Utilizing Community Foundations to Assist with Charitable Aspects of Estate Planning

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I. Primer on Community Foundations and Regulatory Requirements

A. History and Purpose of Community Foundations. Frederick Goff, a retired judge and banker, is credited with establishing the first community foundation, the Cleveland Foundation, in 1914. The Cleveland Trust Company held several small, endowed charitable trusts that it was having trouble administering and making grants from in an effective manner. Goff felt that the practices of the day were needlessly eroding the charitable funds. They were expensive to administer and the banks frankly knew more about investing money than giving it away. The Trust Company admittedly was not well versed concerning either the needs of the community or the local charities that most effectively addressed those needs. An additional problem was that the purposes of certain of the charitable trusts had become obsolete, and it was expensive to go to court when these charitable funds had outlasted their purposes and needed to be changed to stay useful. One such fund, the story goes, was to be used to support travelers in Conestoga wagons on their journey west. Conestoga traffic had come to a literal and figurative standstill by 1914. Goff wanted to ensure that donors' charitable intentions could be carried out in perpetuity, even if their original purposes became obsolete.

Goff created a representative governance system to oversee permanent charitable funds held by the trust company. The foundation board would distribute grants to good causes in the donors' names, forever. The foundation would identify the most worthy charitable recipients and award grants from the various charitable trusts and funds held by the foundation that could best carry out the donors' intent and meet community needs. The community foundation would benefit from economies of scale, offering professional management to affluent and modest donors alike. Other Cleveland banks with additional charitable trusts later joined in the arrangement.

Community foundations still follow the fundamental design established by Judge Goff. The multiple-trust community foundation became a model that was adopted in many other larger metropolitan areas through the next half-century or so, including Indianapolis which established the Indianapolis Foundation in 1916. More recently, additional community foundations have been established as non-profit corporations, and many original trust form community foundations have been reorganized under various state non-profit corporation laws, including The Indianapolis Foundation, Inc. Community foundations now exist as either trust form or corporate form community foundations, or as some combination of the two. *See*, Hoyt, *Legal Compendium for Community Foundations* (Council on Foundations, 1996), for a general history of community foundations.

In *Davis v. U.S.*, 495 U.S. 472, 479:110 S. St.2014 (1990), in studying the history of the charitable tax deduction for contributions to grantmaking foundations, the Supreme Court recounted community foundation history as follows: "numerous communities had established charitable trusts, charitable foundations, or community chests so that individuals could donate money to a trustee who held, invested, and reinvested the principal, and then turned the principal over to a committee that distributed the funds for charitable purposes."

B. Community Foundations Today. What began as a way to better ensure the intent of deceased donors with respect to bequests and charitable trusts has evolved to include living donors through a variety of fund types that can be set up by individuals, families and organizations that have philanthropic interests at community foundations to easily and effectively support the issues the donors care about—both during and after their lifetimes. The New York Community Trust (a community foundation) is credited with creating one of the most well-known community foundation fund types-- the very first donor advised fund around 1931. It was created as an alternative to the private foundations that were popping up about that time such as Carnegie, Rockefeller, Ford and Eli Lilly. Donor advised funds had long been a staple of the community foundation world when financial institutions began creating sister 501(c)(3) public charities for the sole purpose of housing donor advised funds. *See*, Department of Treasury, Report to Congress on Supporting Organizations and Donor Advised Funds (2011) ("Treasury Report"). According to the most recent statistics compiled by the Council on Foundations, more than 700 community foundations currently operate in urban and rural areas throughout the United States, including 91 community foundations in Indiana. Council on Foundations, Community Foundations Fact Sheet http://www.cofclassic.org/Members/content.cfm?ItemNumber=1281.

In June 2014, CF Insights (a community foundation research group) and the Council on Foundations reported that community foundations held $66B in assets, received $7.5B in gifts, and made $4.9B in grants in 2013. Over 90% reported managing assets that exceed pre-recession totals of 2007. See: "Guideposts for Growth and Aspirations," Council on Foundations, June 2014. http://cfinsights.org/Portals/0/Uploads/Documents/2014%20July%20Columbus%20results.pdf?cpgn=CFI%20WP%20DL%20FY%202013%20Columbus%20Survey%20Results

Central Indiana Community Foundation ("CICF") was established in 1997 as an affiliate of The Indianapolis Foundation, Inc., established in 1916, and Legacy Fund, Inc., the community foundation serving Hamilton County, established in 1991. As of the end of 2014, CICF and affiliates had combined charitable assets of more than $720 million, consisting of hundreds of separate funds, including unrestricted community funds for both Marion and Hamilton County, as well as donor advised funds, designated funds, charitable organization endowment funds, field of interest funds and scholarship funds. In 2014, CICF and affiliates, through their unrestricted community endowment funds and all of the various donor funds made a total of 2179 grants to a total of 966 different charitable organizations.

CICF and each of its affiliates is a public charity dedicated to transforming central Indiana by:

1. Advising caring donors of all types, including individuals, couples, families, family foundations, businesses, corporate foundations and others-- and their professional advisors--on charitable giving;
2. Awarding grants to effective not-for –profit organizations that are doing invaluable work in our community; and
3. Providing leadership to address critical needs and seize opportunities throughout central Indiana.

C. Community Foundation Regulatory Requirements. Tax regulations give community foundations the unique advantage of being able to treat multiple trusts and charitable funds as a part of the community foundation rather than as separate private foundations or taxable trusts. When Congress created the distinction in 1969 between public charities and private foundations, the Treasury Department issued regulations that define the conditions under which multiple trust form community foundations could be considered a combined "single entity" and, therefore, a public charity rather than a private foundation. Although corporate form community foundations may not legally need to comply with these **"single entity" regulatory requirements**, as a practical matter, most community foundations, whether corporate or trust form, are organized in compliance with the requirements. *See*, Hoyt, *supra*, Chapter 3. What this means for day to day planning purposes is that the regulatory requirements commonly are echoed in the organizational documents of community foundations, as well as fund agreements entered into with donors. The single entity requirements include:

1. **Organization Name**. The organization must be commonly known as a community foundation, community trust or community fund and convey the concept of an endowment or capital fund to support charitable activities in the area it serves. (Note the absence of geographical limitations.) Treas. Reg. Section 1.170-9 (e) (11) (iii).

2. **Common Instrument**. All funds of a community foundation must be subject to a common instrument or agreement. Treas. Reg. Section 1.170A-9 (e) (11) (iv).

3. **Common Board of Directors**. The community foundation must be governed by a common board, which either directs or monitors the distribution of all of the funds exclusively for charitable purposes. Treas. Reg. Section 1.170A-9 (e) (11) (v) (A).

4. **Variance Power**. The governing board must have or commit itself toward exercising "variance power" with respect to the charitable purpose or specified organizational recipient of a particular charitable fund (a "cy pres" power without the need for court approval, but likely reviewable under state law by the courts and/or attorney general). Treas. Reg. Section 1.170A-9 (e)(11) (v) (B) (1).

5. **Reasonable Return on Investments.** The governing board must commit itself, by resolution or otherwise, to administering the foundation funds in the community's best interests, including obtaining all information and taking all steps necessary to ensure that a reasonable return is realized on those assets. Treas. Reg. Section 1.170A-9 (e) (11) (v) (F).

6. **No Material Fund Restrictions.** A donor to a fund at a community foundation may not impose a "material restriction," which prevents the community foundation from "freely and effectively employing the transferred assets, or the income derived therefrom, in furtherance of its exempt purposes." Treas. Reg. Sections 1.170A-9 (e) (11) (B) and 1.507-2 (a)(8). The "Material Restriction Rules" (1.507-2(a)(8)) are borrowed from the private foundation termination rules.

No statutory or regulatory geographic limitation. There is no statutory or regulatory provision requiring a community foundation to limit grants to the local community. Thus, although grants from a community foundation's community endowment fund almost always are made within a defined geographic area, grants from donor funds may be made to any U.S. 501(c)(3) public charity or foreign equivalent, unless the community foundation itself has a contrary policy.

II. **Community Foundation Fund Types.** In order to not run afoul of the Material Restriction Rules discussed above, community foundations traditionally have structured their operations and philanthropic funds along the lines of the four fund arrangements described in the Material Restriction Rules, Treas. Reg. Section 1.507 -2 (8) (iii) – (v): **Unrestricted, field of interest, designated and donor-advised** (including **scholarship** that started as a sub category of donor-advised)**.** These types of funds allow donors to impose certain restrictions on their fund that are not deemed "material." CICF, The Indianapolis Foundation, Inc. and Legacy Fund offer each of these fund types for current, living donors as well as for future funds (funds that are established pursuant to agreement between the donor and the community foundation, but which do not receive funding until the future pursuant to some aspect of donor's estate plans). Different community foundations will have varying minimums to establish each different type of fund. A brief description of the different types of community foundation fund types and their respective advantages, are as follows:

A. **Unrestricted Funds**. Unrestricted gifts to CICF and affiliates are put in our **community endowment funds** and enable the community foundations to be the most responsive to changing community needs. Grants from our unrestricted community endowments support the broadest range of charitable needs and issues in central Indiana, now and in the future.

Donor Advantages: By donating during life or by bequest/ through estate plans to a community foundation unrestricted endowment fund, a donor can ensure his or her charitable dollars will be utilized for the betterment of his/her community in perpetuity for the widest range of issues affecting that community. They enable the community foundation to respond most effectively to emergency situations. CICF provides the opportunity for named community endowment funds with donor recognition starting at $5,000. Unrestricted gifts of any amount are included in our annual reports.

B. **Field of Interest Funds**. Field of interest funds are structured to support effective charitable programs in particular fields of interest to the donor. A donor may choose to establish a field of interest fund by instructing the community foundation to limit distributions from the fund to a charitable purpose or purposes specified in the fund agreement, such as the arts in Indianapolis, single mothers, hunger in central Indiana, Alzheimer's research, etc. The specific field of interest may be broad or narrow. We recommend contingency language in the event the problem or issue is solved. CICF has many active and future field of interest funds.

Donor Advantages: Field of interest funds have the advantage of the community foundation's expertise concerning the most effective charitable organizations working in the particular field of interest. The most effective organization at one point could very well change over time. The problems faced by today's youth are not the same as those that were encountered 50 years ago, and today's art organizations may not all exist fifty years from now. Often donors who establish donor-advised funds will include a "fall back provision" specifying one or more fields of interest to receive distributions from the fund in the event it ceases to be advised pursuant to the terms of the fund agreement. Field of interest funds often are utilized for legacy planning through bequests and testamentary trusts.

C. **Designated Funds (and Charitable Organization Funds)**. Public charities and/ or their benefactors often establish endowed funds at community foundations from which distributions are restricted to the particular public charity or charities named by the donor in the fund agreement. At CICF, we call designated funds established by the charity itself "charitable organization funds." We have more than 150 funds established by charitable organizations, but since charitable organizations don't engage in estate planning (although they certainly engage in planned giving and receive our assistance in that regard), this presentation will focus on designated funds that are created by donors for the benefit of charitable organizations. A donor may establish a donor designated fund by requesting, or "designating," that the annual income from the fund be used to benefit one or more specifically named charitable organizations. Often designated funds carry the name of the donor and the organization, such as the Debra Donor Fund for ABC Art Museum. If a donor desires to support several charities through a donor designated fund, donor could name the fund, e.g., Debra Donor Charitable Fund. Naming within reason is completely up to the donor.

Donor Advantages: By establishing a designated fund at a community foundation for the benefit of a particular organization rather than contributing directly to the organization, the donor gains the oversight of the community foundation in terms of:

- enforcing any conditions the donor placed upon the gift;
- ensuring against subsequent invasion of endowment principal, if that is the donor’s objective; and
- ensuring that the donor's endowment fund will exist in perpetuity, even if the particular organization should cease to exist or its purpose become obsolete.

Donors wishing to make life income gifts, such as a charitable gift annuity, may be better off utilizing a community foundation with the residuum going to a designated fund at the community foundation for the benefit of donor’s favorite charity. (The community foundation is more likely to have a greater asset base to guarantee the annuity obligation.) CICF currently has myriad active designated funds, as well as a good number of future designated funds, that are established pursuant to written fund agreement with the foundation, but which will not be funded until the triggering event in donors’ estate plans. During the donor’s life, donor may easily change the names of the designated charitable recipients, as well as the share of the annual distribution each charity is to receive.

A significant advantage that a community foundation fund can provide to your clients is the ability to gift one asset, e.g., a parcel of real estate, a valuable painting or coin collection, shares of closely held stock, and yet benefit multiple charities through a one designated fund--or one donor-advised fund, as described below.

D. Donor-Advised Funds. Donor-advised funds (DAFs) allow donors of all types to donate cash, stocks or other assets to a named fund at a community foundation (or other 501(c)(3) “sponsoring organization,”) claim a tax deduction on their federal income tax return for the year in which the contribution occurs, and then later, on the donor’s own time table, recommend how, when and to which charities money from the fund should be distributed. DAFs are increasing in importance as more individuals, families and businesses are utilizing this vehicle of philanthropic giving—in many instances rather than a private foundation. DAFs are established by donors who wish to be actively involved after the fund is established in choosing which specific charitable organizations receive distributions from the fund.

CF Insights and the Council on Foundations reported in June 2014 that: “Donor advised funds continue to be a driver of growth and grantmaking for community foundations, representing an average 40% of a community foundation’s total gifts and grants.” From “Guideposts for Growth and Aspirations,” Council on Foundations, June 2014.
http://cfinsights.org/Portals/0/Uploads/Documents/2014%20July%20Columbus%20results.pdf?cpgn=CFI%20WP%20DL%20FY%202013%20Columbus%20Survey%20Results

The Pension Protection Act of 2006 (PPA") added Internal Revenue Code Section 4966 (d)(2), which provides a three pronged definition of donor advised fund: (1) a fund or account that is separately identified by reference to contributions of a donor or donors; (2) is owned and controlled by a "sponsoring organization" (such as a community foundation or commercial donor advised fund provider); and (3) with respect to which the donor, or any person appointed or designated by such donor ("fund advisor") has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in such fund. The donor (and/or other fund advisor or advisory committee designated by the donor) recommends to the community foundation's board grants to be made from the fund to public charities of the donor's or other fund advisors' choice. *See, Donor Advised Funds Provide the Majority of Grant Funds Awarded by Community Foundations* (Council on Foundations, 2009).

The foundation must conduct its own appraisal of the donor's recommendations and ensure the charitable status of the recommended recipients. Although the foundation board has ultimate legal control over all distributions from DAFs (thus enabling the donor to receive a charitable income tax deduction for contributions to DAFs), these funds serve for many donors as a very effective, low cost/ low hassle substitute for private foundations.

The PPA-mandated study on the organization and operation of donor-advised funds, the 2011 "Treasury Report," *supra*, in which the Department of Treasury recommended NO new legislative changes or reforms to donor advised fund rules and regulations, has further cemented the donor-advised fund as an extremely popular philanthropic vehicle.

Donor Advantages. With one significant caveat requiring the necessity of due diligence on the sponsoring organization with which a donor plans to establish a donor advised fund, DAFs offer donors several advantages, including:

- **Simplicity**. Donor-advised funds have no start up costs. The community foundation already exists, so setting up a fund is easy, whereas establishing a new private foundation, supporting organization or charitable trust is both time consuming and expensive. The community foundation handles all record keeping and ensures compliance with regulatory requirements.
- **Flexibility**. As with designated funds, the donor may support multiple charitable organizations with one fund--and one asset, if desired.
- **Automatic Experience and Service**. The donor obtains the services, knowledge and expertise of the community foundation professional staff for a comparatively low fee (often one percent or less of the fund balance.) Not only will the research and knowledge of the community foundation be shared with the donor, but the foundation can assist with identifying charitable needs, researching specific charities, facilitating site visits, etc., and will provide all due diligence.
- **Available Ongoing Philanthropic Planning**. Most community foundations offer strategic charitable planning and family philanthropy facilitation.

- **Minimal Expense/Required Investment**. The minimum amount required to start a DAF is much less than the minimum amount recommended to establish other charitable vehicles, such as a private foundation, supporting organization or charitable trust. (Community foundation minimums for DAFs most often range from $10,000 to $25,000, versus the $1million, or more recently $3 to $5 and even $10 million most often recommended to establish private foundations.) Community foundation administration fees vary, but a range of one to two percent of fund balance is quite common.
- **Economies of Scale**. Donors benefit by having fund assets invested with other assets of the foundation and from the professional investment services utilized by the foundation.
- **Outside Investment.** The donor also may choose to recommend his or her investment advisor invest the charitable assets of the fund.
- **Ability to "Take a Test Drive."** Many community foundations, including CICF and affiliates, offer **pass- through donor-advised funds**, as well as the more traditional endowment type funds. Thus, a donor could open a donor-advised pass through fund for the minimum required amount with the assurance that the donor could advise grants from the fund out to charities of the donor's choice and spend out the entire amount of the fund. For donors concerned about whether the ability to serve as fund advisors to their fund at a community foundation provides sufficient control over the distribution of their charitable capital, the pass-through alternative could provide a great introduction to working with their community foundation.
- **Immediate Tax Deductibility**. DAFs are especially attractive for donors with sudden and/or one time increases in income, or who need or desire a larger than normal income tax deduction. The amount donated to establish a donor-advised fund is deductible for the year the transfer to the community foundation is received from the donor, even though the donor may advise grants from the fund to his or her favorite charities for years to come. The availability of an immediate income tax deduction without first having to determine all of the charitable recipients can prove very helpful to donors in a time crunch.
- **Greater Tax Deductibility**. Gifts to donor-advised funds at community foundations constitute gifts to public charities and are deductible up to 50% of adjusted gross income, as opposed to the 30% or 20% limit for gifts to private foundations. Donors also can deduct the full fair market value of appreciated long-term capital gain property contributed to a community foundation.
- **Free Up Cash for Other Purposes**. Donors who make annual gifts to a variety of charities may continue to do so through their DAF, thereby freeing up cash from the annual family or corporate budget to be available for other purposes.
- **Anonymity if Desirable**. Donors have the opportunity to give anonymously, which is nearly impossible with private foundation 990 PF reporting requirements and their online availability. The entire fund can be anonymous or certain grants made from the fund can be anonymous. At CICF, our philanthropic services advisors allow donors to refer all solicitations (whether the solicitation is to the fund or to the family, company or private foundation in general) to their philanthropic services advisor.
- **Recognition if Desirable**. The donor can choose to name the donor-advised fund after the donor or the donor's family and call it a family foundation with associated

name recognition and prestige. The donor also could establish a fund as a memorial to honor someone.

- **Legacy/Philanthropic Inheritance**. Through donor-advised funds, donors can build lasting legacies to their families and the causes or charitable organizations they support. Depending on fund size, most community foundations allow for successor generations to continue to advise the fund. Donor advised funds also are popular for future funds. The fund would be funded from the estate plan of the donor and the donor's children would then recommend grants from the fund in accordance with the instructions laid out by the donor in the fund agreement.
- **No Excise Tax on Earnings**. Earnings from DAF assets can be devoted to charitable causes of the donor's choosing, rather than to the government (through the investment earnings excise tax applicable to private foundations.)
- **No Required Payout.** Donors can choose to not grant every year and have the opportunity to build up their endowment fund over time if desirable.
- **Centralized and Streamlined Charitable Giving**. Donors can make a single charitable contribution, take the tax deduction for that one gift, and make distributions from the fund at any time to myriad charities without the need on the part of the donor to keep track of multiple charitable substantiation letters and tax years. Likewise, **appreciated property** can be contributed to a donor-advised fund, allowing the donor the associated tax benefit for the full fair value, and the proceeds can benefit multiple charities.
- **Protection from Solicitation**. The community foundation receives all mail on behalf of the fund. Donors' addresses and other contact information remains protected.
- **Corporate Foundation Ease**. For corporations considering private foundations, DAFs offer 'turn-key" operation with no or minimal additional staff time required. All investment, compliance, administration, check distribution, etc., is handled by the community foundation in the name of the corporation, e.g., the ABC Corporation Foundation, thus freeing up staff to focus on the business of the corporation.

E. Scholarship Funds. Please note the above mentioned fund types follow the fund arrangements described in the Material Restriction Rules, Treas. Reg. Section 1.507 -2 (8) (iii) – (v). **The PPA ushered in scholarship funds as an additional fund type separate from donor advised funds.** The PPA specifically prohibited donor advised funds from making grants to individuals, but in Code Section 4945 (g)(1), (2) and (3) allowed scholarship funds so long as all grants are awarded on an objective and nondiscriminatory basis using a procedure that has been approved in advance by the board of directors of the foundation and that the donor and related parties may not make up a majority of the selection committee. CICF offers three types of scholarship funds, from the most basic Scholarship Designated Fund, which depends on the donor designated recipient educational institution to select the recipient of the scholarship award, to a "Donor Scholarship," which is the most "customizable" and allows for an outside selection committee which must be approved annually by the community foundation Board. The majority of our scholarship funds are what we call our Blue Ribbon Scholarship Funds, which allow the donor to specify criteria (so long as it is sufficiently broad) and also allow the Donor/s to participate in the selection of scholarship recipients (so long as donor and other "disqualified persons" do not comprise a majority of the selection committee).

Donor Advantages. The donor can still serve on the selection committee, but PPA provisions ensure that scholarships are awarded on an objective and nondiscriminatory basis and that the donor does not control the committee directly or indirectly. Compliance requirements are handled by the community foundation. Community foundations are especially helpful with donors who want to have a broad based scholarship not limited to graduates from a particular high school or applicants to a particular college.

F. Future Funds. Each of the foregoing fund types (community endowment/ unrestricted, field of interest, donor designated, donor advised and scholarship) works extremely well with the charitable piece of estate planning, either (1) entirely as a "future fund" that is not funded prior to the death of the donor (or death of survivor of donors in the case of couples); or (2) as a fund that starts during the donor's lifetime, but which is added to at death, perhaps with additional instructions or requirements that can include changing the fund from a pass through to endowment, changing the fund from donor-advised to donor designated or field of interest, etc.

1. **Deciding Upon Appropriate Fund Type.** Let us help you! Does your client desire designated heirs to be involved in grantmaking? If so, does your client want a perpetual fund or would it be okay if the heirs granted out the fund all at once? Following a generation or two of grantmaking by heirs, does your client want to perpetually benefit particular charities or an interest area or the community endowment fund? Does your client want to provide scholarship opportunities based on specified criteria? Support his or her favorite charity/ies forever? Have the community foundation select the most effective organizations working in a particular charitable field in perpetuity? Create a fitting memorial to a loved one by benefitting that person's favorite charity or cause or by endowing a permanent scholarship? As demonstrated by the case studies in section III below, we can help you craft highly personalized fund agreement provisions tailored to your clients' individual charitable goals.

2. **Designating Future Funds in Estate Documents or on Beneficiary Designations.**
   Planned gifts can come into both active and future funds at CICF, The Indianapolis Foundation, Inc. and Legacy Fund, Inc. Bequests are quite common, as well as beneficiary designations and life income gifts, such as charitable remainder trusts and charitable gift annuities. CICF and affiliates are able to accept a wide variety of assets--the subject for a different presentation.

3. **Flexibility of Future Funds.** While the donor/s are still living, amending their fund agreement (for future funds only) to change or add successor fund advisors (if donor advised fund), to add or eliminate charitable organizations and/ or percentages of annual distributions to be received (if donor designated fund) or to change or revise the ultimate charitable beneficiaries of the fund is a simple

process. Since the fund already is referenced in the estate documents or on relevant beneficiary designation forms, your client can make changes to the fund agreement without necessitating a revision of the will, trust or other estate plan provision.

F. **Outside Management of Fund Assets.** This is mentioned under the donor-advised fund benefits above, but is worth mentioning again. We have several FUTURE donor-advised fund agreements in which the donors recommend that either a particular individual or a particular firm or both invest the assets of the fund (at the point in time when the fund is funded). Our typical provision for this in the fund agreement is as follows:

INVESTMENT OF FUNDS *Donor has recommended and the Foundation will consider retaining <investment firm> and <individual advisor>, currently located in _______, to invest the money and property of this Fund in accordance with the terms of the Foundation's Investment Policy Statement as assets of the Foundation. The decision to retain or not retain <firm/individual> to provide investment services and the continuation thereof, if any, shall be subject to periodic review and shall be within the sole discretion of the Foundation.*

Our prior policy required a fund balance of $500,000 for a donor to be able to recommend an outside investment manager, but we recently became MUCH more flexible! So long as the fund meets our required minimum balance, the donor may recommend outside management. We are required to exercise due diligence, so this must be left to community foundation discretion, but reputable investment advisors and firms whose clients prefer that they continue to invest assets that have been transferred to donor-advised funds at CICF can rest assured that CICF will retain them as investment manager for their clients' funds.

III. Estate Planning Will Continue to Include Charitable Giving

A. **Charitable Bequests Remain or Increase Post ATRA.** In the newest "permanent" transfer tax system imposed under the American Taxpayer Relief Act of 2012 ("ATRA"), with its $5 million indexed gift, estate and GST exemptions and portability of estate exemptions between spouses, only taxpayers with estates in excess of $5.43 million in 2015 ($10.86 million for married couples with portability) need concern themselves with estate tax. Although this system is "permanent" only in that it will not change if Congress fails to act at some point in the future, for the time being, however, lest one assume that charitable planning as a component of estate planning has decreased along with federal estate taxes, both IRS statistics and the 2014 U.S. Trust Study of High Net Worth Philanthropy indicate that estate related charitable contributions are alive and well and very possibly on the increase, despite the dramatic decrease in availability of estate tax charitable contribution deductions traditionally believed to be a significant "motivator" for planned gifts.

Post ATRA, less than 99.5% (maybe even less than 99.9%) of estates will owe any federal estate tax. Only 3738 estates in 2012, the first year in which the "pre-ATRA" $5 million federal estate tax threshold applied, owed federal estate tax. In that same year, $25.5 billion was left to charity, which was 25% more than the charitable bequest total in 2001 when the federal estate tax exemption was $675,000. According to Giving USA 2014, the total bequest giving of $27.7 billion in 2013 was the second highest total on record and more than half of that amount came from non-taxable estates. It seems that when people owe less or no estate tax, they understand that their heirs will inherit more, and that there is more available also for their favorite charities. Estate tax avoidance, while nice, is not THE reason most Americans make charitable bequests.

When asked, most HNW individuals say they would leave their charitable bequests the same or increase them absent a federal estate tax. According the 2014 U.S. Trust Study of High Net Worth Philanthropy, 36.8% of wealthy householders (defined as income greater than $200,000 or net worth greater than $1 million excluding home value) have a charitable provision in their estate plans, with an additional 6.6% who plan to do so in the future. (Interestingly, according to the 2013 U.S. Trust Study of the Philanthropic Conversation, regarding advisor approaches and client expectations, the majority of professional advisors believe their clients would make a charitable gift in their estate plans only if their estates are large enough to be subject to estate taxes.)

B. Accelerating Charitable Bequests for Current Income Tax Benefits. In addition to increasing federal estate and gift tax exemption amounts, ATRA added a new income tax rate of 39.6% and substantially increased the top capital gains tax rate such that, coupled with the 3.8 % Medicare investment surcharge, the highest marginal rate on capital gains is 25%. Due to this shift in the tax paradigm, it may be advisable for certain clients with charitable bequests currently provided for in their estate plan to consider accelerating all or a portion of such gifts and make them during their lifetimes in order to obtain income tax benefits and capital gains tax savings, especially if those charitable gifts would not offset any estate tax.

1. **Gifts of Appreciated Assets.** It may be more important than ever to pay special attention to the benefits of non-cash gifts during life. Not only does the donor get a charitable deduction for the current fair value of the gift (in most cases), but also avoids paying capital gains tax on the unrealized gain. Charitable gifts of appreciated property, including stock, business interests, investments, real estate, etc., are more attractive than ever.

2. **Charitable Remainder Trusts and Charitable Gift Annuities.** These irrevocable, life income gifts are more attractive in this era of appreciated assets and high capital gains rates, as they offer the donor the ability to realize gains in a tax-free environment, obtain a charitable income tax deduction and enjoy income based on the total value of donated assets. The use of both CRTs and CGAs is on the rise under current market conditions and given higher income and capital gains taxes. A CGA may be especially useful for a donation of low dividend producing, appreciated stock in exchange for a CGA. The donor can convert that stock into

an income stream and avoid capital gains taxes that otherwise would be incurred if the stock was sold and reinvested for higher income producing assets. A future fund at CICF could be the beneficiary of the residuum.

3. **Obtaining Enhanced Tax Benefits**. Due to the public charity status of community foundations, donors who contribute to community foundation funds receive tax deductions significantly higher than they would receive for contributing those same assets to a private foundation. Examples include a deduction of 50% versus 30% for cash donations, both with 5 year carry forwards, as well as the ability to deduct full market value of appreciated assets gifted to community foundations. In most instances, gifts of appreciated property to a private foundation are deductible only in the amount of the donor's basis--and then only up to 20% of AGI.

IV. Case Studies

A. Future Fund Donor-Designated and Interest Area Agreement (sample included). Part pass-through and part endowment. Estate estimated to be between $20 and $100 million.

B. Future Fund Donor-Designated Partial Pass-Through and Partial Endowment Fund. Sample amendment to add additional charitable organization to receive small percentage of annual endowment distribution (sample included).

C. Spend Down Examples.

1. 25 year "sunset" provision to active donor advised fund that will receive large bequest upon fund advisors' passing (sample included).
2. 100 year sunset

D. Private Foundation Termination.

E. Scholarship Fund--$25,000 designated created during life to honor father; planned gift to that fund will provide full ride scholarships to one or more graduating seniors from community high school.

F. Future Funds Established by Single Women (during the last 12 months).

V. Using Your Community Foundation as a Resource

A. Trusted Philanthropic Advice

At CICF and all community foundations, we give you and your clients the advice we would want ourselves. If the community foundation isn't the best partner for what you as a professional advisor, your clients, or their family desire to accomplish, we will tell you. Community foundations want relationships to work both short-term and long-term.

Community foundations exist to be a trusted philanthropic advisor and resource. You don't need to know whether we will be able to help you and your client or not – just remember where to find our phone number. (317-634-2423)

B. Community Foundation Resources

CICF a public 501(c) (3) charitable foundation

Council on Foundations: Founded in 1949, the Council on Foundations is a nonprofit membership association of grantmaking foundations (public and private) and corporations.

Foundation Center national nonprofit clearinghouse for information and research about private, corporate and community foundations

Indiana Philanthropy Alliance a state-wide nonprofit association of Indiana grantmaking foundations and philanthropic advisors.

VII. **Sources Mentioned in Presentation**

Frederick Goff's address is here

National Community Foundation Locator

Top 25 community foundations by asset size are here

Guideposts for Growth and Aspirations, Council on Foundation, June 2014

National Philanthropic Trust 2014 Donor Advised Fund Report

2014 U.S. Trust Study of High Net Worth Philanthropy

CICF's 2016 Scholarship Guidebook

Giving USA 2015