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FASB Removes Projects from Technical Agenda

The FASB recently announced it was removing certain projects from its agenda. These projects have all been around for a while, but they no longer need to be on practitioners' radar. This article highlights of the projects removed from consideration and provides information about the dispensation of the related issues.

Non-profit Consolidation by a For-profit Entity

In March, the FASB removed *Consolidation of a Not-for-Profit Entity by a For-Profit Sponsor* from its technical agenda. This project originated in May 2020 when the Board received an agenda request to provide guidance on how a for-profit sponsor should evaluate whether to consolidate a not-for-profit entity controlled through sole corporate membership, owning a majority voting interest, or other means when the sponsor for tax reasons does not have a claim on assets transferred to the not-for-profit. Because specific guidance does not exist in this area, there was the potential for diversity in practice on whether to consolidate. The project was added to the technical agenda in October 2020.

In March 2021, the FASB Staff's research determined that most for-profit sponsors are not consolidating the not-for-profit entity and are making an accounting policy election based on analogy to FASB ASC 810, *Consolidation*; FASB ASC 958-810, *Not-for-Profit Entities—Consolidation*; or nonauthoritative guidance. Therefore, consolidation was not pervasive enough for GAAP to be amended, and existing GAAP was considered adequate. Board members advised for-profit entities consolidating a not-for-profit entity to consider making a voluntary change in accounting policy to deconsolidate the entity.

Debt Classification

In April, the Board discussed comments received on its January 2017 proposed ASU and its September 2019 proposed ASU (Revised),

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Debt (Topic 470): Simplifying the Classification of Debt in a Classified Balance Sheet (Current versus Noncurrent). The Board removed this project from its technical agenda after concluding that the implementation costs would outweigh any potential benefits.

The IASB issued *Classification of Liabilities as Current or Non-current* in January 2020, which clarifies existing guidance on classification of debt and other financial liabilities in certain circumstances. The FASB will determine if a more comprehensive project on current versus noncurrent classification of all liabilities is needed so there is more consistency in balance sheet classification between FASB and IASB standards.

Inventory Disclosure Rules

In July, the FASB decided to remove from its technical agenda proposed ASU, *Inventory (Topic 330): Disclosure Framework—Changes to the Disclosure Requirements for Inventory*. This proposed ASU was issued in January 2017 to consider whether additional quantitative and qualitative inventory disclosures were needed. Most of the existing inventory disclosure requirements were established in 1953 by ARB 43, and other disclosure requirements specific to certain industries have developed over the years. In 2017, half of those that provided comments on the proposed ASU raised concerns about the proposed new disclosures. The FASB staff conducted additional outreach and research on this project since 2017 but has now decided to drop it.

What's Up Next?

After formally removing these projects, the FASB is beginning a new agenda consultation process. The Board will formally evaluate whether an item should be added to its agenda based on whether there is an identifiable and pervasive need to improve GAAP, there are technically feasible solutions whose perceived benefits likely justify the costs of changing, and the issue has an identifiable scope.

Cybercrime Risks on the Rise

Cybersecurity is not a new issue for nonprofit organizations. The COVID-19 pandemic has also lead to more cybercrime risks along with economic devastation and increased pressures on the health and welfare of employees. Remote work, increased use of online transactions, and new types of sensitive personal health information all create new challenges.

There is a significant increase in media coverage of organizations that are victims of cyber-incidents and security breaches that has made this topic more top of mind for management and board members. Smaller organizations with less sophisticated systems and security controls are becoming a more common target.

There are more incidents of deliberate cyberattacks on information systems from outside organizations. Cybercriminals are becoming more sophisticated and using newer technologies. There are also increases in security breaches and misuse of organizations' data from within, both intentional and accidental, by employees and suppliers.

Unfortunately, the risks of data breaches are high. They can cause serious harm to the organization, including increased expenses, legal liability, regulatory fines, reputational damage, inability to operate for a period of time, and loss of funding. There is also personal risk to those individuals whose personal data is compromised because of the organization's actions or failures to act.

Included herein are a few types of cybercrime that are potential high-risk areas for nonprofit organizations and suggestions for accountants to help clients prevent an attack.

Stealing Sensitive Information

Organizations are at risk when storing and transferring confidential data about employees, donors, customers, and volunteers. Examples of individuals' personally identifiable information (PII) that is protected by law includes social security numbers, addresses, employee records, and financial account numbers. If there is a data breach, this information can be exposed and used by hackers to commit identity theft or sold to others. Organizations that outsource functions to third parties or use cloud-based services may face additional risks to their PII data they cannot directly control.

Hacking Websites or Computer Networks

Nonprofit organizations use their websites to conduct e-commerce, including special event registrations and processing donations online. Scammers use different types of *malware* to attack organizations' hardware or encrypt files to prevent them from accessing their own systems and data unless they pay 'ransom' to restore them. If cybercriminals hack an organization's website and systems, customers and donors who become aware of it or whose confidential information is compromised can lose confidence in the organization's systems and controls and no longer support them.

Compromising Emails

Online scammers use emails to obtain information and steal money. *Phishing* is an email that appears to be from a legitimate sender requesting private information or directing the reader to click on a link or open an attachment to gain access to their computer or network. There have been cases of criminals emailing organizations' human resource departments asking for confidential information about employees (name, address, birth dates, social security numbers, bank account numbers, salary information, etc.). The scammers steal the data and can use it inappropriately or hold the organization ransom, demanding money in exchange for the data being returned to the organization and not published. Data can be lost forever to the organization, or it may have to be reconstructed and reentered into systems.

Another common email fraud involves scammers pretending to be an officer, vendor, or attorney of the organization and emailing employees requesting money be wired to them. These emails look legitimate and can result in large financial losses if employees unwittingly respond to them.

Included herein are some basic safeguards and controls that nonprofit organizations should consider having in place to protect themselves from cyberattacks.

Employee Awareness

Organizations should proactively safeguard their information. Access to confidential information must be protected using quality passwords and limiting access only to certain authorized employees. Employees' use of mobile phones and social media increases risks to the organization's data. Desktops, laptops, and mobile devices must not compromise network security and need to be protected from theft and damage. It is critical for organizations to train all personnel on the cybersecurity risks and types of breaches, how to protect confidential data, handle records in both digital and paper form, and keep devices secure.

Risk Assessment

Security of systems and data is no longer the sole responsibility of the IT department or chief information officer. Management and board members need to discuss and evaluate the nature of risks their organizations are exposed to across the cybersecurity spectrum, along with ways to address them. This includes being aware of the operational, legal, and regulatory exposures, thinking through the specific risks related to the organization's data, its storage, the IT infrastructure, and system integrity. Regulations and laws at federal, state, and local levels are changing and becoming more stringent. Board members are facing more questions about cybersecurity from the organization's customers, donors, and regulators, and they must educate themselves beyond a basic understanding.

Investment in Cybersecurity

Based on their risk assessment, nonprofit management and board members should assess the need to make additional investments in their basic system security and controls. Investment goes beyond hardware and software and must include human and organizational considerations. Organizations that use cloud-based computing must have additional controls in place that are continually monitored.

Incident Management and Response

Despite planning, most cybersecurity experts say some form of data breach is likely going to happen to every organization at some point in time. Organizations need to have processes and procedures in place and a communication plan ready for how they would respond quickly to a cyber incident, to minimize their financial and reputational losses and any damage to their donors and employees.

Accountants and consultants can provide valuable advice to organizations on how to better manage cybersecurity risks by identifying security gaps and reducing opportunities. An organization's external auditor can objectively assess internal controls over cyber-security while internal auditors can provide additional resources and assurance.

Practical Consideration:

The AICPA has a Cybersecurity Resource Center with resources to help organizations and CPA firms assess risks. **www.aicpa.org/interestareas/frc/assuranceadvisoryservices/cyber-security-resource-center.html**

An Overview of Fundraising

The COVID-19 pandemic has caused an increased demand for the services of nonprofit organizations while creating multiple challenges, including teleworking, decreased donations, and the inability to conduct certain revenue-generating programmatic activities. However, with the return to some resemblance of normal appearing likely in early 2022, organizations are now beginning to plan in-person fundraising events.

Appropriately designed fundraising events can raise donation income and create positive publicity for, and awareness of, the organization's mission. However, if not designed carefully, they could create unrelated business income, donor acknowledgment penalties, and confusion over the value of goods and services provided at the event.

Common fundraising events include annual celebrations, gala dinners, silent auctions, concerts, and games of skill such as golf tournaments. Typically, these events avoid classification as unrelated business income because they are not regularly carried on. Therefore, an organization that conducts multiple fundraising events in a year will often vary the type of event, perhaps holding one golf event, one banquet, and one silent auction. Events such as a Walk-a-Thon or crowdfunding that solely generate charitable donations and do not provide goods or services with more than token value in return are not considered to be fundraising events reportable on IRS Form 990 Schedule G.

Good recordkeeping is essential for organizations to report the fundraising activity accurately. An organization that earns more than $15,000 from fundraising events must disclose details for its two largest events over $5,000 and provide combined details for all its other events with gross receipts over $5,000 each. If the organization is exempt from income tax under IRC Sec. 501(c)(3), it must notify its donors, contemporaneously and in writing, of the fair market value of any goods and services provided. All of the organization's donors who give more than $250 must be provided with a contemporaneous written acknowledgment, or the donor risks having the charitable donation deduction denied. However, for donations with a *quid pro quo* element where goods and services are provided in connection with the donation, the written acknowledgment threshold is only $75. Organizations that fail to provide such a written disclosure can be penalized up to $5,000 per event. "Contemporaneous" for this purpose means that the donee must provide the written acknowledgment before the due date of the donor's tax return.

A written acknowledgment must explicitly state the value of goods and services provided as a return benefit, even if that value is zero. The acknowledgment may disregard token return benefits if the fair market value of the items is 2% or less of the payment (not to exceed $113 in 2021) or if they consist of low-cost items with the donee's logo that cost less than $11.30 (in 2021). Sponsor recognition that lacks any element of advertising is not considered a return benefit and has no fair market value.

Auctions consist of two transactions that must be accounted for separately. In the first transaction, a donor gives a noncash item. The organization recognizes donation revenue and temporarily holds the asset in inventory. In the second transaction, it sells that item of inventory for cash. The donor in the first transaction has made a donation. The buyer in the second transaction has not made a donation unless the buyer had charitable intentions and paid more for the item than its fair market value. Even then, only the excess portion of the payment over the item's fair market value can be treated as a donation.

Organizations conducting fundraising events need to keep track of the following:

- *Gross Receipts:* Total event funds received from all sources, including ticket sales, contributions, sponsorships, auction proceeds, and proceeds from the sale of goods or services.
- *Contributions:* The portion of gross receipts that exceeds the fair market value of goods and services provided.
- *Gross Income:* The portion of gross receipts that represents the fair market value of goods and services provided to event participants, including auction items purchased, cash and noncash prizes, food, beverages, and entertainment.
- *Direct Expenses:* Expenses reportable on Schedule G Part II that relate to hosting the event and providing the benefits, including cost of goods sold, catering fees, food, beverages, golf course fees, prizes, facility rental, and entertainment.
- *Indirect Expenses:* Expenses reportable on Form 990 Part IX column (D) that relate to the cost of getting people to attend the event and make donations,

including maintaining mailing lists, soliciting donors and sponsors, advertising, and engaging a professional fundraiser.

Games of chance such as bingo, casino nights, sweepstakes, scratch-offs, and raffles are disclosed separately from other fundraising activities. Gaming can result in unrelated business income unless it is not regularly carried on, is conducted by volunteers, or is in furtherance of the organization's social or recreational mission. Individuals who participate in games of chance have not made a charitable donation and should not be provided with a written acknowledgment. Win or lose, the value of participating in the game is considered equal to the amount of the wager. Additional reporting requirements, including backup withholding, may exist when prizes are awarded. Organizations conducting a gaming event should consult IRS Pub 3079, "Tax-Exempt Organizations and Gaming," for further details.

In addition to federal reporting and disclosure requirements, organizations must comply with state laws and regulations, particularly with regard to soliciting charitable donations and conducting gaming events. Some states require additional disclosures when a professional fundraiser is used.

Practical Consideration:

Fundraising events may soon be a welcome attraction for people venturing out after months of quarantine. Close coordination between a nonprofit's marketing, fundraising, and accounting departments can make the reporting burden manageable.

Donor Advised Funds: Why So Controversial?

A donor advised fund (DAF) is designed to allow donors to contribute cash, securities, or other assets to an investment account and take an immediate tax deduction. The funds are held by a sponsoring charitable organization, often a community trust, and the donor/advisor is given advisory privileges over how the charitable funds are to be disbursed to recipient charities. The donation is irrevocable, and the sponsoring charity has complete discretion over how to invest and distribute the funds. Any recommendations the donor/advisor makes about investing or grantmaking are *not* legally binding. However, most sponsoring charities will follow the donor/advisor's recommendations to maintain a good relationship.

DAFs appeal to individuals who want to get an immediate tax deduction but who haven't decided which recipient charities to support, who want to see the funds grow tax-free while creating a legacy for future giving, or who lack the means to afford the administrative costs of a private foundation. Donors may prefer a DAF to a private foundation for several reasons:

- The accounting and legal fees to create and maintain a DAF are lower,
- The charitable donation deduction limitations are higher,
- The donor/advisor is not responsible for confirming that the recipients are qualified charitable organizations,
- The donor/advisor does not have to keep track of gift acknowledgements from multiple recipients,
- There is no excise tax on investment income,
- There are no minimum required payouts,
- Donor/advisors can front-load several years worth of donations to maximize their itemized deductions,
- Donor/advisors remain anonymous with respect to the recipient charities, and
- A DAF can facilitate a large charitable donation that would jeopardize the recipient charity's public support status if the donor gave it directly.

DAF resources may not be directed to fulfill a donor/advisor's personal pledge, used in a way that results in more than incidental personal benefit to the donor/advisor such as tuition or entertainment, or directed to a private foundation or noncharitable organization.

In recent years, for-profit financial investment firms have created sponsoring charities to accept and manage DAF accounts. The sponsoring charity usually hires the investment firm to manage the DAF accounts' investments. As a result, the sponsoring charity has an incentive to accumulate funds in the DAF account rather than distribute them to recipient charities. DAFs have also been criticized for investing in businesses owned by the donor/advisor or funding administrative items that benefit the donor/advisor.

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There is disagreement about the rate at which DAFs have been making charitable distributions. Proponents claim that the payout rate is between 14% and 20% each year, and even higher during times of emergency. Critics claim that the payout rate is much lower when investment gains are excluded from the calculation, and that 57% of DAFs distributed less than 5% of their assets in 2020. A study conducted by the Dorothy A. Johnson Center for Philanthropy found that payout rates in Michigan are over 46% at small DAFs but below 5% at large ones. The study also found that 90% of DAFs have made some kind of distribution during the four-year period covered by the survey.

John Arnold of The Initiative to Accelerate Charitable Giving, a coalition of philanthropists and charitable leaders, states that "There are too many DAF accounts that have received a tax benefit and are not distributing resources into the community. This statistic that 90 percent [of DAF accounts] made a distribution of at least $1 in aggregate is an incredibly low bar, and one I don't think defines success."

Leslie Lenkowsky, professor emeritus at the Indiana University Lilly School of Philanthropy, counters that "One shouldn't assume that because a DAF didn't make a gift in a particular year that the donors were basically taking advantage of the tax code."

New Legislation Introduced

Because of this continuing debate, legislation has been introduced to further refine the operations of DAFs. The Accelerating Charitable Efforts (ACE) Act was introduced in June 2021. ACE would institute distribution requirements on donor advised funds (DAFs), provide incentives for accelerated payouts, and prevent private foundations from treating payments to a DAF as a qualifying distribution.

The Act would create two classes of DAFs:

- *15 Year DAF (Qualified DAF):* Similar to current DAFs, the donor would get an immediate tax deduction for the contribution to the sponsoring charity. Unlike current DAFs, funds would have to be distributed by the sponsoring charity within 15 years.
- *50 Year DAF (Nonqualified DAF):* The donor would be allowed a charitable contribution deduction only as the sponsoring charity distributes funds to recipient charities. No deduction would be available for noncash donations until the sponsoring organization sells the property for cash. Funds must be distributed within 50 years.

The distribution rules would not apply to donations of $1,000,000 or less that are given to a community foundation. For amounts over $1,000,000, the donor could enjoy immediate tax benefits if the DAF requires a 5% minimum distribution, similar to the minimum distribution requirements for a private foundation.

Donors, sponsoring charities, and recipient charities should review the proposed legislation and other reform efforts, study the underlying data, and participate in the debate (with due regard for the limitations on lobbying activities). The nonprofit sector will enhance the public's trust and will benefit from increased giving if it can identify and promote reforms that will put more resources to work in supporting charitable causes.