

Philanthropy and Accountability: A New Era of Transparency for Nonprofits

In a seemingly unending spirit of generosity and optimism, Americans lead the world with their outpouring of philanthropic support, as millions of gift dollars find their way annually to thousands of charities to be distributed in hundreds of communities. Whether it is in response to Hurricane Katrina, the December 2004 tsunami, September 11th, 2001, or in ongoing support of educational, cultural and social institutions, Americans continue to open their hearts and bank accounts with private philanthropic gifts in order to support others. This spirit of philanthropy, which has defined Americans for generations, is unchanged and growing stronger. However, there is a new sense of accountability in regards to how the funds will be directed and used. Charitable organizations that are responsible for soliciting and distributing these funds have a new obligation to do so in a timely, efficient and highly effective manner. The American people are looking closely at how our charities are governed, how well they account for the gifts they raise, and how transparent they are in communicating with donors and with the public at large about the results they achieve.

As philanthropic support in America continues to strengthen each year, rising 5% in 2004 to nearly \$250 billion, so do the expectations for

reporting back to individual donors, and the public at large, the results of these philanthropic investments. In an extensive report issued to the Senate Finance Committee in July 2005, a commission organized by the Independent Sector recommended more than 100 ways that charities and congress should address areas of governance, accountability and transparency in order to assure donors that their gifts are being used for their anticipated purposes. The report calls on all nonprofit institutions to develop a culture of accountability and transparency.¹

Across the country, states such as Iowa, Colorado, Kentucky, Hawaii, and California are involved in a variety of lawsuits, regulatory and legislative actions that are forcing nonprofits to become more accountable and transparent in their dealings with donors and with the public. A particularly telling newspaper editorial from Colorado states, "If the University of Colorado's leaders learn anything from this year, it should be this: transparency, transparency, transparency. Many donors and state taxpayers want to know, and have a right to know, how their money is being spent – especially at the

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University of Colorado Foundation, the school's private fund-raising ally." ²

It is not just federal and state legislators who are questioning our philanthropic institutions. Over the past several years there has been a sea of change in individual donors' attitudes regarding the way they choose to make their gifts and in determining the organizations they support. For decades, surveys consistently found that people considered the mission of the charity to be the most important factor in deciding where to make philanthropic investments. Recent studies now find that while the mission is still a top factor, the way in which organizations operate ranks just as highly on the list.

donor recognition and stewardship at a national research university in 2001. In this survey of previous major gift donors to the institution, the study found that fully 50% of those interviewed were "neutral or negative" about the university's donor stewardship programs in relationship to their gifts. Concerns included a lack of periodic and timely information from deans and their faculties about the use of gifts, delays in using the gifts as directed, and generic rather than gift-specific financial or programmatic reports. ⁴

Within weeks following the devastation of Hurricane Katrina, questions were already being raised about the designation and distribution of millions of gift funds directed to assist

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In his book "Sustaining Nonprofit Performance," Paul Light of the Brookings Institute finds that Americans continue to believe in the mission of the institutions they support, and have confidence in the work that charitable organizations perform. However, they are raising many questions about the efficiency and efficacy of operations. "Asked to identify the greater problem facing charitable organizations in my October 2003 survey, only 17% said these organizations had the wrong priorities, while 70% said they were inefficient," states Light. "The warning embedded in these percentages is clear—even Americans who have a great deal of confidence in charitable organizations, and believe that these organizations do a very good job helping people, have come to wonder about fiduciary and administrative performance, which in turn, affects discretionary giving and volunteering." ³

Marts & Lundy conducted a study on

the victims and their communities in rebuilding efforts. Donors want to know, in writing, that their gifts were used for the purposes for which they were given, that they were not wasted, and that administrative fees were not excessive. The public at large, as well as state and federal legislative bodies, wants to know that these massive charitable organizations, responsible for delivering millions of dollars in aid, are operating in the best interests of the country.

As we build our charitable organizations, we are also increasing our expectations of them to deliver support in a myriad of venues—to be the first responders for disaster relief, to provide medical and social support systems, to build and sometimes rebuild our cultural and religious organizations, to fund our private and public institutions of higher education. However, as we intensify our expectations of support, so too are we increasing our expectations that nonprofit organiza-

tions will operate to the highest standards of accountability and transparency.

NONPROFIT SECTOR REPORT TO SENATE FINANCE COMMITTEE

During the past year, Senator Charles Grassley, Chair of the Senate Finance Committee, held hearings regarding the nonprofit sector that have resulted in a massive report to Congress. In his presentation, Senator Grassley stated that his “goal is legislation that will seek to encourage more checks to charities while also ensuring that the dollars are being spent appropriately to help the community and those in need.” In his letter to Diana Aviv, President and CEO of the Independent Sector, requesting that an independent national panel on the nonprofit sector be convened, he stated that the Senate Finance Committee “is deeply concerned about transactions with and within charitable organizations that are inappropriately exploiting charities’ tax-exempt status and that may be wrongly enriching individuals and corporations.” He went on to state that they “are considering a number of comprehensive reforms to protect charities from bad actors and strengthen their accountability to donors.”⁵

While Senator Grassley perhaps overstates the situation, and while most charities are doing a good job in both providing important services and in operating to the best of their ability both financially and organizationally, we cannot ignore the new expectations for those of us in the nonprofit field. We must review these new standards, evaluate the new benchmarks, publicly disclose as much as we can about our organizations in order to become more accountable and transparent to our donors and the public, and strengthen the essential bond between charitable donors and charitable organizations.

The Independent Sector has summarized the Nonprofit Panel’s recommendations to the Senate Finance Committee in a nine-item “Checklist for Accountability.”⁶

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This checklist includes:

1. Develop a culture of accountability and transparency
2. Adopt a statement of values and a code of ethics
3. Adopt a conflict-of-interest policy
4. Be transparent
5. Conduct independent financial reviews, particularly audits
6. Establish a “whistleblower-protection policy” for reporting suspected misconduct or malfeasance
7. Ensure that the board of directors understands and can fulfill its financial responsibilities
8. Ensure the accuracy of and make public the organization’s informational tax returns
9. Keep up with any changes in the laws that govern nonprofit groups

In essence, as the report finds, it’s all about trust—and verification! Meeting the ethical standards to justify the public’s trust in our charitable institutions requires a series of ongoing commitments from individual charitable institutions. These organizations must set standards and implement practices that manifest dedication to transparency; from the charitable community as a whole, who must share recommended practices and educate its members; and from the government, who must strengthen the law and dedicate the resources necessary to enforce it.

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LEARNING FROM SARBANES-OXLEY

In this post-Sarbanes-Oxley world, there are several lessons to be learned and applied to our nonprofit institutions. While Sarbanes-Oxley technically applies only to publicly traded corporations, BoardSource and Independent Sector have developed a checklist of recommendations for nonprofits and foundations to voluntarily incorporate into their organizations. The list consists of seven areas for review, including:

1. Insider Transactions and Conflicts of Interest
 - Understand and comply with laws regarding compensation and benefits provided to directors and executives ("intermediate sanctions" and "self-dealing" laws)
 - Establish a conflict of interest policy and enforce it
2. Independent and Competent Audit Committee
 - Conduct an annual external financial audit
 - Establish a separate audit committee of the board
3. Responsibilities of Auditors
 - Rotate auditor or lead partner at least every five years
4. Certified Financial Statement
 - CEO and CFO should sign off on all financial statements
5. Disclosure
 - Disclose IRS Form 990 and 990-PF as well as audited financial statements
6. Whistle-blower Protection
 - Develop, adopt and disclose a formal process to deal with complaints and prevent retaliation

7. Document Destruction

- Have a written, mandatory document retention and periodic destruction policy

In summary, the recommendations for all nonprofits are four-fold: strengthening the Board of Directors and their fiduciary responsibilities; writing and enforcing policies for conflicts of interest, whistle-blower protection and document destruction; increasing attention to audit and financial statement preparation; and finally, full public disclosure of all of the above!⁷

NEW ILLUSTRATIVE MEMORANDUM OF UNDERSTANDING FROM AGB AND CASE

Another consideration for review and revision lies in the area of institutionally related foundations, associated with many public universities and colleges. In 2005, the Association of Governing Boards (AGB) and Council for the Advancement and Support of Education (CASE) produced an Illustrative Memorandum of Understanding (MOU) document that addresses the critical partnership between the host institution and the institutionally related foundation. The MOU details the various missions and responsibilities of each partner in the relationship, as well as the day-to-day working relationship and deliverables.⁸ This document should be thoughtfully written, evaluated and renewed annually.

PUBLIC INFORMATION DISCLOSURE POLICY

In the fall of 2002, the Iowa State University Foundation adopted a groundbreaking Public Information Policy, which outlined volumes of information routinely made available for public

review. This policy has become a model used by many in higher education fundraising and beyond. The policy outlines the procedures and mechanisms for obtaining information from the Foundation, the many broad areas of information that are already being disclosed, and the categories of information that the Foundation is constrained by law from disclosing.⁹

Information already requiring disclosure by law includes the annual information return IRS 990 for the current and prior two years: the organization's request for tax-exempt status, the IRS determination letter, and the articles of incorporation and biennial report.

Information that many institutionally related foundations are also disclosing—or might want to think seriously about disclosing—includes administrative and financial information, fundraising and stewardship information, investment information and fund distribution information:

Administrative Information

- Foundation Bylaws
- IRS Forms 990 Beyond the Current and Prior Two Years
- Information regarding actions of the Foundation Board of Directors and/or Trustees
- Organizational Chart
- Information Regarding Foundation Employment
- Conflict of Interest Policy

Financial Information

- Audited Financial Statements
- Annual Reports, Including Financials

Fundraising and Stewardship

- Donor Bill of Rights
- Model Standards of Practice
- Statement of Ethics
- Gift Acceptance Policy
- Guidelines for Named Gifts
- Biographical Information of Donors who Consent to Disclosure

Investment Information

- Investment Policy Statement
- Foundation Investments

Distribution of Funds Information

- Disbursement Guidelines
- Contracts Between the Foundation and the University

In some cases, the Foundation is constrained from disclosing information due to other state and/or federal laws and regulations that govern such information. This includes two categories as listed below:

Privacy

- Private Gift Information including Trust Documents, Wills and Gift Agreements
- Biographical Information of Donors who desire Privacy
- Gift Amounts, unless Donor expresses consent
- Personal Information regarding Employees

Strategic and Competitive Business Information

- Meeting Agendas, Minutes, and Notes of Board of Directors, Trustees and Committees
- Individual Expense Vouchers and Trip Reports
- Prospect Lists and Prospect Cultivation Plans
- Foundation's Alumni and Donor Database

THE RIGHT THING TO DO

In 1991, the Independent Sector issued a report that remains as timely and important today as it was when first distributed. Entitled "Obedience to the Unenforceable," it reminds those of us who work in the nonprofit world that we serve in positions of privilege and trust, positions granted to us by the public at large. "The rights and responsibilities that the independent sector enjoys are a result of the trust afforded to the organizations of this sector. Donors give to and volunteers get involved with charitable organizations because they trust them to carry out their missions, to be good stewards of their

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resources, and to act according to the highest ethical standards. Most fundamentally, voluntary and philanthropic organizations must abide by the highest ethical standards because it is the right thing to do.”¹⁰

Today, the work our philanthropic institutions perform is more important than ever, and it is our responsibility to ensure that our donors and our prospective donors are confident that their gifts are being used wisely and efficiently. They are asking for, and deserve to receive, assurance that our organizations are operating under the highest standards of practice. These standards must be as open and accessible to the public as legally and ethically possible.

There are many models and benchmarks that we can review when creating or updating our organizations. Attached is a listing of suggested documents and organizational website addresses to assist you in your organizational review. These documents can guide your Board and institutional leadership in critical discussions that will help strengthen your organization for the future. By acting today to ensure that solid ethical, fiduciary and communications standards are in place throughout your organization, you will also be ensuring future philanthropic strength in support of your institution’s mission. ■

ENDNOTES

1. Panel on the Nonprofit Sector, convened by INDEPENDENT SECTOR
“Strengthening Transparency, Governance and Accountability of Charitable Organizations” – final report to Congress and the Nonprofit Sector, June 2005, p. 4
<http://www.nonprofitpanel.org/press/finalreport>
2. “Open CU Foundation Books,” Denver Post, December 29, 2004
3. Fact Sheet on the Continued Crisis in Charitable Organizations (Discusses the ongoing decline in confidence in charities) By Paul C. Light, Senior Fellow, Governance Studies, The Brookings Institution, September 13, 2004, pp. 3 & 4
www.brookings.edu/views/papers/light/20040913.htm
4. Marts & Lundy internal report, 2004
5. Association of Fundraising Professionals Press Release, June 27, 2005, and Panel on the Nonprofit Sector, convened by INDEPENDENT SECTOR
Strengthening Transparency, Governance and Accountability of Charitable Organizations—final report to Congress and the Nonprofit Sector, June 2005, specifically letter from Senator Grassley dated September 22, 2004 to Diana Aviv, President and CEO, Independent Sector, requesting independent national panel be convened, p. 110
<http://www.nonprofitpanel.org/press/finalreport>
6. Panel on the Nonprofit Sector, convened by INDEPENDENT SECTOR
Strengthening Transparency, Governance and Accountability of Charitable Organizations—final report to Congress and the Nonprofit Sector, June 2005
<http://www.nonprofitpanel.org/press/finalreport>
and Independent Sector, *Checklist for Accountability*, 2006
<http://www.independentsector.org/issues/accountability/checklist/index.html>
7. *Learning from Sarbanes-Oxley: A Checklist for Nonprofits and Foundations*
http://www.independentsector.org/PDFs/sarbanesoxley_checklist.pdf
8. AGB-CASE Illustrative Memorandum of Understanding Between a Foundation and Host Institution or System, CASE Press Release, March 24, 2005,
<http://prod.case.org/Content/PressRelease/Display.cfm?CONTENTITEMID=5025&PF=1>
9. Iowa State University Foundation Public Information Policy
<http://www.foundation.iastate.edu/policy/public-info.html>
10. “Obedience to the Unenforceable, Ethics and the Nation’s Voluntary and Philanthropic Community,” Independent Sector, 1991, Revised 2002

ADDITIONAL RESOURCES

GENERAL ACCOUNTABILITY AND OVERSIGHT RESOURCES

Senate Finance Committee

Panel on the Nonprofit Sector, convened by INDEPENDENT SECTOR
 “Strengthening Transparency, Governance and Accountability of Charitable Organizations”—
 final report to Congress and the Nonprofit Sector, June 2005
<http://www.nonprofitpanel.org/press/finalreport>

Fact Sheet on the Continued Crisis in Charitable Organizations
 (Discusses the ongoing decline in confidence in charities)
 By Paul C. Light, Senior Fellow, Governance Studies, The Brookings Institution
 September 13, 2004
<http://www.brookings.edu/views/papers/light/20040913.htm>

Management Checklist for Institutionally Related Foundations, CASE
<http://www.case.org/Content/Miscellaneous/Display.cfm?contentitemID=2517>

BBB Wise Giving Alliance Standards for Charity Accountability
 BBB Wise Giving Alliance, a merger of the National Charities Information Bureau
 and the Council of Better Business Bureaus’ Foundation and its Philanthropic Advisory Service
<http://www.Give.org>

Sarbanes-Oxley

The Sarbanes-Oxley Act and Implications for Nonprofit Organizations
<http://www.independentsector.org/pdfs/sarbanesoxley.pdf>

Learning from Sarbanes-Oxley: A Checklist for Nonprofits and Foundations
http://www.independentsector.org/PDFs/sarbanesoxley_checklist.pdf

NOTE:

Samples of University Foundation Audit Committee Charter, Whistleblower Policy, Document Destruction Policy, Conflict of Interest and Self-Dealing Policy available from above Independent Sector websites

Ten Emerging Principles of Governance of Nonprofit Corporations and Guides to a Safe Harbor,
 by Thomas Silk, The International Center for Not-For-Profit Law
http://www.icnl.org/JOURNAL/vol7iss1/ar_silk.htm

Other accountability resources can be found on CASE’s Website at:
<http://www.case.org/Content/Miscellaneous/Display.cfm?CONTAINERID=87&CONTENTITEMID=3365&CRUMB=3>

Disclosure and Transparency Resources

Governing in the Sunshine: Open Meetings, Open Records, and Effective Governance in Public Higher Education
 (Report addressing public information and higher education governance from a broad national perspective)
<http://www.usc.edu/dept/chepa/pdf/Sunshine%20Final%20Report%20040415.pdf>

State Open-Meetings and Open-Records Laws in Higher Education: An Annotated Bibliography (Compiled in conjunction with “Governing in the Sunshine”), January 2003
http://www.usc.edu/dept/chepa/pdf/governance_bib.pdf

Continued...

ADDITIONAL RESOURCES *(Continued)*

Documents that discuss Donor Privacy issues in Canada:

Privacy 101: A Guide to Privacy Legislation for Fundraising Professionals and Not-For-Profit Organizations in Canada (Version I)
http://www.afpnet.org/content_documents/Privacy_101_guide_to_send_6-30-03.pdf

An Introduction to Protecting Personal Information Collected by Charities (Canada)
http://www.afpnet.org/content_documents/Canada_privacy_guide_final_version_II_6-12-2003.pdf

Examples of Foundation Public Information Policies

Iowa State University Foundation Public Information Policy
<http://www.foundation.iastate.edu/policy/public-info.html>

Indiana University Foundation Website: *How is the Foundation Accountable?*
<http://www.indiana.edu/~iuf/qlinks/faq/faq6.shtml>

University of Iowa Foundation: *How the Foundation is Accountable to the Public*
<http://www.ifoundation.org/about/faq/faq3.shtml>

Pertinent court rulings on foundation independence and donor privacy, and related resources can be found on CASE's website at:
<http://www.case.org/Content/Miscellaneous/Display.cfm?contentItemID+3367>

State University-Related Foundations and the Issue of Independence by Thomas Arden Roha
AGB Occasional Paper No. 39
<http://www.agb.org>

NOTE: Thomas Roha has written an article updating his *Seven Touchstones of Independence* and will be published shortly by AGB.

Foundation Openness and Disclosure
by Gary A. Ransdell, Vice President for Institutional Advancement, Clemson University—
Briefing Paper I-94, National Clearinghouse for Institutionally Related Foundations, CASE

AGB-CASE Illustrative Memorandum of Understanding Between a Foundation and Host Institution or System
CASE Press Release, March 24, 2005
<http://prod.case.org/Content/PressRelease/Display.cfm?CONTENTITEMID=5025&PF=1>

Marts & Lundy

At Marts & Lundy, we recognize that every non-profit is unique and requires distinctive solutions. As experts in the science of philanthropy, we strategize beyond analysis and planning, information technology, or prospect research. We take pride in our ability to utilize our breakthrough solutions and then apply them in ways that are both specialized and diverse. That is the art of philanthropy. It is our experience in this art that allows us to effectively use the innovative tools and analytics that are transforming philanthropy. For additional information about our services and our clients, please visit our website, www.martsandlundy.com, or call 800-526-9005 to speak with a consultant.



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