



Revision Date: January 23, 2006

## Guidelines for Acceptance of Interests in LLC and Limited Partnerships

NHF is willing to consider accepting proposed gifts of interests in limited partnerships (and similar entities such as limited liability companies), for the support of NHF and to fund foundations which NHF has determined to be in furtherance of its mission as an Internal Revenue Code sec. 501(c)(3) organization. We at NHF, in our efforts to encourage philanthropy, wish to be prudent and careful in the acceptance of any gift to make certain that bona fide charitable purposes are served. **We also need to make sure that the gift of the partnership interest will result in annual distributions to NHF and a significant contribution of capital when the term of the partnership expires.**

The criteria explained below are not meant to create rigidity, but, rather, to be interpreted flexibly in light of the objectives explained in the preceding paragraph. We realize that partnership interests are as varied as the nature of the limited partnership and the assets owned by the partnership.

The Family Limited Partnership (FLP) contemplates a legal structure with a General Partner, and a Limited Partner. The general pattern is that the "foundation at NHF" which has been set up for the charitable program suggested by the donor and approved by NHF, is given a major interest in the Limited Partnership, which is controlled by the General Partner. By law, the Limited Partnership must be managed by the General Partner or Partners for the benefit of all partners, general and limited. The General Partner has a fiduciary duty to the Limited Partner. NHF will make sure the partnership agreement contains procedures which allow for the Limited Partner to review actions by the General Partner. These include, for example, the right of the Limited Partner to receive financial statements on a regular basis and economic benefits proportionate to its equity interest in the partnership.

We have set forth below basic guidelines to be followed in connection with the review of proposed gifts of interests in Limited Partnerships and similar entities, such as limited liability companies. These Guidelines have been developed on advice of counsel.

- 1) **Application for a Foundation:** We must have a fully completed application for a "foundation at NHF" before we can proceed. This application may be sent with the documents and information described below.
- 2) **Initial Donation:** The initial cash donation to NHF should be at least \$500 to defray the costs of NHF in connection with the review of the application for the foundation. This non-refundable donation is separate and apart from the additional review fee of \$150.00 which applies to our review of the proposed donation of the interest in the FLP. We must charge this fee to defray the cost of our review of the documents and information set forth below. There is no guarantee that we will accept the proposed gift, even if we have approved the application to establish the foundation. NHF will accept only those gifts of

Revision Date: January 23, 2006



interests in FLPs which meet its criteria. This determination is made in the sole discretion of NHF. If the proposed gift is not approved by NHF, the review fee is not refundable.

**3) Initial Documents Required:**

- a. A copy of the proposed partnership agreement,
- b. A copy of the proposed transfer document or gift agreement.
- c. An appraisal prepared by an independent, qualified appraiser setting forth both the value of the partnership assets and the value of the units to be contributed to NHF (i.e., the discounted value of the gift).
- d. A copy of IRS form 8283 signed by an independent, qualified appraiser.
- e. A Balance Sheet: A statement of the entity's assets and liabilities (liabilities to include, mortgages, margin accounts, or other liens.)
- f. An Income Statement: A statement of the entity's income and expenses, including the details of any management agreement or understanding
- g. A title report or opinion of counsel related to the ownership of the assets. Deeds are not sufficient since they do not indicate subsequent transfers or liens.
- h. Copies of any note and security (e.g., deed of trust) for the note which is owned or to be owned by the FLP as an asset.
- i. Such other documents and information as NHF may request. This will vary depending on the nature of the property owned or controlled by the FLP, as well as its operations and activities.

- 4) Unrelated Business Income:** Tax-exempt, public charities, such as NHF, are subject to federal tax on "unrelated business taxable income." The FLP is a "pass-through" entity. This means that if the enterprise or business conducted by the FLP is "unrelated" to the charitable purposes of NHF, NHF may be subject to tax on distributions to it from the FLP. For example, if the FLP operates a working farm, distributions to NHF are likely to be taxed. NHF is reluctant to accept any proposed gift of an interest in a FLP which may cause NHF to realize "unrelated business income." If the FLP owns or acquires certain types of debt-financed assets, this also may cause NHF to realize tax. NHF reviews potential tax implications as part of its review of the proposed gift of the interest in the FLP.

Therefore, the Partnership must agree not to engage in activities which will result in any limited partner realizing unrelated business taxable income within the meaning of Internal Revenue Code sections 511-514 in any taxable year unless the activities result in a cash distribution in the same fiscal year sufficient to pay any tax which may be incurred by such partner.

**5) Annual Reporting Required:** NHF requires the following annual reports

- a. A Balance Sheet: statement of the entity's assets and liabilities



- b. An Income Statement: statement of the entity's income and expenses.
  - c. A copy of the signed tax return (1065 and the accompanying K-1) sent at the same time as the IRS filing deadline.
  - d. A statement indicating the amount of management fees paid, and the percentage of assets it represents. NHF is sensitive to management fees – please see item (9) below.
  - e. Depending on the nature of the FLP and the property owned by it, NHF reserves the right to require other types of information and documents.
  - f. Moreover, NHF must have the right, exercisable upon reasonable notice, to audit annually, at the expense of NHF, the books and records of the FLP, which must be maintained in accord with generally accepted accounting principles (consistently applied).
- 6) **Annual Fee for NHF Oversight:** In addition to the fees set forth above, the FLP agrees to pay to NHF \$500 per year to defray the cost to NHF of reviewing the above documents and information, monitoring its interest, and updating NHF records in the FLP.

At the expiration of the term of the partnership (or earlier, if agreed by the general and limited partner), the assets of the partnership shall be sold and cash distributed. The cash distributed to NHF, as the limited partner, will be allocated to your foundation at NHF, less a liquidation fee of four and one-half percent (4 ½%). The fee defrays the costs incurred by NHF for oversight duties related to the partnership and the liquidation.

- 7) **Liquidation and Protection of the Foundation's Interests:** NHF agrees to consider the terms of any bona fide proposal to purchase its interest in the FLP, whether such proposal is submitted by the General Partner, by another limited partner, or by a third party. NHF is willing to grant to the General Partner a Right of First Refusal to match the offer of a third party, but NHF must possess the independent right to sell its interest in the FLP (i.e., without securing the consent of the General Partner.) NHF will rely on the advice of an independent, qualified appraiser approved by NHF, in order to determine fair market value.

NHF will review annually all financial statements of the partnerships. If there has been a material operating loss or significant decline in the value of assets, the General Partner will be required to provide a detailed explanation. If the General Partner has failed to exercise an appropriate degree of care, NHF reserves the right to seek an accounting and other remedies. As noted above, the General Partner has a fiduciary duty to protect and respect the interest of NHF.

- 8) **Annual Distributions from the Limited Partnership:** NHF requires that sufficient funds be transferred to the "foundation at NHF" from the limited partnership each year both to pay the \$500 annual "due diligence" fee and, further, as a good faith distribution of profits. This will vary depending on the nature of the FLP and the equity interest of NHF in the partnership. In connection with the review of the proposed gift, NHF will consult with the



donor and reach agreement as to what should be a mandatory minimum annual cash distribution, barring unforeseeable circumstances.

- 9) **Management Fees of the Limited Partnership:** NHF requires that any management fees incurred by the limited partnership must be "reasonable," which depends on the nature of the assets in the FLP and the scope of its operations, evaluated annually. NHF, as part of the initial review, will reach agreement with the General Partner as to what the appropriate management fee should be initially. Any increase in such fee must be approved by the Limited Partners.
- 10) **Term of Partnership:** As part of the initial review, NHF will consider the term of the FLP, i.e., the date when the FLP must terminate and the assets are liquidated and distributed to the partners in accord with their equity interests in the partnership. If this term exceeds forty (40) years, NHF, generally, will not accept the proposed gift. The term must be reasonable in relation to the properties owned by the FLP and the nature of its operations.
- 11) **Transfer and Assignment of Partnership Interests:** NHF will not transfer shares of Partnership Interest to any other charities before the liquidation of Partnership Assets and any outstanding fees have been paid.

We understand these Guidelines and shall comply (sign below):

Donor: \_\_\_\_\_ PDO: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_