Best Practice in Gift Acceptance Policies

Date: **March, 2018**

Prepared By: **John H. Taylor**

Category: **Records Management/Advancement Management**

Comments To: **johntaylorconsulting@gmail.com**

Comment Period:

Description of Practice:

To ensure compliance with all laws, rules, regulations, and guidelines pertaining to charitable giving, all nonprofit organizations must develop internal governing documents generally outlining the form, nature, and circumstance associated with gift acceptance. Such protocol is often codified in a document commonly referred to as a Gift Acceptance Policy. Another common reference is Standard Operating Procedure for the Acceptance of Gifts. No matter the title, all Institutional Advancement programs should adopt a document of this nature. Many organizations require approval of such a protocol by their Board. At other organizations, promulgation is delegated to senior administrators. Regardless, this is a powerful instrument requiring great care in development.

Prospective Users of Practice:

All employees and volunteers engaged in institutional fundraising activities.

Issue Addressed:

The need to provide a common framework for the development of an institutional Gift Acceptance Policy (GAP).

Desired Outcome:

Upon review of this Best Practice, and accompanying examples, all nonprofit organizations should be armed with adequate tools for the development of their own institutional GAP.

AASP Recommendation:

AASP recommends the development of a GAP with the following features and suggested contents:

- Formally establishes a Gift Acceptance Committee
  - While a GAP will outline specific types of gifts that can, and cannot, be accepted there are often gift nuances that must be considered by an independent body both to determine acceptability but also to ascertain the appropriate dollar value for counting and recognition purposes. The GAP should name, by title, those individuals who will form this committee which often will include:
    - Senior Advancement/Development Official
    - Senior Financial/Business Official
    - Senior Advancement Services Official
    - General Counsel or Legal Representative
    - Senior Gift Planning Representative
    - Donor Advocate
    - Other experts and officials as necessary
  - Depending on the nature of the organization and frequency of receipt on nonstandard gifts, this body may need to have a formal meeting scheduled as often as monthly or quarterly
  - Many organizations will appoint members to this committee annually by name
- Defines and describes gifts and gift vehicles that are routinely accepted requiring no formal approval or valuation process. This generally includes:
  - Cash and checks contributed to pre-existing programs or for new funds (such as scholarships and facilities) for which there are prescribed processes and protocol in place
  - Publicly traded securities (e.g. stocks, bonds, mutual funds) to similar programs, provided there are protocol in place for the proper determination of gift value, and acknowledgement of IRS receipting requirements
  - In-kind personal property donations that can be immediately used for related purposes (there are often dollar limits for certain contributed goods and equipment, above which the Gift Acceptance Committee (GAC) must approve – this is commonly established at $5,000+ as it is at this level that many donors must execute an IRS Form 8283 as well as obtain a qualified appraisal in order to claim a deduction)
  - In-kind unrelated use personal property donations that will be *immediately* liquidated through an institution-approved charity auction, raffle, or other similar fundraising event – provided the contributed items meets general decorum and ethical standards (there are often dollar limits for certain contributed goods and equipment, above which the GAC must approve – this is commonly established at $5,000+ as it is at this level that many donors must execute an IRS Form 8283 as well as obtain a qualified appraisal in order to claim a deduction)
  - Virtual Currency (e.g. Bitcoin), provided the institution has previously established a vendor relationship for the liquidation of these instruments. Note that the IRS regards Virtual Currency as

"property" and, as such, 8283 rules apply suggesting that a dollar limit above which the GAC must be involved should also be established for gifts of this nature

- Defines and describes gifts and gift vehicles that *must* be reviewed and approved by the GAC:
    - Outright gifts or real property
    - Outright gifts of *commercial* real property – like issues pertaining to gifts of time shares, these are often suggested by donors due to their inability to either sell or otherwise profit from the asset
    - Outright gifts of time shares (see above)
    - Gifts of real property realized through a bequest
    - Gifts of property wherein the donor requires the institution hold the asset for a minimum of 3 years before liqudation/disposal
    - Gifts of property (related or unrelated use) above a prescribed dollar amount as discussed above, as well as proposed gifts of either a unique nature, might require institutional expenditures to accept, maintain, or liquidate, or that might represent a moderate or material risk to the organization. Examples include but are not limited to:
        - Works of art or other similar objects – particularly if intended for public display external to an art/museum facility
        - Airplanes, boats, cars, and other vehicles
        - Mineral, water, or timber rights
        - Oil wells
        - Overseas investments/assets
        - Manuscripts
        - Literary works (including faculty "papers")
        - Computer software (ownership or use)
        - Intellectual property
        - Patents
    - Other nonstandard/unique gift vehicles not commonly bestowed:
        - Anything considered "unique" or of questionable value
        - Conditional pledges of any amount, including those with "matching" requirements
        - Gifts or real or personal property of *any* value subject to donor restrictions pertaining to disposal of the property
        - Partnerships
        - Partnership Investment
        - LLCs
        - Non-publicly traded securities
        - Cash gifts with donor restrictions (other than being restricted to specific funds or with standard annual reporting requirements)
        - Interests in business entities
        - Alternative (to institutional protocol) investment requirements
        - New giving vehicle the institution has not previously received
    - Any proposed gift that, if/when liquidated, might not be sufficient to fund the project/priority specified.
    - Any gift that might have implications for institutional governance (donor desires to select the recipient of the chair/fellowship/scholarship), how a new institute fits into the organizational structure and/or relates to existing programs, etc.

- Outlines pertinent IRS regulations governing receiving and receipting charitable donations, but without too many specifics or copies of actual publications (the IRS routinely changes these):
    - IRS Publication 526: “Charitable Contributions”
    - IRS Publication 561: “Determining the Value of Donated Property”
    - IRS Publication 1771: “Substantiation and Disclosure Requirements”
    - IRS Publication 4202/3 “Vehicle Donations”
    - IRS Form 8283: “Noncash Charitable Contributions”
    - IRS Form 8282: “Donee Information Return”
- For noncash donations, explains the differences between, and potential impact on charitable deductions regarding, related and unrelated use property:
    - Related Use: The donation as is must be useful to the organization in fulfilling the purpose or mission for which the organizations was granted tax-exempt status
    - Unrelated Use: The donation may still qualify as a gift-in-kind (that you can count and the donor can deduct), provided it was given specifically to be sold (charity auction) or similarly disposed of at a fundraising event
        - “The Treasury Regulations under section 170 provide that if a donor contributes tangible personal property to a charity that is put to an "unrelated use", the donor's contribution is limited to the donor's tax basis in the contributed property”
        - “The term "unrelated use" means a use that is unrelated to the charity's exempt purposes or function . . . The sale of an item is considered unrelated, even if the sale raises money for the charity to use in its programs”
- Describes requirements to be satisfied to record in-kind donations in development systems, such as:
    - Written description of its related use (if any) and a review/statement by the area benefiting outlining how the donation will be used
    - Special requirements by the donor such as price considerations (if being sold), sale timing criteria, potential buyers, etc.
    - Valuing requirements for recording purposes such as providing a bill of sale (if new), copy of the donor’s paid qualified appraisal (if one is offered), expert opinion by a third-party, online verification through a reliable website (eBay, ItsDeductible), etc.
- Informs development staff with just enough information regarding IRS filing requirements to be able to speak intelligently with a donor *without* providing tax advice:
    - The potential need for the donor to file an 8283 if their noncash gift is valued at $500+
    - The potential need for the donor to obtain a qualified appraisal for noncash gifts of $5,000+ should they plan on claiming a deduction
    - The potential need for the donor to submit to the organization a completed 8283 for signature if the noncash item is valued at $5,000+ should they plan on claiming a deduction

    - The potential filing requirements for the organization of an 8282 should a donated noncash item valued at $5,000+ be sold or disposed of within 3 years of the date of gift
    - The potential impact on the donor's deduction should a noncash item be sold within 1 year of acceptance of the noncash item
- Addresses several forms of nonstandard gifts and considerations that should be made prior to acceptance (thus avoiding the need to seek further guidance from the GAC):
    - Life Insurance Policies
        - Acceptance only of whole life policies wherein the organization is named owner and irrevocable beneficiary
        - Minimum face value requirements if not fully paid up
        - Maximum number of years premiums should be paid to fully pay the policy
        - Annual (suggested) premium payment requirement
        - Need for a qualified appraisal under certain circumstances
        - Beneficiary program/fund upon realization of proceeds (and if to establish an endowment, disposition if the realized benefit does not meet the endowment minimum at the time of realization
    - Nontraditional gifts of securities (loosely traded, closely held, Rule 144 or 145 Restrictions, S-3 security transactions, etc.)
        - Many of the above can be quickly negotiated by an able broker. Those that cannot – especially closely held – should be referred to the GAC for review and approval
    - Virtual Currency
        - As noted above gifts of this nature can be routinely accepted if there is a precedent and vehicle in place for acceptance. If not, then the GAP should outline steps required for gaining acceptance
    - Real Property
        - Often discusses the requirement for site visits, environmental audits, local realtor observations pertaining to suitability for sale, etc.

Sample Policies & Procedures:

- NC State Standard Operating Procedure for the Acceptance of Gifts
- UCSF 450-10: Authority to Solicit and Accept Gifts