

*Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations*¹

Solicitation materials and other communications addressed to donors and the public must clearly identify the organization and be accurate and truthful.

Charitable solicitations—whether in print, via the Internet, over the phone, or in person—are often the only contact a donor has with a charitable organization. Clear and accurate solicitation materials help potential contributors to contact the organization and obtain information necessary to distinguish an organization with a solid history of service to the community from one that may claim a similar name or purpose, but whose fundraising appeal is misleading. A donor has the right to know the name of anyone soliciting contributions, the name and location of the organization that will receive the contribution, a clear description of its activities, the intended use of the funds to be raised, a contact for obtaining additional information, and whether the individual requesting the contribution is acting as a volunteer, employee of the organization, or hired solicitor. (A Donor Bill of Rights, endorsed by many organizations, is available at www.nonprofitpanel.org.) Descriptions of program activities and the financial condition of the organization must be current and accurate, and any references to past activities or events should be dated appropriately. If an organization is not eligible to receive tax-deductible contributions, it must disclose this limitation at the time of solicitation. Similarly, a charitable organization that the IRS has recognized as eligible to receive tax-deductible contributions should clearly indicate in its solicitations how donors may obtain proof of that status. The charity may post a copy of its IRS letter of determination on its website or offer to provide a copy of the letter to donors who request it. If the solicitation promises any goods or services to the donor in exchange for contributions, the materials should also clearly indicate the portion of the contribution (that is, the value of any goods or services provided) that is not tax-deductible.

Contributions must be used for purposes consistent with the donor's intent, whether as described in the relevant solicitation materials or as specifically directed by the donor.

When a donor responds to a charitable solicitation with a contribution, he or she has a right to expect that the funds will be used as promised. Solicitations should therefore indicate whether the funds they generate will be used to further the general programs and operations of the organization or to support specific programs or types of programs. A donor may also indicate through a letter, a written note on the solicitation, or a personal conversation with the solicitor or another official of the charitable organization how he or she expects the contribution to be used. In some cases, an organization may not receive sufficient contributions to proceed with a given project or it may receive more donations than it needs to carry out that project. If the organization is unable or unwilling to use the contribution as stated in its appeal or in the donor's communication, it has an obligation to contact the donor and request permission

¹ www.nonprofitpanel.org

to apply the gift to another purpose or offer to return the gift. Charitable organizations should strive to make clear in materials that solicit contributions for a specific program how they will handle such circumstances. A charitable organization should carefully review the terms of any contract or grant agreement before accepting a donation. If the organization will be unable or unwilling to comply with any of the terms requested by a donor, it should negotiate any necessary changes prior to concluding the transaction. Particularly in the case of substantial contributions, the recipient should develop an agreement that specifies any rights it may have to modify the terms of the gift if circumstances warrant. Some charitable organizations include provisions in their governing documents or board resolutions indicating that the organization retains “variance powers,” the right to modify conditions on the use of assets. Such powers should be clearly communicated to donors through a written agreement.

A charitable organization must provide donors with specific acknowledgments of charitable contributions, in accordance with IRS requirements, as well as information to facilitate the donors’ compliance with tax law requirements.

Acknowledging donors’ contributions is important not only because of IRS requirements, it also helps in building donors’ confidence in and support for the activities they help to fund. Organizations should establish procedures for acknowledging contributions in a timely manner and for providing appropriate receipts for cash contributions if requested. Regular updates to donors on the activities they support is another way to build trust and loyalty, as is providing ways for contributors to find more information on their own—say, through a website, print publications or visits to the organization’s office. If the organization has provided goods or services to the donor in exchange for or recognition of the contribution, an acknowledgement must include a good-faith estimate of the fair market value of those goods or services—that is, the amount the donor would have to pay to purchase those goods or services independently. The cost of the item to the charitable organization does not determine its fair market value, although cost may be an important factor. For example, a hotel may donate the food served at a banquet, thus imposing zero cost on the charitable organization. But the fair market value of a donor’s meal at that banquet would not be zero; it would be the price he or she would have to pay for a similar meal at that hotel. The charitable organization does not have to include information on fair market value in a donor acknowledgement if that value is not more than 2 percent of the contribution or \$89, whichever is less. (These are 2007 amounts; the IRS changes them periodically.) It is generally unwise, and may pose a conflict of interest, for a charitable organization to appraise the value of gifts of property from taxpayers seeking income tax deductions for such contributions. Organizations should, however, alert donors to IRS rules for substantiating such claims and encourage them to seek appropriate tax or legal counsel when making significant non-cash gifts.

A charitable organization should adopt clear policies, based on its specific exempt purpose, to determine whether accepting a gift would compromise its ethics, financial circumstances, program focus or other interests.

Some charitable contributions have the potential to create significant problems for an organization or a donor. Knowingly or not, contributors may ask a charity to disburse funds for illegal or unethical purposes, and other gifts may subject the organization to liability under environmental protection laws or other rules. Some types of corporate sponsorships or interests in corporate stock or assets may result in unrelated business income for a charitable organization. Donors may also face adverse tax consequences if a charity is unable to use a gift of property in fulfilling its mission and must instead sell or otherwise dispose of the property soon after the donation is received. A gift-acceptance policy provides some protection for the board and staff, as well as for potential donors, by outlining the rules and procedures by which an organization will evaluate whether it can accept a contribution even before an offer is actually made. The policy should make clear that the organization generally will not accept any non-cash gifts that are counter to or outside the scope of its mission and purpose, unless the item is intended for resale or would otherwise produce needed revenue for the organization. It should list any funding sources, types of contributions, or conditions that would prevent the organization from accepting a gift. The organization should also consider establishing rules and procedures for determining whether a gift is acceptable and should identify circumstances under which a review by legal counsel or other experts would be required before accepting a gift.

A charitable organization should provide appropriate training and supervision of the people soliciting funds on its behalf to ensure that they understand their responsibilities and applicable federal, state and local laws, and do not employ techniques that are coercive, intimidating, or intended to harass potential donors.

A charitable organization may be legally responsible when those who solicit on its behalf engage in illegal or fraudulent practices. Yet even beyond ensuring that fundraising practices are lawful and honest, a charitable organization has many reasons to provide careful training and supervision to those who solicit donations on its behalf. The most obvious reason is that they are often a potential donor's first, and sometimes only, direct contact with the organization. The organization should therefore ensure that its fundraisers are respectful of a donor's concerns and do not use coercive or abusive language or strategies to secure contributions, misuse personal information about potential donors, pursue personal relationships that are subject to misinterpretation by potential donors, or mislead potential donors in other ways. All those who solicit contributions on the organization's behalf, including volunteers, should be provided with clear materials and instructions on what information to provide to prospective donors, including the organization's name and address, how the donor can learn more about the organization, the purposes for which donations will be used, whether all or part of the donation may be tax-deductible, and who the donor can contact for further information. If a charitable organization decides to use an outside professional fundraising firm or consultant, it should have a clear contract—as required by law and guided by good practice—that outlines the responsibilities of the organization receiving the funds and of the firm or consultant. The fundraiser

must agree to abide by any registration and reporting requirements of the jurisdictions in which fundraising will be conducted, as well as federal restrictions on telephone, email, or fax solicitations. The charitable organization should verify that the outside solicitor is registered as required in any state in which the solicitor will be seeking contributions. In general, those soliciting funds on behalf of charities should refrain from giving specific legal, financial and tax advice to individual donors. Rather, when such questions arise, fundraisers should encourage donors to consult their own legal counsel or other professional advisors before finalizing a contribution.

A charitable organization should not compensate internal or external fundraisers based on a commission or a percentage of the amount raised.

Compensation for fundraising activities should reflect the skill, effort, and time expended by the individual or firm on behalf of the charitable organization. Many professional associations of fundraisers prohibit their members from accepting payment for fundraising activities based on a percentage of the amount of charitable income raised or expected to be raised. Basing compensation on a percentage of the money raised can encourage fundraisers to put their own interests ahead of those of the organization or the donor and may lead to inappropriate techniques that jeopardize the organization's values and reputation and the donor's trust in the organization. Percentage-based compensation may also lead to payments that could be regarded by legal authorities or perceived by the public as "excessive compensation" compared to the actual work conducted. Percentage-based compensation may also be skewed by unexpected or unsolicited gifts received by the charitable organization through no effort of the fundraiser. A similar logic applies to employees. Some charitable organizations choose to provide bonuses to employees for exceptional work in fundraising, administrative, or program activities. If so, the criteria for such bonuses should be clearly based on the quality of the work performed, rather than on a percentage of the funds raised.

A charitable organization should respect the privacy of individual donors and, except where disclosure is required by law, should not sell or otherwise make available the names and contact information of its donors without providing them an opportunity at least once a year to opt out of the use of their names.

Preserving the trust and support of donors requires that donor information be handled with respect and confidentiality to the maximum extent permitted by law. Charitable organizations should disclose to donors whether and how their names may be used, and provide all donors, at the time a contribution is made, an easy way to indicate that they do not wish their names or contact information to be shared outside the organization. In all solicitation and other promotional materials, organizations should also provide a means, such as a check-off box or other "opt-out" procedure, for donors and others who receive such materials to request that their names be deleted from similar mailings, faxes or electronic communications in the future. The organization should immediately remove a donor's name from any lists upon request and should ensure that all donors at

least once a year are provided information about how they may request that their names and contact information not be shared outside the organization.

Organizations that gather personal information from donors and other visitors to their websites should have a privacy policy, easily accessible from those websites, that informs visitors to the site what information, if any, is being collected about them, how the information will be used, how to inform the organization if the visitor does not wish personal information shared outside the organization, and what security measures the charity has in place to protect personal information.