

Welcome!

Please be seated, the seminar will start shortly.

FORV/S

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Culture: Recruiting and Retaining Staff

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We will examine five aspects of organizational culture:

- 1. Stability**
- 2. Strategic Clarity**
- 3. Fresh Thinking and Innovation**
- 4. Organization Success**
- 5. Connections**

Stability against internal/external forces



Weathering the storm starts with proper planning and requires an understanding of your environment.

Doing things in the right way at the right time is essential.

Strategic Clarity



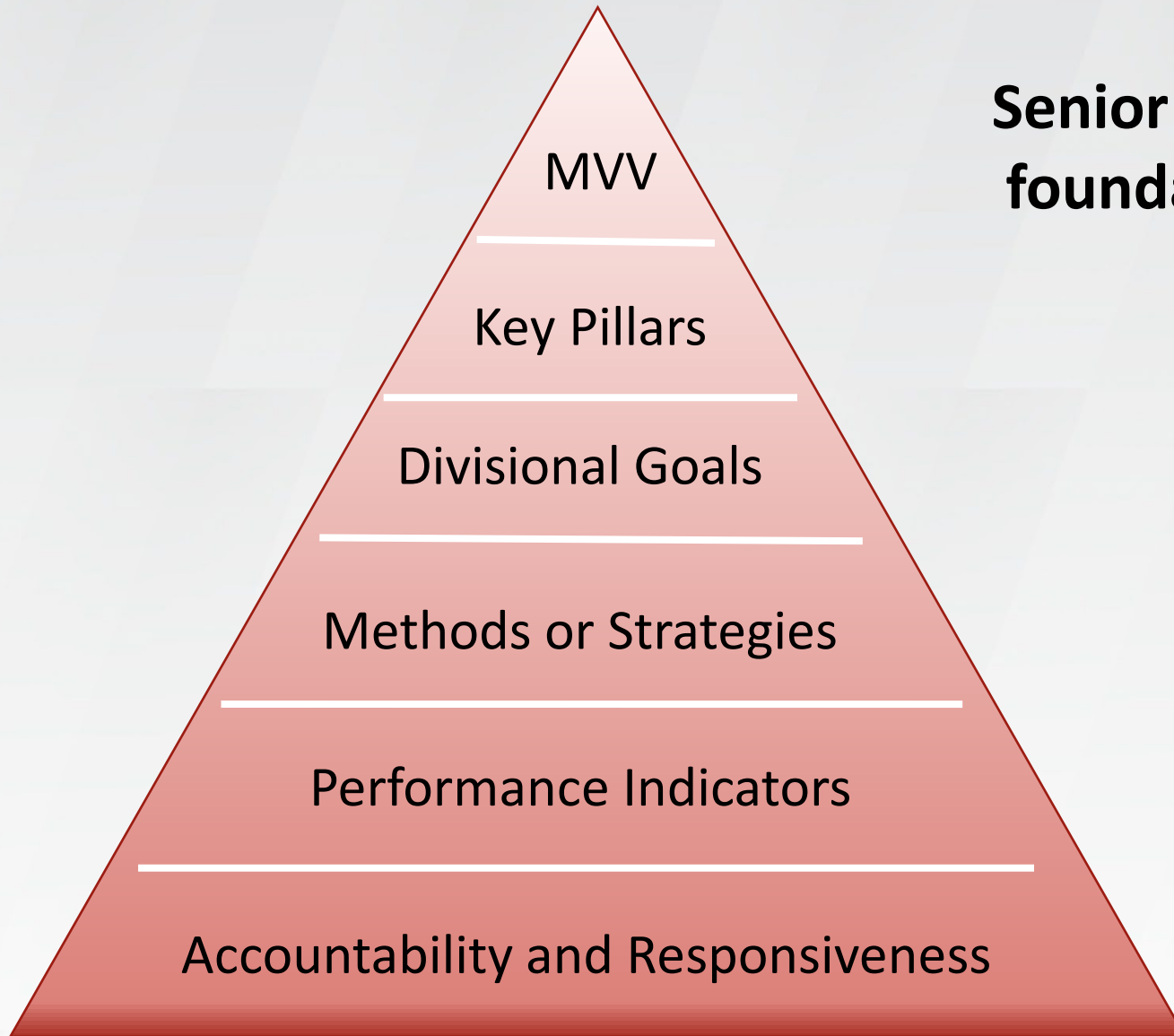


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Senior leaders & boards form the foundation for the entire house.



⇒ **Who are we?** ⇐

- Who we serve (and do not serve)
- What we do (and do not do)
- Why it is needed
- **What defines & distinguishes us**

Strategic Clarity

Stability begins with clarity –
a shared understanding and agreement of your purpose and value.



Strategic Clarity

Set and keep Boundaries



Keep True North
Avoid Unrelated activities
Evaluate & adjust boundaries

Internally

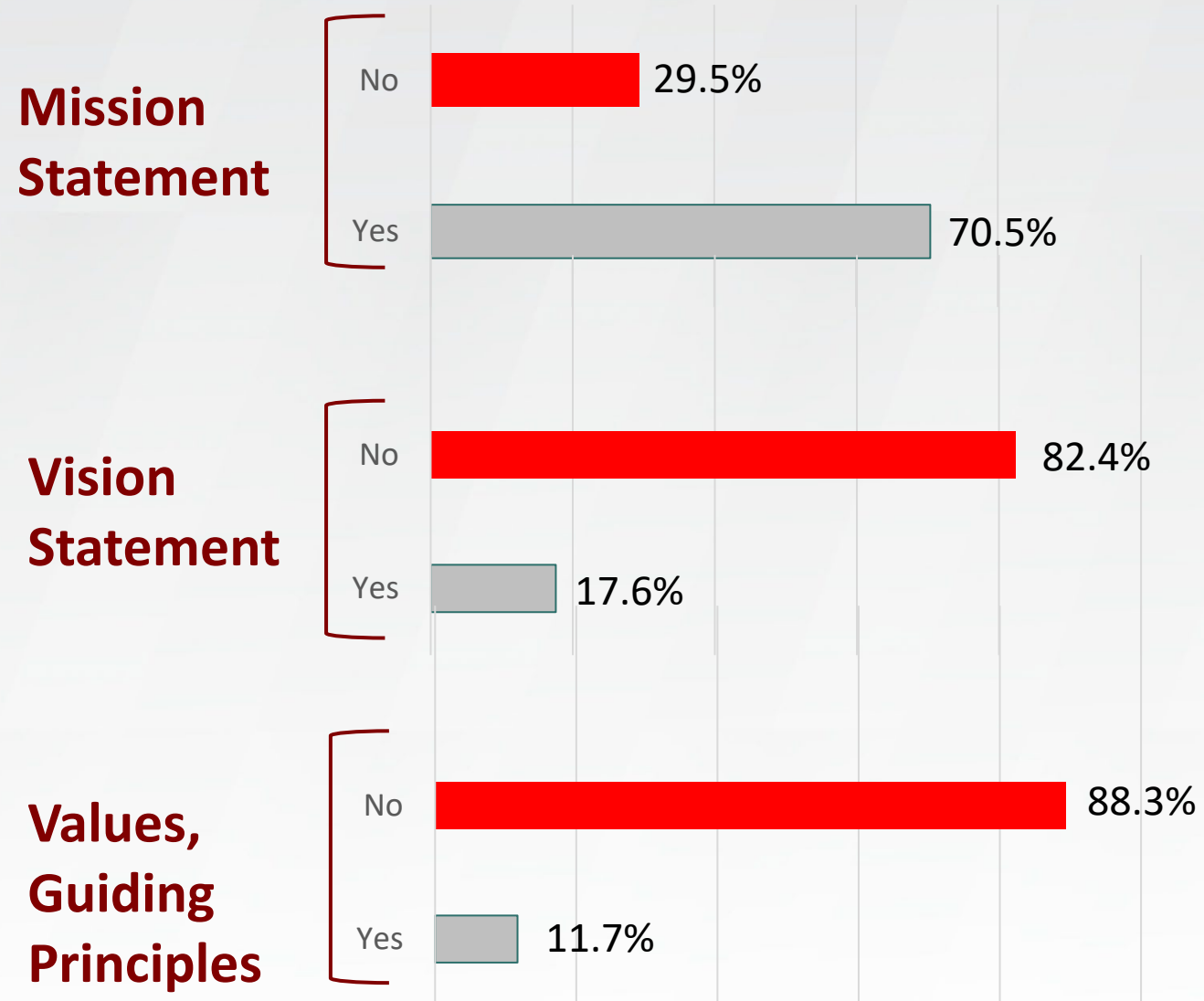
Organizational Chart
Clear descriptions/expectations
Policies and Procedures
Honest Evaluations

What are the forces working against your organization?

INTERNAL		EXTERNAL	
1.		1.	
2.		2.	
3.		3.	

72% Staffing shortages have hampered their ability to deliver programs and services

Stability through Values and Culture

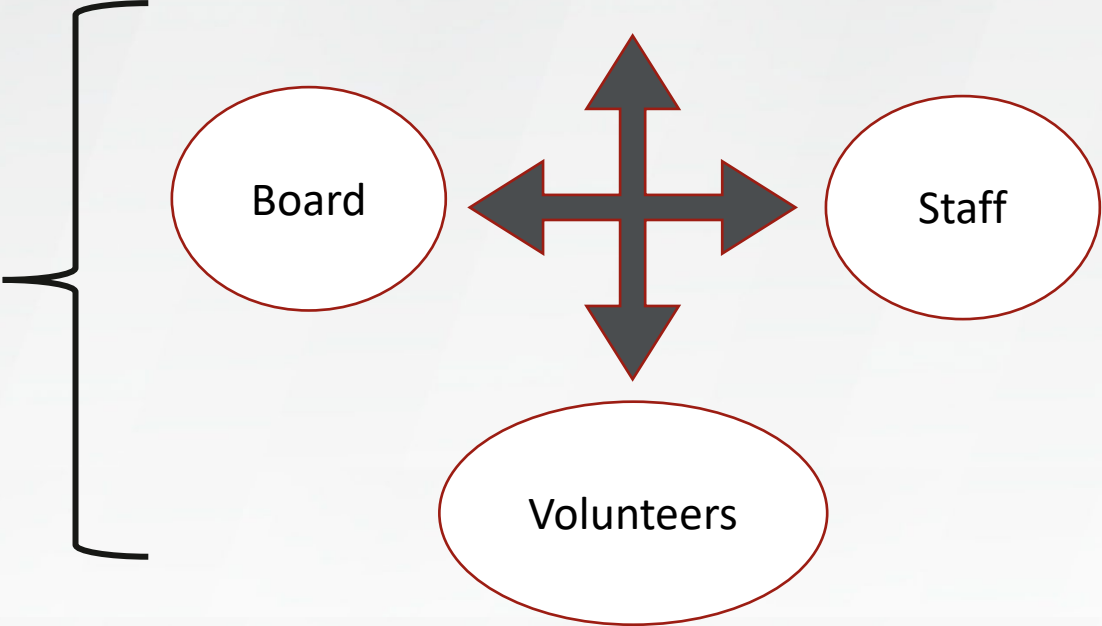


Stability through Guiding Principles and Culture

Bumper sticker values.

Culture – The way we all agree to behave to accomplish this work.

Recruitment
Hiring
Evaluation/reviews
Policies/Procedures
Decisions

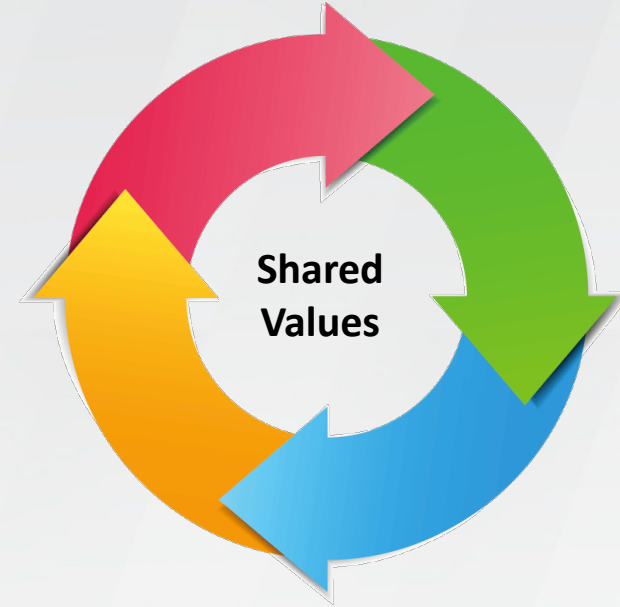


Stability through Values and Culture

A formal expression of the organization's fundamental values, its ethical code.

It is a process of defining the personal values of those who make up the organization.

These are values that your people live by, no matter where they were or under what conditions they found themselves.



Outreach & recruiting should be based on **beliefs and culture.**

Recruiting:
enabling people to act on their **Beliefs & Values**



Protecting nature,
Employees first



LGBTQ friendly,
Equality



Nonpartisan
Outcome-focused
DEI



We are deeply rooted in the principles of **Equity, Inclusion, and Diversity, and racial equity**



To glorify God and
be a positive
influence on all.



Increase women and
underrepresented groups
in its senior leadership



Putting Christian
principles into practice

Greed is Good



In the nonprofit industry, passion—not money— can drive employees to work long hours.

Often at the sacrifice of their families and own well-being.

Gen Z workers aren't buying into the 24/7, always-on, above-and-beyond work lifestyle.

Quiet Quitting

At least 50%
of the U.S.
workforce



An approach to work where employees don't quit, but will not go beyond the minimal job requirements.

- arriving late or leaving early
- low productivity
- less contribution to team projects
- not participating in planning or meetings
- lack of passion or enthusiasm

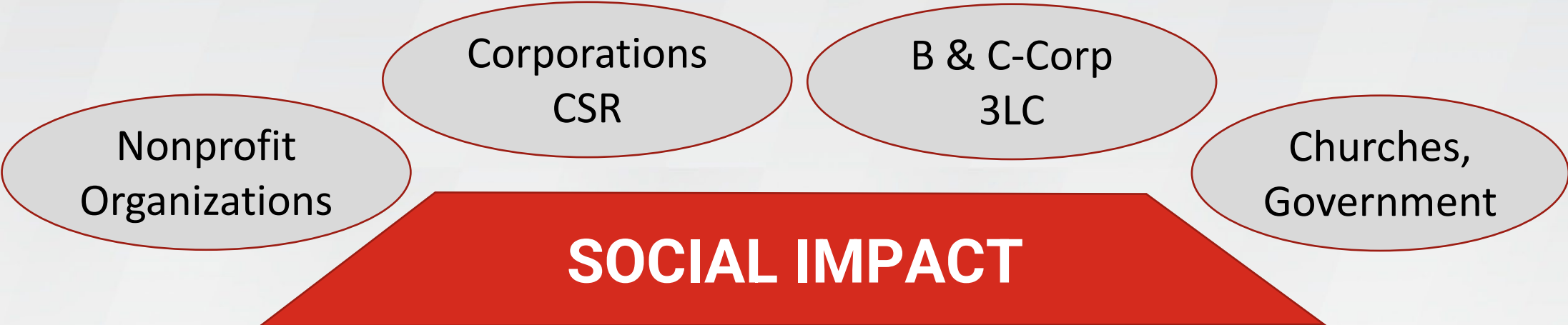
Vanishing Boundaries

The world has changed dramatically in the past three years.

What employees now want has changed dramatically too.

Employees of the Past	Employees Today
Work to earn a paycheck.	
Struggle to balance work and personal.	
Leave home to work.	
Join nonprofit to better the world.	

Blurred lines



Nonprofits aren't the only Do-Gooder's in town.

Donors and Employees have choices

Outcome Mapping

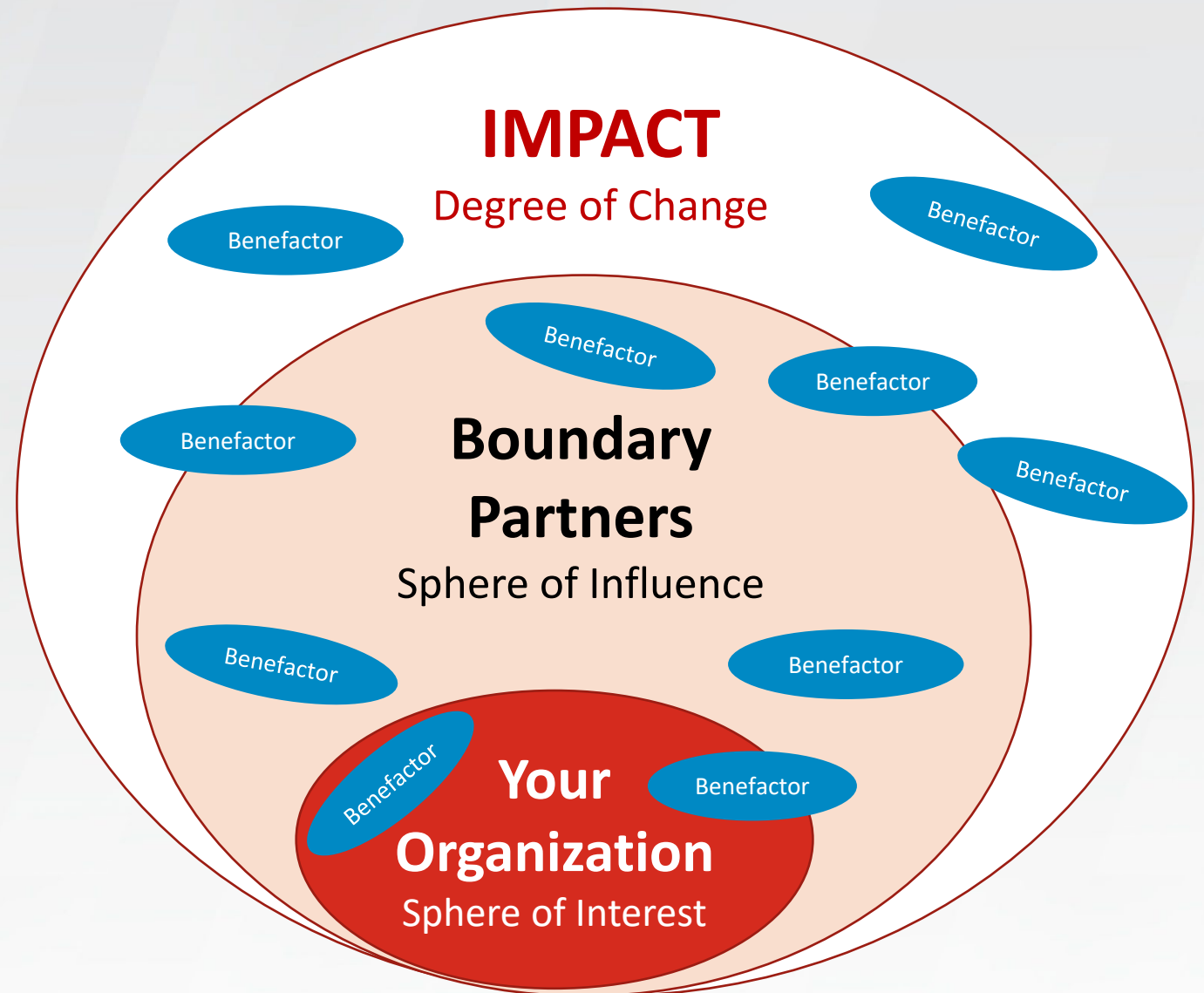
clears up blurred lines

Step 1: Clarity of Vision and Mission

Step 2: Boundary Partners

Step 3: Outcome Challenge (roles and interactions of each partner, contribution toward overall goal)

Step 4: Progress markers expected



Characteristics of Strong Cultures

1. People first

- a. Flexibility
- b. Wellness
- c. Advancement opportunities
- d. Social connections
- e. Civic engagement

Characteristics of a Strong Organization Culture

2. High Performance

- Clear expectations
- Consistent, honest feedback
- Accountability at all levels
- Continual Quality Improvement

The culture of any organization is shaped by the worst behavior the leader is willing to tolerate.

Gruenter and Whitaker

Protecting someone's feelings

vs.

Protecting the mission

Characteristics of a Strong Organization Culture

3. Fresh thinking and Innovation

“In the last two years alone, we’ve experienced 10 years’ worth of change.”

Allan Thygesen, president
of the Americas at Google

Innovation produces fresh approaches to bringing about positive change.



3. Fresh thinking and Innovation



Isolation = Myopic thinking

Lose ability to interact

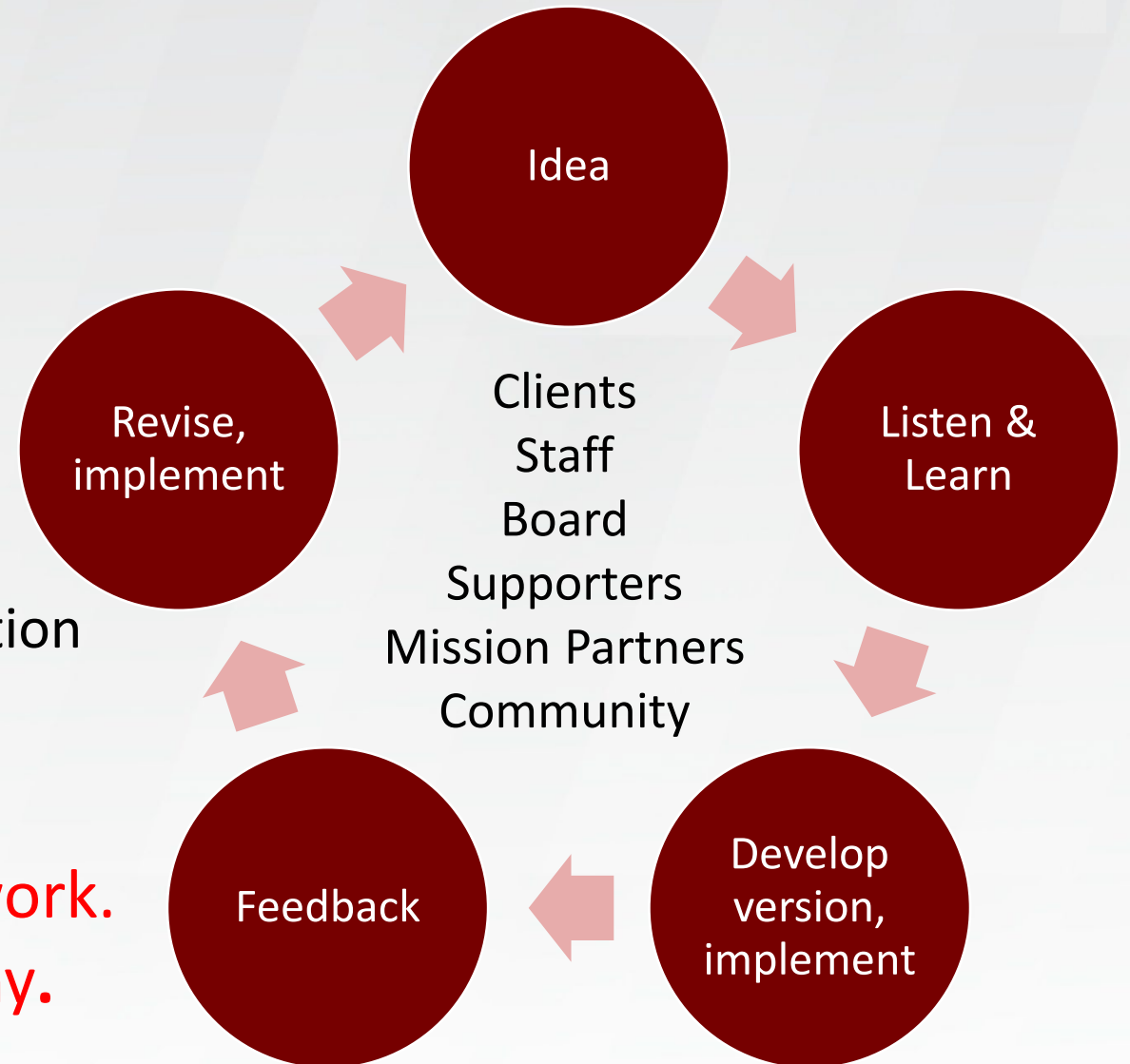
Limited abilities

The issues Nonprofits address are too critical to continue using slow, outdated approaches

3. Fresh thinking and Innovation

1. 360° Feedback - LISTEN
2. Intentional diversity staff and board
3. Set up systems to receive/reward innovation

Your work is not just your work.
You are accountable to many.



Characteristics of a Strong Organization Culture

Innovative Organizations encourage people to:

- Ask questions, challenge status quo
- Do research
- Explore new ideas and approaches
- Improve systems and tactics

Move from
SERVING
to **SOLVING**



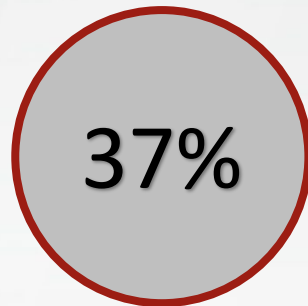
When done intentionally....giving can **solve** Dallas' biggest challenges. The Dallas Foundation exists to do just that – sharing our expertise, leadership, and the opportunity to co-invest in **solutions** that match our donors' interests and make a meaningful difference.

4. Organization Success

1.8M Registered NPs in the U.S.

13M People work in the industry

66% Annual budget under \$500,000

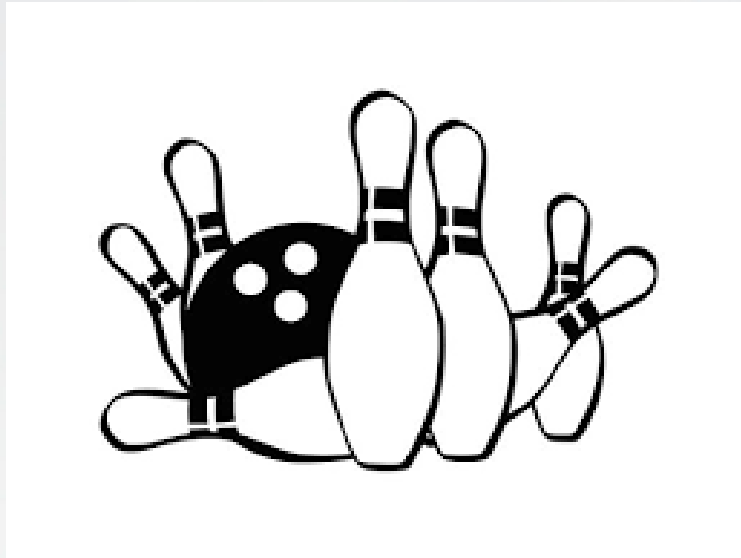


Programs have definite
positive impact



Programs have possible
positive impact

4. Organization Success



Bowling in the Dark

We're aren't necessarily efficient or effective, but we think we're successful because we throw the ball.



- Donors and supporters care about whether nonprofits are using best practices to address a specific issue.
- They compare nonprofits in terms of performance and results.

MOST Important in decision making process

1. Cause or Issue area
2. Program outcomes (results)
3. Management/Leadership
4. Peer opinions of organization
5. Best practices - EBP

 **DEFENSIBLE**

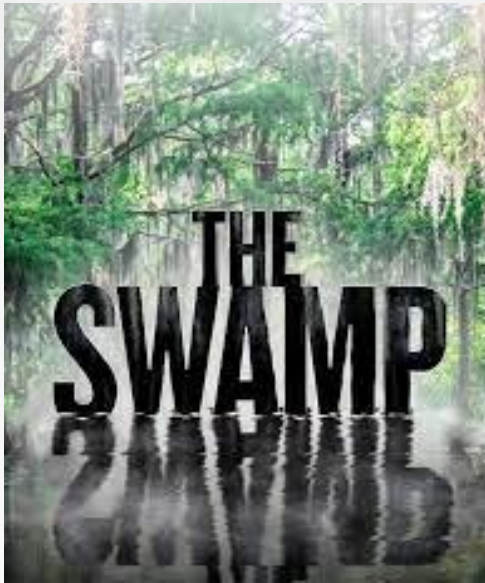
SWAMP

Satisfied

With

Mediocre

Program



- Poor drainage
- Few plants compared with the numbers that grow on land.
- Trees lack deep roots and may lack sufficient oxygen.
- Mostly unproductive land

Interesting to visit, but don't want to spend a lot of time there

4. Personal Connections

Personal –

Work friends, social events (happier, more productive)

Professional –

Networking, peer to peer (learning, growth)

Civic –

Addressing community issues/problems (what matters to them)

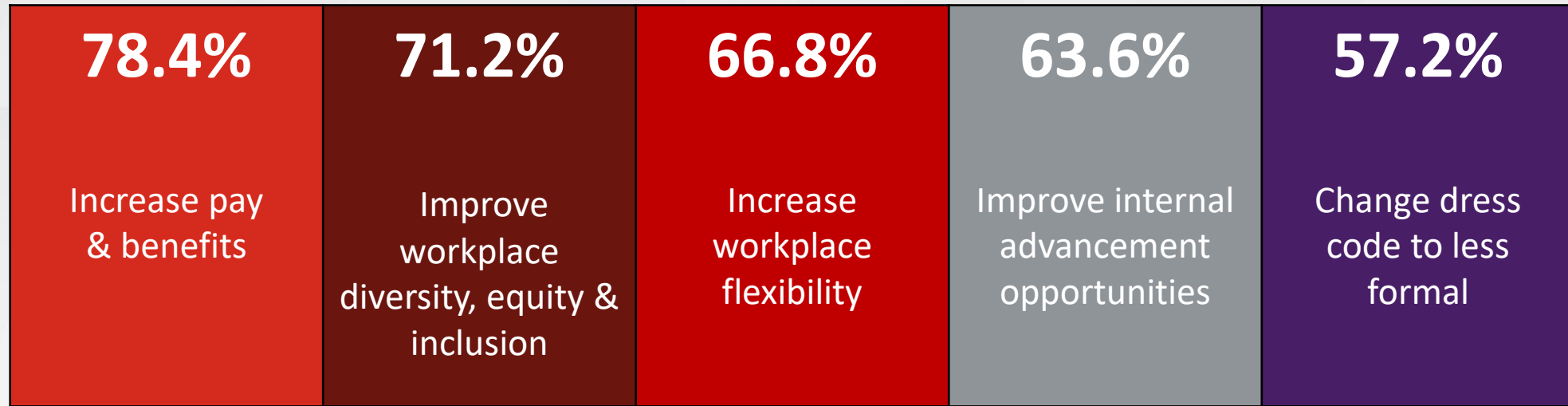
RECRUITING ACROSS GENERATIONS

	They want:	Recruiting:
Boomers 1947-1964	Stability and benefits, defined roles Flexibility nearing retirement Loyal, respect authority	PT and remote options Go light on tech demands
Gen X 1965-1979		
Gen Y-Mill 1980-1996		
Gen Z 1997-2015		

Five Recruitment Strategies

1. Leverage your own people (staff and board) for candidates – incentives
2. Clearly define job description and expectations
3. Create careers page Shows openings, online app, explains culture/values, profiles current employees/demographics, employee testimonials
4. Always respond to inquiries
5. Make DEI a true priority

What steps has your organization taken (or is planning to take) to recruit employees?



Summary:

1. Make sure you know yourself before selling to others (MVV, Culture)
2. Be clear about who/what you need to achieve mission success
3. Offer competitive pay and benefits
4. Prioritize employee wellness
5. Offer flexibility
6. Strive for innovation in all areas
7. Be accountable

Thank you!

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Not-for-profit Fall Seminar

FASB ASU 2020-07: Presentation and Disclosures by NFP Entities for Contributed Nonfinancial Assets

Meet the Presenters



Karen Garcia, CPA
Senior Manager
Karen.Garcia@forvis.com



Ellen Eden, CPA
Manager
Ellen.Eden@forvis.com

Learning Objectives

- ❑ Understand the new reporting and disclosure requirements of ASU 2020-07
- ❑ Understand the new requirements to the fair value of contributed gifts-in-kind
- ❑ Ability to describe and implement policies around the new ASU

Contributed Goods and Services – When to Record At Fair Value

**Services that create or enhance a
nonfinancial asset**

**Nonfinancial assets include land, building,
use of facilities/utilities, materials and
supplies, intangible assets, or services**

**Services that require specialized skills,
are provided by individuals possessing
those skills, and would typically need to
be purchased if not provided by donation**

**Specialized skills are provided by
accountants, architects, carpenters, doctors,
electricians, lawyers, nurses, plumbers,
teachers, and other professionals and
craftsmen**

Contributed Goods and Services – When to Record At Fair Value

The NFP recipient has discretion in using
or distributing the gifts-in-kind

Discretion = Variance power

The NFP has risks and rewards of ownership
over the gifts-in-kind, such as the risk of loss
if they are lost, damaged, or destroyed and
the ability to obtain the benefits of and
control others' access to the gifts-in-kind

**NFP takes physical possession (typically) of
the gifts-in-kind or NFP takes constructive
possession (housed with a third-party
warehouse for example)**

See FASB ASC 958-605-50-1

Required Disclosures for Contributed Services Prior to ASU 2020-07 were:

- Description of the programs or activities for which the services were used
- Nature and extent of contributed services received for the period
- Amount of revenue recognized for the period
- Encouraged to disclose the fair value of contributed services received but not recognized as revenue, if practicable

Not-for-profit reporting of gifts-in-kind

ASU 2020-07 Project Background

Objective

- Increasing transparency about contributed nonfinancial assets through enhancements to presentation & disclosure

Scope

- Contributions of nonfinancial assets (fixed assets, use of fixed assets, materials & supplies, intangibles, services)

Not-for-profit reporting of gifts-in-kind

ASU 2020-07 Transition and Effective Date

Retrospective transition required

Effective years beginning **after**
June 15, 2021

Not-for-Profit Reporting of Gifts-in-Kind Requirements of ASU 2020-07

1

Present contributed nonfinancial assets as a separate line item in the statement of activities

2

Disclose disaggregation by category of nonfinancial asset, including whether it is used or monetized. If used- in which areas/programs. Also, any monetization policies.

3

Disclose a description of donor restrictions associated with the nonfinancial asset

4

Provide a description of the valuation techniques and inputs used to arrive at a fair value measure for contributed nonfinancial assets in accordance with paragraph 820-10-50-2(bbb)(1) of the Codification for initial recognition

5

Disclose principal market (or most advantageous market) used to arrive at the fair value measure if it is a market in which the recipient NFP is prohibited by donor restrictions from selling or using the contributed asset

Technical Overview of Fair Value Accounting

- Highest level of the fair value hierarchy is a quoted price in an active market that the reporting entity can access at the measurement date
- An active market may not exist for many nonfinancial assets
- If no active market, then look for level two type support; public information is often available for identical or similar assets in inactive markets, which are considered Level 2 inputs

Technical Overview of Fair Value Accounting

- NFPs need to consider factors specific to the nonfinancial asset
- FASB Codification 820-10-35 states fair value measurement assumes the transaction to sell takes place in the principal market and if there is none then the most advantageous market
- Principal market is defined as a market with the greatest volume and level of activity to which the NFP has access

Technical Overview of Fair Value Accounting

- When considering the principal market, you need to be sure you have the legal ability to be active in that market.
- FinREC has said that a NFP's specific market may not be the principal or most advantageous market because of fulfillment of their mission. A NFP may work in regions or accept dollars that are significantly less than market price as part of fulfilling its mission.

Technical Overview of Fair Value Accounting

- FASB Codification 820-10-35-10B states that the highest and best use of a nonfinancial asset takes into account the use of the asset that is physically possible, legally permissible, and financially feasible.
- FASB Codification 820-10-35-6B says that the NFP needs to be able to access the market but does not need to be able to sell the asset in that market.
- The fact that a donor may restrict access through donor-restrictions does not affect the price in the principal (or most advantageous) market. That would impact net asset classification.

Technical Overview of Fair Value Accounting

- FASB Codification 820-10-35-2B does however state a NFP should take into account the characteristics of an asset, which includes legal restrictions on any holder of the asset.
- Examples include conservation or zoning easements

The Challenge: when an asset's usefulness indicates principal market

- ❑ Gifts-in-kind (GIK) may be provided to address a need which exists primarily in the developing world, not the US.
- ❑ When a GIK serves a need which primarily exists in the developing world, Principal Market concepts (market with the greatest volume) indicate the developing world would be the market for Fair Value purposes. As the location where need for and utilization of the asset exists, it reasonably has the greatest volume of activity for the asset.
- ❑ NFPs may inadvertently start their valuation process considering the asset's attributes, and US salability, rather than where the product is primarily sold. This could lead to the wrong conclusion that the most advantageous market should be used rather than the principal market.

The Challenge: when an asset's usefulness indicates principal market

- ❑ In the example of River Blindness, if the NFP receives a donation of a pharmaceutical product which is approved for sale in the US, it may incorrectly value it according to US market values when the market with the greatest volume is outside the US.
- ❑ It is best practice for a NFP to have a rebuttable presumption that the principal market (market with the greatest volume and level of activity) is the developing world, not the US, when a pharmaceutical product serves a need which exists primarily in the developing world.

The Challenge: Market Participant Assumptions

- ❑ The Fair Value Measurement Approach requires a reporting entity to determine “the valuation techniques appropriate for measurement, considering the availability of data with which to develop inputs that represent the assumptions that market participants would use when pricing the asset or liability...” (ASC 820-10-55-1d).
- ❑ NFPs may inadvertently select inputs which do not consider assumptions market participants would use when pricing an asset.

The Challenge: Market Participant Assumptions – A Pharmaceutical Example

- ❑ US Pharmaceutical pricing is complex and related data indexes represent a spectrum of pricing assumptions. One key assumption market participants would use when selecting an input is that it reflects real values transacted in the market, not list prices.
- ❑ Due to the complexity of understanding the many data sources, NFPs may inadvertently select data excluding assumptions market participants assume in orderly transactions, thus misstating an asset's fair value.
- ❑ If market participants would expect a prompt pay or other discount, rebate and reductions in price, NFPs should also consider these when selecting a pharma pricing index to determine fair value.

Not-for-profit Considerations

- ❑ Current Reporting Structure
- ❑ Key Nonfinancial Contributions
- ❑ Disclosure – Impact on Statement of Activities and Note Disclosures
- ❑ Summary of Policy and Procedure Guidance
 - Qualitative Information
 - Programmatic v. Other Activities
 - Fair Market Value Measurements

Present as a separate line in the Statement of Activities Integrated Columns, Separate Rows

	<u>Without Donor Restrictions</u>	<u>With Donor Restrictions</u>	<u>Total</u>
Support, revenues, and gains			
Contributions and grants, primarily private	18,510	5,670	24,180
Gifts-in-kind	67,680		67,680
Government grants	9,680	-	9,680
Other income	465	-	465
Net assets released from restrictions	1,430	(1,430)	-
Total support, revenues, and gains	97,765	4,240	102,005
Expenses			
Food bank operations	86,940	-	86,940
Supporting services:			-
General and Administrative	1,050	-	1,050
Fundraising	3,475	-	3,475
Total expenses	91,465	-	91,465
Change in net assets	6,300	4,240	10,540

Present as a separate line in the Statement of Activities

Separate Columns

	Without Donor Restrictions			With Donor Restrictions	
	Financial	Non-Financial	Total	Restrictions	Total
Support, revenues, and gains					
Contributions and grants, primarily private	18,510	67,680	86,190	5,670	91,860
Government grants	9,680	-	9,680	-	9,680
Other income	465	-	465	-	465
Net assets released from restrictions	1,430	-	1,430	(1,430)	-
Total support, revenues, and gains	30,085	67,680	97,765	4,240	102,005
Expenses					
Food bank operations	21,730	65,210	86,940	-	86,940
Supporting services:					
General and Administrative	1,050	-	1,050	-	1,050
Fundraising	3,475	-	3,475	-	3,475
Total expenses	26,255	65,210	91,465	-	91,465
Change in net assets	3,830	2,470	6,300	4,240	10,540

Current reporting structure used by an NFP Does NOT meet the new disclosure requirements

NOTES TO FINANCIAL STATEMENTS – June 30, 2020 and 2019

REVENUE AND PUBLIC SUPPORT

Public support and revenue are reported as increases in net assets without donor restrictions unless use of the related assets is limited by donor-imposed restrictions. Expenses are reported as decreases in net assets without donor restrictions. Gains and losses on investments and other assets or liabilities are reported as increases or decreases in net assets without donor restrictions unless their use is restricted by explicit donor stipulation or law. Expirations of net assets with donor restrictions (i.e., the donor-stipulated purpose has been fulfilled and/or the stipulated time period has elapsed) are reported as reclassifications between applicable classes of net assets.

Contributions of cash and other assets, including unconditional promises to give in the future, are reported as revenue when received, measured at fair value. Donor promises to give in the future are recorded at the present value of estimated future cash flow. Conditional promises are recorded when donor stipulations are substantially met. Contributions are recorded net of allowances. An allowance for doubtful pledges receivable is provided based on management's judgment, including factors such as prior collection history, the type of contribution and the nature of fundraising activity. The Food Depository did not record an allowance for doubtful accounts, as it expects to receive outstanding amounts due subsequent to fiscal year end.

Contributions received with donor-imposed restrictions are reported as revenue of the net assets with donor restrictions asset class. Net assets with donor restrictions released from restriction primarily relate to expenditures incurred for capital additions and program services. Contributions of land, building and equipment without donor-imposed restrictions concerning the

funds and donor contributions for agencies are recognized as credits to the agencies' balances when received and are recognized as revenue when the agencies purchase food. These credits are recorded as deferred revenue on the statement of financial position.

DONATED GOODS AND SERVICES

Certain donated services are recognized as support in the statement of activities and changes in net assets. The value of these services is determined based on estimated fair value.

Donated legal services have been recorded in the statement of activities and changes in net assets in the amount of \$346,362 and \$352,824 for the years ended June 30, 2020 and 2019, respectively.

Donated advertising and printing has been recorded in the statement of activities and changes in net assets in the amount of \$257,302 and \$291,280 for the years ended June 30, 2020 and 2019, respectively.

In-kind contributions discussed above are recorded in contributions and grants on the statement of activities and changes in net assets, and the corresponding expense is recorded in professional and contractual fees on the statement of functional expenses.

Donated fixed assets are reflected in the financial statements at their estimated values. Donated fixed assets have been recorded in contributions – *Nourish* Capital Campaign on the statement of activities and changes in net assets in the amount of \$2,395,656 for the year ended June 30, 2019. There were no donated fixed assets for the year ended June 30, 2020.

GIK Disclosure

Narrative example to meet the new requirements

For the year ending June 30 20X2, GIK recognized within the statement of activities included:

	<u>20X2</u>
Food	\$49,920
Clothing	13,540
Supplies	<u>4,220</u>
	<u>\$67,680</u>

GIK Valuation Techniques: Contributed food items are valued using average US wholesale price per pound for each food category as determined by America's Food Product Valuation Survey, which is performed annually by Crackers, LLP. All other GIK is valued using estimated US wholesale prices of identical or similar products using pricing data of similar products under a 'like-kind' methodology, considering the goods condition and utility for use at the time of the contribution.

Donor Restrictions and GIK Use: No GIK was restricted, except for \$10,000 of food contributions restricted for emergency hurricane response in the local community.

The Organization does not sell donated GIK and only distributes goods for program use, including the Mobile Food Pantry and Adult and Children Programs.

GIK Disclosure

	Revenue recognized	Utilization in Programs/ Activities	Donor Restrictions	Valuation Techniques and Inputs
Building	\$ 550,000	General and Administrative	No associated donor restrictions	In valuing the contributed building, which is located in Metropolitan Area B, NFP K estimated the fair value on the basis of recent comparable sales prices in Metropolitan Area B's real estate market.
Household goods	\$ 95,556	Domestic Community Development; Community Shelters	No associated donor restrictions	NFP K estimated the fair value on the basis of estimates of wholesale values that would be received for selling similar products in the United States.
Food	\$ 85,407	Natural Disaster Services; Domestic Community Development; Community Shelters	No associated donor restrictions	NFP K estimated the fair value on the basis of estimates of wholesale values that would be received for selling similar products in the United States.

GIK Disclosure

	Revenue recognized	Utilization in Programs/ Activities	Donor Restrictions	Valuation Techniques and Inputs
Medical supplies	\$ 90,389	Natural Disaster Services	No associated donor restrictions	NFP K estimated the fair value on the basis of estimates of wholesale values that would be received for selling similar products in the United States.
Clothing	\$ 85,765	Natural Disaster Services; Domestic Community Development; Community Shelters	No associated donor restrictions	In valuing clothing, NFP K estimated the fair value on the basis of estimates of wholesale values that would be received for selling similar products in the United States.
Vehicles	\$ 127,900	It is NFP K's policy to sell all contributed vehicles immediately upon receipt unless the vehicle is restricted for use in a specific program by the donor. All vehicles received were sold.	No associated donor restrictions	Proceeds from vehicles sold are valued according to the actual cash proceeds on their disposition.
Services	\$ 73,890	Various Administrative Legal Matters	No associated donor restrictions	Contributed services from attorneys are valued at the estimated fair value based on current rates for similar legal services.

SUMMARY OF POLICY AND PROCEDURE GUIDANCE

Policy Statement Should Summarize

- Gift Acceptance
- Policy about monetizing or utilizing GIKs
- Revenue Recognition
- NPO Use In Business Activities
- Potential Donor Restrictions
- Valuation Techniques and Required Inputs

Procedures Should Include

- Fair Market Value Measurement by Gift Category
- Timing (Valuation and Reporting)
- Use of Third Parties (Appraisals)
- Internal Review and Approval
- Gifts v. Discounts

Questions?

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Break
10 minutes



Choosing New Software Systems

KAREN BODACH

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Objectives:

- Understand when and why a new system should be considered
- Understand a methodology for choosing technology
- Understand ways to prepare



Meet the Presenter



Karen Bodach, CPA

Why a New System?



Goals and Objectives
of a New System

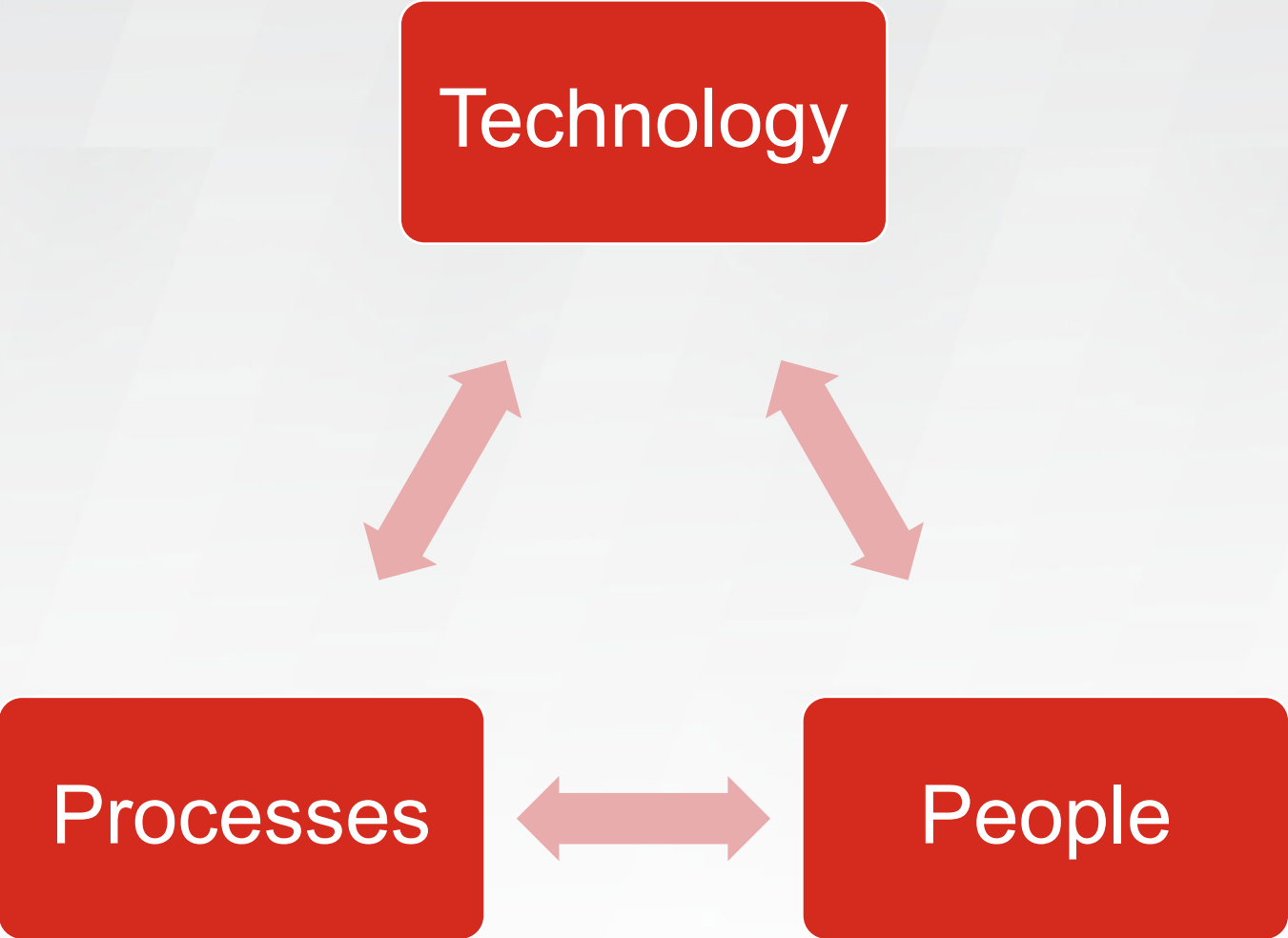


Pain Points to Solve

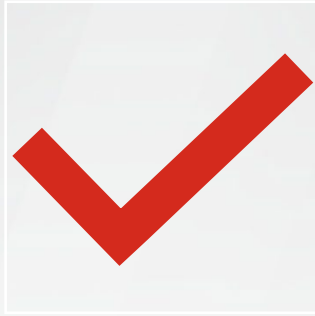


Appropriate Buy In

The Three-Legged Stool



Timing of a New System



You have appropriate
internal support

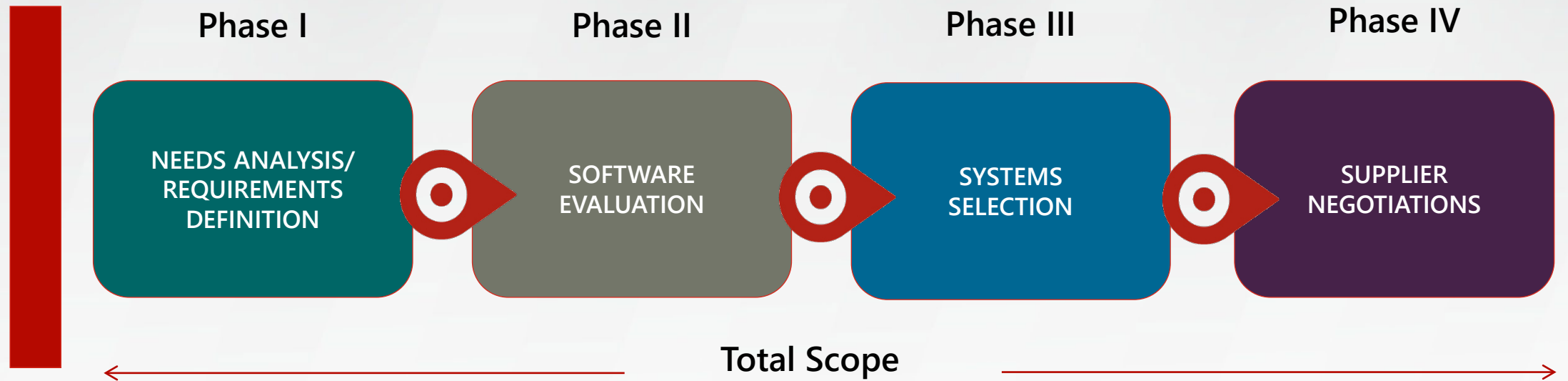


You have executive
sponsorship

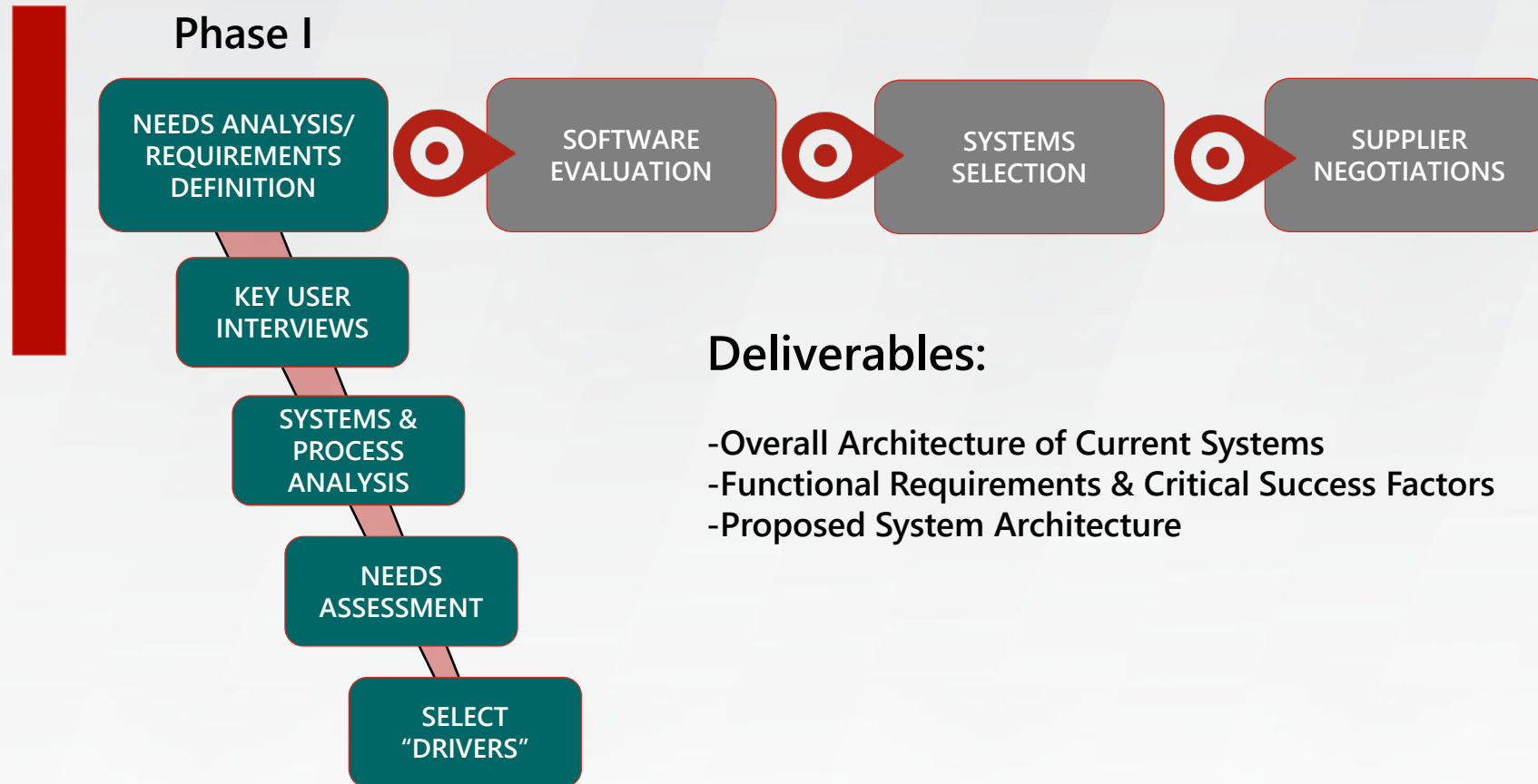


Timing of choosing a
system 3-6 months

System Selection Project Methodology



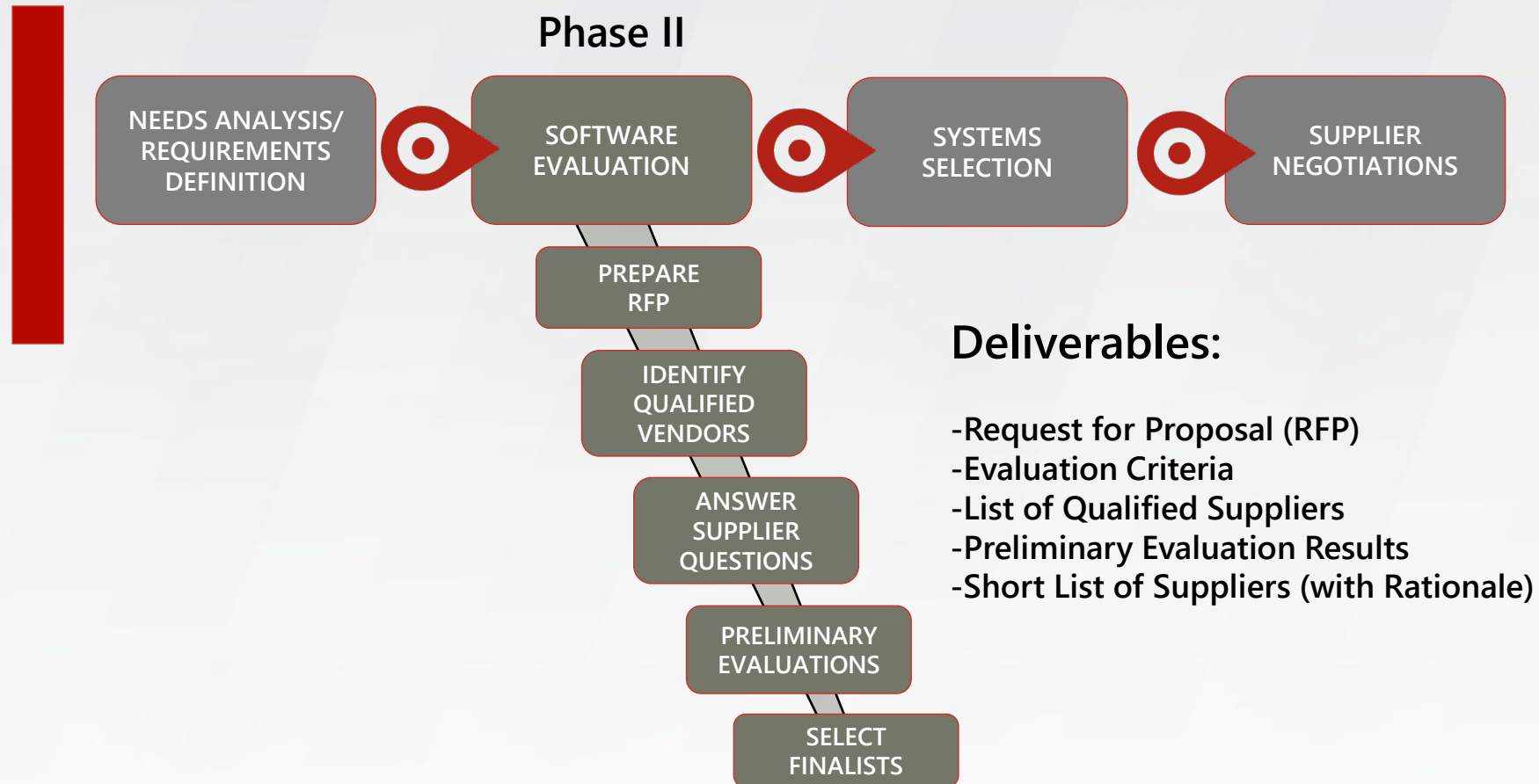
Phase I: System Selection Project Approach



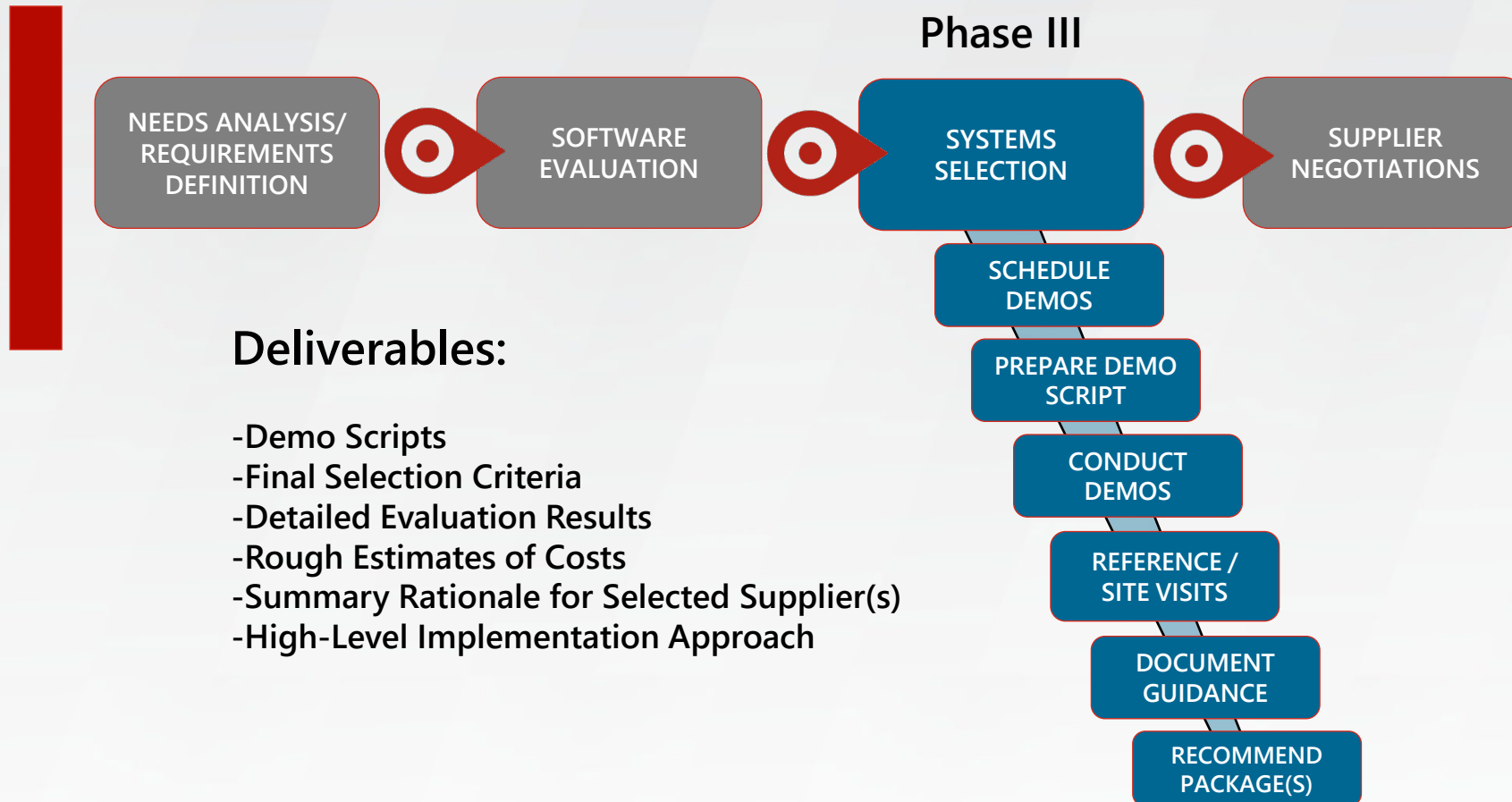
Deliverables:

- Overall Architecture of Current Systems
- Functional Requirements & Critical Success Factors
- Proposed System Architecture

Phase II: System Selection Project Approach



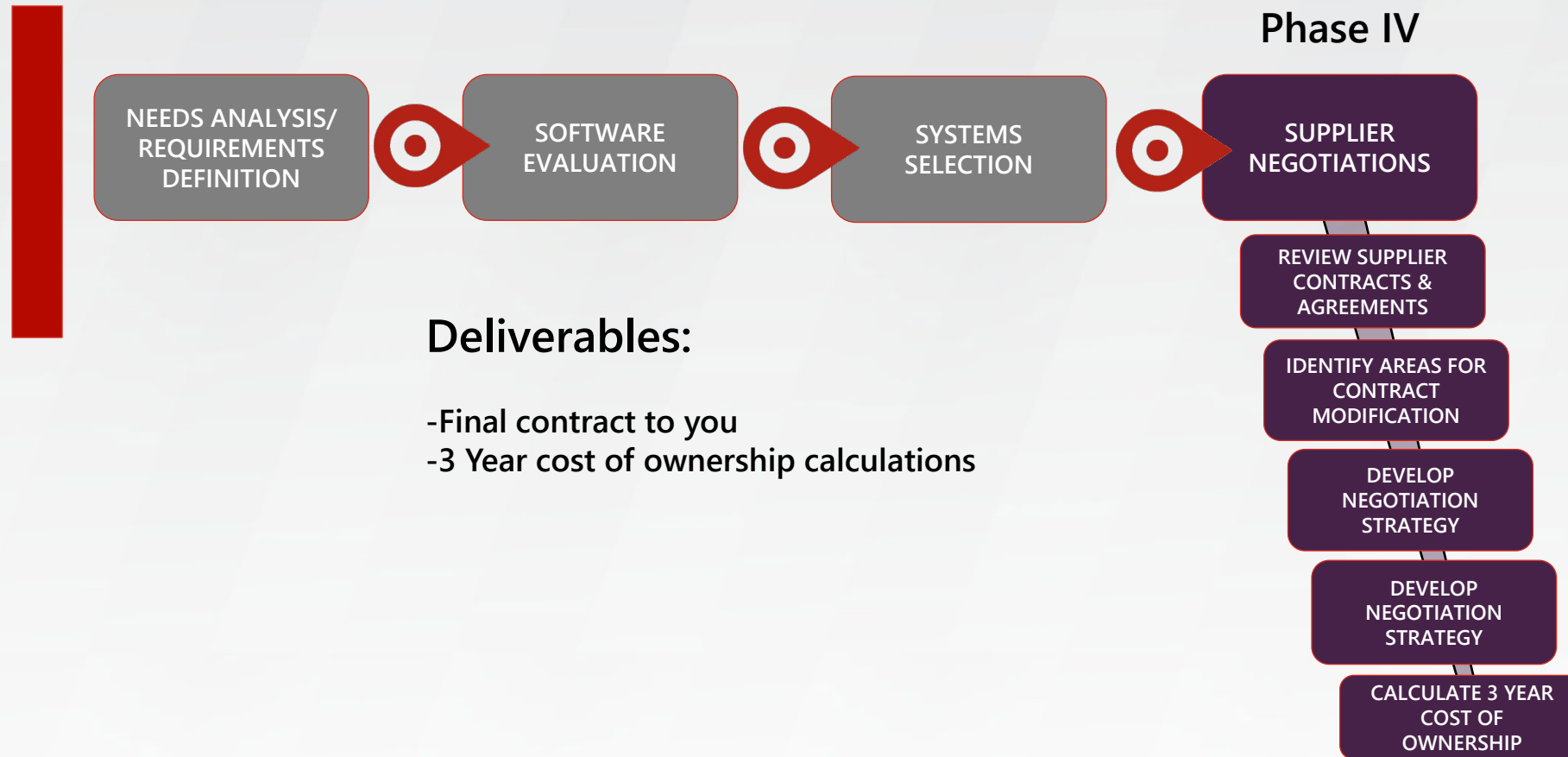
Phase III: System Selection Project Approach



Deliverables:

- Demo Scripts
- Final Selection Criteria
- Detailed Evaluation Results
- Rough Estimates of Costs
- Summary Rationale for Selected Supplier(s)
- High-Level Implementation Approach

Phase IV: System Selection Project Approach



System Selection Process - Prework



Gather requirements



Understand and document current processes

Three tasks that take the most time



Scrub data



Start with the **End in Mind** i.e. Reporting and Dashboarding

Objectives:

- Understand when and why a new system should be considered
- Understand a methodology for choosing technology
- Understand ways to prepare





Questions?

FORV/S

A photograph of three business professionals in a meeting. A woman with curly hair is on the left, a man in a suit is in the center, and a woman with short grey hair is on the right. They are all looking at a laptop screen. The background is a modern office with large windows.

Thank You!

Karen Bodach, CPA

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A Discussion on Budgeting & Planning

October 25, 2022

Agenda

- Introductions
- Discussion Topics
- Dealing with uncertainty
- Planning for workforce retention & growth
- Managing risks & what comes next
- Questions from the Audience

Meet the Panel



Emily George

Senior Director of Finance & Administration

Texas 2036



Theresa Guerra

Director of Finance

Highland Park Presbyterian Church



Jill Scigliano

Chief Executive Officer

The Samaritan Inn



Heather Flabiano, Moderator

Director, FORVIS

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Leann Peden, Moderator

Managing Consultant, FORVIS

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Dealing with Uncertainty

“If there is one thing that is certain in business, it’s uncertainty.”

– Stephen Covey

Planning for Workforce Retention & Growth

“In most cases, being a good boss means hiring talented people & then getting out of their way.”

– Tina Fey

Managing Risks & What Comes Next

“Turn your wounds into wisdom.”

– Oprah Winfrey

**“The first step to receiving
an answer is being brave
enough to ask a question.”
– Anonymous**

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Break
5 minutes

**PROS AND CONS OF SETTING UP A
RELATED ENTITY:
UNDERSTANDING AND DECIDING ON
THE CREATION OF SUBSIDIARIES AND
AFFILIATES**

October 25, 2022
FORVIS Fall 2022 Nonprofit Seminar
Arlington, Texas

Darren B. Moore | dmoore@bwwlaw.com

OVERVIEW OF PRESENTATION

- Selected choice of entity options
- Choice of entity considerations
- Case study

CHOICE OF ENTITY OPTIONS

- “Wholly owned” organizations
 - Section 501(c)(3) organizations
 - Supporting organizations
 - Type I, II, III (functionally integrated and non-functionally integrated)
 - Other Section 501(c) organizations
 - Single-member limited liability companies
 - Disregarded limited liability companies (LLCs) vs. “check-the-box” LLCs

CHOICE OF ENTITY OPTIONS

- “Wholly owned” organizations (cont.)
 - Taxable subsidiaries
 - State law business corporation vs. nonprofit corporation
 - Stock ownership vs. membership
 - “Check-the-box” LLC
 - S corporations = automatic UBTI

501(C)(3) AFFILIATES: STAND-ALONE ORGANIZATIONS VS. SUPPORTING ORGANIZATIONS

- Generally prefer stand-alone public charity to SOs
 - Can still maintain control over stand-alone public charity without tax restrictions placed on SOs
- SO as parent entity
 - Which type to use?
 - Generally a parent can only be a Type II or Type III functionally integrated supporting

DISREGARDED SINGLE-MEMBER LLCs VS. SECTION 501(C)(3) ORGANIZATIONS

- Disregarded single-member LLC provides liability protection, separate governance and/or independence but no separate application/990.
- Contributions to disregarded single-member LLC are eligible for charitable contribution deductions.
 - IRS Notice 2012-52
 - However, can create issues for donors/grantors
- State and local sales and property tax exemption
 - Varies by state
 - TX: Disregarded single-member LLC subject to margin/franchise tax, sales tax, use tax, and generally not eligible for property tax exemption

CHOICE OF ENTITY CONSIDERATIONS

- Related vs. unrelated activity
- Size (or expected size) of activity
- Limitations on liability
- Governance
- Independence/culture
- Attracting and compensating employees
- Public perception
- Future partners/investors
- Costs (both \$ and time) of forming/maintaining multiple entities
- Exit strategies

RELATED VS. UNRELATED ACTIVITIES

- A substantial nonexempt purpose can jeopardize the tax exempt status of an organization.
- There is no bright-line test to determine when an unrelated business activity becomes so pervasive that it is no longer incidental and instead becomes substantial.
- A facts-and-circumstances determination:
 - **Amount of income derived** from the unrelated business income (UBI) activity in comparison to total income
 - **Amount of expenditures** for the UBI activity in comparison to total expenditures
 - **Amount of time** the organization's employees devote to the UBI activity in comparison to total hours worked

COMMERCIAL ACTIVITIES AND THE OPERATIONAL TEST

1. Are the commercial activities in furtherance of the org's exempt purposes?
2. If yes to #1, operational test is satisfied.
3. If no to #1, are the commercial activities insubstantial?
4. If yes to #3, operational test is satisfied (but UBI implications)
5. If no to #3, operational test not satisfied

Issue: Commercial activities may be conducted in a manner that marks them as not in furtherance of exempt purposes (commerciality doctrine).

RELATED VS. UNRELATED ACTIVITIES (CONT.)

- Commerciality Doctrine:
 - Related business conducted in commercial manner as indicia of operating for nonexempt purpose
 - Manner of conducting revenue-generating activities = substantial non-exempt purpose
 - Operating with a “distinctly commercial hue”
 - Direct competition with commercial firms (esp. in same locales)
 - Pricing Structure designed to produce a profit
 - Extensive advertising and use of commercial advertising materials
 - Annual accumulated profits
 - Lack of charitable donations

RELATED ACTIVITY ENTITY CHOICES

- Operate in existing exempt organization
- Separate for liability protection, governance and/or independence
 - Section 501(c)(3) organization
 - Stand-alone public charity or supporting organization
 - Single-member LLC (disregarded)
 - Other Section 501(c) organization
 - E.g., Section 501(c)(2) title-holding company or Section 501(c)(4) social welfare organization
- Generally do not use taxable corporation

UNRELATED ACTIVITY ENTITY CHOICES

- Operate in existing EO
- Separate for liability protection, governance, independence **OR** to protect against excessive UBTI or commercial activities
 - Single-member LLC (disregarded)
 - Taxable corporation
 - Protects exempt status
 - Requires separate tax return

DISREGARDED ENTITY VS. TAXABLE ENTITY

Disregarded entity

Exempt organization (EO)
Reports 100% of disregarded
entity

100%: Income and
activities

Disregarded entity

Revenue \$200k
Expenses (\$100k)
Net income \$100k

C corporation

EO
No flow-through
Tax-free dividend

100%

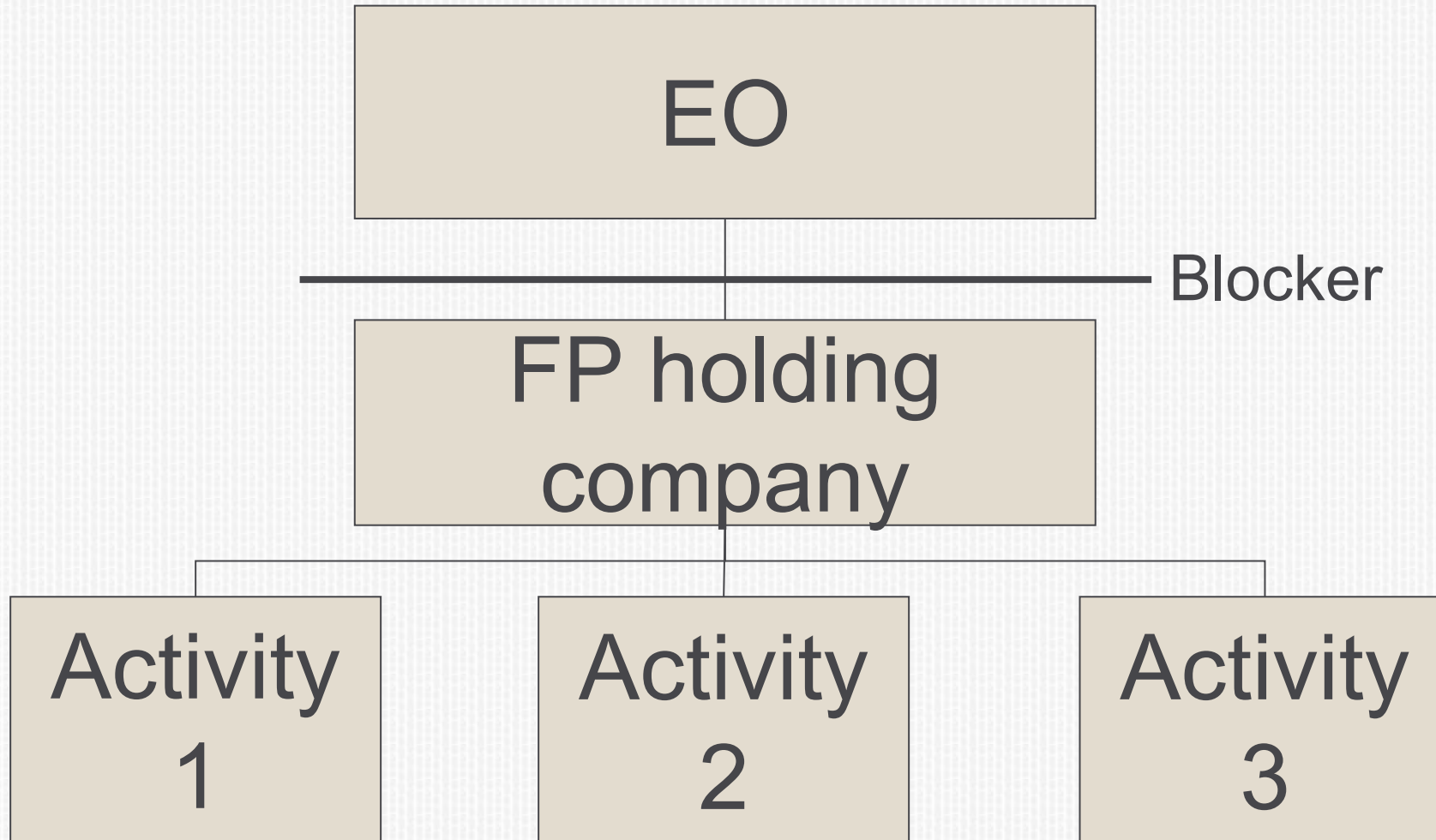
C corporation

Revenue	\$200k
Expenses	(\$100k)
Net income	<u>\$100k</u>
Tax paid	\$35k
Net	\$65k

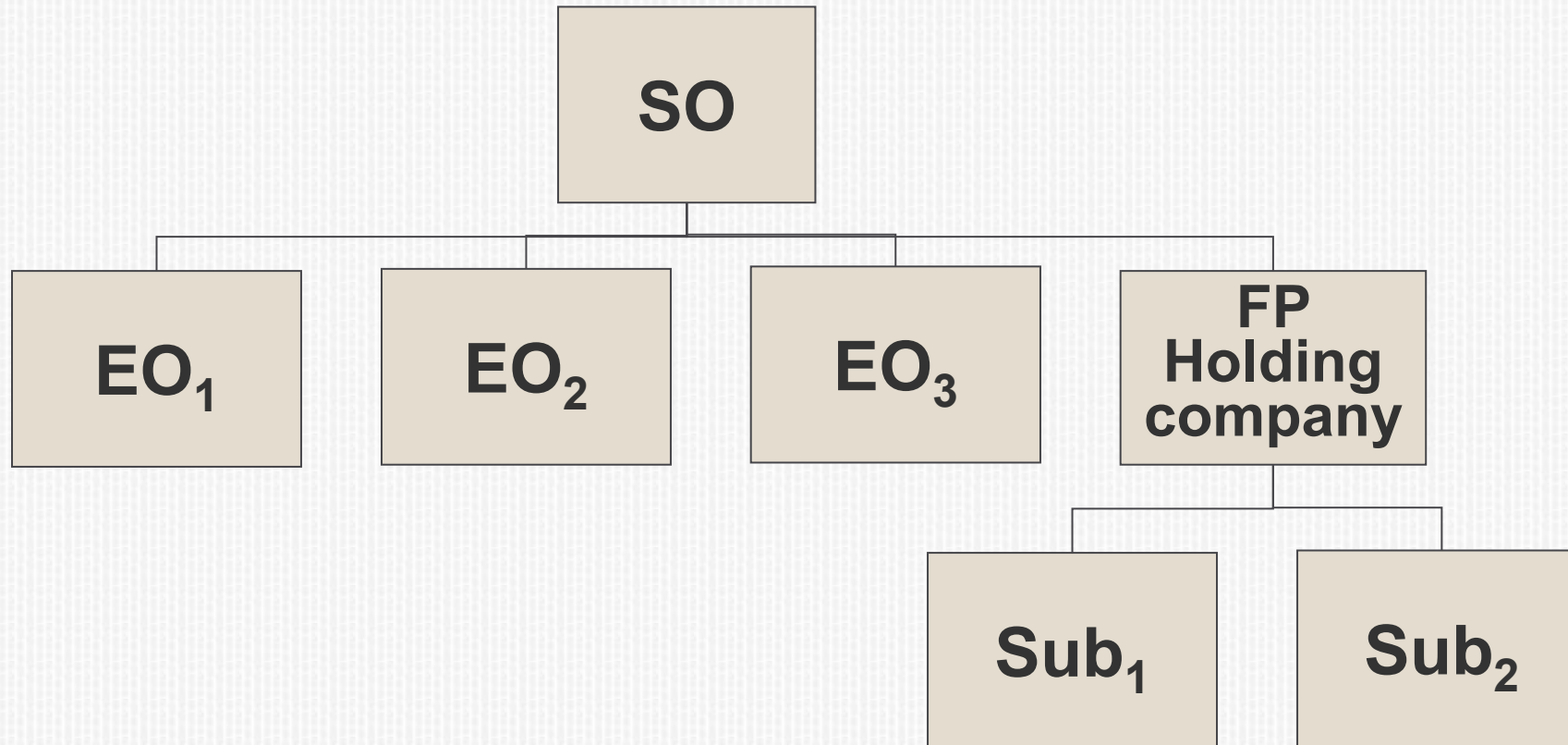
OTHER CONSIDERATIONS

- Section 512(b)(13)
 - Interest, annuities, royalties and rents (specified payments) received from or accrued by a **controlled organization** is UBTI (to the controlling entity) to the extent the specified payment reduces the net unrelated income of the controlled organization (or increases net unrelated loss).
 - Control – 50% of stock/profits interest/beneficial interests (constructive ownership rules apply)

MULTIPLE UNRELATED ACTIVITIES WHOLLY OWNED CONSOLIDATED GROUP



RELATED AND UNRELATED USE OF CONSOLIDATED GROUP AND SUPPORTING ORGANIZATION



OTHER CONSIDERATIONS

Separate entity — issue of separateness

- Particularly important if unrelated activity
- Facts and circumstances analysis
 - Need for bona fide business purpose
 - Observation of corporate formalities
 - Maintain separate books and records
 - Board of directors
 - Officers
 - Employees
 - Facilities/website
- Historical focus — separate board of directors
- Focus is now on day-to-day activities
 - Good facts: PLRs 201503018, 201406019 and 200602039
 - Bad facts: TAM 200908050 and PLR 201408030

PARENT LIABILITY FOR SUBSIDIARY

Texas law is very protective of
the corporate veil

- Contractual obligations: alter ego/sham to perpetrate a fraud require *actual fraud* for direct personal benefit of shareholder
- Torts: injustice or inequity will result if separate corporate existence is recognized
 - Avoid complete overlap of governing persons
 - Ensure arms-length dealings
 - Appropriately capitalize the subsidiary
 - Don't commingle funds

OTHER CONSIDERATIONS

- Transfer pricing (TP) — Section 482
 - This refers to the pricing of transactions between related parties
 - General principle: arm's-length transaction
 - Section 482 provides, in part:
 - In the case of two or more organizations owned or controlled directly or indirectly by the same interests, the IRS Commissioner may allocate gross income, deductions, credits or allowances between or among such organizations if he or she determines that such allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations.
 - TP rules apply equally to transactions conducted within the US between for-profit and tax-exempt parties.
 - State tax authorities have generally adopted Section 482 principles.

OTHER CONSIDERATIONS: EXIT STRATEGIES

- Sale/merger or liquidation
 - Single-member LLCs
 - Since the LLC is disregarded for tax purposes, no tax impact
 - Exempt organizations
 - Generally no gain or loss should be recognized
 - Taxable corporations (state law nonprofit and business corporations)
 - Asset sale versus stock sale to unrelated party
 - Stock sale: Gain or loss on sale of stock by EO parent generally excluded from UBTI treatment under Section 512(b)(5).
 - Asset sale: Taxable event to the for-profit subsidiary
 - Liquidation/merger into parent
 - Issues related to Affordable Care Act Provision 9010 — Health Insurance Providers Fee

MERGER/LIQUIDATION OF TAXABLE SUBSIDIARY INTO EXEMPT PARENT

- Treated as a “liquidation” of subsidiary for tax purposes
- General rule: no gain or loss recognized by parent (Section 332(a)) or subsidiary (Section 337(a)) where the parent owns at least 80% of subsidiary stock (by vote **and** value)
- Special rule: where parent is exempt organization, gain or loss will be recognized by taxable subsidiary upon the transfer unless parent (a) is subject to UBTI and (b) uses the property in an unrelated trade or business *immediately* after the distribution. *See* Reg. Section 1.337(d)-4
- Limitation on losses under Reg. Section 1.337(d)-4(d)

CASE STUDY #1

- A public charity, which is operated entirely by volunteers, engages in activities that promote the beautification of public parks and green spaces. It is considering starting a new lines of business where it will sell flowers, plants, and related garden items to the general public. Consider the following facts:
 - Initially, PC will conduct the venture only through its own volunteers.
 - PC believes that this could turn into a large business.
 - PC may consider partners in the future to expand the business if successful.
- What type of structure should PC consider?

CASE STUDY #2

- An exempt hospital is considering starting a new medical supply distribution business. Consider the following facts:
 - Initially, hospital will only distribute to related entities that are part of its system. However, in the future, it may expand the business to unrelated entities.
 - Hospital believes that this could turn into a large business.
 - Hospital is also considering starting or purchasing ancillary businesses.
 - Hospital may consider investors or partners in the future to expand the business if successful.
 - Hospital also may consider a sale of the entity in the future.
- What type of entity structure should hospital consider?

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Compensation Issues & Best Practices

NFP Seminar/ October 2022

Not-for-Profit

Presenters



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Discussion Topics

Compensation Issues >

- Possible Problems
 - Penalties

How to Mitigate Issues >

- Strategies & Policies

Determining Compensation >

- Rebuttable Presumption of Reasonableness
 - Other Types

Why is Compensation an Issue?

- Bad press (990 Disclosure)
- Public perception
- Stakeholder/Donor revolt
- IRS Audit (Inflation Reduction Act – 87,000 new IRS agents)
- Tax Court
- Attorney General investigations
- Charity Rankings
- Attracting and Retention of Employees – paying fairly and reasonably

Federal Tax Issues

- Private Inurement
- Private Benefit
- Intermediate Sanctions – Excess Benefit Transaction
- Self-dealing for Private Foundations

Penalties - Public Charities

- Intermediate Sanctions/Excess Benefit Transaction
 - Excise tax of 25% of the excess portion ON the disqualified person
 - Excise tax of 10% of the excess portion on any organization manager who participated in the compensation arrangement (unless not willful and due to reasonable cause)
 - If not corrected after notice, an additional excise tax of 200% of the excess portion on the disqualified person
- Private Inurement – Revocation of tax-exempt status of the Organization

Penalties - Private Foundations

- Self Dealing
 - Excise tax of 10% of self-dealing ON the disqualified person
 - Excise tax of 5% of self-dealing on a foundation manager who participated in the compensation arrangement (unless not willful and due to reasonable cause)
 - If not corrected after notice, an additional excise tax of 200% on self dealer
- Private Inurement – Revocation of tax-exempt status of the Organization

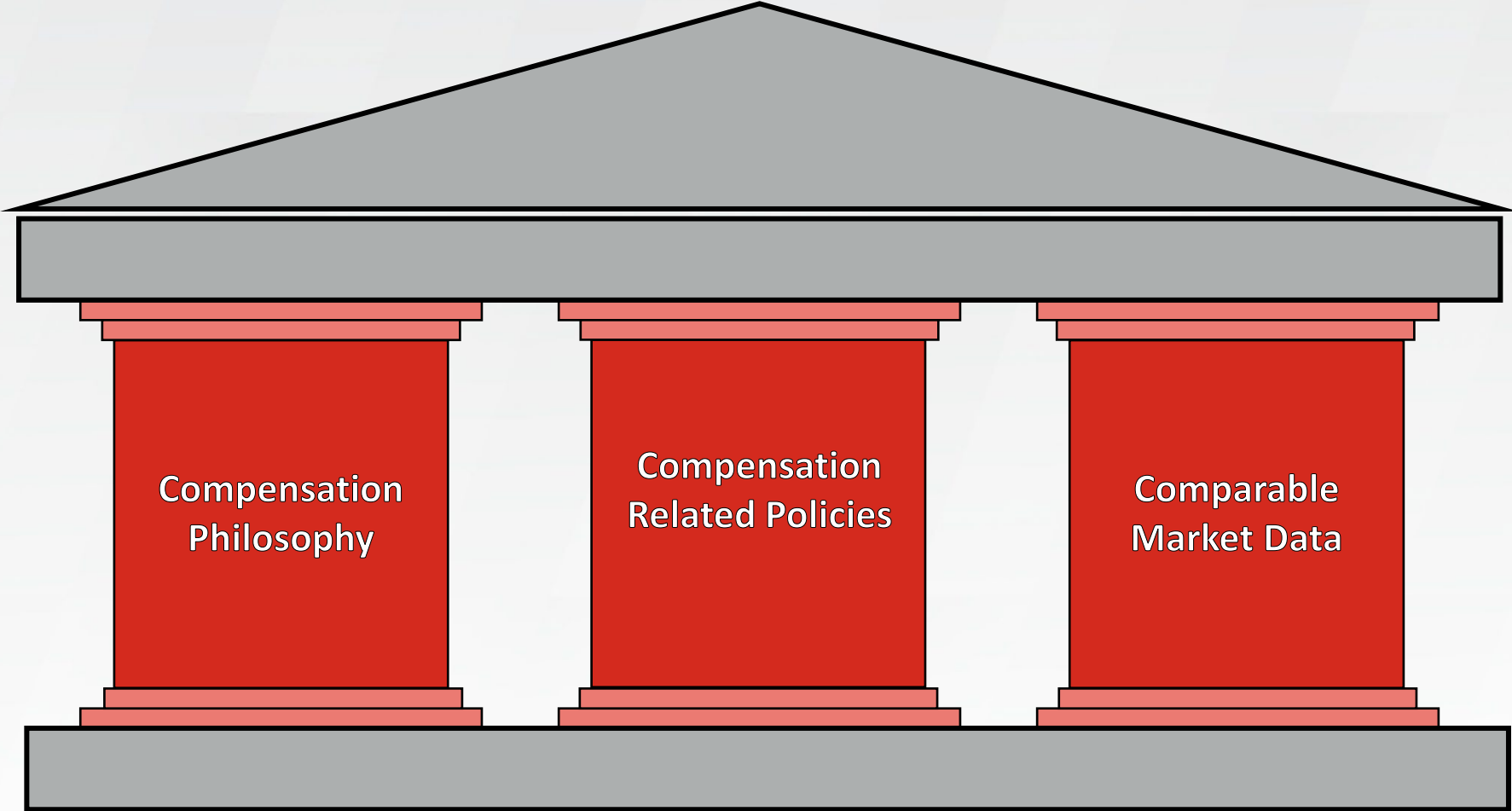
IRC Section 4960

- Added by the Tax Cuts and Jobs Act in 2017
- “Applicable tax-exempt organization” that pays to a “covered employee”
 - remuneration in excess of \$1 million for a taxable year; or
 - excess parachute payment
- Subject to an excise tax on amount of excess remuneration or any excess parachute payment at the corporate rate (currently 21%)
- Final regulations were issued January 2021

Tips & Potential Mitigation Strategies

- Review employment agreements and severance policies to determine if they could generate excess parachute payments
- Shifting Income – specifically employee's bonus and severance
- Structuring of smaller payments made over time instead of a one-time payment upon termination
- Restructuring vesting dates
- Make sure considering related organizations

Building the Foundation for Executive Compensation Success



Key Stakeholders



Reasons to Build the Foundation

Attraction

- Salary
- Incentives
- Flexibility
- Advancement

Retention

- Culture
- Morale
- Growth
- Expenses

Compliance

- State, Local, and National Mitigation
- Public Perception
- Audit Risk

Compensation Philosophy

PURPOSE

- Document the basis for how compensation is set in an organization.
- Identify the organizations pay programs and reward strategies
- Create a framework for consistency and is the basis as the guiding principals that drive decision making regarding compensation at a company.

FACTORS

- Company's financial position
- Size of the organization
- Industry
- Business objectives
- Market salary data
- Level of difficulty finding qualified talent

Compensation Policy

PURPOSE

- Require certain individuals that have, or thinking they have, a conflict to disclose such conflict to the organization
- Prohibit such folks from voting on any matter in which there is a conflict

KEY ELEMENTS

- Compensation includes salary and benefits
- Compensation is linked to experience, performance, and industry
- Address the process for determining the CEO's compensation

Board Approval of Compensation

ROLE

- Largely depends on the bylaws and the compensation committee's charter.
- These will determine whether the Committee has authority to determine compensation packages components or if they simply make recommendations to the Board

RESPONSIBILITIES

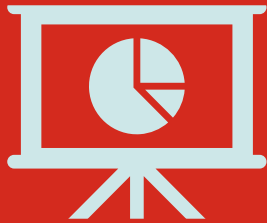
- Recommend, Oversee, and Approve Compensation
- Serves as a Liaison Between CEO, Full Board, HR
- Compensation Committees May Seek Professional Experts in Making Their Recommendations

Establishing the Rebuttable Presumption



Approval By An Authorized Body In Advance

- Board of Directors (Compensation Committee)
- Board of Trustees
- Equivalent Controlling Body



Appropriate Data As To Comparability

- Compensation by Similarly Situated Organizations (Including For Profit)
- Comparability of Similar Services (Positions) and Geographic Area
- Compensation Surveys by Independent Firms
- Written Offers from Similar Organizations Competing for Similar services



Documentation

- Provide Written or Electronic Records of the Approval
- Terms of Transaction and Date
- Authorizing Members
- Comparable Data Obtained and Relied Upon

Comparable Market Data

- Criteria for Identifying Market Comparable
 - Similar Position
 - Comparable Organization Type
 - Similar In Size
 - Similar Geography*
- Comparisons to Include For-Profit / Non-Profit Data

Comparable Market Data

- Sources of Compiling Comparable Data:
 - GuideStar
 - Cause IQ
 - Independent Survey(s)

Other Types of Compensation

- Moving Expenses
- Gift Cards
- Educational Expenses
- Professional dues
- Meals on Premises

Other Types of Compensation Cont'd

- Bonus/Incentive Packages
- Retirement Packages
- Loans & Loan Forgiveness
- Related Organization Compensation

Deferred Compensation

- 401(k)
- 403(b)
- 457(b)
- 457(f)

Questions?

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Break
10 minutes

Jeopardy!

**Are You in Jeopardy?! What a
Treasurer Needs to Know**

JEOPARDY!



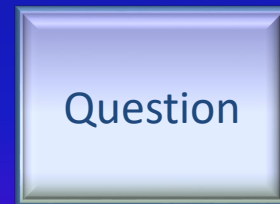
GAMESHOW

Fraud	Payables	Receivables	Scandals	Potpourri
<u>10</u>	<u>10</u>	<u>10</u>	<u>10</u>	<u>10</u>
<u>20</u>	<u>20</u>	<u>20</u>	<u>20</u>	<u>20</u>
<u>30</u>	<u>30</u>	<u>30</u>	<u>30</u>	<u>30</u>
<u>40</u>	<u>40</u>	<u>40</u>	<u>40</u>	<u>40</u>
<u>50</u>	<u>50</u>	<u>50</u>	<u>50</u>	<u>50</u>

Fraud for 10 Points

Answer

Payment method most often exposed to fraud activity according to the 2021 AFP Payments Fraud and Control Survey.



Fraud for 10 Points

Question

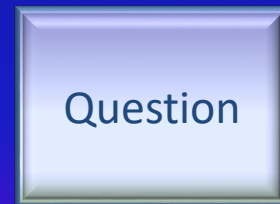
What is check fraud?



Fraud for 20 Points

Answer

The ability to pre-authorize checks to clear your account to protect against fraud.



Fraud for 20 Points

Question

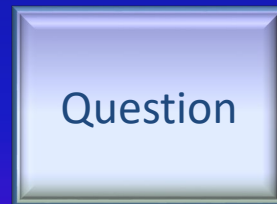
What is positive pay?



Fraud for 30 Points

Answer

Covers a business' liability in the event of a data breach where customers' personal information is exposed or stolen.



Fraud for 30 Points

Question

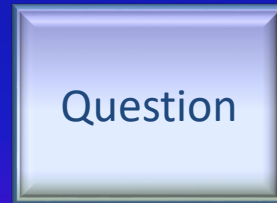
What is cyber insurance?



Fraud for 40 Points

Answer

A fraud scam where an email is spoofed to look as though it is coming from a known vendor or an executive, usually asking to change payment instructions or to send a payment.



Fraud for 40 Points

Question

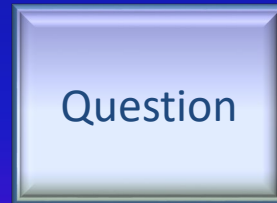
What is Business Email Compromise (BEC)?



Fraud for 50 Points

Answer

In 2021, the FTC estimated over \$770 million was lost here due to scams.



Fraud for 50 Points

Question

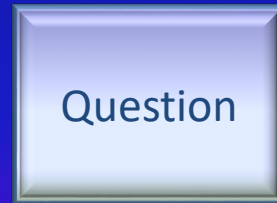
What is Social Media?



Payables for 10 Points

Answer

A company's short-term obligation owed to a creditor or supplier, which have not yet been paid.



Payables for 10 Points

Question

What is accounts payable (AP)?



Payables for 20 Points

Answer

Used to drop off mail, including check payments, without going to or getting down at the Post Office.

Question



Payables for 20 Points

Question

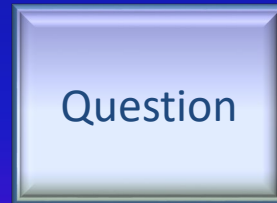
What are USPS collection boxes?



Payables for 30 Points

Answer

Calling the supplier or vendor at a phone number you have on file to confirm new payment instructions.



Payables for 30 Points

Question

What is verbal verification?



Payables for 40 Points

Answer

Electronic payment method that has never been breached.

Question



Payables for 40 Points

Question

What is ACH?



Payables for 50 Points

Answer

Payment method that offers a fast payment to your vendor, less fraud risk, no direct exposure to your checking account, audit reporting, and possibly rewards back to the organization.

Question



Payables for 50 Points

Question

What is commercial credit card?



Receivables for 10 Points

Answer

Service offering that is focused on processing mailed payments and prevents internal fraud.

Question



Receivables for 10 Points

Question

What is Lockbox?



Receivables for 20 Points

Answer

Cash is stolen before the funds are recorded in the accounting records.

Question



Receivables for 20 Points

Question

What is Skimming?



Receivables for 30 Points

Answer

A virtual form of stealing proprietary data and processing information.

Question



Receivables for 30 Points

Question

What is ransomware?



Receivables for 40 Points

Answer

Deliberate misrepresentation of company's finances, including asset misappropriation, exaggerations, or omissions, to portray positive performance.



Receivables for 40 Points

Question

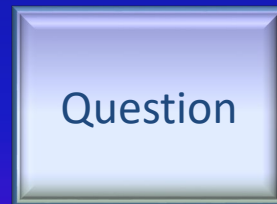
What is financial statement fraud?



Receivables for 50 Points

Answer

Employee alters accounts receivable records in order to hide the theft or cash. This is done by diverting a payment from one customer, and then hiding the theft by diverting cash from another customer to offset the receivables from the first customer.



Receivables for 50 Points

Question

What is Lapping?



Scandals for 10 Points

Answer

A Texas-based company filed for bankruptcy in early 2000s as a result of accounting fraud.

Question



Scandals for 10 Points

Question

What is Enron?



Scandals for 20 Points

Answer

A family-owned bakery featured in a Discovery+ documentary uncovering crimes committed by the staff accountant.

Question



Scandals for 20 Points

Question

What is Collin Street Bakery?



Scandals for 30 Points

Answer

NFP organization that had a 44 yr-old administrative assistant, Euphonia Green, embezzle \$5.1 million within an eight-year period (2005-2013).



Scandals for 30 Points

Question

What is Association of American Medical Colleges?



Scandals for 40 Points

Answer

Aunt Becky from Full House.



Scandals for 40 Points

Question

Who is Lori Loughlin?



Scandals for 50 Points

Answer

Former American stockbroker who orchestrated the biggest Ponzi scheme in history. He conned investors out of \$64.8 billion.

Question



Scandals for 50 Points

Question

What is Bernie Madoff?



Potpourri for 10 Points

Answer

Using the identifying information of another person without lawful authority.



Potpourri for 10 Points

Question

What is identity theft?



Potpourri for 20 Points

Answer

To develop rapport, using information such as a birthdate or a boss's name, to convince a user that you are a trusted person or institution.

Question



Potpourri for 20 Points

Question

What is Social Engineering?



Potpourri for 30 Points

Answer

The minimum amount of characters (letters, numbers, and symbols) used in combination to successfully prevent a hacker from guessing your password.



Potpourri for 30 Points

Question

What are 18 characters?



DAILY DOUBLE

Answer



Potpourri for 40 Points

Answer

Successfully portrayed himself as a pilot, a doctor, and an attorney. Now spends his days as an FBI consultant to catch other fraudsters.



Potpourri for 40 Points

Question

Who is Frank Abagnale Jr.?



Potpourri for 50 Points

Answer

Scammers using video, audio, and stolen identity information to apply for remote work in a technical field.



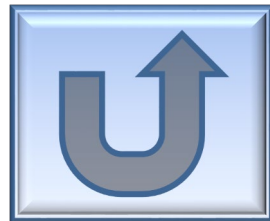
Potpourri for 50 Points

Question

What are Deepfake Interviews?



WRONG



Closing Comments

Thank you for coming!

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