APRIL 22, 2016

Final PRI Regulations Released

The Treasury Department and Internal Revenue Service yesterday released **final regulations on private foundation program-related investments .**

These regulations put in final form nine examples of investments that qualify as PRIs, initially proposed by the IRS in 2012.

The White House has been enthusiastic about impact investing as a tool to further social and charitable objectives, including the use of PRIs, and issued **this blog post** announcing the final regulations.

The nine examples in the final regulations illustrate the wide range of possible PRIs and reflect the following general principles:

- Charitable goals that may be accomplished through a PRI are broad; they include purposes such as combating environmental deterioration, promoting the arts, and advancing science.
- PRIs may fund activities both domestically and abroad.
- Many different kinds of investments may qualify as PRIs, including loans to individuals, loans to tax-exempt organizations (e.g., a 501(c)(4) social welfare organization), guaranties and other forms of credit enhancement, and equity investments in for-profit organizations.
- A potentially high rate of return does not automatically prevent an investment from qualifying as program-related.

These final regulations follow guidance issued last September by the Treasury Department and IRS (Notice 2015-62) clarifying that private foundations could consider the relationship between an investment and the foundation's charitable purposes, even when making ordinary investments that are not PRIs, and that foundation managers are *not* required to select only investments that offer the highest rates of return, the lowest risks, or the greatest liquidity. (See our **blog post** on this topic.)

A few points from the Treasury Department and IRS written comments that accompanied the final regulations:

1. Treasury and the IRS confirmed that the examples are intended as illustrations of investments that qualify as PRIs but that other fact patterns also may qualify, for

RELATED CATEGORIES

- Grantmaking & Social Investing
- Private Foundations
- Social Enterprise

AUTHOR

David A. Levitt
Principal

ABOUT OUR BLOG

Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

EDITORS

Stephanie L. Petit
Principal

Eric K. Gorovitz
Principal

instance, ones that are similar to but that do not contain *all* of the elements in any particular example. The examples therefore provide guidance but are not intended to be restrictive.

2. Treasury and the IRS removed from the fact pattern of one example that the foundation would liquidate its stock investment if it became profitable, which is helpful to avoid a conclusion that a foundation *must* sell the equity it acquires in a business once it becomes profitable for the investment to qualify as a PRI. This is not a PRI requirement in the regulations. However, the comments did note that the establishment of an exit condition when making an investment that is "tied to the foundation's exempt purpose in making the investment can be an important indication of" the foundation's primary charitable purpose.
3. We've previously commented that it would be helpful if we had an example of an equity PRI in an LLC (as opposed to a loan), which is a fairly common investment structure. However, we understood that the IRS viewed the complexity of such an investment to be outside the scope of these examples. The comments confirmed that this is the case, but also stated that the IRS and Treasury are considering issuing a revenue ruling addressing investments in partnership/LLC interests. We look forward to that future guidance.