

The Advancement Profession: Its Present and Its Future - or, What Have We Gotten Ourselves Into?

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Agenda (hope we get through it!)

- The "State of Fundraising"
- Ethics
- What have we gotten ourselves into?
 - CASE Management & Reporting Standards
 - Some IRS key rules and regulations
 - Everything you NEVER wanted to hear about
- Alphabet Soup

If We ALL Do Our Jobs Right All Of Our Donors Will Think We Have The Power To Do Anything!

- But oh my gosh do we have lots of external forces who think otherwise . . .
- Let's review the past, present, and future (and a ton of rules and regulations) . . .

Philanthropy in History

- First use of the word "development" - 1920's at the University of Chicago and at Northwestern
- In 1949 the American College Public Relations Association listed only two members with the title "Director of Development"

Philanthropy in History

- The Greenbriar Conference in 1958 combined the American Alumni Council and Development, and ushered in the modern era of development in higher education - alumni relations, public relations and fundraising in a unified organizational frame

Difference between Charity and Philanthropy

- Both arise from compassion and a motivation to help others
- Both arise from sharing resources, time, energy and money

Difference between Charity and Philanthropy (cont.)

- Difference is in what one does about a problem
 - Philanthropy goes beyond relief and provides resources that will change circumstances
 - Charity might be to give flour, philanthropy would provide seeds and education

What's The Current Climate?*

- Better than 2001-2002!
- The economy remains the biggest "fear factor," but since 2003 it's been less scary
- Competition is one of our greatest threats
- We are our own worst enemy
 - Board and volunteer leadership
 - Reduced staff and high turnover
 - Leads to overworked and under appreciated = limited success
 - Pressure to show immediate results – the "low-hanging fruit" dilemma
- Regulatory pressures will have the greatest impact
- Need to PROVE we're ethical and accountable

*Email John to receive a copy of his paper:
"The Environment for Fundraising"

Ethics & Accountability

Top Ten Ethical Professions

1. Nurses
2. Pharmacists
3. Veterinarians
4. Medical doctors
5. Grade & high school teachers
6. Clergy
7. College teachers
8. Dentists
9. Engineers
10. Police officers

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Ethics – A Definition

A set of principles or values

Ethical Principles Checklist

- Honesty
- Integrity
- Promise-keeping
- Loyalty
- Fairness
- Caring for others
- Respect for others
- Pursuit of excellence
- Accountability

Common Rationalizations for NOT Doing What We Should

- "If it's necessary, it's ethical."
- "If it's legal and permissible, it's proper."
- "I was just doing it for you."
- "It doesn't hurt anyone."
- "It can't be wrong because everyone is doing it."
- "It's okay if I don't gain personally."
- "I've got it coming."
- "I can still be objective."

The Ethics of Advancement

- Promote the merits of your institution without disparaging other institutions – or even divisions WITHIN the institution
- Respect and have tolerance for diversity
- Uphold the professional reputation of development officers, and give credit for ideas, works, or images created by others

The Ethics of Advancement

- Safeguard privacy rights and confidential information
- Follow the letter and spirit of the law

Trust Generates Gifts

- Trust in the institution
 - Statement of Values and Code of Ethics for Nonprofit and Philanthropic Organizations
 - Donor Bill of Rights
 - ePhilanthropy Ethics Policy
- Trust in the fundraiser
 - CASE Statement of Ethics
 - Code of Ethical Principles and Standards of Professional Practice

Accountability

- But what “rules” govern the conduct of fundraising and campaigns?
- FERPA, HIPAA, SOX, GLB (alphabet soup) I am sad to say (more later). But also . . .
- The CASE Management & Reporting Standards
- Current version intentionally designed to assure accountability – AND help keep us out of trouble

Standards Development 2001 - Present

- 2001 – Committee of 13 formed to initiate complete overhaul of the 1996 publication (which really was the 1982 and 1994 version slapped together)
 - Expand definitions and explanations – including definitions for gifts, grants, & contracts
 - Confirm and/or expand exclusions
 - Add definitions for types of gifts not previously covered
 - Determine the best means for counting deferred gifts
- 2002 – Interim update published covering most of the above
- 2003 – Resolution to deferred gift, bequest, and alumni dues questions
- Had to evolve to stay current with IRS, CRA, FASB, GASB, etc.
- Think it's the last version?
- No time to go into the details, but any specific questions?

IRS “Stuff”

Donor-Advised Funds – And Their Donors

- What are the rules?
 - Pledge Payment No No
 - Benefit No No
 - Matching Gift No No
 - Soft Credit No No?
- Do the donors know the rules?
- They aren't YOUR rules!
- But we now must inform and educate – a true story from Duke . . .
- But do our donors really NOT know the rules?
- You bet they do (but might not care)

Straight from the IRS:

- "A charitable pledge is an obligation of the donor to give money or property to a charity at a future time. Where a charity (including a charitable organization of which a donor advised fund is treated as a component part) relieves a donor of a substantial obligation by satisfying the donor's pledge, the charity is providing the donor with an impermissible benefit. Accordingly, a donor's charitable pledge may not be fulfilled by a single payment or a series of payments from the charity."

Legal Opinion

Attorney Statement Pertaining to Donor Advised Funds

- Gifts through donor advised funds should not be applied to satisfy pledges nor linked to a donor [other than perhaps to acknowledge a gift from a foundation at the direction of the donor]. Here are some of the reasons:
 - the donor will take a deduction when the gift to the conduit foundation is made
 - the donor cannot take a double deduction and therefore does not need a receipt
 - if you have recorded a pledge by the donor, then while that pledge is on your records, a gift from a 3d party [the conduit foundation] which satisfies that pledge is in effect a gift to the donor by the 3d party [lots of cases on this] which in theory may be treated as an improper transfer by the foundation [non-profit] to the donor [non-qualified donee] and may also be treated as income to the donor. In summary, it will be very difficult to make a "safe" gift to a nonprofit through a conduit foundation to satisfy a pledge.
- Although I will not provide an opinion regarding this matter, it would appear that if a donor has a pledge on the books, one way to proceed might be for you to voluntarily cancel the pledge before the gift from the conduit Foundation is made [and without any legally binding agreement tying the cancellation to the Foundation gift]. This could be very risky, however, and the donor is assuming all of the risk. The only safe procedure is to make sure donors understand that a pledge may not be satisfied except by a direct gift. The conduit foundations [e.g. Fidelity, Community Foundations] were established as and intended to be the donee charity and therefore there can be no linkage.

“Creative” Pledge Language

- Donors cannot pledge funds held in a donor advised fund because the money really isn't theirs. To do so, and to apply donor advised gifts as pledge payments, jeopardizes that firm's tax-exempt status. Soooooooo . . .
- Reconstruct the language in a pledge so that instead of saying “I will give to Ineedmoney University”, you say “Either I will give or will cause to be given to Ineedmoney University . . .”
- But that only fixes the pledge . . .

What's In A Pledge?

- Legally enforceable
- Personal Commitment
- Can NEVER include a potential match
 - Why?
 - “But it's my money!”
 - Matching gifts are NOT employee benefits
 - Can only note the expectancy
- Benefits derived from the match are NOT allowed

Let's Talk About "Control"

- Once a gift always a gift
 - Cannot give a gift back – 1099s? What if the gift was matched?
 - Retain gift after a restricted program is canceled
- Scholarship recipient selection
 - Donor's involvement
 - Cannot have a majority vote
 - Control based on position/power
- Cannot require institution to take action it otherwise would not take

A Gift Is Not:

- A payment to an individual (other than by pre-approved grant procedures of a foundation); includes tuition!
- A payment that is conditional on a future event or the substantial probability of return to the donor or another individual(s)
- An involuntary payment on behalf of a charitable organization (e.g., A payment to charity in lieu of court fine.)
- Expenses associated with conveying a gift (appraisal fees, shipping, insurance, etc.)

Common Gift Myths

- Donation of time or service. While truly a charitable act, only a volunteer's out-of-pocket expenses (mileage, parking, supplies, etc.) may be deducted.
 - FASB/GASB may recognize as an asset
 - Expressly forbidden as a charitable donation per IRS Publication 526
 - Donated advertising space is a "service" per IRS Revenue Ruling 57-462
- The use of a donor's property by a charitable organization (partial interest – IRS Pub 526)
 - Vacation home for charity auction
 - Office space sans rent
 - Use of software

IRS Regulations

- Omnibus Budget Reconciliation Act of 1993 added Internal Revenue Code section 170(f)(8)
- IRS clarification to charities and individuals found in a new publication, 1771: Charitable Contributions - Substantiation and Disclosure Requirements
- IRS final and temporary regulations issued on 10/12/95 to clarify(?) the clarification

IRS Regulations

- IRS final FINAL regulations issued on 12/16/96
- IRS clarification of the clarified clarification of the final regulations – Revised IRS Publication 1771 (3/2002)
- Two primary areas of interest/concern:
Written acknowledgement requirements;
Value of Goods & Services (quid pro quo)

Written Acknowledgments . . .

- Required for all contributions of \$250 or more in order to claim a charitable deduction. Canceled checks are no longer sufficient ABOVE this amount but ARE below!
- Donor is responsible for obtaining.
- Substantiation to donor must be contemporaneous (in time for tax filing).

Written Acknowledgments

- Written acknowledgments must provide the amount contributed (or description, not value, of non-cash property contributed) and a statement indicating whether or not any goods or services were provided in exchange for the gift.
- Payroll Deductions - Only applies to single deductions of \$250 or more. Not required, period, if employer evidences the amount withheld (pay stub) and provides a "no goods or services" statement (pledge card).

IRS DISCLOSURE STATEMENT

Beginning with the 1994 tax year, the Internal Revenue Service requires non-profit organizations to provide donors with a good faith estimate of the value of any benefits received as a result of their gifts. When a donor calculates a charitable deduction, the value of any related benefits must be subtracted from the amount of the contribution. If a benefit is immediately known, it is referenced on the reverse side of this acknowledgment. If you receive a benefit at a later date as a result of this gift, you will be informed of its fair market value at that time. Benefits valued at 2% of the gift amount or \$71 (in 1998)*, whichever is less, and certain low cost token items, are viewed by the IRS as insubstantial and do not need to be considered when determining the tax deductibility of a contribution. Consult your tax advisor with any specific questions or concerns.

*The IRS changes these amounts in January of each year.
The current value, for 2005 is \$83.

Time for a commercial message - DATE is a 4-letter word!

What's In A Date?

- What date does the IRS require?
- What date do you use?
- A "gift date" is NOT required
- Pub 1771 suggests a "received date"
- John Taylor suggests a "processed" date
- But what about gifts of stock?
- And what about credit card donations?

Safe Harbor Rules

Quid Pro Quo receipts are not required when:

- Fair market value of all benefits received in connection with the payment does not exceed the lesser of 2% of the gift amount or \$83 (2005)
- Gift is \$41.50 or more and the cost of all benefits given does not exceed the IRS "low-cost articles" minimum of \$8.30 (2005)
- The only benefit the donor received consisted of token items bearing the institution's name or logo

Value of Goods & Services . . .

- Quid Pro Quo contribution: Gift exceeds \$75 where part of the payment is for goods or services received and part is a contribution.
- Let's talk about athletics . . .
- Disclosure must inform donor that the tax deductible amount is limited to the excess of the amount contributed over the value of goods or services provided. Must also provide donor with a good-faith estimate of the value of such goods or services.

Hot Off The Press . . .

- "Problems and abuses in the valuation of these types of gifts was the rationale the committee gave for these proposals. It also stated that a primary goal of the charitable deduction should be to encourage gifts that are most useful to a charity. Gifts that require the charity to divert resources or "incur substantial transaction costs" should not be encouraged."
- Even hotter off the press – new vehicle donation rules . . .

The Trouble With Cars

- See new IRS Form & Instruction 1098c
- Must support mission
 - Receipt to donor must explain HOW
- If you plan to sell, receipt to donor must reflect:
 - Name of donor
 - Tax ID of Donor
 - Vehicle ID
 - Date of Gift Date of Sale
 - Proceeds from Sale
 - Comment that sale was at "arms length"
 - Statement to donor that their deduction is limited to the gross proceeds

What Kind of Trouble Can I Get Into - Legally?

- Internal Revenue Code 6700 & 6701
 - Negligently or intentionally providing misleading information regarding gift values can result in severe fines
 - “Gross valuation overstatement” will result in a fine of \$1,000 – “a person furnishing the gross valuation overstatement need not have knowledge that the valuation is overvalued”
 - “False or fraudulent” gift receipts will result in above fine
 - Fines imposed on a **person**
- Real-life example (in other words, you *can* get caught)
 - A prominent museum “lent credence to an 10-fold increase in value” of a gift-in-kind
 - New Jersey Philharmonic
 - Senate Finance Committee investigated

More Trouble for Vehicle Donations:

- “The penalty applicable to an acknowledgment relating to a qualified vehicle described in section 3.02(1) of this notice is the greater of (1) the product of the highest rate of tax specified in § 1 (currently 35%) and the sales price stated on the acknowledgment, or (2) the gross proceeds from the sale of the qualified vehicle. The penalty applicable to an acknowledgment relating to any other qualified vehicle the claimed value of which is more than \$500 is the greater of (1) the product of the highest rate of tax specified in § 1 and the claimed value of the qualified vehicle, or (2) \$5,000.”

Alphabet Soup - FERPA

- Family Education Rights and Privacy Act of 1974
 - Also known as the Buckley Amendment
 - Protects the privacy of a student's educational records
 - Applies to all educational agencies or institutions that receive funds under any program administered by the Secretary of Education

FERPA

- **FERPA gives certain rights to parents regarding their children's educational records.**
 - Rights transfer to the student
 - upon reaching 18 years of age or
 - attending any school beyond the secondary level.
- **When may a parent access a student's educational records?**
 - Law allows parental access if student is claimed as a dependent for Federal income tax purposes.
 - Access is granted to both the parent who claims the student as well as the parent who is not claiming the student.
 - Parent must complete Parental Request for Academic Information (available in the Registrar's Office or academic department) each time information is requested.

FERPA

- **How can a parent access student information if the student is not being claimed by either parent for Federal income tax purposes?**
 - Parent can have access only if the student is willing to release information.
 - Student must complete Student Consent for Release of Records (available in the Registrar's Office or academic department) each time information is to be released.
- **A parent may access student information but may not act on the student's behalf except in emergency situations.**

FERPA and Advancement

- Fact vs. Fiction
 - FERPA means we (the Registrar's Office) can't give you (the Alumni/Advancement Office) any identifiable information about the student.
 - SSN, birth date, gender, race, ethnicity, grades, etc.

FICTION

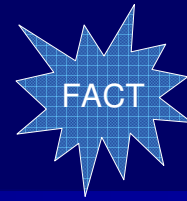
Alphabet Soup - HIPAA

- Health Insurance Portability and Accountability Act of 1996
 - Purpose is to adopt national standards for safeguards to protect the confidentiality, integrity, and availability of electronic protected health information.
 - They were needed because there were no standard measures existing in the health care industry that addressed all aspects of the security of electronic protected health information while it is in use, in storage, or during the exchange of that information between entities.
 - Requires that health plans, health care clearinghouses, and certain health care providers meet the use of these standards.

HIPAA

- Focus is on security of information
 - It gives patients more control over their health information.
 - It sets boundaries on the use and release of health records.
 - It establishes appropriate safeguards that health care providers and others must achieve to protect the privacy of health information.
 - It holds violators accountable, with civil and criminal penalties that can be imposed if they violate patients' privacy rights.
 - And it strikes a balance when public responsibility supports disclosure of some forms of data – for example, to protect public health.
 - It enables patients to find out how their information may be used, and about certain disclosures of their information that have been made.
 - It generally limits release of information to the minimum reasonably needed for the purpose of the disclosure.
 - It generally gives patients the right to examine and obtain a copy of their own health records and request corrections.
 - It empowers individuals to control certain uses and disclosures of their health information.

HIPAA and Advancement



- Fact vs. Fiction
 - For fundraising purposes, HIPAA permits covered entities to themselves use -- or disclose to a business associate or institution-related foundation -- only two types of protected health information (PHI) without specific permission:
 - basic demographic information relating to an individual, and
 - dates of health care provided to an individual.
 - An entity that wishes to engage in fundraising activities of *any* kind -- including just using the two types of information above -- must include that planned information use in its notice of privacy practices (per 45 CFR 164.520).

Alphabet Soup - GLB

- Graham-Leach-Bliley Act of 1999
 - Financial institutions must
 - insure the security and confidentiality of customer records and information;
 - protect against any anticipated threats or hazards to the security or integrity of such records; and
 - protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.
 - Financial institutions must provide an “opt-out” mechanism for consumers and customers to prohibit the sharing of their information to other entities

GLB

- “Financial Institution” means any institution the business of which is engaging in financial activities (described in section 1843(k) of title 12). Defined broadly to include
 - Lenders
 - Finance companies
 - Account services
 - Check cashers
 - Travel agencies operated in connection with financial services
 - Others, such as car dealerships, Best Buy, etc.

GLB and Advancement

FICTION

- Fact vs. Fiction
 - Institutions of Higher Education are exempt from GLB
- Fundraisers (all non-profit types) need to exercise vigilance in the protection of sensitive information in records
 - Software compliance is key
 - Opt-out options must exist in self-service opportunities
 - Online alumni directories
 - Electronic solicitations (i.e. email)

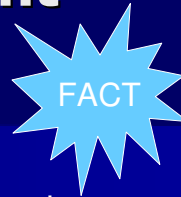
Alphabet Soup - SOX

- Sarbanes Oxley Act of 2002
 - Also known as the American Competitiveness and Corporate Accountability Act
 - Financial and Accounting Disclosure of Information
 - Companies are required to create mechanisms to manage the reporting of financial fraud on top of ethical guidelines already in place
 - “Whistle-blower protection” law also shields employees from retaliation should they report financial wrongdoing.

SOX

- Part of the bill affects charitable organizations
 - Many states are looking at applying the bill’s provisions to the nonprofit sector.
- These sections concern whistle-blower protection and the destruction of documents.
 - In particular, nonprofits need to develop written policies related to complaints by employees and the destruction of documents.

SOX and Advancement



- Fact vs. Fiction
 - “Nonprofits should take steps to ensure the independence of the audit committee”
 - “Nonprofits need to ensure that board members of the audit committee have the financial competency to understand financial statements, evaluate accounting company bids to undertake auditing, and make sound financial decisions...”
 - Refer to:
<http://www.independentsector.org/PDFs/sarbanesoxley.pdf>

Alphabet Soup – USA PATRIOT Act

- What is the USA PATRIOT Act?
- **U**niting and **S**trengthening **A**merica by **P**roviding **A**ppropriate **T**ools **R**equired to **I**ntercept and **O**bstruct **T**errorism Act
- Some of the more ‘well known’ aspects include
 - Indefinite imprisonment without trial of non-U.S. citizens whom the Attorney General has determined to be a threat to national security
 - Issuance of a wiretap against an individual instead of a specific telephone number
 - Permission for law enforcement agencies to obtain a warrant and search a residence without immediately informing the occupants, if the Attorney General has determined this to be an issue of national security
 - Allows intelligence gathering at religious events as well
- Many of the components of the PATRIOT Act are set to expire on 12/31/05

USA PATRIOT Act

- Piggy backs on Executive Order 13224
 - Blocking property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism
- But...unlike the Executive Order, which automatically calls for asset blocking in many instances, the Patriot Act leaves room for *prosecutorial discretion* (whether or not it is exercised!)
- Because the standards of required knowledge or intent are specified - at least generally - in the law, there is room to defend the well-intentioned grant maker or charity
- **And that's where it ripples into and effects Advancement...**

USA PATRIOT Act and Advancement

- The US Government Treasury Department's "Anti-terrorist financing guidelines: voluntary best practices for U.S.-based charities" is a resource, outlining
 - Uniform "best practices" with regard to governance, disclosure, financial accountability and anti-terrorist financing procedures
- The "anti-terrorist financing procedures," suggest proposed due diligence steps that can be extremely burdensome and may cripple a charity's capacity to carry out work abroad –
 - *And would not necessarily be effective at preventing problem grants or other assistance in any event*

USA PATRIOT Act and Advancement



FACT

- Fact vs. Fiction
 - Collecting a broad range of information about the FRO, (i.e. determining an active governing body (BOD), meeting at least three times annually with the majority of members attending in person
 - Reviewing the financial operations of the FRO, (i.e. determining if the bank to which a charity is sending funds is a shell corporation
 - Conducting on-site audits
 - Compiling extensive personal information of all staff and board leadership of the recipient organization

Conclusion

- Increased competition is forcing us to be more “creative”
- We CANNOT lose sight of our ethics and a donor’s rights
- The world around us is being regulated to death due to accounting “infractions”
- An “Enron U” could change our fundraising lives forever
- Let’s work together to keep that from happening!