Humboldt State University
Office of Advancement

Fundraising Counting and Reporting

Humboldt State University is required to count and report charitable contributions and donor support according to rules and guidelines established by the Council for the Advancement and Support of Education (CASE) and the Council for Aid to Education (CAE).

When counting and reporting contributions to Humboldt State University, the Office of University Advancement utilizes the following guidelines from Section 1 of *CASE Reporting Standards & Management Guidelines, 4th edition (2009)*. Exceptions to these guidelines require approval of the Vice President for Advancement.

CASE Reporting Standards & Management Guidelines, 4th edition (2009)
SECTION 1 - Gift Types and Methods of Reporting

Contents

1.1 FUNDAMENTALS

The definitions and descriptions in this chapter apply to both the annual CAE and CASE survey instruments and reports unless otherwise noted. Key differences between reporting to CAE and CASE are noted throughout this chapter.

REPORTING TO THE CAE'S VSE SURVEY

Include gifts and grants of cash or property and newly established deferred gifts received as private, charitable support during the fiscal year.

- Include irrevocable deferred gifts at both face and present value (defined as the U.S. Internal Revenue Service (IRS) tax deduction to the donor). Use present value to calculate giving totals, but report both figures.

- You may-but are not required to-report pledges and bequest expectancies, but do not include them in gift receipt totals. If you report them, report them at both face and present value. Count bequest expectancies only if they are a dollar amount, not if they are a percentage of an estate.

REPORTING TO THE CASE CAMPAIGN SURV EY

Follow the same guidelines for reporting to CAE (above) with these exceptions:

- Include irrevocable deferred gifts at both face and discounted present value (in separate columns).

- Include revocable gifts and conditional pledges at face value (together in a single column).

See Section 1.1.3, "Exclusions," for items that institutions should not report to CAE or to CASE.

1.1.1 Gifts, Grants, and Contracts

CASE recognizes that the determination of whether to classify certain revenues as a gift, grant, or contract can vary according to each institution's general accounting policies. CASE's goal is to ensure that institutions report only those transactions that involve true philanthropic intent. For CASE and CAE reporting purposes, there is no need to distinguish between a gift and a grant, defined below.

- **Gift**: a contribution received by an institution for either unrestricted or restricted use in the furtherance of the institution for which the institution has made no commitment of resources or services other than, possibly, committing to use the gift as the donor specifies.

- **Grant**: a contribution received by an institution for either unrestricted or restricted use in the furtherance of the institution that typically comes from a corporation, foundation, or other organization, rather than an individual.

- **Contract**: an agreement between the institution and another entity to provide an economic benefit for compensation. The agreement is binding and creates a quid pro quo relationship between the institution and the entity. Exclude contracts from your institution's fundraising totals. Note: This definition is not intended to address gift annuity contracts or similar charitable instruments.

A **clinical trial** is an industry-sponsored organized medical study (with a protocol reviewed and approved by the appropriate review board) of a new or existing drug, medical device, or biological treatment on people or animals for the purpose of identifying the potential beneficial effect on treating human or animal illness and/or determining safety and efficacy. For the purposes of these standards, a clinical trial is a contract, regardless of the terminology used by the granting organization, and therefore exclude it from official fundraising totals.

1.1.2 Donor Control

A donor may not retain any explicit or implicit control over the use of a gift after acceptance by the institution. A donor can suggest a department or area to which the institution should apply the contribution. However, to consider a gift to be a gift for CASE and CAE purposes, no further involvement on the part of the donor is appropriate after gift acceptance. (Note: This section on donor control does not refer to revocable deferred gifts or revocable or conditional pledges, which remain in the control of the donor until the institution realizes the gift and are countable when reporting to CASE but not to CAE. It speaks to the use of all gifts once they are actually received by the institution.)

The following examples of donor control preclude the counting of a gift:

- A donor establishes a scholarship fund but requires that he be able to select the recipient. (In theory, it could be acceptable for the donor to be a member of the selection committee as long as he does not control more than 49 percent of the allotted votes. However, the institution must take care in such a case to ensure that the donor does not possess perceived additional control, perhaps by virtue of his ability to make additional gifts. The institution should seek legal counsel to ensure that no possible control position exists before permitting a donor to serve on a selection committee.)

- A donor makes an unrestricted contribution while requiring the institution to award a professorship to a specified individual.

- A donor contributes to a fund for a new art museum, provided the institution selects an architect of the donor's choice.

- A computer equipment provider establishes a need-based scholarship, provided the institution grants an exclusive contract for hardware acquisition to that provider for 36 months.

1.1.3 Exclusions

For the most part, if the IRS does not recognize a transaction as a charitable donation, then it is inappropriate to recognize the transaction as a gift for CASE and CAE reporting. There are a few exceptions for reporting to the CASE campaign survey, which allows counting of irrevocable deferred gifts reported at both current and discounted present value and revocable gifts and conditional pledges reported at face value.

Clarifications on what constitutes a legal gift are found in "Charitable Contributions," IRS Publication 526. These standards amplify on certain of the ineligible gifts in the following list of exclusions. This list is not comprehensive.

NOT REPORTABLE TO CAE'S VSE SURVEY

- Revocable and legally unenforceable gifts, pledges, and bequest expectancies

NOT REPORTABLE TO CASE OR CAE FOR EITHER SURVEY

- Advertising revenue: The IRS defines advertising as qualitative or competitive pricing or product information displayed because of a donation, or any form of endorsement on the part of the host organization.

- Alumni membership fees/dues: While the IRS may suggest that certain amounts paid as alumni dues could constitute a legal gift, for these standards they are always excluded. The terms alumni dues and membership fee imply a perceived benefit to the donor of equal or greater value. Therefore, alumni dues, as such, are excluded from official fundraising totals. However, if an amount is paid over and above the assessed alumni dues amount in conjunction with that dues payment, and that additional amount is applied toward philanthropic endeavors, those additional funds are counted.

- Appraisal costs

- Contract revenues, including clinical trial funds

- Contributed services: FASS and GASS recognize certain contributions of professional services as assets to an institution, which are therefore entered as such on the accounting books of the institution. However, contributions of said services are not charitable contributions in the eyes of the IRS and are excluded from CASE and CAE reporting.

- Discounts on purchases, such as the common practice of offering education discounts, but not to be confused with "bargain sales" (see Section 1.2.5, "Gifts-in-kind") ,which are countable gifts

- Earned income, including transfer payments from medical practice plans or other money-earning programs or businesses affiliated with the institution

- Expenses associated with transferring a gift to an institution

- Gifts or pledges, out right and deferred, that already have been counted in previous campaigns, even if realized during the campaign reporting period

- Gifts to social organizations such as sororities and fraternities, even if the organizations are affiliated with the institution

- Government funds, whether local, state (including state matching grants) , federal, or foreign. This includes distributions from Indian Tribal Governments, including payments from Indian Tribal Enterprises acting as conduits for those governments; distributions from these entities should be treated similarly to transactions from state governments. This exclusion also applies to contributions from cities or regional governments, even though those entities may be incorporated. While the Canadian Council for the Advancement of Education (CCAE) reporting standards for annual campaigns do permit limited counting of certain gifts from city, municipal, and regional governments, for consistency and comparison purposes they are excluded from reports to CASE and GAE. (See Section 6.2.6, "Government Funds," for more on this topic.)

- Investment earnings on gifts, even if accrued during the fundraising reporting year and even if required within the terms specified by the donor. The only exception permitted is interest accumulations counted in guaranteed investment instruments that mature within the reporting year, such as zero-coupon bonds.

- Monies received as a result of exclusive vendor relationships, such as "pouring rights" agreements

- Non-gift portions of quid pro quo transactions (see "Quid Pro Quo Contributions," below)

- Proceeds from sale of merchandise, unless the merchandise is sold as part of a fundraising program and the charitable portion of the transaction is clearly identified

- Royalties from affinity agreements

- Sales tax on the purchase of goods

- Surplus income transfers from ticket-based operations, except for any amount equal to that permitted as a charitable deduction by the IRS when identified to donors as a gift in advance of their ticket purchase

- Tickets purchased at fair market (face) value

- Tuition payments

1.1.4 Quid Pro Quo Contributions

The IRS defines a quid pro quo gift as "a payment made partly as a contribution and partly in consideration for goods or services provided to the payor by the donee organization." The value of the benefits, or "premiums," the donor receives is a key factor in determining the amount of the actual gift.

For quid pro quo contributions, report only the amount of the contribution that exceeds the value of benefits the donor receives from the institution in return for the gift. For such contributions, these standards follow the IRS tax rules regarding tax-deductibility and receipting of quid pro quo contributions. IRS Publications 526 and 1771 provide additional guidance.

Some highlights of those IRS regulations are as follows:

1. The items must have "substantial" value to be considered as benefits under this regulation and, therefore, to be subtracted from the donor's contribution.

2. Items that have insubstantial value need not be subtracted from the donor's contribution.

3. The IRS has "safe harbor" rules to determine whether benefits or premiums are of insubstantial value. These values are adjusted annually for inflation and typically reported in the fall in an IRS Bulletin. Per the IRS, consider a benefit insubstantial if any of the following apply:

    - The fair market value of all benefits equals less than 2 percent of the donor's contribution and falls within a cap indexed annually by the IRS ($95 in 2009).

    - The gift is $47.50 or more (in 2009) and the benefits received are token items such as bookmarks, posters, mugs, etc., with the institution's name or logo printed on them and for which the cost to the institution is $9·50 or less (in 2009) for all such items given.
    - The benefits are offered to members in exchange for a payment of $75 or less and consist of rights or privileges that can be exercised frequently during the membership period (e.g., bookstore discounts or parking privileges).

4. With the exception of token items referred to above, the value of the benefits must be based on the fair market value of the items, rather than the cost to the institution.

5. **Raffles:** In accordance with IRS regulations, donors may not consider any portion of a payment made resulting in an opportunity to win a prize (this includes raffle tickets, door prizes, etc.) a tax-deductible gift. Therefore, do not count such payments as gifts for CASE and CAE purposes.

6. **Preferential seating consideration:** According to IRS regulations, donors to education institutions who receive in return for their gift the right to purchase preferred seating for athletics events at the institution may take as a deduction only 80 percent of their contribution (IRC 170(1) and IRS Publication 526). Thus, institutions should count and report to CASE and CAE only that 80 percent amount. Furthermore, the institution is obligated to report this reduction in gift amount on the IRS-acceptable receipt sent to the donor. Should the donor receive benefits in addition to the preferential seating privilege, subtract such additional benefits from the gift amount according to the quid pro quo standards noted above. Subtract these tangible benefit values before applying the 20 percent reduction. In other words, use the net charitable gift amount for annual and campaign counting purposes. The institution should set its own guidelines for valuing these gifts for donor recognition purposes.

Examples. Following are some examples of quid pro quo contributions:

- A donor gives an institution $100 in exchange for an event ticket with a fair market value of $40. The donor's tax deduction may not exceed $60, and $60 is the maximum amount to be counted for CASE and CAE purposes.

- A donor gives an institution $1,000 with the understanding she will receive two tickets to an annual donor recognition dinner for all $1,000-plus donors. The fair market value of the dinner is $25 per person. Since the value exceeds the 2 percent threshold established by the IRS, the maximum amount deductible and reportable for CASE and CAE purposes is $950. In this scenario, it does not matter how much it costs the institution to conduct the recognition event. Even if a corporation underwrites all expenses (see Section 1.1.5, “Corporate Sponsorships”), the donor’s deduction still is limited to the amount paid above fair market value. You base the value on what a willing buyer would pay a willing seller. The actual expenses of the institution do not affect that valuation. Furthermore, the above reduction is required even if the donor does not attend the event-she still earned the right to attend, or to transfer the tickets, by virtue of the donation. Only if the donor refuses the benefit at the time of solicitation or donation is she eligible to claim a 100 percent deduction.

- A donor makes a contribution of $500 with the understanding that, as a result, his name will be entered in a random drawing, the winner of which will receive two round-trip tickets to anywhere in North America. Because the donor has contributed in anticipation of being declared a winner and because this event qualifies as a “game of chance” under IRS regulations, there is no tax-deductible contribution. Thus, do not count any amount for CASE or CAE purposes. This is the case even if an airline donated the tickets and the full amount of the donation goes to the institution. Avoid this problematic situation by allowing anyone to enter the drawing regardless of whether he or she contributes.

- A donor contributes $10,000 to a scholarship fund at an institution. The donor is a member of a booster club that considers all gifts made to the institution when assigning athletic seating priority points. Reduce the contribution by 20 percent. Only $8,000 is a charitable contribution, and that is the amount reported to CASE and CAE.

- You give the donor in the preceding example a ticket to a post-game reception of her choice, with a fair market value of $15, and two “free” tickets to any home football game, valued at $50 each. Therefore, you must first reduce the $10,000 donation by $115 ($15 for the reception plus two tickets at $50 each) and then apply the 20 percent reduction. Thus, the net gift amount for IRS, CASE, and CAE purposes is $7,908. However, if the only additional benefit awarded were the ticket to a post-game reception, you would not reduce the gift amount, because the value of the reception falls below the threshold of 2 percent or $95 (in 2009).

Read the IRC and related IRS regulations for a complete description of the rules for tax-deductibility of quid pro quo contributions, gift substantiation, and quid pro quo disclosure statements. Also consult your tax advisers.

1.1.5 Corporate Sponsorships

Corporations and other organizations often give money to institutions to sponsor activities, events, or projects and in return receive recognition on campus, at the event, or in accompanying publications. Most corporate sponsorship dollars are fully countable; the determining factor is whether the recognition the corporation receives constitutes advertising. The IRS defines advertising in this instance as competitive pricing or product information displayed because of the donation. If the recognition fits this definition of advertising, the sponsorship is an exchange transaction, not a gift. Simple name or logo placement is not advertising.

If, in return for a gift, the name of a donor or donor organization is placed on a brick, chair, building, or other item or program that remains part of the institution, this recognition does not reduce the value of the gift so long as it is not "advertising" per the above IRS definition.

For a sponsorship to qualify as a gift, all the factors below must exist:

- The contribution must be made by a person or corporation engaged in a trade or business

- The sponsor should not expect nor receive a substantial return benefit (2 percent of sponsorship contribution) for payment other than name acknowledgment and/or promotional value

- The promotional information should be limited to any or all of these:
    - a sponsor’s location, telephone number, internet address
    - a value-neutral description of sponsor’s products or services
    - a sponsor’s brand/trade name or product/service listings.

- There is no qualitative or comparative advertising of sponsor’s products or services such as pricing, savings, value, purchase/sale inducements, etc.

- The sponsorship should not be contingent on event attendance, ratings, or public exposure

Examples. The following are examples of sponsorships that do not qualify as charitable gift income (sometimes called exchange transactions):

- Advertising revenue

- Exclusive vendor relationships, such as fees received for soft drink pouring rights

- Trade-outs, such as free hotel rooms or transportation provided by the supplier; these are not considered tax-deductible by the IRS and are not reportable to CASE or CAE

- Donations of athletic uniforms, shoes, and equipment via exclusive vendor agreements whereby the university receives the items in exchange for refraining from using competitors’ products

Examples. Following are some examples of situations involving corporate sponsorships:

- An institution hosts a golf tournament with all proceeds going to that institution's tax-exempt purposes. The institution offers corporate sponsorship opportunities, whereby the sponsor would pay $2,500 to provide food and beverages at any one of the 18 holes, in exchange for displaying a placard stating the name of the company sponsoring that hole. Because the simple display of the corporation’s name does not constitute “advertising,” consider the entire $2,500 a gift for purposes of CASE and CAE reporting.

- In the same scenario as above, the sponsor also receives “free” admission for four participants in the golf tournament, with a fair market value of $125 per person. In accordance with the quid pro quo discussion above, reduce the fair market value of those tickets from the amount paid to calculate the true gift amount. Therefore, the net gift amount for CASE and CAE purposes is $2,000.

- An institution hosts a donor recognition dinner and asks local corporations to help underwrite the costs. In exchange for any amounts paid, the institution offers the corporations space to display and sell their products and services. This would constitute a form of free advertising for the companies that would not have otherwise existed had they not underwritten the costs. Therefore, none of the amounts paid may be counted for CASE and CAE purposes.

Nonprofit organizations must take great care to protect themselves from possible taxation issues arising from corporate sponsorships. IRS Federal Register Volume 67, number 80, published on April 25, 2002, promulgated final regulations pertaining to “Taxation of Tax-Exempt Organizations’ Income From Corporate Sponsorships.” Become familiar with this and other IRS material to ensure you conduct yourself properly and in accordance with government regulations.

1.2 GIFT TYPES AND COUNTING CRITERIA

Except as otherwise indicated, all of the following descriptions and counting method s for specific forms of gifts apply to both annual giving (CAE) and comprehensive campaigns (CASE).

REPORTING TO THE CAE'S VSE SURVEY

- Include gifts and grants of cash or property and newly established deferred gifts received as private, charitable support during the fiscal year.

- Include irrevocable deferred gifts at both face and present value (defined as the U.S. Internal Revenue Service (IRS) tax deduction to the donor). Use present value to calculate giving totals, but report both figures.

- You may-but are not required to-report pledges and bequest expectancies, but do not include them in gift receipt totals. If you report them, report them at both face and present value. Count bequest expectancies only if they are a dollar amount, not if they are a percentage of an estate.

REPORTING TO THE CASE CAMPAIGN SURVEY

Follow the same guidelines for reporting to CAE (above) with these exceptions:

- Include irrevocable defer red gifts at both face and discounted present value (in separate columns).

- Include revocable gifts and conditional pledges at face value (together in a single column).

See Section 1.1.3, "Exclusions," for items that institutions should not report to CAE or to CASE.

1.2.1 Assignment of Income

A person may assign to an institution income that the person would have received from a third party as payment for services (e.g., payment for serving on a corporate board, honoraria for speaking engagements, etc.). In such circumstances, credit the gift to the person making the assignment. This assumes that the organization making the payment will report the payment for services as income to the individual (usually on IRS Form 1099 in the United States), and the individual would then take a corresponding tax deduction.

If the institution receives the check directly from the third-party organization, knowing that it is a payment for a person's services to that organization, credit it as a gift from the person who performed the services, not as a gift from the third party. However, an institution should not always assume this is the case. It is just as likely that the individual waived all rights to the payment and has simply suggested that, in lieu of payment, the organization contribute to a charitable cause of the individual's recommendation. In such a case, the organization is making the gift and, depending on the recipient institution's policies and abilities, the recipient institution can recognize or give (soft) credit to the individual. If the recipient institution is uncertain about the circumstances, it should contact the check issuer to ascertain legal ownership of the gift.

1.2.2 Auctions and Other Special Events

Generally, institutions should follow the standards for reporting quid pro quo contributions when they hold an auction or other special event. They may then report any excess over the quid pro quo as a gift from the donor attending the event (see Section 1.1.4., "Quid Pro Quo Contributions"). In the case of an auction, each auction transaction may offer the opportunity for two different donors to make a charitable donation. First, there is the donor of the item the institution will auction. If the item sells, that donor has made a countable gift. Instruct such donors to seek professional guidance regarding deductions for unrelated use property. (See Section 1.2.9., "Real and Personal Property.") Then, provided a fair market value for that item is made known-for example, reported in an auction booklet-and further provided the winning bid is in excess of that amount, the winner may claim a deduction (and the institution may count a gift) for any amount paid in excess of the fair market value. In such a case an appropriate quid pro quo receipt is required. Gifts of services (for example, a coupon for yard work) or partial interest (use of a beach house for a week) are not gifts and, therefore, not countable/reportable.

1.2.3 Cash, Checks, and Credit Cards

Except in the case of deferred gifts, report the amounts of cash and check gifts as of the date the institution receives or processes them (depending on the institution's audit requirements). For gifts denominated in foreign currencies, compute the value based on the exchange rate in effect on that date.

Note that these guidelines pertain to CASE and CAE reporting only. These reports should mirror accounting reports as far as the date is concerned. The date indicated and used for CASE and CAE reports should be the same as the date used for accounting purposes-namely, the date the gift was credited to your general ledger (typically the same as the date of deposit). This date may not be the legal date of gift as outlined in "Charitable Contributions," IRS Publication 526. However, nonprofit organizations should not be concerned with ascertaining or reporting gift dates to donors, as indicated in "Charitable Contributions: Substantiation and Disclosure Requirements," IRS Publication 1771.

Gifts made by credit card are recorded in much the same manner as gifts made by cash or check (although many institutions use separate codes to distinguish between these categories), but the legal date of gift is determined differently. Credit card donations represent a loan transaction between the donor and the credit issuer. Therefore, the gift is not a gift until the institution receives authorization for the charge from the credit card agency. Thus, count or report credit card donations on the date that the institution receives approval from the credit card agency.

1.2.4 Closely Held Stock

Gifts of closely held stock that exceed $10,000 in value should be reported at the fair market value placed on them by a qualified independent appraiser as required by the IRS for valuing gifts of stocks that are not publicly traded. In the United States, the institution may obtain the appraiser's valuation figure from "Noncash Charitable Contributions," IRS Form 8283, which the donor must usually provide for the recipient's signature. (A signature by the recipient organization does not signify an approval of the indicated amount.) Apply this confirmation of receipt by the recipient only after the donor and the independent appraiser sign the document.

Gifts of closely held stock of $10,000 or less may be valued at the per-share cash purchase price of the most recent transaction. Normally, this transaction is the redemption of the stock by the corporation. If no redemption has occurred during the reporting period, an independent Certified Public Accountant (CPA) who maintains the books for that corporation is qualified to value its stock.

1.2.5 Gifts-in-kind

Gifts-in-kind are generally defined as non-cash donations of materials or long-lived assets, other than real and personal property (see Section 1.2.9). Gifts of materials or long-lived assets that are directly related to the mission of the institution should be reported at the face (or fair market) value.

Gifts-in-kind might include such items as equipment, software, printed materials, food or other items used for hosting dinners, etc. Gifts-in-kind usually (although not always) come from companies, corporations, or vendors, in contrast to individuals, who typically give personal property.

For all gifts-in-kind, especially items such as equipment and software, report the educational discount value (if an educational discount is offered)-that is, the value the institution would have paid had it purchased the item outright from the vendor. This point is key. Regardless of what estimated value a vendor may place on a gift-in-kind, the recipient should only count as a gift the amount it would have paid for the item or items were they not donated.

Common examples of gifts-in-kind include:

- **Deep discounts or bargain sales.** If a company offers to sell a product to the institution at a "deep discount" or "bargain sale," the company should provide a bill of sale clearly indicating the retail (or educational/nonprofit discount) price, less the charitable contribution of the discounted amount, and a net cost. Record the discounted amount as a gift-in-kind. If, how- ever, the same discount applies to purchases made by the institution on a regular basis and is not uniquely identified as a special reduction to be considered as a donation, no gift should be counted. Thus, do not count as gifts standard discounts afforded to an institution based on the nature of its business or because it is a major or frequent customer. For example, if a corporation routinely provides a 20 percent discount on all purchases made by colleges and universities, that discount does not qualify as a deep discount or bargain sale contribution that you may count for CASE and CAE purposes.

- **Royalties.** Institutions that receive gifts of royalties from property they do not own (such as patents)-or from property that could not be valued and thus was not counted at the time of the gift-should count and report the income they receive resulting from that ownership each time a payment is received. Do not enter a pledge in anticipation of such payments, as there is no guarantee of the amount or continuation of an income stream. Royalties from vendor affinity agreements, such as alumni credit card programs, are exchange transactions and are not countable. Treat gifts from separately incorporated alumni groups as gifts from that group, unless the group is a registered supporting organization permitted to act as a fiscal agent of the institution, in which case count the gifts from the individuals.

- **Gifts of gas, oil, and mineral rights.** Ownership of gas, oil, or mineral facilities should be counted and reported at the readily determinable face (or fair market) value. Alternatively, if the fair market value is not known and cannot be readily determined, report the asset in the year the value becomes known. For gifts of royalties from facilities not owned by the institution, report the amount received each year.

- **Services.** The value of a person's or organization's time or service is not considered a charitable contribution and is not countable, regardless of whether the individual assists as a volunteer or as a professional providing a specialized service (e.g., accounting, legal work, consulting, or printing). Some institutions encourage volunteers providing professional services to bill the institution for the service, accept payment from the institution, and then make a cash gift to the institution. This cash donation is usually 100 percent tax-deductible. In contrast, an individual could not claim the same deduction for their time.

- **Software and hardware.** Treat irrevocable gifts of software or hardware with an established retail value like other gifts-in-kind and count at the educational discount value (if one exists) or the fair market value, as long as the agreement qualifies as a charitable donation under the laws of the appropriate tax authority. In so-called "mega-gifts," companies seek to use an institution as a test site for newly developed software or hardware with no established retail price, although the company may have its own estimate of the software's value. Institutions entering into such agreements need to ascertain whether they are gifts, partial interests, or exchange transactions according to the IRS and these standards.

Large software donations can be highly complex. The following list suggests various methods for assessing the countable value of certain components of those contributions:

1. **Value to the institution.** Count only software gifts that serve the academic or research purpose of the institution.

2. **Gift value.** As with other gifts-in-kind, the donor should provide the institution with a written confirmation of the dollar value of the gift at the educational discount price. If no educational discount is available, it must be so stated in the letter from the donor and the established retail value shall be used. If there is no established retail price for the software, no amount can be counted or reported until such a value is determined, such as by a qualified independent appraisal or when the software product is available for purchase on the open market.

3. **Revocation of gift.** A donor must irrevocably transfer ownership of the property to the institution for the property to be considered a gift. There must be no implicit or explicit statement of exchange, purchase of services, or provision of exclusive information.

1.2.6 Life Insurance

Count the insurance company's settlement amount for an insurance policy whose death benefit is realized during the campaign period (whether or not the policy is owned by the institution) to the extent that no gift amount was counted previously.

Consider gifts of whole life insurance policies a gift only if the donor names the institution both owner and irrevocable beneficiary of the policy. (Do not count revocable policies.) Institutions should adhere to the following standards in reporting this gift:

- Report partially or fully paid-up life insurance policies as outright gifts at the cash surrender value as identified in writing by the insurance provider.

- If the policy is new or not fully paid up at the time of gift, report premium payments the donor makes to the insurer or the institution (which in turn pays the premium to the insurer) as outright gifts at the full value of the premiums paid. This is consistent with current IRS regulations authorizing such payments as tax-deductible contributions. However, CASE urges that the individual make the premium payments to the institution, and not directly to the insurance carrier, because the institution is obligated to provide an IRS-acceptable receipt to the donor; the only way the institution can be sure of who is making a premium payment is to actually receive it. In the event that a donor fails to make a scheduled premium payment and the institution pays the premium with no offsetting payment from the individual, that payment becomes an operating expenditure. Do not report that expenditure as a gift. Furthermore, do not report any other increases in cash surrender value as gifts.

- Report realized death benefits as gift income for fundraising purposes only if the institution has never previously recorded the policy value or any donor-paid premiums as gift income and if the institution has not been paying the premiums. If you have already reported the values, do not report as a gift the difference between the previously reported values and the amount of the insurance company's settlement at the death of the donor. This is a gain on the dis- position of the institution's assets.

If an institution receives the proceeds of an insurance policy in which it is the beneficiary, but not owner, report the full amount of the insurance company's settlement at the death of the donor as a gift on the date the institution receives the proceeds.

1.2.7 Marketable Securities

In the United States, count marketable securities at the average of the high and low quoted selling prices (or the average of the bid/ask in the case of certain securities) on the date the donor relinquished dominion and control of the assets in favor of the institution or trust. In Canada, base the valuation on the closing market price on the legal date of gift. If the security was not traded on that date, use the date of the most recent sale. Neither losses nor gains realized by the institution's sale of the securities after their receipt, nor brokerage fees or other expenses associated with this transaction, should affect the value reported.

Exactly when a donor relinquishes dominion and control depends upon the method of delivery of the securities to the institution. These standards do not address the multitude of tax rules regarding the delivery of securities. IRS Publication 526, "Charitable Contributions," states: "The gift to a charity of a properly endorsed stock certificate is completed on the date of mailing or other delivery to the charity or to the charity's agent. However, if you give a stock certificate to your agent or to the issuing corporation for transfer to the name of the charity, your gift is not completed until the date the stock is transferred on the books of the corporation ." Institutions should consult with their tax advisers regarding current tax laws; however, to ensure effective comparable valuation across institutions, CASE offers the following guidance for determining the legal date of gift:

- Stock certificates that are mailed to an institution are considered to be a legal gift as of the date of postmark for the certificate or signature-guaranteed stock power (a certified signature of the owner of the stock signing the stock over to the institution) whichever is later.

- Stock certificates that are sent to an institution via a third-party provider, such as UPS or Federal Express, are considered to be a legal gift as of the date of receipt by the institution.

- Stock certificates registered in the name of the institution are considered to be a legal gift as of the date of registration in the institution's name.

- Stock shares transferred electronically are considered a legal gift as of the date the stock is credited to the account of the recipient institution. While a donor may have instructed his or her broker to initiate a transfer on some earlier date, the fact that the broker delayed that transfer or moved the shares into a temporary holding account does not alter the fact that the institution did not have control of the stock. In addition, until the stock is credited to the institution's account, it is possible for the transfer to be reversed. Therefore, for purposes of these standards, base the gift valuation on the date the stock came under the institution's control.

1.2.8 Pledges

Pledges are commitments to make future gifts. Only the entity exercising legal control over the assets to be given can make a pledge. Therefore, an individual cannot make a pledge that includes anticipated matching contributions from an employer or some other source. Nor can an individual commit funds that may come from a donor-advised fund or community foundation. An enforceable, countable pledge includes only those funds that will be given by that legal entity.

"Conditional" pledges are those that place requirements on the institution to perform some task or take some sort of action that it might not otherwise initiate. A conditional pledge may also depend on some future event over which neither the institution nor donor may have control. Examples of conditional pledges are challenge gifts, gifts for capital projects (if pledge is conditional on either raising other funds or moving forward with the plans to build or renovate), and pledges that are non-binding on the donor's estate.

A pledge may take either of two forms:

- **Oral pledges.** Count and report in totals only oral pledges made through an authorized telethon or phonathon campaign or program. This assumes that the institution mails some form of confirmation notice to the donor immediately following the solicitation period. An oral pledge is not to be confused with a conditional pledge, as they are not the same. (See Section 6.3.1, "Pledge Documentation.")

- **Written pledges of assets.** Document pledges of a donor's assets, committing to a specific dollar amount that the donor will pay according to a fixed time schedule.

Treat pledges differently for reporting to CAE and for reporting to CASE.

REPORTING TO CAE'S VSE SURVEY

Count and report at face value only legally enforceable unconditional pledges and promises to give as defined by FASB and GASB. (CAE asks for annual pledge totals only as an optional, informational item. Pledges are not included in total giving figures for VSE purposes.) Do not include conditional pledges and other revocable gifts in reporting to CAE.

REPORT ING TO THE CASE CAMPAIGN SURVEY

Report conditional pledges at face value that are pledged during a campaign if:

- there is a reasonable expectation that the conditions under which the pledge is made will be met during the campaign period, and

- there is appropriate documentation, most likely in the form of a gift agreement. The documentation should include dollar amounts and a payment schedule.

Record conditional pledges as revocable gifts. See Section 1.3, “Planned/Deferred Gift Instruments,” for additional discussion about counting revocable gifts.

1.2.9 Real and Personal Property

Real property (also called real estate or realty) is land, its natural resources, and any permanent buildings on it. Personal property is anything other than real property that is subject to personal ownership. Real or personal property becomes a gift to the institution when a transfer of ownership has taken place. This occurs when the item(s) of property or clear title to the property has been delivered to the institution or the institution's legal agent.

Personal property also may include gifts donated to the institution to auction at charity fund- raising events. While possibly not related directly to the mission of the institution, their conversion to cash results in a mission-related donation. However, these items do not constitute a gift for CASE and CAE reporting purposes unless they are purchased at the auction (see Section 1.2.2, “Auctions and Other Special Events”). If they are not purchased, your accounting department may wish to record these transfers of physical property as something other than physical assets. However, for purposes of the CASE and CAE reports, all property (except partial interest) donated for an auction should be included in real and personal property totals at their fair market value, regardless of the value the donor may claim for tax purposes.

There are two types of personal property: tangible and intangible (intellectual property) assets. Examples of tangible assets can include, but are not limited to:

- personal collections of art, books, coins, or movies
- cars, boats, and aircraft
- animals, such as livestock for a veterinary program or horses for an equestrian program
- securities
- equipment
- software
- printed materials
- food or other items used for hosting dinners
- gas or oil wells

Intellectual property is an intangible asset produced through creativity and innovation. Examples of intellectual property include:

- patents
- copyrights of cultural, artistic, and literary works
- computer software under development

If the institution does not know or cannot readily determine the fair market value of intellectual property, report the asset in the year the value is learned.

Count gifts of real and personal property (tangible and intangible) that qualify as a charitable deduction for a donor at fair market value regardless of the value the donor may be able to take as a charitable deduction. IRS requirements for gift substantiation note that the donor has the responsibility for independently valuing property for tax deduction purposes.

Count gifts of real and personal property with fair market values of more than $5,000 at values placed on them by qualified independent appraisers, if required by the IRS for valuing non-cash charitable contributions. In those rare instances when the donor is not required to provide an appraisal (for example, if the donor is the creator of a piece of donated artwork, in which case the donor's deduction is limited to the cost of materials), the institution's appraisal obtained independently for insurance purposes is sufficient.

Count gifts of $5,000 and less in any of the following ways:

- the value placed on the gift by a qualified independent appraiser. While not necessary for IRS purposes, the donor may nonetheless obtain such an appraisal.

- the value declared by the donor. CASE recommends that the institution require the donor to provide a copy of either (1) the paid bill of sale or (2) the invoice and a copy of the check or personal credit card statement showing payment. Sales tax should not be included in the gift’s value.

- the value determined by a qualified expert on the faculty or staff of the institution, but not an individual whose fundraising totals are directly affected by the gift.

- the value established by a purchaser's winning auction bid at a charity auction run by the institution , if no fair market value for the item was available before the auction.

1.2.10 Wholly Charitable Trusts Administered by Others

A wholly charitable trust is one that is held for the benefit of charity, in which the principal is invested and the income is distributed to charitable organizations. All interests in income and principal are irrevocably dedicated to charitable purposes (as opposed to a charitable remainder or lead trust). While it is similar in that sense to an endowment fund, it is created as a free- standing entity. However, for purposes of these standards and reporting instruments, count the donation in the appropriate “endowment” category.

Count the fair market value of the assets or a portion of the assets of such a trust administered by an outside fiduciary at face value in the year in which the trust is established, provided that the institution has an irrevocable right to all or a predetermined portion of the income of the trust.

In the case where the institution receives less than the entire income of the trust, report the stated percentage to be distributed to the institution multiplied by the total fair market value of the assets in the trust. Income received from the trust is usually regarded as endowment income on the general ledger of the institution. The income does not appear as a gift in fundraising reports.

1.3 PLANNED/DEFERRED GIFT INSTRUMENTS

Deferred gifts, also called “planned gifts” or “future commitments,” play a very important role in the development of an overall giving strategy when a fundraising professional is working with a donor or prospect. These types of commitments-which for some institutions include complex current gifts such as real estate-differ from outright gifts because the benefiting nonprofit organization does not realize an asset until some point in the future. For this reason- the uncertainty of timing of realization-these standards advise institutions to develop and announce separate goals for deferred and outright gifts.

Report planned gifts to CAE and CASE in different ways.

REPORTING TO CAE’S VSE SURVEY

Report to GAE only legally enforceable, irrevocable planned or deferred gifts. Report these gifts at both face value and present value. See discussion in Section 1.3.8, “Irrevocable and Legally Enforceable Gifts.”

Note that in the case of bequest expectancies, an irrevocable bequest agreement may be executed with willing donors in order to count and report the gift to CAE. Provide bequest expectancy data to CAE for information purposes only. When reporting to CAE, do not aggregate the values of these expectancies in total giving.

Do not include conditional pledges and other revocable gifts in reporting to CAE.

REPORTING TO THE CASE CAMPAIGN SURVEY

Report legally enforceable unconditional pledges and irrevocable deferred gifts at both current face and discounted present value. CASE also allows reporting of appropriately documented revocable gifts and conditional pledges at face value if they are pledged during the course of the campaign.

Irrevocable deferred gifts: Report irrevocable deferred gifts (such as charitable gift annuities and charitable remainder trusts) to CASE at both current face and discounted present values. Calculate present value according to IRS standards. Record irrevocable deferred gifts separately from outright gifts and revocable gifts.

Revocable gifts: You may report revocable gifts to CASE at face value as a testamentary pledge if donors pledge them during a campaign, and the institution documents the pledges and reports them separately from outright gifts and irrevocable deferred gifts. Appropriate documentation might include a commitment in writing from the donor, her attorney or financial adviser, or a copy of the bequest intention, retirement plan, or other document outlining the ultimate source of the gift. Documentation should include a statement about the assumed value of the gift. CASE also recommends periodic verification of the gift.

If a revocable gift is realized or becomes an irrevocable deferred gift during the campaign in which it was pledged, the value of the gift should be subtracted from the revocable commitment category and added in the appropriate category as an outright or irrevocable gift. If a revocable gift is realized during a future campaign, only amounts not attributed to the original campaign may be counted in the new campaign.

In the case of externally managed irrevocable life income trusts that allow the donor to change the charitable beneficiary, because the designation is not irrevocably pledged to the institution, it should be counted as a revocable gift, at face value, and in the revocable gift category.

Record conditional pledges as revocable gifts.

Except where otherwise noted (for instance, for bequest expectancies), use the present value method for reporting to both CAE and CASE outlined by Canadian or U.S. law for determining an individual's charitable tax deduction or credit. That means the present value requirement is simply the particular deduction/credit calculation for the specific type of gift, as specified by the IRS.

The IRS does not specifically address present value methodology for bequest expectancies. For purposes of these standards, institutions that report irrevocable bequest expectancies should take the discount rate published on a monthly basis by the IRS and apply it to the IRS’s life expectancy tables for annuities (Reg. section q2-6(d)(3)).

These standards do not suggest what value an institution may assign for donor recognition purposes or in fundraising reports to their constituencies.

In many of the following examples, it is possible for the donor to make an “additional” gift either by revoking his or her interest in the remainder or through premature death.

Realized testamentary gifts. In cases where a deferred gift-for instance, from a will or life insurance-is realized within five years of when that instrument was initially counted, resulting in the institution receiving the gift in full, the institution should record an additional gift of the difference between the previously recorded deferred gift and the amount realized as a new outright gift. This is to reflect consistency in reporting these receipts with gifts and pledges paid during a five-year campaign reporting period.

Deferred gifts administered by others. When the institution or the donor chooses to have a deferred gift administered by others, report the value of the gift's assets to CAE at both face and present value in the deferred gifts section in the institution's gift totals for the year. When reporting to CASE, report the value in separate columns at both face and discounted present values.

For example, suppose a donor creates a charitable remainder trust for an institution, naming a bank as the trustee. Report the trust in the year it is established, or at such time as the terms of the trust become known to the institution. Calculate the present value for counting and reporting purposes in accordance with tax deduction guidelines, and include the market value and present value in the appropriate report section for the type of gift. The institution should cite the gift in the appropriate source category under "Individuals," not in "Other foundations and trusts." In addition, once the value of the asset is counted and reported, it should not appear again in a subsequent report for example, after the death of an individual who set up a charitable remainder trust-except as indicated under "Realized testamentary gifts" (above).

Some generally accepted accounting principles for educational institutions provide for omit- ting the assets of trusts administered by others from the institution's records as the preferred alternative to the above treatment. In other cases, some generally accepted accounting principles require recognizing the assets and related revenue. Because an objective of these standards is to measure annual and campaign fundraising performance, these assets should be included in gift totals regardless of the treatment by the accounting department.

Types of deferred gifts. Below are descriptions and definitions of the more common deferred gift instruments. CASE provides these examples for information purposes and, as described, for counting and reporting purposes. However, the following are not legal descriptions and should not be construed as legal guidance. Applicable laws must be reviewed to ensure proper legal compliance.

Note that on the VSE survey not all of these instruments are considered deferred gifts. The deferred-giving section of the VSE includes only charitable remainder trusts, charitable gift annuities, pooled-income funds, and remainder interest in property. Gifts of life insurance and retirement plan assets are usually the result of revocable beneficiary designations, much like a bequest. And bequest expectancies are not counted except, optionally, in Section 1.

1.3.1 Bequest Expectancies

Bequest expectancies are provisions in a will, trust, or other testamentary legal document providing a gift to charity pursuant to applicable state or provincial law. Typically, these may be revoked before the donor's death unless accompanied by a legally enforceable contract. The gift may be designated as a percentage of the donor's estate, a specific dollar amount or description of property (such as securities, real estate, or other assets), or a residual of the donor's estate. Bequest expectancies may also be made contingent upon a certain event happening.

Retirement plan assets. The Individual Retirement Account (IRA) charitable rollover-which under current U.S. law expires on Dec. 31, 2009-allows IRA owners starting at age 70 1/2 to make tax-free gifts totaling up to $100,000 per year from their IRAs directly to eligible charities, including schools, colleges, and universities. (IRS Notice 2007-7 answers frequently asked questions related to the IRA rollover.) Otherwise retirement plan assets may be transferable directly, but such a transfer is treated the same as a withdrawal, and taxed to the plan recipient as ordinary income. Of course, a subsequent outright gift of cash to an organization will usually provide an income tax deduction that can offset most, although sometimes not all, of the ordinary income tax liability. However, some or all of the retirement plan assets may be bequeathed to a charity pursuant to a legally enforceable document, such as a simple beneficiary designation form.

1.3.2 Charitable Gift Annuity

In the charitable gift annuity transaction, a person irrevocably transfers to an institution some property, such as cash or securities, and the institution agrees in a contract to pay the donor or other beneficiaries (maximum allowable of two beneficiaries) a guaranteed annuity for life. A portion of the income is not taxable but considered a return of principal. Because the transferred property has a value larger than the value of the annuity, the transaction is in part the purchase of an annuity from the institution and in part a gift to the institution. An income tax deduction (at the present value for counting and reporting purposes) is allowed for the difference between the gift value and the amount required to fund the annuity (actuarial value).

A deferred payment charitable gift annuity is almost identical in construct to the standard charitable gift annuity. The significant difference is that the contract stipulates some date in the future when payments to the donor or other beneficiaries will begin. This results in a larger income tax deduction to the donor in the year in which the transfer is made to the institution. In addition, the amount of income to the donor can be significantly larger than that of the standard charitable gift annuity.

1.3.3 Split-interest Trust

Split-interest trusts typically involve some asset (the principal, principal capital, or property) that can generate income, such as land that can generate rental income, or financial investments that can generate interest income. Split-interest trusts are used to give one party income during the period of the trust, while another party maintains full ownership of the income-generating property when the trust ends. The term split-interest trust indicates that the interests in the trust (that is, the different parts of ownership) are divided among the charity, donor, and sometimes other beneficiaries. The right to the income generated by the property is called the “income interest,” and the right to the property itself is called the “remainder interest.” The latter term refers to the fact that when the trust ends, full ownership and rights to the remaining property (including the right to all future income it generates) go to the designated beneficiary. Charitable lead trusts and charitable remainder trusts are split-interest trusts.

1.3.4 Charitable Lead Trust

A charitable lead trust allows for one or more charitable organizations to receive income payments from the trust for a specified number of years or one or more lifetimes. At the end of that term, the assets of the trust return to the donor or designee. This allows a donor to transfer assets to children or grandchildren while potentially reducing transfer taxes. There are two common forms of charitable lead trust:

- A charitable lead annuity trust makes a fixed-dollar payment annually to the charity.
- A charitable lead unitrust pays to the charity a fixed percentage of the market value as determined annually.

In the case of charitable lead trusts, which make contributions over time, record the face value of the payment stream as a pledge in the year that it is given, and record the annual income as pledge payments as you receive it regardless of the length of the trust.

1.3.5 Charitable Remainder Trust

A charitable remainder trust is an irrevocable qualified trust in which a donor gives cash or assets to the trust, allowing the payment of income to one or more persons for their lives or a term of years. At the end of this time, the trust's assets are given to one or more charities designated by the donor. Details of all charitable remainder trust gifts may not be available to the institution, and thus it will not always be possible to verify that the institution irrevocably is the charitable remainder beneficiary. Nonetheless, to count the assets in fundraising totals for reporting to CAE, the charitable remainder beneficiary designation must be irrevocable and verified.

Charitable remainder trusts are usually in one of two major forms. Each provides periodic payments during a specified term, but each determines the payment amounts differently.

In a **charitable remainder unitrust (CRUT)**, the designated income beneficiary(ies)/donor receives variable income from the trust for the rest of his life or a specified number of years. Distributions are a percentage of the trust principal, revalued each year, reflecting any increases or decreases in the value of the trust’s assets. More than one person may receive income. The trust assets become the property of the charitable organization upon the death of the last surviving income beneficiary or in a pre-established period. The donor may make additional contributions to the trust. The donor bases her income tax deductions on the present value of the remainder interest going to the charitable organization. There are three variant forms of CRUTs:

1. **Charitable remainder unitrust-standard.** This is similar to a charitable remainder unitrust-net income but less flexible, as the annual income is explicitly a fixed percentage of the asset value, usually between 5 and 7 percent. The IRS has issued regulations allowing trustees of income exception CRUTs to convert (flip) them into standard CRUTs under certain circumstances. This generates a charitable remainder unitrust-combination, also called a "flip-CRUT" or "flip unitrust."

2. **Charitable remainder unitrust-net income (NICRUT).** A NICRUT pays only the net income earned by the trust each year, but not more than a set percentage of the property's net fair market value. It provides for payments of either (1) a fixed percentage (at least 5 percent) of the trust's annual value or (2) the net income of the trust, whichever is less.

3. **Charitable remainder unitrust-net income with makeup provisions (NIMCRUT).** A NIMCRUT (sometimes called a "type 3 CRUT") pays the net income earned by the trust each year up to a fixed percentage of value, but makes up any deficit below that percentage with surplus income in subsequent years.

A **charitable remainder annuity trust (CRAT)** is similar to a unitrust except that the designated income beneficiary(ies)/donor and second beneficiary (if one is named) receive a fixed income from the gift for the rest of their life, a term of years, or as long as the trust has assets. Distributions are determined by the original value of the trust's assets. The donor cannot make future contributions to this type of trust.

It is possible for a donor of a charitable remainder trust to make a subsequent additional gift by reducing the number of years she is to receive income distributions. Follow applicable tax law and guidance to calculate the additional tax deduction.

Retention of right to change beneficiaries. When establishing a qualified irrevocable charitable remainder trust (CRUT or CRAT), donors must assign the remainder of the trust to one or more charitable institutions for it to qualify as a charitable trust. The donor, however, may retain the right to change the charitable organization that will ultimately benefit from the trust. When educational institutions are involved in the creation of the trust (or when they serve as trustee), the trust must have wording that makes the assignment to the institution irrevocable for the institution to count and report the trust as a gift for purposes of reporting to CAE. Report revocable beneficiary designations in a charitable remainder trust to CASE in the same manner as bequest intentions.

If an educational institution does not have the opportunity to be involved in the creation of the trust and/or the donor(s) or a third party externally manages it, the donor typically retains the right to change the beneficiary. Educational institutions frequently want to give gift credit to donors who have made such provisions. However, because the donor has retained the right to change the provisions, the remainder gift is revocable and, therefore, the institution cannot assign such hard credit. An institution may enter into a simple letter of agreement with the donor that states that it is the donor's intent not to change or reduce the provisions of the trust. Count the gift once the letter of agreement is executed.

1.3.6 Life Estate

In a life estate gift, a donor deeds personal residential property (or a farm) to a charitable organization. While the donor or designated owner of the retained life estate is living, he has a legal interest in the life estate with full rights to live there or to rent or sell those rights. The donor continues to take care of the property, pay the taxes , and receive any income the property generates. Since the transfer occurs outside the donor's will, it will not pass through probate.

It is possible for a donor to make a subsequent additional gift by transferring any remaining life interest in the designated property. Institutions should follow applicable tax law and guidance to calculate the additional tax deduction.

1.3.7 Pooled Income Fund

A pooled income fund is a common fund into which several donors place contributions for investment and management. Each donor has a pro rata shared interest of the pooled fund and receives a share of the total net ordinary income earned for the remainder of her life. At the end of each income beneficiary's life, the trust's assets representing the deceased beneficiary's pro rata share of the trust are segregated from the trust and given to a designated charity. The income tax deduction is based on the current value of the remainder interest going to the charitable organization.

REPORTING TO CAE'S VSE SURVEY

Gifts reported to the CAE must be irrevocably and legally enforceable. The exception to this is the optional Section I where institutions may report pledges and bequest expectancies. (Bequest expectancies must be a dollar amount, not a percentage of an estate.) What makes an agreement irrevocable and legally enforceable?

In most locations, what makes an agreement irrevocable or a pledge legally enforceable is either "consideration" or "detrimental reliance."

- Consideration is broadly defined as the legal principle applied when one party (e.g., the donor) receives something (e.g., credit for a gift intention or the naming opportunity) in exchange for something else (e.g., entering into an irrevocable agreement).

- Detrimental reliance is generally defined as the legal principle applied when it can be demonstrated that if one party (e.g., the donor) does not fulfill its obligation to the other party (e.g., the institution), harm (financial or otherwise) will come to the party to whom the promise was made. For example, suppose an educational institution borrows money to begin construction on a new building based upon an irrevocable agreement. If the donor does not fulfill the obligation under the agreement, the institution will suffer financially. Because of the uncertain timing of bequests, it is generally not advisable to enter into an agreement of this type for expenses that are anticipated in the short term.

- According to research done by attorney William Finestone of Finestone, Richter & Vital of Los Angeles for a presentation at the 2002 annual meeting of the National Committee on Planned Giving, it is possible to enter into a legally enforceable agreement with donors based on the legal principle of consideration in all states, with the possible exceptions of Alaska, the District of Columbia, North Dakota, and Wyoming, where it is unknown if such agreements would be considered legally enforceable under this legal principle. Also, in Hawaii, to make an irrevocable bequest agreement legally enforceable, the agreement does not need to show consideration, but rather the legal principle of detrimental reliance.

- In Alabama, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Mexico, New York, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Vermont, and Wisconsin, either the legal principle of consideration or that of detrimental reliance may be used make the agreement legally enforceable. The conditions for legal enforceability of agreements based on detrimental reliance are unknown in Alaska, the District of Columbia, North Dakota, and Wyoming.

- In Iowa and New Jersey, a simple agreement that may lack both consideration and detrimental reliance is considered legally enforceable based on public policy.

- The strongest case for enforceability would be to show both consideration and detrimental reliance, although often only one is needed. Institutions should seek legal advice regarding their local laws before entering into any type of irrevocable gift agreement. In locations where the enforceability of the above-mentioned agreements is uncertain, it may be appropriate to use one of the following other forms:

- **Charitable/deferred-pledge agreement.** A deferred-pledge agreement is a legally binding document tested in the courts of several states that places an obligation on the estate of the issuer to transfer a certain amount to the institution. Under such agreements, the executor of the donor's estate is responsible for payment of the specified amount from the estate.

- **Contract to make a will.** A contract to make a will is a legally binding document, also tested in the courts of several states, that places an obligation on the donor to make a will that transfers certain assets or a certain percentage of his or her estate to the institution. This instrument is used when the donor cannot (or does not wish to) specify the precise dollar amount he or she will contribute. Instead, the donor promises to execute a valid will wherein he or she designates a certain item of property or a portion of his or her estate to the institution. Often, this portion is stated as a percentage of the residue of the estate. After the contract is signed, no changes may be made in the donor's will that would decrease the institution's originally specified share, except as agreed upon in advance by the donor and the institution.