

Georgia HEART Hospital Program, LLC

Transparency and Accountability Narrative

August 1, 2019

Table of Contents

Introduction..... 1

Relation to Georgia Education Expense Credit Program 3

Initial Features of RHO Credit Program..... 4

Enhancements to the RHO Credit Program 7

Formation of Rural Healthcare 180 10

Role of Portage Charity Advisors, Inc..... 12

Operation of Georgia HEART in 2016..... 15

Operation of Georgia HEART in 2017..... 17

Operation of Georgia HEART in 2018..... 20

Operation of Georgia HEART in 2019..... 21

Undesignated Contributions..... 23

Contributions by Portage and Georgia HEART, LLC to GCF and the Resulting Georgia
Community Rural Health Fund Grants 24

Compensation of Jim and Lisa Kelly..... 26

GCF and Georgia GOAL Financial Statements..... 30

Indirect Benefits of Creating the RHO Credit Program..... 30

Introduction

In 2016, lawmakers enacted the Georgia Rural Hospital Organization Expense Credit Program (the “RHO Credit Program”), effective January 1, 2017, and, in doing so, empowered individual and businesses throughout Georgia to become aware of, and contribute to, rural hospital organizations (“RHOs”) in need of critical financial support. Each year through 2024, taxpayers are eligible to apply for, and receive, a total of \$60 million of Georgia income tax credits (“RHO Credits”), which they can use to offset 100% of their Georgia income tax liabilities (up to certain annual maximums for individuals, corporations, and trusts). As of January 1, 2019, subject to a Hospital Participation Agreement that either party may terminate upon 30-days prior written notice, all 58 of the eligible RHOs have voluntarily engaged Georgia HEART Hospital Program, LLC (“Georgia HEART, LLC”), a non-governmental philanthropic consulting firm, to assist them in the marketing and contribution administration of the RHO Credit Program. Georgia HEART, LLC charges the RHOs an administrative fee of 3% of the contributions they receive under the RHO Credit Program, which is the maximum statutory fee permitted under Georgia law. A wholly-owned subsidiary of the non-profit, state-wide charity, Georgia Community Foundation, Inc. (“GCF”), which is governed by an independent Board of Directors (including a former Commissioner of the Georgia Department of Revenue), Georgia HEART, LLC contributes all of its net income to GCF to be used in support of rural health care, rural hospitals, and addressing the social determinants of health in rural Georgia.

As the GCF Board and Georgia HEART, LLC are dedicated to serving RHOs in an effective, efficient, and ethical manner that respects and protects the participating RHOs, their donors, and the legislative intent of the RHO Credit Program, this Transparency and Accountability Narrative provides the public with detailed information about:

- The relation of the RHO Credit Program to the Georgia Education Expense Credit Program (the “Education Credit Program”) and the relation between Georgia HEART, LLC and Georgia GOAL Scholarship Program, Inc., an affiliate of GCF that is the largest student scholarship organization participating in the Education Credit Program;
- The initial features of the RHO Credit Program
- The amendments adopted by Georgia lawmakers to make the RHO Credit Program more attractive to potential donors;
- The decision the GCF Board made to assist RHOs in marketing and administering the RHO Credit Program on a non-profit basis, the reason for the involvement of Portage Charity Advisors, Inc. (the predecessor to Georgia HEART, LLC) (“Portage”), and the charitable transfer by Jim Kelly of his 100% interest in Portage to GCF;

- The federal and state tax returns for 2016 through 2018 and the unaudited or audited financial statements of Portage, Georgia HEART, LLC, GCF, and Georgia GOAL from 2016 through the first six months of 2019;
- The critical roles Portage and Georgia HEART have played during the first few years of the RHO Credit Program to facilitate its implementation, amendment, survival, and ongoing process improvement;
- The effort taken by Georgia HEART to encourage the Georgia Department of Revenue to permit the owners of interests in pass-through business entities to take the RHO Credit in cases where the pass-through entity makes a payment to a RHO that qualifies as a deductible ordinary and necessary business expense for federal income tax purposes;
- The manner in which Georgia HEART handles RHO Credit pre-approval requests submitted by taxpayers who are unfamiliar with any particular RHO and desire for Georgia HEART staff to designate a RHO on their behalf, including a geographic breakdown of these so-called “undesigned” contributions;
- GCF’s creation of the Georgia Community Rural Health Fund (the “Fund”), the contribution of the net income of Georgia HEART, LLC to the Fund, and the grants the Fund has made to the RHOs and to other grantees for use in support of rural health care and addressing the social determinants of health in rural Georgia;
- The details of the compensation earned from Portage, Georgia HEART, LLC, GCF, and Georgia GOAL by their Founder and General Counsel, Jim Kelly, and his wife, Lisa, who works for these entities, during 2016 through the first six months of 2019;
- The details of the personal loans Jim Kelly made to Portage to sustain the operation of the RHO Credit Program in years when the RHO Credit percentage was less than 100% of the contributed amount and was failing to attract significant taxpayer support; and
- A description of three significant indirect benefits arising from the creation of the RHO Credit Program.

The GCF Board and Georgia HEART staff consider it an honor and great responsibility to be able to provide the marketing and contribution administration services that have proven vital to the 58 RHOs who are participating in the RHO Credit Program. It is our hope that this Transparency and Accountability Narrative evidences our passion and commitment to helping enhance access to rural treatment, or “HEART.”

Relation to Georgia Education Expense Credit Program

Georgia lawmakers modeled the RHO Credit Program on the highly successful Education Credit Program, a pre-K-12 tuition tax credit scholarship program, pursuant to which taxpayers receive a Georgia state income tax credit for contributing to qualified tax-exempt student scholarship organizations (“SSOs”). In turn, SSOs use the contributions to award scholarships to applicant families whose children desire to enroll in the non-public schools of their parents’ choice.

Since 2008, the Education Credit Program, which, for 2018, had a cap of \$58 million, has been very popular with Georgia taxpayers, with taxpayers having applied for \$105 million worth of credits on the first business day of 2018. During the 2018 legislative session, Georgia lawmakers increased the annual cap on the Education Credit Program to \$100 million for the next ten years. As of June 30, 2019, taxpayers were within \$1.4 million of reaching the \$100 million cap. It was because of the popularity of the Education Credit Program, which offers taxpayers a 100% credit for their contributions to SSOs (up to certain maximums), that lawmakers initially set the credit percentage for the RHO Credit Program at only 70% of the contributed amounts.

Upon the adoption of the Education Credit Program, to promote the effective, efficient, and ethical administration of the program, advocates of the legislation requested Jim Kelly, a tax, corporate, tax exempt-organizations, and education reform attorney, to form a SSO. Kelly formed Georgia GOAL Scholarship Program, Inc. (“Georgia GOAL”), the majority of the Board members of which consisted of members of the Board of Directors of GCF, a community foundation which Kelly founded in 1991. Since 2008, Georgia GOAL has been the largest of among approximately 30 operating Georgia SSOs, having raised \$193 million of Georgia income tax credit-eligible contributions from approximately 80,000 contributors and awarded 35,171 scholarships to families to educate their children at the pre-K-12 non-public schools of their choice. For 12 years, leaders of the national school choice community, the 140 participating Georgia GOAL schools, lawmakers, donors, and scholarship families have viewed GOAL as the “gold standard” in the administration of one of the nation’s largest pre-K-12 tuition tax credit programs.

Since Georgia GOAL’s inception, it has charged an average administrative fee of 6% of contributions, which is less than the statutory rate provided by Georgia law. In 2018, Georgia GOAL charged a net administrative fee of 4.5% of contributions. Since inception, Georgia GOAL has retained a total of \$5.3 million *less* in administrative fees than the fees to which it was entitled under Georgia law. In 2018, Georgia GOAL received 40% of all contributions made to the 30 existing SSOs.

Each year, individuals constitute the overwhelming majority of donors to Georgia GOAL, with the 12,000 annual donors to Georgia GOAL consisting of only about 100 “C” corporations. To effectively administer a multi-step tax credit program involving so many individual taxpayers, since 2008, Georgia

GOAL has developed and implemented a highly-customized, cost-effective, information technology solution to process tax credit pre-approval applications, approvals, contributions, and state reporting obligations. Georgia GOAL's operational expertise has eliminated the need for its 140 participating private schools (at great expense and time commitment) to assume responsibility for administering the Education Credit Program.

Regardless of the likelihood that thousands of individual taxpayers might contribute to RHOs, when creating the RHO Credit Program, Georgia lawmakers did not expressly provide for the involvement of intermediary foundations (comparable to SSOs) or consulting firms to perform the marketing and administrative functions on behalf of rural hospitals comparable to those functions SSOs provide for their participating private schools. Fortunately, though uncertain of the sustainability of a 70% Georgia income tax credit program and the ability of under-staffed and under-funded rural hospitals lacking any significant donor base or donor development expertise to effectively participate, the GCF Board agreed to have GCF or a related entity facilitate the marketing and contribution administration of the RHO Credit Program.

Initial Features of RHO Credit Program

Some of the initial features of the RHO Credit Program included a 70% state income tax credit for contributions to RHOs, maximum credit limitations per taxpayer type, a RHO qualification requirement, and the use of contributions for the provision of health care-related services.

The initial features of the RHO Credit Program included:

- Beginning in 2017, the State of Georgia would grant up to \$50 million in Georgia state income tax credits to taxpayers in exchange for contributing to qualified RHOs;
- In 2018, the annual cap would increase to \$60 million and, in 2019, to \$70 million, whereupon, unless renewed by the Georgia General Assembly, the program would expire;
- Single individual or head of household taxpayers would receive a credit for 70% of the amount they contributed to a RHO, up to a maximum credit of \$2,500;
- Married taxpayers filing a joint return would receive a credit for 70% of the amount they contributed to a RHO, up to a maximum credit of \$5,000;
- "C" corporations and other entities would receive a credit for 70% of the amount they contributed to a RHO, up to a maximum credit of 75% of their Georgia income tax liability;
- Owners of interests in pass-through entities would only be able to receive a credit in the amount of the maximum credit to which they would be entitled as an individual or head of household taxpayer (\$2,500) or married taxpayer filing a joint return (\$5,000);

- The total amount of the RHO Credit for a taxable year cannot exceed the taxpayer’s Georgia income tax liability. Any unused RHO Credit may be used against an individual taxpayer’s succeeding five years’ tax liability;
- In order to secure a RHO Credit, a taxpayer must apply to the Georgia Department of Revenue (the “DOR”) for pre-approval and, in doing so, designate the RHO to which the taxpayer desires to contribute in exchange for a RHO Credit;
- Once approved, the taxpayer has 60 days within which to contribute to the designated RHO and, upon making the contribution and receiving the required contribution confirmation form from the recipient RHO, must file the RHO contribution confirmation form with the DOR within 30 days of making the contribution;
- Taxpayers contribute directly to their designated RHOs, *not* to the state of Georgia, any of its agencies, or any third-party administrator;
- If (as formerly permitted by federal law) the taxpayer takes a federal charitable income tax deduction for the contribution to a RHO for which the taxpayer receives a RHO Credit, for purposes of calculating the taxpayer’s Georgia income tax liability, the taxpayer is required to add the amount of the federal deduction back to the taxpayer’s taxable income;
- Each year, a qualified RHO can receive no more than \$4 million in contributions under the RHO Credit Program and, during the first six months of each year, a RHO can only receive a maximum of \$2 million from individual and married taxpayers and \$2 million from “C” corporation taxpayers;
- The DOR approves taxpayer pre-approval requests for RHO Credits on a first-come, first-served basis and, on the day the annual cap is met, there is no pro-ration of the remaining RHO Credits among all of the taxpayers who submitted pre-approval applications on that day;
- To qualify as a RHO entitled to participate in the RHO Credit Program, a RHO must:
 1. Be an acute care hospital licensed by the Georgia Department of Community Health (“DCH”);
 2. Provide inpatient hospital services at a facility located in a rural county (35,000 residents or less, excluding military personnel and dependents) or is a critical access hospital;
 3. Participate in both Medicaid and Medicare and accept both Medicaid and Medicare patients;
 4. Provide health care services to indigent patients;
 5. Have at least ten percent of its annual net revenue categorized as indigent care, charity care,

or bad debt;

6. Annually file IRS Form 990, Return of Organization Exempt from Income Tax, with the DCH or a “proxy” Form 990 containing same information as contained on Form 990;
 7. Be operated by a county or municipal authority or be a Section 501(c)(3) tax-exempt organization;
 8. Be current with all legally-required audits and reports; and
 9. Complete the qualification process with the DCH, including the submission of a Hospital Financial Survey; the Form 990 or “proxy” Form 990; a five-year plan detailing its financial viability and stability, including a narrative regarding challenges it faces and how it will use contributions to address those challenges; and a Dun & Bradstreet Supplier Qualifier Report;
- By December 1 of each year, the DCH must approve a list of qualifying RHOs;
 - Once qualified, each year, RHOs must submit an updated five-year plan;
 - Each year, the DCH must publish its ranking of the qualified RHOs by financial need; however, taxpayers may designate the RHOs to which they desire to contribute, without regard to RHO financial need or DCH review or approval;
 - Hospitals must use donations for the provision of health care-related services for residents of a rural county or for residents of the area served by a critical access hospital and, if they do so, State officials cannot object to, or vary, the RHO expenditure decisions;
 - Hospitals must report all contributions to the DCH, show the manner or purpose in which the contributions were expended, and report any and all administrative fees paid to a third party. Otherwise, the state of Georgia has no direct or indirect control over the manner in which a RHO uses the contributions for the provision of health care-related services, with the RHO independent hospital authority or board and administration retaining all power to determine the purposes for which the RHO uses the contributions;
 - In response to an early Georgia HEART inquiry, the DCH interpreted the term “provision of health care-related services” to include, but not be limited to:
 1. Administration costs, but not fundraising costs;
 2. Payments on short-term or long-term debt;
 3. Renovations or improvements to healthcare facilities;
 4. Construction of new healthcare treatment center;
 5. Market feasibility study fees for a proposed new treatment center;
 6. Accounting fees to prepare financial projections relating to the construction and operations of a proposed new treatment center;

7. Architectural fees to design a proposed new treatment center; and
 8. Payments on a construction loan to build a new treatment center;
- RHOs may not use the contributions for executive compensation;
 - DCH must annually report on hospital contributions and uses to the Georgia House Ways and Means and Senate Health and Human Services Committees; and
 - RHOs may contract with outside firms for contribution marketing and management services.

Enhancements to the RHO Credit Program

To stimulate early lower-than-expected taxpayer participation in the RHO Credit Program and generate state-wide financial support for rural hospitals, in 2017 and 2018, Georgia lawmakers enhanced the provisions of the law, with the 2018 enhancements resulting in broad-based taxpayer philanthropic support for RHOs, especially from taxpayers residing in the metropolitan Atlanta area.

Although lawmakers enacted the RHO Credit Program in 2016, to be effective in 2017, during the second half of 2016, an early survey Georgia HEART conducted of the participating RHOs revealed that the following factors would negatively impact their 2017 efforts:

- Very few “C” corporations that would be capable of making significant RHO contributions are located in rural Georgia;
- Unless they have operations in rural Georgia, “C” corporations located in the metropolitan Atlanta area and other suburban and urban areas in Georgia usually engage in philanthropic projects of a state-wide, national, or international nature and often use a tax-exempt corporate foundation to make their philanthropic investments;
- In many cases, residents of rural communities have never been asked to contribute to their local RHOs and, if they have contributed, have not contributed annually or have contributed a relatively small amount;
- Many residents of rural communities assume that their local taxes adequately sustain their local RHOs;
- The 70% tax credit limitation on taxpayer contributions to RHOs would discourage many taxpayers in rural communities from contributing;
- The 70% tax credit limitation on taxpayer contributions to RHOs would discourage most metro Atlanta taxpayers from contributing to RHOs in rural communities with which they are not familiar;
- Because the maximum RHO Credit available to owners of interests in pass-through entities was limited to the maximum RHO Credit available to individuals (\$2,500) and married couples (\$5,000), RHOs would not have access to a significant potential source of RHO contributions from business owners;

- Most RHOs did not have development expertise or adequate staff in place to cultivate contributions; and
- Those who reside in rural Georgia and who would be the natural audience for the RHO Credit Program are relatively small in number (i.e., 20% of the state population) and pay a small portion of the total state income taxes paid each year in Georgia.

In anticipation of the difficulty RHOs would have in attracting tax credit-eligible contributions in their rural communities in 2017, during the 2017 legislative session (which, roughly, lasts from early January through March of each year), Georgia lawmakers amended the RHO Credit Program in the following manner, effectively retroactively to January 1:

- The percentage of each contribution that would be eligible for a RHO Credit was increased from 70% to 90% for all taxpayer types;
- The RHO Credit maximums were increased from \$2,500 to \$5,000 for single individuals and heads of households and from \$5,000 to \$10,000 for married couples filing jointly (i.e., a married couple could contribute \$11,111 to a RHO at the 90% rate and receive a corresponding \$10,000 RHO Credit);
- RHOs may not expend more than 3% of the amount of their contributions in payment for outside RHO Credit Program marketing and contribution administration services;
- The annual cap on available RHO Credits was set at \$60 million in each of 2017, 2018, and 2019; and
- The population cutoff for RHO Credit Program eligibility was increased from 35,000 to 50,000, exclusive of military personnel.

Unfortunately, although the above-enhancements were made retroactive to the beginning of 2017, the uncertainty during the first half of 2017 relating to the exact percentage of each contribution to a RHO that would qualify for a RHO Credit (i.e., 70% v. 90%) and the continued inability throughout 2017 to attract RHO contributions from taxpayers in metro Atlanta and other urban and suburban areas, resulted in approximately only \$9 million of the \$60 million of available credits being used by Georgia taxpayers in 2017. Of that amount, taxpayers in metro Atlanta and other urban and suburban areas only contributed an estimated \$574,000, or 6.38% of total contributions.

Obviously, RHOs and Georgia lawmakers were very disappointed that taxpayers (especially urban and suburban taxpayers) did not take advantage of \$60 million worth of RHO Expense Credits in 2017, a reality that did not bode well for the future success of the RHO Credit Program or the financial sustainability of RHOs. In late 2017, the Final Report of the Rural Georgia Senate Study Committee, which, throughout the second half of 2017, had conducted hearings throughout Georgia on the economic development and healthcare challenges facing rural communities, recommended that the percentage of each contribution that

would be eligible for a RHO Credit be increased from 90% to 100% for all taxpayer types.¹ Otherwise, there was a significant risk that taxpayers would apply for only a small portion of the \$60 million of RHO Expense Credits available in 2018 (the second year of the three-year program), thereby further jeopardizing the program and the survival of many RHOs.

During the 2018 legislative session, effective July 1, 2018, Georgia lawmakers amended the RHO Credit Program in the following manner:

- The percentage of each contribution that would be eligible for a RHO Credit was increased from 90% to 100% for all taxpayer types;
- The owners of interests in pass-through entities (i.e., “S” corporations, limited liability companies, and limited liability partnerships) are eligible to receive a 100% credit for contributions to qualified RHOs, up to a maximum of \$10,000, with respect to taxes pertaining to their pass-through interests;
- The maximum limits on RHO Credits available to each taxpayer (\$5,000 per individual; \$10,000 per married couple filing jointly; \$10,000 per owner of an interest in a pass-through entity) only apply for the first six months of each calendar year;
- On or after July 1 of each calendar year, there is no limit on the amount of available credits for which taxpayers may apply, subject to the availability of RHO Credits remaining under the annual \$60 million cap; and
- The termination date of the RHO Credit Program was extended for two years to the end of 2021.

Fortunately, the critically important 2018 enhancements lawmakers made to the RHO Credit Program had their intended effect. By June 30, 2018, when the annual maximum credit limits per taxpayer type (i.e., \$5,000 and \$10,000) would expire, taxpayers had applied for approximately \$55 million of the annual \$60 million of available RHO Credits. On July 1, taxpayers applied on a first-come, first-served basis for all of the remaining \$5 million of available credits. The 2018 enhancements to the RHO Credit Program resulted in the following 2018 results:

- An estimated 3,500 urban and suburban taxpayers (out of a total 5,600 contributors) applied for approximately \$38 million of the \$60 million in available RHO Expense Credits, or 63.33% of the credits (up from 6.38% in 2017); and
- The estimated average amount contributed to each participating RHO was \$1.1 million, up from \$152,000 in 2017, thereby providing RHOs with much-needed financial resources to improve their long-term sustainability.

¹ GA. Legis. S. Rural Georgia Senate Study Committee. *Final Report*, 2017, 9. Retrieved from <http://www.senate.ga.gov/sro/Documents/StudyCommRpts/RuralGeorgia.pdf>

In addition to securing the support of non-rural taxpayers for financially insecure RHOs, from a cultural perspective, the 2018 enhancements to the RHO Credit Program built awareness among urban and suburban taxpayers of the health and other challenges rural Georgians are facing.

During the 2019 legislative session, effective April 25, 2019, Georgia lawmakers amended the RHO Credit Program in the following manner:

- The DCH will create an operations manual for identifying RHOs and ranking them in order of financial need;
- The DCH shall post in a prominent location on its website the list of eligible RHOs; the operations manual; the Rural Hospital Tax Credit Donation and Expenditure Form; and the total amount received by any third party that participated in soliciting, administering, or managing donations;
- For any donor who desires to make an unspecified or undesignated contribution, the DOR or any third-party administrator shall attribute such donation to the RHO ranked with the highest financial need that has not yet received the maximum contributions for that taxable year;
- Taxpayers approved for the RHO Credit will have 180 days within which to make their contributions to their designated RHOs, an extension from the original 60-day period;
- The DOR shall post on its website detailed information, including a monthly progress report containing the total RHO Credits approved by RHO and in total; the total contributions received by each RHO; the total RHO Credits remaining available; and a list of approved contributions made to an unspecified or undesignated RHO and the RHOs that received such contributions;
- The Georgia Department of Audits and Accounts shall annually conduct an audit of the tax credit program, including the amount and recipient RHO of all contributions made, all tax credits received by individual and corporate donors, and all amounts received by third parties that solicited, administered, or managed donations under the RHO Credit Program; and
- The RHO Credit Program termination date was extended from 2021 to 2024.

As the 2019 amendment requires the DOR to post on its website the total contributions received by each RHO, Georgia HEART, LLC has published the detail of the total contributions received by the Georgia HEART participating RHOs in 2017, 2018, and the first six months of 2019, which is available at https://www.georgiacf.org/about_us/page/public-information.

Formation of Rural Healthcare 180

When drafting SB 258, adopting the RHO Credit Program, some Georgia lawmakers may have assumed that RHOs would be able to (i) adequately market the RHO Credit Program, (ii) solicit contributions, (iii) complete tax credit pre-approvals, contributions, and reporting requirements in cooperation with the DOR, (iv) navigate related federal income tax regulations, and (v) educate CPAs and

other tax and financial professionals about the RHO Credit Program. As a result, lawmakers did not expressly provide for the possibility of a system whereby non-profit foundations or for-profit consulting firms would provide marketing and contribution administration services to RHOs. Nevertheless, following the passage of SB 258, Lieutenant Governor Casey Cagle and Bill Linginfelter of Regions Bank joined Senator Dean Burke (R-Bainbridge) to create Rural Healthcare 180, a public/private partnership task force charged with raising awareness of the critical financial climate facing rural hospitals and developing a sustainable financial model ensuring every Georgian has access to quality healthcare.² Primarily, the task force consisted of business leaders, as one of the principal goals of Rural Healthcare 180 was to educate potential businesses about the possibility of contributing to RHOs in exchange for Georgia income tax credits.

As, Mike Giles, President of the Georgia Poultry Federation, explained at the launch of the Rural Healthcare 180 Task Force on September 27, 2016:

I predict this will be the first of many businesses, large and small, in all different sectors that are going to see the opportunity to help and participate in this program. Our job at the taskforce is to get the word out. I think we can do that through engaging with other trade associations, like the Poultry Federation, getting the word out to employers that employ thousands of Georgians throughout these rural areas. Working with Chambers of Commerce who understand the important relationship between health care and economic development. And with the hospitals themselves who will be making, I think, direct appeals to businesses and individuals in their communities.³

Unfortunately, very few large businesses have contributed to the RHO Credit Program.

In 2017, only 31 corporations contributed \$963,509 to Georgia HEART participating RHOs; whereas 1,115 individuals contributed \$5,877,051.

In 2018, only 77 corporations contributed \$3,528,586 to Georgia HEART participating RHOs; whereas 5,829 individuals contributed \$55,242,121.

The vastly disproportionate number of individual taxpayers (including single individuals, married couples, and owners of interests in pass-through business entities) evidences the important role for one or more third-party intermediaries to provide vital assistance to under-staffed and under-resourced RHOs, most of which have very little fundraising expertise or capacity to engage in the multi-step RHO Credit pre-approval, contribution, and reporting processes on behalf of donors.

² <https://ruralhealthcare180.org/>

³ “Launch of Rural Healthcare 180 Taskforce,” <https://www.youtube.com/watch?v=zXDzipJhfu8>
(4:30 to 5:50 mark)

Role of Portage Charity Advisors, Inc.

On April 26, 2016, Georgia Governor Nathan Deal signed the legislation creating the RHO Credit Program. From the outset, the GCF Board decided to offer RHO Credit Program marketing and contribution administration services to interested RHOs on a non-profit basis; however, as of 2016, Internal Revenue Service (“IRS”) income tax regulations, revenue rulings, and court decisions made it clear that, if GCF or any affiliated entity provided administrative and other clerical services on a regular basis for a fee, even at cost, the income derived from the rendering of those services would be taxable under Internal Revenue Code (“IRC”) Section 511 as unrelated business income.⁴ The imposition on non-profit entities of an unrelated business income tax (“UBIT”) is designed to prevent tax-exempt entities from using their favored tax status to unfairly compete with commercial businesses.

In order to enable the provision of RHO Credit marketing and contribution administration services to RHOs on a non-profit basis, without having GCF incur UBIT, Kelly, the 100% owner of Portage Charity Advisors, Inc. (“Portage”), a for-profit charitable consulting firm he created in 1991, agreed to have Portage provide those services on a non-profit basis under the trade name “Georgia HEART Hospital Program.” On December 19, 2016, GCF and Portage entered into a Donor Agreement, pursuant to which Portage agreed to contribute to GCF any and all net income resulting from Portage’s provision of RHO Credit Program marketing and contribution administration services to RHOs. Pursuant to the Donor Agreement, Portage granted to the GCF Board final approval over all expenses paid by Portage, including, but not limited to, compensation, rent, travel, and other operating and capital expenditures. Meanwhile, the Donor Agreement provided that any and all net income and assets contributed by Portage to GCF are to be used in support of rural health care, rural hospitals, and addressing the social determinants of health in rural Georgia.

On December 8, 2017, Portage and GCF entered into a First Amendment to Donor Agreement, which converted the Fund into a donor-advised fund in relation to which Jim Kelly could make recommendations to the GCF Board regarding the uses to which the income or assets of the Fund could be used in support of rural health care, rural hospitals, and addressing the social determinants of health in rural Georgia.

On June 22, 2018, Kelly and GCF entered into a Second Amendment to Donor Agreement, changing the name of the Fund to “Kelly Rural Health Fund.”

On December 12, 2018, Kelly and GCF entered into a Third Amendment to Donor Agreement, (i) converting the Fund from a donor-advised fund into a field-of-interest fund, the operation of which a subcommittee of the GCF Board is to oversee, with Kelly relinquishing his right as a donor-advisor to make

⁴ “IRS Confirms That a Charity May Provide Consulting Services for a Fee,” *Loeb & Loeb LLP*, citing PLR 200832027 and PLR 200832028 (January 13, 2017), available at: <https://www.lexology.com/library/detail.aspx?g=79da55d1-042b-49ca-9761-0da8992287fc>

grant recommendations to the Fund; (ii) amending the name of the Fund to the Georgia Community Rural Health Fund; and (iii) permitting the GCF Board to elect to award grants from the Fund to Georgia HEART RHOs of any or all of the amount by which the expected net income of Georgia HEART exceeds one percent (1%) of the total contributions received by Georgia HEART participating hospitals during each year.

A copy of the Donor Agreement, as amended, is available at https://www.georgiacf.org/about_us/page/public-information.

During 2016 and 2017, Portage provided marketing and contribution administration services to RHOs on a non-profit basis. Then, early in 2018, Kelly discovered that, on January 6, 2017, the IRS had published Private Letter Ruling (“PLR”) 201701002, in which the IRS ruled that IRC Section 501(c)(3) organizations, like GCF, may charge reasonable fees for project-based technical assistance services provided to other charities and government agencies (collectively referred to as “social sector” organizations) without incurring UBIT in certain circumstances.⁵

In the case of PLR 201701002, a private operating foundation charged reasonable fees to provide “technical assistance” to social sector organizations — specifically, nonprofits, foundations, government agencies and community organizations. The foundation’s stated purpose was to improve the lives of low-income children and their families in its state, and it furthered this purpose through the collection, analysis, interpretation and sharing of a city’s neighborhood data to improve community decision-making. The “technical assistance” services were additional data analysis services that could not be accomplished by client social sector organizations through the publicly available tools on the foundation’s website. Client social sector organizations sought technical assistance because they did not have the in-house technical or subject-matter expertise to run that type of analysis. The IRS ruled that the technical assistance services were substantially related to the foundation’s exempt purpose and reasonable fees earned from such services would not be subject to UBIT.

Similarly, one of GCF’s charitable purposes is to promote access to rural health care in Georgia. By providing RHO Credit Program marketing and contribution administration services to RHOs who do not have the in-house development staff or IT expertise to engage in such activities, GCF Board members and staff are better able to assess the status of rural health care delivery in Georgia and possible reforms and programs for helping to enhance access to rural treatment.

IRS PLR 201701002 made it clear that GCF or a subsidiary could directly operate Georgia HEART, without having to rely on Portage to do so on a non-profit basis. Although Kelly was willing to contribute his entire interest in Portage to GCF without compensation, as an “S” corporation, the issued and

⁵ *Ibid.* citing PLR 201701002, dated January 6, 2017.

outstanding shares of Portage stock could not be owned by GCF. Thus, effective April 18, 2018, Portage filed articles with the Secretary of State of Georgia to convert from a corporation, owned 100% by Kelly, to a limited liability company, the name of which is Georgia HEART Hospital Program, LLC. This conversion terminated Portage's "S" election for federal income tax purposes and Georgia HEART, LLC became a single-member LLC, of which Kelly owned 100% of the Member interests. Pursuant to the conversion, on April 18, 2018, Kelly exchanged all 1,000 shares of the issued and outstanding common stock of Portage for 1,000 membership units of Georgia HEART, LLC. On April 18, 2018, Kelly made a charitable contribution to GCF by transferring his 100% interest in Georgia HEART, LLC to GCF. A copy of a Limited Liability Company Membership Unit Contribution Agreement made and entered into between Kelly and GCF is available at https://www.georgiacf.org/about_us/page/public-information.

Upon the contribution of Kelly's membership interests to GCF, Georgia HEART, LLC became a wholly-owned subsidiary of GCF and the GCF Board of Directors assumed direct responsibility for Georgia HEART operations, appointing Lisa Kelly as Managing Member of Georgia HEART, LLC. Jim Kelly continued to serve as Director and General Counsel of the Company. At no time have Lisa or Jim Kelly served as a member of the Board of Directors of GCF or Georgia HEART, LLC.

Copies of the Form 1120S, U.S. Income Tax Return for an S Corporation for Portage for 2016, 2017, and the final short period ended April 18, 2018 are available at https://www.georgiacf.org/about_us/page/public-information.

A copy of the Form 990, Return of Organization Exempt From Income Tax, for GCF for 2016, 2017, and 2018, which, in the case of 2018 includes the reporting for Georgia HEART, LLC as GCF's wholly-owned subsidiary, is available at https://www.georgiacf.org/about_us/page/public-information.

Because of the potential for net income generated by Georgia HEART, LLC to be used by GCF to support its mission of becoming aware of rural health care challenges and making grants to worthwhile programs to improve access to rural health care, the GCF Board accepted Jim Kelly's contribution of 100% of his Georgia HEART, LLC membership units and assumed ultimate responsibility for its operations. The potential to use Georgia HEART, LLC's net income in this manner is also what enables GCF to avoid UBIT under PLR 201701002. Although, in 2019, Georgia HEART, LLC is not presently expected to earn net income, at the present 3% administrative fee charged by Georgia HEART, LLC to its participating RHOs, there is a possibility of generating net income in future years. If, either by reducing (to below 3%) the maximum statutory fee Georgia HEART, LLC and other third-parties can charge for the marketing and contribution administration services rendered to RHOs, or by prohibiting the use of net income in support of rural health care programs other than RHOs, Georgia lawmakers eliminate the possibility of Georgia HEART, LLC to generate net income and advance the goal of promoting rural health in Georgia, it is possible the GCF Board would have to terminate the operations of Georgia HEART, LLC and re-allocate

its resources to other programs related to its mission having a greater impact beyond the administration of the RHO Credit Program. It would then be left to the DCH, DOR, or other consulting firm or firms to come forward and assume responsibility for operating the RHO Credit Program.

Operation of Georgia HEART in 2016

During the second half of 2016, in anticipation of the RHO Credit Program becoming effective on January 1, 2017, Portage engaged in the following activities:

- Registered the Georgia HEART service mark and related service marks with the Georgia Secretary of State;
- With the permission of the Boards of GCF and Georgia GOAL, Portage engaged several Georgia GOAL staff members on an hourly, independent contractor basis to assist Portage in developing the IT, website, marketing and communications, and banking capacities required to operate Georgia HEART, the total compensation of which in 2016 was \$3,270.03; \$52,091.25 in 2017; and \$600 in 2018. A copy of the Form 990, Return of Organization Exempt From Income Tax, for Georgia GOAL for 2016, 2017, and 2018 is available at https://www.georgiacf.org/about_us/page/public-information;
- Entered into a Consulting Agreement with Kelly providing for a monthly retainer of \$5,000, the total \$30,000 of which, due to no incoming revenue to Portage in 2016, was unable to be paid to Kelly on a timely basis;
- Kelly traveled to approximately 30 rural hospital communities to meet with interested RHOs and their hospital board or authority members to explain the RHO Credit Program and the services available through Georgia HEART;
- Retained Bennett Thrasher accounting firm to prepare projections of the tax impact to potential donors of contributing to a RHO in exchange for a federal charitable income tax deduction and Georgia income tax credit;
- Designed and, on June 2, 2016, went live with, the Georgia HEART website, informing potential participating RHOs accordingly;
- Prepared and, on July 18, 2016, entered into an Agreement with Georgia Hospital Health Services, Inc. (“GHHS”), an affiliate of Georgia Hospital Association, Inc. (“GHA”), pursuant to which, in exchange for working with Georgia HEART to promote the RHO Credit Program to RHOs, Portage agrees to pay GHHS a quarterly fee of 8.33% of Portage’s fee income collected each quarter from Georgia HEART participating RHOs during the previous quarter, resulting in payments by Georgia HEART to GHHS of \$17,048 in 2017, \$146,558 in 2018, and \$59,247 in 2019 (through June 30);

- Prepared and, on August 16, 2016, entered into an Agreement with Georgia Chamber of Commerce, Inc. (“Georgia Chamber”), pursuant to which, in exchange for introducing Georgia HEART to “C” corporations that might be interested in supporting RHOs, Portage agrees to pay Georgia Chamber a quarterly fee of 8.33% of Portage’s fee income relating to “C” corporation contributions collected each quarter from Georgia HEART participating RHOs during the previous quarter, resulting in payments by Georgia HEART to Georgia Chamber of \$2,408 in 2017, \$8,738 in 2018, and \$10,641 in 2019 (through June 30);
- Prepared and, beginning on September 7, 2016, entered into standard Hospital Participation Agreements with RHOs (terminable by either party without cause or penalty upon 30 days prior written notice to either party) engaging Portage for the provision of marketing and administration services relating to their participation in the RHO Credit Program, the provisions of which, among other things, (i) prohibit a RHO (during the term of the Agreement) from engaging any other individual or entity for the provision of services comparable to those provided by Georgia HEART; (ii) prohibit a RHO from depositing into an account other than the RHO’s bank account administered by Georgia HEART any contributions that qualify for a RHO Credit; and (iii) require Portage to keep confidential and, except as necessary to perform the services contemplated by the Agreement, not make any use of any taxpayer information provided to it by the RHO or taxpayers, a representative copy of which is available at https://www.georgiacf.org/about_us/page/public-information;
- On September 9, 2016, emailed the Georgia HEART participating RHOs, welcoming them to Georgia HEART and explaining the nature and contents of their Georgia HEART portals, including (i) a Contribution Dashboard to track all RHO Credit contributions on a real-time basis; (ii) marketing materials the RHOs could download for use, including email templates, e-postcards, and one-pagers to facilitate and streamline their contribution marketing efforts; and (iii) copies of relevant DCH forms, instructions, and news related to the RHO Credit Program;
- Facilitated the process by which Georgia HEART participating RHOs established their own bank accounts with State Bank & Trust to process contributions and authorized Portage (i) to deposit into those accounts all RHO contributions mailed to Georgia HEART by donors (contributions are *never* made to Georgia HEART and contributions to RHOs are *never* deposited into a Georgia HEART account); (ii) to transfer Portage’s 3% administrative fee from the accounts to Portage; and (iii) to transfer remaining 97% of contributions to the RHOs’ designated operating accounts;
- Consulted with Georgia HEART participating RHOs with respect to their preparation of the Five Year Plan required to be submitted by them to the DCH in order to qualify for the RHO Credit Program;

- Assisted RHOs in establishing RHO Credit Program accounts in their Georgia Tax Center (“GTC”) portals at the DOR;
- Provided fundraising materials to Georgia HEARTMonitors (i.e., the point person at the RHO for working with Georgia HEART) to facilitate and, possibly, augment, the RHO solicitation of RHO Credit-eligible contributions; and
- Kelly delivered approximately ten presentations to CPAs and other tax and financial advisors throughout rural Georgia.

Of course, as the RHO Credit Program did not become effective until January 1, 2017 and taxpayers could not contribute to RHOs for a RHO Credit until such time, during 2016, Portage earned no administrative fees or other income.

The unaudited Profit and Loss Statement of Portage for calendar year 2016, which shows a net loss from operations in the amount of \$(12,437.02), is available at https://www.georgiacf.org/about_us/page/public-information.

The unaudited Balance Sheet of Portage as of December 31, 2016, which shows capital contributions (made between July 1, 2016 and December 31, 2016) by Kelly to Portage of \$19,000, is https://www.georgiacf.org/about_us/page/public-information.

As of December 31, 2016, Portage owed Kelly \$30,000 in consulting fee income.

Operation of Georgia HEART in 2017

On January 1, 2017, the RHO Credit Program began operation, with the DOR accepting taxpayer pre-approval forms.

On behalf of the Georgia HEART participating RHOs, Portage provided the following services:

- Accepted taxpayer information;
- Prepared tax credit pre-approval applications for taxpayers;
- Submitted tax credit pre-approval applications to the DOR through RHO GTC portals;
- Received notice of DOR pre-approval of RHO credits for taxpayers through RHO GTC portals;
- Emailed taxpayers informing them that they had been approved for RHO Credits and instructing them on how to complete the contribution process;
- Accepted contribution checks mailed to Georgia HEART offices and deposited them into the RHO bank accounts established for that purpose, with Georgia HEART neither depositing donor contributions to its own accounts nor awarding RHO Credits on behalf of the DOR;
- Emailed contribution payment reminders to taxpayers reminding them about approaching contribution deadlines;
- On behalf of Georgia HEART RHOs, prepared and emailed Form IT-QRHOE-RHO1 contribution

confirmations to RHO donors informing them about the need to upload the confirmation forms to their individual GTC accounts and providing instructions accordingly;

- Provided widespread and extensive assistance to taxpayers to facilitate their timely and effective donor reporting as required by the DOR;
- Emailed taxpayer filing instructions to donors for use in connection with claiming the RHO credits on their Georgia income tax returns;
- Engaged in “troubleshooting” with DOR staff on behalf of RHOs and their donors;
- On a daily basis, updated Georgia HEART participating RHO portals to reflect taxpayer pre-approval application, approval, contribution, and reporting status;
- Posted RHO Credit Program marketing materials in the Georgia HEART RHO portals, including sample e-postcards for use by participating RHOs encouraging donation activity; model emails and letters participating RHOs could send to corporations and other businesses; “one-pagers” participating RHOs could send to potential donors, CPAs and other tax and financial advisors; and sample news articles and press releases RHOs could tailor for use in informing local media about the RHO Credit Program;
- In early January, 2017, conducted a Georgia HEART Hospital Survey among Georgia HEART’s then 35 participating RHOs to assess the status of the implementation of the RHO Credit Program and to inform the 2017 legislative process relating to potential amendments to ensure success of the RHO Credit Program, the results of which Survey evidenced the need to increase the tax credit percentage from 70% and to increase the maximum annual limits on individual taxpayer contributions;
- Continued to educate RHOs about the RHO Credit Program and Georgia HEART services;
- Petitioned the DOR to clarify retroactive granting of 100% RHO Credit to taxpayers who had been approved at the 90% rate;
- Worked with the DOR and national tax preparation software vendors (i.e., Turbo Tax and H & R Block) to facilitate the integration of the RHO Credit into their software programs, including successful efforts to remedy errors contained therein;
- Continued to email CPAs and other tax and investment professionals informing them about the RHO Credit Program, including amendments to the law contained in SB 180 adopted during the 2017 legislative session;
- Fielded approximately 500 phone calls from taxpayers inquiring about the impact of the legislative increase of the RHO Credit rate from 90% to 100% of contributions to RHOs;

- Assisted Georgia HEART participating RHOs in preparing RHO case statements to which potential donors could refer on the Georgia HEART website to learn more about potential RHOs to which they could designate their contributions;
- Kelly continued to visit RHO communities to meet with RHO executives, Board members, and service providers and to present to CPAs and civic groups;
- Worked with GHA to produce a Georgia HEART Employee Giving Guide to promote RHO service provider participation in the RHO Credit Program;
- Attended the GHA Center for Rural Health Annual Meeting to present about the RHO Credit Program and to network with existing and potential Georgia HEART participating RHOs; and
- Hired a full-time staff person, the salary of which, due to relatively slow contribution activity (at a 70% tax credit rate) during the first half of 2017, Kelly funded through capital contributions to Portage from his personal funds.

The unaudited Profit and Loss Statement of Portage for calendar year 2017, which shows total fee income of \$204,656.87, and a net loss from operations in the amount of (\$26.44) (after a \$31,900 charitable contribution of Portage net income to GCF for rural health care), is available at https://www.georgiacf.org/about_us/page/public-information.

The unaudited Balance Sheet of Portage as of December 31, 2017, which shows capital contributions (made between June 8, 2016 and June 28, 2017) by Kelly to Portage of \$59,000 and a return of capital to Kelly of \$18,000 (on August 24, 2017), is available at https://www.georgiacf.org/about_us/page/public-information.

On November 27, 2017, Portage paid Kelly the \$30,000 in unpaid consulting fee income from 2016.

For 2017, Portage paid Kelly a total of \$30,000, consisting of \$14,325 in consulting fee income and, upon Portage making Kelly an employee on March 1, 2017, a total of \$15,675 in salary, until June 30, 2017, when Portage and Georgia HEART could no longer sustain his employment.

As of December 31, 2017, Portage owed Kelly \$40,000 in capital contributions made to Portage to sustain Georgia HEART business operations during 2016 and 2017.

In 2016, upon creating Georgia HEART, based on the average administrative fee of 6% Georgia GOAL had been charging its participating schools for many years, the Hospital Participation Agreement Portage entered into with its early participating RHOs provided for an administrative fee equal to 6% of the contributions received by the RHOs, with any unused net income to be returned to participating RHOs or used to promote rural health care. During the first quarter of 2017, Portage charged the 6% administration fee. Meanwhile, during the 2017 legislative session, the Georgia General Assembly adopted SB 180, which contained a provision limiting to 3% of donations the amount that RHOs could pay to a third-party to solicit,

administer, or manage the donations received by them under the RHO Credit Program. On April 10, 2017, Portage informed its participating RHOs that, retroactive to January 1, 2017, Portage would be charging an administrative fee equal to 3% of donations received by each RHO and, accordingly, sent the Georgia HEART participating RHOs an Amendment to their Hospital Participation Agreements, a representative copy of which is available at https://www.georgiacf.org/about_us/page/public-information. As, at that time, Portage did not have the funds available to rebate the \$20,786.84 in fees that Portage had charged its participating RHOs during the first quarter of 2017, on April 4, 2017, Kelly contributed \$20,000 of his personal funds to Portage, which, on April 10, 2017, Portage used to rebate to its participating RHOs the difference between the 6% administrative fee charged during the first quarter of 2017 and the new statutory 3% maximum fee.

Operation of Georgia HEART in 2018

On behalf of the Georgia HEART participating RHOs, in 2018, Portage and Georgia HEART, LLC provided the following services:

- Continued to provide “turnkey” RHO Credit Program marketing and contribution administration services to Georgia HEART participating RHOs;
- Continued to invest time and money in information technology and other process improvements to enhance the administration of contributions to Georgia HEART participating RHOs;
- Continued to communicate with RHOs, current and prospective donors, and CPAs and other tax and financial advisors relating to the status of the RHO Credit Program;
- On May 1, 2018, Georgia HEART, LLC entered into an office space sharing arrangement with Georgia GOAL providing for a rental payment at the monthly rate of \$2,500, totaling \$20,000 for 2018.
- Prepared a HEARTMonitors Playbook consisting of RHO Credit Program marketing and communications best practices, marketing and communication templates, marketing timelines, and media outreach strategies;
- Convened a half-day HEARTMonitors Conference in Macon, Georgia, at which a leading rural hospital fundraising consultant and Georgia HEART staff presented marketing and communications best practices and strategies to development and other staff from Georgia HEART’s participating RHOs;
- In anticipation of the pending publication by the IRS of Proposed Regulations limiting the federal deductibility of charitable contributions to tax-exempt organizations for which the donors receive state income tax credits, on August 14, 2018, on behalf of Georgia HEART, LLC, James P. Kelly, III, P.C. prepared and submitted to the IRS a 24-page comment letter detailing the adoption,

purpose, policy, and success of the RHO Credit Program and urging the IRS to adopt a “facts and circumstances” test that would preserve the ability of donors to take both a federal charitable income tax deduction and Georgia income tax credit for contributions to RHOs; and

- Beginning September 17, 2018, Georgia HEART, LLC engaged Bennett Thrasher accounting firm to perform a Cybersecurity Assessment, the resulting report of which contained extensive cybersecurity process improvement, practice, and IT recommendations, all of which Georgia HEART, LLC has implemented. In 2019, Bennett Thrasher will conduct a similar Cybersecurity Assessment of Georgia HEART, LLC.

The unaudited Profit and Loss Statement of Portage for the final short period from January 1, 2018 to April 17, 2018, which shows total fee income of \$152,285.64 and net income from operations in the amount of \$13,615.71 (after a \$40,030.34 charitable contribution of Portage net income to GCF on April 17, 2017 for rural health care), is available at https://www.georgiacf.org/about_us/page/public-information.

The unaudited Balance Sheet of Portage as of April 17, 2018, which shows the return of \$59,000 in capital contributions made by Kelly to Portage from June 8, 2016 through June 28, 2017, is available at https://www.georgiacf.org/about_us/page/public-information.

The audited Statement of Operations of Georgia HEART, LLC for the period from April 18, 2018 (Inception) through December 31, 2018, which shows total fee income of \$1,607,120 and net income from operations in the amount of \$88,020 (after a \$850,000 charitable contribution of Georgia HEART LLC’s net income to GCF on December 26, 2018 for rural health care) and the audited Balance Sheet of Georgia HEART, LLC as of December 31, 2018 are available at https://www.georgiacf.org/about_us/page/public-information.

Operation of Georgia HEART in 2019

On behalf of the Georgia HEART participating RHOs, in 2019, Georgia HEART, LLC provided the following services

- Recognizing that Georgia lawmakers, donors, and the media would be interested in learning about the uses RHOs made of the contributions they received under the RHO Credit Program to provide health-care related services in their communities, Georgia HEART and GHA surveyed participating RHOs on that subject and, in an effort to secure 100% participation by RHOs in the survey, secured GCF’s funding (from the Fund) of a Georgia HEART Hospital Transparency Facilitation Grant Program, which, beginning on January 16, 2019, offered a \$5,500 grant to each RHO to be used for (i) maintaining, enhancing, or putting in place procedures and personnel necessary to track, document, and publicly report on the specific uses the RHOs made of their 2018 contributions; (ii) completing the 2018 Georgia HEART Rural Hospital Tax Credit Survey; and

(iii) considering the manner in which the RHO can maximize transparency in the public reporting of the uses it will make in 2019 under the RHO Credit Program;

- On June 5, 2019, published the 2018 Georgia HEART Annual Report, a copy of which Georgia HEART posted to its website and copies of which Georgia HEART mailed to the Georgia HEART participating RHOs, to RHO donors who contributed under the RHO Credit Program, and to key Georgia lawmakers, and the contents of which included (i) a letter from Georgia Governor Brian Kemp, expressing his appreciation of the Georgia HEART participating RHO donors and RHOs, (ii) RHO contribution results, (iii) results from the 2018 Georgia HEART Rural Hospital Tax Credit Survey Report, (iv) highlights relating to RHO uses of 2018 contributions, and (v) Georgia HEART LLC's 2018 audited Financial Statements;
- After multiple attempts during the existence of the RHO Credit Program, successfully petitioned the DOR to eliminate the burdensome requirement that taxpayers upload their Form IT-QRHOE-RHO1 contribution confirmations to their Georgia GTC accounts, instead permitting RHOs and, in turn, Georgia HEART, LLC, to report the making of the contributions in the RHO GTC accounts;
- In June, at Georgia HEART offices, Georgia HEART staff conducted a series of three HEART to HEART Sessions with representatives of its participating RHOs, the topics of which included (i) contribution results, (ii) donor communication and marketing strategies, (iii) federal tax regulatory developments, (iv) pass-through entity ordinary and necessary business payments to RHOs, and (v) state legislative developments;
- Upon the IRS' publication of its Final Regulations generally prohibiting taxpayers from deducting for federal income tax purposes charitable contributions made to tax-exempt organizations for which they receive state and local tax credits, Georgia HEART emailed its participating RHOs and CPAs and other tax and financial professionals to inform them about the publication of the Final Regulations and, according to a U.S. Treasury official, the potential for the federal deductibility of payments made by pass-through business entities (i.e., limited liability companies, partnerships, and "S" corporations) as "ordinary and necessary" business expenses, even in cases where the owners of the pass-through entities claim a corresponding state income tax credit; and
- In June and July of 2019, encouraged the DOR to revise its rules governing the RHO Credit Program to enable the owners of interests in pass-through business entities to be able to receive the RHO Credit in cases where the pass-through entity makes a payment to a RHO that the entity claims as an ordinary and necessary business expense for federal income tax purposes.

The unaudited Statement of Operations of Georgia HEART, LLC for the period from January 1, 2019 through June 30, 2019 and the unaudited Balance Sheet of Georgia HEART, LLC as of June 30, 2019 are available at https://www.georgiacf.org/about_us/page/public-information.

Undesignated Contributions

From the inception of the RHO Credit Program in 2017 through April 24, 2019, Georgia law provided that, when applying to the DOR for RHO Credits, individual and corporate taxpayers shall designate the RHO to which they intended to contribute. From the inception of the RHO Credit Program, many Georgia taxpayers (especially in the metropolitan Atlanta area) who were unfamiliar with rural communities and any specific RHOs, desired to apply for RHO Credits, either because they sought to help enhance access to rural treatment for the fellow Georgians or, beginning in 2018, to take advantage of the favorable federal income tax treatment associated with replacing a limited state and local taxes (“SALT”) deduction with an unlimited charitable income tax deduction by securing a Georgia income tax credit for contributing to a RHO.

Beginning on January 1, 2017, as Georgia HEART began accepting taxpayer RHO Credit pre-approval applications on behalf of its participating RHOs, to encourage broad taxpayer participation in the RHO Credit Program, in the drop-down menu of participating RHOs on the Georgia HEART website that potential donors could designate, Georgia HEART included the option for a taxpayer to indicate a desire for Georgia HEART to designate a RHO on the taxpayer’s behalf. In order to equitably allocate undesignated contributions among the Georgia HEART participating RHOs, Georgia HEART relied on the state listing of RHOs by financial need.

Each year, the maximum amount of RHO Credits which taxpayers may claim on behalf of each RHO is \$4 million. From the inception of the RHO Credit Program in 2017 through April 24, 2019, if, when applying to the DOR for pre-approval for RHO Credits, a taxpayer designated a RHO that had reached its maximum annual limit of \$4 million in RHO Credits, Georgia law provided that the DCH shall provide the individual or corporate donor with a list (the “DCH List”), ranked in order of financial need, as determined by the DCH, of rural hospital organizations still eligible to receive contributions for the taxable year. Since inception of the RHO Credit Program, Georgia HEART published the DCH List on its website.

During 2017, as taxpayers indicated their desire to have Georgia HEART designate a RHO on their behalf, Georgia HEART used the DCH List to allocate undesignated contributions in equal installments of \$11,111 (when the 90% credit rate applied) and \$10,000 (when the 100% credit rate applied), and informed its participating RHOs accordingly. By November 28, 2017, Georgia HEART had allocated at least one “undesignated” contribution to each of its 43 participating RHOs. Based on contribution results at that time, the vast majority of Georgia HEART participating RHOs had received more in undesignated contributions than Portage had charged them (at 3% of contributions) for administering the program on their behalf.

Georgia HEART allocates undesignated contributions on a “real-time” basis, immediately posting to each Georgia HEART RHO portal the activity associated with the contributions-- from the submission

of the tax credit preapproval form to the DOR, to the making of the contribution, to the delivery to the donor of the Form IT-QRHOE-RHO1 contribution confirmation.

In 2017, taxpayers used only \$7,913,355 of the available \$60 million RHO Credits, evidencing the continued importance of marketing the RHO Credit Program to all Georgia taxpayers, regardless of their familiarity, or lack thereof, with any specific RHOs.

In 2018, of the \$58,254,512 taxpayers contributed to Georgia HEART participating RHOs, 18,719,311, or 32%, was made by taxpayers who had requested Georgia HEART to designate a recipient RHO on their behalf.

Since inception of the RHO Credit Program through June 30, 2019, the “undesigned” contributions have been made by taxpayers according to the following regional percentages:

- Metropolitan Atlanta: 87%
- North Georgia: 4%
- Middle Georgia: 5%
- South Georgia: 3%
- Out of State: 1%

Effective April 25, 2019, Georgia law provides that, in the event a donor desires to contribute to an unspecified or undesignated RHO, either directly or through a third-party that participates in soliciting, administering, or managing donations, such donation shall be attributed to the RHO ranked with the highest financial need that has not yet received the maximum amount of contributions for that taxable year, regardless of whether a third party has a contractual relationship or agreement with such RHO. Since April 25, 2019, Georgia HEART has complied with this change in the law and is posting on its website (accessible from the DOR website) detailed information relating to the attribution of “unspecified” or “undesigned” donations to RHOs as required of the DOR in accordance with the amended law.

From April 25 through June 14, 2019, the DOR has approved \$103,000 in undesignated RHO Credit pre-approval applications, of which approved donors have contributed only \$10,000 to date to the RHO that is listed as the most in financial need on the DCH List. Georgia HEART has posted the DCH List to its website and is tracking the pre-approval applications for “undesigned” RHO Credits and resulting contributions to date, which is available at <https://www.georgiaheart.org/hospitals/page/undesigned-contributions>.

Contributions by Portage and Georgia HEART, LLC to GCF and the Resulting Georgia Community Rural Health Fund Grants

As discussed earlier, Portage was, and Georgia HEART, LLC is, obligated to contribute to GCF any and all net income from the provision of Georgia HEART marketing and contribution administration services, which contributions must be used in support of rural health care, rural hospitals, and addressing

the social determinants of health in rural Georgia. In 2017, Portage contributed \$31,900 in net income to GCF. In 2018, Portage contributed \$40,030.34 in net income to GCF. In 2018, Georgia HEART, LLC contributed \$850,000 in net income to GCF. GCF deposited these charitable contributions to the Fund. Though, typically, GCF charges its funds an administrative fee of between .75% to 1% of assets in the Fund, GCF does not charge the Fund with any administrative or other fees.

To date, GCF has made the following grants from the Fund totaling \$473,500:

- Georgia Chamber of Commerce for the promotion of rural healthcare at its annual Rural Prosperity Summit: \$15,000
- Grants in the amount of \$5,500 each to the 52 Georgia HEART participating hospitals (as of December 31, 2018) who participated in the 2018 Georgia HEART Rural Hospital Survey: \$286,000;
- Rehoboth Life Care Ministries for indigent dental care in middle Georgia: \$5,000;
- St. Vincent de Paul of Georgia for the creation of a tele-pharmacy to which rural communities will have access: \$25,000;
- Grants in the amount of \$15,000 each (a total of \$75,000) to the following Georgia Area Health Education Centers (“AHEC”) to promote healthcare access for medically underserved Georgians in rural communities by improving the quality, education, supply, distribution, and retention of healthcare professionals: Southwest Georgia AHEC; Magnolia Coastlands AHEC; Three Rivers AHEC; Blue Ridge AHEC; and Foothills AHEC;
- Augusta University- Georgia Statewide AHEC Network: \$25,000;
- Emory University Physician Assistant Program in support of the South Georgia Farmworker Health Project: \$15,000;
- Georgia Hospital Association for Platinum sponsorship of the Georgia Association for Development Professionals annual meeting: \$2,500; and
- Georgia Health Sciences Foundation for Children’s Hospital of Georgia: \$25,000.

On December 12, 2018, upon the contribution of \$850,000 from Georgia HEART, LLC to the Fund, in light of the uncertain impact the IRS’ Proposed Regulations would have on RHO Credit contribution activity in 2019, the GCF Board resolved to reserve \$400,000 of the contribution amount to meet future expenses associated with Georgia HEART LLC’s operation of Georgia HEART. On July 1, 2019, when the amount of the 2019 pre-approved contributions to RHOs reached \$30 million, GCF released the \$400,000 portion of the Fund for use in support of rural health care, rural hospitals, and addressing the social determinants of health in rural Georgia.

A copy of the Charles Schwab Account Statement for the Fund for June, 2019 showing an ending Fund value on June 30, 2019 of \$529,568.12 is available at <https://www.georgiaheart.org/hospitals/page/undesignated-contributions>.

The production of \$850,000 in net income during 2018 is attributable to Georgia HEART, LLC going to great lengths to minimize operating expenses in light of the fact that, in 2017, taxpayers had contributed only \$7.9 million (out of a possible \$60 million) to Georgia HEART participating RHOs. During 2018, a significantly understaffed (and overworked) Georgia HEART team processed \$58.8 million in contributions to RHOs. In the first six months of 2019, to avoid a repeat of the 2018 scenario, Georgia HEART, LLC hired two new employees, appointed Lisa Kelly as Director, increased Jim Kelly's General Counsel responsibilities and salary to address increased federal and state tax, regulatory, and legislative activities and development opportunities, and entered into a lease for its own office space adjacent to Georgia GOAL. The most recent version of the 2019 Georgia HEART, LLC budget estimates \$1.5 million of administrative fee revenue on \$50 million of taxpayer contributions to Georgia HEART participating RHOs, less net cash requirements/outlays of \$1,209,700, resulting in an Excess Operating Funds after Expenses of \$290,301. After applying a \$310,963 reserve for one-half of the remaining lease expense for the duration of the lease obligation, there will be an estimated shortage of cash in the amount of \$(20,663).

Compensation of Jim and Lisa Kelly

Jim Kelly is the sole shareholder of James P. Kelly, III, P.C., an Atlanta-area based law firm. In 2016, 2017, 2018, and 2019, the hourly rate charged by lawyers in the Atlanta area with Kelly's comparable legal education and 33 years' tax, tax-exempt organizations, and corporate law and institutional development experience was between \$400 and \$450.

In 2016, 2017, 2018, and the first six months of 2019, Jim Kelly served as Development Director and General Counsel of GCF. During these years, Kelly worked an average of five hours per week for GCF, for which GCF did not compensate Kelly in any manner.

In 2016, 2017, 2018, and the first six months of 2019, Jim Kelly served as General Counsel for Georgia GOAL. During these years, Kelly worked an average of five hours per week for Georgia GOAL, for which Georgia GOAL did not compensate Kelly in any manner.

In 2019, Georgia GOAL paid James P. Kelly, III, P.C. \$18,700 as Special Counsel in connection with the preparation and filing of an *amicus curiae* brief in the Supreme Court of the United States in the school choice case of *Espinoza v. Montana Department of Revenue*.

In 2016, 2017, and the first 14 weeks of 2018, Kelly served as Director and General Counsel for Portage. During these years, Kelly worked an average of 20 hours per week for Portage, which paid Kelly:

2016: \$30,000 (earned in 2016; not paid until November 27, 2017)
2017: \$30,000
2018: \$11,084.

During the last two weeks of April and the remainder of 2018, Kelly served as Director and General Counsel for Georgia HEART, LLC. During 2018, Kelly worked an average of 15 hours per week for Georgia HEART, LLC, which paid Kelly \$76,916.

During the first six months of 2019, Kelly served as Director and General Counsel for Georgia HEART, LLC. During these months, Kelly worked an average of 15 hours per week for Georgia HEART, LLC, which paid Kelly \$30,000.

Thus, in 2016, 2017, 2018, and the first six months of 2019, for 5,140 total hours of legal and philanthropic consulting services rendered by Kelly and James P. Kelly, III, P.C., Portage, GCF, GOAL, and Georgia HEART paid a total of \$178,000, which results in an effective hourly rate to Kelly of \$34.63.

During the second half of 2019, Kelly will serve exclusively as General Counsel for Georgia HEART. He is projected to work 20 hours per week for Georgia HEART, LLC, in part relating to (i) facilitating the IRS and DOR development and implementation among RHOs and their potential donors of regulations pertaining to the federal deductibility of business expenses paid by pass-through business entities to RHOs and the receipt of a RHO Credit by their owners; (ii) the annual audit of the RHO Credit Program by the Georgia Department of State Audits and Accounts as prescribed by O.C.G.A. §48-7-29.20 (j); and (iii) RHO community visits to explain these developments to RHO officials, CPAs and other tax and financial professionals, and civic groups.

During the second half of 2019, the Company estimates that it will pay Kelly \$60,000.

Lisa Kelly is a CPA with 39 years of experience working as an accountant, financial accounting software quality assurance manager, Controller, CFO, and Executive Director for private profit and non-profit entities, including PricewaterhouseCoopers, Ernst & Young, Management Science America, Inc., NetPlanner Systems, Inc., Brand Velocity, GCF, Georgia GOAL (10 years), and Georgia HEART.

In 2017, 2018, and the first six months of 2019, Lisa Kelly served as the President and CEO of GCF, for which GCF paid her:

2017: \$13,505
2018: \$13,143
2019: \$ 6,839.

In 2017, 2018, and the first six months of 2019, Lisa Kelly served as the President and CEO of Georgia GOAL, for which Georgia GOAL paid her:

2017: \$163,959
2018: \$159,560
2019: \$ 75,260.

In 2018 and the first six months of 2019, Lisa Kelly served as the Managing Member of Georgia HEART, LLC, for which Georgia HEART, LLC paid her:

2018: \$50,000
2019: \$59,998.

In 2019, it is estimated that, in total, GCF, Georgia GOAL, and Georgia HEART will pay Lisa Kelly the following:

GCF: \$ 13,919
Georgia GOAL: \$153,113
Georgia HEART: \$ 95,629.

In 2018, a compensation survey conducted by the Boards of GCF and Georgia GOAL indicated that, based on compensation paid to the Presidents/CEOs of Atlanta-based and other non-profit organizations comparable to the combined missions, operations, revenues, and expenses of GCF, Georgia GOAL, and Georgia HEART, LLC, the average annual compensation is \$475,264, which exceeds Lisa Kelly's 2019 annual total compensation from all three entities by \$212,603.

For purposes of the compensation survey, GCF was treated as one entity, including its donor-advised fund and grant-making activities, K-12 education reform, Georgia GOAL, and Georgia HEART, the latter two of which arose out of GCF's mission, but, due to the particulars of the laws under which they operate, are operated by separate legal entities.

The following non-profit entities were chosen as the basis for comparing compensation:

- Community Foundation of Metropolitan Atlanta, Inc., a community foundation that solicits and administers donor-advised funds and identifies worthwhile grant recipients in the areas of pre-K-12 education, social services, and poverty relief;
- United Way of Metropolitan Atlanta, Inc., a community chest that solicits donor designated contributions and identifies worthwhile grant recipients in the areas of pre- K-12 education, social services, and poverty relief;
- Boys & Girls Club of Metro Atlanta, Inc., a youth development organization dedicated to improving the lives of children from low-income, urban families through after-school programming and mentoring;

- YMCA of Metropolitan Atlanta, Inc., a youth development organization dedicated to building caring communities and individuals by providing neighborhood recreational opportunities, adult learning, and after-school educational opportunities;
- Jewish Federation of Greater Atlanta, Inc., a faith-based foundation that supports the Metro Atlanta Jewish community through the development of donor-advised funds and annual giving campaigns, the resulting funds of which are used to support Jewish day school education (including the separate ALEF Fund student scholarship organization), Jewish religious and cultural understanding, and social services into the Jewish community;
- Georgia Chamber of Commerce, Inc., a public policy and advocacy organization dedicated to promoting legislative and policy initiatives that improve business and economic outcomes and the lives of Georgians, with a significant emphasis on promoting educational choices K-12 education and improved access to rural health;
- Metro Atlanta Chamber of Commerce, Inc., a public policy and advocacy organization dedicated to promoting legislative and policy initiatives that improve business and economic outcomes and the lives of Metro Atlanta residents, with a significant emphasis on improving K-12 public schools in the City of Atlanta;
- Step Up for Students, Inc., the nation's largest K-12 tuition tax credit student scholarship organization, based in Florida;
- United Negro College Fund, Inc., a college scholarship program;
- EdChoice, Inc., one of the nation's leading K-12 educational choice policy and advocacy organizations;
- Georgia Hospital Association, Inc., a professional association serving urban, suburban, and rural hospitals, with a dedicated Center for Rural Healthcare; and
- Healthcare Georgia Foundation, Inc., a grant-making foundation created as a result of the sale of BlueCross BlueShield, which is engaged in a Two Georgias Initiative that is awarding grants to rural communities for improving personal health and rural health treatment outcomes.

Based on a review of compensation paid by the foregoing twelve comparable nonprofit organizations, the following conclusions were reached:

- After eliminating the highest compensation figure for CEO/Executive Director, the average annual compensation for the CEO/President position is: \$475,264; and
- According to the GuideStar Compensation Report, the average compensation paid to CEO/Executive Director of nonprofits in Atlanta with comparable budget size to GCF is \$385,290.

GCF and Georgia GOAL Financial Statements

The unaudited Financial Statements of GCF for the calendar years 2016, 2017 and 2018 and for the first six months of 2019 are available at https://www.georgiacf.org/about_us/page/public-information.

The Financial Statements of Georgia GOAL for the calendar years 2016, 2017, 2018, as audited by Bennett Thrasher accounting firm, and the unaudited Financial Statements of Georgia GOAL for the first six months of 2019 are available at https://www.georgiacf.org/about_us/page/public-information.

Indirect Benefits of Creating the RHO Credit Program

In retrospect, in addition to the direct financial benefits to RHOs resulting from the RHO Credit Program, several indirect benefits have been realized.

First, by enacting the RHO Credit Program, Georgia lawmakers avoided the legal, procedural, and political problems that would have been associated with establishing a complex, large-scale, state-managed rural hospital grant program. In 2016, almost 50 RHOs throughout Georgia were facing severe financial challenges, each of which faced a different set of financial, facilities, information technology, recruitment and retention, governance, and other challenges. If lawmakers had created a state-managed rural hospital grant program, Georgia officials would have been tasked with soliciting up to 58 RHO grant applications; closely reviewing the grant applications and RHO applicant financial and operational history and status; reviewing the nature and competence of local RHO hospital authorities, boards, and administrators; awarding grants on an individual, case-by-case basis, which might result in grants of varying amounts and duration; monitoring the use of the grants; implementing reporting requirements; conducting costly and potentially intrusive field audits; taking remedial action for non-compliance or non-performance; and defending their politically-sensitive grant-making and non-renewal decisions.

Second, though, perhaps, unintended, by enacting the RHO Credit Program, Georgia lawmakers enabled Georgia taxpayers living in metropolitan Atlanta and other urban and suburban areas to become aware of, and financially support, struggling rural hospitals. For decades, politicians and policymakers have recognized that there are “two Georgias:” metropolitan areas in Georgia and rural Georgia, a reality having profound implications on access to health care.

If lawmakers had decided to address Georgia’s RHO crisis through normal budgetary processes or the creation of a state-run RHO grant program, most likely, thousands of Georgians living in urban and suburban areas would never learn about the access-to-health-care crisis one-fifth of their fellow Georgians are facing. Also, without the enhanced tax treatment afforded by a state income tax credit for contributing to qualified RHOs, it is unlikely that non-rural Georgia taxpayers would have contributed to distant RHOs, about which they have no knowledge or reason to make part of their regular charitable giving.

Finally, by enacting the RHO Credit Program, lawmakers respected the *subsidiary principle*—that nothing should be done by a larger and more complex organization which can be done as well by a smaller and simpler organization. In other words, any activity which can be performed by a more decentralized entity should be, a principle that promotes limited government and personal freedom. Local public hospital authorities or independent boards govern the RHOs that are the target of the Georgia legislature’s hospital sustainability and reform efforts. Under the RHO Credit Program, to varying degrees, taxpayers who receive a state income tax credit in exchange for contributing to a RHO become financially and emotionally invested in the future of the RHO. Ultimately, at the conclusion of each calendar year, each local hospital authority or board will be required to disclose to the DOR and the DCH the amount taxpayers contributed to the RHO and the manner in which the RHO will use the contributions for the provision of health care-related services. Then, the contributors, local media, and community residents can hold the RHO authority or board accountable for the results, or lack thereof.⁶

The RHO Credit Program enables taxpayers to decide whether to provide charitable or business-motivated support to Georgia’s rural hospitals. In turn, without significant state oversight, the recipient RHOs decide how to use the funds for the provision of health care-related services.

⁶ Taylor, S. (2018, June 25). Tift Regional receives \$1.3 million in donations through Georgia HEART. *The Tifton Gazette*. Retrieved from: http://www.tiftongazette.com/news/tift-regional-receives-million-in-donations-through-georgia-heart/article_72c75364-8fa3-11e8-bf8d-078f52996d5c.html