Best Practice in Gift Acceptance

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Description of Practice:

This document addresses a variety of topics institutions may consider before accepting gifts, including: 1.) procedures by which proposed gifts are reviewed and documented, and 2.) the policies reflecting required gift levels for endowed funds, named physical spaces and named programs.

Prospective Users of Practice:

Advancement Services Officers
Donor Relations Officers
Fundraising Professionals
Finance Office Professionals
Legal Counsel

Issues Addressed:

1. Industry Standards
2. Fundraising Database

3. Is it a Gift?
    - Definitions
    - Types of gifts
    - Review process
4. Institutional Minimum Requirements
    - Gift clubs
    - Naming an endowed fund
    - Naming a facility or program
5. Gift Documentation
    - Pledge form
    - Gift agreement or other communication
    - Records retention procedures
6. Policy Review and Maintenance

Issue 1 – Industry Standards

Issue Addressed: Available resources for establishing a gift acceptance policy.

ADRP/AASP Recommendations (considerations and pitfalls): Standards for the acceptance of gifts have been set by multiple entities. The first and foremost authority is the federal government [i] followed closely by state law. Other authorities on gift acceptance policies and practices include, but are not limited to, the following: Council for Advancement and Support of Education [ii], The Nonprofit Policy Sampler from BoardSource® [iii], the resource library for Kathryn W. Miree & Associates, Inc. [iv], and the National Council of Nonprofits [v]. Referring to the Donor Bill of Rights [ix] should be a common practice during all stages of gift acceptance.

Issue 2 – Fundraising Database

Issue Addressed: Choosing a system to house donor information.

To successfully track the life cycle of prospects, adhere to the Donor Bill of Rights [ix], measure return on investment, manage gifts according to auditor guidelines, report on performance, and produce accurate donor recognition vehicles, it is suggested that the institution employ a fundraising database (customer relationship management system or CRM system) that is best suited for its organization.

ADRP/AASP Recommendations (considerations and pitfalls): The system that houses an institution's donor information is the most critical tool that development professionals have at their disposal. It needs to be robust in capabilities from recording donor demographic and gift data to reporting on all aspects of the same. There are many fundraising database software applications, and each institution must choose a system that best fits its needs.

It is recommended that the chief development officer, or his or her designee, work with internal or external information technology consultants to determine needs. The list of needs should be comprehensive and should take into consideration the end users and multiple units that may be affected by the system. Once a needs assessment is completed, a request for proposals should be crafted and submitted to fundraising database software suppliers. For larger institutions, it may also be beneficial to reach out to other internal units to see if one software supplier can provide multiple applications within the same system to address various needs of the organization (e.g., financial, human resources, student database systems).

Issue 3 – Is it a Gift?

Issue Addressed: Determining and classifying money received by the organization.

ADRP/AASP Recommendations (considerations and pitfalls): It is important to protect the nonprofit status of the organization and protect the charitable intent of generous friends of the institution. To do so, institutions must be able to recognize a gift and distinguish it from other forms of revenue to the organization. Institutions must also keep in mind that it might be prudent to refuse a gift if it is in the best interest of the organization or if from a source that is inconsistent with the organization's beliefs, values and mission.

A. Definitions

As defined by the Nonprofit Law Blog (http://www.nonprofitlawblog.com/charitable_givi-2/) "a gift is a transfer that (1) is voluntary, and (2) is motivated by a detached and disinterested generosity."

As generally understood, a gift is a transfer of an asset that is unconditionally motivated or out of affection, respect, admiration, charity or similar impulses. Generally, gifts are irrevocable; and beyond a possible designation of use, the donor does not impose contractual requirements as a condition of the gift. If the constituent is receiving an equal benefit in exchange for this transfer of asset, the transaction is not charitable.

IRS Publication 526 [vi] provides guidance relative to fully deductible charitable contributions and for contributions from which the donor benefits in some way (e.g. tickets to a fundraising event which also has a charitable component beyond the goods and services received). In addition, there may be state laws that govern gifts, and relevant state statutes should be reviewed to ensure the organization is in compliance with all governing bodies.

Funding agencies such as philanthropic foundations sometimes use words like "gift," "grant," "contribution" or "donation" interchangeably. In addition, private grants as well as gifts may be awarded on the basis of an unsolicited proposal, both may be based on line item budgets, and both may involve the responsibility for providing periodic and final reports on the uses made of the funds. The difference, however, between a gift and a grant is judged on the basis of the intention of the awarding agency, the legal obligations incurred by the institution in accepting the award, and the way the funds are handled and accounted.

The Council for Advancement and Support of Education provides the following definitions for gift, grant and contract.

- Gift: A contribution received by an institution for either unrestricted or restricted use in the furtherance of the institution for which the institution has made no commitment of resources or services other than, possibly, committing to use the gift as the donor specifies.
- Philanthropic private grant: An award that is non-contractual in nature but for which one or more of the following characteristics might apply:

1. Provision for audits by grantor.
2. Specified period of performance is prescribed or termination is at the discretion of the grantor.
3. Grantor requires report of grant results or expenditures.
4. Testing or evaluation of proprietary products is involved.
5. Grantor states a precise scope of work rather than general area of programmatic support.
6. Unexpended funds must be returned to the grantor.
7. Grantor requests patent rights or right to review publications prior to submission.

The determination of when private support constitutes a philanthropic private grant must be made by looking at the award in its entirety rather than through a defined set of criteria.

- Contract: An agreement between the institution and another entity to provide an economic benefit for compensation. The agreement is binding and creates a quid pro quo relationship between the institution and the entity. Exclude contracts from your institution's fundraising totals. Note: This definition is not intended to address gift annuity contracts or similar charitable instruments.

The following terms used by agencies may indicate that the funds received are not gifts to the institution and require further review of the intent behind the funds received: refund, membership or dues, services rendered, invoice, settlement (unless involving an estate), discount, testimony payment, payment for goods and services rendered, royalties, investment earnings, game of chance and license. Sponsorships can be gifts, so the details behind these should be considered in accordance with IRS guidelines. Some fundraising offices work with legal, finance and external auditors to develop a standard "Sponsorship or Corporate Sponsorship" acceptance policy.

B. Types of Gifts

Donors are responsible for understanding and complying with all laws that affect their gift(s). The institution will provide donors with gift-related information as required by law and in accordance with the institution's policies and procedures. The institution should avoid providing tax-related guidance to a prospect/donor. If requested, the prospect/donor should be referred to their financial advisor.

1. Outright Gifts of Cash and Securities

Gifts of cash, stocks, bonds or mutual-fund shares are types of allowable gifts with a minimal burden to the institution for processing. Appreciated securities are those that have increased in value during the time the donor has owned them. If sold, the donor would be required to recognize the capital gain and pay tax on that gain. Generally, if a donor contributes appreciated securities owned for more than one year, a current income tax deduction can be taken by the donor for the full fair market value of the securities on the date of the gift and therefore avoid the capital gain tax. As a tax-exempt organization, the organization does not incur capital gain tax when it sells the securities, thereby increasing the proceeds available to support the donor's charitable purpose. A donor’s net cost of giving appreciated securities may be considerably less than an equivalent gift of cash due to the potential for capital gain tax savings.

According to IRS requirements, the value of stock and bonds contributed as a charitable gift is calculated using the average between the high and low trading values on the gift date. For gifts of mutual fund shares, the value is based on the closing net asset value. This value is the charitable income tax deduction amount when the security has been held for more than one year. The charitable deduction amount is limited to the donor's cost basis for securities held one year or less.

The gift date is established as the date on which the donor gave up control of the asset. For stock certificates transferred via the mail, this is the latter postmark date of the stock certificates and the stock power, which should be mailed in separate envelopes. For certificates hand-delivered to the organization, this is the date the stock certificates and stock power are delivered to the organization or an official of the organization. For stocks transferred electronically, the gift date is the date the stocks are received into a securities account belonging to the recipient organization.

Closely held securities, or partnership interests, may be accepted by an organization provided they have some potential marketability and do not carry undue restrictions or liability concerns. Closely held securities may be subsequently redeemed by the issuing corporation or sold by the recipient organization to other stockholders. The valuation of such securities is the donor's responsibility and should be determined by a qualified independent appraiser.

2. More Complex Outright Gifts

Gifts of real estate and tangible personal property such as artwork and other valuable, useful or historically significant personal property may be donated to a nonprofit as long as there is a related use for the gift (if to be held) or as long as the proceeds from the sale of such items are to benefit the organization. Depending on the type of asset and how it will be used by the institution, these gifts may have favorable tax incentives for the donor.

Other types of outright, complex gift transactions include bargain sale gifts and charitable lead trusts.

As the name implies, a bargain sale is part gift and part sale. A bargain sale generally occurs whenever property is sold to the organization for less than its fair market value. The donor is entitled to an income tax deduction based on the difference between the property's fair market value and the sale price. If the asset in the bargain sale arrangement is appreciated capital gain property, the gain realized in the transaction is allocated between the gift and the sale portions of the transaction. A bargain sale gift can also occur without an actual sale. For instance, a donor might make an outright gift of property that is subject to a mortgage. The amount of the gift is considered to be the difference between the property's fair market value and the amount of the debt. The amount of the debt is the amount the donor is deemed to have received, or the "sale” portion of the transaction.

In a charitable lead trust, the organization receives an income stream for a term of years, and the donor or other non-charitable beneficiaries receive the remainder of the trust property at the end of the term. The principal tax benefit to the donor is a gift-tax benefit that arises when someone other than the donor is named to receive the remaining trust property at the end of the term. The donor will make a gift to that beneficiary at the time the trust is established, but the gift will not be received until years later. The value of the gift to the beneficiary is the value of the right to receive the appreciated trust assets in the future, which will be considerably less that the value of the assets now. Therefore, the donor will be able to transfer valuable assets to his or her family or others in the future often at a reduced tax cost or no tax cost.

3. Outright gifts-in-kind

The institution may consider accepting gifts-in-kind which might be also referred to as non-cash gifts or in-kind gifts. Gifts-in-kind include, but may not be limited to, the following:

> Equipment and furniture, software and software licenses, supplies, works of art, books or other matter intended for study or exhibition, food and beverages, real estate and intellectual property.

4. Other Giving Instruments

Other gift planning instruments utilized by donors and nonprofits include charitable gift annuities and charitable remainder trusts which allow the donor a lifetime income with certain tax benefits with the remainder of assets providing funding for the organization. A donor may also choose an outright bequest left under a will or trust document, gifting a remainder interest in a home or farm, gifts of life insurance and contributions of retirement assets. The Partnership for Philanthropic Planning [vii] is a valuable resource for further information on the various nuances of planned giving instruments.

C. Review Process

Organizations should have an internal review process to determine the nature of most cash gifts and gifts-in-kind that are valued at a major gift level. This review may include multiple internal units at larger institutions, such as counsel and financial affairs, but in all cases, general counsel is recommended to review all legal documents before they are executed by an authorized signature authority for the institution. For the benefit of the donor, it is encouraged to include language regarding the definition, policy and guidelines for each type of gift accepted in the Gift Acceptance Policy of an organization. Collaborating with Development, Finance and Legal are recommended when considering to accept, what your institution has defined as, a major level gift.

Issue 4 – Institutional Minimum Requirements

Issue Addressed: Giving requirements for inclusion in gift clubs and/or for naming opportunities.

ADRP/AASP Recommendations (considerations and pitfalls): It is important to maintain consistency in adherence to institutional standards for gift amounts necessary to establish endowed funds and in providing consistent donor recognition opportunities for gifts of the same and similar amounts. A complete and separate policy should be developed to address naming opportunities for properties, programs and facilities. It is suggested that donor relations staff begin the initial work on these policies in collaboration with Finance, Legal, Advancement Operations, et al. To ensure that donors' intentions and expectations are reflected correctly and are realistic, all endowment and naming agreements should be reviewed by donor relations staff. Though this will be managed by donor relations staff, facilities, et al, the endowment and naming agreements should reflect time limits if applicable.

A. Recognition/Giving Societies

Recognition or giving societies provide an opportunity to recognize donors at various levels of giving. For more information on recognition/giving societies, refer to donor recognition best practices.

B. Naming an Endowed Fund

Many organizations have naming opportunities associated with different types of endowed funds at various giving levels. While some institutions use endowment earnings to supplement funds from other sources, there are others who rely solely on an endowment's spendable income (interest earned from investing the corpus) to provide support for programs. Careful consideration must be given to the gift levels that work best for your organization's needs.

A minimum endowed fund giving level may be set based not only on the financial support that will be provided by the endowed fund but also on financial and marketable appeal to the donor base. Examples of lower levels of endowment naming opportunities may include endowed award, prize, or book funds, among others, while higher levels of giving may include endowed leadership positions, endowed chairs or professorships to be used as recruitment and retention funds, building maintenance funds, and general program support funds.

When establishing endowed fund giving levels, it is important to consider the amount of money that will be needed to carry out the donor's wishes and meet the organization's needs. A good approximation for this can be achieved through the following formula: dollars needed per year divided by an average payout (this may be a general approximation or a calculated average based upon historical performance) equals the amount of endowment principal needed to sustain the program. For example, for an endowment with a 5% average payout, the corpus related to each endowment level should be 20 times the annual earnings needed to support the program.

C. Naming a facility (or portions thereof) or program/unit

An organization should set a policy on all naming opportunities including the standards that must be met to name a building, or portions thereof, or a program or unit. Naming opportunities can be dealt with on a case-by-case basis, or formulas may be put into effect to provide a guideline for all naming opportunities.

For a facility, a donor may be required to give a percentage of the cost to construct or renovate the space. This can be calculated using square footage and cost per square foot for individual portions of the facility as well as for the building shell.

For program or unit naming opportunities (e.g. a young patrons' series at an arts organization, a research institute at a teaching hospital, an honors program at an educational institution or an exhibit at a museum or zoo) an organization may consider implementing a policy where a donor must give the greater of a chosen major gift level or an endowed fund that will generate some percentage of the annual operating budget of the program or unit.

An organization should create a naming policy that defines the amount the institution must collect before issuing naming rights; the lifecycle of the naming rights (Is the naming in perpetuity or will it expire after a period of time?); and, if the naming was issued, how the institution will manage this if the pledge commitment is not fulfilled.

Issue 5 – Gift Documentation

Issue Addressed: Types of documentation that should accompany gifts and pledges.

ADRP/AASP Recommendations (considerations and pitfalls): Documentation such as pledge forms, gift agreements and verified correspondence from donors ensures that institutions have the information necessary to properly process, acknowledge and utilize gifts. Gift-related documentation must be retained for a period of time. Similar to the recommendations/pitfalls addressed under Issue 4, donor relations staff should be responsible for drafting endowment and gift agreements as well as recognition policies.

A. Pledge Form

Many organizations use standard pledge forms for general support and annual giving. Pledge forms are not typically legally binding documents and simply provide information regarding the donor and the donor's planned commitment to the organization. General forms will typically include at a minimum: 1.) a donor demographic section and 2.) a section to detail the specifics of the pledge including the frequency of payment and reminders. Pledge forms may also include sections for the provision of credit card gifts, to request information on planned giving, to include memorial or honorarium information and more. If your organization has any sort of fee (gift fee or gift tax) associated with fundraising, this information should be clearly disclosed in a statement or a link to a website with this information.

B. Gift Agreement

Major gifts that are paid over a series of years, gifts with an associated naming opportunity and gifts with donor restrictions relative to purpose should have terms outlined in a gift agreement between the donor and the organization. A gift agreement should include the purpose of the gift, a payment schedule, the restrictions placed on the gift, any naming associated with the gift and, if appropriate, a provision for completion of the pledge through the donor's estate. For endowed gifts, it is important to include an alternative-use or alterative disposition statement in case the original purpose can no longer be met. For facility gifts, a statement relative to the life of the naming may also be included. The gift agreement should also include a morality clause which will grant the institution the opportunity to remove naming if the donor or the donor's business practices are no longer aligned with the organization and its mission. The intent of the morality clause it is to prepare for any potential risks to the institution's reputation, avoid compromising the community's trust should the donor become negatively scrutinized and protect the organization’s mission. Should this instance arise, the removal of naming is subject to the approval of the governing board, and the donor must be notified.

It is critical to share the document governing the gift with all relevant parties within your organization. Anyone who has a part in ensuring the gift is used as intended should receive details about the gift and the technicalities of the fund.

C. Other Communication (proposal, letter from donor, et al)

Gifts may be received with limited restriction on usage or based on a proposal submitted by the benefiting organization. Any correspondence that accompanies a gift should be recorded and/or retained with the institutional gift records to ensure adherence to donor wishes and appropriate stewardship of the gift.

D. Records Retention Procedures

Effective document retention procedures will increase operational efficiency, be used as a tool for compliance with legal and regulatory requirements and will assist with avoiding costly consequences. Gift-related documentation, regardless of format, must be retained for specific periods of time in accordance with legal or other institutional requirements, or for historical value. Refer to IRS publication 4221: Compliance Guide (c)(3) for 501(c)(3) Public Charities [viii] for schedule recommendations.

Retention periods for selected records may be increased for various reasons including, but not limited to, government regulation, judicial or administrative orders, contracts, pending or threatened litigation, audit requirements, historical value and/or other institutional requirements. Destruction Records should be deleted/destroyed when they have reached the conclusion of the retention period. Records should be disposed of in a manner which preserves the confidentiality of the record(s).

Issue 6 – Policy Review and Maintenance

Issue Addressed: Gift acceptance policy approvals and maintenance.

ADRP/AASP Recommendations (considerations and pitfalls): It is recommended that an institution develop a gift acceptance policy that is specific to their organization’s fundraising practices and aligned with industry standards. The gift acceptance policy should be reviewed and edited, as needed, on an annual basis. Prior to initial implementation and after any subsequent edits, the policy should be shared with the gift acceptance or development committee, legal counsel, et al. The policy should then be shared with the Board of Trustees for final endorsement according to institutional policy.

References:

i www.irs.gov

ii http://www.case.org/

iii https://boardsource.org/search/#stq=nonprofit+policy+sampler&stp=1

iv http://www.kathrynmireeandassociates.com/resource-library.asp

v http://www.councilofnonprofits.org/

vi http://www.irs.gov/publications/p526/ar02.html#en_US_publink1000229649

vii http://www.pppnet.org/

viii https://www.irs.gov/pub/irs-pdf/p4221pc.pdf

ix https://www.aps.org/about/support/upload/bill-rights.pdf

Samples of gift acceptance policies can be found at:

- Council for Advancement and Support of Education (CASE)
- National Council of Nonprofits
- GRANTSPACE
- FundSvcs.org