Effective Gift Acceptance Policies and Procedures

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The Internal Revenue Service and state regulators have recently emphasized the importance of good governance in the charitable sector, including sound policies and effective operational procedures for implementing those policies. This trend should cause charitable gift planners and executives of charities, and the boards of those organizations, to reevaluate their gift acceptance policies and procedures.

A survey of gift acceptance policies adopted by a wide range of charitable organizations suggests that current policies do not measure up to modern standards of good governance for charitable organizations, for a number of reasons. Because many of the examples to which one might otherwise look as a starting point are themselves substandard, it is necessary to begin with the basic principles that dictate the elements of effective gift acceptance policies and procedures. We can begin with themes that run throughout this article and the specimen policies and procedures in the attached appendix.

First, policies and procedures are frequently combined in a single document when they should be kept separate, written for different purposes and for different audiences. The second theme is that most statements of gift acceptance policy are far too long. One precept of governance is that the only thing worse than not having a policy is having a policy that is ignored in practice. One reason these documents become so long is the result of the first theme: by combining policies and procedures in a single document, the document becomes much longer than a document devoted solely to policy. Second, a time-honored approach to preparing policy documents is to gather samples of statements of policy adopted by other organizations. As the draftsperson takes some (or all) of the provisions from organization A and adds to them some (or all) of the provisions from the policy statement of organization B, the resulting document becomes overly long (and redundant, if not incomprehensible) by the time the project is complete. The longer the document, the less likely that it will be routinely referred to and the more likely that, once adopted by the board, it will be placed on a shelf or in a notebook, never to be consulted again. Finally, neither policies nor procedures for gift acceptance are "one size fits all." Each needs to be specific to the unique requirements of the organization to avoid ending up with a generic document that is so general that it does not serve the needs of any organization.

Throughout this article, the approach that is strongly encouraged is to maintain gift acceptance policies and gift acceptance procedures as two separate documents, with a statement of policy, like other policies of the organization, serving as a broad statement by the organization's board of directors or other governing body of the

THE PROCESS OF PREPARING EFFECTIVE GIFT ACCEPTANCE PROCEDURES, AND ADOPTING MEASURES TO INCREASE THE LIKELIHOOD THAT THOSE PROCEDURES WILL BE FOLLOWED, CAN BE AN EFFECTIVE METHOD FOR MANAGEMENT OF RISKS ARISING FROM ACCEPTANCE OF CONTRIBUTIONS TO THE ORGANIZATION.

official policy of the organization. Gift acceptance procedures, on the other hand, are directed to the development staff and should consist of the detailed processes, steps and rules for implementation of policy. Policies should be directed to the public at large and other important constituencies, including donors, tax authorities and regulators, while procedures are directed at the staff level to the people responsible for day-to-day gift acceptance operations.

PART ONE: GUIDING PRINCIPLES

The Purpose of Policies

A statement of gift acceptance policy encourages the types of gifts that are consistent with the values and objectives of the organization. The policy statement should target gift opportunities that make the best use of staff and other resources. A well-considered policy will anticipate issues with certain types of gifts and attempt to minimize problems arising from those issues. The statement of policy serves as a statement by the board of directors, or other governing body of the organization, of the official policy of the organization. To effectively serve these purposes, the statement of policy should be both broad and brief. The oversight responsibility of an organization's governing body is performed at the policy level, rather than being immersed in the day-to-day details of operations.

The Purpose of Procedures

Gift acceptance procedures should clearly state the steps to be followed, and rules to be observed, in accepting gifts to the organization. Whether the development operation is a single fundraiser reporting to the executive director or a staff of 100 in a hierarchical organization, it is important for the organization's leadership to be comfortable that everyone raising funds on behalf of the organization is on the same page.

In reviewing the existing procedures, or preparing new ones, one must always keep in mind that the primary purpose of gift acceptance procedures is to provide guidance to the responsible staff members that will help them effectively and efficiently implement the gift acceptance policies adopted by the board. There are a number of ancillary purposes to be served by effective gift acceptance procedures, including improved financial management and standards for evaluating personnel performance, but a few deserve special mention.
First, there are several ways in which gift acceptance procedures can support effective donor relations. For example, by having clear and consistent rules concerning the types of assets that may and may not be accepted

by the organization, the procedures will help the development officer avoid making promises to the donor that he or she will be unable to fulfill. Moreover, a clear statement in the gift acceptance procedures that the organization will not accept, for example, gifts of tangible personal property provides helpful support to the fund-raiser when he or she must say "no" to the donor.

Another important purpose served by effective gift acceptance policies is risk management. There may be financial risks to an organization arising from accepting gifts of certain types of assets, such as real estate, that may carry environmental cleanup expense, but other risks may arise as well. These might include reputational risks, if accepting a certain type of gift, or accepting a gift from a certain category of donor, could reflect poorly on the prestige of the organization. Another important category of risk arises from the possibility that an inordinate amount of staff resources might be diverted to developing or administering some types of gift assets. The process of preparing effective gift acceptance procedures, and adopting measures to increase the likelihood that those procedures will be followed, can be an effective method for management of risks arising from acceptance of contributions to the organization.

Both policies and procedures also serve an educational function to make the board, staff, donors and advisors more aware of the specifics of the organization's development program.

What Belongs in the Statement of Policy?

The statement of gift acceptance policies should be a relatively short document that conforms stylistically to other policies adopted by the board and that concisely summarizes the official policies of the organization pertaining to gift acceptance, with those policies stated as simply as possible, so it is clear to the reader what those policies are. The statement of policy should delegate to the appropriate executive or staff within the organization the responsibility and authority for ensuring that the gift acceptance policies are implemented in practice.

What Belongs in the Procedures?

Gift acceptance procedures are like the user's manual for the development operation. This document should contain the standardized method for dealing with issues that routinely present themselves in the gift acceptance process, such as donor-imposed restrictions on gifts and review of written agreements by legal counsel. This is also the place to lay out the organizational standards for various types of gift vehicles, for example, trusteeship of charitable remainder trusts and the rates that will be used for charitable gift annuities. The procedures should contain standards for various potential gift assets, such as real estate and closely held stock. Finally, and importantly, the procedures should assign authority and responsibility for gift acceptance procedures, including authority and responsibility for making judgment calls in situations that deviate from standard patterns.

What Does Not Belong in Either

Note that neither document—the statement of policy nor the procedures manual—should contain lengthy descriptions of various types of gift vehicles and their legal or tax aspects. It is a curious development in this area of charitable sector governance that gift acceptance policies of a number of organizations contain these descriptions. This is not to say that such descriptions might not serve a useful purpose elsewhere as an educational piece for board members, staff and even donors, but this descriptive material is neither policy nor procedure and ends up doing nothing more than muddying the waters by causing these documents to lose the focus that is necessary for their effectiveness.

> It should be emphasized to stakeholders that the policies and procedures are living documents; to achieve their purposes, they need to be reviewed periodically to make sure they meet the needs of the organization. They should also be reviewed prior to launching a new capital campaign or other major fundraising initiative.

PART TWO: THE PROCESS

First Steps

Let's assume that you are given the responsibility of preparing a proposed draft of your organization's gift acceptance policies and procedures. Where should you start? Begin by anticipating the format that your finished product will take. Review other statements of policy adopted at the board level by your organization. Is there a standard template to which all policies must conform? Are existing policies broad and brief or detailed and lengthy?

Next, collect files, records, memoranda, correspondence and other documentation to determine if *ad hoc* policies have been established. Gift planning veterans will undoubtedly have their own war stories of where these *ad hoc* policies might reside. Many of us have had the experience of being told to refer to a dog-eared memorandum prepared 20 years ago by our predecessor's predecessor that describes the procedure that was followed in one gift acceptance scenario. This memorandum may have subsequently been referred to as similar scenarios arose over time, until it eventually becomes "the way we have always done this." You may end up incorporating some of these *ad hoc* policies into your eventual work product—or not—but either way you will want to make sure that the new policies and procedures supersede everything that has been done in the past to eliminate the need for you to continually refer back to that ancient memorandum as the source of procedures to be followed.

Research

There is a growing body of professional commentary concerning best practices for gift acceptance. To make sure you have not missed anything (and to be sure you can answer every question when you present your proposal to the board, the development committee or your boss), you should be conversant in this body of knowledge. On the other hand, keep in mind that policies and procedures should be specifically tailored to the objectives of your organization—one size does not fit all.

Statements of policy adopted by other organizations should be used only as a checklist to make sure there is nothing you are overlooking. They should *not* be used as the first draft for your organization's policies and procedures since experience has shown that this type of "cut and paste" approach leads, at worst, to policies and procedures that are not well suited to the organization (and therefore tend to get ignored in practice), or, at best, a document that is way, way too long.

Getting Your Policies Adopted

To ensure the likelihood that your efforts will be rewarded by the adoption of your proposed statement as the official policy of your organization, you should not get too far ahead of your board. At some point, the statement of policy needs to be approved by the board of directors or other governing body of your organization. Coming to the board with a proposed statement of policy may lead to a variety of unpredictable results if this is the board's first exposure to the concept. To smooth the process, consider bringing the policy to the board in three steps.

1. First, inform the board, either at a board meeting or in correspondence from the board chair, that the development staff, under the supervision of the vice president, development, and the development committee, is beginning the process of developing a gift acceptance policy for eventual approval by the board. This first communication should summarize briefly (*i.e.*, five or six bullet points) the objectives to be achieved with the policy.

2. The second communication should be a brief presentation to the board with a progress report on the project. This should discuss concepts in simple terms without including a draft document.

3. The third, and hopefully final, communication with the board should be the actual proposal, which should include not only the document—the statement of policy—but also a simple set of slides with bullet points (think PowerPoint) to lead board members though historical perspective, the process of developing the policy statement, and the main points of the policy. At the meeting itself, rather than walking the board members through the actual document, the proposed policy statement can be presented via the slide presentation.

Constituencies

The working group to undertake the research, gather input, and prepare the initial draft of the policy statement and procedures should be kept small, for example, one representative from the business office and one representative from the development department. The working group should obtain input from staff members and perhaps outside advisors who are involved in the gift acceptance process to gain perspective on technical aspects of gift assets and vehicles, donor relations, and institutional risk management. It should be emphasized to stakeholders that the policies and procedures are living documents; to achieve their purposes, they need to be reviewed periodically to make sure they meet the needs of the organization. They should also be reviewed prior to launching a new capital campaign or other major fundraising initiative.

PART THREE: SPECIFIC ISSUES

The official statement of every organization's gift acceptance policy may contain a statement of that organization's core values. Many organizations have particular values or objectives that are at the core of their charitable purposes. For example, a university founded by Jesuits may have core values tied to those roots. Another obvious example would be an environmental organization that might place emphasis on conservation or on promoting the accessibility of wilderness for public enjoyment or on advocacy to influence legislation. If an organization has these clearly identifiable values and objectives, they may be stated at the beginning of the statement of policy to set the stage for policies that will (hopefully) fit into that framework. Consistent with the desirability of keeping the statement of policy brief, words should not be wasted on a recantation of values and objectives that are generic or obvious: If the organization is a liberal arts college, it is not necessary to recite that its core value is promoting the importance of a liberal arts education.

Once the unique values and objectives, if any, of the organization have been summarized, the policy statement should state, as a guiding principle, that the organization cannot accept gifts that might require a deviation from these core values and objectives.

While UPMIFA allowed an organization to release a restriction imposed by the donor in the original gift instrument, with the written consent of the donor, UMIFA allows the institution to release or modify a restriction contained in the gift instrument on the management, investment or purpose of the restricted gift, with the written consent of the donor.

Another general statement that should probably be included in most statements of gift acceptance policy is a recognition that donors have a legitimate interest in choosing the purpose for which their gifts will be used. This recognition is useful since it contrasts with the typical institutional interest of encouraging unrestricted gifts, and portions of both policies and procedures will be devoted to balancing the interests of donors in restricting their gifts to those of the organization in generating unrestricted funds. This portion of the statement of policy might also contain language encouraging the education of donors on areas of greatest institutional needs, to frame the conversation with donors desiring to restrict their gifts to increase the likelihood that those gifts will have the maximum impact in achieving their charitable purposes.

Restricted Gifts Generally

The statement of policy should address whether bequests and other amounts realized by the organization from planned gifts should automatically go into endowment unless otherwise specified by the donor.

Gift acceptance procedures should establish the criteria for named endowment funds, including the minimum amount to establish a fund, the time over which this funding must be completed, and approval of restrictions on the use of named endowment funds.

Restrictions on Use

The gift acceptance procedures must assign responsibility for approval of all restricted gifts to ensure that the gifts fit within budgeted objectives of the organization and comply with policies.

The portion of the procedures dealing with restrictions that may be placed by donors on the use of their gifts should anticipate the appropriate level of continuing donor involvement with their gift assets. For example, is the organization prepared to periodically report to donors on compliance with restrictions placed on the use of their gifts? Will the organization encourage or allow certain types of monitoring by donors or their representatives? Will the organization allow a donor or family members to sit on a committee overseeing the use of restricted funds, such as a selection committee overseeing the use of a scholarship fund established by the donor?

As part of this process, you should confirm whether your state has adopted the Uniform Prudent Management of Institutional Funds Act (2006) (UPMIFA), which replaces the 1973 Uniform Management of Institutional Funds Act (UMIFA). While UPMIFA allowed an organization to *release* a restriction imposed by the donor in the original gift instrument, with the written consent of the donor, UMIFA allows the institution to *release or modify* a restriction contained in the gift instrument on the management, investment or purpose of the restricted gift, with the written consent of the donor. This ability to move a fund from an old restricted purpose to a new restricted purpose creates more flexibility for restricted gifts as compared with UMIFA, where the only option was to go from the old restriction to completely unrestricted.

The procedures should require, as the default, inclusion of a variance power in gift agreements. Experience has demonstrated to many institutions the importance of including a variance power for restricted gifts, allowing the organization's board of directors to modify, loosen or lift the original restricted purpose. One issue on which input should be solicited from stakeholders is the standard to be used by the organization in exercising the variance power.

1. One possibility is for the restriction to "sunset" after a specified number of years. For example, the variance power might provide that the endowed fund established by the donor will remain restricted as to its use for a period of thirty (30) years, after which the organization may unilaterally modify, loosen or remove the restriction (or, of course, leave it in place).

4. A second option is to include a standard for exercise of the variance power, such as a determination by the Board of Trustees that the restriction is obsolete (for example, funds are no longer needed for research to find a polio vaccine) or that it no longer serves the mission of the organization (for example, the university has decided to close its law school so it can focus its resources on its nursing program).

5. The most flexible (and therefore, perhaps, requiring the most explanation to donors) is a variance power that gives the institution broad discretion to modify, loosen or lift the restriction, for example if the board of directors determines that the restriction is no longer in the best interest of the university.

Recognition

The organization should have in place (separate and apart from these policies and procedures) a schedule of naming opportunities for new facilities for which funds are being raised, as well as a system for recognition for certain types of giving or giving at certain levels (for example, legacy society for identified bequests, parents club, alumni association, etc.). The procedures need to assign responsibility for approval of any donor recognition that is outside the established system.

Controversial Donors

Risk management involves more than avoiding real estate with toxic waste or carrying appropriate insurance coverage. There may be reputational risks to the organization associated with some donors. This risk may arise from the source of the funds used to make the gift. Assume, for example, that the charity's endowment investment policies prohibit investment in tobacco businesses. Is it in the best interest of the charity to extend this policy to preclude acceptance of a very substantial gift from a donor who made his fortune in tobacco? Should this policy extend to the gift from the great-granddaughter of the tobacco entrepreneur?

The reputational risk may come not from the source of funds but from the causes or institutions with which the donor is associated. For example, an independent school with a curricular emphasis on social justice might incur risk to its reputation by accepting a large gift (with naming rights to the library) from a donor who has been a vocal proponent of conservative causes and has openly opposed women's reproductive rights, environmental regulations, workers' rights, etc.

PART FOUR: SPECIFIC ASSETS

The procedures should contain guidelines for dealing with specific types of assets and gift situations. Note that these guidelines are appropriate for the procedures rather than the policies—at most, the policies should contain a statement that risk to the organization will be one element considered by the development staff in determining whether to accept a gift.

One purpose for guidelines on specific assets and gift situations is to articulate the steps that may be taken, and what may be accepted or rejected, without further authorization. These guidelines also assign authority and responsibility for deviation from the general rules or making judgment calls on the gray areas created by those rules. Finally, guidelines concerning specific assets and gift situations can provide a graceful way of saying no to a donor: "If it were me, I would love to see the school accept the gift of your taxidermy collection, but we have a specific policy that prohibits us from accepting gifts of tangible personal property that require moth proofing."

MANY ORGANIZATIONS WILL NOT ACCEPT GIFTS OF TANGIBLE PERSONAL PROPERTY THAT IS NOT FUNCTIONALLY RELATED TO THE ORGANIZATION'S CHARITABLE PURPOSE DUE TO THE TIME AND ENERGY REQUIRED TO CONVERT THOSE ASSETS TO CASH, NOT TO MENTION THE UNCERTAINTY OF THE VALUE THAT WILL ULTIMATELY BE REALIZED FROM THE SALE OF SUCH PROPERTY.

Securities

The procedures should specify types of securities that will or will not be accepted. In general, securities that are publicly traded on a national exchange such as NYSE or NASDAQ are acceptable. The procedures should identify the person authorized to approve acceptance of other securities and provide guidance to that person with criteria for approving these gifts. The conversation with stakeholders should include input on whether the procedures should be for all securities to be sold immediately with the proceeds invested or used for organizational purposes, or if the securities should be held while a determination is made by the finance office whether the securities should continue to be held for investment.

Real Estate

Due to the risks and other issues presented by real estate, some organizations (primarily but not exclusively smaller organizations) as a matter of policy will not accept gifts of real estate. Organizations that are willing to accept gifts of real estate are sometimes rewarded with very substantial gifts, but there is no question that the internal process for accepting and disposing of these properties needs to be well defined in order to capture that value while protecting the organization.

The procedures should not attempt to cover every issue that might arise in a real estate gift. Instead, effective procedures will spell out the rules for dealing with key items and will identify the person responsible for handling these gifts, from intake through management of the property to its eventual sale.

It is likely that environmental issues associated with real estate have caused more overreaction in the gift acceptance process than any other area of concern. The result has been policies and procedures of many organizations that require unnecessary environmental studies of very low-risk properties that at best delay the gift and at worst make the gift financially unattractive to the donor, the charity or both. This is one area in which, after consultation with the various constituencies, the gift acceptance procedures can make it clear that common sense should prevail. One method is to assign a staff person with real estate experience, or to employ a real estate consultant, to first determine whether formal environmental review is required at all. For example, the majority of real estate gifts are residential—single-family homes or apartment buildings—where the environmental risk is very low. The procedures should leave it to the designated employee or consultant to advise whether more advanced environmental review is advisable (for example, when the gift asset will be industrial real estate).

The procedures should establish the manner in which the charity will be assured of the title to the property it is receiving from the donor. The best practice is to require the organization to obtain a policy of title insurance, since this will identify defects in title and protect the organization against those defects.

The stakeholders must determine whether the organization will encourage gifts of donors' personal residences in which the donors retain a life estate. Factors to consider are whether the organization has the infrastructure to own and manage the house (or what could be several houses) and to organize the successful sale of the property. The procedures should also describe the documentation required by the organization in connection with those gifts. Here, the best practice is a written agreement spelling out the rights and responsibilities of the donor and charity plus other provisions that may be suggested by stakeholders.

Tangible Personal Property

Many organizations will not accept gifts of tangible personal property that is not functionally related to the organization's charitable purpose due to the time and energy required to convert those assets to cash, not to mention the uncertainty of the value that will ultimately be realized from the sale of such property. If an organization is willing to accept tangible personal property that is not related to the organization's program or purpose, the procedures must identify a person responsible for developing a plan for sale of the property, ideally before the gift is accepted by the organization.

More extensive procedures are required for gifts of tangible personal property that are directly related to the charitable purpose of the organization, such as art work to be received by a museum or manuscripts or other literary collections to be received by a library. Here, the procedures should spell out how the development office will cooperate with the curator, librarian or person within the organization who is familiar with the property in question to determine whether the gift property will be compatible with existing collections and to assess the curatorial, maintenance, storage, insurance and other expenses that may arise from accepting (and possibly retaining) a gift of such property.

Planned Gifts

Beyond a general, strategic statement in the policies that the organization encourages planned gifts, or perhaps a statement that as a matter of policy all proceeds from planned gifts go into endowment, most of the information pertaining to planned gifts is tactical and therefore belongs in the procedures rather than in the board-level statement of policy.

The procedures should spell out the criteria for gift annuities, including minimum ages of annuitants and whether annuities will be accepted for assets other than cash and marketable securities (for example, will we issue a gift annuity in exchange for a remainder interest in a personal residence?). This section of the procedures should require use of the annuity rates published by the American Council on Gift Annuities and, as with other areas of procedures, should identify the person with authority to override the default rules.

A very valuable outcome of the process of compiling gift acceptance policies and procedures is to ensure that the organization does not assume fiduciary responsibilities as an executor or trustee without thinking through the pluses and minuses of doing so, pitfalls to avoid and best practices for risk management. Does the organization have the infrastructure to perform all of the necessary functions of a fiduciary? Or would it be better served with a "preferred provider" solution in which the charity has the power to appoint (and replace) an institutional fiduciary such as a bank or trust company?

The procedures should contain criteria for charitable remainder trusts for which the charity has provided assistance in the preparation of the trust document and provides fiduciary services either by serving as trustee or through a preferred provider solution. Criteria to consider are the minimum size of a CRT, its unitrust or annuity percentage, irrevocability of the remainder and restrictions, if any, that the donor may place on the use of the remainder.

Conclusion

Carefully considered gift acceptance policies and procedures can serve a charitable organization well by helping to develop more resources for the organization in a manner consistent with its values, objectives and charitable purposes, while efficiently allocating institutional resources and managing risks that arise from gift acceptance. The process of preparing and adopting these policies and procedures should cause responsible staff members, executives and board members to reflect on factors that may be unique to their institution since this is one area where one size does not fit all. The finished product, especially in the case of the statement of policy, should be both broad and brief to ensure that it is regularly consulted, while the procedures should ideally be maintained as a separate document since they are directed toward the staff responsible for their implementation and should lay out the rules to be observed and the steps to be followed in the gift acceptance process, while identifying in each case the persons authorized and responsible for deviations from default rules or judgment calls regarding specific issues. Gift acceptance policies and procedures prepared and adopted using this approach are critical elements in the good governance and effective operations of a charitable organization.

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