LUTHER COLLEGE

POLICIES AND PROCEDURES

Department:	Financial Services
Subject:	Charitable Trusts
Date Issued:	October 23, 2009
Date Revised:	
Approved By:	

I. Policy

This policy sets forth the guidelines for accepting, establishing, and investing Charitable Trust contracts.

II. Scope

This policy applies to all charitable trusts established after the approved date of the policy.

III. Terms and Definitions

- Charitable Remainder Trust – a type of gift vehicle in which to donor (trustee or settler) places substantial funds or assets into an irrevocable trust (in which the basic terms cannot be changed or the gift withdrawn) with a trustee, in which the assets are to go to a charity after the trust terminates, but the donor (or specific beneficiaries) will receive regular payments from the trust during the donor's lifetime or for a period of years not to exceed twenty years. Trust payments are taxable to the income beneficiary(ies) under a four tier system, with the trust's ordinary income distributed first, capital gains second, other income third and the corpus of the trust last. A Charitable Remainder Trust may be either a Charitable Remainder Annuity Trust or a Charitable Remainder Unitrust. Payments to beneficiaries from all types of trusts must come exclusively from the trust assets and are not guaranteed by Luther College.
- Charitable Lead Trust – a type of gift vehicle in which a donor (trustor or settler) places substantial funds or assets into an irrevocable trust (a trust in which the basic terms cannot be changed or the gift withdrawn) with a trustee for a designated period of years. During the time the assets are held in the trust, a charity receives income from the donated assets. After the specified period concludes, the trust terminates and the trust principal is transferred to the donor or those noncharitable beneficiaries designated by the donor.
- Donor(s), Trustor(s), Settlor(s), Grantor(s) – person transferring property to a trust.
- Income Beneficiary(ies) – person(s) or entities receiving payments from the trust. The income beneficiary(ies) of a charitable remainder trust can be the donor or the donor and another beneficiary, or any person the donor designates in a charitable remainder trust. The income beneficiary of a charitable lead trust is a charity.
- Remainderman (Remainder beneficiary(ies) – party who benefits upon maturity (termination) of the charitable trust. Luther College must be at least 50% remainder beneficiary of any charitable remainder trust it is serving as trustee.

- Crescendo Software – Vendor (Crescendo Interactive Inc.) purchased software currently in use by Luther College Development Office to assist in the calculations of charitable contribution and valuation of the present value of the expected income stream to beneficiary(ies).
- Trustee – the person(s) or corporation named in the trust agreement to administer a trust. Luther College may be named a trustee of a Charitable Remainder Trust or Charitable Lead Trust.
- Additional information can be found in the Gift Acceptance Policy (Dated May 15, 2009).

IV. Types of Charitable Trusts

A. Charitable Remainder Annuity Trust

- The annuity trust agreement specifies a sum certain, to be paid annually to the trust income beneficiaries. The sum certain is either a stated dollar amount or a fixed percentage of the initial fair market value of the property passing in trust. The sum certain must be payable, at least annually, either for a term of years (but not more than twenty years) or for the life or lives of the nonheritable beneficiary or beneficiaries. The sum certain that is paid cannot be less than five percent nor more than fifty percent of the initial value of the property placed in the trust.
- The value of the charitable remainder interest at inception must be at least ten percent of the present value of the property placed in the trust.
- No additional contributions to an annuity trust are permitted after the initial formation of the trust.
- Income earned in excess of the fixed annuity payment is added to the trust principal, and any deficiencies which may result from insufficient trust earnings in a given year are paid to the income beneficiaries from trust principal.
- The Internal Revenue Service requires that there may be no more than a 5% probability that the non-charitable income beneficiaries will survive the exhaustion of the fund in which the charity has a remainder interest.
- At termination of the trust, the remainder interest in the trust is transferred to or for the use of a qualified charitable organization

B. Charitable Remainder Unitrust

- The Unitrust annual payout amount is determined by applying a fixed percentage of the fair market value of the assets of the trust, valued annually. The fixed percentage of the payout must be at least five percent and no more than fifty percent of the fair market value of the assets in the corpus. The remainder of the corpus goes to the charity when the trust terminates. The remainder must be at least ten percent of the fair value of the assets when contributed.

  a. Straight Unitrust
     - Pays a fixed percentage of the net fair value of its assets, valued annually, to the designated non-charitable income beneficiaries. The fixed percentage rate cannot be less than five (5) percent and once established by the donor when the trust is created, cannot be changed.
     - Additional contributions may be made at any time.

  b. Net Income Unitrust
     - Pays a fixed percentage of the fair market value of the assets, valued annually, or the net income earned by the trust, whichever is less.
     - Trust document can be written with a “make-up” provision whereby the trust uses excess income from prior years to pay the non-charitable income beneficiary(ies) income lost during the years when earnings were insufficient.

   - A separate letter of understanding should be signed by the donor indicating that the donor understands the income concept of a net income Unitrust.

   c. Flip Trust
   - A net income Unitrust written with a provision enabling the net income trust to "flip" to a straight fixed percentage payout Unitrust once some "triggering" event has occurred, such as the sale of a specific asset within the trust. The trust "flips" on January 1 of the year after the triggering event has occurred.
   - Usually used for gifts of real estate, non-publicly traded securities, or unmarketable assets which produce little or no income.

C. Charitable Lead Trust
- A charitable lead trust is a charitable trust that works in the reverse order of a charitable remainder trust. While the assets are in trust, the trust makes payments to a charity. When the trust terminates (usually after a pre-determined number of years), the assets are transferred back to the donor or the donor's heirs. It is called a "lead" trust because the income interest paid to a charity "leads" or precedes the "remainder" interest paid to the beneficiaries.
  a. Grantor Lead Trust
     - A gift arrangement in which the donor (grantor) transfers income producing assets to a trust, income is paid to the charity over the trust term and at the end of the term the trust principal returns to the donor.
     - The donor receives an immediate income tax charitable deduction equal to the present value of the income stream the charity will receive during the life of the trust. The trust's annual earnings (minus the distribution to the charity) are taxable to the donor.
  b. Non-Grantor Lead Trust
     - A gift arrangement in which the donor (grantor) transfers income producing assets to a trust, which makes payments to a charity for the duration of the trust. When the trust terminates, the assets are transferred to someone other than the donor or donor's spouse (usually children or grandchildren).
     - The trust can run for a term of years or the lifetime of an individual.
     - The donor does not receive an immediate income tax deduction, but also does not have to report any trust income on his/her personal tax return.
     - The taxable value of the gift to heirs is reduced or discounted, because the heirs will not actually receive the benefit until sometime in the future. The taxable value of the gift to heirs is also offset by a deduction for the present value of the payments that will be made to the charity.
     - Any appreciation in the value of the trust assets, after the payments to the charity are made, will pass to heirs free of gift and estate tax.

V. Procedures and Guidelines

A. General Requirements for a Charitable Trust
- Normally, a charitable trust will require a minimum $100,000 irrevocable contribution. Lesser amount will be accepted with the approval of the Vice President for Finance and Administration and the Vice President for Development.
- Trusts funded with non-cash gifts (other than publicly traded securities) must be approved by the Vice President for Finance and Administration before establishing the trust.

- Matured charitable remainder trusts cannot fund current building projects but can fund building endowments for the building project. Matured charitable remainder trusts, if board designated, can upon maturity, be designated by the board for a current building project.
- Minimum and maximum payout rates are determined by the current Internal Revenue Codes rules for charitable trusts (with minimal residual requirements) and by current market and investment conditions. The final rate of payout will be negotiated with the donor(s), the Vice President for Development and the Vice President for Finance and Administration. The final decision will take into consideration the term and goals of the trust, the potential investment environment, and the risk tolerance of all parties involved.
- The maximum number of life income beneficiaries for a charitable trust for which Luther College serves as trustee shall be four. With the approval of the Vice President for Development and the Vice President of Finance and Administration, exception will be considered if the ages of the beneficiaries warrant such an exception. If one of the beneficiaries is under 50, a term of years which cannot exceed 20 years, charitable remainder trust must be used.

B. Establishing a Trust

- A trust agreement should be prepared by the donor's attorney, but the college or the college's attorney may provide IRS approved documents for the donors. If prepared by the college or the college's attorney, it is required that the donor(s) have their attorney(s) review and approve the documents prior to signing. If prepared by the donor(s) attorney, the college must review and approve the document before being signed.
- Luther College may decline to serve as trustee if it finds any of the terms in a trust document to be unacceptable.
- The college may act as trustee of charitable remainder trusts. If the college serves as trustee, at least 50% of the remainder must be irrevocably designated for the college at the inception of the trust.

C. Crescendo Calculations

- The Crescendo program identifies the portion of the trust value that is considered a charitable contribution.

D. Matured Charitable Remainder Trusts

- Upon maturity, the remaining charitable trust value will be transferred to the designation stated in the trust agreement. If the agreement is silent on this issue, the funds will be considered board designated, with the Board of Regents determining the designation of funds.

VI. Statement of Investment Policy

A. Roles and Responsibilities

- Members of the Board of Regents, ultimately, are responsible as fiduciaries for administering the charitable trusts for those trusts that the college is currently named as trustee. The Regents delegate responsibility for ongoing oversight of the charitable trusts to the Investment Committee.
- The Investment Committee is charged with setting the overall policies for the investment of trust assets. Trust assets are invested according to specific investment models taking into consideration among other things, the donors' age, donor income needs, and asset growth expectations. An annual review of the investment models and investment performance of the charitable trusts will be performed.

- The College administration is responsible for implementing decisions of the Investment Committee.
- The College administration is charged with monitoring the trust performance and annual reporting of said performance to the Investment Committee and to the trust beneficiaries.
- The administrative and investment management services may be outsourced. Fees for this will be charged to each trust based on the current fee structure from the planned giving services agreement. The college currently outsources the administrative and investment management for most of its trusts to TIAA-CREF. (See TIAA-CREF Trust Company, FSB Planned Giving Services Agreement.)

VII. Confidentiality and Record

All charitable trust files will be held in the Development Office and because of donor's relationship to Luther College, will become part of Luther College's archives upon maturity