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Mitigating and Managing Gift Acceptance and Donor Risk in Today's Hyper-Scrutinized Climate

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Feeling (or Perhaps Fearing) the Heat

Sackler. Epstein. Kanders. The very mention of these names probably sends shivers down the spines of fundraisers everywhere.

It takes but a quick Google search to generate links from various news outlets on these newsmakers. The Sackler family, owner of Purdue Pharma, maker of OxyContin, is largely blamed for causing and profiting from the opioid epidemic, which has claimed hundreds of thousands of lives and devasted families and communities. The University of Connecticut received money from Raymond and Beverly Sackler for arts programs and scientific research (though unrelated to pain treatment and addiction) and is now in the process of redirecting those funds toward addiction research and education. Other leading institutions in the state have spent the past year quietly redirecting those funds as well or returning them altogether.

Jeffrey Epstein was an American financier and convicted sex offender whose philanthropic ties to the MIT Media Lab brought about the resignation of its director. And Warren Kanders, whose firm Safariland produced and sold the tear gas used on migrants at the US-Mexico border, ignited protests at both his alma mater, Brown University, where he had made numerous gifts, and at the Whitney Museum, where he was vice chair of the board and had made a significant contribution toward the Warhol retrospective.

While these examples may seem extreme, they do draw attention to an important issue in philanthropy. There are absolutely times when donors who were once deemed perfectly acceptable, even praiseworthy, become tainted and seemingly overnight, *personae non gratae*.

Philanthropic contributions from such individuals invariably put an organization under the microscope, causing consternation and concern while also generating press coverage and firing up social media, resulting in considerable public and governmental scrutiny. For nonprofit organizations that increasingly rely on philanthropic support to fund their operations, support their missions, and advance their causes, tainted donations can be vexing at best and toxic at worst. While problematic donations aren't new, awareness of them and the speed with which news spreads is unprecedented, thanks in large part to social media and the ability to gather and disseminate information faster than ever before. This all causes angst among fundraising professionals everywhere.

Modern-day organizations are realizing they must have established protocols and processes in place because accepting gifts from donors with questionable backgrounds or misaligned values can imperil those organizations and the people and causes they serve. The clarion call today is to be proactive by forming a gift acceptance committee, determining campaign counting, establishing internal workflows, and ensuring that the gift acceptance policy is designed to inform due diligence and mitigate risk. Take for example Brown University's recently updated language, which in no uncertain terms states that the institution will not accept money that "could inflict damage to the university's reputation, standing, or integrity, or be contrary to university values."

To be sure, no organization, despite its best efforts and good intentions, can mitigate all risk associated with fundraising. But there are absolutely several things to consider and steps to take that will ensure you're as prepared as possible should the worst scenario unfold.

Establishing a Risk Management Matrix is Essential

It is vital for nonprofit leaders to put gift acceptance policies and practices, and the assessment of donor values and behavior, high on their risk management matrix. Mapping out the issues is step one. With rigorous thought and a collaborative process—step two, reducing risk—is absolutely doable. At some point, it is virtually inevitable that issues will arise and start to smolder. Dealing with them and heading off a potential blaze or even firestorm—step three—is far more challenging, especially as the intensity of the heat escalates.

From the get-go, it is essential to think of almost all gifts as simply that: gifts of genuine value without inappropriate restrictions from well-intentioned donors seeking to do good or perhaps even leaving a legacy of lasting impact. But because exceptions to that tenet do occur, creating a matrix of the possible issues and problems that can arise from the exceptions is an essential initial step.

The matrix needs to capture two broad categories:

1. The criteria for unacceptable gifts.
2. The due diligence needed to minimize risk from gifts that are accepted from donors whose values and behavior, which may come to light after the contribution, lead to financial and reputational problems for the nonprofit.

Getting Out Ahead of Assessing Unacceptable Gifts

All nonprofits have some policy, written or otherwise, on what gifts are unacceptable. A surprisingly high percentage have policies that are limited to the obvious—contributions derived from ill-gotten gains and/or made by donors with criminal records or sordid reputations. One hopes that such situations are rare, that such gifts are not pursued in the first place, and that offers of such donations are turned away long before the need would arise to deal with the repercussions. Circumstances like this seem quite cut and dry.

But what about accepting a gift from an investor who reaped a fortune in the tobacco industry but who has become regretful and now wants to fund cancer research? Or what about accepting a gift from a well-publicized but not criminally charged nefarious business person, long retired, and naming a recreational center in their honor but rejecting the donor's wish to name its business school after them? It is the vast gray area that requires careful deliberation.

Questions that should be raised include but are not limited to the following:

- Is the gift really a gift or is it a tactic to gain some tangible benefit for the donor (e.g., pay for a child's tuition or that of a friend's by donor-imposed scholarship requirements that fit only a specific individual)?
- Does the donor have the financial wherewithal to fulfill a gift pledge?
- Might the funds being used to make the gift be tainted in any way? What constitutes "tainted"? (Funds from a tobacco company or environmental

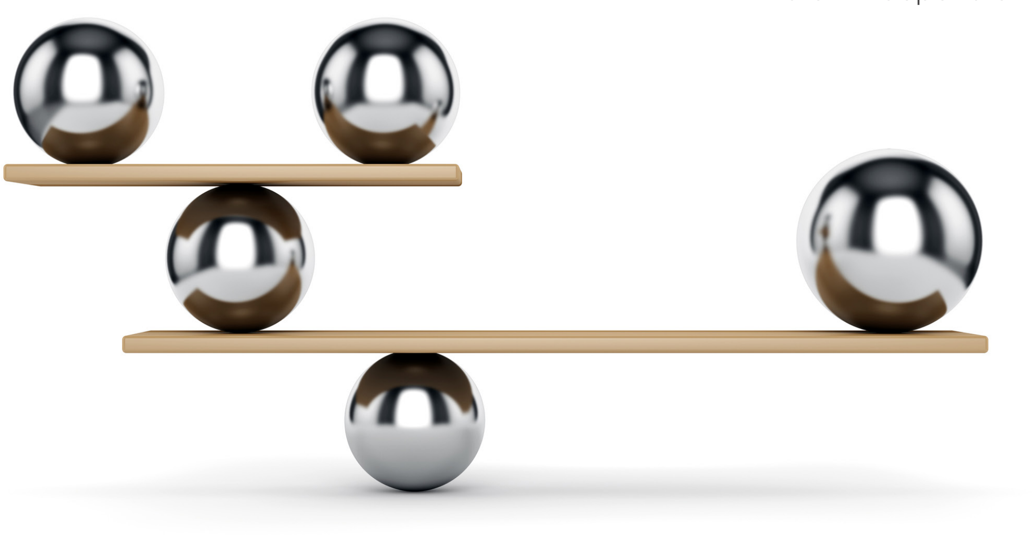
polluter? What about those from someone who provided false information on their resume or who was caught plagiarizing?)

- Will the organization incur a financial or reputational cost by accepting the gift, and if so, does that cost outweigh the anticipated benefit to the organization? (Perhaps obvious but worth stating nonetheless is that treating a gift as confidential or a donor as anonymous when the gift or donor is questionable is entirely different from the donor of a worthy gift who prefers privacy for legitimate reasons.)
- What level of contribution will trigger a review of gift acceptability and the donor's reputation and behavior? (Honoring the donor by naming a building certainly qualifies as a trigger, but perhaps not a $10,000 unrestricted gift to the annual fund. Where should the line be drawn?)
- What restrictions on the gift designated by the donor are unacceptable? At what point do the costs of adhering to the restrictions become too burdensome for the organization?
- Under what circumstances may the donor's expectations for the gift exceed what the organization can accomplish with the funds, and to what extent can the expectations be brought into alignment with a realistic outcome? (This would certainly seem to apply to conditional pledges, too.)

In practice, the answers to these questions are rarely absolute and are best not left to a single individual to answer. In fact, the task would ideally fall to an established committee, likely comprised of individuals from the organization's development staff, leadership team, and legal counsel. Outside fundraising counsel could play a key role as well.

Minimizing Risk by Establishing Policies and Protocols

As the range of potential gift acceptance issues are identified, a due diligence process should be developed to establish both a formal policy and a protocol for dealing effectively and expeditiously with issues should they arise. How formal and comprehensive the policy and protocol are will depend on the complexity of the



organization. While the range of issues that may confront a local arts organization are likely less expansive than those a medical center or research university would face, they can be just as threatening and impactful regardless of the organization's size and complexity.

A number of guidelines should be kept in mind as the organization crafts its policy and protocol:

- The imprimatur of the chief executive and governing board must be on the policy and protocol. Risk management in the fundraising program must be ultimately approved, if not initiated by, the leaders of the organization rather than by the development office or any other single person or unit in the organization. The governing body must be fully on board for a variety of reasons, including that risk management is central to their legal and fiduciary responsibilities and board members are typically donors themselves, and hence, need to lead by example.
- Development of the policy and protocol should be a collaborative task involving all those who can add expertise and sound judgment and who will be affected by the outcome. Besides development, the finance, legal, and communications staffs should be part of the process, as well as representatives of internal stakeholders, such as physicians, faculty, or performing artists. Bringing multiple perspectives to bear can make the task difficult, but the outcome will likely be stronger and have greater credibility and integrity. Also, by involving all key stakeholders in developing the policy and protocol, it will then be easier for them to accomplish the task of integrating workflows between departments and key individuals.
- Together with a gift acceptance policy, one that should be periodically reviewed and updated, a gift acceptance review protocol for handling gift and donor reputation issues should be put in place. Again, the protocol should include the appropriate array of experts and stakeholders who need to be involved and to what extent to ensure the ability to act expeditiously is not impeded. Rarely do gifts and donors emerge suddenly and out of the blue, but the review process needs to be seamless and efficient.
- Preemptive steps can be taken by the development program to minimize the cases that reach the gift acceptance decision-makers. The prospect development team, including prospect research, is in effect the first line of defense. As part of the prospect assignment process, all prospects rated above a designated threshold can be vetted for financial capability and reputational issues. Development officers themselves need to be alert to "red flags" as they become acquainted with their individual prospect's personal and professional

characteristics. Small development operations may not have the resources for comprehensive vetting, but time should always be devoted to the highest-level prospective donors.

Great care must be taken in conducting due diligence. Prospective donors could well be offended if they suspect they are being singled out for "investigation" and greater scrutiny. This is all the more reason for having a written policy and established protocol in place, one based on the assumption that donors are upstanding people motivated by worthy objectives while recognizing that there are rare exceptions when their involvement with the nonprofit could do it harm in the arena of public opinion.

Managing the Crisis

The preparation of a sound gift acceptance policy and protocol reduces risk but will not eliminate it entirely. Optimism that all is good and well should be balanced with a carefully thought out crisis management plan that is designed to deal with the bad, should the need arise.

With the benefit of 20-20 hindsight, it can be argued that most of the recent, widely publicized gift acceptance disasters could have been avoided with more thorough vetting and across-the-organization adherence to existing standards. But vetting and a review protocol will not catch all potential or real issues, and importantly, problems can occur years and even decades after a gift was made and a donor's name was affixed to a program or building.

As with the overall approach to establishing the policy and protocol, managing the crisis must be an organization-wide collaborative effort. That effort is typically led by the organization's chief communications officer working closely with the chief development officer in support of the CEO and governing board and the organization's outside fundraising counsel. Proactively preparing for such an event is the impetus for crisis communication planning. Crisis communication is essential in the effort to protect people, assets, and brands. As such, a crisis communication plan is a set of guidelines that include the steps to take when a crisis first emerges and how best to communicate with internal and external stakeholders. Numerous books and articles have been written about crisis management and communication, but all strategies call for having a protocol in place, getting out in front of an issue and being as transparent as possible, and taking corrective action as best as one can.

Being Proactive is Paramount

Developing standards for accepting gifts, putting a protocol in place for reviewing questionable donations as well as the reputations and backgrounds of prospective donors, and managing problems if and when they arise, are inherently challenging and sometimes exasperating and possibly even embarrassing. Values and norms can become politicized within a charitable organization, and achieving buy-in from key stakeholders can indeed be an arduous process. Fundraising executives can make the task less burdensome by examining best practices at other organizations and conferring with those who have dealt with the policies and protocols in the recent past.

For today's fundraising professionals, the litmus test for any gift is whether or not it can be defended in a public forum. BWF is ready to work with clients to position themselves to address this pressing matter and be proactive and strategic in service to protecting their brands. No fundraiser wants to have to deal with a tainted donation, but there are steps that can be taken preemptively to mitigate the risk of one surfacing and ensure that the organization is ready to deal with the issue should it occur. Preparation can help ensure that the heat stays concentrated on fundraising efforts, not on a PR blaze caused by a tainted donation.

Contact Us

The BWF Donor Risk Assessment involves reviewing an organization's policies, procedures, and capabilities to provide a roadmap for essential and successful risk governance. In addition, we can guide development of revised gift acceptance policies, escalation procedures, and response management strategies, as well as provide training in due diligence research. For more details, contact Steve Birnbaum at sbirnbaum@bwf.com.

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