

Nonprofit Business Advisor

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Nonprofit Finance Fund's 'tool kit' provides certainty in uncertain times

A recent survey released by the Nonprofit Finance Fund (NFF) entitled *2010 State of the Nonprofit Sector Survey (NBA 248)* finds that many nonprofits are being asked to do more with less. According to the survey, 80 percent of participants anticipate an increase in demand for services in 2010, yet only 49 percent expect to be able to fully meet demands.

Gar Kelley, vice president, Mid-Atlantic Region, at Nonprofit Finance Fund, said survey respondents were painfully honest and offered up some frightening statistics.

"Some organizations have told us that they have less than three months of cash on hand for operating expenses and 12 percent said they don't have any cash. Many times folks are 'faking it 'til they make it,'" he said, "In an environment of increased demand and less funding available, this lack of reserves puts nonprofits in a precarious position, and that sort of

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Foundations acted quickly during recession

A new report from The Philanthropic Collaborative, *Responding in Crisis: An Early Analysis of Foundations' Grantmaking During the Economic Crisis*, has found that America's foundations were swift, flexible and targeted in their response to the worst economic crisis since the Great Depression. The first-of-its-kind study examining the private-sector response to the crisis analyzed a sample of 2,672 grants that totaled \$472 million of foundation giving from 2008 to 2009, and early planned giving for 2010.

"The ability of foundations to be swift and flexible in their response allowed them to modify their giving throughout the crisis and ensure the grants went to those most in need," said study author Doug Holtz-Eakin in a statement. "During the U.S. economic collapse, we saw grant-making shift, expand and follow the larger unemployment and housing needs that developed and became acute in communities across the country. Even when foundations themselves faced financial stress from the very same crisis, our analysis shows a very clear shift in grant-making patterns to meet emerging economic needs," he said.

To read the complete report, go to www.philanthropycollaborative.org/documents/crisis_report_050610.pdf. For more about The Philanthropic Collaborative, visit www.philanthropycollaborative.org/. ■

WINNER of the
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NFF (continued from page 1)

behavior just isn't going to work for nonprofit organizations anymore."

That's one reason why the NFF—a nonprofit lender, consultant and capacity builder that teaches organizations how to minimize their mission risk—developed its "Tough Times" package for nonprofit organizations. This "package" of services, whether bundled or utilized individually, has helped many nonprofit leaders manage their organizations' finances with greater certainty in uncertain times.

NFF workshops and webinars attempt to reach as many as people as possible, Kelley said, offering a chance for executive directors, development directors, C-suite staff and board members to learn about financial management and why it's important to nonprofits seeking to realize their missions.

Kelley said these workshops teach nonprofit professionals about why there must be balance among

the three core components of mission, capital and capacity.

"What's most often overlooked is capital," he said. "So we want to introduce to nonprofit leaders why a financial decision can't be made in isolation, because those decisions have programmatic and capacity implications, and vice versa. We want to demystify what leaders should focus on."

Workshop topics run the gamut from broad-based seminars on linking money to mission, to capital expenditures, and to introductory courses on basic financial tools, such as cash-flow planning and program economics. Participants may also review their audits and/or statements of financial activity. They come away knowing the right questions to ask, and with the confidence to articulate their financial stories. "We've learned [from our surveys] that organizations that were making informed decisions were better able to navigate the downturn as it was emerging than those organizations that were caught cold," Kelley said.

The NFF also offers an organization's executive director, its highest-ranking financial officer and a board member the opportunity to attend a Financial Leadership Clinic. As significant stakeholders with fiduciary responsibilities, the trio participates in peer-to-peer, interactive learning with four or five other organizations from the same sector. The NFF does a background analysis of each organization's financials, which is reviewed—anonously—by all attendees for discussion purposes. The participants also determine their organizations' greatest financial challenges and opportunities, and develop a presentation of their financial story to use with both external and internal audiences.

"This gives them the opportunity to see that their challenges are often similar to those of their colleagues and that there is power in peer-to-peer learning," Kelley said. "They also learn that while they may have once been competitors, they may be better off working as collaborators, furthering each other's mission. If you're working in the same space, you're often working towards similar goals."

After attending these Financial Leadership Clinics, many organizations ask the NFF to make presentations to their boards of directors. While the NFF will accompany leaders to such meetings, they prefer to equip executive directors with the confidence to convey their organizations' financial story and "own the numbers."

Often, organizations come back to the NFF to ask about how the NFF can help them take the steps neces-

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sary to address their financial challenges and capitalize on their opportunities. “It’s one thing for an organization to be exposed to items it needs to work on, but another to take the first step out of the gate,” Kelley said.

The NFF will help plan a road map and timeline to help resolve organizational issues. These consulting services are available to all organizations, regardless of whether they’ve previously attended a workshop or clinic.

“This economy is forcing organizations to adjust rapidly and continuously to changing conditions,” Kelley said, “and our maturation, creativity and innovation are now accelerating. The status quo is no longer acceptable.”

For more information

The Nonprofit Finance Fund is a nonprofit Community Development Financial Institution (CDFI) that provides a continuum of financing, consulting and advocacy services to nonprofits and funders nationwide. Its services are designed to help great organizations stay in balance, so that they’re able to successfully adapt to changing financial circumstances—in both good and bad economic times—and grow and innovate when they’re ready. For more, go to www.nonprofitfinancefund.org. To contact Gar Kelley, e-mail Garvester.Kelley@nffusa.org or call (215) 546-9426, ext. 101. ■

Conferences/Events

Institute of Fundraising’s National Convention

On July 5–7, 2010, the Institute of Fundraising will host its National Convention 2010 in London. Organizers said the conference was “put together by fundraisers for fundraisers,” and that they’ve brought together “1000 inspiring ideas” for attendees by listening to the needs of their constituents. Participants will be able to pick and choose from 118 sessions that have been organized into nine tracks, ranging in topic from community, events and volunteers, and digital fundraising to legacies, personal effectiveness, trusts and statutory, and major gifts. Officials said new features this year will include facilitated networking sessions, a networking hospitality lounge, a corporate-charity engagement breakfast session with Fortune 100 CEOs, a jobs board and more. For more information, visit the Institute’s conference Web page at www.nationalconvention.org.uk/.

AHP Institute promotes professional development

The Association for Healthcare Philanthropy’s 34th Annual Institute for Healthcare Philanthropy will take place July 10–15, 2010, at the University of Wisconsin-Madison in Madison, Wis. Attendees will participate in a five-day curriculum that focuses on health care development, and also have a chance to learn, share and develop networks. Organizers said participants can choose from six comprehensive certificate programs, such as The Fundamentals of Fund-

raising, Major Gifts or Planned Giving, and select the one that is most relevant to their needs. The AHP said attendees will experience small class sizes, networking with colleagues and faculty through presentations, prestigious faculty members, case studies and role playing. Those who complete all the required coursework will receive a certificate from the University of Wisconsin and AHP. For more information about the Institute, visit www.ahp.org/conferencesandeducation/madisoninstitute/Pages/Madison2010.aspx.

AFP, DMA partner for Bridge Conference

The 5th Annual Bridge Conference will take place July 26–28, 2010, in Washington, D.C., and will be hosted by the Association of Fundraising Professionals Washington, D.C. Chapter and the Direct Marketing Association of Washington, D.C. Organizers said the Bridge Conference is “an opportunity for marketers and fundraisers to learn how to effectively use integrated marketing approaches, as well as new techniques, tools and technologies to capture and engage their audiences.” According to the conference Web site, more than 75 educational sessions will be offered, so that participants can learn new techniques or improve their current processes, find marketing and fundraising tips to help during hard times, and expand their network of colleagues. For more information, go to www.bridgeconf.org/site/PageServer. ■

Technology

Blackbaud's Altru centralizes data for arts and cultural organizations

In May, Blackbaud, Inc. expanded its portfolio of products when it announced a comprehensive, reasonably priced platform for managing general admissions arts and cultural organizations. The leading global provider of software and services designed specifically for nonprofit organizations added Altru to its growing list of products, which includes The Patron Edge®, The Patron Edge® Online, Blackbaud® NetCommunity™, The Raiser's Edge®, and The Financial Edge™.

"Altru provides a revolutionary approach to improving the way general admissions arts and cultural organizations operate," said Marc Chardon, Blackbaud's chief executive officer, in a statement. "With Altru, organizations are able to gain a clear view of their supporters and organizational data while increasing their efficiency to achieve success."

The company recently featured Altru at the American Association of Museums' Annual Meeting and MuseumExpo™ in Los Angeles, and organizations including the Gibbes Museum of Art, South Florida Museum and Bishop Planetarium, and Tallahassee Museum have selected Altru to gain a complete view of their organizations, data, and visitors; streamline operations; and better engage and cultivate visitors and supporters.

"We needed an affordable solution for all our data, one that provides a 360-degree view of the museum's operations and everyone that walks through the door," said Brynne Anne Besio, South Florida Museum and Bishop Planetarium, Inc.'s executive director. "This organization of data will allow us to better serve our customers, save staff time, and also provide critical information to our board for fundraising. We can now focus on donor development with an accurate picture of each person."

According to Blackbaud, Altru is the first technology solution designed to centralize all the information a general admissions arts and cultural organization collects. It instantly displays this information in a single view, and presents it in a way that helps staff better plan and execute activities. It is the only integrated Web-based platform to do so.

With Altru, general admissions arts and cultural organizations can:

- Get a 360-degree view of their organizations, data, and visitors—with unified functionality for memberships, fundraising, ticketing and marketing; global reporting; and centralized calendaring.

- Become more efficient to focus on their missions, not administrative tasks, by eliminating silos and centralizing data, centrally managing group sales and scheduling, and reducing paper and manual data entry to eliminate duplications and reliance on institutional memory.

- Better engage and cultivate visitors and supporters with centralized records and information—with access to a single, holistic constituent record of each visitor, by tracking constituent activity to better understand donor preferences and motivations, and by offering better service to increase member retention and acquisition.

- Get better results from their external and internal communication efforts—through personalized, targeted communications; powerful segmenting; and enabling online donations, membership acquisition, ticket purchases and event registrations.

- Save money with a Web-based platform—including in-product training, award-winning live support, role-based views for staff and remote access through Blackbaud's secure servers.

The software and service provider said Altru also features management tools for: constituent relationships, membership programs, program sales and ticketing, group sales and facility rentals, resource allocation, marketing and communications, fundraising, special events, online transactions and reporting.

Russell Daws, executive director of the Tallahassee Museum, said, "Altru is an intuitive solution that allows staff to work more efficiently, communicate better, and have a global view of our organization while helping us know and serve our visitors better."

For more information

Since 1981, Blackbaud's sole focus and expertise has been partnering with nonprofits and providing them the solutions they need to make a difference in their local communities and worldwide. As a global provider of software and services designed specifically for nonprofit organizations. For more information, visit www.blackbaud.com. ■

Giving

Corporate philanthropy adapts to meet challenges, old and new

While economists and government officials deliberate the nation's economic turnaround, the business sector has wasted no time refining its philanthropic programs to reflect the challenging times.

Delaware Valley Grantmakers Executive Director Debra Kahn said her corporate members—who comprise almost one-third of DVG's membership and include business, financial and service organizations, as well as others such as manufacturers, utilities, and pharmaceutical companies—have continued to support their communities by using creativity and collaboration.

"Throughout our 23-year history, these types of organizations have been integral to Delaware Valley Grantmakers, and many were founding members," said Kahn, "but no one has been exempt from the effects of the economy. Some of our corporate members have experienced cutbacks in their overall budgets, but on the other hand, there's been a resolve to continue to be good corporate citizens, continue philanthropic programs and double efforts to increase their impact."

Kahn said her members have used a variety of techniques to meet an increased demand for services

by harnessing the power of their employees, placing emphasis on "signature" programs, and creating new programs to address communities' greatest needs, such as food, shelter and other forms of emergency relief.

For instance, CIGNA, which chose Philadelphia as its corporate headquarters, has revised its volunteer program so that employees—who logged 17,000 volunteer hours in 2007 according to its Web site—now receive paid time off to contribute to their communities.

PNC, one of the largest financial services companies in the country, has used its signature program, "Grow Up Great," to invest in early childhood development, and last year launched PNC Arts Alive, Kahn said, which fosters collaboration among local arts organizations to enhance the lives of those in its community.

At ACE Group, which provides support in the areas of education, poverty and health, and the environment, Kahn said there were several initiatives made possible by the ACE Charitable Foundation: a sustainable agriculture and microfinance program offered through a three-year grant to CARE to respond to the global (See **PHILANTHROPY** on page 6)

DVG members' philanthropic efforts continue despite tough times

Debra Kahn, executive director, Delaware Valley Grantmakers, cited the following DVG members for their continued commitment to their communities in the midst of the economic downslide. Here's just some of what these companies posted on their Web sites about their philanthropic endeavors:

- Comcast Foundation—Comcast Foundation has donated money and air time exceeding \$1 million to help Télécoms Sans Frontières (Telecom without Borders) bring telecommunications services to crisis zones such as Haiti. In addition, Comcast said it will provide free air time across their networks for earthquake-related public service announcements from the Red Cross, United Way, and National Cable and Telecommunications Association. For more information, go to www.comcast.com/Corporate/About/InTheCommunity/Foundation/Haiti.html?fss=Haiti.

- Champions in Action—Citizens Bank said it has partnered with media outlets within each of its markets to award a \$25,000 grant to a nonprofit, and provide media coverage, as well as promotional and volunteer support. For more information, visit www.citizensbank.com/community/champions/overview.aspx.

- Wachovia Regional Foundation—Wachovia has taken a comprehensive approach to giving through its Neighborhood Planning Grants. Each year, the foundation said it provides funding for consultants, staff members, outreach, community meetings, advisory group development and other planning activities to develop an all-inclusive, resident-driven neighborhood plan for revitalization. Awards support neighborhood plans, not strategic or business plans for the chosen nonprofit organization. For more information, go to <https://www.wachovia.com/> and click on Community Involvement. ■

PHILANTHROPY (continued from page 5)

food crisis, and a grant to the World Food Program to support a Food for Work initiative in Indonesia.

Nonprofit organizations hoping to secure corporate funding during the economic crunch should be doing their homework, Kahn said. She suggested that they:

- Research ongoing projects within the community. Kahn said nonprofits need to talk to their peers about the types of initiatives that are already working. “Not only will they be able to fill you in on the general guidelines,” she said, “but they’ll also be able to share a great deal about a corporation’s substance and style,” providing insight into the company, its business objectives and its philanthropic mission.

- Make your program’s impact clear. Kahn said nonprofits need to demonstrate their organization’s sense of history, program effectiveness and how they plan to measure outcomes. “There are fewer resources, yet there’s a demand for increased impact,” she said. “Funders don’t want their investments to be isolated, so nonprofits need to show how they’ll fit into an active region or community—it gives your program credibility.”

Kahn said that given these difficult economic times, some companies have struggled more than others, but that she would be remiss to say that they’ve hunkered down, shut down or are no longer making or honoring their commitments.

“It’s quite the opposite,” she said. It’s gratifying to see that more companies continue to get involved and be very active ... and it’s encouraging that in spite of the problems, [corporations] understand the connection between quality of life in the region, a good business environment and the need for good investments in the well-being of the region in order to be successful in business.”

For more information

Delaware Valley Grantmakers is a regional forum for philanthropy, serving as a network, resource and voice to help philanthropy strengthen and improve the health and vitality communities throughout Greater Philadelphia and southeastern Pennsylvania. To learn more about DVG membership, go to www.dvg.org/. ■

Resources

Convio offers free webinars to nonprofits

Convio, a software and service provider for nonprofit organizations, has made available free on-demand webinars for nonprofit professionals seeking best practices for online fundraising, donor database solutions, advocacy and e-mail marketing strategies. Users can also find free resources on topical issues appropriate for animal welfare, higher education, environmental and other social service organizations. For more, go to www.convio.com/four-research/on-demand-webinars.html.

New book sheds light on lessons learned in social enterprise

Succeeding at Social Enterprise, a new book from the Social Enterprise Alliance and published by Jossey-Bass, helps organizations recognize the best approach they’ll need to create and maintain a successful social venture or organization. Filled with best practices, tools, guidance, models and successful cases, *Succeeding at Social Enterprise* draws on the experience of pioneers

in the social ventures field as well as leading social entrepreneurs, using real-life examples, lessons learned and core competencies. To learn more, go to www.wiley.com/WileyCDA/WileyTitle/productCd-0470405325.html.

Web site helps determine which discrimination laws apply

The U.S. Labor Department recently launched a new online tool to help employers understand their responsibilities under disability nondiscrimination laws. According to *Disability.gov*, the Web site *Disability Nondiscrimination Law Advisor* offers employers a quick and easy way to determine which federal disability nondiscrimination laws apply to their businesses or organizations, and their responsibilities.

The Web site asks users to click on statements best describing their organizations, and then produces a “customized list” of the laws that most likely apply. To find out more about the Web site or disability nondiscrimination laws, go to www.dol.gov/elaws/odep.htm. ■

Tax issues

IRS notice helps small businesses, tax-exempts navigate health care tax credit

The Internal Revenue Service has issued new guidance to make it easier for small businesses to determine whether they are eligible for the new health care tax credit under the Affordable Care Act and how large a credit they will receive.

According to the department, the credit is available to small employers that pay at least half the cost of single coverage for their employees in 2010, and is specifically targeted to help small businesses and tax-exempt organizations that primarily employ moderate- and lower-income workers.

The credit—which is in effect this year—was designed to encourage small employers to offer health insurance coverage for the first time or maintain coverage they already have, officials said.

Notice 2010-44 provides detailed guidelines and examples, and also requests public comment on issues that should be addressed in future guidance.

According to officials, for tax years 2010 to 2013, the maximum credit is:

- 35 percent of premiums paid by eligible small-business employers.
- 25 percent of premiums paid by eligible employers that are tax-exempt organizations.

The maximum credit goes to smaller employers—those with 10 or fewer full-time equivalent employees—paying annual average wages of \$25,000 or less. The credit is completely phased out for employers that have

25 FTEs or more or that pay average wages of \$50,000 per year or more.

Eligible small businesses can claim the credit as part of the general business credit starting with the 2010 income tax return they file in 2011, the department said, and it will provide further information on how tax-exempt organizations can claim the credit.

For more information

To find more information about the health care tax credit, go to www.irs.gov/newsroom/article/0,,id=223666,00.html. ■

IRS still encourages small organizations to file 990

Commissioner Doug Shulman of the Internal Revenue Service has released a statement on the recent passing of the filing deadline for small charities.

The commissioner said that he wanted these organizations to know that the IRS will do what it can to help prevent the loss of their tax-exempt status and will soon be providing guidance to help them maintain their status. Shulman also encouraged the organizations to file, even though the deadline has passed.

To get more information, visit www.irs.gov/charities/article/0,,id=217087,00.html. ■

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Donors

Nationwide, contributors happy with nonprofits, but still plan to reduce giving

According to results from the *2010 Fenton Forecast: Leadership and Effectiveness Among Nonprofits*, while nonprofits are generally doing a good job in the minds of many Americans, donors plan to keep a tight grip on their purse strings now and in the near future. The report found that nearly two-thirds of those surveyed said they plan to either reduce their giving or keep it the same as last year—this is on top of already reduced giving levels for 2008 and 2009.

More than half of the Fenton survey respondents who said they planned to decrease their giving said they will cut their donations by 25 percent or more. Underscoring this problem, said the report, is the finding that older Americans ages 50 and older, who are typically a reliable fundraising base, intend to reduce their giving the most.

“This is clearly a challenging time for nonprofits,” said Rob Anderson, managing director of Fenton’s New York office and head of the firm’s corporate social responsibility practice, in a statement. “But there is also an opportunity for nonprofit organizations to connect with supporters and prospects to engage them in the organization’s overall mission. There is a direct correlation between how effectively nonprofits communicate to support their brand and their fundraising results.”

The survey shed light on how nonprofits could best communicate news and information about their missions and activities. For example, when asked which sources of information they deem the most credible, both young and older respondents ranked traditional news outlets the highest, relegating social media sites like Facebook near the bottom in ranking. In contrast, when these same respondents were asked how they share their opinions about the causes closest to them, they ranked Facebook as their number-one choice.

Researchers said these findings point to the challenges and enormous opportunity social media presents for nonprofits, particularly the need to package and promote content that will establish their credibility as experts, and be compelling enough to inspire participation in online communities. The survey suggested that nonprofits accomplish this by:

- positioning senior leaders as experts;
- developing original research;

- showcasing programmatic results;
- highlighting stories of real people; and
- creating opportunities that generate traditional news coverage.

“A growing number of nonprofits have begun to catch on that social media is not an ‘add-on’ but a necessary evolution to attract the next generation of donors and activists—not to mention a dynamic tool for promoting their causes and sharing their brand,” said Lisa Witter, Fenton’s chief strategy officer, in a statement.

The study also revealed that the way an organization manages its donated funds is the largest indicator to most donors about whether or not a nonprofit is doing a good job. Researchers said today’s donors want to know that the money spent on programs is furthering the organization’s mission, and they are looking for nonprofits to provide fact-based and objective information about the issues they champion.

When respondents were then asked to rank the performance of 50 well-known nonprofits based on their effectiveness related to a number of leadership qualities, the Fenton survey found that the following nonprofits were ranked as “extremely” or “very effective.”

- 1. (tie) American Diabetes Association.
- 1. (tie) Special Olympics.
- 3. American Red Cross.
- 4. Habitat for Humanity.
- 5. Make-A-Wish Foundation.

For more information

Since 1982, Fenton has developed and implemented public interest communications campaigns, combining decades of expertise with creativity and innovation to accelerate progress on today’s most pressing global and national issues—from protecting people’s health and the environment to advancing human rights. To learn more about Fenton, go to www.fenton.com. The *2010 Fenton Forecast: Leadership and Effectiveness Among Nonprofits* was designed by Fenton, with field research conducted by InsightExpress, a leading online market research firm (www.insightexpress.com/). To view the complete survey results, visit www.fenton.com/fenton-forecast.html. ■

Fundraising

Charity Navigator examines best and worst metro markets for fundraising

Ever wonder how your region's fundraising efforts are doing compared to nonprofit organizations in other areas of the country?

Charity Navigator, the nation's largest charity evaluator, recently concluded its seventh study of the largest charities in the nation's top 30 metropolitan markets, revealing that charities in markets such as Pittsburgh, Houston and Dallas show greater overall financial health than those found in Baltimore, Detroit and Indianapolis.

In its study, Charity Navigator compared the median performance and size of the largest nonprofits in the 30 largest metropolitan markets: Atlanta, Baltimore, Boston, Chicago, Cincinnati, Cleveland, Colorado Springs, Dallas, Denver, Detroit, Houston, Indianapolis, Kansas City, Los Angeles, Miami, Milwaukee, Minneapolis/St. Paul, Nashville, New York City, Orlando, Philadelphia, Phoenix, Pittsburgh, Portland, San Diego, San Francisco, Seattle, St. Louis, Tampa/St. Petersburg and Washington, D.C. Those markets account for 55 percent of the 5,500 charities evaluated by Charity Navigator, and generate 64 percent of the total revenue and 66 percent of the total spending.

Researchers said the study revealed that regional factors, such as the cost of living, a market's maturity and a city's tendency to support one or two specialized causes, greatly influence the ability of the charities in each city to raise money and manage costs. In terms of their overall financial health, the study's highest-rated charitable communities are Pittsburgh, Houston and Dallas. The lowest-rated communities are Baltimore, Detroit and Indianapolis.

"In these difficult economic times, we know many Americas have to make tough choices regarding their ability to make charitable donations," said Ken Berger, president and CEO of Charity Navigator. "Likewise, the professionals leading our nation's charities must decide how to best utilize donations to achieve maximum social impact while retaining enough funds to sustain operations beyond the recession. This study offers information that can help both donors and nonprofit leaders understand the financial strengths and weaknesses of each philanthropic marketplace and thus assist them in navigating through this challenging time."

Other Metro Market Study 2010 results include:

- **Market Size:** New York City (590 large charities); Washington, D.C. (500); and Los Angeles (198) are more crowded and competitive philanthropic markets than Cincinnati (31); Nashville (31); and Orlando (34).

- **CEO Compensation:** Charity executives in New York City (\$190,472) and San Diego (\$165,000) earn considerably more than those in Orlando (\$107,569) and Portland (\$110,601).

- **Fundraising Efficiency:** Spending a median of just 65 cents to raise a dollar in contributions, Orlando's charities are the most efficient in their fundraising endeavors. Seattle's charities are the least efficient, as they spend nearly double that amount to raise a dollar.

- **Annual Growth:** Charities in San Francisco are among the fastest growing, while charities in Baltimore are among the slowest growing.

- **Wealth:** Cleveland's and Cincinnati's largest charities are generally richer in assets and working capital than charities in other parts of the country, while charities in Colorado Springs are less financially secure.

- **Types of Charities:** Miami, with 40 percent of its largest charities classified as Human Services, and Colorado Springs, with 39 percent of its largest charities classified as Religious, appear to be less diverse in terms of the types of charities represented. Portland and Los Angeles are more diverse marketplaces, as they contain at least 3 percent, but no more than 19 percent, of each type of charity.

To learn more about Charity Channel's Metro Market Study 2010, and using Charity Channel's interactive chart to find more about your city/region or compare markets by different variables, go to www.charitynavigator.org/index.cfm/bay/studies.metro.main.htm.

For more information

Charity Navigator is the largest charity evaluator in America, and its Web site attracts more visitors than all other charity rating groups combined. The organization helps guide intelligent giving by evaluating the financial health of over 5,500 charities. You can learn more at www.charitynavigator.org. ■

Employment Law

Here's a look at several recent notable lawsuits involving nonprofits. Nonprofits should regularly review employment laws and their compliance efforts to avert similar issues.

Waiver of right to sue

Not easy to revoke an employee's right to sue

Alan Alonso was a paramedic. In July 2005, he signed an employment application with Huron Valley Ambulance Inc. That document provided that all employment-related complaints had to be submitted to the HVA Internal Grievance Review Board and the GRB was Alonso's exclusive remedy for any such claims.

In August 2005, Alonso signed a written acknowledgment that he had received a copy of the HVA Policies and Procedures Manual, which generally described a four-step grievance process, and referred him to a Web site for more detailed information.

Two years later, Alonso joined the National Guard and provided his supervisor with several dates on which he was required to attend training in September 2007 and February 2008.

His request to be excused from work on those dates was approved.

In February 2008, HVA found out that Alonso did not actually attend National Guard training on any of those dates, although he had taken the time off from work.

That same month, Alonso suffered a medical emergency while at work. He was taken to an emergency room where he was diagnosed with "altered mental state" and "possible seizure."

When he was released from the hospital, Alonso was taken for a drug screen test, which was positive for Hydrocodone—a mind-altering and function-altering substance for which Alonso had a prescription.

A few days later, Alonso was terminated for lying about his attendance at Army National Guard training and testing positive for a mind-altering and function-altering substance while at work.

He initiated the HVA internal grievance process the same day.

In May, the GRB upheld the termination after conducting a hearing.

Alonso filed a lawsuit against HVA in Michigan federal court.

The trial judge dismissed the suit, ruling that Alonso had waived his right to litigate any of his claims.

Alonso filed an appeal.

The appellate court cited its previous rulings in other cases that had found that employees did not knowingly waive their rights to sue where they were hired on the spot, during which the hiring manager hurriedly presented them with various documents to sign; placed an "x" in every spot an applicant was required to sign or initial; and told the applicants to sign or initial every "x" without any explanation.

EMPLOYEE WINS → It concluded that Alonso was hired in a similar manner, and said that Alonso had no idea of what the GRB process entailed at the time he signed the application that waived his right to sue.

The panel also pointed out that he was not even given a general description of the process until almost a month after beginning employment with HVA.

Because of those circumstances—and because Alonso was never given the right to revoke his waiver of the right to sue—the court reversed the ruling of the trial judge.

[*Alonso et al. v. Huron Valley Ambulance Inc.*, 6th Circuit Court of Appeal, No. 09-1812, 04/26/10].

Whistleblower Act

Extent of employer's reaction to complaint is important

Jason Ellison was a deputy with the Oldham County Sheriff's Department.

In 2005, he sent a letter to the sheriff with concerns about misfeasance and malfeasance on the part of Chief Deputy Sheriff Ron Jones.

In April 2006, Ellison signed an affidavit as part of a complaint alleging that Jones had improperly disposed of a trace amount of marijuana evidence at an airport two years previously.

Shortly thereafter, Ellison's relationship with the Sheriff's Department worsened.

His shift was immediately changed to one that was less desirable.

In August 2006, Chief Deputy Jones pulled Ellison over on a routine traffic stop but did not write him up for the incident.

On the same day, Ellison was written up for "sick-time abuse."

Ellison was also written up for taking excessive breaks and for not shaving, although he was not otherwise punished or reprimanded.

In September, the right to use police vehicles while off-duty was restricted to the geographical area of Oldham County. Ellison was the only deputy affected by that new policy, because he was the only deputy who lived outside that area.

In August 2006, Ellison filed suit against the Oldham County Sheriff's Department, presenting claims under the Kentucky Whistleblower Act.

Ellison alleged that he had been subjected to improper retaliation for disclosing facts and information relating to mismanagement, waste, fraud and violations of law.

In 2009—because Ellison had experienced no reduction in his pay or responsibilities, and had not been subjected to any additional discipline other than simply being written up—the trial judge concluded that Ellison had failed to demonstrate that he had suffered any materially adverse change in his employment circumstances, and granted summary judgment in favor of the sheriff.

On appeal, Ellison pointed out that the Kentucky Whistleblower Act prohibited employers from retaliating “in any manner whatsoever” and urged that the statutory language be given the broadest interpretation.

In an unpublished opinion, the panel noted that no Kentucky court had decided what amount of “reaction” by an employer would amount to “reprisal.”

It ultimately decided that an employer's action would have to be likely to dissuade a reasonable—and similarly situated—worker from making a report, in order to justify a suit.

The court also declared that the significance of any given employer's action should often depend upon the particular circumstances, because context could make a big difference.

EMPLOYER WINS → It emphasized that Ellison had only suffered a change in his work shift, and being written up for a number of minor infractions.

The court pointed out that Ellison's job duties were not diminished or reassigned, and that he was not subjected to a reduction in pay or any other punishment.

The panel affirmed the ruling of the trial judge, declaring that “reprisal” for purposes of the Whistleblower Act must amount to something more egregious than mere inconvenience.

[*Ellison et al. v. Oldham County Sheriff's Department*, Kentucky Court of Appeals, No. 2009-CA-000350-MR, 04/16/2010].

Immorality

Don't confuse political correctness with morality

In 2005, the Farrell Area School District in Pennsylvania hired Lee McFerren as principal under a five-year contract to correct academic and disciplinary issues at an underperforming high school.

The district charged McFerren with the mission of instituting disciplinary measures necessary to transform the chaotic environment into one conducive to learning; improving academic performance on standardized tests; and improving the performance of school employees.

In 2006, McFerren was appointed to the position of assistant to the superintendent, but he still continued his duties as the principal of the same high school.

In March 2007, McFerren disciplined a student by forbidding him from participating in a performance by his stomp group at a high school basketball game.

In violation of that discipline, that student participated in the performance.

McFerren responded by suspending him.

During a subsequent meeting with the student and his father about the suspension, McFerren explained to the student that he might think that the school was too strict, but that the real world was even more demanding.

In making that point, McFerren said, “The white man is going to kick your ass.”

In June 2007, McFerren was stripped of his position as assistant to the superintendent after an evidentiary hearing. One of the asserted grounds for termination was that his comment to the student about the “white man” was immoral.

McFerren filed an appeal.

The appellate court noted that “immorality” was a stated ground for termination in the relevant Public School Code, but that the term had not been defined anywhere.

In justifying his comment to the student, McFerren pointed out that all of the participants at the meeting were African-American, and explained that all of them interpreted the phrase to mean “the establishment, or the people in control.”

No witnesses were called by the district to refute that explanation.

(See **EMPLOYMENT LAW** on page 12)

EMPLOYMENT LAW (continued from page 11)

The district responded that, given the racist nature of McFerren's remark, it did not need to produce evidence of community morals.

EMPLOYEE WINS → The appellate court said that political correctness should not be confused with morality.

It stated that McFerren's choice of words was unfortunate—as much for the unnecessary anatomical reference as for the reference to race—but that it was human nature to say thoughtless things in stressful situations that were later regretted.

The panel also said that context was important in evaluating whether speech was offensive. It ex-

plained that if McFerren's comment had been made to a white student, it might have touched upon morality in a way it would not with respect to an African-American.

The court said that a reasonable explanation for the district's failure to present evidence that McFerren's comment offended the morals of the relevant community was that it was unable to do so.

The panel ruled that the district erred in holding that McFerren's use of the phrase "the white man" was immoral.

[*McFerren v. Farrell Area School Dist.*, Commonwealth Court of Pennsylvania, No. 287 C.D. 2009, 04/08/2010]. ■

Quick Looks

NAMM survey names 'Best' music communities

The NAMM Foundation recently announced the results of its 11th annual "Best Communities for Music Education" survey, which acknowledges schools and districts across the United States for their commitment to and support of music education in schools, even amid drastic school budget cuts. According to the NAMM Foundation, this "Best Communities" designation represents a distinction worthy of pride, and also a call to action for local music education advocates to help preserve—and in some cases, save—their current music education programs. To see the complete "Best Communities for Music Education" roster, go to www.namm.org/news/press-releases/namm-foundation-survey-reveals-bes.

Macy's 'bags' hunger

Thanks to Partners in Time, a national award-winning employee volunteer program at Macy's, Inc., food pantries from coast to coast will be able to restock empty shelves. All Macy's, Inc. stores and business support locations contributed to the 13th annual national food campaign, which ended in April. According to the company, Macy's and Bloomingdale's employees organized collections in an effort to "Bag Hunger" for children and their families—resulting in 211,978 pounds of food, \$2.3 million in monetary donations and 27,796 hours of community service. The Bag Hunger project benefits many affiliates of Feeding America, the largest domestic hunger-relief charity in the United States.

For more information about the program, go to www.macysinc.com/community/bag_hunger.aspx.

MLK Memorial receives \$1M from Delta employees, customers

Delta Air Lines has announced that its employees and customers raised \$1 million for the Martin Luther King Jr. National Memorial in Washington, D.C., an achievement that stems from a fundraising challenge from Delta's Chief Executive Officer Richard Anderson in January 2008. Delta said most of the donations were collected by Delta's Force for Global Good, an effort that comprises Delta employees, customers and community partners to promote positive change for improving the standards of living and the environment where Delta employees and customers live and work. With Delta's donation, more than \$107 million has been raised for the Martin Luther King, Jr. Memorial. For more, visit www.delta.com/about_delta/global_good.

CitiGroup aids Haiti microfinance program

To help rebuild the earthquake-stricken country's microfinance industry, Citigroup has donated \$1 million in grants to three local Haitian microfinance institutions. Award recipients Fonkoze, FINCA Haiti and SOGESOL will use the funds to help drive job creation, support livelihood preservation and contribute to the long-term economic development of the country. The pledge makes up almost half of a \$2 million charitable contribution Citigroup made to aid the relief and reconstruction effort. ■