter and checklist for the specific asset type to be donated along with a list of necessary documentation that the donor will need to provide for ACF to determine the viability of the contribution.

6. Gift Acceptance Authority

a. Special Assets Committee

The Committee has been appointed by the Board, and the Board delegated authority to the Committee through its Committee Charter. In accordance with the Committee Charter, the primary responsibilities of the Committee include reviewing proposed gift transactions specified in this Policy, overseeing the acceptance and management of ACF's complex, noncash assets.

The Committee may accept gifts on behalf of ACF, provided the gift complies with this Policy. Certain categories of gifts, described in Part 1: Section 7 below, may only be accepted following review and approval by the Committee. Other gifts, described in Part 1: Section 8 below, may be accepted by staff without review and approval by the Committee.

The Committee has the authority to propose additional gift acceptance policies and/or modifications to this Policy, subject to approval by the Board and/or its designee. The Committee may make exceptions to this Policy on a case-by-case basis.

b. Acceptance by Staff

Any gift that does not require Committee review under Part 1: Section 8 below may be accepted by staff, provided the gift complies with this Policy.

Gifts requiring immediate action or pending sale of property may be exempted from full Committee review if, in the judgment of the CEO, in consultation with the Committee Chair (or their designee), the gift may be accepted without reservations and in no way jeopardizes ACF's tax-exempt status.

Gift agreements that involve a complex planned gift may be negotiated by the Chief Executive Officer, Chief Financial Officer, Chief Development Officer and/or General Counsel or a consultant retained by ACF for this purpose, in accordance with the Policy. Any gift or negotiated agreements must be approved by a member of the ELT.

7. Gifts Requiring Special Assets Committee Review

a. Current Gifts

Types of gifts include:

- Accounts receivable (including gifts of loans, promissory notes, mortgages, etc.);
- Closely-held business interests or securities (including S corporation stock, pre-IPO stock in any non-public company, partnership interests, LLC interests);
- Forms of cryptocurrency and other digital assets;
- Restricted stock in public companies with any lock-up periods or unusually large blocks of shares if a member of ACF ELT determines that ACF's right to liquidate shares might be time restricted (e.g., ACF might need to sell shares over an extended time period);
- Interests in private investment funds (including hedge funds, private equity or debt funds, and real estate or real assets funds);
- Oil, gas, and mineral interests;
- Real property;
- Tangible personal property (fine art, jewelry, collectibles, etc.) that is not for use in ACF's offices or its programs;
- Intellectual property;
- Any bargain sale in which ACF agrees to provide some payment in return for the gift; and
- Any other asset that is not listed in this policy as being within the CEO's and/or staff's authority to accept without Committee review.

b. Planned Gifts

Types of gifts include:

- Any bargain sale in which ACF agrees to provide some payment in return for the gift;
- Any agreement under which ACF agrees to accelerate or terminate an existing CRT or other trust agreement of which it is a beneficiary (other than acceptance of a gift of the remaining income interest in a CRT); and
- Entering into any planned gift arrangement that requires an exception to the approved planned giving policies.

8. Gifts That Can Be Accepted without Special Assets Committee Review

a. Current Gifts

Gifts received in the following forms and that adhere to this Policy may be accepted by staff:

- Cash or cash equivalents, including gift by check, credit card, and electronic transfer;
- Marketable securities;
- Qualified Charitable Distributions from IRAs (under current law QCDs cannot be made into donor advised funds or supporting organizations and may be a one-time gift into CRTs or CGAs)
- Pledges;
- Precious metals, where the value is easily established and the asset is able to be readily liquidated;
- Gifts of life insurance policies;
- Gifts of tangible personal property for use in ACF's offices or programs;
- Restricted stock in public companies (SEC Rule 144 and 145), provided a member of ACF ELT determines it can be sold promptly without a blockage discount; and
- Repeat gifts of assets previously accepted by the Committee where there are no material changes to the gift or gift circumstances.

b. Planned Gifts

Staff may enter into the following planned gifts without review by the Committee (unless the nature of the asset to be distributed or the restrictions on the gift require approval by the Committee under this Policy):

- Entering into a Charitable Gift Annuity (CGA) agreement that complies with this Policy (See Part 2: Section 2);
- Accepting a gift of an income interest in a CRT (See Part 2: Section 2);
- Accepting a gift of income distribution from a Charitable Lead Trust (CLT) (See Part 2: Section 2); and
- Accepting distributions from matured planned gifts, including bequests, distributions from revocable trusts, distributions from retirement plans, proceeds from life insurance policies, savings bonds given through a will or trust, commercial annuities, and/or remainder distributions from CRTs with external trustees.

9. Gifts ACF Will Not Accept

a. Current Gifts

ACF will not accept the following gifts:

- Time shares;
- Animals;
- Automobiles, motorcycles, airplanes, boats, or other vehicles;
- Cemetery plots;
- Conservation and historic preservation easements; or
- Any asset that would be illegal per applicable law.

b. Planned Gifts

ACF will not enter into the following planned gift arrangements:

- Charitable Reverse Split Dollar Agreement (per IRC and Treasury Regulations);
- Life Settlements and Viaticals[2];
- Serving as trustee of a trust, including, without limitation, a Charitable Lead Trust or any trust which would create an inherent conflict of interest for ACF; or
- Gifts to pooled income funds.

10. Use of Legal Counsel

ACF may seek the advice of legal counsel in matters relating to the acceptance of gifts when appropriate. Approval to use legal counsel will be given by ELT. ACF's legal counsel will likely be called upon to:

- Review closely-held business transfers that are subject to restrictions or buy-sell agreements;
- Review ACF naming commitments as part of a gift agreement;
- Review gifts involving contracts, such as bargain transactions requiring ACF to assume an obligation;
- Review any transactions with a potential conflict of interest that may invoke penalties under IRC or Treasury Regulations; and
- Review any other gift or transaction when requested by staff or the Committee.

11. Pass-Through Gifts

ACF will consider a pass-through gift to an eligible charity that is described in IRC Sections 170(b)(1)(A) and 170(c) – in other words, a charity that may itself receive tax-deductible charitable contributions under the contribution limits that apply to gifts to ACF. Grants of pass-through gifts will be subject to the same standards of review and due diligence to which all grants made from ACF are subject.

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[2] A viatical settlement is a lump sum of cash given to terminally ill persons (viators) in exchange for the death benefits of their life insurance. ACF will not accept gifts of life insurance involving arrangements where a third party, other than the donor or someone related to the donor, owns a policy on another's life, such as life settlements or viaticals, or any arrangement that may appear to circumvent established rules against this practice. A life settlement involves the sale of a life insurance policy to institutional investors for an amount greater than the cash surrender value.

All requirements as outlined in Part 2, including fees and expenses, will apply to pass-through gifts. All expenses will be deducted from the gross proceeds of the gift, and the net proceeds will be granted once all related transactions have been accounted for.

12. Bargain Sale

ACF will consider entering into a bargain sale arrangement when the asset being proffered is deemed to be readily marketable and/or when the asset being offered has a related use for ACF. The type of asset – e.g., real estate, tangible personal property, etc. – will follow the guidelines for acceptance of that type of asset as set forth in this Policy.

13. Gifts to an ACF Supporting Organization

All gifts to ACF Supporting Organizations will be administered in accordance with the Policy, and ACF Supporting Organizations shall adopt the Policy.

PART 2: CRITERIA FOR GIFTS OF SPECIFIC ASSETS

1. Current Gifts

ACF seeks to liquidate gifts of complex noncash assets as soon as possible (i.e., within three to six months of gift acceptance) so that the gift can benefit the community in accordance with the donor's charitable goals. However, ACF recognizes that some contributions of complex noncash assets will be held because they cannot be immediately liquidated. This may apply to the asset types described below and the following conditions apply to acceptance of noncash assets:

- The minimum gift for complex noncash assets is $100,000 unless a higher minimum is specified for specific types of assets through Policy. Gifts less than the minimum will be evaluated on an individual basis for growth potential, risk, and cost of acceptance and administration.
- A gift acceptance fee may be applied to noncash assets, and the donor may be required to make a gift of liquid assets to cover the administrative costs and fees associated with the gift (discussed further below). To the extent that an ACF fund does not have sufficient liquidity, gift acceptance and administrative fees, in accordance with ACF's then-current fee schedule, will accrue to the fund and be repaid at liquidation or when cash generated from the asset is received into the fund (e.g., lease payments). ACF reserves the right to collect cash contributions from the donor to cover annual administrative fees and costs.
- ACF's goal is to liquidate all complex noncash assets immediately (i.e., within three to six months of gift acceptance) with a maximum holding period of three years after receipt unless an exception is approved by the Committee due to unique circumstances. ACF will require a put right (or similar mechanism for asset liquidation), when it deems such a right appropriate based on the circumstances.
- Regardless of asset type, any out-of-pocket expenses incurred by ACF directly associated with receiving and liquidating the asset (such as brokerage fees, legal fees, accounting fees, taxes, etc.) will be charged directly to the associated fund and will be settled upon liquidation of the asset or from liquid assets required by ACF to cover administrative costs, fees, etc.

- If trailing costs associated with holding and/or liquidating an asset are received or discovered after the sale of an asset, the associated fund will be charged accordingly.
- If assets are not contemplated or are unlikely to be liquidated immediately (i.e., within three to six months of gift acceptance), a donor will be required to provide a cash contribution to cover acceptance, administrative, and carrying expenses expected during the holding period. In exceptional circumstances, ACF may choose to waive this requirement.

a. Closely-Held Business Interests

ACF accepts gifts of business interests as described below. In accepting gifts of business interests, ACF will consider whether an opportunity to convert the business interests into liquid assets via sale, redemption, or other method of liquidation can be anticipated within the criteria listed above.

- **Closely-Held Stock**

  ACF accepts gifts of closely-held stock. ACF may accept S Corporation stock on a case-by-case basis but will consider exposure to unrelated business taxable income as a component of the evaluation.
- **LLC and LP Interests**

  ACF accepts gifts of membership interests in limited liability companies (LLC) and gifts of limited partnership interests in limited partnerships (LP). Gifts of an LLC or other closely-held business structure containing one primary asset type (e.g., real estate) will require ACF to apply both this section and the section in this Policy that covers the underlying asset type.
- **GP Interests**

  ACF normally does not accept gifts of general partnership interests. Acceptance of general partnership interests or other positions whereby ACF could become contingently liable financially or otherwise (e.g., capital calls, operating expenses, environmental remediation, etc.) will normally not be allowed.
- **Excess Business Holdings**

  A Donor Advised Fund's holdings in a business enterprise will be aggregated with those of its donors, Fund Advisors, their family members, and 35% controlled entities to determine whether the regulatory allowed threshold (a 20% ownership interest) has been exceeded. If the threshold for holdings in business enterprises has been exceeded and the excess business holdings are not divested within the required time period, significant excise taxes will be imposed on the Donor Advised Fund by the IRS. Refer to Appendix A for a more comprehensive explanation of the Excess Business Holdings Rule and IRC Section 4943.

b. Real Property

ACF accepts gifts of real property, including but not limited to, developed property, undeveloped property, residential and commercial property, partial interests, or gifts subject to a life estate interest.

- Gifts of real property should be transferred in the form of membership interests in an LLC that holds title to the real property. Therefore, policies above pertaining to gifts of closely-held business interests will apply as well.
- In evaluating a proposed gift of real property, ACF will consider whether an opportunity to liquidate the asset can be anticipated within the criteria listed above. ACF does not intend to be a long-term property owner/manager.
- Gifts of real property in Arizona should result in a contribution to ACF of at least $100,000. Gifts of real property outside Arizona should result in a contribution of at least $500,000.
- Properties with multiple owners will require agreement in writing by all owner parties to make the gift.
- Real property that is encumbered in any way (e.g., mortgages, liens, encumbrances, etc.) will be accepted only in exceptional circumstances.
- Prior to acceptance of a gift of real property, ACF and the donor must agree, in writing, on arrangements for paying expenses associated with the property, including taxes and assessments, easements, insurance coverage, and maintenance costs. Agreements for gifts subject to a life interest should also identify the rights and obligations of each party with respect to the property during the term of the life interest.
- In order to avoid potential liability for environmental cleanup and toxic and hazardous materials issues related to real estate, ACF typically requires inspection, provided by the donor, through an environmental assessment of any real property.
- In addition to the considerations listed above, commercial properties will be examined in relationship to the potential for exposure of ACF to developer or landlord liability and unrelated business taxable income.

c. Oil, Gas and Mineral Interests

ACF accepts oil, gas and mineral interests. Unless the surface interests (i.e., real property) and the subsurface interests (i.e., oil, gas and mineral interests) have been bifurcated, gifts of oil, gas and mineral interests will also be deemed to be real property gifts. As such, the policies above pertaining to gifts of real property will also apply. ACF will not consider working interests.

d. Life Insurance Policies

Given the variety of life insurance policy types, each life insurance policy gift is reviewed based on its particular circumstances. Based on their review of a life insurance gift, the CEO and/or CFO may request that it be provided to the Committee for approval.

ACF accepts gifts of life insurance policies whereby ACF has been named both the beneficiary and irrevocable owner of the policy. The donor will be asked to provide an "in force" statement illustrating interpolated terminal reserve (ITR) value or letter from the carrier reflecting the ITR value, which may be different than the policy's cash surrender value, each dated within sixty to ninety days of the gift. If the donor contributes future premium payments, ACF will include the entire amount of the contribution as a gift at the time it is received. If the donor does not elect to continue to make contributions to cover premium payments on the policy, ACF may:

- Continue to pay the premiums;
- Convert the policy to paid-up insurance;

- Surrender the policy for its current cash value; or
- Sell the policy on a secondary market

e. Tangible Personal Property that is not for Use in ACF's Offices or its Programs

ACF accepts gifts of tangible personal property. Gifts will be liquidated immediately after the contribution has been completed. ACF may refuse gifts of personal property which cannot readily be sold, or which require unusual expenses prior to sale.

f. Intellectual Property

ACF accepts gifts of intellectual property (IP) including, but not limited to, patents, royalties or distribution rights on published works (such as books, films or music) where there is clear evidence of marketability or assurance of an income stream.

g. Promissory Notes

ACF accepts gifts of promissory notes under which the donor is due money as the holder of the promissory note. ACF will not accept a promissory note whose payments are in arrears or subject to collection activities.

h. Digital Assets

ACF accepts gifts of cryptocurrency and other digital assets if the gift is able to be transferred and liquidated immediately after the contribution has been completed. ACF will utilize a third-party provider to receive and liquidate any digital assets.

i. Charitable Lead Trusts (CLTs)

ACF accepts gifts of the income interests of a CLT. The donor will be asked to provide a copy of the trust agreement and submit annual statements for valuation purposes. ACF will not serve as trustee for CLTs and will not accept an appointment as trustee of a CLT. If ACF is named as a revocable beneficiary designation, contributions will be recognized when received.

j. Other Assets not Specifically Listed

Other property not otherwise described in this Policy, whether real or personal, of any description must be reviewed and approved by the Committee.

2. Planned Gifts

ACF's planned giving program encompasses all gifts in which benefits do not fully accrue to ACF until some future time (such as the death of the donor or other income beneficiaries or the expiration of a predetermined period of time).

ACF encourages donors who make planned gifts to execute a Legacy Gift Agreement ("LGA") during their lifetime to ensure the donors' wishes are clearly conveyed to ACF. ACF requests that donors provide ACF with a copy of the related estate or beneficiary designation documentation to support the LGA. If the donor does not execute an LGA with ACF, the donor should simply indicate the purpose for which the gift should be used in their will, trust, or other relevant legal instrument of conveyance, or identify an existing fund at ACF into which the gift should be placed.

Any planned gift to establish a new fund at ACF must meet the applicable fund minimum at the time the gift matures. Because the amount ultimately realized by ACF from planned gifts may vary, all gift instruments that direct ACF to create a new fund should include contingent instructions in the event the applicable minimum is not met.

a. Bequests from Wills and Trusts

ACF accepts gifts from wills and trusts. ACF will not serve as trustee in the administration of a trust or executor of an estate upon the death of a donor[3]. Based on a recommendation from ELT, exceptions will be considered in select circumstances when, in the judgment of the Committee, the interests of ACF will be best served.

b. Retirement Assets

ACF accepts gifts as the beneficiary designated through a donor's retirement plan. ACF requests that donors provide a copy of the document naming ACF as the beneficiary for its records.

c. Charitable Remainder Trusts (CRTs)

ACF accepts gifts of the remainder interest of CRTs. ACF will not serve as trustee for CRTs. If ACF is named as irrevocable beneficiary, the donor will be asked to provide a copy of the trust agreement and submit annual statements for valuation purposes.

An income beneficiary of a CRT may wish to accelerate or terminate the CRT in a variety of ways. If ACF is an irrevocable beneficiary of the CRT, the following guidelines apply:

1) ACF may accept a gift from the income beneficiary of a CRT of his or her remaining income interest. This will cause the CRT to terminate through the Doctrine of Merger since ACF will then own all of the interests in the CRT.[4]
2) ACF may enter into an agreement to accelerate both the income interest of the income beneficiary as well as ACF's remainder interest by dividing the assets according to the actuarial interests of the beneficiaries.

d. Testamentary Charitable Lead Trusts (CLTs)

ACF accepts gifts of the income interests of a CLT. ACF will not serve as trustee for CLTs. The donor will be asked to provide a copy of the trust agreement and submit annual statements for valuation purposes. Revocable beneficiary designations may be acknowledged for stewardship purposes but generally will not be recognized as completed planned gifts or included in ACF's gift expectancy records.

e. Charitable Gift Annuities (CGAs)

ACF will facilitate CGAs using a third-party provider under the conditions described below. ACF may employ agents and advisors to facilitate the issuance, investment, and/or administration of annuity assets.

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[3] This restriction will become effective upon Board approval of the revised Policy. ACF staff will record the date on which this restriction becomes effective. Gifts received prior to the revised Policy date will be grandfathered in under the prior Policy that allowed ACF to act as trustee or executor.

[4] **Doctrine of Merger:** In trust law, this doctrine is used to mix both equitable and legal titles if a person becomes the sole beneficiary and sole trustee of a trust. Pursuant to such doctrine, a trust is deemed to be terminated. Consequently, the beneficiary owns the trust property outright. USLegal.com

- The gift annuity residuum/remainder must be placed into an endowment fund at ACF.
- The minimum gift for an annuity agreement is $25,000.
- With the exception of a Deferred Payment Gift Annuity, the minimum age of income beneficiaries shall be 55 years. Deferred Payment Gift Annuities should begin annuity payments after age 55.

CERTIFICATE OF ADOPTION

The foregoing Gift Acceptance Policy was approved and adopted by the Board of Directors of the Arizona Community Foundation on September 09, 2026.

By: Signed by: Curtiss Smith 0F0A0ECF108448C...

Curtiss Smith, Secretary

APPENDIX A

COUNCIL *on* FOUNDATIONS

Excess Business Holdings Rule for Donor Advised Funds and Supporting Organizations

Summary: Sections 1233 and 1243 of the Pension Protection Act of 2006 make the private foundation excess business holdings rule (IRC §4943) applicable to donor-advised funds and supporting organizations.

Effective date: Tax years beginning after date of enactment (August 17, 2006). This will be January 1, 2007 for calendar-year taxpayers. However, the transition rules for existing holdings will apply only to assets held on the date of enactment.

Applicability to donor-advised funds: The excess business holdings rule is applicable to donor-advised funds. The statute is clear that it is only the donor-advised fund, not the sponsoring charity that is to be treated as a private foundation. Accordingly, the Council does not believe that this provision affects assets held by the sponsoring charity's investment pools, or assets held by funds that are not donor-advised.

Applicability to supporting organizations: The excess business holdings rule will apply to Type III supporting organizations unless they are "functionally integrated." It will also apply to Type II supporting organizations if the supported organization is controlled by the supporting organization's donors. It does not apply to Type I supporting organizations.

The Hershey Trust, and any other Type III supporting organization that held assets as of November 18, 2005 on the direction of a state attorney general or other official with jurisdiction over the organization, is exempt. Other Type IIIs may seek an exemption based on a determination by the Secretary of the Treasury that the organization's holdings are consistent with the purpose or function that constitutes the basis for its exemption.

Application of the excess business holdings rule. The excess business holdings rule requires that the holdings of a donor-advised fund (or supporting organization), together with the holdings of persons who are disqualified persons with respect to that fund (or supporting organization), in a business enterprise may not exceed:

- Twenty percent[5] of the voting stock[6] of an incorporated business; or
- Twenty percent of the profits interest of a partnership or joint venture or the beneficial interest of a trust or similar entity.

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

[6] Additionally, the donor-advised fund (or supporting organization) 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.

- Ownership of unincorporated businesses that are not substantially related to the fund's (or supporting organization's) purposes is prohibited.

Donor-advised funds (or supporting organizations) receiving gifts of interests in a business enterprise after the date of enactment 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 (or supporting organizations) 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.[7]

Definition of "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
- Businesses that derive at least 95 percent of their income from passive sources (dividends, interest, rent, royalties, capital gains). Thus, many family limited partnerships and other types of holding company arrangements are not "business enterprises" and so are not subject to the excess business holdings rule.

Definition of a disqualified person for donor-advised funds. 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).

Definition of a disqualified person for supporting organizations. Disqualified person is defined using the more expansive section 4958 definitions in place of the section 4946 definitions that apply to private foundations and includes organizations controlled by the same person or persons who control the supporting organization and organizations which received substantially all of their contributions from the supporting organization's substantial contributor or related parties.

Impact. The new rule will mainly affect contributions of closely-held businesses and in most cases will require the donor-advised fund (or supporting organization) 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.[8] For donor-advised funds, the rule will not apply to assets held by the sponsoring charity, as

[7] Excess holdings acquired by purchase must be disposed of immediately. If purchases by disqualified persons cause the donor-advised fund (or supporting organization) to have excess holdings, the donor-advised fund (or supporting organization) will have 90 days to dispose of the excess.

[8] Under the *de minimis* rule, the donor-advised fund (or supporting organization) could continue to hold an interest that did not exceed two percent of the voting stock and two percent of the value.

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. 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), and remainder interests in personal residences and farms.

Existing holdings. The rules that will apply to donor-advised funds (or supporting organizations) holding business interests on August 17, 2006 (date of enactment of HR 4) are quite complex. In Phase 1, donor-advised funds (or supporting organizations) 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 down to 50 percent, and, in most cases the foundation's share of the holdings, to 25 percent, in accordance with the following schedule:

- Twenty years if the donor-advised fund (or supporting organization) 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 II is the fifteen-year period that begins at the end of Phase I. 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 II, 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.[9]

The information provided here is based on our continuing analysis of the bill. Every effort has been made to ensure accuracy of these documents. However, 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, please understand that 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.

[9] Additional rules apply to cover situations such as mergers, redemptions, and acquisitions.