I. Introduction

The purpose of these materials is to provide an overview of the current state registration requirements for charitable organizations and the solicitors and other fundraising professionals that many of these organizations hire to help them with their fundraising efforts. For charitable organizations that solicit contributions nationally and have to register every year in as many as 38 different states and the District of Columbia,\(^1\) this is often a controversial topic that understandably evokes strong sentiments because complying with these statutes is time-consuming, costly, and, at times, confusing. After reading these materials, you should know more about these basic requirements and understand how important effective state and federal oversight of the nonprofit sector is to both donors and the legitimate charitable community.

The nonprofit sector continues to grow in both size and significance.\(^2\) In 2006, Americans gave an estimated $295 billion to charity. In 2009 they gave an estimated $303.75 billion.\(^3\) Between 1975 and 1995 the number of tax-exempt organizations more than doubled to 1.2 million, their assets increased by 312 percent to $1.9 trillion, and their revenue increased by 380 percent to $899 billion.\(^4\) The nonprofit sector’s 312 percent growth in assets and 380 percent growth in revenue significantly outpaced the country’s 74 percent growth in gross domestic product during the same twenty-year period. According to the GuideStar website, there are now over 1.8 million tax-exempt organizations as of January 20, 2011.\(^5\) Because of the charitable sector’s importance and dramatic growth, and because of the unfortunate fact that there have always been individuals who engage in charitable solicitation fraud, 38 states and the

\(^1\) The 38 states are: Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin.


\(^5\) www.guidestar.org
District of Columbia have enacted solicitation statutes that typically require organizations to register before they solicit a state’s residents for charitable contributions.6

These state solicitation statutes generally serve at least two important purposes. First, they enable donors to obtain basic information about organizations asking for contributions so the donors can make more informed charitable giving decisions. For example, in Pennsylvania and many other states, donors can easily obtain basic information about registered organizations by calling a toll-free number or visiting a website.7 Simply by picking up the phone or logging on to a website, donors can easily learn an organization’s total income for its most recently completed fiscal year, its total contributions, and how much it spent in three key categories—program services, administration, and fundraising.

In addition, now that most organizations’ IRS 990 Returns8 are readily available from the GuideStar9 website, donors can easily view and print copies by going directly to the website or indirectly through the increasing number of state websites that now link to GuideStar10 or actually provide electronic images of organizations’ IRS 990 Returns and other documents on their websites.11 In terms of nonprofit accountability, this new technological capability is a significant development. However, as important as it is, it is not the ultimate solution because state auditors and investigators regularly document that many charitable organizations’ IRS 990 Returns often contain material falsifications, misrepresentations, and omissions. Indeed, several years ago, The Chronicle of Philanthropy documented that as many as one out of every four charitable organizations — one-quarter of the largest organizations at the time — reporting contributions of at least $500,000 on their IRS 990 Returns may have falsely reported no fundraising expenses.12 A more recent study has documented that 37 percent of organizations with contributions of $50,000 or more reported no fundraising costs on their IRS 990 Returns.13

6 Supra note 1.

7 The toll-free number for the Pennsylvania Bureau of Charitable Organizations is 1-800-732-0999. The Bureau’s website is www.dos.state.pa.us.

8 Charitable organizations are required to file this informational return detailing their income and expenses with the IRS each year. Unlike personal and corporate returns, IRS 990 Returns are public documents.

9 The website, www.guidestar.org, was developed by Philanthropic Research, Inc. (PRI), an IRC § 501(c)(3) tax-exempt organization.

10 E.g., the Pennsylvania website that links to GuideStar is www.dos.state.pa.us.

11 For example, New York and Massachusetts are among the growing number of states that now provide electronic images on their state websites of all documentation charitable organizations file with those states.


While there are sometimes legitimate reasons why an organization might have no fundraising costs, these two studies confirm what many state charity regulators have been documenting for some time — there are many material falsifications, misrepresentations, and omissions on IRS 990 Returns filed by charitable organizations.

These two studies and the various state findings highlight the second, equally important purpose that state solicitation statutes serve — they help protect donors from charitable solicitation fraud and misrepresentations. Most charitable organizations are worthy and deserve to be generously supported, but there are many fraudulent ones that employ deceptive solicitation practices and mislead the public by submitting false or inaccurate IRS 990 Returns. By attempting to discover and take appropriate action against individuals and organizations that engaged in fraud and/or submit false and misleading IRS 990 Returns, the various state registration offices help protect the interests of both the donating public and the legitimate charitable community.

II. Charitable Organization Registration Requirements

A charitable organization that solicits contributions nationally must typically register in thirty-eight different states before it starts to solicit unless it is one of the many types of organizations that are specifically excluded or exempt. Registering usually involves submitting an annual registration statement, reviewed or audited financial statements, a copy of the entity’s IRS 990 Return, and, in most cases, a registration fee. For an initial registration, the entity is also typically required to submit copies of its articles of incorporation, by-laws, IRS determination letter, and other organizational documents.

A. The Unified Registration Statement (URS)

The Unified Registration Statement, commonly referred to as the URS, was initially developed in 1997 by the National Association of State Charity Officials (NASCO) and various representatives of the charitable community for charitable organizations that solicit nationally. Thirty-six states and the District of Columbia currently accept the URS in lieu of their own registration forms for initial registrations: Alabama, Arkansas, California, Connecticut, Georgia, Hawaii, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin. While Illinois, Massachusetts, New York, and Oregon accept the URS

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14 See supra note 1.

15 Robert Tigner, General Counsel for the Association of Direct Response Fundraising Counsel, and Karin Kunstler Goldman, the Assistant Attorney General in charge of the New York Attorney General’s Charities Bureau, were instrumental in making the URS a reality. NASCO is the professional association for the various state regulators responsible for administering and enforcing the thirty-nine different state charitable solicitation statutes. It sponsors an annual training conference for state regulators and generally seeks to improve state and federal oversight of the charitable sector.

16 The following states and the District of Columbia currently accept the URS in place of their own registration forms for initial registrations: Alabama, Arkansas, California, Connecticut, Georgia, Hawaii, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin. While Illinois, Massachusetts, New York, and Oregon accept the URS
that accept it, it is typically lengthier than any individual state’s registration form. Nonetheless, entities that solicit nationally should definitely consider using it to avoid filling out thirty-six different forms.\textsuperscript{17} The URS can be downloaded from the URS website, www.multistatefiling.org.

**B. Comprehensive Resources**

If you need information about registration requirements for a particular state, you should consult one or more of the following resources:

- The NASCO website, www.nasconet.org, has a link to a very helpful site that details all the various state registration requirements and provides direct links to most states that have websites.

- The URS website, www.multistatefiling.org, provides a concise overview of the various state requirements.

- Hardbound publications that provide state-specific information, such as *The Law of Fund-Raising*\textsuperscript{18} and *Fundraising Regulation: A State by State Handbook of Forms, Requirements, and Procedures*.\textsuperscript{19}

You should consult one or more of these resources for state-specific questions. Since Pennsylvania’s Solicitation of Funds for Charitable Purposes Act\textsuperscript{20} is similar to the laws of many other states, the next several sections of these materials will give a brief overview of its basic requirements.

**C. The Pennsylvania Solicitation of Funds for Charitable Purposes Act**

Pennsylvania, like most states, generally requires organizations to register with the state before they solicit charitable contributions in the state, while it specifically excludes or exempts certain types of organizations. The statute provides the following definition of “charitable organization”:

\begin{quote}

\end{quote}

\textsuperscript{17} A handful of states and the District of Columbia that accept the URS also require one or more state-specific supplementary forms. These states are: Arkansas, California, Georgia, Minnesota, Mississippi, North Dakota, Tennessee, Utah, Washington, West Virginia, and Wisconsin.


Any person granted tax exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) or any person who is or holds himself out to be established for any charitable purpose or any person who in any manner employs a charitable appeal as the basis of any solicitation or an appeal which has a tendency to suggest there is a charitable purpose to any solicitation . . . The term shall not be deemed to include:

1. any bona fide constituted organization of law enforcement personnel, firefighters or other persons who protect the public safety whose stated purpose in the solicitation does not include any benefit to any person outside the actual active membership of the organization; and

2. any bona fide duly constituted religious institutions and such separate groups or corporations which form an integral part of religious institutions, provided that:
   
i. such religious institutions, groups or corporations are tax exempt pursuant to the Internal Revenue Code of 1986;

   ii. no part of their net income inures to the direct benefit of any individual; and

   iii. their conduct is primarily supported by government grants or contracts, funds solicited from their own memberships, congregations or previous donors, and fees charged for services rendered.

It is important to keep in mind that for-profit entities can sometimes fall within the statutory definition of “charitable organization” if they use a “charitable appeal” or “an appeal that has a tendency to suggest a charitable purpose” to sell their products. For example, a for-profit company that sells light bulbs, cleaning supplies, or other products by representing that a consumer’s purchase of the product will “help the disabled, the handicapped, or the veterans who produce, package, or distribute the products” would have to register with Pennsylvania and many other states because the entity is using a charitable appeal to increase sales of its product.

It is also important to note that it is the act of soliciting contributions that triggers the registration requirement, not the actual receipt of contributions. In other words, unless otherwise excluded or exempt, an organization must typically register before it solicits contributions in any given state. It would not be a defense, for example, to show that an entity’s unregistered solicitation efforts yielded few or no contributions, although such facts would undoubtedly be taken into consideration by most enforcing authorities when deciding upon an appropriate sanction. However, that is not always the case. For example, one state recently made a charitable organization that had raised $68 during the two months its registration had lapsed pay a $4,000 fine and sign a formal Consent Agreement admitting that it had solicited contributions in violation of that state’s law. The state in question had initially demanded a $10,000 fine from the organization in question and could have required the charitable organization to pay a $25,000 fine.
Organizations that are not excluded or exempt must file annual registration statements for their immediately preceding fiscal year. Pennsylvania’s registration forms can be obtained from the Bureau’s website at www.dos.state.pa.us. Other states’ registration forms can be obtained by consulting one or more of the comprehensive resources listed above.

1) Exclusions and Exemptions

As can be seen from the definition of “charitable organization” above, bona fide religious institutions and organizations of law enforcement personnel, firefighters, and other persons who protect the public safety are typically excluded from Pennsylvania’s statute provided they meet certain enumerated criteria. In addition, educational institutions, hospitals, veteran’s organizations, volunteer firemen organizations, ambulance associations, rescue squad associations, public nonprofit library organizations, senior citizen centers, nursing homes, and parent-teacher associations are often exempt from many states’ annual registration requirements provided they meet any applicable criteria set forth. Organizations receiving annual contributions of $25,000 or less are exempt from the statute’s registration requirements as long as they do not compensate anyone to conduct solicitations.

While some state exclusions and exemptions have no conditions attached to them, many others do. In Pennsylvania, for example, veteran’s organizations, volunteer firemen organizations, ambulance associations, rescue squad associations, senior citizen centers, and nursing homes are only exempt from registering if all of their fundraising activities are conducted by volunteers or members who are not compensated, directly or indirectly, for their services. If one of these types of entities pays anyone to conduct any of its fundraising activities, whether the person paid is a professional solicitor, a professional fundraising counsel, or simply a member or employee of the entity, it is not eligible for the exemption. Similarly, bona fide organizations of law enforcement personnel, firefighters, and other persons who protect the public safety are only excluded from the statute’s requirements if they solicit contributions solely to benefit their actual, active memberships. If they solicit contributions for any other purpose such as to send disadvantaged children to the circus or help educate children about the dangers of drugs and alcohol, they are not excluded and must register.

It is also important to note that just because a particular type of charitable organization is exempt from the registration requirements of one or more states, it may not be exempt from the registration requirements of other states. For example, while educational institutions and their related foundations are exempt from registration under Pennsylvania’s and many other state charitable solicitation statutes, they are not exempt from all. In fact, educational institutions are required to register in about a dozen states and are required to formally apply for exemption in approximately ten others in order to legally solicit contributions in those states. Educational

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22 See supra Section II, B.


institution foundations are required to register in approximately eighteen states and formally apply for exemption in about eight others. Because many states are increasing their enforcement efforts to ensure that organizations are complying with their initial and annual registration requirements, it is especially important for educational institutions and their related foundations to ensure they are in compliance with these statutes because even the smallest college or university undoubtedly has alumni they regularly solicit in virtually state. Given the extreme budget constraints most state charity oversight offices are currently operating under, it is all but inevitable that more and more states where educational institutions and their related foundations are not exempt will begin pursuing educational institutions and their related foundations that are not properly registered to solicit alumni in their states.

Hospitals that solicit contributions nationally are yet another example of a type of charitable organization that, while exempt in many states, are not exempt from the registration requirements of approximately twenty-eight states.

The bottom line on exclusions and exemptions from state charitable solicitation statutes is that they vary from state to state and many have conditions attached to them. Consequently, even a charitable organization that is clearly excluded or exempt under the charitable solicitation statutes of several states cannot assume that it is excluded or exempt from having to register under the solicitation statutes of other states where the organization is soliciting charitable contributions.

2) Reviewed and Audited Financial Statements

Each year, organizations must also file compiled financial statements if their gross contributions exceed $50,000 per year; reviewed financial statements if their gross contributions exceed $100,000 per year; and audited financial statements if their gross contributions exceed $300,000 per year. Some states do not require reviewed or audited financial statements, while others have review and audit thresholds different from Pennsylvania’s. For example, California’s audit threshold is two million dollars in gross revenue. These audited and reviewed financial statements must be accompanied by a report prepared and signed by a licensed, independent public accountant or certified public accountant. Pennsylvania routinely scrutinizes audits and reviews to make sure they are performed by such professionals; it has uncovered well over 100 unlicensed accountants who have submitted reviews and audits and has referred them to the State Board of Accountancy for appropriate disciplinary action.

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25 10 Pa. Cons. Stat. §162.5(f) (1990). On December 26, 2006, Pennsylvania’s reviewed financial statement threshold increased from $50,000 in gross contributions to $100,000 in gross contributions and its audited financial statement threshold increased from $125,000 in gross contributions to $300,000 in gross contributions for organizations with fiscal years ending after December 26, 2006. See Act 121 of 2006 (Enacted October 27, 2006).

26 For example, Alabama, Colorado, Florida, Kentucky, Missouri, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, Utah, Washington, and Wisconsin do not require reviewed or audited financial statements.

Pennsylvania has the discretion to waive the requirement for reviewed or audited financial statements provided there are “special facts and circumstances” that justify the waiver. Waiver requests must be in writing and actually set forth the special facts and circumstances that justify the granting of a waiver. Consequently, even though Pennsylvania will generally have audits or reviews available for registered organizations, in certain limited circumstances they may not be available for a particular year if a waiver was granted because of special facts and circumstances. Other states such as Kansas, for example, do not have any audit waiver provisions and, therefore, the registration applications of organizations that do not submit audited financial statements when required will be denied until they submit audited financial statements.

3) Extensions and Late Fees

Like the IRS, many states can also grant extensions to file their registration and/or financial statements; Pennsylvania grants up to 180 days. Until recently, all extension requests for Pennsylvania had to be in writing and had to be filed before the entity’s registration expired, otherwise statutorily-mandated late fees of $25 per month had to be paid before any extension could be granted. However, because of increasingly limited resources, Pennsylvania now automatically grants 180-day extensions to all registered organizations rather than making the organizations formally apply for the extensions each year. In doing so, Pennsylvania has followed the lead of states like Washington and North Carolina which, for similar reasons, also automatically grant 180-day and 60-day extensions, respectively, to all registered organizations. As state charity regulator offices continue to deal with additional budget and staff cuts, it is likely that more and more states will also start granting automatic extensions. This is actually a very positive development since extension requests are routinely approved by all states as long as a charitable organization’s registration is current. Many states such as Connecticut, Massachusetts, Minnesota, New York, Oregon, and Virginia now allow extension requests to be filed on-line or via e-mail to help simplify the process. It cannot be emphasized too strongly that it is absolutely critical for organizations to ensure they file timely state extension requests when required because if they do not, they suddenly cannot legally solicit contributions in those states even if the organizations have been granted extensions by the IRS. Two states, New Hampshire and New Jersey, require organizations to pay the states’ annual registration fees before they will grant an extension request. All other states specifically instruct organizations to not include the states’ annual registration fees with their extension requests.

4) IRS 990 Returns

Organizations required to register must also submit copies of their IRS 990 Returns. The basic information from these returns is entered into Pennsylvania’s database and made

available to the public through a toll-free number and the state’s website. 32 Many other states do this as well and, as was noted earlier, states such as Massachusetts and New York now make images of the IRS 990 Returns and other registration materials filed by charitable organizations available on-line through their websites.

5) Other Documentation

When registering for the first time, organizations must submit copies of other official documents such as their organizational charters, articles of incorporation, and/or bylaws. 33 Copies of these documents can be obtained from Pennsylvania’s and other states’ registration offices as well as from certain states’ websites and basic information about registered organizations can be obtained by calling toll-free numbers or visiting the increasing number of state websites that can easily be located through NASCO’s website at www.nasconet.org.

D. State and Federal Electronic Filing Initiatives

Most individual state registration requirements, in and of themselves, are not that complicated. Cumulatively, however, the various requirements unquestionably require significant amounts of time and money, whether an organization handles the process in-house or hires any of the law firms, accounting firms, or other entities that specialize in registration matters. Either way, the current system is admittedly not easy or cheap.

For that reason, NASCO and a number of states have worked with the Urban Institute’s National Center for Charitable Statistics (NCCS) on an electronic filing project that hopefully will one day revolutionize the currently cumbersome and expensive registration process. 34 Even though several states such as Pennsylvania, Colorado, New Mexico, Ohio, and Hawaii have implemented electronic registration systems, most have not, and, as a result, the significant burden of complying with the 38 state solicitation statutes has not been reduced significantly to date. In fact, due to budgetary and other technical problems, Pennsylvania’s first-in-the-nation on-line registration system has not been operational for some time now and even when organizations were able to file their IRS 990 Returns and annual registration materials electronically with Pennsylvania for many years, very few organizations actually did so. 35 Colorado was the first state to require all organizations to register on-line and its on-line registration system is probably the most user friendly of the systems developed to date.

32 Supra note 7.


34 Linda Lampkin, former Program Director of the Urban Institute’s National Center for Charitable Statistics, and Tom Pollak, the Assistant Director, were the key persons making this groundbreaking project a reality. Don Kirschman, former Chief of the Pennsylvania Department of State’s Management Information Systems Division, and George Jacob, an application developer with the Department, were the key persons making this project a reality for the Pennsylvania Bureau of Charitable Organizations.

35 Unfortunately, the number of organizations that have taken advantage of the electronic filing option in Pennsylvania to date has not been significant. See Jeff Jones, “E-filing Is Coming to Town, Maybe,” The NonProfit Times, January 1, 2004, p.1.
In February 2004, the IRS implemented a much-anticipated new system to allow charitable organizations to file their IRS 990 Returns with the IRS electronically.\(^{36}\) During the 2006 calendar year, 10,946 IRS 990 Returns, 3,116 IRS 990EZ Returns, and 13,520 extension requests were filed electronically with the IRS. Many more organizations now take advantage of this significant technological innovation because the software used by accounting firms to prepare the forms has been updated to include electronic filing options. Organizations with total assets of $100 million or more were required to file their 2005 IRS 990 Returns electronically. Organizations with $10 million or more in total assets are now required to file their IRS 990 Returns electronically.\(^{37}\)

More importantly, in January 2006 the IRS completed its development of a Federal/State Filing System that will allow organizations to file their state registration materials electronically at the same time they file their IRS 990 Returns electronically with the IRS. Unfortunately, no states have yet to connect to this new system because of budget constraints and other factors. Nonetheless, it is likely that most states that require registration will eventually participate in the Federal/State Filing System, although budget constraints and other factors will undoubtedly prevent this from happening for several more years.

E. IRS 990 Return Irregularities

Whether or not an organization takes advantage of the new federal and state electronic filing capabilities, it is absolutely critical for it to file an accurate and complete IRS 990 Return. This form remains the principal document informed donors rely on to make better, more informed giving decisions. It is also the principal document used by government regulators charged with monitoring charitable organizations and by private watchdog groups that evaluate charitable organizations.\(^{38}\)

Approximately 5.4 million IRS 990 Returns are now widely available on the Internet from the GuideStar website.\(^{39}\) Organizations whose IRS 990 Returns accurately depict their financial situations and are free from material discrepancies and misrepresentations have nothing to fear from this significant technological advance. However, now more than ever, organizations and their accountants need to make sure their IRS 990 Returns are filled out accurately and completely, since potential donors, employees, and the media can readily access and review these forms as never before. It is critical that they accurately depict their filers’ financial situations and not contain material misrepresentations and discrepancies so their principals don’t


\(^{38}\) Some of the major private watchdog organizations are: the Better Business Bureau’s Wise Giving Alliance, Charity Navigator, and the American Institute of Philanthropy.

\(^{39}\) As of January 20, 2011, GuideStar had almost 3.2 million digitized IRS 990 Returns and approximately 5.4 million images of IRS 990 Returns available on its website at www.guidestar.org.
wake up one morning and find their IRS 990 Returns featured in a negative light on the front page of their local paper or, worse still, find their organization being questioned by the IRS or one or more state regulators.

The “keep away game” so often played by many organizations in the past has all but ended with the IRS’s new disclosure rules and GuideStar’s ambitious project to put all IRS 990 Returns on the Internet. Until June 8, 1999, an individual unfamiliar with the documentation available from the various state registration offices who wanted to review an organization’s IRS 990 Return or its application for tax-exempt status would have to either request a copy from the IRS, which could take weeks, or visit the organization’s headquarters. The individual was only entitled to review an organization’s IRS 990 Return and application for tax-exempt status. The organization was not required to provide copies of these documents if it did not want to do so voluntarily. That all changed on June 8, 1999 when new IRS rules took effect. As of that date, a charitable organization must provide copies of its three most recent IRS 990 Returns to any individual who makes an on-site request. The organization has up to thirty days to send copies of its IRS 990 Returns to any individual who requests them in writing rather than in person. Organizations must handle requests for copies of their applications for tax-exempt status in the same manner — copies must be provided to on-site visitors upon request, and copies requested in writing must be sent within thirty days. The 1999 rules allow an entity to avoid having to provide paper copies of these documents if exact reproductions are widely available on the Internet, or if the entity is being subjected to a “harassment” campaign — which might occur, for example, when an individual or entity urges large numbers of individuals to request copies of an organization’s IRS 990 Return simply to make the organization incur significant duplication costs.

The new rules provide for significant penalties for noncompliance, and fines can be assessed against individual charity officials themselves. Officials who deny on-site requests or fail to provide copies within the required time frame can be personally fined $20 for each day they fail to comply up to a maximum of $10,000 per return. The new rules also provide for an additional $5,000 penalty for willful failure to comply. Clearly, charity officials should think long and hard before denying individuals copies of these documents because the penalties are significant and add up quickly. It is unfortunate that the IRS had to enact these new rules, which on the surface may seem unnecessarily harsh, but it apparently found stiffer sanctions to be necessary given the past unwillingness of certain organizations to readily allow their IRS 990 Returns to be viewed by the public.\footnote{The full text of the disclosure provisions is twelve pages long and can be found at 64 Fed. Reg. 17,279–17,291 (1999).}

However, all of these efforts to make IRS 990 Returns more readily available are only the first step. Since state and federal investigators, as well as The Chronicle of Philanthropy and Urban Institute studies mentioned earlier\footnote{Supra notes 12 and 13.}, have documented significant falsifications, misrepresentations, and omissions in many IRS 990 Returns, the benefits of having them widely available via the Internet and otherwise are significantly diminished when they are not accurate
and complete.\textsuperscript{42} When IRS 990 Returns are found to contain material falsifications, misrepresentations, and omissions, organizations are increasingly being required, at a minimum, to file amended IRS 990 Returns with the states and the IRS. Where the inaccuracies or misrepresentations appear particularly egregious and intentional, formal administrative action is increasingly being taken at the state level and/or appropriate referrals are being made to the IRS.\textsuperscript{43} Furthermore, the accountants or advisors in question are often being referred to the appropriate state licensing authorities.

**F. Ethical Considerations for Attorneys**

Attorneys who represent organizations that solicit charitable contributions nationally would do well to heed the advice given by attorney Bruce Hopkins, who urges attorneys to make sure their clients are properly registered in all the states in which they solicit, if those states have solicitation laws. Hopkins correctly observes that:

> It is common knowledge that some states regulate charitable fund-raising more stringently than others. It is also common knowledge that the states will not proceed against charitable organizations that are not in compliance with their law without first contacting the organizations and requesting their compliance. Thus, a substantial number of charitable organizations decide to not register and otherwise comply with the law of one or more states until they receive a formal request from each state to do so. Consequently, the lawyer is often asked this question: Which states should the organization register in and which state’s law can the organization “safely ignore” until or unless contacted by the regulatory authorities? The problem for the lawyer is that he or she ought not to counsel flouting or breaking the law. Thus, the lawyer should advise the charitable organization client that it must adhere to the law of every state in which it is soliciting contributions and not wait for some informal notice or otherwise wait “until caught.” The lawyer ought not advise the charitable organization client to comply in the “rigorous regulatory” states and “wait to see what happens” in the others.\textsuperscript{44}

Given the widespread noncompliance with most state solicitation laws, it is essential that attorneys remember they cannot ethically counsel their charitable organization clients, or anyone for that matter, to knowingly violate the law.

\textsuperscript{42} Harry Lipman et al., \textit{supra} note 12.

\textsuperscript{43} For example, several years ago Children’s Wish Foundation International, Inc. was found to have made forty-one intentional material false statements in an IRS 990 Return it filed with the Pennsylvania Bureau of Charitable Organizations. It paid a $41,000 administrative fine for these violations. In October 2004, four related charities, their officers, and the CPA who prepared the charities’ IRS 990 Returns were charged in a 1,289-count Order to Show Cause with making hundreds of material false statements and omissions. As a result, the charities, their officers, and the CPA in question could have been found liable for fines and penalties well in excess of $1.3 million. This case was subsequently settled after a fine of $150,000 was paid.

\textsuperscript{44} Bruce R. Hopkins, \textit{supra} note 18.
III. Professional Solicitor and Fundraising Counsel Requirements

The basic requirements for professional solicitors and fundraising counsels can also vary from state to state. Once again, Pennsylvania’s basic requirements, because they are similar to those of many other states, will be used for illustrative purposes.

A. Definitions and Basic Requirements

In Pennsylvania, as in many other states, a “professional solicitor” is defined as:

[a]ny person who is retained for financial or other consideration by a charitable organization to solicit in [Pennsylvania] contributions for charitable purposes directly or in the form of payment for goods, services or admission to fundraising events, whether such solicitation is performed personally or through his agents, servants or employees or through agents, servants or employees especially employed by or for a charitable organization who are engaged in the solicitation of contributions, the sale of goods or services or the production of fundraising events under the direction of such person, or a person who plans, conducts, manages, carries on, advises, consults, whether directly or indirectly, in connection with the solicitation of contributions, sale of goods or services or the production of fundraising events for or on behalf of any charitable organization, but does not qualify as a professional fundraising counsel within the meaning of this act. A person who is otherwise a professional fundraising counsel shall be deemed a professional solicitor if his compensation is related to the amount of contributions received. A bona fide salaried officer or regular, nontemporary employee of a charitable organization shall not be deemed to be a professional solicitor provided that the individual is not employed or engaged as professional fundraising counsel or as a professional solicitor by any other person.

A “professional fundraising counsel” is defined as:

[a]ny person who is retained by a charitable organization for a fixed fee or rate under a written agreement to plan, manage, advise, consult or prepare material for or with respect to the solicitation in [Pennsylvania] of contributions for a charitable organization, but who does not solicit contributions or employ, procure or engage any compensated person to solicit contributions and who does not have custody or control of contributions. A bona fide salaried officer or regular, nontemporary employee of a charitable organization shall not be deemed to be a professional fundraising counsel provided that the individual is not employed or engaged as professional fundraising counsel or as a professional solicitor by any other person.

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45 See Section II, B for resources to consult for state-specific requirements.


47 Id.
Professional solicitors must register prior to soliciting for charitable organizations in Pennsylvania, and professional fundraising counsels must register prior to providing services related to the solicitation of Pennsylvania residents. Professional solicitors and fundraising counsels must also typically file annual registration statements and copies of their contracts with charitable organizations at least ten working days before conducting solicitation campaigns or events, or providing services.

Pennsylvania’s statute permits the imposition of administrative fines of up to $1,000 per violation and additional penalties of up to $100 per day for each day a violation continues. For particularly egregious violations, fines as high as $45,000 have been imposed against companies for acting as unregistered fundraising counsels and/or failing to file required contracts.

B. Professional Solicitor Registration Statements

Professional solicitor registration statements must contain the following information:

- The address of the solicitor’s principal place of business and any Pennsylvania addresses;
- The form of the solicitor’s business;
- The names and residence addresses of all the solicitor’s principals, including all officers, directors, and owners;
- Whether any of the solicitor’s owners, directors, officers, or employees are related by blood, marriage, or adoption to any of the solicitor’s other directors, officers, owners, or employees, to any officer, director, trustee, or employee of any charitable organization under contract with the solicitor, or to any supplier or vendor providing goods or services to any charitable organization under contract with the solicitor; and
- The name of all persons in charge of any solicitation activity.

C. Professional Solicitor Contract Requirements

Professional solicitor contracts with charitable organizations must be written and contain the following basic provisions:

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• The legal name and address of the charitable organization as registered with Pennsylvania;

• A statement of the charitable purpose for which the solicitation campaign is being conducted;

• A statement of the respective obligations of the solicitor and the charitable organization;

• A statement of the guaranteed minimum percentage of gross receipts from contributions that will be remitted to or retained by the charitable organization, if any;

• A statement of the percentage of gross revenues the solicitor will receive as compensation; and

• The effective and termination dates of the contract and the date solicitation activity is to commence in Pennsylvania — although a fixed termination date is no longer required provided there is a reasonable termination clause in the contract.\(^{52}\)

D. Professional Solicitor Notice Requirements

In Pennsylvania, in addition to filing a contract with the charitable organization, a professional solicitor must file a written solicitation notice at least ten working days before the start of any solicitation campaign. The notice must be accompanied by a $25 fee and contain the following information:

• A description of the solicitation event or campaign;

• Each location and telephone number from which the solicitation is to be conducted;

• The legal name and residence address of each person responsible for directing and supervising the conduct of the campaign and each person who is to solicit during the campaign;

• A statement as to whether the solicitor will at any time have custody or control of contributions;

• The account number and location of each bank account where receipts from the campaign are to be deposited;

• A full and fair description of the charitable program for which the campaign is being carried out; and

The date the solicitation campaign or event will begin or be held and the termination date for each campaign or event.\textsuperscript{53}

E. Professional Solicitor Bonding and Final Campaign Report Requirements

Professional solicitors must also obtain a $25,000 bond and file campaign reports within ninety days of the end of each solicitation campaign or annually for campaigns lasting more than a year.\textsuperscript{54} These campaign reports must detail how much the public contributed as a result of the campaign and how much of the total amount contributed the charitable organization actually received after the solicitor and all its related expenses were paid. A recent analysis of the 2,987 campaign reports filed to date with the Pennsylvania Bureau of Charitable Organizations showed that the charities in question on average received only 27 cents of every dollar donated by the public. Many states also require these campaign reports and some, such as New York, California, and Minnesota, publish compendiums of their campaign reports each year that always receive considerable media coverage.\textsuperscript{55}

F. Professional Fundraising Counsel Registration Statements

Professional fundraising counsel registration statements must contain the following information:

\begin{itemize}
  \item The address of the counsel’s principal place of business and any Pennsylvania addresses;
  \item The form of the counsel’s business;
  \item The names and residential addresses of all the counsel’s principals, including all officers, directors, and owners;
  \item Whether any of the counsel’s owners, directors, officers, or employees are related by blood, marriage, or adoption to any of the counsel’s other directors, officers, owners, or employees, to any officer, director, trustee, or employee of any charitable organization under contract with the counsel, or to any supplier or vendor providing goods or services to any charitable organization under contract with the counsel; and
  \item The name of any person in charge of any solicitation activity.\textsuperscript{56}
\end{itemize}


\textsuperscript{54} 10 Pa. Cons. Stat. §§162.9(c), 162.9(l) (1990).

\textsuperscript{55} For example, the New York Attorney General’s annual report titled \textit{Pennies for Charity} is issued each December and can be obtained by calling 212-416-8401 or writing to the Charities Bureau, New York Attorney General’s Office, 120 Broadway, Third Floor, New York, NY 10271. \textit{See also}, Sharnell Bryan, “Percentage of Funds Pocketed by Charity Telemarketers Varies by State”, \textit{The Chronicle of Philanthropy}, January 20, 2005, p. 19.

G. Professional Fundraising Counsel Contract Requirements

Professional fundraising counsel contracts with charitable organizations must also be written and contain the following basic provisions:

- The legal name and address of the charitable organization as registered with Pennsylvania;
- A statement of the charitable purpose for which the solicitation campaign is being conducted;
- A statement of the respective obligations of the counsel and the charitable organization;
- A clear statement of the fees to be paid to the counsel;
- A statement that the counsel will not at any time have custody or control of contributions;
- A statement that the charitable organization exercises control and approval over the content and volume of any solicitation; and
- The effective and termination dates of the contract and the date services will commence with respect to the solicitation of contributions in Pennsylvania — although a fixed termination date is no longer required provided there is a reasonable termination clause in the contract. \(^57\)

These are the basic requirements for professional solicitors and fundraising counsels. Copies of solicitor and counsel annual registration statements, their contracts with charitable organizations, solicitation notices, and final or interim campaign reports can all be obtained from the various state registration offices.

H. Electronic Registration for Professional Fundraising Counsels

In January 2004, Pennsylvania became the first state in the country to implement an electronic filing system for professional fundraising counsels. As was the case with Pennsylvania’s first-in-the-nation electronic filing system for charitable organizations, the Urban Institute’s NCCS was instrumental in developing and implementing this innovative electronic filing option for fundraising counsels. Unfortunately, due to budgetary and technical constraints, Pennsylvania’s electronic filing systems for both professional fundraising counsels and charitable organizations are not currently operational. On July 1, 2006, Vermont implemented its electronic filing system for paid fundraisers. \(^58\) When other states successfully implement


\(^{58}\) Vermont’s electronic filing system can be accessed at http://www.atg.state.vt.us/display.php?smod=208.
similar electronic filing systems for charitable organizations and/or fundraising counsels, there will be significant cost savings for state registration offices, charitable organizations, and professional fundraising counsels. Unfortunately, most states have not yet implemented such electronic filing systems due to budgetary and technical constraints and most charitable organizations and fundraising counsels have yet to use the electronic filing systems of the few states that have developed and implemented such systems.59

I. Commercial Co-Venturers

A commercial co-venturer is commonly defined as a for-profit entity that normally engages in trade or commerce, other than in connection with raising funds for a charity, which represents to the public that the purchase or use of any goods, services, entertainment, or any other thing of value will benefit a charity.

For example, if McDonalds enters into an agreement with the American Heart Association to donate 50 cents for every Big Mac purchased during the month of May to the American Heart Association, McDonalds would be a commercial co-venturer and would have to comply with any applicable state charitable solicitation statutes and the American Heart Association would typically need to be registered to solicit charitable contributions in states that have charitable solicitation statutes where McDonalds offers this promotion.

An actual example of a particularly noteworthy commercial co-venture was when the General Mills Company offered to donate 50 cents to the Breast Cancer Research Foundation for every foil lid from its Yoplait yogurt containers that purchasers sent back to the company. Consumers sent back lids that would have resulted in the Breast Cancer Research Foundation receiving in excess of $4.7 million dollars. Unfortunately, under the terms of the original agreement, General Mills was only obligated to contribute a maximum of $100,000 to the Foundation no matter how many lids were sent in by consumers. Because this particular fact was not adequately disclosed to consumers, the Georgia Secretary of State’s Office subsequently required General Mills to make a significant additional payment to the Breast Cancer Research Foundation because of the company’s failure to adequately disclose to consumers that there was a maximum amount that General Mills had agreed to donate. Largely as a result of this case, commercial co-venturers now are typically very careful to clearly disclose to consumers if there is a maximum amount or cap on the amount that they will pay a charity.

A charitable sales promotion is an advertising or sales campaign conducted by a commercial co-venturer where the commercial co-venturer represents that the purchase or use of goods or services offered by the commercial co-venturer will benefit, in whole or in part, a charity.

The states that regulate commercial co-venturers have a range of requirements that must be met to legally conduct a charitable sales promotion.

59 Jeff Jones, supra note 35, p.8.
A few states require a commercial co-venturer to first register with the secretary of state or attorney general, pay a fee, and/or meet certain reporting requirements prior to conducting a charitable sales promotion. These reporting requirements range from the requirement to file periodic financial reports to simply providing notice of new charitable sales promotions. In addition to the District of Columbia, the states that require registration of commercial co-venturers are: Alabama, California, and Massachusetts. Copies of the required registration forms for these states are available through the NASCO website mentioned earlier, www.nasconet.org. Interestingly, California only requires registration of a commercial co-venturer when the commercial co-venturer fails to comply with the state’s other related statutory requirements.\(^\text{60}\)

Of the states that require commercial co-venturers to register with the state prior to conducting a charitable sales promotion, Alabama, and Massachusetts require a commercial co-venturer to also obtain a surety bond. The bond is required to cover a cause of action against the commercial co-venturer for malfeasance or misfeasance in the conduct of charitable sales promotions. Alabama requires a $10,000 bond and Massachusetts requires a $25,000 bond.

Even though they do not require a commercial co-venturer to formally register with the state prior to conducting a charitable sales promotion, New Hampshire and South Carolina require the filing of a specific form prior to the start of each charitable sales promotion.

In addition to the District of Columbia, Alabama, Arkansas, California, Connecticut, Florida, Georgia, Hawaii, Louisiana, Maine, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, South Carolina, Tennessee, Utah and Virginia, require a commercial co-venturer that agrees to run a charitable sales promotion that will benefit a charity to memorialize the agreement in the form of a written contract. Some of these states also require that specific provisions be included in the written agreement.\(^\text{61}\) These required provisions include: the specific end date for the promotion; a requirement that an accounting be supplied at the end of the promotion; a statement of the geographic area where the promotion will be offered; and a statement of the guaranteed minimum percentage of the gross receipts that the charity will receive. Oregon requires that the written agreement include an actual estimate of the amount the charity will receive as well as a statement that the charity will not receive less than 90% of the estimate.

\(^\text{60}\) California only requires a commercial co-venturer to register with the California Attorney General’s Office if the commercial co-venturer: 1) does not have a written contract with a charity signed by two officers of the charity prior to representing to the public that the purchase or use of any goods, services, entertainment, or any other thing of value will benefit the charity; 2) does not within 90 days after commencement of those representations, and at the end of each successive 90-day period during which the representations are made, transfer to the charity all funds, assets, or property received as a result of the representations; and, 3) does not provide in conjunction with each transfer to the charity a written accounting of all funds, assets, or property received sufficient to enable the charity to determine that representations made to the public on its behalf have been adhered to accurately and completely, and for the charity to prepare the periodic report it is required to file with the Attorney General.

\(^\text{61}\) The states that require specific terms to be included in the written agreement between a charity and a commercial co-venturer are: Connecticut, Georgia, Hawaii, Massachusetts, New Hampshire, New Jersey, North Carolina, and Oregon.
Certain states require the written agreement between the commercial co-venturer and the charity be filed with the state prior to the start of the promotion.⁶² Others simply require that the written agreement be kept on file and be made available at the request of the state for a fixed period after the promotion is completed.⁶³

Some states require that a final accounting of a charitable sales promotion be prepared by a commercial co-venturer and retained for a period of two to three years. The states that have final accounting requirements for commercial co-venturers are: Alabama, Arkansas, Connecticut, Florida, Georgia, Hawaii, Louisiana, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, South Carolina, Tennessee, Utah, and Virginia. Some of these states also require that a commercial co-venturer supply the charity or the state with the final accounting following the end of the charitable sales promotion or require the commercial co-venturer to provide a copy of the final accounting to the charity or the state within 10 to 20 days of being requested to do so.

There are several states that require a commercial co-venturer to disclose certain terms when soliciting in the form of a charitable sales promotion. Examples of these requirements include: a disclosure of the actual or estimated financial benefit to the charity from the promotion and a disclosure of the identity of the commercial co-venturer. Depending on the form of the solicitation, either oral, print, or at point-of-sale, the disclosure requirements change in both form and the extent of required information.

In addition to the District of Columbia, the states that require some form of disclosure by a commercial co-venturer are: Arkansas, Colorado⁶⁴, Connecticut, Hawaii, Louisiana, New Hampshire, New Jersey, Ohio, Oregon, Utah, and Wisconsin.

As was mentioned earlier, one state, California, requires a commercial co-venturer to remit all funds due a charity, and supply an accounting of this activity, every 90 days throughout the term of a charitable sales promotion.

States that regulate charities that take part in charitable sales promotions have a range of requirements that must be met to legally conduct these promotions.

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⁶² The states that require the written agreement between the commercial co-venturer and the charity be filed with the state prior to the conducting of a charitable sales promotion are: Alabama, Arkansas, Connecticut, Hawaii, Massachusetts, and New Jersey.

⁶³ In addition to the District of Columbia, states that do not require the written agreement between the commercial co-venturer and the charity to be filed with the state prior to the conducting of a charitable sales promotion but require that it be kept on file and made available to the state upon request are: California, Florida, Georgia, Louisiana, New Hampshire, New York, North Carolina, Ohio, Oregon, South Carolina, Tennessee, Utah, and Virginia.

⁶⁴ Colorado’s disclosure requirements relating to commercial co-venturers and charitable sales promotions only apply when a commercial co-venturer reasonably expects that more than one-half of all proceeds of the solicitation campaign will be derived from transactions within the state of Colorado.
As has been mentioned earlier, the District of Columbia and thirty-eight states have statutes that require charities to first register with the state prior to soliciting charitable contributions.\(^{65}\) Therefore, a charity that solicits nationally must typically register in these thirty-nine states and the District of Columbia before a commercial co-venturer begins a charitable sales promotion that will benefit the charity unless the charity is one of the many types of organizations that are specifically excluded or exempt.\(^{66}\) As was mentioned earlier, registering usually involves submitting an annual registration statement, reviewed or audited financial statements, a copy of the entity’s IRS 990 Return, and, in most cases, a registration fee. For an initial registration, a charity is also typically required to submit copies of its articles of incorporation, by-laws, IRS determination letter, and other organizational documents.

Because these statutes typically require charities that solicit contributions in these states directly or indirectly to register prior to soliciting contributions, a charitable sales promotion being offered by a commercial co-venturer to benefit a particular charity would typically require the charity to be registered in any of the 39 states and/or the District of Columbia that have charitable solicitation registration statutes prior to the commencement of the charitable sales promotion.

Three states, Arkansas, New Hampshire and Utah\(^{67}\), require a charity to file a Notice of Charitable Sales Promotion prior to the start of solicitation. Copies of these required notices are also available through the NASCO website at www.nasconet.org.

As was mentioned earlier, many states require a charity to obtain a written agreement from a commercial co-venturer prior to the commencement of a charitable sales promotion. Many of these states require that specific terms be included in the written agreement. Again, a

\(^{65}\) See supra note 1.

\(^{66}\) For example, in Pennsylvania, bona fide religious institutions and organizations of law enforcement personnel, firefighters, and other persons who protect the public safety are typically excluded from Pennsylvania’s registration statute provided they meet certain enumerated criteria. In addition, educational institutions, hospitals, veteran’s organizations, volunteer firemen organizations, ambulance associations, rescue squad associations, public nonprofit library organizations, senior citizen centers, nursing homes, and parent-teacher associations are typically exempt from the statute’s annual registration requirements provided they meet any applicable criteria. Lastly, organizations receiving annual contributions of $25,000 or less are exempt from the statute’s registration requirements as long as they do not compensate anyone to conduct solicitations.

While some state exclusions and exemptions have no conditions attached to them, many others do. In Pennsylvania, for example, veteran’s organizations, volunteer firemen organizations, ambulance associations, rescue squad associations, senior citizen centers, and nursing homes are only exempt from registering if all of their fundraising activities are conducted by volunteers or members who are not compensated, directly or indirectly, for their services. If one of these types of entities pays anyone to conduct any of its fundraising activities, whether the person paid is a professional solicitor, a professional fundraising counsel, or simply a member or employee of the entity, it is not eligible for the exemption. Similarly, bona fide organizations of law enforcement personnel, firefighters, and other persons who protect the public safety are only excluded from the statute’s registration requirements if they solicit contributions solely to benefit their actual, active memberships. If they solicit contributions for any other purpose, such as to send disadvantaged children to the circus or help educate children about the dangers of drugs and alcohol, they are not excluded and must register.

\(^{67}\) Utah does not offer a form for this requirement; rather Utah describes the requirements of the notice at Utah Code Ann. § 13-22-22.
few examples of these specific contract requirements include: a description of the geographic area in which the promotion will be offered; a minimum and/or maximum amount that the charity will receive from the promotion; a description of how the charity’s name will be used during the promotion; and a list of the goods and services that will be offered to the public during the promotion.

Some states require that a charity file the written agreement with the appropriate state office prior to the commencement of the charitable sales promotion. Most states, however, simply require the charity to keep the written agreement on file for a period of time after the charitable sales promotion concludes and require the charity to provide a copy of the written agreement to the state upon request.

Massachusetts, New Jersey, Ohio, and South Carolina require a charity to keep its own accounting records for a charitable sales promotion. These states require that the records be kept on file for three years after the conclusion of the charitable sales promotion and made available to the state upon request.

IV. Internet Solicitations

A. Background and Overview

The subject of Internet solicitation is definitely one of the hottest topics currently being debated within both the charitable and the regulator communities. I must emphasize that my comments on this topic are not necessarily those of the various attorneys general and secretaries of state around the country; how this type of solicitation activity will be addressed has yet to be finalized and may actually differ from state to state.

The Internet has opened a whole new world of possibilities for both large, well-established organizations and small, recently-formed ones. It may be especially helpful for smaller organizations that do not have the resources to conduct extensive telephone or direct mail campaigns, because even small organizations can develop relatively inexpensive websites that can be accessed from anywhere in the world. The potential to publicize inexpensively an organization’s mission and message is enormous, and more and more money is being raised via the Internet every day.  

In 1999, Toys For Tots raised $475,000 in cash and received 42,000 toys as a result of its Internet solicitation efforts during just the one month between Thanksgiving and Christmas. The American Red Cross raised $2.5 million online that same year. Of course, these numbers pale

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in comparison to the amount of money raised online since September 11, 2001. By mid-June 2002, over $215 million was given online to help the victims of the September 11 terrorist attacks.\(^{70}\)

Several articles and books have been published on the topic of Internet soliciting,\(^{71}\) and charitable organizations of all sizes are setting up websites for this purpose. At least one organization developed websites for charitable organizations for free so they could take advantage of this new and exciting way to raise funds. In addition, some online Internet shopping malls, where shoppers can make purchases from hundreds of retailers, will donate a portion of the purchase price to the charitable organization of the shopper’s choice,\(^{72}\) and some will even donate a portion of the purchase price to the school of the shopper’s choice.\(^{73}\)

The bottom line is that the Internet is being used more and more each day by thousands of worthy organizations to raise funds. This incredible technological advance also has enormous potential to be abused, however. Anyone can easily create a so-called charity with an impressive website that tugs at heartstrings but that really only exists in the website designer’s mind.\(^{74}\)

Articles in The New York Times,\(^{75}\) The Philadelphia Inquirer,\(^{76}\) The Chronicle of Philanthropy,\(^{77}\) and elsewhere have questioned whether some Internet shopping malls always


\(^{73}\) See, e.g., www.schoolpop.com, whose website indicates that “it is America’s #1 year-round school support program [that] has contributed more than $200 million to over 30,000 schools and other nonprofits.” See also Mary Ann Zehr, “Schools Hope to Cash in on Online Sales,” Education Week, December 15, 1999, p. 1.


\(^{76}\) Articles cited supra note 74.

\(^{77}\) See, e.g., Jennifer Moore & Grant Williams, supra note 72.
follow through with their promises to donate a portion of each purchase price to the charitable organization or school of the donor’s choice. Sometimes their administrative policies or procedures result in no actual donations being made in certain circumstances, such as when a minimum amount must be designated for a particular organization or school before any actual donation is made. Several years ago, many of these Internet shopping malls and similar websites suddenly closed up shop; dozens of dot-coms that were actively soliciting contributions for thousands of organizations were suddenly dot-gones.\textsuperscript{78} As a result of these factors and others, there has been considerable media interest in the growing number of charitable organizations and for-profit entities soliciting on the Internet and how, if at all, they should be regulated.

A strict reading of most states’ solicitation statutes would require registration of organizations whose websites include requests for contributions. For example, Pennsylvania’s solicitation statute defines “solicitation” as:

\begin{quote}
[a]ny direct or indirect request for a contribution on the representation that [the] contribution will be used in whole or in part for a charitable purpose, including, but not limited to, any of the following:

. . . [a]ny written or otherwise recorded or published request that is mailed, sent, delivered, circulated, distributed, posted in a public place or advertised or communicated by press, telegraph, television or any other media.\textsuperscript{79} [Emphasis added.]
\end{quote}

Clearly, the Internet falls into the “any other media” category. However, taking such a position poses enormous practical difficulties given the fact that there are now thousands of organizations with websites asking for contributions. It seems unfair and burdensome to require an organization that is not otherwise soliciting contributions nationally to have to register in all thirty-nine states with solicitation statutes simply because it creates a website that, among other things, asks for contributions. Strict application of existing laws to websites that solicit contributions for literally thousands of charitable organizations produces even more unreasonable results. For example, several websites routinely solicit contributions for thousands of organizations and some actually solicit contributions for every organization listed in IRS Publication 78 (Cumulative List of Organizations), the IRS’s official listing of every approved IRC Section 501(c)(3) organization.\textsuperscript{80} A strict reading of many state solicitation statutes would require each of the hundreds of thousands of organizations listed in Publication 78 to register because they are soliciting “directly or indirectly” through these websites in virtually every state.


\textsuperscript{80} One website, Network for Good, \url{www.networkforgood.org}, allows individuals to make donations to any charity in the United States. In 2003, in the few weeks between November 16 and December 31, $4.7 million was donated through this website, up from $3.2 million during the same weeks in 2002. See Nicole Wallace, “Charities Try New Year-End Online Appeals,” \textit{The Chronicle of Philanthropy}, January 22, 2004, p. 28. Another website that solicits contributions for any charity in the United States is \url{www.justgive.org}. 
Obviously, it would be unreasonable and totally impractical for any one state to require every organization listed in Publication 78 to register with it, let alone to require these organizations to register with each of the thirty-eight states that have charitable solicitation statutes. Yet, is it really fair to direct mail and telephone solicitors to allow those soliciting over the Internet to play by a different set of rules? Do donors responding to Internet solicitations have any less of a need for basic information to help them make informed giving decisions? Is there less, or more, potential to defraud donors via the Internet than by phone or through direct mail?

B. The Charleston Principles

Both before and after NASCO’s 1999 and 2000 annual training conferences there was extensive discussion between the various state regulators and the charitable community about how states could fulfill their statutory responsibilities to protect their residents and provide them with access to basic information about organizations soliciting contributions without unduly burdening the ever-growing number of organizations that are, and will be, using the Internet to raise substantial sums. This extensive discussion produced The Charleston Principles, a document named for Charleston, South Carolina, the site of the conference where NASCO first grappled with the issue of Internet solicitations. The NASCO Board adopted The Charleston Principles as advisory guidelines on March 14, 2001 and distributed them to the various state attorneys general and secretaries of state that enforce charitable solicitation statutes.

Even though The Charleston Principles are not legally binding on any state, they give helpful guidance to both regulators and the charitable community about when registration in a particular state should or should not be required. One of the many suggestions that was considered and eventually incorporated into the document was to not require out-of-state websites to register if they only passively solicit donations and do not affirmatively target residents of a particular state. For example, if a Utah-based organization has a website that asks for contributions and a Pennsylvania resident simply finds the site while surfing the Internet from a computer in Pennsylvania, the organization would not have to register in Pennsylvania because the Utah-based organization did not actively and affirmatively seek out the Pennsylvania resident and ask for a donation. Under this scenario, the Pennsylvania resident is the one who sought out the Utah-based organization. However, even assuming this scenario would not require the Utah-based organization to register in Pennsylvania, the reality of fundraising is that once the Pennsylvania resident has made a donation, it will only be a matter of weeks, months, or, at the most, a year before the Utah-based organization will ask the Pennsylvania resident for another donation, either by phone, mail, or the Internet. Once that happens, The Charleston Principles would require the organization to register. This is because using the Internet to directly solicit a specific individual in a specific state is no different from sending the individual a letter or calling the individual on the telephone.

The Charleston Principles were developed after extensive discussion and input from both state regulators and many charitable community representatives. However, the following former NASCO board members were most responsible for the final form of The Charleston Principles: Jeff Even, Assistant Attorney General from the State of Washington; Dan Moore, former Registrar of Charitable Organizations from New Mexico; Nikki Trella, former Legal Officer, Charitable Division, Maryland Secretary of State’s Office; and Barbara Pfeiffer, former Chief of the Ohio Attorney General’s Charitable Organization Division. Without these individuals’ dedication to this project, it would not have been completed.
The Charleston Principles are available on NASCO’s website, www.nasconet.org. However, the reader is once again cautioned that notwithstanding the NASCO Board’s adoption of these principles, most states are undecided at this time about how they are going to deal with this rapidly growing way to solicit contributions and whether they will adopt The Charleston Principles as advisory guidelines.

V. Prohibited Conduct

Pennsylvania’s solicitation statute, like those of most other states, prohibits certain conduct and authorizes the Secretary of the Commonwealth, the Attorney General, and local district attorneys to prosecute organizations and individuals for various improper activities. The prohibited activities are outlined in Section 162.15 of its solicitation statute and include, among other things:

- Using any unfair or deceptive acts or practices or engaging in any fraudulent conduct that creates a likelihood of confusion or misunderstanding;

- Using any representation that implies a contribution is for or on behalf of a charitable organization, or using any emblem, device, or printed matter belonging to or associated with a charitable organization without first being authorized in writing by the charitable organization to do so;

- Using a name, symbol, or statement so closely related or similar to that used by another charitable organization that the use would tend to confuse or mislead a solicited person;

- Misrepresenting or misleading anyone in any manner to believe that an organization on whose behalf a solicitation is being conducted is a charitable organization or that the proceeds of such a solicitation will be used for charitable purposes when this is not the case;

- Misrepresenting or misleading anyone in any manner to believe that any person sponsors, endorses, or approves a particular solicitation when the person has not given consent in writing to the use of his or her name for such a purpose;

- Misrepresenting or misleading anyone in any manner to believe that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities they do not have, or that a person has a sponsorship, approval, status, affiliation or connection that he or she does not have;

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82 Providing a comprehensive analysis of each of the thirty-eight state solicitation statutes is far beyond the scope of these materials and the reader is once again encouraged to consult one or more of the comprehensive resources mentioned in Section II, B for specific conduct prohibited by any particular state solicitation statute.

- Using or exploiting the fact of registration to lead any person to believe that the registration in any manner constitutes an endorsement or approval by the state;

- Representing directly or by implication that a charitable organization will receive an amount greater than the actual net proceeds reasonably estimated to be retained by the organization for its use; and

- Representing that any part of the contributions received will be given or donated to any other charitable organization unless such organization has consented to the use of its name before the solicitation begins.

Section 162.17(b)(3) of the statute authorizes the imposition of fines of up to $1,000 per violation and additional penalties of up to $100 per day for each day an organization, solicitor, or fundraising counsel violates the statute.

VI. Private Watchdog Organizations

There are several nongovernmental organizations that evaluate charitable organizations. They are often referred to as private watchdog organizations. And while these organizations’ standards sometimes vary considerably, they are all staffed by individuals who want to genuinely help donors make better, more informed giving decisions as they sort through the hundreds, and often thousands, of solicitations they receive each year. Unfortunately, there are several factors that sometimes limit the ability of these organizations to consistently accomplish their worthy objectives.

First, given the rating organizations’ limited resources, they can each only evaluate a fraction of the charitable organizations that exist. As was noted earlier, the charitable sector has been growing at an incredible rate for many years now. There were approximately 490,000 charities in 1990. Ten years later, there were almost 820,000. In 2003, the IRS received over 90,000 applications for tax-exempt status. Given these facts, the unfortunate reality is that no matter how insightful their evaluations, no matter how dedicated their staffs, no matter how sincere their motivation and goals, because of their limited resources, these rating organizations will never be able to evaluate more than a fraction of the charitable organizations that solicit contributions.

Another factor that sometimes limits the effectiveness of these organizations is the fact that their evaluations understandably rely heavily on their analysis of IRS 990 Returns. While each rating organization may apply different ratios, formulas, and criteria to the information reported on an entity’s IRS 990 Return, an analysis of a Return that contains one or more material falsifications, misrepresentations, and/or omissions will be flawed as well. As


mentioned earlier, state regulatory offices and *The Chronicle of Philanthropy* have documented that the basic information reported on many IRS 990 Returns is often false, inaccurate, and/or incomplete. It only stands to reason that no matter how sophisticated the analysis, where some of the basic numbers used are false, an inaccurate evaluation is all but inevitable.

The final factor limiting the ability of these rating organizations to accomplish their worthy objectives is the fact that most material falsifications, misrepresentations, and omissions are not readily evident on the face of an IRS 990 Return. Regulators only discover most falsifications after the underlying documentation used to prepare the form is obtained through subpoena or otherwise. Since none of the rating organizations have the authority to require that this underlying documentation be produced, their ability to uncover most falsifications is obviously hindered.

Even though these factors will sometimes diminish the usefulness of rating organizations, private watchdogs still play an important and vital role in helping donors make better, more informed giving decisions. As private, nongovernmental organizations, they are not constrained by the U.S. Supreme Court’s restrictions on what states can require of charitable organizations. While states cannot require any minimum amount a charitable organization must spend on its actual charitable purpose, the watchdog organizations can, and do. For example, the Better Business Bureau’s Wise Giving Alliance requires a charitable organization to spend at least 65 percent of its total expenses on its charitable activities for the organization to receive a favorable rating. It has similar standards for administrative and fundraising expenses. For example, the Alliance requires a charitable organization to spend no more than 35 percent of its contributions on fundraising to receive a favorable rating. Because these private watchdog organizations are not constrained by the U.S. Supreme Court rulings in this area, they can often provide valuable assistance to donors who have been solicited by charitable organizations that have been evaluated and rated. Informed donors regularly check private watchdog websites to see which organizations meet their standards in order to make better, more informed giving decisions.

**VII. Recent Trends and Developments: Accountability, Transparency, and Heightened Media Scrutiny**

**A. Legislative Action**

The issues of accountability and transparency are the critical issues facing the nonprofit sector right now. Hardly a day goes by without a newspaper article or other media story about real or perceived abuses in the nonprofit sector. Indeed, largely because of this heightened

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87 The complete set of standards the Better Business Bureau’s Wise Giving Alliance uses to evaluate charitable organizations is available on its website at [www.give.org](http://www.give.org).
media scrutiny, the U.S. Senate Finance Committee held a hearing on June 22, 2004 to look into nonprofit sector improprieties such as excessive compensation, abusive tax shelters, car donation program abuses, and other perceived irregularities. Shortly before the hearing, committee staff distributed an extensive white paper that discussed over 200 suggestions for how the government could improve its oversight and regulation of nonprofits. On July 22, 2004, Committee Chairman Charles R. Grassley and key members of his staff met with approximately 100 nonprofit officials to hear their concerns about the various ideas being proposed to deal with abuses. Senator Grassley dispelled any notion that lawmakers might back down from the major legislative changes they have floated in the past two months. He said that he and other senators intend to introduce changes “quickly, perhaps even this year depending on other factors.”

Until recently, Senator Grassley had been unsuccessful with his many attempts to introduce legislation on this topic. However, on August 17, 2006, The Pension Protection Act of 2006 (H.R.4) was signed into law. This new federal legislation includes many of the charitable reforms that Senator Grassley has steadfastly been trying to get enacted to address abuses in the nonprofit sector. There are “seven major provisions intended to encourage charitable giving, or in other ways assist charities, and 17 key provisions that were written to crack down on abuses by charities or donors, or make other changes.” While this new legislation contains numerous provisions that are intended to crack down on abuses by charities and donors at the federal level, the only provision that directly impacts state charity regulators is the one that allows the IRS to share more information with state charity regulators in order to enhance their enforcement of the state solicitation statutes they administer.

Whether Senator Grassley and his colleagues are able to enact additional legislative changes to address other real and perceived abuses in the nonprofit sector remains to be seen. However, it goes without saying that if scandals continue to be exposed and/or serious questions continue to be raised about the integrity, credibility, or effectiveness of certain charitable organizations, every legitimate organization will be hurt as the public becomes more and more skeptical and refuses to make donations it would otherwise make. Just as our most important


92 A 386-page explanation of all The Pension Protection Act’s provisions is available on the Joint Committee on Taxation’s web site at http://www.house.gov/jct/x-38-06.pdf. The applicable explanation for the enhanced information sharing provisions is on pages 327 through 329 of the Joint Committee’s report.
asset as individuals is our personal integrity and credibility, the most important asset of any charitable organization is its organizational integrity and credibility. Once its integrity and credibility are called into question, an organization’s ability to raise funds, function effectively, and accomplish its purposes is severely hindered. Especially for charitable organizations, public trust and organizational credibility are absolutely critical. According to Independent Sector, the largest membership group for charitable organizations in the United States, “Public trust is the single most important asset of the [charitable] community. Without it, donors will not give and volunteers will not get involved.”

That is why charitable organizations in the United States are regulated by both the federal and state governments and why various private watchdog organizations, the media, and the public frequently scrutinize charitable operations so closely. Charitable organizations are held accountable for their operations and actions by the federal government through the IRS; by the various states through their attorneys general and secretaries of state; by private watchdog organizations; by an ever-vigilant media always eager to expose irregularities and fraud; and, most importantly, by the donating public that can, and does, stop its support of charitable organizations that violate the public’s trust. For example, after months of rumors and media stories about financial mismanagement and other improprieties at the United Way of the National Capital Area, its president was forced to resign and the organization suffered a devastating drop in contributions.

B. The Red Cross’s September 11 Disaster

Unfortunately, since September 11, 2001, there has been a significant and well-documented decrease in confidence in the charitable sector in the United States. The almost exclusively positive publicity charitable entities received after the September 11 tragedy has been replaced, and sometimes overshadowed, by much negative, critical publicity because funds collected in the wake of the tragedy did not make their way to victims as expeditiously or efficiently as the donating public, the media, and government officials had expected. Even the venerable Red Cross got into serious hot water with the media, the government, and donors because it initially violated the basic legal and accounting rules requiring charitable organizations to abide by the representations they make to donors about how they will use solicited contributions. You simply cannot ask people for money for one purpose and then turn around and use it for another. You have to honor donors’ wishes and your representations to the people you ask to give you money.


95 See, e.g., Grant Williams, “Turmoil at the Red Cross,” The Chronicle of Philanthropy, November 1, 2001, p. 71.
In the United States, these requirements are typically set forth in state statutes, case law, and generally accepted accounting principles. It was the Red Cross’s initial violation of these basic requirements that caused it to receive an enormous amount of negative publicity after September 11, 2001. In fact, the Red Cross received so much negative publicity following its initial decision to not use all the funds donated to its Liberty Fund to directly help September 11 victims that one noted nonprofit expert has actually attributed the dramatic drop in public confidence in all charitable organizations since September 11 to the Red Cross’s ill-advised decision to initially violate these well-established legal and accounting requirements.

*The Chronicle of Philanthropy*, Independent Sector, and the Brookings Institution have all conducted surveys showing that the number of Americans who expressed “a lot of confidence” in charitable organizations declined significantly since September 11, 2001, while one of the surveys showed that the number who said they had “absolutely no confidence whatsoever” doubled.\(^{96}\) Indeed, according to a November 2002 Barna Research Group study, “the percentage of Americans who . . . donated money to [a charitable organization] reached its lowest level since pollsters first began measuring giving trends in the 1960s.”\(^ {97}\)

Paul C. Light, Director of the Brookings Institution’s Center for Public Service, has stated that “the controversy surrounding the disbursement of charity funds for September 11 survivors is the primary culprit in [this] decline [in donor confidence]”\(^ {98}\) and has suggested that the Red Cross’s troubles have actually pulled general support for all charitable organizations down since that time.

What exactly did the Red Cross do after September 11 that resulted in such a dramatic erosion in public support for all charitable organizations? Did its executives or employees steal money from the organization? No. Did its executives or employees improperly spend donations on inappropriate personal trips or other personal items? No. Did it fail to actually help the victims of September 11? No. So, what exactly did it do that alienated so many of its donors, the media, Congress, and the general public and caused public support for all charitable organizations to decline so dramatically? It simply indicated initially that it was not going to use all of the funds donated to its Liberty Fund to help the September 11 victims. Its reasoning was

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that given the unprecedented amounts of money given to the Liberty Fund, there was more than enough to help all the victims and it would, therefore, be wise and prudent to use at least some of the donated funds to better prepare for future terrorist attacks and/or help future victims. On the surface, this appears to be a very reasonable, rational approach under the circumstances. The only trouble was that the Red Cross, for whatever reason, had deviated from its standard policy of clearly indicating that donated funds might be used for future disasters and had not indicated this broader, worthy intention in any of its specific solicitation appeals for the Liberty Fund. Therefore, it was legally obligated to use all of the Liberty Fund donations for the specific, albeit limited, purpose of only helping the September 11 victims. Legally, the Red Cross had no other option and eventually had to agree to use all of the Liberty Fund donations for exactly what it had originally told donors it was going to do with them. If it had not agreed to do so voluntarily, the New York Attorney General’s Office was prepared to sue the Red Cross to force it to live up to the representations it had made to its Liberty Fund donors.

C. Perceived Lack of Integrity and Credibility

Unfortunately, the recent surveys by *The Chronicle of Philanthropy*, Independent Sector, the Brookings Institute, and the Barna Research Group all confirm that a negative, cynical attitude is held by an increasing number of donors. These recent surveys actually confirm a very astute observation made by a prominent foundation director many years ago when she asserted that a “corrosive cynicism” had set in in much of America. She used this catchy phrase to refer to the negative, distrustful, and cynical attitude so many Americans had developed towards charitable organizations because of several high-profile fraud cases that had received lots of negative exposure by the media. Unfortunately, these recent surveys have confirmed that this corrosive cynicism has actually increased since September 11, 2001.

There is a true crisis of credibility in the American charitable sector right now. Indeed, Emmett Carson, former President of the Minneapolis Foundation, recently observed in a letter to the editor of *The Chronicle of Philanthropy* commenting on a recent expose on interest-free loans to nonprofit executives that, “This new scandal, together with the ongoing stories about excessive compensation for foundation trustees and allegations of self-dealing at nonprofit organizations and foundations, should lead [nonprofit organization representatives] to recognize that we are facing the most significant crisis in public confidence that [the nonprofit] sector has ever known.”

One article stated:

> After the massive outpouring of $2.3 billion . . . to heal the damage of September 11, many people in and out of philanthropy expected the nonprofit world to be changed forever. No disaster in recent memory . . . touched off the urge to give among so many Americans . . . or put charity relief and recovery efforts under

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99 The Red Cross alone received over $415 million to help the victims of the September 11 tragedies.


such intense scrutiny by the news media, members of Congress, and the public. Yet a year later, few [charitable] organizations have significantly revamped the way they operate or interact with their supporters, even in the face of a striking erosion of confidence in [charitable organizations] among many Americans.  

According to this article, 42 percent of Americans had less confidence in charitable organizations after September 11, 27 percent were less likely to give to disaster-relief groups, and 29 percent were less likely to give to any charitable organization.  

The writer went on to observe that:

[This] negative publicity can have lingering consequences. Data from Independent Sector and the Brookings Institution show that the share of Americans who express a lot of support for federated fund-raising campaigns like United Way fell from 39 percent in July 2001 to 26 percent in December [2001]. Just as alarming . . . is that only 25 percent of Americans expressed a lot of confidence in charitable organizations in December [2001] — virtually unchanged since the previous July.

The writer astutely observed that to fully appreciate the implications of these facts, we must realize that:

Every conceivable civic institution in America got a big post-9/11 surge . . . including the presidency, Congress, religious institutions, and the news media, in addition to police, firefighters, and other government workers. [Confidence in] everybody else was going through the roof [after September 11], while confidence in charitable organizations merely held steady. By May 2002, in fact, the number of Americans expressing lots of confidence in [charitable organizations] had fallen to 18 percent.

Again, the most important asset of any charitable organization is its organizational integrity and credibility. If an organization does not use solicited funds for the purposes it told donors it was going to use them, its integrity and credibility will necessarily suffer. And when an organization’s integrity and credibility are called into question, its ability to raise funds, function effectively, and fulfill its charitable purposes is severely hindered. That is why it is

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103 Id.

104 Id.

105 Id.
absolutely critical for charitable organizations to live up to the representations they make to their donors about how they’ll actually use contributed funds — there is a legal and moral obligation to do so, and as the Red Cross painfully learned, a high price will be paid in the court of public opinion if they even think about not honoring their donors’ wishes and the representations they make about using contributions. The Red Cross case vividly illustrates why, especially in this day of heightened media scrutiny, it is critical that every charitable organization not violate the public trust and ensure that it conducts its affairs with integrity. If they don’t, they may be held accountable by one or more governmental oversight agencies, by one or more private watchdog organizations, by an ever-vigilant media, or, lastly and perhaps most importantly, by informed donors who will simply not support organizations that violate their trust.

VIII. Conclusion: Inadequacy of Current Federal and State Oversight Resources

There can be little doubt that most charitable organizations make significant contributions to society. They perform important functions, many of which would otherwise have to be performed by the government or not be performed at all. Our society is unquestionably a better place because of the work the legions of legitimate charitable organizations perform each day.

These organizations have the difficult but essential task of challenging us to recognize that we all benefit when worthy charitable organizations are generously supported. The public must feel confident that the charitable community as a whole is largely comprised of legitimate, fiscally prudent, accountable organizations that provide important services. It is critical that the public’s perception of the charitable community be overwhelmingly positive so the public will continue to support the important work this sector performs. The last thing the legitimate charitable community needs is more scandals. Yet scandals and other improprieties continue to be exposed in the media on an almost daily basis. These scandals hurt every legitimate charity because each day an ever-growing segment of the public becomes more and more skeptical and refuses to make donations it might otherwise have made.

Even though most charitable organizations are legitimate and are staffed by highly skilled, dedicated individuals, some so-called charities exist on paper only and accomplish little or nothing of actual value besides making their principals, fundraisers, and advisors lots of money, using fraudulent and deceptive solicitation practices. In addition, the sad reality is that, as hard as it is to believe, there are actually individuals who see tragedies such as the one that occurred on September 11 as an opportunity to redouble their efforts to defraud innocent donors. One such individual from Pennsylvania actually had a book published allegedly chronicling his heroic efforts to save people in the first twenty-four hours after September 11, 2001. He traveled around the country selling his book and collecting contributions for the children who lost parents in this tragedy and then never turned a penny of the collected funds over to either the children or any of the organizations for which he said he was collecting the contributions. On April 1, 2005, this individual who exploited the September 11th tragedy to enrich himself was sentenced to prison for 3 to 6 years after being convicted of 105 felonies and 104 first degree

misdemeanors. Unfortunately, there have always been those who make their livings defrauding donors and diverting millions of dollars each year from legitimate charitable organizations that are sincerely trying to address and remedy a seemingly endless array of social ills and injustices.

A. Need for Regulatory Oversight

Because of this fact, it is essential to have effective state and federal regulators who are equipped and trained to promptly investigate and pursue fraudulent so-called charities that compete for the same donations as legitimate charitable organizations. Unfortunately, in most states, and certainly at the federal level, the resources devoted to oversight of the charitable sector are woefully inadequate and have been so historically. As one writer has put it:

The Internal Revenue Service is falling far short in its role as federal overseer of the nation’s nonprofit organizations . . . Lack of money, employees, and experience at the tax agency have hindered the IRS’s efforts to crack down on charities that run afoul of the law . . . While the number of charities has risen by two-thirds over the last 10 years, to nearly 820,000 organizations, the number of revenue-service employees who handle charity audits and applications for exemptions has barely increased. The problems have been compounded in recent years by the departure of some of the agency’s most experienced employees. The IRS’s tax-exempt division “has been woefully underfunded,” says Jonathan A. Small, president of the Nonprofit Coordinating Committee of New York, which represents more than 1,000 small and midsize charities. He says the lack of spending is dangerous to charities because “the public’s trust in nonprofits demands strong regulatory oversight.”

The article noted that in 1995, the IRS audited 10,497 Form 990 returns — 2 percent of all 990 returns filed by tax-exempt groups, and that by 1999 the audit rate had dropped to 1.3 percent. According to the article, one reason for the decrease is that the number of organizations applying for tax-exempt status more than doubled from about 40,000 in 1990 to about 82,000 in 2001. And this upward trend continues — in 2003, the IRS received over 90,000 applications for tax-exempt status. In fact, so many organizations apply for tax-exempt status each year that for many years the IRS reluctantly had to assign much of the application overflow to its auditors to handle. Obviously, to the extent IRS auditors were processing applications for tax-exempt status, they could not devote as much time to conducting the audits they were hired and trained to perform. The article points out that “[w]hile few charities relish the idea of coming under the

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IRS’s microscope, some observers fear abuses will rise if nonprofit activities go unwatched.”110 Indeed:

Some charity officials endorse the notion of the government performing more audits. Lee Cassidy, [former] executive director of the Direct Marketing Association Nonprofit Federation, says that unless charities think there is a chance they will be audited, “eventually voluntary compliance with tax laws will degrade.”111

B. Lack of Staff and Funding

As noted earlier, between 1975 and 1995 the number of tax-exempt organizations more than doubled to 1.2 million, their assets increased by 312 percent to $1.9 trillion, and their revenue increased by 380 percent to $899 billion.112 Yet, during this same period, the federal and state agencies charged with oversight of this exploding sector of the economy did not experience proportionate increases in their resources. Indeed, after allowing for inflation, the budget for the IRS charity division did not substantially increase during the 1990s. Even though the number of charitable organizations grew significantly from 489,862 in 1990 to 819,008 in 2000, the number of IRS employees monitoring them remained essentially flat. In 1990 there were 501 IRS employees responsible for monitoring 489,862 organizations, and in 2000 there were 524 employees responsible for monitoring 819,008 organizations. Do the math: in 1990 each employee was responsible for overseeing 978 organizations, ten years later, each was responsible for overseeing 1,563 organizations.113 Even though the IRS was recently able to hire a significant number of new auditors, there is widespread consensus that the agency still does not have sufficient staff to adequately oversee the ever-growing tax-exempt sector.114

In addition, the U.S. Senate Finance Committee recently had the General Accounting Office (GAO) conduct a detailed review of the IRS’s effectiveness in monitoring and overseeing the nonprofit sector. In its highly publicized April 2002 report, the GAO concluded that the IRS was not doing anything close to an adequate job of overseeing and policing the sector.115

110 Id.

111 Id.


113 Elizabeth Schwinn & Grant Williams, supra note 109.


The picture for the various state agencies that oversee the charitable sector is similar. According to Lisa Connor, a Special Investigator with the Pennsylvania Bureau of Charitable Organizations, state offices throughout the country responsible for overseeing and monitoring the charitable sector are also underfunded and understaffed. Connor conducted a detailed survey documenting the various state resources devoted to oversight of the charitable sector and concluded that “[t]here are inadequate government resources at both the federal and state levels devoted to regulating . . . charitable organizations.”\(^{116}\)

For the sake of the legitimate charitable sector, this needs to change. The unfortunate reality is that the charitable sector is no different from any other sector — it has its fair share of unscrupulous individuals who make their living defrauding innocent donors of their hard-earned income and, in some cases, their lifetime savings. The legitimate charitable community simply cannot afford to have more and more people come to the conclusion that Andy Rooney, the noted *60 Minutes* commentator, came to several years ago when he very astutely observed that:

> The ultimate game is money. The rules are simple. Someone else has money and you try to get it away from them.

There are thousands of illegal ways to get someone else’s money, first among which is stealing. This is very popular in some circles. The last — but one of the most effective — way to get someone else’s money is by asking them to please give you some. It seems silly because it’s so simple. [Yet.] last year, Americans gave away [[$260]] billion to charity.

In an average week, I get ten requests for donations to good causes — not to mention requests from causes that aren’t so good. I’m seldom sure which organization is honest and which is in the rip-off business.

The people who run dishonest charities are among the most despicable on earth. The charity thieves hurt the millions of people who depend on legitimate charitable organizations because, hearing of the bad ones, we’re reluctant to give to the worthy ones because we aren’t sure.\(^{117}\)

And that is the main reason it is in the legitimate charitable community’s best interest to see that the various state and federal regulators have adequate resources to aggressively pursue the fraudulent “charities” out there — they hurt every legitimate charity and the millions of deserving people those organizations serve every day. Interestingly, although many of the participants in the July 22, 2004 Senate Finance Committee staff meeting\(^{118}\) disagreed with many of the proposals the Committee was considering, “[m]ost of the participants . . . agreed on the

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\(^{118}\) See discussion *supra* Section VII, A.
need for an increased appropriation to the Internal Revenue Service to assist in enforcing rules against charitable improprieties."\footnote{119 Brad Wolverton, \textit{``Nonprofit Leaders Express Concern About Some Ideas Advanced by Senate Aides,''} \textit{The Chronicle of Philanthropy}, August 5, 2004, p.39.}

C. The Bottom Line

In conclusion, the bottom line on the often-controversial topic of state charitable solicitation statutes and requirements is this: there is at least a very dim light at the end of the tunnel. The Internet and electronic filing systems will eventually simplify and reduce the costs and burdens of the current registration process significantly. However, as has been noted earlier, growing state budgetary and technical constraints have unfortunately delayed, and will continue to delay, this logical and ultimate solution from being implemented for many more years. Eventually, these technological advances will free up much of the limited state and federal resources currently devoted to reviewing and processing large volumes of paper filings to do what every donor and legitimate charity want their federal and state governments to do — aggressively pursue those who make their livings defrauding innocent donors and siphoning millions of dollars each year from legitimate charitable organizations. It is truly unfortunate that state budgetary and technical constraints have prevented this logical and ultimate solution from becoming a reality by now.