The Community Foundation of West Chester/Liberty
Gift and Fund Acceptance Policy
Approved by Board of Directors May 24, 2006

This policy concerns the administrative procedures to be followed by staff in managing various types of gifts that may be revised and ratified by the Foundation Board of Directors from time to time to comply with good business practices. All changes to this policy will require approval from the Foundation Board.

The asset development program of The Community Foundation of West Chester/Liberty (TCFWCL) encompasses the solicitation and acceptance of gifts which may be current, planned, or testamentary. The TCFWCL will comply with all federal, state, and local laws in the conduct of development activities, including acceptance of gifts. The Foundation endorses and subscribes to A Donor Bill of Rights. Appendix A.

Authorization
It is the policy of TCFWCL Board of Directors to encourage donors to make outright, planned and testamentary gifts. Planned and testamentary gifts include bequests, charitable gift annuities, charitable remainder trusts, charitable lead trusts, retained life estates, gifts of life insurance or retirement assets, interest in business entities such as partnerships, limited liability companies, or closely-held corporations or other gift arrangements as the Board may from time to time approve. It is the Board’s directive that staff shall aggressively seek such gifts, and that adequate staff and resources for a fully effective program are maintained. All programs, solicitation plans, and activities shall be subject to oversight by the Board.

Purpose of Gifts
The purposes of all gifts to the Foundation must relate to the mission of the Foundation. The purpose of the gift and the procedures for administration shall, whenever possible, be defined in a letter or agreement signed by the donor. Because the Foundation was created to benefit the residents of West Chester and Liberty Township, we encourage our donors to make grants to benefit West Chester and Liberty Township residents.

Gift Acceptance Committee
This committee is made up of the Executive Committee of the Board of Directors, which consists of the Board Chair, Board Vice-Chair, Treasurer, Secretary, Governance Committee Chair, President and three additional board members. Other professional experts may be called upon to assess the gift as needed. The Committee will: 1) determine whether the specific gift contributes to the mission of the Foundation 2) outline steps to be taken in the acceptance/rejection process 3) advise staff how to protect the Foundation from any possible repercussions 4) recommend to the Foundation Board of Directors whether or not to accept the gift.

Business Practices
It is the business practice of the Foundation to inform, serve, guide or otherwise assist donors who wish to support the Foundation’s activities, but never under any circumstance to pressure or unduly persuade.

It is the Foundation’s intention to properly acknowledge all completed gifts within 2 weeks of receipt. The Foundation will provide a disclosure to every donor before a fund agreement is executed.

All information concerning donors and prospective donors shall be held in strict confidence by the Foundation, subject to legally authorized and enforceable requests for information by government agencies and courts. All other requests or information concerning a donor or prospective donor will be honored or allowed only if written permission is obtained from the donor prior to the release of such information.
Persons acting on behalf of the Foundation shall encourage the donor that it is the donor’s responsibility to obtain any necessary appraisals, file appropriate personal tax returns, and defend against any challenges to claims for tax benefits.

The President of the Foundation and consultants retained by the Foundation for this purpose are authorized to negotiate planned gift agreements with prospective donors, following guidelines approved by the Board of Directors.

All planned giving agreements requiring execution by the Foundation shall first be reviewed and approved as to form by the Foundation’s legal counsel. However, each agreement need not be reviewed provided it is based on a prototype agreement that has been reviewed and approved by the Board.

The Foundation will accept charitable gift annuities but only under conditions described below. The Foundation may employ agents and advisors to facilitate the investment of annuity assets. The Foundation may serve as a trustee of irrevocable charitable remainder trusts and charitable lead trusts or as co-trustee with a trust institution, when it is irrevocably named as the sole beneficiary. However, it may serve in select circumstances when it is not the sole beneficiary if, in the judgment of the Acceptance Committee, the interests of the Foundation will be best served. The Foundation may employ one or more financial managers for the administration and investment of trust assets. Expenses related to investments and administrative services shall be charge to the respective trusts.

The Foundation will not serve as trustee or co-trustee of any revocable trusts or other trusts that are not qualified charitable remainder trusts or charitable lead trusts.

**Procedures for Review of Gifts**

In reviewing gifts to the Foundation, the Acceptance Committee and/or staff will consider the following criteria:

The charitable intent and ultimate community benefit

The nature of any restrictions

- The permanency of the gift; or in the case of a non-permanent fund, the amount of time the fund will remain with the Foundation.
- Projected costs of managing the gift asset.
- Fee revenues to the Foundation for administering the gift.

Acceptance by staff of gifts consistent with the purposes, bylaws and procedures of the Foundation shall not require review by the acceptance committee if the gifts are in any of the following forms:

- Cash
- Check
- Marketable security
- Gifts of usable furniture and equipment for the offices or programs of the Foundation
- Gifts of precious metals, where the value is easily established
- Charitable remainder trusts, charitable lead trusts, or charitable gift annuities, if funded with cash or publicly traded securities

Gifts requiring review and approval of the acceptance committee include the following:

- Gifts of real estate or any other asset that has real estate holdings as an element of its value (e.g. certain limited partnerships or other business entities)
- Interest in business entities (i.e. closely-held corporations, partnership and limited liability company interests)
- Charitable remainder trusts, charitable lead trusts, or charitable gift annuities, if funded with assets other than cash or publicly traded securities
- Remainder interests in a residence or farm
- Rights in copyrighted materials, patents, and royalties
• Tangible personal property
• Other property that may be unusual or fall outside the type of gifts usually handled by the Foundation, including tangible property unrelated to the Foundation’s charitable purpose.

Gifts requiring committee review will be handled promptly. Foundation staff will deliver to the committee all information necessary to make a decision. If a gift is not accepted, the donor will be notified in writing by staff immediately. All gift reviews will be handled with confidentiality.

NOTE: Gifts requiring immediate action (e.g. gifts on December 31 or pending sale of property) may be exempted from full Acceptance Committee review if, in the judgment of the President, in consultation with designated members of the Acceptance Committee, that gift may be accepted without significant reservations or in any way jeopardizing the Foundation’s tax exempt status.

Fund Options
The Foundation establishes component funds and supporting organizations in response to community needs and donor’s charitable concerns. While funds may be built in increments, the minimum balance for fund distributions to begin is $5,000. The Board of Directors of the Foundation has the responsibility for acceptance, management and disposition of component funds. Options for fund structures include the following:

Unrestricted Funds
Unrestricted funds are available to the Foundation for any of the charitable purposes encompassed by the Foundation’s mission. The Grants Committee recommends to the Foundation Board of Directors how unrestricted funds might be best used. Examples include but are not limited to:
• Arts and Culture
• Education and Scholarship
• Health and Human Services
• Civic and Community
• Park and Recreation
• Disaster Relief

Field of Interest Funds
Field of Interest Funds are limited to their use by the donor’s stated preference for a specific area of charitable purpose. The Grants Committee recommends to the Foundation Board of Directors which organizations and programs might receive grants from field of interest funds and the amount and timing of such grants. Examples of field interest funds include but are not limited to:
• Children, youth and families
• Arts & Culture
• Education
• Community and neighborhood development
• Health and Human Services
• Animals
• Environment

Advised Funds
Donors establish advised funds when they wish to actively participate in the grant activity of the fund. Donors of advised funds may offer recommendations to the Foundation regarding the recipients and amounts of the grants from the fund. When the donor and spouse are no longer living or no longer wish to serve in an advisory capacity, the advised fund will be unrestricted in nature unless the original fund agreement specifies an alternative type of fund. The successor provision shall extend until no activity or communication by the designated successor takes place within two years.
Scholarship Funds
Scholarship Funds are dedicated to providing grants for educational assistance to individuals seeking post-secondary education.

Designated Funds (Agency Funds)
Designated funds are earmarked for one or more charitable organizations, and all grants made from such funds will be made to (or for the use of) the designated recipient organization. If the recipient organization ceases to exist or changes its status or mission as a charitable organization, the Foundation’s Board of Directors may exercise its variance power, selecting an alternate use for the fund compatible with its original charitable purpose.

Supporting Organizations
Donors establish supporting organizations at the Foundation as independently incorporated tax-exempt nonprofit organizations with separate governance, Appendix C. A supporting organization is a grant-making entity that avoids private foundation status by being operated, supervised, controlled by, or in connection with the Foundation. The Board of Directors of the Foundation appoints a majority of the board of directors of the supporting organization.

Community Projects
The Community Foundation may serve as fiscal sponsor for various community projects designed to improve the quality of life for residents in West Chester and Liberty Townships. These non-endowed/pass-through funds are created to hold contributions raised for a specific purpose until disbursements are made to cover the costs of the project. When the money for the project has been expended, the temporary fund ceases to exist. Community project funds require a written agreement and approval by the Foundation Board of Directors.
Donor Bill of Rights

Philanthropy is based on a voluntary action for the common good. It is a tradition of giving and sharing that is primary to the quality of life. To assure that philanthropy merits the respect and trust of the general public, and that donors and prospective donors can have the full confidence in The Community Foundation of West Chester/Liberty, we declare that all donors have these rights.

1. To be informed of the organization's mission, of the way the organization intends to use donated resources, and of its capacity to use donations effectively for their intended purpose.

2. To be informed of the identity of those serving on the organization's governing board, and to expect the board to exercise prudent judgment in its stewardship responsibilities.

3. To have access to the organization's most recent financial statements.

4. To be assured their gifts will be used for the purposes for which they were given.

5. To receive prompt acknowledgement and appropriate recognition for all gifts.

6. To be assured that information about their donations is handled with respect and with confidentiality to the extent provided by law.

7. To expect that all relationships with individuals representing organizations of interest to the donor will be professional in nature.

8. To be provided with disclosure of all significant parties involved with The Community Foundation of West Chester/Liberty.

9. To be assured that The Community Foundation of West Chester/Liberty will not share mailing lists with any other entity.

10. To feel free to ask questions when making a donation and to receive prompt, truthful and forthright answers.
ADDENDUM

Gift Acceptance Policy
Treatment of Excess Business Holdings
March, 2012

Excess Business Holdings Rules for Donor Advised Funds
(Revised 1.6.2012)

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 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 percent (20) of the voting stock (3) 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
- Any interest in a sole proprietorship (4)

Donor-advised funds receiving gifts of interests in a business enterprise have five years from the receipt of the interest 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. Community foundations that held such assets in donor advised funds on the date of enactment will have a much longer period to divest under the same complicated transition relief given to private foundations in 1969. (5)

What is a business enterprise?

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

- Holdings that take the form of bonds or other debt instruments unless they are a disguised form of equity
- Income from dividends, interest, royalties and from the sale of capital assets
- Income from leases unless the income would be taxed as unrelated business income
- “Functionally-related” businesses and program-related investments
- 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 law does not define “family” and does not cross-reference either section 4958 or 4946 of the Internal Revenue Code 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. (6)

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—that are not donor-advised. For clarification on which funds are considered donor advised, see What is a Donor-Advised Fund? on the Council on Foundations website.

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:

- 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. (7)

**When did 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 was applicable only to assets held on the date of enactment.

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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. According to Treas. Reg. Section 53.4943-10(e), a sole proprietorship is a business enterprise which is actually and directly owned by the private foundation and not held by a corporation, trust, or other business entity for the foundation. Further, to be considered a sole proprietorship, the foundation must have a 100 percent equity interest. If the foundation has less than a 100 percent equity interest, the business enterprise would be treated as a partnership for the purposes of the excess business holding rules.
5. 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.
6. 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.
7. Additional rules apply to cover situations such as mergers, redemptions, and acquisitions.

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**DISCLAIMER**

The information provided is based on our continuing analysis of the Pension Protection Act. Every effort has been made to ensure accuracy of this information. Please understand, however, that due to the complexity of the Act 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 these rules 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.