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THE PPC NONPROFIT UPDATE

AUGUST 2022, VOLUME 29, NO. 8

Gift Acceptance Policy

An exempt organization should consider adopting a new, or reviewing (at least annually) an existing, gift acceptance policy. An organization must decide before gifts are offered whether it is equipped to handle gifts other than cash and, if so, the procedures to follow in accepting them. It is equally important to have policies to identify gifts that should not be accepted.

Observation: If the current policy does not address virtual currency, perhaps it is time for a revision. A prepared organization may be able to bring in a larger-than-average donation if able to accept one or more forms of virtual currency. Virtual currency (e.g., crypto) as an investment vehicle is rising in popularity fueled by significant appreciation that some forms of crypto have experienced. Virtual currency (treated as property for income tax purposes) can produce a significant tax burden on the investor at disposition and, consequently, opens the door for tax strategies to help charitably-minded investors minimize the tax.

Benefits

A gift acceptance policy helps an organization in numerous ways. Creating a gift acceptance policy educates the staff, volunteers, and the governing board about critical issues triggered by certain kinds of gifts. The discipline that results from having a policy should help prevent the acceptance of gifts that could cost the organization time, money, and possibly its reputation.

An organization should not wait until a noncash or property donation is offered before it considers the practical issues associated with accepting the gift. With a gift acceptance policy in place, an organization is prepared to discuss the issues with experts, if necessary, and arrive at a decision that is right for the organization. A policy also defines the roles of the people who will make the decisions and process the gift if it is accepted so that communications with the donor will go smoothly and efficiently.

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In addition, if a gift is not accepted, a gift acceptance policy depersonalizes the organization's refusal and reduces the risk that the organization will hurt donors' feelings. Rather than being based on a particular individual's decision, the refusal is based on the board's policy.

Not all donors are well-informed about the tax rules related to certain types of donations, nor do they necessarily have access to legal counsel or a tax professional. A gift acceptance policy may be useful to donors in deciding what type of assets to give and what form of gift to make.

If the gift acceptance policy is made publicly available, either by providing it to donors as part of the solicitation or posting it on the organization's website, it is a good practice to state that the organization intends to protect the donor. To do so, the organization promises that it will be ethical, competent, and professional in all dealings with the donor.

Note: The organization should also encourage the donor to seek professional advice regarding the legal or tax consequences of making the gift.

Issues to Address

A good gift acceptance policy considers the following issues:

- What types of gifts will the organization consider for acceptance? Many different types of gifts exist, but donors also have different vehicles to accomplish the gift to the organization. The organization should determine its capacity for receiving different types of gifts.
- What types of gifts will the organization *not* consider for acceptance? The organization may not be able to easily convert noncash gifts to usable resources. For example, an organization receives a gift of land that may take years to sell. Prior to its sale, the organization must pay property taxes, which could cost the organization more than the value of the land.
- What types of gift entities is the organization willing to participate in (i.e., split interest trust or other trust arrangements)?
- What types of restrictions on gifts will the organization accept? Gifts with restrictions frequently create problems for an organization. If it cannot easily honor the donor's restrictions, the organization should decline the gift.
- When will the organization accept gifts? Is there a deadline for making certain types of gifts? Due to timing and due diligence issues, the organization cannot always accept gifts when offered. For example, the organization should not accept real estate near year-end due to the time it takes for the organization to perform due diligence, especially regarding title and environmental issues. Additionally, the organization should clarify how end-of-the-year donations will be processed and recorded.
- Who reviews and authorizes the acceptance of noncash gifts, gifts with restrictions, or gifts using alternate funding vehicles? The board should appoint someone from senior management to this task. The board should give this person clear instructions about gift acceptance.
- What forms (if any) of virtual currency are accepted? What channel(s) will be used to accept virtual currency (e.g., third-party vendors)?
- Who has the authority to provide acknowledgments to donors and who is required to monitor any IRS filing requirements for subsequent transactions (e.g., sales of the property)? The finance department is ordinarily responsible for this task.
- Is there any positive or negative publicity surrounding the donor that could have potential ramifications to the organization?

Developing a Policy

Developing the gift acceptance policy requires input from many of the organization's team members. The organization should consult with persons involved in development, finance, administration, and legal, as well as the top management officers of the organization. Having all areas agree over the policy contents will lessen the risk that one department will circumvent the policy to appease a donor. Gift acceptance policies may be as simple or as complex as an organization requires. It is better to start with a simple policy and then add specific provisions to address organizational concerns. The policy should be reviewed at least annually.

Process for Policy Development. To develop a gift acceptance policy, follow these steps:

1. Identify the proper people to participate in developing the policy.
2. Draft the policy considering the issues described earlier and have it reviewed by legal counsel.
3. Submit the drafted policy to the board of directors for approval and adoption. Include the governing board's adoption date on the policy to show that the instructions have the board's authority.
4. Identify the group of experts (e.g., appraisers, brokers, lawyers, and environmental analysts) who the organization will consult as it applies the acceptance policies. An organization will have difficulty responding to the donor's offer on a timely basis if it does not know who to call for assistance.

Note: See *Other resources* later in this article for the location of a sample gift acceptance policy.

Continued Review of Terms. A gift acceptance policy should be reviewed about six months after its adoption and at least annually thereafter. The review committee should read through the minutes of the gift acceptance committee meetings to decide if certain types of gifts have occurred frequently enough that the processing of those gifts can be built into the policy rather than treated as exceptions.

Donor-Restricted Contributions

Nonprofit organizations act as stewards of donors' gifts. Donors trust nonprofit organizations to comply with the donor's restrictions. Restrictions generally require special use of the donated property (e.g., the stipulation that donated land must be used for agricultural purposes or prohibiting the future transfer of property by the charity). Organizations should perform the following steps before accepting restricted contributions:

1. Clarify all restrictions and expectations with the donor.
2. Carefully consider all restrictions.
3. Consider whether there are any implied restrictions associated with the gift.
4. Determine if the organization can meet the restrictions.

After the restricted contribution is accepted, the nonprofit organization should monitor compliance with the restrictions. See *Other resources* later in this article for the location of a contribution documentation form that can be used to identify donor restrictions on gifts and the need for compliance monitoring. (See also the discussion in *PPC's Nonprofit Tax and Governance Guide* about legal compliance issues related to restricted gifts.)

Observation: Organizations should be wary of restrictions placed by a donor on when a gift may be sold. Donors sometimes attempt to prevent the organization from selling donated property within the three-year period that requires Form 8282 (Donee Information Return) to be filed.

Real Estate Donation Policy. Gifts of real estate can be troublesome because often they cannot be quickly sold, they may not generate cash flows during the holding period, and they can expose the organization to third-party liability. See *Other resources* later in this article for the location of a real estate acceptance checklist.

Conservation Easements. The IRS is concerned about the valuations of conservation and facade easements, and technical compliance with the substantiation requirements. The IRS updated its Conservation Easement Audit Technique Guide (ATG) to aid IRS examiners in auditing property contributions with permanent restrictions on use and development. The ATG indicates the IRS examiner should determine if the donee organization is monitoring the easement for compliance with the conservation agreement. Failure to appropriately monitor compliance may result in the loss of a charitable deduction for the donor and possible loss of goodwill to the charity. Organizations should carefully consider whether to accept those types of partial interests in real property. For organizations that choose to accept conservation easements in real property, a policy should be developed to appropriately monitor the easement for compliance with the conservation agreement. The policy should determine the frequency and type of monitoring, as well as identify actions to be taken if violations of the agreement occur. Adequately documenting the organization's monitoring activities is important. See *Other resources* for the location of a sample conservation easement monitoring form.

Observation: Congress is currently considering legislation limiting the tax deduction of syndicated conservation easement contributions. Stay tuned.

Other resources. Some helpful resources are available in *PPC's Nonprofit Tax and Governance Guide*—

- Sample Gift Acceptance Policy
- Sample Contribution Documentation Form
- Real Estate Acceptance Checklist
- Conservation Easement Monitoring Form

Practical Consideration:

A gift acceptance policy should be carefully drafted and reviewed at least annually with internal collaboration of affected departments and competent outside counsel.

IRS INCREASES MILEAGE RATE. In recognition of recent gasoline price increases, the optional standard mileage rate for the final six months of 2022 has been increased. Taxpayers may use the optional standard mileage rates to calculate the deductible costs of operating an automobile for business and certain other purposes. For the final six months of 2022, the standard mileage rate for business travel will be 62.5 cents per mile, up four cents from the rate effective at the start of the year. The new rate for deductible medical or moving expenses (available for active-duty members of the military) will be 22 cents for the remainder of 2022, up four cents from the rate effective at the start of 2022. These new rates are effective July 1, 2022. The 14 cents per mile rate for charitable donations remains unchanged as it is set by statute. (News Release IR 2022-124)

2022 Compliance Supplement Released

For the past several years, the Office of Management and Budget (OMB) has struggled to release the annual Compliance Supplement in a timely manner, causing many difficulties and confusion for practitioners performing single audits as well as auditees. The delays have been especially troublesome with the significant amount of COVID-19-related funding, which resulted in many new programs and expansion of many existing award programs. The compliance audit community was pleasantly surprised when on May 12, 2022, the OMB issued the 2022 OMB Compliance Supplement.

The 2022 Compliance Supplement is effective for audits of fiscal years beginning after June 30, 2021, and supersedes the 2021 Compliance Supplement, including its two addenda and a technical update. OMB has stated that they do not plan to release an addendum to the 2022 Compliance Supplement.

Practical Consideration:

The 2022 Compliance Supplement is available at **www.whitehouse.gov/wp-content/uploads/2022/05/2022-Compliance-Supplement_PDF_Rev_05.11.22.pdf** (single pdf file). The AICPA Government Audit Quality Center (GAQC) has posted the Compliance Supplement by section at **www.aicpa.org/resources/article/omb-compliance-supplement-resource-center**.

Highlights

Appendix V lists the changes made to the 2022 Compliance Supplement in detail. The following paragraphs highlight some of the key changes.

Part 2—Matrix of Compliance Requirements. Current year changes, which are minimal compared to recent years, are shown with yellow highlights. The six-compliance requirement mandate that was first introduced in the 2019 Compliance Supplement remains in effect. *This six-requirement mandate continues to not apply to programs not included in the Compliance Supplement*. For programs that are not included in the Compliance Supplement, the framework in Part 7 of the Compliance Supplement should be applied.

Part 4—Agency Program Requirements and Part 5—Clusters of Programs. Updates reflect program additions and deletions (including additions and deletions within certain clusters), program title changes, COVID-19 and statutory requirement updates, reference updates, and technical changes and corrections.

There are new programs resulting from the Infrastructure Investment and Jobs Act (IIJA) that were not included in the 2022 Compliance Supplement. OMB decided that, rather than holding up the release of the 2022 Compliance Supplement, they would add the programs in the 2023 Compliance Supplement. Because little of the infrastructure funding has been released before June 30, 2022 year-ends, this should not have a significant effect on June 30, 2022 year-end single audits. However, as the year progresses and more program funds flow out to grantees, such programs could be major programs. Auditors should use the framework in Part 7 of the Compliance Supplement to determine compliance requirements to test.

Appendix IV—Internal Reference Tables. Appendix IV includes a complete list of programs designated as *higher risk* and denotes with a single asterisk or a double asterisk which programs are considered 100% COVID-19-related funding, and which are existing programs that received additional COVID-19-related funding, respectively.

Appendix IV states that auditors are not precluded from determining that a program or other cluster that has been designated as *higher risk* qualifies as a low-risk Type A program if both of the following criteria are met:

- The program otherwise meets the criteria for a low-risk Type A program under 2 CFR section 200.518; and
- The percentage of COVID-19-related funding in the program or other cluster during the nonfederal entity's fiscal year is not material to the program or other cluster as a whole. (Appendix IV of the 2022 Compliance Supplement provides several examples.)

Note that the inclusion of COVID-19-related funding within the Research and Development (R&D) cluster does not create a *higher risk* for the R&D Cluster

Appendix IV states that there are no changes to the normal risk assessment process for Type B programs identified as higher-risk by a federal agency with the concurrence of OMB. That is, the *higher risk* identification must be considered with the other factors in 2 CFR section 200.519. It also states that auditors are not required to prioritize the assessment of Type B programs designated as *higher risk* over other Type B programs.

Practical Consideration:

Auditors should prepare audit documentation supporting the risk considerations and conclusions for *higher risk* program determination.

Appendix VII—Other Audit Advisories. Updated section I, Novel Coronavirus (COVID-19), includes additional guidance on COVID-19 funding. Subsections include: definition of COVID-19 funding, treatment of donated personal protective equipment on the schedule of expenditures of federal awards, agency guidance document references, identification of COVID-19-related awards in various documents and single audit applicability, identification of compliance requirements for COVID-19-related awards, responsibilities for informing subrecipients, and alternative compliance examination engagement for eligible Coronavirus State and Local Fiscal Recovery Funds (SLFRF) recipients.

There is also a new section VII to Appendix VII, Federal Audit Clearinghouse Transition from Census to GSA, which indicates that the provider of the Federal Audit Clearinghouse will change from the U.S. Census Bureau (Census) to the U.S. General Services Administration (GSA) on October 1, 2022. Single audits with fiscal periods ending in 2021 or earlier should be submitted to Census, which will continue to receive and process single audits for a limited period of time after September 30, 2022. Single audits with fiscal periods ending in 2022 will be submitted to the General Services Administration beginning on October 1, 2022.

2 CFR section 200.512(1) states that single audits must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. Therefore, if it is not possible to meet the 30-calendar day requirement due to the timing of this transition, audits will not be considered late if they are submitted within nine months after the fiscal period end date.

Practical Consideration:

PPC's SMART Practice Aids™—Single Audit Suite allows the auditor to plan and execute the single audit engagement from beginning to end—including preparation and electronic signoff of practice aids, federal award audit programs, and compliance audit programs. Information about features, including automated rollforward from year to year and a federal award import feature, is available by calling (800) 431-9025 or visiting **tax.thomsonreuters.com**. Single audit guidance is also included in *PPC's Guide to Single Audits* and *PPC's Guide to Audits of Nonprofit Organizations*.

Part 2—Auditor Report Changes Refresher

As noted in Part 1 of this article in the July issue of *The PPC Nonprofit Update,* since May 2019 the ASB has issued a suite of standards [Statement on Auditing Standards (SAS) Nos. 134–140] that change the current auditor's report and provide for many additional requirements. These changes will have a significant impact on audits conducted this year as the suite of standards is effective (as amended by SAS 141) for audits of financial statements for periods ending on or after December 15, 2021. Part 1 of this article focused on overall changes addressed in the reporting suite, and highlighted key changes in SAS 134. This article highlights SAS 135–140.

More Suite Highlights

SAS 135. SAS 135, *Omnibus Statement on Auditing Standards,* aligns Auditing Standards Board guidance with the Public Company Accounting Oversight Board's (PCAOB) standards concerning (1) communicating with those charged with governance, (2) related parties, and (3) consideration of fraud in a financial statement audit in order to provide consistency between the two standard setters and enhance audit quality.

SAS 136. SAS 136, *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA,* provides for new requirements concerning engagement acceptance, audit risk assessment and response, communications with those charged with governance, procedures for an ERISA section 103(a)(3)(c) audit, and considerations for the Form 5500 along with a new audit report format.

SAS 137. SAS 137, *The Auditor's Responsibilities Relating to Other Information Included in Annual Reports,* allows for transparency concerning the auditor's responsibility for other information included in an annual report when the auditor has obtained all the other necessary information at the date of the auditor's report on the financial statements.

SAS 138. SAS 138, *Amendments to the Description of the Concept of Materiality,* amends AICPA Professional Standards to align with the description of materiality used by the U.S. judicial system, the auditing standards of the PCAOB, the SEC, and the FASB. The alignment helps to remove inconsistencies between current standards

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SAS 139. SAS 139, *Amendments to AU-C Sections 800, 805, and 810 to Incorporate Auditor Reporting Changes from SAS No. 134,* aligns the new auditor reporting language for statements prepared following special purpose frameworks; single financial statements; specific elements, accounts, or items of a financial statement; and summary financial statements.

SAS 140. SAS 140, *Amendments to AU-C Sections 725, 730, 930, 935, and 940 to Incorporate Auditor Reporting Changes from SAS Nos. 134 and 137,* completes changes needed to conform generally accepted auditing standards with the reporting provisions of SAS 134 and other recently issued SASs. More specifically, the amendments relate to the presentation of supplementary information and required supplementary information in the auditor's report and revisions for consistency with OMB's Uniform Guidance and the 2018 Yellow Book.

Practical Consideration:

Specific nonprofit reporting guidance is available in Chapter 13 of *PPC's Guide to Audits of Nonprofit Organizations*. *PPC's Guide to Single Audits* provides report illustrations for Yellow Book and Single Audit reporting.

We Want Your Financial Statements!

We have begun work on the 2022 edition of *PPC's Nonprofit Financial Illustrations and Trends (Nonprofit Trends)* and are on the lookout for new illustrative financial statements of nonprofit organizations. We are especially interested in financial statements for organizations that have implemented new accounting standards. We ask that the financial statements include note disclosures and not be for governmental units.

To comply with AICPA or state ethics requirements, you may need to obtain permission from your client before submitting financial statements for consideration. We will carefully edit any financial statements to obscure the name and location of the organization and other identifying information. If your submission is selected for inclusion in the 2022 edition of *Nonprofit Trends*, you will receive a free copy of that edition plus *PPC's Guide to Nonprofit GAAP* when they are available in the fall.

Financial statements may be submitted by attaching the files to an email and sending to **CheckpointPPCNPT@thomsonreuters.com**. [**Note:** We're also looking for for-profit entity financial statements (GAAP, cash, income tax, FRF for SMEs). If selected, you'll receive *PPC's Guide to Preparing Financial Statements* and *PPC's Guide to GAAP*). Please send to same URL.]