EFFECTIVE PRACTICES AND IDEAS COLLECTION (EPIC)

Unit 3 – Critical Policies

Chapter 1 – Conflict of Interest

“Self-interest is the enemy of all true affection.”

Tacitus

Most people, including most community foundation board members, have good intentions whenit comes to avoiding conflicts of interest. But gray areas abound, and sometimes the person for whom it is hardest to discern what is a conflict is the person who has the conflict. We are all wired for self-preservation. That’s why it’s so important not only to espouse the highest Standards when it comes to avoiding conflicts of interest, but to police those Standards as a group.

Assessment

Take this quiz to determine your community foundation’s level of effectiveness in this area:

1. The Conflict-of-Interest Policy is reviewed at least annually to ensure compliance with regulations.
2. The Conflict-of-Interest Policy is reviewed regularly with board members and volunteers toensure the policy is being followed.
3. The foundation ensures that adequate information is gathered to disclose relationshipswith interested persons to complete the Form 990.
4. The policy defines "disqualifying relationship" and "interested person."
5. The policy requires disclosure of charitable involvement, investment interests, family relationships, business/vendor relationships or other relationships which might result ina conflict of interest.
6. The policy addresses grants to charities on which a staff or board member serves on theboard of directors.
7. The policy addresses the awarding of scholarships to family members of staff and boardmembers.
8. The policy requires that staff and volunteers affirm, in writing, that they have read andunderstood the conflict-of-interest policy.
9. A written conflict of interest disclosure statement is submitted by all staff, board members and volunteers.

Stories

Family Ties

Sometimes mere disclosure is not enough. A family member of the executive director (or any other staff member) should not serve on the board. We at one time made a grant to a nonprofitwhere the mother of the executive director was a board member. When that executive director was later accused of malfeasance, there is no way that board member could remain neutral.

What I Learned: Don't put your organization in a tough spot. Relatives of staff should not be onthe board.

What I Wish I Knew

- The goal of this policy is to ensure that board members can make fair andunbiased decisions, and to assure the community that that is the case.
- If you don't collect this information ahead of time, when it's time to do the 990 you willhave a lot more work for yourself.

Red Flags

- *Poor reporting on the 990.* Understand the questions that the 990 is asking so you havethe information to report it accurately.
- *Conflicts of interest disclosed on the Form 990.* Disclosing conflicts can harm the reputation of your foundation, but you must disclose them if you have them. Try to avoid getting into conflict situations in the first place.

Practical Tips

- Make sure the policy is broad enough that it provides clear instruction to board memberswhen they feel conflict is present, including areas other than grantmaking.
- The presence or absence of a conflict really needs to be self-reported by the board member; each board member should have the latitude to identify something as a conflicteven if it would not need to be treated that way by the letter of your policy.
- Make sure the guidelines clearly state the action to be taken after the conflict is disclosed.
- Make sure the conflict of interest is included with the motion, so it is easy to find.

Chapter 2 - Confidentiality

"Society is built upon trust, and trust upon confidence of one another's integrity."

Robert South

Confidentiality is a cornerstone of your foundation's relationships with its various constituencies – donors, agencies, community leaders. Without it, trust will falter, and your mission will suffer.Just one breach can do a lot of damage. Yet insecure people are inevitably tempted to share secrets to which they are privy, and anyone can slip up out of absent-mindedness. That's why your foundation must be systematic and unequivocal in emphasizing the importance of confidentiality.

Assessment

Take this quiz to determine your community foundation's level of effectiveness in this area:

1. The foundation has confidentiality statement(s) applicable to all staff, board and volunteers which cover all organizational operations.
2. Confidentiality statements address varied forms of communication such as written, verbal and/or electronic communications.
3. All individuals associated with foundation operations sign confidentiality statements atleast annually and more often as conditions warrant.
4. Vendors with access to information the foundation considers confidential sign confidentiality statements when the business agreement is established. (Vendors may include cleaning service, direct mail service, information technology vendor, marketingfirm, consultants, etc.)
5. Breaches of confidentiality are addressed promptly – by the executive director when committed by staff or office volunteers, by the executive committee or officer(s) when committed by board members or committees, and by the board or executive committeewhen committed by the executive director.
6. The foundation has clear policies regarding disclosure of donor lists and other confidential information.
7. A process or practice exists to ensure that the identity of anonymous donors is protected.

Stories

The Talker

Once upon a time there was a woman who was on numerous boards and committees in her local community. One organization seemed to receive her extra attention and she spent an inordinate amount of time badmouthing that organization to peers. She disclosed items shared with her in confidence as a board member of that organization. Because there existed a lot of cross-membership – the same people serving on many of the same boards – this woman's actions were detrimental to many people and programs. Her loyalty to the organization was questioned and she was not invited to continue her service to the board once her first term had expired.

What I Learned: Breaking confidences brings serious consequences. Screening of potential board and staff members should include inquiries about candidates' ability to maintain confidentiality.

Inside Information

We once had a board member disclose information prematurely. It was the day of a board meeting when several grants were to be brought to a vote. Board members had received information about the grants in their board meeting packet – information which was to remain confidential until the board had acted upon it, after which staff would notify grant seekers that their requests had been approved or declined. The morning of the meeting, I received an email from the executive director of an organization whose grant was being recommended to our boardfor approval by our distribution committee. The director conveyed his gratitude for the communityfoundation and thanked me for funding his organization with the grant. I realized that one of my board members must have leaked the confidential information to the organization's leader.

I could not respond to the email to either confirm or deny as the board had not yet met. I had my suspicions but could not confirm which board member had violated confidentiality. I did make the president of our board of directors aware along with our Program Director. From a staff standpoint, we handled the process as if the breach of confidentiality did not occur. I relied uponmy board president to address the issue with the board member. That person completed the remainder of her term but was not asked to serve a second term.

What I Learned: Board members will sometimes be tempted to share confidential information. They must hold each other accountable for exercising their duty of loyalty to the foundation. Let them police each other.

What I Wish I Knew

- Confidentiality is an exercise, not just a word. Frequent reminders to board members when you are about to enter a sensitive discussion are important.
- When you put things in writing or an email there is a greater chance that they could beread by someone not intended to see it.

Red Flags

- *Board members who are motivated to serve, in part, by the desire to make themselveslook good*. Don't assume board members will remember and honor their obligation of confidentiality without firm modeling and enforcement by their peers.
- *New items or situations that may require confidentiality* that were not addressed with theoriginal signing of the agreement. Always give out reminders when appropriate.
- *Other people you may not have thought about*. Everyone involved with the foundation is bound to confidentiality – from the cleaning staff to the student interns to the volunteersstuffing the mailings.

Practical Tips

- Spend some time on the confidentiality policy when you distribute it, rather than handlingit in a *pro forma* way – review the policy in face-to-face meetings, giving examples of types of information that require confidentiality.
- Stick a hard copy of the policy in every folder or packet of information pertaining to everycommittee of the foundation; this way you won't forget some of the smaller or less activecommittees when it comes time to renew the agreement.
- Add "confidentiality agreement signed" to the new employee checklist.
- Confidentiality pertains more to people and privacy policy pertains more to information,documents, data, etc.

Chapter 3 - Compensation

"That should be long considered which can be decided but once."
Publilius Syrus

Compensation is an important part of attracting and retaining capable staff. That means it is important for your organization's long-term effectiveness. And because staffing costs make up the largest chunk of your operating budget, board members are sure to keep an eye on compensation too. It is also a subject that provokes curiosity and, sometimes, criticism – from the public, from prospective donors, and from watchdogs like the media and the IRS. This is one part of your foundation's operation that everybody tunes into. Bottom line: develop and follow a sound process for handling compensation.

Assessment

Take this quiz to determine your community foundation's level of effectiveness in this area:

1. The foundation has a deliberate process for determining staff compensation.
2. Responsibility for determining compensation levels is clearly established.
3. The process ensures that no one involved in setting salaries has a conflict of interest.
4. The process allows for both merit and cost of living increases.
5. Decisions about compensation levels are made within the context of appropriate data, including an independent survey of compensation which is specific to the sector or industry.
6. The foundation ensures that it follows Section 4958 of the Internal Revenue Code regarding excess benefits.
7. All compensation decisions are documented in writing.
8. The foundation reports all economic benefits to officers, directors, and key employees on Form 990.

Stories

Hidden Talent

Our foundation was conducting a site visit of a relatively small arts organization. The charity's Form 990 properly included salary and benefits for the charity's executive director. On the budget for the charity, there was a line for "contracted talent." When we asked about that line, we were told that this was contractual payments made for persons who provided the talent required to conduct a performance. When we reviewed the audit, however, it was disclosed that the contracted payments for talent were paid, in fact, to a corporation owned by the executive director. Those additional payments were not disclosed on the Form 990.

What I Learned: Be transparent in how you report compensation for your organization and avoidany real or perceived conflicts of interest.

Irrational Rationalizations

When I worked for a non-profit arts organization, yearly salary discussions could be quite interesting. Some of the members of the board thought that a female director who had benefits through her husband's job, worked because she wanted to and not necessarily because she hadto. During salary discussions some comments from board members included "she dresses too well to need a raise" or "there is no way this position is worth what I receive as a teacher." It wasobvious these board members were not measuring performance in an objective way, such as based on the position job description, goals, and achievements.

What I Learned: Board members may need some gentle guidance in how to conduct executiveperformance reviews and determine compensation. Sharing sample evaluation forms and comparative data may be helpful.

What I Wish I Knew

- The Council on Foundations salary survey is a great source for "comparable data." Notonly is the survey broken down by job title, but by size of foundation, as well. You can also extrapolate the Indiana report only.
- Many states provide salary information. For example, the Indiana Department of Workforce Development compiles occupational employmentstatistics by Metropolitan Statistical Area (MSA), including employment numbers and wage rates for a variety of occupations.

Red Flags

- *Media and donor inquiries about executive compensation.* Many local newspapers will periodically run stories of the salaries of nonprofit executives. Discerning donors will occasionally inquire about your operating expenses as well. You don't have to be ashamed of what you make. You should, however, be able to defend the transparencyand fairness of the compensation process.

Practical Tips

- Remember, some salaries within your foundation will be publicly reported in your Form 990. Scanning other non-profits' 990s can provide you with salary comparisons, as well.
- Create a compensation and benefits sheet to help explain to staff the true cost of personnel salary and benefits.

Chapter 4 – Gift Acceptance

"Gifts come from above in their own peculiar forms."
Johann Wolfgang von Goethe

Why would we ever turn down a gift? You might wonder. *Isn't that what we are here for, to servedonors' interests?* Indeed, advancing donors' charitable goals is an important part of a community foundation's mission. But there are good reasons to scrutinize gifts, and sometimes,to decline them:

- not all prospective donors are charitable;
- not all gifts will further your mission.
- you may not have the capacity to accept and administer all types of gifts; and
- some gifts bring too much work, or liability, to be worth it.

A good gift acceptance policy helps you navigate such issues. It tells you not only what you will and won't accept, but how you will evaluate and receive gifts. With such a policy in place, you canrespond with confidence and professionalism to every opportunity that arises. Experienced donors will expect your foundation to have such a policy, and respect you for it.

Assessment

Take this quiz to determine your community foundation's level of effectiveness in this area:

1. The gift acceptance policy has provisions for all types of gifts, including cash, appreciatedsecurities, life insurance, real estate, gift annuities, closely held securities, personal property, retirement assets, wills/bequests, charitable trusts, and other planned gifts.
2. The policy addresses the legal obligation for the gift to match the mission of the organization for the donor to receive the maximum tax benefit.
3. Board members receive a copy of the policy and have been informed about the parameters of acceptance.
4. The policy is reviewed by legal counsel on a regular basis.
5. Prospective donors are encouraged to seek legal counsel and financial advice in makingtheir decisions, so they can be apprised of benefits and liabilities that could reasonably influence their decision to make a gift to the foundation.
6. The foundation has a committee designated with the responsibility of ensuring compliance with the gift acceptance policy.
7. The foundation has a procedure for declining gifts.
8. The policy clearly defines who has the authority to negotiate, decline or accept a gift onbehalf of the foundation.

9. The policy addresses material restrictions or donor control issues such as policies for disposal of assets gifted to the foundation.

Stories

Making Amends & Making Friends

Our foundation was the recipient of a substantial estate gift that included cash, stocks, and realestate. We did not know the gentleman prior to his death and were totally surprised by his gift. Rather than leave his two estranged daughters or divorced wife an insignificant sum of money, such as a dollar, he omitted any mention of them in his Will. The family had grounds to contest the Will – which had been executed two days before his unexpected death following surgery – and contest it they did.

The foundation chose to initiate discussions with the family and try to reach a settlement withoutgoing to court. It took an extra three months in the settlement phase of the estate, but it was worth it; the family accepted an offer of a small portion of the estate and appreciated the opportunity to choose some of the gentleman's memorabilia. The foundation also asked the daughters to assist us with cataloging and identifying some of the numerous pictures that were left with the estate for public display. They agreed, spent a day with the executive director reminiscing, and in the end, all was well. One of the daughters has subsequently established herown small fund at the foundation in honor of her mother.

What I Learned: Sometimes it's best to settle for a little less than you were originally promised.

Gift or Burden?

While a matching gift program was in effect, a foundation accepted a gift of an island in a river,hoping the property would generate a matching gift. The foundation was advised against it but still accepted the island. There is no value to the island, and they continue to pay taxes and insurance each year.

What I Learned: Investigate before accepting any non-cash gift and remember you don't have toaccept any gift. Many stories exist where a foundation accepted a gift that turned out to be quite a liability: the corner lot where a gas station once operated, the house filled with black mold, the trust fund that requires yearly upkeep of the cemetery plot. Don't be afraid to graciously decline when a prospective gift will not further your mission.

Hidden Treasures

A foundation received a gift of property, complete with farm acreage, a house, and its contents. The property had belonged to three generations of the same family, and it seemed that every personal possession had been kept over the years. The foundation hired an auction company totake care of selling the property. The owner of the auction company became ill while preparing for the personal property sale, so a complete inventory of the vast collection was not completed.On the day of the sale, non-inventoried items in the barn were auctioned in lots. The foundation staff found out later that several items that were sold out of the barn were historically significant--including the pine box a member of the family came home in after being killed in the Normandy Invasion in World War II.

What I Learned: Take time to properly determine what has been gifted to the foundation, so thatthe gift's benefit may be maximized.

Up, Up and Away

A foundation received a gift of stock in the early 1980s. The stock price was increasing almost daily, with no end in sight. The foundation had no gift acceptance policy that addressed the process involved in selling such a gift. The foundation's board of directors decided to hold on to the stock in the hope that the price would continue to climb. It did, and when the stock was sold,the value of the gift was quite large. However, the donor was not happy that the foundation held the stock. When the donor died a few years later, the bulk of their estate did not go to the foundation; it went to create a private foundation.

What I Learned: Adopt a gift acceptance policy that addresses how the foundation will handlegifts of stock. Also, be sure you fully know, and honor, the donor's intent.

Down and Out

It's important to understand the details of the gift acceptance policy. I met with a donor one day and he gifted us some stock. The stock price fell between the day of the gift and the day we soldit. While the donor took a deduction for the market value of the stock on the day of the gift, his fund was credited for the net proceeds, which were less. He was not happy about the difference.

What I Learned: Make sure donors understand your policies and procedures for handling stockgifts before the gift is completed.

What I Wish I Knew

- It's beneficial to talk with a potential donor before the gift is made if possible. Donors usually think their non-cash gift is worth much more than it really is and is muchmore meaningful to the foundation than you think it is (or than it is). An honest but respectful conversation will result in the greatest benefit to both parties, even if you don't end up receiving the gift.
- Be sensitive to reactions from a donor's family as you're talking about potential gifts, andas an estate is being settled.
- A thorough gift acceptance policy is often a large document which covers a wide range oftopics. You should review the document regularly and be prepared to cite it in discussions with donors.

Red Flags

- *A donor who has only a tax benefit as a motive, not a philanthropic intent.* If a donor doesn't really want to make a difference with a gift, he or she may just be trying to unloadan undesirable asset. Do your homework.
- *Offers of gifts that do not fit the charitable mission of the foundation.* This is a legal no-noand can also cause mission drift.
- *Your legal counsel is providing advice to a donor.* Avoid this situation and advise all donors and prospects to seek independent counsel.
- *Material restrictions on gifts.* Carefully evaluate your ability to honor material restrictions – and the benefit to your mission of doing so.

Practical Tips

- Find ways to remind your board and the public that you do have the ability toaccept non-cash gifts with some restrictions/parameters.
- Gifts of real estate carry special considerations for liability – consult outside sources forassistance.
- Know a gift-acceptance expert to call on with unusual gift offers – your regional association of grantmakers may suggest knowledgeable people if you need help findingone.
- Know the percentage of your public support test in case you receive a substantial gift.
- Find ways to accept any gift if possible; work with a potential donor to "make it happen" for them; don't just dismiss an unusual or possibly cumbersome gift without researching all the options.
- By the same token, don't be afraid to refuse a gift or refer a potential donor to anotherorganization that might benefit from acceptance.
- Have a discussion with your board and professional advisers regarding the pros and consof serving as trustee of a trust of which you are also the beneficiary.
- Every gift carries opportunities and liabilities or obligations; use caution and seek advicefor gifts other than cash and marketable securities.
- Be careful about how you sell real estate, not just how you accept it.

Questions?

Have questions about this information? Please contact us.

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