

**THE GREATER CINCINNATI FOUNDATION
POLICY AND PROCEDURE
FOR POTENTIAL GIFTS OF PARTNERSHIP INTERESTS**

Adopted December 4, 1996
Revised December 6, 2000
Revised June 2, 2004
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I. AUTHORITY TO NEGOTIATE

The President and the Vice President for Giving Strategies will have the overall authority to handle inquiries, negotiate with donors, assemble documentation, and execute agreements on behalf of The Greater Cincinnati Foundation ("the Foundation" or "GCF"). Assuming such activities follow approved procedures and assuming such agreements are approved by the Foundation's legal counsel, this authority to act will not require review or further approval by the Board of Trustees.

II. GENERAL GUIDELINES

Contributions of partnership interests to GCF raise several issues which bear on the advisability of accepting the contribution. These issues include (i) exposure to creditors' claims and contingent liabilities; (ii) GCF'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 GCF's tax-exempt status; and (v) the nature of the partnership's activities. The purpose of this Policy and Procedure is to assure that these issues are addressed prior to the acceptance of a contribution of a partnership interest.

A. Type of Interest: GCF will only accept contributions of limited partnership interests. GCF cannot accept general partnership interests, due to the exposure to claims of creditors and other liabilities.

B. Nature of Activity: GCF will only accept interests in passive, investment-type partnerships, such as those holding rental real estate, stocks, bonds, and other investments. GCF cannot accept interests in partnerships that carry on an active, for-profit business.¹

In addition, GCF will not accept contributions of limited partnership interests where the nature of the partnership's activities is not consistent with the mission and objectives of the Foundation.

¹ Holding an interest in a partnership that carries on an active, for-profit business will subject GCF to the unrelated business income tax (UBIT), and, in the case of general partnerships, the tax-exempt status of GCF may be jeopardized if the IRS takes the position that participation by GCF in the partnership as a general partner constitutes non-charitable activities. See Hoyt, *Legal Compendium for Community Foundations* at 71.

C. Sale or Liquidation: It should appear reasonably certain that the partnership interest(s) proposed to be transferred to the Foundation will be sold or liquidated and proceeds received into a component fund of the Foundation within a specific time frame, not to exceed three to five years.² In the alternative, it should appear reasonably certain that the partnership interest(s) proposed to be transferred to the Foundation will, through regular distributions, generate annual income sufficient to provide a reasonable rate of return for the component fund into which it is received. For purposes of this policy, the definition of “a reasonable rate of return” shall be determined by GCF, in its sole discretion. The President/CEO [and the Chair of the Giving Strategies Committee] shall have the authority to determine whether the requirements of this paragraph have been met.

D. Administrative and Investment Fee Schedule: Prior to accepting a gift of partnership interests, the Foundation 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 GCF determines that annual distribution income is insufficient to produce a reasonable rate of return for the recipient component fund, the Foundation may re-negotiate with the donor and impose a higher fee schedule on the recipient component fund.

III. RESPONSIBILITIES OF THE DONOR

A. Documentation. The following documentation must be submitted to the Foundation before a proposed gift of a partnership interest can be accepted:

1. **Partnership Agreement.**

- a. The Foundation’s legal counsel will review the limited partnership agreement to determine the nature of the interest being contributed, the 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.
- b. In the case of family limited partnerships (FLPs), the donor shall assume full responsibility for assuring that the FLP was validly formed and properly valued, and that the FLP interest meets all requirements for qualification for a charitable deduction.

2. **Income Tax Return.** A copy of the most recent federal income tax 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 requested, a qualified appraisal complying with IRS regulations for the purposes of establishing the value of the gift for federal income tax purposes,

² Treasury Regulations require that GCF 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 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 1.70A-9(e)(13)(x).

including the preparation of Form 8283 (“Noncash Charitable Contributions”) See Treas. Reg 1.170A-13(a). For all proposed gifts of FLP interests, a qualified appraisal will be required.

4. **Description of Activities.** 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 use(s) of such property.
5. **Transfer Instrument.** A copy of the proposed instrument that will be used to transfer the partnership interest(s) to the Foundation. The transfer instrument should include a warranty that the interest is free and clear of all claims and liens. The proposed transfer instrument will be reviewed by the Foundation’s legal counsel prior to acceptance by the Foundation.
6. **Confirmation of Sale or Liquidation.** A written statement from the general partner of the partnership, confirming the likelihood that the partnership interests that are proposed to be contributed will be sold or liquidated and proceeds received into a component fund of the Foundation within three to five years following the date of the transfer; or, in the alternative, 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. **Administrative Expenses.** Prior to acceptance of the partnership interest, the Foundation 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 UBIT³, 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 addition, the donor should provide GCF adequate assurance that the affected fund will have sufficient cash to pay any tax and costs, either from the investment itself or from further contributions from the donor. 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 GCF’s acceptance of the initial gift, to contribute additional cash to the fund to pay any tax and costs.

B. Advance Approval. The required documentation should be submitted to the Foundation sufficiently in advance of the anticipated date of the gift as to allow the Foundation adequate time to evaluate the proposed 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.

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 GCF to UBIT.

C. Bequests. Donors are encouraged to discuss contemplated bequests before finalizing their wills. Partnership interests that are bequeathed to the Foundation will be evaluated in accordance with this Policy and Procedure like all other gifts of partnership interests.

D. Endowment Requirement for Gifts of FLP Interests. In light of recent publicity about increased IRS scrutiny of FLPs, the due diligence required of GCF 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 the Foundation, either (i) as a permanent “floor” of a donor advised fund, or (ii) in a permanently endowed designated, field of interest, or unrestricted fund.

IV. PROCEDURE FOR ACCEPTING PARTNERSHIP INTERESTS

A. Acceptance. After the requirements of this Policy and Procedure have been satisfied, the President/CEO will have the authority to accept or decline a gift of a partnership interest.

B. Declination. The President/CEO may decline to accept any offered gift of a partnership interest that is judged not to be in the best interests of the Foundation.

C. Acceptance Agreement. Prior to or upon transfer of the interest to the Foundation, the donor and the Foundation will sign an agreement (approved by legal counsel) stating the terms of the gift, which shall specify that there are not restrictions on the Foundation’s right to use or convey the property.

D. IRS Form 8282. In addition, the donor will be advised that if the property listed in IRS Form 8283 is sold, liquidated, or otherwise disposed of within three years of receipt, GCF is required to file a separate report within 125 days with the IRS on IRS Form 8282 (“Donee Information Return”) and disclose facts about the disposition. See Treas. Reg. 1.6050L-1.

V. WHAT THE FOUNDATION WILL NOT DO

A. Donor Expenses. Except in extraordinary circumstances, the Foundation will not pay for legal assistance, appraisals or other services on behalf of the donor.

B. Corroboration of Value. The Foundation 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), the Foundation 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 GCF will be charged against the fund.

THE GREATER CINCINNATI FOUNDATION
GIFTS OF PARTNERSHIP INTERESTS
Checklist of Items Required

- 1. Confirm that partnership is a limited partnership. Determine whether partnership is FLP.
- 2. Notify President/CEO and Vice President for Giving Strategies of proposed gift.
- 3. Send donor copy of Policy and Procedure for Potential Gifts of Partnership Interests.
- 4. Obtain copies of the following documents from the donor:
 - Partnership agreement.
 - Partnership's most recent income tax return (Form 1065), including donor's most recent Schedule K-1.
 - Qualified appraisal of partnership interest.
 - Description of partnership's activities. If the partnership owns real property, this should include a description of the real property, its location and current use(s).
 - Proposed transfer instrument.
 - Written statement from General Partner confirming likelihood of sale or liquidation within three to five years; or written statement from General Partner estimating the value of anticipated annual distributions related to the proposed gift.
 - Obtain President/CEO's approval of such statement.
- 5. Send copies of partnership agreement, income tax return, proposed transfer instrument to legal counsel, written description of activities and appraisal.
- 6. Discussion with donor regarding fee structure to be applied and any special arrangements for donor's fund or other sources to address any possible ongoing expenses for taxes, accounting expenses, and other items.
- 7. If partnership is FLP, obtain donor's written consent that at least \$100,000 of the assets contributed shall remain in a component fund of the Foundation, either (i) as a permanent "floor" of a donor advised fund, or (ii) in a permanently endowed designated, field of interest, or unrestricted fund.
- 8. If the partnership owns real property, conduct field evaluation to determine nature and type of the property and to identify any potential problems not evident from information supplied by the donor.
- 9. Review information with President/CEO and Vice President for Giving Strategies.

If Proposed Gift Is Accepted

- 10. Acceptance agreement.
- 11. Follow-up with donor as to Form 8283.