

# **STATEMENT OF DISCLOSURE**

## **EVANGELICAL FREE CHURCH OF AMERICA**

### **POOLED LIFE INCOME FUND NUMBER TWO**

#### 1. Purpose of Disclosure Statement

As described in more detail below, Evangelical Free Church of America (“the Church”), through EFCA Foundation (“the Foundation”), a ministry and division of the Church, invests all transfers to the Evangelical Free Church of America Pooled Life Income Fund Number Two (“the Fund”) as a single, collective investment fund. Federal securities laws therefore require that the Church provide a disclosure statement to all donors who are considering making transfers to the Fund to establish life income interests and to make gifts to the Church. Those federal securities laws require that the disclosure statement describe the material terms of the operation of the Fund. This Disclosure Statement is designed to give donors that information.

#### 2. General Description of the Church

The Church is a Minnesota non-profit corporation with its principal office in Minneapolis, Minnesota. The Internal Revenue Service has determined that the Church is a tax-exempt public charity described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (“the Code”). The Church has approximately 1,450 member churches and church plants, within the United States, and an active international missions and missionary effort worldwide.

3. General Description of the Fund

In 1981 the Church established the Evangelical Free Church of America Pooled Life Income Fund Number Two (“the Fund”) as a vehicle for deferred gifts to the Church. The Fund is a trust governed by the laws of the State of Minnesota, and transfers to the Fund are held by the Church as trustee pursuant to the Declaration of Trust Establishing Evangelical Free Church of America Pooled Life Income Fund Number Two (“the Declaration of Trust”), which established the Fund.

Revenue Procedure 88-53 provides that the Internal Revenue Service will recognize a trust as meeting all of the requirements of a pooled income fund under Section 642(c)(5) of the Code if the trust instrument governing the trust refers to Revenue Procedure 88-53 and if the trust instrument, and instruments of transfer to the trust, are substantially similar to the sample documents set out in Revenue Procedure 88-53, provided that the trust operates in a manner consistent with the terms of the trust instrument. It is the opinion of counsel for the Church that the Declaration of Trust and the forms of Life Income Agreement which donors may use as instruments of transfer to the Fund are substantially similar to the sample documents of Revenue Procedure 88-53.

This Disclosure Statement, along with a copy of the Declaration of Trust, is designed to provide information to prospective donors regarding the Fund and its operation. This Disclosure Statement does not cover all aspects of the Fund or explain the consequences of participation in the Fund for a particular Donor. Prospective donors are encouraged to address general questions about the Fund to the Foundation and to consult their own legal counsel and/or other advisors regarding the tax and other legal consequences of a prospective transfer to the Fund.

4. Structure and Operation of the Fund

Each transfer to the Fund is irrevocable and is commingled for investment purposes with all other transfers to the Fund. Although the assets of the Fund are now held in a separate account, the Church has the authority to invest those assets jointly with property owned by the Church in its own capacity. Each transfer to the Fund will be allocated a pro rata share of the Fund's net income, which will be paid to one or more concurrent or successor income beneficiaries designated by the donor in the applicable Life Income Agreement. Individuals who are designated as income beneficiaries must be living at the time of the transfer to the Fund, and such individual income beneficiaries will receive income under the applicable Life Income Agreement for their lives. The donor may also designate the Church as one of the income beneficiaries. An income interest in the Fund cannot be sold or redeemed by the income beneficiary, and realized capital gains will be reinvested as additions to principal and will not constitute part of the income to be distributed to the income beneficiaries. Upon the termination of the life income interests of all individual income beneficiaries under a Life Income Agreement, the pro rata share of the principal of the Fund allocable to that Life Income Agreement will be severed and transferred to the Church. The Church will use the transferred assets for its general support unless the donor has designated that the gift shall be used for particular purposes and the Church has consented to that restriction.

The Trustee of the Fund is the Church. As such, the Church, through the Foundation, maintains the Fund and has ultimately control over its administration. No donor to or income beneficiary of the Fund may in any way manage, value, advise or otherwise act as Trustee of the Fund. The Trustee is charged with the proper administration of the Fund. The Declaration of

Trust empowers the Trustee to undertake all acts which it considers necessary or desirable to administer the Fund properly.

The Trustee is authorized to retain, invest and reinvest the property of the Fund. No portion of a transfer to the Fund may consist of, and no portion of the property of the Fund may be invested directly or indirectly in, securities which are exempt from taxes imposed by Subtitle A of the Code. In addition, the Trustee is prohibited from accepting transfers of, or investing in, any depreciable or depletable assets. Subject to these two restrictions, the Trustee may retain any investments acquired from a donor, and the Trustee may generally invest in any kind of real or personal property which it deems a proper investment, including: real estate; common, preferred or any other class of stock; and shares or interests in investment trusts or common funds. In exercising its exclusive right to manage and control the Fund, the Trustee has the power to hold and manage the Fund's investment portfolio, to vote any corporate stock held by the Fund, and to employ agents and counsel to manage and protect the Fund.

In general, the receipts and expenditures of the Fund shall be allocated between principal and income in accordance with the law of the State of Minnesota. The Declaration of Trust provides, however, that all capital gain dividends and all capital gain resulting from the sale or exchange of any property shall be allocated to principal.

5. Administration of the Fund

As Trustee of the Fund, the Church has ultimate control over the Fund's administration. Pursuant to the Declaration of Trust, the Church may charge the Fund a reasonable fee for the services the Church renders in managing the Fund, and the Church is entitled to reimburse itself from Fund assets for all reasonable expenses it incurs in administering and managing the Fund.

Administration of the Fund with respect to matters other than investment management is currently handled by the Chief Financial Officer of the Church.

CapTrust Asset Management hold the assets of the Fund under a custodial agreement which calls for an annual fee paid by the Fund. The total value of the assets of the Fund as of December 31, 2008 was \$ 27,193.94.

Investment management of the Fund's assets is currently the responsibility of the Evangelical Free Church of America Investment Committee ("the Investment Committee"), which is appointed by the Board of Directors of the Church. The names and addresses of the current members of the Investment Committee are as follows:

- Mr. Steve Henry (Chair), Hagertown, MD
- Mr. Jot Turner (CFO), Eden Prairie, MN
- Mr. Steve Hawn, Woodbury, MN
- Mr. Jim Matthews, Arroyo Grande, CA

The Investment Committee is authorized by the Board of Directors of the Church to retain an investment advisor. The Investment Committee currently retains CapTrust Asset Management to manage all of the investments of the Fund under an investment management agreement which calls for an annual fee paid by the Fund.

#### 6. Investment Objectives of the Fund

The Fund is managed with the objective of maximizing current return. The Fund invests in a mix of publicly traded stocks and bonds.

Because growth of income is an objective, transfers to the Fund to establish income interests under Life Income Agreements may be appropriate for younger donors who could benefit from an increasing income stream.

Because of its investment approach, the Fund assumes all risks inherent in the ownership of equities, securities and other investments. There can be no assurance that the Fund's investment objectives and goals will be achieved.

7. Relationship of Donors and Income Beneficiaries to the Fund

Transfers to the Fund may be made during a donor's lifetime or by will. Transfers may generally take the form of cash, readily marketable securities or any other property deemed an acceptable acquisition by the Trustee. The Fund is, however, prohibited from receiving any securities the income from which is exempt from federal income tax, and from receiving any depreciable or depletable assets. As a rule, the Fund will not accept a transfer of any property subject to indebtedness. The Fund will not accept an initial transfer of cash or other property with a value of less than \$5,000; subsequent gifts with a value of \$1,000 or more are acceptable.

At the time a donor makes a transfer to the Fund, he or she will be required to execute a Life Income Agreement incorporating the Declaration of Trust. The Life Income Agreement describes the transferred property, the income beneficiaries, their life income interests and the use, if other than unrestricted, to which the Church will apply the remainder gift. The terms of a Life Income Agreement may not be changed, except that the donor may reserve the right to revoke by will the interest of any income beneficiary other than the Church.

A Life Income Agreement may designate the donor and/or other initial or successor income beneficiaries. All income beneficiaries other than the Church, including successors, must be living at the time that the transfer is made and the accompanying Life Income Agreement is established.

Although a donor may designate the Church as one of the income beneficiaries, no charitable deduction will be allowed to the donor for the value of such an income interest. Any

income beneficiary who assigns his or her income interest to the Church may be entitled to an income tax charitable deduction.

Once the Fund has accepted a transfer and transfer of title has been completed, units of participation in the Fund will be allocated to the Life Income Agreement under which the transfer was made. The number of units allocated to a Life Income Agreement shall be the number obtained by dividing the fair market value of the property transferred to the Fund by the fair market value of a unit in the Fund on the date of the transfer. The fair market value of a unit in the Fund on the date of a transfer shall be computed by dividing the value of the assets of the Fund on that date by the units in the Fund on that date. The first day of each month shall be a Valuation Date for the Fund. Donors may transfer property to the Fund at any time. The value of the assets of the Fund on a Valuation Date shall be computed by excluding any transfers to the Fund which occur on that date. The value of the assets of the Fund on a date other than a Valuation Date shall be the average of the fair market values of the assets of the Fund on the Valuation Dates immediately before and after the date of the transfer. In computing that average, all assets transferred to the Fund between those Valuation Dates, or on such succeeding Valuation Date, shall be excluded.

Once determined, the number of units of participation assigned to a Life Income Agreement will not change unless units of participation in the Fund are divided or combined at the direction of the Trustee. However, the fair market value of a unit will vary according to the changes in the overall value of the Fund.

The income of the Fund for any period is determined in accordance with the provisions of the Code applicable to trusts and in conformity with Minnesota fiduciary accounting rules for

trusts. Capital gains and losses, as well as unrealized appreciation or depreciation, are credited to principal and are not taken into account in the calculation of annual income.

The amount of Fund income allocated to a Life Income Agreement is proportionate to the number of units allocated to it. The share of net income allocated to each unit is determined by dividing the net income of the Fund by the number of units outstanding at the end of the year. However, units which have been outstanding for only a part of the year receive a pro rata portion of the actual income accrued during the period of time those units have been outstanding. Actual distributions to beneficiaries under a particular Life Income Agreement are made as provided in that Life Income Agreement.

The income interest of an individual income beneficiary under a Life Income Agreement terminates with the last regular payment made before his or her death. Upon the death of the last surviving individual income beneficiary under a particular Life Income Agreement, the units allocated to it are withdrawn from the Fund, and the proceeds, together with any undistributed income, are paid over to the Church or, if the Church no longer exists or no longer qualifies as a public charity described in clauses (i) through (vi) of Section 170(b)(1)(A) of the Code, to such a public charity designated by the Trustee.

The Church will provide each income beneficiary under a Life Income Agreement with a concise annual report that shows the investment performance of the Fund. In addition, the Church will send each income beneficiary an annual IRS Form K-1 with respect to the annual distribution the beneficiary receives from the Fund. Where required, the Church will also send an income beneficiary an annual Minnesota Schedule KF with respect to the beneficiary's annual distribution from the Fund.

8. Tax Considerations

Prospective donors are advised to seek assistance from their own tax advisors in order to assess the tax consequences of a prospective transfer to the Fund in light of their individual tax situations. The federal tax consequences which may be of importance to donors include the following:

(1) Income Tax Charitable Deduction. Subject to the applicable percentage limitation, a donor will be allowed an income tax charitable deduction for the year of a transfer to the Fund. The amount of the potentially deductible charitable gift equals the present value of the Church's remainder interest with respect to the transferred property. For transfers of cash and long-term capital gain property, that amount is defined by the Treasury Regulations as the fair market value of the transferred property minus the present value of all income interests created by the transfer of that property. The present value of those income interests is computed using Treasury Regulation tables and is dependent on the ages of the individual income beneficiaries and on the deemed rate of return of the Fund, which is the highest yearly rate of return of the Fund for the three years immediately preceding the year of the transfer to the Fund. The deemed rate of return for the Fund for 2008 is 9.46%. The portion of the charitable gift which the donor may deduct for the year of the transfer is 50 percent of the donor's "contribution base" if the transfer consist of cash or 30 percent of contribution base if the transfer consists of appreciated long-term capital gain property. A donor's contribution base for a given year equals his or her adjusted gross income for the year, after certain adjustments. Any unused portion of the charitable gift may be carried forward for up to five years, subject to the same deduction limit in each carryforward year. In order to be allowed an income tax charitable deduction, a donor who transfers property other than cash or publicly traded securities to the Fund and claims a

deduction in excess of \$5,000 with respect to the resulting charitable gift must obtain a “qualified appraisal” of the transferred property as required by Treasury Regulations and must complete Form 8283 and attach it to the federal income tax return on which he or she first claims a deduction for the charitable gift.

(2) Gain. A donor realizes no gain or loss upon making a transfer of appreciated property to the Fund. In addition, a donor will realize no gain or loss if the Fund later sells such property, provided that, at the time of the transfer of such property to the Fund, there was no binding obligation to sell such property and such a sale was not a practical certainty.

(3) Gift Tax. The gift of the remainder interest to the Church is not subject to federal gift tax. An irrevocable designation of an income beneficiary other than the donor will result in a completed gift equal to the actuarial value of the beneficiary’s interest. Before making such a designation, a donor should consult with his or her tax advisor as to whether a taxable gift will result. Even if a taxable gift will occur, many donors will have unified credit available to offset any resulting gift tax. Before a donor irrevocably designates his or her spouse as an income beneficiary, the donor should consult with his or her tax advisor as to whether the gift to the spouse is in a form which can qualify for the gift tax marital deduction, and if so, as to what election must be made to secure such qualification.

(4) Estate Tax. Generally, when a donor reserves either an income interest for himself or herself or the right to revoke by will the income interest of another income beneficiary, the entire value of the units of participation allocated to the donor’s Life Income Agreement will be includable in the donor’s gross estate for federal estate tax purposes. However, the value of the Church’s remainder interest will be deductible as a charitable gift. The value, at the donor’s death, of any income interest for a person, other than the donor’s

spouse, who survives the donor will be subject to estate tax. If a donor and that donor's spouse are the only income beneficiaries under a Life Income Agreement, the value at the donor's death of the successor income interest for the surviving spouse which is attributable to that donor's contribution under that Life Income Agreement will qualify for an estate tax marital deduction in that donor's estate if a timely election is filed with the Internal Revenue Service. In that case, the entire value of the corresponding portion of such units will be included in the spouse's estate but will qualify for an estate tax charitable deduction. There will be no estate tax upon the death of an income beneficiary other than the donor.

(5) Income Taxation of Payments to Income Beneficiaries. Payments received by income beneficiaries are includable in gross income as ordinary income. In addition, the income received by a beneficiary will be governed by any applicable state income tax law.

(6) Income Taxation of the Fund. The Fund is subject to federal income tax but will have no taxable income for any year in which it realizes no short-term capital gains. The Fund must distribute all of its annual income, other than capital gains, to its income beneficiaries, and it will be allowed deductions for all such distributions. In addition, the Fund must accumulate all realized capital gains for ultimate distribution to the Church. The Fund will be allowed an income tax charitable deduction for all long-term capital gains set aside in this manner. The Trustee intends to manage the Fund with the goal that the Fund will realize no short-term capital gains. If the Trustee achieves that goal, all of the Fund's income will be offset by deductions, and the Fund will incur no federal tax liability.

9. Federal Securities Law Exemption

The Fund is exempt from the registration requirements of the federal securities laws under an exemption for certain funds maintained by charitable organizations exclusively for the purpose of collectively investing the assets of certain planned gifts to those organizations.

10. Consultation with Advisors

This Disclosure Statement is intended solely to provide prospective donors to the Fund with information about the material terms of the Fund's operation. This Disclosure Statement should not be construed as legal or tax advice with respect to any prospective transfer of property to the Fund. Donors are encouraged to consult with their own legal and tax advisors regarding the risks, tax treatment, and other aspects of transfers to the Fund.

11. U.S. Treasury Department Disclaimer

The Church has prepared this Disclosure Statement with the assistance of its legal counsel. Pursuant to the Rules of Professional Conduct set forth in Circular 230, as promulgated by the United States Department of Treasury, (1) nothing contained in this Disclosure Statement is intended or written to be used by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer by the Internal Revenue Code of 1986, and it cannot be used by any taxpayer for such purpose, (2) this Disclosure Statement was written to support the solicitation of transfers to the Fund, and (3) any taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax adviser.