

# Event Details

**Please Note: This event has already taken place.**

## Regulation of Charitable Solicitations: We Can Do Better!

Tuesday, April 30, 2013 12:30 PM to 1:30 PM  
Boston Bar Association - 16 Beacon Street, Boston, MA

### Description:

This season's final Brown Bag Lunch presentation will begin with a brief overview of state charitable solicitation laws, followed by a discussion of the real-world impact of these laws. Current hot topics will then be discussed, along with an innovative proposal for bringing solicitation regulation into the Digital Age. There will be time at the end to ask questions and share ideas and experiences.

For this program's materials, please [click here](#).

### Sponsoring Section/Committee(s):

*Tax Exempt Organizations Section*

### Speakers:

**Leonard Cole**  
Cole Nonprofits Law, LLC

**Nora J. Mann**  
Massachusetts Office of the Attorney General

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## Regulation of Charitable Solicitations: We Can Do Better!

Tuesday, April 30, 2013 12:30 PM to 1:30 PM Boston Bar  
Association, Tax Exempt Organizations Section  
16 Beacon Street, Boston, MA

Speakers: Leonard Cole, Cole Nonprofits Law, LLC  
Nora J. Mann, Massachusetts Office of the Attorney General

- I. Introduction
  - A. Welcome & introductions
  - B. Overview of agenda and scope of presentation
    1. Focus on state regulation; some counties & municipalities also regulate
- II. Overview of State Charitable Solicitation Acts
  - A. Covered entities
    1. Charitable organizations
      - a. Often extends beyond 501(c)(3)
      - b. Exemptions
        - i. *De minimis*
        - ii. Certain types or organizations, e.g., religious, higher ed, those that solicit only from members
        - iii. Exemption is sometimes limited
        - iv. Filing a notice of exemption may be required.
    2. [Individuals]
    3. Paid solicitors
    4. Fundraising counsel
    5. Commercial co-venturers
  - B. Covered acts
    1. Solicitation
    2. Receipt
    3. Contracting
    4. Constitutional jurisdiction
  - C. Administration
    1. AGs
  - D. Requirements
    1. Registration & renewal
      - a. Multiple states
      - b. Unified Registration Statement (URS) [www.multistatefiling.org](http://www.multistatefiling.org)
        - i. Organized by NASCO and NAAG
      - c. Fees

- 2. Annual reports
  - a. Financial / audit
  - b. Form 990
  - c. Contracts
- 3. Contracts
  - a. Specific terms
  - b. Specific citations
  - c. Filing with state
    - i. X days before performance begins
    - ii. Within Y days of execution
- 4. Disclosures
  - a. With solicitations
  - b. Records available to public and/or state officials
- 5. Recordkeeping
- 6. Surety bond
- E. Restrictions
  - 1. Prohibition of false or misleading statements
- F. Penalties
  - 1. AG authority to investigate
  - 2. Civil penalties; sometimes criminal penalties
- III. Hot Topics
  - A. Online solicitation and donation
    - 1. Charleston Principles
    - 2. Crowd funding
- IV. Modernization
  - A. Singlepoint Website – a unified **electronic** registration system that will allow nonprofit organizations and professional fundraisers to comply with every state’s registration requirements at one online location
    - 1. Currently under development by NASCO, in conjunction with the Urban Institute and the Charities Regulation and Oversight Project of the National State Attorneys General Program at Columbia Law School

## I. STATE CHARITABLE SOLICITATION STATUTES

by  
Karl E. Emerson, Director Bureau  
of Charitable Organizations  
Pennsylvania Department of State

### 1. Introduction

According to the latest edition of *Giving USA*, Americans gave \$190 billion to charity in 1999 ----- up 6.7 percent from 1998 after adjusting for inflation. As a result, the nonprofit sector continues to grow in both size and significance.

In fact, according to the Fall 1998 issue of the Internal Revenue Service Statistics of Income Bulletin, between 1975 and 1995 the number of tax-exempt organizations more than doubled to 1,200,000, their assets increased by 312 percent to \$1.9 trillion, and their revenue increased by 380 percent to \$899 billion. The nonprofit sector's growth in assets and revenue significantly outpaced the country's 74 percent growth in Gross Domestic Product in the same period.

The astonishing growth of the tax-exempt sector reflects the significant contributions charitable organizations make to society. They perform many important functions that would otherwise need to be performed by government or not at all. Unfortunately, the charitable community is no different than any other sector of the economy in that it also has its share of unscrupulous individuals who seek to profit by defrauding innocent donors out of their hard-earned income and, in some cases, their lifetime savings. These fraudulent schemes harm not only contributors who respond in the mistaken belief they are helping charitable causes, but also the charitable community, as each new scandal hurts every legitimate charitable organization by increasing skepticism in the giving public. The states have the difficult, but essential, tasks of protecting their citizens from charlatans who prey on their charitable natures while challenging them to recognize that we all benefit when worthy charitable organizations are generously supported. Their role is even more critical when major government cutbacks shift the responsibility for relieving many of society's burdens to the charitable sector.

To protect their residents and legitimate charitable organizations, approximately 40 states have enacted charitable solicitation statutes. Although specifics vary, state statutes usually require organizations to register with the state before they solicit the state's residents for contributions.

State solicitation statutes generally serve two important purposes. First, they allow the public to get basic information about organizations asking for contributions so donors can make better, more informed charitable giving decisions.

For example, in Pennsylvania, residents can easily obtain basic information about registered organizations by either calling a toll-free number or visiting the Bureau of Charitable Organizations' web site. Either method allows residents to quickly and 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.

The Bureau's web site links directly to the *Guidestar* web site at [www.guidestar.org/](http://www.guidestar.org/). As *Guidestar* makes copies of charitable organizations' Forms 990 available, residents can easily view, and even download them 24 hours a day from the comfort of their homes. However, as significant as this recent technological innovation is, our recent experience in Pennsylvania shows that any suggestion that disclosure can replace regulation is overly optimistic, or at least premature. Pennsylvania's recently hired auditors and investigators now regularly document that many organizations' Forms 990 contain material omissions, misrepresentations, or even falsifications.

In addition, the *Chronicle of Philanthropy* recently documented that as many as one out of every four organizations that reported at least \$500,000 in contributions on their Form 990 failed to report any fundraising expenses! That's one quarter of the largest charitable organizations in the country! The *Chronicle of Philanthropy* study confirmed what Pennsylvania's auditors and investigators have been documenting for some time now: that a significant number of the Forms 990 contain material omissions, misrepresentations, or falsifications.

The *Chronicle of Philanthropy* study and the Bureau's auditors' findings highlight the second, and equally important, purpose state solicitation statutes serve: they help protect state residents from charitable solicitation fraud and misrepresentations. Although most charitable organizations are fine, worthy organizations that deserve to be generously supported, unfortunately, many are fraudulent, employ deceptive solicitation practices, or mislead the public by submitting false or inaccurate Forms 990.

Pennsylvania's experience demonstrates the importance of enforcement. Under the previous administration, the Bureau had only been staffed to serve as a registration office. However, when the infamous Foundation For New Era Philanthropy scandal occurred a few months after he took office, Governor Tom Ridge quickly decided the Bureau needed

a staff of investigators and auditors to fulfill its long-standing statutory mandate to detect and prosecute charitable solicitation fraud. As a result, the Bureau is now headed by a prosecuting attorney with extensive experience investigating fraud. In addition, the Bureau created a Special Investigation Unit (SIU) staffed with five investigators and four auditors, two of whom are licensed CPAs. Recently, several prosecuting attorneys have been either permanently or temporarily assigned to prosecute some of the many cases being documented by this new unit.

By attempting to discover and prosecute those individuals and organizations engaged in solicitation fraud, the various state registration offices, like the IRS Tax-Exempt/Government Entities Division, help protect the interests of both the public and the legitimate charitable community.

## 2. Charitable Organization Registration Requirements

Pennsylvania's Solicitation of Funds For Charitable Purposes Act, 10 P.S. §162.1 *et seq.*, is very similar to the solicitation statutes in most states. The basic registration requirements are not complicated.

Generally, Pennsylvania requires an organization to register with the Department of State's Bureau of Charitable Organizations before it solicits contributions in Pennsylvania. However, like most state solicitation statutes, certain organizations are specifically excluded or exempt from the Act. Although most states exempt similar types of organizations, specific exemptions vary from state to state. For example, in Pennsylvania, *bona fide* religious institutions and organizations of law enforcement personnel, firefighters, and other persons who protect the public safety are excluded from the Act's requirements if they meet certain criteria in the Act. 10 P.S. §162.3

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 Act's registration requirements if they meet any applicable criteria in the Act. 10 P.S. §162.6

Finally, organizations receiving annual contributions of \$25,000 or less are exempt from the Act's registration requirements as long as they don't compensate anyone to conduct solicitations. 10 P.S. §162.6(a)(8)

Organizations that are not excluded or exempt must file annual registration statements for their immediately preceding fiscal year. 10 P.S. §162.5

Each year organizations must also file reviewed financial statements if their gross contributions exceed \$25,000 per year and audited financial statements if their gross contributions exceed \$100,000 per year. 10 P.S. §162.5(f) Some states don't require reviewed or audited financial statements while others have review and audit thresholds different from Pennsylvania's.

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 licensed, independent public accountants or certified public accountants. As a result, we have discovered over 110 unlicensed accountants who have submitted reviews and audits to the Bureau. These unlicensed accountants have been, or are being, referred to the State Board of Accountancy for appropriate disciplinary action.

The Bureau has the discretion to waive the requirement for reviewed or audited financial statements if there are "special facts and circumstances" that justify doing so. 10 P.S. §162.5(j) Requests for waivers must be in writing and must set forth "special facts and circumstances" that justify granting a waiver. So, even though the Bureau will generally have audits or reviews available for registered organizations, in certain limited circumstances they may not be available for any given year.

Like the IRS, the Bureau can grant extensions up to 180 days for organizations to file their registration or financial statements. 10 P.S. §162.5(k) However, requests for extensions must be in writing and be filed before an organization's registration expires. Otherwise, statutorily mandated late fees of \$25 per month must be paid before any extension can be granted.

Organizations required to register must also submit copies of their Form 990. 10 P.S. §162.5(b)(6) As mentioned earlier, the basic information from these returns is entered into the Bureau's database and made available to the public through the Bureau's toll-free number and web site.

Lastly, organizations must submit copies of other official documents such as their organizational charters, articles of incorporation, and by-laws, the first time they register. 10 P. S. §162.5(c) Copies of these documents are also available for public review.

These are the basic registration requirements for charitable organizations. Should you need copies of these documents for an IRS examination, you can write the Bureau of Charitable Organizations at 124 Pine Street, 3<sup>rd</sup> Floor, Harrisburg, Pennsylvania 17101;

call the Bureau toll-free at 1-800-732-0999; or request the documents through the Bureau's web site at [www.dos.state.pa.us](http://www.dos.state.pa.us).

### 3. Professional Solicitor and Fundraising Counsel Requirements

The basic requirements for solicitors and fundraising counsels are also quite straightforward. Solicitors must register before soliciting for charitable organizations in Pennsylvania and counsels must register before providing services related to solicitations in Pennsylvania. 10 P.S. §162.9(a) and 10 P.S. §162.8(a)

Solicitors and counsels must also file annual registration statements and copies of their contracts with charitable organizations no less than ten working days before conducting solicitation campaigns, events, or providing services. 10 P.S. §162.9(e) and 10 P.S. §162.8(d)

Solicitor registration statements must contain the following information: 1) the address of the solicitor's principal place of business and any Pennsylvania addresses; 2) the form of the solicitor's business; 3) the names and residence addresses of all the solicitor's principals, including all officers, directors, and owners; 4) 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 5) the name of all persons in charge of any solicitation activity. 10 P.S. §162.9(a)

Solicitor contracts with charitable organizations must be written and contain the following basic provisions: 1) the legal name and address of the charitable organization as registered with the Bureau; 2) a statement of the charitable purpose for which the solicitation campaign is being conducted; 3) a statement of the respective obligations of the solicitor and the charitable organization; 4) a statement of the guaranteed minimum percentage of the gross receipts from contributions that will be remitted to or retained by the charitable organization, if any; 5) a statement of the percentage of the gross revenue that the solicitor will be compensated; and 6) the effective and termination dates of the contract and the date solicitation activity is to commence in Pennsylvania. 10 P.S. §162.9(f)

In addition to filing their contracts with charitable organizations, solicitors must also file written solicitation notices at least ten working days before commencing any

solicitation campaign in Pennsylvania. The solicitation notice must be accompanied by a \$25 fee and contain the following information: 1) a description of the solicitation event or campaign; 2) each location and telephone number from which the solicitation is to be conducted; 3) 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; 4) a statement whether the solicitor will at any time have custody or control of contributions; 5) the account number and location of each bank account where receipts from the campaign are to be deposited; 6) a full and fair description of the charitable program for which the campaign is being carried out; and 7) the date the solicitation campaign or event will begin or be held and the termination date for each campaign or event. 10 P.S. §162.9(e)

Lastly, solicitors must also obtain a \$25,000 bond and file campaign reports within 90 days of the end of each solicitation campaign or annually for campaigns lasting more than a year. 10 P.S. §162.9(c) and 10 P.S. §162.9(l) 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.

Fundraising counsel registration statements must contain the following information: 1) the address of the counsel's principal place of business and any Pennsylvania addresses; 2) the form of the counsel's business; 3) the names and residence addresses of all the counsel's principals, including all officers, directors, and owners; 4) 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 contact with the counsel; and 5) the name of any person in charge of any solicitation activity. 10 P.S. §162.8(a)

Fundraising counsel contracts with charitable organizations must also be written and contain the following basic provisions: 1) the legal name and address of the charitable organization as registered with the Bureau; 2) a statement of the charitable purpose for which the solicitation campaign is being conducted; 3) a statement of the respective obligations of the counsel and the charitable organization; 4) a clear statement of the fees that will be paid to the counsel; 5) the effective and termination dates of the contract and the date services will commence with respect to the solicitation of contributions in Pennsylvania; 6) a statement that the counsel will not at any time have custody or control

of contributions; and 7) a statement that the charitable organization exercises control and approval over the content and volume of any solicitation. 10 P.S. §162.8(d)

These are the basic requirements for solicitors and fundraising counsels. Again, should you need copies of a solicitor's or counsel's annual registration statements, copies of their contracts with charitable organizations for whom they solicited contributions in Pennsylvania, or copies of final or interim campaign reports or solicitation notices for campaigns conducted in Pennsylvania, you can contact the Bureau as noted above.

#### 4. The Unified Registration Statement

Organizations that solicit contributions nationally typically can save time and money by utilizing the relatively new Unified Registration Statement (URS), which was developed through a collaborative effort between the charitable community and the National Association of State Charity Officials (NASCO). The URS can currently be filed in 34 different states in lieu of the states' own registration statements. The form can be downloaded at [www.nonprofits.org/library/gov/urs/](http://www.nonprofits.org/library/gov/urs/).

#### 5. Internet Solicitations

The subject of Internet solicitation is definitely one of the hottest topics currently being debated within both the charitable and regulator communities.

Because the way this type of solicitation activity will be addressed has not yet been finalized and may differ from state to state, I must give you the standard disclaimer that any opinions I express on this topic at this time are my personal opinions and not necessarily those of the Secretary of the Commonwealth of Pennsylvania or the Attorney General of Pennsylvania, the officials who will ultimately decide how this issue will be handled in Pennsylvania.

Equally, if not more, important, any opinions I express are not necessarily those of the various Attorneys General and Secretaries of State throughout the country. The President of NASCO simply doesn't have that authority! All I can share are my personal opinions concerning how I think the area of Internet solicitation might be handled and the current status of NASCO's review of this issue.

NASCO held its most recent conference in October 1999. This was the annual meeting of the state and federal officials responsible for enforcing the charitable

solicitation statutes and Internal Revenue Code provisions that govern the conduct of tax-exempt organizations.

Last year's conference covered a wide variety of topics, including Internet solicitations. In fact, the conference's entire public session dealt with how to address this rapidly growing way to solicit contributions because, as we all know, each day more and more charities are using the Internet to do so.

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

According to a recent article in the *Chronicle of Philanthropy*, Toys For Tots raised \$475,000 in cash and received 42,000 toys as a result of its Internet solicitation efforts during the month between Thanksgiving and Christmas last year. According to the same article, the American Red Cross raised \$2.5 million on-line last year.

Soliciting on the Internet is now a hot topic at fundraising conferences all around the country and several books on the topic have recently been published. Charities of all sizes are being urged to set up web sites to solicit contributions. At least one organization is developing web sites for charities for free so they can take advantage of this new and exciting way to raise funds.

In addition, there are now at least 15 "Internet shopping malls" where you can make purchases from hundreds of retailers and the "Internet shopping mall" will donate a small portion of your purchase price to the charity of your choice. There are now even "Internet shopping malls" where you can make similar purchases and these particular "shopping malls" will donate a small portion of your purchase price to your child's school. According to a recent article, there are at least 6 of these new "Internet shopping malls" that specialize in raising funds just for schools.

The bottom line is that the Internet is being used more and more each day by hundreds of worthy charities to raise funds. However, like all things, this incredible technological advancement also has enormous potential to be abused. One could easily

create a so-called "charity" that has an impressive web site that tugs at your heartstrings, but really only exists in the web site designer's mind.

Recent articles in the *New York Times*, the *Chronicle of Philanthropy*, and elsewhere have questioned whether some "Internet shopping malls" always follow through with their promises to donate a portion of each purchase price to the charity or school of the donor's choice. Sometimes these "Internet shopping malls" have administrative policies or procedures that result in no actual donations being made in certain circumstances such as when a minimum amount must be designated for a particular charity or school before any actual donation is made. As a result of these factors and others, there's now considerable media interest in the growing number of charities soliciting on the Internet and how, if at all, they should be regulated.

The press and the public expect the regulators to address this issue. Because of its rapid growth and increasing visibility, the issue of Internet solicitation can no longer be ignored by regulators with the vague hope that it will just quietly go away. There's no getting around the fact that a strict reading of most states' solicitation statutes would require that charities maintaining web sites that include a request for contributions register in those states.

The Pennsylvania Attorney General's Office has recently taken the position that charities soliciting on the Internet do violate Pennsylvania's solicitation law if they're not registered because our law defines "*solicitation*" as "*[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."*

Clearly, the Internet falls into the "any other media" category. However, taking such a position poses enormous practical difficulties given there are now thousands of charities whose web sites ask for contributions. It seems rather unfair and burdensome to require a charity to suddenly have to register in the approximately 40 states that have solicitation statutes simply because the charity creates a web site that, among other things, asks for contributions. 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?

At last year's NASCO conference there was extensive discussion about how states can fulfill their statutory responsibilities to protect their residents and see they have access to basic information about the charities asking them for contributions without unduly burdening the ever-growing number of charities that are, and will be, using the Internet to raise substantial sums.

NASCO hopes to adopt a formal policy on this important subject soon. A draft policy was discussed extensively at both the public and private sessions of our annual conference in October. However, because of concerns expressed by several states and one county, the draft policy has since been modified several times. The most recent version has now been circulated among the NASCO membership and there have been several very long conference calls where NASCO members from around the country have discussed the latest draft in great detail. We hope to arrive at some consensus among the NASCO membership soon so the draft policy can be circulated to our bosses: the various Attorneys General and Secretaries of State for review and comment. It will then be circulated to the general charitable community for further comment and review.

Of course, even if NASCO is able to arrive at a consensus about how to address Internet solicitation, any policy it adopts would not be legally binding on any state. Nonetheless, adopting such a policy would be a significant step in the right direction because it would at least give some much needed guidance to both regulators and the charitable community about when registration in a particular state would, or would not, be required.

One of the many suggestions being considered by NASCO to deal with this problem is to not require out-of-state web sites to register if they only "passively" solicit donations and don't "affirmatively target" residents of a particular state. In other words, if a charity based in Utah has a web site that asks for contributions and a Pennsylvania resident simply finds the web site while surfing the Internet one night from his computer in Pennsylvania, the charity would not have to register in Pennsylvania because the Utah-based charity did not "actively and affirmatively" seek out the Pennsylvania resident and ask him for a donation. Rather, the Pennsylvania resident in this scenario sought out the Utah-based charity.

However, even assuming for the sake of argument that this type of scenario would not require the Utah-based charity to register in Pennsylvania, the reality of fundraising is that, once the Pennsylvania resident has made a donation to the Utah-based charity, it's only a matter of weeks, months, or, at the most, a year before the Utah-based charity will ask the Pennsylvania resident for another donation either by phone, mail, or the Internet.

When that happens, everyone agrees the charity would have to register because using the Internet to directly solicit a specific individual is no different from sending the individual a letter or calling the individual on the telephone.

The bottom line on the subject of Internet solicitations is that most states are undecided at this time about how they're going to deal with this rapidly growing way to solicit contributions. As a result, the entire public session of NASCO's annual conference this year will once again be devoted to this important topic.

## 6. Prohibited Conduct

Finally, Pennsylvania's solicitation statute, like most other states', prohibits certain conduct and authorizes the Bureau, the Pennsylvania Attorney General, and local District Attorneys to prosecute organizations and individuals for various improper activities.

In Pennsylvania, the prohibited conduct is outlined in Section 15 of the Act, 10 P.S. §162.15, and includes, among other things:

- 1) utilizing any unfair or deceptive acts or practices or engaging in any fraudulent conduct that creates a likelihood of confusion or misunderstanding;
- 2) utilizing any representation that implies a contribution is for or on behalf of a charitable organization, or utilizing any emblem, device, or printed matter belonging to or associated with a charitable organization without first being authorized in writing to do so by the charitable organization;
- 3) utilizing a name, symbol, or statement so closely related or similar to that used by another charitable organization that the use thereof would tend to confuse or mislead a solicited person;
- 4) 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 solicitation will be used for charitable purposes when such is not the case;
- 5) 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 purpose;

- 6) 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 as a sponsorship, approval, status, affiliation or connection that he or she does not have;
- 7) utilizing or exploiting the fact of registration to lead any person to believe that such registration in any manner constitutes an endorsement or approval by the state;
- 8) 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
- 9) 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.

Section 17(b)(3) of the Act authorizes the Bureau to impose 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 Act. 10 P.S. §162.17 (b)(3)

## 7. Conclusion

I hope this basic overview of one of the many state solicitation statutes is helpful, if only to inform you that you can obtain additional documentation concerning charitable organizations, professional solicitors, fundraising counsels, or their contracts that may be useful as you conduct your audits and investigations of tax-exempt organizations. I have not attached a copy of Pennsylvania's solicitation statute since it is readily available from the Bureau's web site at **[www.dos.state.pa.us](http://www.dos.state.pa.us)**.

In conclusion, as the President of the National Association of State Charity Officials (NASCO), I assure you that NASCO members throughout the country will be pleased to assist you in any way they can with your efforts to combat charitable solicitation fraud and thereby protect both the donating public and the legitimate charitable community.

# The Unified Registration Statement

THE MULTI-STATE FILER PROJECT

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THE MULTI-STATE FILER PROJECT

## Introduction & Contents

### Why must my organization "register?"

The simple answer is "it's the law." Typically, states exercise regulatory authority over nonprofits based on one (or both) of two premises: the nonprofit is physically "present" in the state (e.g., has an office, owns real estate, or conducts program activities) or the nonprofit raises funds in the state.

In either case, a state may require the nonprofit to "register", that is, to provide identifying information about the nonprofit and its operations. It is the latter premise for registration -- raising funds -- that provides the impetus for the Unified Registration Statement and the movement for standardized reporting in general. Organizations of any size and any means may find that raising funds from the public --even when conducted modestly from a single location -- will give rise to regulatory obligations to multiple states.

In fact, today most states regulate fundraising. They do so through statutes -- usually called "solicitation laws" -- that are primarily concerned with the solicitation of charitable contributions from the general public. The centerpiece of most of the regulatory schemes is comprehensive reporting, by nonprofits and by the outside fundraising firms and consultants they employ.

### What is "registration?"

Compliance reporting under solicitation laws is divided into two pieces: (1) registration, which provides an initial base of data and information about an organization's finances and governance; and (2) annual financial reporting, which keeps the states apprised about the organization's operations with an emphasis on fundraising results and practices. Typically, states require both registration (at least an initial registration) and annual financial reporting.

With forty jurisdictions regulating in this manner, there is inevitably little consistency of approach. Some states have one-time registration; others require annual renewal of registration; some will require submission of every common governance and financial document; others make do with just an IRS Form 990; and so forth. But each has its own registration form (or forms) and, until the advent of the URS, required its submission, verbatim.

PLEASE TAKE SPECIAL NOTE: The URS and this packet are designed for registration only. **For many states, the URS cannot be used to fulfill annual financial reporting requirements.** A project is underway to produce a standardized format -- like the URS -- for annual financial reporting (see below). For now, the URS is the sole device for standardized, multi-state filing and it applies only to registration and registration renewal (which may be required yearly but, we say again, may be distinct from annual financial reporting).

### Which nonprofits must register (and when)?

Generally, any nonprofit conducting a charitable solicitation within the borders of a state, by any means, is subject to that state's law and is therefore required to register (and must do so before soliciting). Also, generally, the operative terms "charitable" and "solicitation" are defined very broadly and could include, for example, a website posting by an environmental organization inviting contributions from the public.

In other words, the soliciting organization need not be a “charity” in a strict sense nor have any physical presence of any kind in the state. So, a letter, phone call, or newspaper ad requesting financial support from a state's residents is enough, in the unchallenged legal opinion of the states, to trigger the coverage of (i.e., give jurisdiction to) that state's solicitation law.

However, Internet fundraising does not neatly conform to existing models -- neither jurisdictional models nor fundraising models. The ultimate jurisdictional question, roughly put, is “Has someone purposefully directed a charitable solicitation to a resident of our state?” A “yes” provides a state with a rationale for exercising jurisdiction. The question and answer get very fuzzy in cyberspace.

The National Association of State Charity Officials (NASCO), recognizing the challenges posed for both nonprofits and regulators, has developed a protocol to aid all concerned (see the “Charleston Principles” at [www.nasconet.org](http://www.nasconet.org)). The protocol will guide state officials in exercising jurisdiction over Internet transactions and it will help nonprofits determine whether (and when) their Internet fundraising activity will subject them to solicitation law registration and reporting.

Against this framework of all-inclusiveness is a patchwork of exclusions from coverage. These are the product of each state's constitutional and political considerations. Either through exemption from registration requirements or out-and-out exclusion from the law, each state excuses some nonprofits from registering. For example, every state grants an exemption (or exclusion) to “religious organizations,” as the term is respectively defined, and most have exemptions for colleges and universities or for organizations raising only small amounts (say, under \$5,000). *Please see the Appendix for details on each state.*

*Significantly, technical compliance with any state's registration law requires initial registration **before** the first solicitation has been directed into the state.* The fact remains that many nonprofits have not done the necessary legal homework before launching fundraising campaigns. If your nonprofit is one of these, you should be very concerned. But you should not be deterred from going ahead with registration because you fear you are breaking a law already and it's too late to comply.

Failure to register before soliciting is a violation of law and *could* subject the organization (and in some circumstances, its officers or directors) to whatever sanctions (e.g., a substantial fine) exist in each state's law. But, the states generally wish to encourage honest efforts to comply with registration laws and tend to employ sanctions only when enforcement officials deem it necessary. So, an organization able to demonstrate its good faith which promptly registers after discovering its obligation (albeit tardily) stands a good chance of avoiding or minimizing sanctions. **The bottom line:** registration is the law and you must comply as soon as possible.

## **What is the Unified Registration Statement?**

The URS represents but a single part of an effort to consolidate the information and data requirements of all states requiring registration. Organized by the National Association of State Charities Officials and the National Association of Attorneys General, the project's aim is to standardize, simplify, and economize compliance under the states' solicitation laws.

The URS effort consists of three phases: (1) compiling an inventory of registration information demands from all states, (2) producing a format (or form) which incorporates all (or most) of these demands, and (3) encouraging the states to accept this “standardized” format as an *alternative* to their own forms. The effort is dynamic and ongoing, now represented by version 4.0 of the URS, which is accepted by thirty-seven of the forty jurisdictions requiring registration. Reflecting this dynamic, **the URS will be updated continually** by way of its website (<http://www.multistatefiling.org/>). See Item #6 in the “Reminders” section (URS Instructions, pg. 4) for more information on URS packet updates.

## How do you use the URS?

The URS is an alternative to filing all of the respective registration forms produced by each of the cooperating states. In those states, a registering nonprofit may use either the state form or the URS. Thus, the URS proves most useful to nonprofits soliciting regionally or nationally and, therefore, subject to the registration laws of multiple states. But the URS may be used by any nonprofit that is registering in a state accepting it.

Conceptually, the process is simple. You fill out the URS by following its accompanying instructions; photocopy the completed URS (with state-specific items, including signature lines, left blank); fill in any state-specific items; execute (i.e., sign with or without notary) according to each state's requirements; collect and attach the specified governance (for initial filings) and other documents; write a check for the prescribed registration fee (if any); and mail the package, covered by the URS, to the respective state's administering agency. Please see the Appendix for a listing of state-specific items, necessary documents, fee for filing, and address of each state's administering agency. Important note: do NOT send completed URS forms to the Multi-state Filer Project; we do not process these. They must go to each state in which you are registering.

## What's in this packet?

The URS is presented here along with additional materials and information. The goal is to enable most users to complete their registrations (for URS states) without the need to acquire information or materials outside this packet. Please read the following description of the packet's contents to learn what's here and where to find it:

\* **URS (3 pgs) and Instructions (4 pgs)** – Only one copy of the URS is provided with this packet. Make a back up photocopy of the blank form before you begin work. Note that the submitted URS will be considerably longer than the 3 pages of the form due to several required attachments. Please consult the instructions while filing out the URS for information on how to answer each question.

\* **Supplementary Forms (22 forms/instructions from 15 jurisdictions)** – A number of states wished to cooperate with the URS effort but found it necessary for legal or other reasons to request information and/or offer instruction on forms designed to supplement the URS. For those states, the respective supplementary form or information must accompany the URS.

\* **Appendix (15 pgs)** – Provides state-by-state filing details for each of the thirty-six cooperating states and DC. Please closely attend to the following notes for helpful information about the Appendix:

(1) The *Exemptions* entries are NOT verbatim from the laws. If you believe your organization may be exempt in one or more states, be cautious and refer to the law (See *Governing law* in the Appendix for citation), regulations, and/or applicable form from the respective states.

(2) *Due date* refers to the day that the first filing *subsequent* to the initial registration is due (initial registration is required before solicitation begins). This subsequent filing may be termed a "registration renewal" or an "annual financial report." See (7), below, for information on due dates for annual financial reports.

(3) *Fund Raiser* contracts refer to the actual contractual documents establishing your relationship with outside fundraising professionals described in URS Item 20. A "yes" here in a state's entry means you must copy and submit all such contracts, along with the URS, to that state. Note too that subsequent contracts may have to be submitted (either when entered into, with registration renewal, or as part of required annual financial reporting).

(4) Your *Certificate of Incorporation*, *Bylaws*, and *IRS Determination Letter* (official letter from Internal Revenue Service establishing federal tax-exempt status) are one-time submissions with initial registration. Unless amended after initial registration, they need

not accompany renewal filings.

(5) In obvious contrast, *Audit* and *IRS Form 990* change from year to year. A “yes” means that the most recently completed versions must be submitted with the URS. Note that while a state (e.g., Oregon) may not require either for purposes of registration, it might require the current version of either or both as part of annual financial reporting. Also note that *states articulate the need to submit an audit very differently* – pay close attention to the requirements listed in the Appendix to the URS, as the actual terminology of each state is used for this entry.

(6) Information about registration for States *not yet accepting the URS* is included.

(7) Basic *information on annual financial reporting* (and/or registration renewal) for all URS states is included in a separate section. Although the URS has not been officially sanctioned for use in fulfilling annual financial reporting/renewal requirements, the information is provided here to help filers understand and coordinate their reporting obligations.

\* **Help** (3 pgs.) – Provides several aids for filers, itemized below:

(1) The *Checklist* recapitulates much of the Appendix in an easy-to-read, yes-no format. It serves as a useful tool when, for example, you are submitting multiple registrations and need to be assured that each state receives the necessary components.

(2) *Changes to the URS* detail changes to each version of the URS packet since v. 2.00.

(3) *Site List* provides sources for printed copies of the URS packet.

### **What's next for the Standardized Reporting Project?**

In every sense, both the URS and the Project are a work in progress. There are four components to reporting under the solicitation laws: registration for nonprofits, annual reporting for nonprofits, registration for outside professionals, and annual reporting for outside professionals. Although work on the additional four components is under way, the URS (nonprofit registration) is the sole product in service.

While the “standardized” approach implies continual change, even the threshold work on the URS is not complete. For example, page 12 of the Appendix lists the three remaining states that, for one reason or another, have not yet chosen to participate by accepting the URS. Neither the URS nor any subsequent products will achieve maximum utility until *all states* are cooperating.

Version 4.01 of the URS packet contains numerous refinements, many of them the product of user comments. Consequently, your feedback is very important. Please direct any comments you may have about suggested improvements (or about errors you believe you've discovered) to the URS, its instructions, or to the accompanying materials to:

Karin K. Goldman  
Charities Trusts Bureau  
New York State  
Attorney General Office  
120 Broadway  
Third floor  
New York, NY 10271-0002  
(212) 416-8060  
[chnkkg@oag.state.ny.us](mailto:chnkkg@oag.state.ny.us)

and/or Robert Tigner  
General Counsel  
Multi-State Filer Project  
1612 K Street, NW  
Suite 510  
Washington, DC 20006-2802  
(202) 463-7980

**Note: Please do not send the Multi-State Filer Project your completed URS form. These go directly to the state(s) you are registering in.**

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## **THE CHARLESTON PRINCIPLES: GUIDELINES ON CHARITABLE SOLICITATIONS USING THE INTERNET**

### **WHEREAS:**

1. Most charitable organizations provide valuable services to society--services that are not provided by government or the private for-profit sector. At the same time, deceptive charitable solicitations, including fraud and misuse of charitable contributions, are significant problems in our country. Reasonable state oversight of charitable organizations and professional fundraisers can remedy or minimize such abuses while facilitating the charitable missions of those who provide needed services to our nation and communities, and by providing information and education to donors;
2. Registration and financial reporting by charitable organizations and their internal fundraisers, their external commercial fundraisers and, where applicable, their fundraising counsel and commercial co-venturers is critical to (a) providing information to the public in order to increase donor confidence in those who solicit their support and (b) providing information to law enforcers to enable them to fight deception and misuse of contributions;
3. Existing registration statutes generally, of their own terms, encompass and apply to Internet solicitations. The application of those statutes beyond more established fundraising techniques, such as telephone, direct mail, and in-person solicitations, raises a number of issues that state charity officials are often called upon to address;
4. The proliferation of Web site solicitations compels state charity officials to address the issue of who has to register where;
5. State charity officials consistently gain valuable insights when the views of the regulated communities are sought;
6. Consistent guidelines addressing online charitable solicitations will assist state charity officials, as well as donors, charities, and online entrepreneurs, throughout the nation. These Principles have been adopted as guidance to state charity officials, but with the express intention of both creating a climate in which creativity and enterprise in the use of the Internet to support charitable activities is encouraged and in which the public interest is vigorously protected; and
7. Therefore, state charity officials discussed the formation of these Principles while gathered at the National Association of Attorneys General/National Association of State Charity Officials (“NAAG/NASCO”) Conference in Charleston, South Carolina in October 1999. During the public portion of that conference, which was devoted to the subject of Internet solicitations, state charity officials began a dialogue with invited guests on this topic.

**THEREFORE WE, THE BOARD OF DIRECTORS OF NASCO, OFFER THE FOLLOWING PRINCIPLES:**

**I. General Principles**

- A. These Principles are offered as a guide to states as to when charities, and their fundraisers, fundraising counsel and commercial co-venturers may be required to register, or may be subject to enforcement action, and in what jurisdictions, with regard to charitable solicitations via the Internet. States are encouraged to use these Principles to develop common policies to implement their specific state laws, but these Principles are not necessarily the views of any particular individual, office, or state, nor do they state an official policy position of NASCO. These Principles recognize that the laws of individual states vary, and that implementation of these Principles may also vary.
- B. These Principles are necessarily dynamic, and may change as laws, technology and business models change. Further discussions among states and between states and the regulated community are desirable.
- C. The Internet can be a valuable and efficient forum for conducting charitable solicitations. State charity officials do not desire to discourage or limit its use.
- D. The basic premise of these Principles is this: Although existing state laws govern charitable solicitations on the Internet, in many instances the use of the Internet raises new questions that state charity officials must answer in order to effectively carry out their statutory missions. Therefore, state charity officials should require registration of those over whom their state courts could constitutionally assert personal jurisdiction to enforce a registration requirement. State charity officials and those who solicit contributions using the Internet should note that in actions to enforce state laws against deceptive charitable solicitations, including fraud and misuse of charitable funds, jurisdiction typically exists over some organizations not required to register in the state.
- E. Nothing in these Principles is intended to limit jurisdiction available under common law. The traditional jurisprudence analysis for jurisdiction is the appropriate rule with which states need to comply.

## **II. Actions to Enforce State Laws Against Charitable Solicitation Fraud**

States will enforce the law against any entity whose Internet solicitations mislead or defraud persons physically located within a particular state, without regard to whether that entity is domiciled in the state or is required to register in that state pursuant to these Principles.

## **III. Application of Registration Requirements to Internet Solicitation**

### **A. Entities That Are Domiciled Within the State**

1. An entity that is domiciled within a state and uses the Internet to conduct charitable solicitations in that state must register in that state. This is true without regard to whether the Internet solicitation methods it uses are passive or interactive, maintained by itself or another entity with which it contracts, or whether it conducts solicitations in any other manner.
2. An entity is domiciled within a particular state if its principal place of business is in that state.

### **B. Entities That Are Domiciled Outside the State**

1. An entity that is not domiciled within a state must register in accordance with the law of that state if:
  - a. Its non-Internet activities alone would be sufficient to require registration;
  - b. (1) The entity solicits contributions through an interactive Web site; and  
(2) Either the entity:
    - i. Specifically targets persons physically located in the state for solicitation, or
    - ii. Receives contributions from the state on a repeated and ongoing basis or a substantial basis through its Web site.; or
  - c. (1) The entity solicits contributions through a site that is not interactive, but either specifically invites further offline activity to complete a contribution, or establishes other contacts with that state, such as sending e-mail messages or other communications that promote the Web site; and  
(2) The entity satisfies Principle III(B)(1)(b)(2).
2. For purposes of these Principles, each of the following terms shall have the following meanings:

*Final—Approved by NASCO Board as advisory guidelines, March 14, 2001*

- a. An interactive Web site is a Web site that permits a contributor to make a contribution, or purchase a product in connection with a charitable solicitation, by electronically completing the transaction, such as by submitting credit card information or authorizing an electronic funds transfer. Interactive sites include sites through which a donor may complete a transaction online through any online mechanism processing a financial transaction even if completion requires the use of linked or redirected sites. A Web site is interactive if it has this capacity, regardless of whether donors actually use it.
  - b. To specifically target persons physically located in the state for solicitation means to either (i) include on its Web site an express or implied reference to soliciting contributions from that state; or (ii) to otherwise affirmatively appeal to residents of the state, such as by advertising or sending messages to persons located in the state (electronically or otherwise) when the entity knows or reasonably should know the recipient is physically located in the state. Charities operating on a purely local basis, or within a limited geographic area, do not target states outside their operating area, if their Web site makes clear in context that their fundraising focus is limited to that area even if they receive contributions from outside that area on less than a repeated and ongoing basis or on a substantial basis.
  - c. To receive contributions from the state on a repeated and ongoing basis or a substantial basis means receiving contributions within the entity's fiscal year, or relevant portion of a fiscal year, that are of sufficient volume to establish the regular or significant (as opposed to rare, isolated, or insubstantial) nature of those contributions. States should set, and communicate to the regulated entities, numerical levels at which it will regard this criterion as satisfied. Such numerical levels should define "repeated and ongoing" in terms of a number of contributors and "substantial" in terms of a total dollar amount of contributions or percentage of total contributions received by or on behalf of the charity. Meeting any threshold would give rise to a registration requirement but would not limit an enforcement action for deceptive solicitations. For example, a state might explain that an entity receives contributions on a repeated and ongoing basis if it receives at least one hundred online contributions at any time in a year and that it receives substantial contributions if it receives \$25,000, or a stated percentage of its total contributions, in online contributions in a year.
3. An entity that solicits via e-mail into a particular state shall be treated the same as one that solicits via telephone or direct mail, if the soliciting party knew or reasonably should have known that the recipient was a resident of or was physically located in that state.
  4. Questions may arise as to whether individual charities are required to register in a particular state when the operator of a Web site through which contributions for that charity are solicited or received is required to register, but the charity itself would not independently satisfy the criteria of Principle III(B)(1)(b). As to such charities:
    - a. If the law of the state does not universally require the registration of all charities on whose behalf contributions are solicited or received through a commercial fundraiser, commercial co-venturer,

*Final—Approved by NASCO Board as advisory guidelines, March 14, 2001*

or fundraising counsel who is required to register, then states should independently apply the criteria of Principle III(B)(1)(b) to each charity and require registration only by charities that independently meet those tests; but

- b. If the law of the state universally requires registration of all charities under such circumstances, states should consider whether, as a matter of prosecutorial discretion, public policy, and the prioritized use of limited resources, it would take action to enforce registration requirements as to charities who do not independently meet the criteria of Principle III(B)(1)(b); and
  - c. For purposes of this Principle, a charity satisfies the interactivity criterion of Principle III(B)(1)(b)(i) if (i) any Web site through which contributions are solicited or received for that charity satisfies that requirement, and (ii) that Web site is operated by an entity with whom the charity contracts. This paragraph does not define the concept of interactivity, but merely addresses the application of that concept in this specific context.
5. Solicitations for the sale of a product or service that include a representation that some portion of the price shall be devoted to a charitable organization or charitable purpose (often referred to as “commercial coventuring” or “cause marketing”) shall be governed by the same standards as otherwise set out in these Principles governing charitable solicitations. Registration is therefore required in those states that require registration for such activities, by charitable organizations and their internal fundraisers, their external commercial fundraisers as applicable.

### **C. General Exclusions from Registration**

1. Maintaining or operating a Web site that does not contain a solicitation of contributions but merely provides program services via the Internet—such as through a public information Web site—does not, by itself, invoke a registration requirement. This is true even if unsolicited donations are received.
2. Entities that provide solely administrative, supportive or technical services to charities without providing substantive content, or advice concerning substantive content, are not required to register. Such service providers (a) include Internet service providers and entities that do nothing more than process online transactions for a separate firm that operates a Web site or provide similar services, but (b) do not include commercial fundraisers, commercial co-venturers, or fundraising counsel. Administrative, supportive, or technical service providers may be required to register if they do more than simply provide such technical services and actually solicit, promote a Web site or engage in other conduct that requires registration. Compensation for services based on the amount of funds raised may be a strong indication the entity is doing more than simply providing technical services.

### **IV. Principles Related to Minimizing Regulatory Responsibilities for Multi-State Filers**

- A. State charity officials recognize that the burden of compliance by charitable organizations and their agents, professional fundraisers, commercial co-venturers and/or professional fundraising counsel

*Final—Approved by NASCO Board as advisory guidelines, March 14, 2001*

should be kept reasonable in relation to the benefits to the public achieved by registration. The acceptance and use of the Unified Registration Statement for charitable organizations by state charity offices and the development and acceptance of other related projects to create such common forms are strongly encouraged.

- B. State charity officials recognize the power of the Internet to assist in the registration of charitable organizations and their agents. State charity offices are strongly encouraged to publish their registration and reporting forms, their laws and regulations and other related information on the Internet to facilitate registration and reporting by charitable organizations and their agents while assuring proper public accountability by regulated entities.
- C. State charity officials, charitable organizations and their agents, professional fundraisers, commercial co-venturers and/or professional fundraising counsel have a mutual interest in exploring how to develop the information technology infrastructure so that registration and reporting can be accomplished electronically in the future. Collaboration on this project between state charity officials and these entities, where appropriate, will advance the timeframe for establishing electronic filing. This collaboration may include discussion of the types of information that entities soliciting through the Internet should be required to retain, so that these Principles can be applied to a particular Web site. This would include information sufficient to determine, within the scope of the law and relevant donor privacy concerns, whether an entity's ties to a particular state are sufficient to give rise to a registration requirement.
- D. Because disclosure to the public promotes informed giving, charitable organizations are encouraged to satisfy the IRS "widely available" standard by posting, without charge, their current Unified Registration Statement, their last three IRS Forms 990, and their complete IRS Form 1023 or 1024 application and resulting determination letter on their Web pages. Links to other sites that provide such information, including any relevant state agency, or other Web sites, are also encouraged. Such postings, however, do not currently fulfill any applicable registration requirements.

## **Annotations to the Principles**

These annotations, and the appendices that follow, are designed for internal discussions among members of NASCO. They are not designed to become an official part of the Principles, but rather to provide background information concerning choices made in drafting the Principles.

**General Note Regarding Terms:** Throughout these Principles there are references to enforcement actions. These terms are used in a general, rather than a technical sense. References to enforcement actions generally refer to actions relating to deceptive charitable solicitations, which includes any action by which a state seeks to enforce any requirement of law other than a registration requirement alone, whether such action is civil or criminal.

The Principles also use terms such as “deceptive charitable solicitation,” “fraud,” and “misuse of charitable funds” in similarly broad ways. Such terms are used to describe, in general, the circumstances that might give rise to an enforcement action without being limited to legally precise definitions of such terms.

**“WHEREAS” Clause No. 1:** Although identifying the actual amount of charitable fraud is difficult for many reasons, the Federal Trade Commission estimates that about one percent of giving was either misused or donated to solicitors or charitable organizations employing fraudulent tactics. While one percent of giving is not a substantial percentage of the total giving, converting a percentage into a dollar value highlights the seriousness and extent of the problem.

According to “Giving USA 1998: The Annual Report on Philanthropy for the Year 1997” published by the AAFRC Trust for Philanthropy, total giving in 1997 exceeded \$143.46 billion. According to the Federal Trade Commission’s estimate, approximately \$1.43 billion of the funds donated were not spent as the donor intended or were gifted to a solicitor or charity utilizing fraudulent solicitations.

An alternative method to determine the baseline amount of fraud and misuse in the charitable sector is to review the number of solicitation fraud and misuse cases brought by state and federal agencies as well as the size of the awards obtained by these agencies. Although identification of all criminal and civil proceedings brought against charitable organizations and solicitors can be used as a guide, the findings do not include non-financial criminal penalties ordered or temporary or permanent bans from soliciting the jurisdiction bringing the action.

In preparation for a 1998 national telemarketing educational effort, a compilation of the number of federal and state actions brought against charitable organizations, fundraisers, and fund-raising counsel for fraudulent acts and the amount of penalties, fines, attorney fees, costs, and restitution awarded was made. Fifteen states and the Federal Trade Commission reported in 1997 seventy cases involving

*Final—Approved by NASCO Board as advisory guidelines, March 14, 2001*

misrepresentation during telephone solicitations for charitable organizations. These 70 cases resulted in awards of over \$26.7 million.

Although the amount of the award is significant standing alone, the number of cases and the cumulative size of the award demonstrates that misrepresentation in solicitation is not an isolated or insignificant issue. Since a substantial portion of the misuse or fraud is not reported, the seventy cases represent only a small percentage of the misuse and fraud.

**I(A):** This Principle addresses the nature of this document as a collaborative product of NASCO. While state laws are similar to each other in many respects, they also vary in significant ways. Each state will, of necessity, need to interpret its own law and develop its own policies to implement its law. These Principles are intended to provide guidance to the states in doing so, but they do not purport to state rules of law of universal application.

The need to provide guidance dictates that these Principles be reasonably detailed, and not merely abstract conceptual statements. They must provide bright lines, where possible, in order to provide clarity, or they will not be useful. The Principles therefore are not primarily intended to state what the law is, but rather to provide guidance as to implementation in a reasonable and consistent manner.

One purpose of these Principles is to discourage the development of the law in ways that would undermine state authority regarding registration and enforcement. Accordingly, the Principles do not always assert the most aggressive possible posture, but rather stop short of doing so in favor of a uniform and coordinated approach. The most likely cause of any developments in the law that harm state interests (actually public interests) would be for states to take unconstitutional positions on this subject. If states assert jurisdiction to require registration under circumstances in which constitutional principles clearly preclude that jurisdiction, then we risk negative court rulings, pre-emptive federal legislation, or both. Court rulings from any state holding that a state lacks jurisdiction under any circumstances would undoubtedly be cited against us, both regarding registration and in enforcement actions, even when the facts and law should support the state position. It is therefore vital that we assess our jurisdictional limits in a careful and principled manner, in order to avoid negative precedents that will be used against all of us, even under different circumstances.

**I(C):** It appears that the costs associated with raising funds over the Internet are less than those involving large direct mail and large telemarketing campaigns. In fact, it is the effect of the Internet on lowering these barriers of entry to reaching a national audience that has raised the fundamental questions concerning registration. Internet fundraising appears to create the opportunity for newer and smaller charities to compete more successfully with more established and larger ones. To the extent that Internet fundraising is less expensive than the more traditional uses of direct mail and telemarketing, more money raised should be available for the charity's program service accomplishments. To the

extent that state charity officials are concerned about fundraising efficiency, the development of the Internet as a fundraising tool appears to be a positive development. While state charity officials "do not desire to discourage or limit the use of the Internet as a forum for fundraising," we are required to fulfill our statutory duty to regulate charitable solicitations within our respective states. This general Principle merely recognizes the potential of Internet fundraising to be a positive development. Simultaneously, it notes the usefulness of the Internet in improving charitable accountability, such as by posting registration materials for the use of the public.

**I(D):** Use of the Internet for charitable solicitations presents very different jurisdictional questions than do traditional methods of solicitation, such as direct mail and telephone solicitations. The importance of jurisdictional concepts to these Principles suggests that we must differentiate our analysis in two ways. First, we must distinguish residents of our states from non-residents. Jurisdictional concerns would not arise as to the former, but may as to the latter. Second, we must distinguish the ability of states to require entities to register from the ability to pursue enforcement actions for substantive violations of our laws. Jurisdictional concerns will sometimes prevent states from requiring non-residents to register, but should not form a bar to substantive enforcement actions. The specific Principles that follow, in sections II and III, further explore both of these two lines of cleavage in our analysis.

Jurisdictional concerns relating to registrations will be somewhat different than other jurisdictional issues arising in cyberspace as to other kinds of activities. This is because the laws of most states facially impose a registration requirement based upon a unilateral action, rather than a completed two-party transaction. In other words, our laws require registration when somebody *asks* for money, whether or not anybody gives them any. The unilateral nature of this standard means that in attempting to enforce registration we will generally lack the factual development of specific contacts with our states that we would expect to find if a completed transaction were involved. A factual determination of whether or not a contribution has been made and of what subsequent actions by the entity to target the donor in the state in question may be necessary for the state in question to assert personal jurisdiction over that entity.

Please note, this analysis should guide state charity officials' registration and enforcement actions only to the extent that the entity's only contact with the state in question is via the Internet. Where non-Internet solicitations alone trigger registration and reporting requirements, these Principles do not have any impact. (See Principle III(B)(1)(a).)

The practical result of these Principles will be to relieve the entities of the need to register with every state charity office simply for the act of creating a Web site that asks for a contribution. State charity offices will also be relieved of the administrative burden of seeking to register numerous entities who have few, if any, actual contacts with their state.

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**II:** This Principle is essentially the counterpoint to the discussion note above, under Principle I(D). Jurisdictional problems, if any, and actions regarding solicitation fraud should be substantially less serious than those involving registration requirements. The Principles, therefore, draw a bright line regarding enforcement actions against fraudulent solicitations, asserting that we do not expect jurisdictional concerns to be an obstacle in this area.

The authority of a state to bring an enforcement action for solicitation fraud is based upon the ability to exercise specific jurisdiction over the violating party. The law is well settled that a state may exercise specific jurisdiction over the defendant if the cause of action arises from or is directly related to the defendant's contacts with a state. If a donor has been misled by an entity's fraudulent Internet claims and makes a donation to the organization, the state in which the donor is located could exercise specific jurisdiction over the entity because the cause of action arose from the entity's contact with the state. As a result, the state could bring an enforcement action for solicitation fraud, regardless of whether the solicitation is by mail, telephone, or over the Internet.

**III(A)(2):** This Principle asserts that an entity is domiciled within a state only if its principal place of business is located there. It does not define domicile in terms of the state of incorporation, or similar action, as this may lead to anomalous results in some instances.

This Principle should also be read in conjunction with other Principles under which jurisdiction could be asserted over entities that are not domiciled within a state. For example, a physical presence within a state, such as a branch office or regional office, would support jurisdiction even if that is not defined as a domicile. Similarly, non-Internet contacts with a state, such as direct mail or telemarketing campaigns, can also provide a basis for jurisdiction even in the absence of physical presence. Jurisdiction in such instances is best analyzed as an assertion of jurisdiction over a non-resident entity, and this Principle should not be read as limiting that concept.

**III(B)(1)(a).** Contacts with the state that are not based on the Internet include entities that have a physical presence (but less than a domicile) in a state in which they solicit. They also include contacts for which a physical presence is not required, such as direct mail, telemarketing campaigns, advertising in local media, or similar activities. Such circumstances are familiar and the approaches of the states are well established and legally recognized. These Principles do not alter them. Entities with such contacts with the state are required to register without regard to what issues may or may not arise if their only contacts were through the Internet.

**III(B)(1)(b):** This Principle describes when online solicitations by non-resident entities using an interactive Web site will trigger a registration requirement. It sets forth the circumstances that the drafters believe will establish both a sound policy basis for requiring registration and sufficient contacts

with the forum state upon which to base a claim of jurisdiction to enforce a registration requirement when non-Internet contacts are lacking.

Principle III(B)(1)(b) states a general rule, which must be construed in light of the definitions contained in Principle III(B)(2). The Principle explains that there are two requirements that must be met before the use of a Web site, by itself, will constitute sufficient contacts to confer personal jurisdiction. First, the Web site must be interactive, a term described more fully in Principle III(B)(2)(a). Second, there must be a substantial link between the solicitation and the forum state, a requirement that can be satisfied in either of two ways. The entity might target the state for its solicitations, as described in Principle III(B)(2)(b). Alternatively, the entity might receive contributions from the state on a repeated and ongoing or substantial basis through its Web site, as described in Principle III(B)(2)(c). It is important to note that solicitations using an interactive Web site will require registration if *either* subsection (b)(2)(i) or (b)(2)(ii) is satisfied; meeting the terms of both is not necessary.

**III(B)(1)(c):** This Principle describes circumstances under which the use of a Web site that contains a solicitation, but which is not interactive (as described in Principle III(B)(2)(a)) will nevertheless invoke a registration requirement. Because the contribution cannot be entirely completed online using such a site, additional ties to the state are necessary in order to support a claim of jurisdiction.

One way of satisfying that additional tie to the state is for the site to invite specific further offline activity to complete a contribution, such as directing the donor to a telephone number or providing an address to which a contribution could be mailed. Alternatively, uses of other means of communication to direct individuals to its Web site will subject the entity to the registration requirements of the states into which the non-Internet communication is directed, if the Web site contains a request for contributions. These additional steps may provide sufficient additional facts upon which to base jurisdiction when the site is not interactive. It is still necessary, as with interactive sites, to establish a practical link to the forum state, by either targeting persons located there or by receiving repeated and ongoing or substantial contributions from that state, as described above.

**III(B)(2):** This Principle contains definitions of terms used in Principle III(B)(1)(b). The definitions are set out in a separate Principle for purposes of clarity and to explain in greater detail the concepts stated in Principle III(B)(1)(b).

**III(B)(2)(a):** The term “interactive” means that the entire transaction is completed online, i.e., the request for donations is posted on the entity’s Web site and the donor can make the contribution by providing his or her credit card information. It should be noted that under Principle III(B)(1)(c) a Web site might invoke a registration requirement even if it is not interactive as described in this Principle. While it is anticipated that it will be easier to establish a basis for jurisdiction when the site is fully

*Final—Approved by NASCO Board as advisory guidelines, March 14, 2001*

interactive, these Principles should not be construed as requiring interactivity under all circumstances. See Principle III(B)(1)(c).

From a practical standpoint, an entity, which provides on its purely passive Web site only the address to which donations may be sent, will, within a relatively short period of time, be subject to the registration requirements of a state under Principle III(B)(1)(a). If a donor sends a contribution as a result of visiting the entity's non-interactive Web site, the entity will likely include the donor in its donor list and will solicit contributions of this individual via direct mail, telephone, electronic mail, or other communication. This subsequent communication would be sufficient to trigger registration requirements under Principle III(B)(1)(a). Additionally, even if the absence of an interactive Web site, entities whose non-Internet activities are sufficient to invoke state jurisdiction will be required to register pursuant to Principle III(B)(1)(a) or Principle III(B)(1)(c).

**III(B)(2)(b):** There are circumstances in which an entity can be required to register based on a solicitation contained on a Web site even if no contributions are actually received. This subsection explains that a state can be targeted for a solicitation either based upon an express or implied solicitation of contributions from the state, or by making an affirmative appeal to persons located in the state. In the case of an express reference to a state, the application of this Principle is clear. An implication that the solicitation is targeted to the persons located in a particular state would require a full examination of the entire context of the Web site, so that this Principle would apply only if persons located within the state are clearly targeted.

It is also possible that some charities may limit their solicitation, either expressly or impliedly, to a limited geographic area such as their local community. These Principles are not intended to assert that local charities must register in every jurisdiction merely because their Web site can be viewed outside their local area. The Web site might include an express statement to this effect, or it might simply be clear from its context. Where it is clear that the geographic scope of a solicitation is limited, then registration would be required only in the areas solicited. This is true even if the entity receives contributions from outside that area, unless those contributions become repeated and ongoing or substantial within the meaning of Principle III(B)(1)(b).

This approach has the advantage of avoiding any potential issues regarding compelled speech that might arise if the Principles were framed to include an express exclusion from registration for local charities that included specified disclaimer language. The Principle therefore directs attention to the substance of the solicitation and to the question of whether a particular state is targeted.

One of the examples offered as to how an entity might affirmatively appeal to persons located in the state involves sending messages either by e-mail or postal mail to people that the entity knows or should know are physically within the state. This "knew or should have known" standard is important to

understanding this Principle. Particularly where e-mail messages are concerned, solicitors may deny any knowledge of the geographic location of the recipient, because e-mail addresses do not normally include geographic information. It is possible, however, that the solicitor might know where the recipient lives based on prior conduct or capture of information through the use of technology. For example, if the recipient has made an online contribution in the past, the entity will have received his or her billing address as part of the credit card transaction. An entity that subsequently sends e-mail messages to a past credit card contributor can therefore be regarded as knowing where that contributor resides.

Additionally, it is possible that an entity may satisfy this “knew or should have known” standard based upon other information tracked through the Web site, such as Internet Protocol addresses or cross-references to other databases.

**III(B)(2)(c):** This Principle reflects two concerns: (1) the need to establish jurisdictional facts necessary to support any attempt to enforce a registration requirement; and (2) the need to draw a bright line so that these Principles can be readily applied by both charities, professional solicitors, and fundraising counsel and state charity officials.

One obvious method of establishing jurisdictional ties between the entity and the forum state would be to establish that the entity has accepted contributions from residents of the state or persons physically located there. As the absolute constitutional minimum level of contributions necessary in order to do so may vary on a case-by-case basis and has not yet been precisely defined there are sound policy reasons not to require registration based upon the most fleeting of contacts. States may vary as to the numerical levels that they believe will satisfy these interests, and so the Principles stop short of stating numbers, except by way of example. If these Principles are to be useful, however, the states must draw a bright line, even if that line is somewhat arbitrary and even if it is not the same in all states. It is therefore recommended that states recognize the necessity of quantifying this concept and work toward consistent approaches to this issue. The drafters of these Principles were comfortable with the numeric levels recited as examples, but recognize that those levels may not always reflect the established constitutional minimum and that opinions may vary in establishing a practical and useful bright line for the benefit of all. Regarding the option of defining “substantial” contributions as a percentage of total contributions received, the drafters did not suggest a specific percentage because the relevant percentage may vary depending on the size of the state involved. For example, a state might look to whether a disproportionate total of the contributions comes from a particular state relative to that state’s proportionate share of the national population. This may not be the only basis upon which to set such a percentage, however.

It is again important to emphasize the distinction drawn in these Principles between registration and enforcement. Principle II asserts blanket jurisdiction to bring any action necessary to remedy a

fraudulent solicitation. At the same time, more extensive factual connections to the state will be necessary in order to enforce registration requirements.

**III(B)(3):** The major limitation upon our ability to equate e-mail with telephone and direct mail solicitations is that, unlike those media, e-mail addresses do not generally include geographic components. For this reason, the Principle adopts a “knew or reasonably should have known” standard for assessing whether the solicitor has knowingly engaged in solicitation within the state.

There are several factors that state charity officials may need to consider as to whether an entity “knew or reasonably should have known” the geographic location of the recipient of the e-mail. If the entity accepts on-line processing of a donation by credit card, the entity will collect the billing address information as an essential part of processing the credit card payment of the charitable contribution. The entity will certainly collect mailing information if it is sending the donor a premium in recognition for a contribution, or a paper receipt for tax purposes. The entity may also collect mailing information and telephone numbers as part of a “guest book” sign-in procedure or through a “membership” application procedure. States may also consider the entity’s use of technology (such as user logs, placement and tracking of cookies, tracking Internet Protocol addresses, and use of external databases to create user profiles) to collect information about individuals who visit a Web site when determining whether an entity “knew or should have known” the location of the sender of the e-mail.

**III(B)(4):** It is possible that some fundraisers might be required to register pursuant to Principle III(B)(1)(b), but some of the charities with which it contracts might not separately be required to register under that Principle. The laws of many states require that all charities register when the commercial fundraisers, commercial co-venturers, or fundraising counsel with which they contract are required to register. In other states, the registration requirements may operate independently of each other. In either case, this Principle reflects the observation that in the case of Web sites through which contributions are solicited for large numbers of charities, a registration requirement imposed against all such charities might have the effect of inundating the registration office with filings from many charities that in fact have little contact with that state. At the same time, many otherwise local or regional charities would face registration requirements in numerous states from which they receive little or no contributions based upon their participation in a Web site that may be required to register broadly. This Principle accordingly recognizes the public interest in recognizing the limited contacts that many such charities may have with individual states. States may reasonably decline to assert the most aggressive possible posture with regard to charities whose individual contacts with the state are minimal, but who appear on a broader-based Web site. This may take the form of a legal interpretation or the exercise of prosecutorial discretion, depending upon the laws of the particular state.

*Final—Approved by NASCO Board as advisory guidelines, March 14, 2001*

Principle III(B)(5)(c) should not be construed as stating, or elaborating upon, the definition of interactivity. It merely describes the application of that concept in this context, and does not necessarily have any application outside this context.

**III(C)(2):** This Principle recognizes that the maintenance of a Web site often involves the services of entities that do not themselves actually engage in charitable solicitations or otherwise engage in activities requiring registration. The Principle also recognizes that some states require registrations by entities that others do not. For example, some states require fundraising counsel to register, while others do not. The determination of whether an entity must register therefore depends, so far as this Principle is concerned, upon an individual analysis of the work performed by a particular entity and whether that falls within a registration requirement under the law of a particular state.

An example would be an Internet service provider (ISP), which would not be required to register merely because the Web site appears on its equipment. This would not be true if the ISP actually designed the content of the site, such that it would act as a commercial fundraiser or fundraising counsel (in those states that require fundraising counsel to register). If, however, the ISP takes affirmative steps to drive traffic to a charity's site then such actions may, depending upon all the facts and circumstances, bring that ISP within the definition of a commercial fundraiser. One fact to look to in this regard is whether the ISP is compensated based upon the amount of funds raised.

Similarly, an entity that merely provided technical services in processing online transactions would not be required to register, much as a bank that processes a check received in a direct mail campaign would not be required to register, unless that entity performed additional functions that bring it within a state's registration requirement. Again, this may be particularly true if the service provider is compensated based upon the amount of funds raised.

**APPENDIX**  
**A QUESTION-AND-ANSWER WORKSHEET**  
**FOR REGISTRATION DETERMINATIONS**

Registration offices may find it helpful to have the concepts illustrated in the Principles translated into a question-and-answer format that they can use to determine whether a particular entity is required to register. The following questions are therefore designed to guide a registration official through the thought process of deciding whether a particular entity must register.

The questions below are based upon the law of the State of Washington. Some of them may require modification in order to comport with the laws of other states, and are offered as an example of a type of approach that might be helpful.

- **Determining whether a registration requirement is imposed by the charitable solicitations act**

1. Does the entity's Web site request a contribution (including an offer to sell any property, service, or other thing) in which
  - a. an appeal is made to any charitable purpose, or
  - b. the name of any charitable organization is used, or
  - c. any statement is made that implies that the whole or any part of the proceeds will be applied toward any charitable purpose or donated to any charitable organization?

If the answer to question 1 is "no" then the entity is not engaged in a charitable solicitation and the inquiry ends. If the answer to question 1 is "yes" (as to any of the subparts) then a charitable solicitation is taking place and we must proceed to question 2.

2. Is the entity exempt from registration for any established reason (e.g., a volunteer operation raising less than \$25,000 per year, a religious or political organization, etc.)?

If the answer to question 2 is "yes" then the organization is not required to register and the inquiry ends. If the answer to question (2) is "no" then continue to question 3.

- **Determining whether personal jurisdiction is an issue**

3. Is the entity domiciled in the state?

An entity is domiciled in the state if its principle place of business is in the state.

If the answer to question 3 is "yes" then the entity is required to register. If the answer to question "3" is "no" then we must determine whether the entity has sufficient minimum contacts with the state to require registration, and must proceed to question 4.

- **Determining whether the state can assert personal jurisdiction over an out-of-state entity**

- **Are the entity’s non-Internet ties sufficient to confer jurisdiction?**

4. In addition to any solicitations over the Internet, does the entity plan to engage (or has it engaged within the period covered by the registration) in any solicitations in the state using any of the following methods:

- direct mail or telephone?
- purchasing advertising in any local newspaper or on any TV station or radio station in the state?
- Soliciting funds in person, such as through door-to-door solicitations or by placing donation boxes or vending machines within the state, or through other activities that are physically present within the state?

If the answer to question 4 is “yes,” as to any of the listed actions, then the entity is required to register. If the answer is “no” then continue to question 5.

- **Is the entity’s Web Site active or passive?**

- **Treatment of active Web Sites**

5. Does the entity’s Web site permit it to accept contributions, or sell a product involving an appeal to charity, directly over the Internet, such as by inputting credit card information?

If the answer to this question is “yes” then continue to question 6. If the answer to this question is “no” then go to question 8.

6. Within the past year, has the entity accepted contributions in the amount of at least [insert dollar amount] or accepted at least [insert number of contributions] contributions in any amount from persons physically located in the state or has the total percentage of contributions received from persons physically located in the state exceed [insert percentage of contributions] of the entity’s total contributions?

If the answer to this question is “yes” then the entity must register. If the answer to this question is “no” or “we don’t know,” then go to question 7.

7. Does the entity specifically target persons located within the state for its solicitations?

Persons located in a specific state may be targeted if the Web site expressly or impliedly requests contributions from residents of the state, or if the entity otherwise affirmatively appeals to residents of the state (such as through advertising or other means). **Please note:** If the Web site clearly indicates that its

*Final—Approved by NASCO Board as advisory guidelines, March 14, 2001*

solicitation is limited to a geographic area that does not include the state, then the Web site alone would not give rise to a registration requirement even if the site would otherwise seem to be required to register.

If the answer to this question is “yes” then the entity must register. If the answer is “no” then the entity is not required to register.

- **Treatment of passive and “gray area” Web Sites**

8. Does the entity solicit through a Web site that is not interactive, but specifically invite further offline activity to complete a contribution ?

If the answer to question 8 is “yes” then go to question 10. If the answer to question 8 is “no” then go to question 9.

9. Does the entity do anything to target its message specifically to residents of the state, such as by advertising, taking steps to drive traffic to its Web site, or otherwise taking steps to direct its message specifically to persons physically located in the state?

If the answer to question 9 is “yes” then go to question 10. If the answer to question 8 is “no” then the entity is not required to register.

10. Within the past year, has the entity accepted contributions in the amount of at least [insert dollar amount] or accepted at least [insert number of contributions] contributions in any amount from persons physically located in the state or has the total percentage of contributions received from persons physically located in the state exceed [insert percentage of contributions] of the entities total contributions?

If the answer to this question is “yes” then the entity must register. If the answer to this question is “no” or “we don’t know, ” then go to question 11.

11. Does the entity specifically target persons located within the state for its solicitations?

Persons located in a specific state may be targeted if the Web site expressly or impliedly requests contributions from residents of the state, or if the entity otherwise affirmatively appeals to residents of the state (such as through advertising or other means). **Please note:** If the Web site clearly indicates that its solicitation is limited to a geographic area that does not include the state, then the Web site alone would not give rise to a registration requirement even if the site would otherwise seem to be required to register.

If the answer to this question is “yes” then the entity must register. If the answer is “no” then the entity is not required to register.

If, after responding to all of these questions, no result has been encountered requiring the entity to register, it need not register.

**National Association of State Charity Officials  
Unified Electronic Registration System  
Overview of the Singlepoint Website Proposal  
Available Upon Request**

The National Association of State Charity Officials (NASCO), in conjunction with the Urban Institute and the Charities Regulation and Oversight Project of the National State Attorneys General Program at Columbia Law School, proposes to develop a unified electronic registration system that will allow nonprofit organizations and their professional fundraisers to comply with every state's registration requirements at one online location (Singlepoint Website). This Singlepoint Website will eliminate many of the costly inefficiencies of complying with the disparate rules of the forty states that currently require charities registration—a process that now requires a multiplicity of forms, duplication of data entry, a mix of electronic and paper submissions, and confusion (or varying requirements) about what attachments are required by which state in order to register and meet annual renewal requirements.

On NASCO's Singlepoint Website, a charity or its professional fundraiser will select each of the states in which they need to register and then complete the necessary registration requirements for those states efficiently and without duplication. A charity may even elect to electronically file its required annual federal 990 informational return at the same time on the Singlepoint Website for maximum efficiency and cost savings in meeting annual state and federal government reporting requirements.

**Practical Benefits: Common Sense for Twenty-First Century Public Policy**

1. It costs nonprofit organizations both time and money to register. A good deal of the cost arises from the inefficiencies created by forty unique state registration systems. As a result, nonprofits must either pay someone to navigate the disparate systems, or devote internal staff time to it. The development of this single, easy-to-use unified state registration website will save nonprofit organizations significant time and charitable dollars.
2. The Singlepoint Website will enable the public to make more informed choices about their charitable giving by providing quick and easy access, for the first time, to the wealth of public information available in every state's nonprofit registration filings through a searchable feature on the home page of the Website.
3. More timely and effective policy making for the nonprofit sector will be facilitated by the increased accessibility to public registration information – presently warehoused in paper files or unique state-specific databases – that academic institutions can easily access and reference in their analysis of emerging issues and trends in the sector.
4. Finally, Singlepoint electronic registration will enable state charities officials to direct their increasingly limited resources away from the registration process and towards their core purpose of preventing fraud and misuse of charitable funds.

### **Getting It Started: The Singlepoint Pilot Project**

Eight of the forty states that register nonprofit organizations plan to participate in a three-year pilot project to build and launch the Singlepoint Website: Alaska, Colorado, Connecticut, Hawaii, Massachusetts, Mississippi, Missouri, and New Hampshire (the pilot states). The Website will be launched during the first year with charities registration and renewals enabled for five of the eight pilot states. Registration for the other three pilot states will be launched in the second year. Fundraising professional registration capability will be completed in the second year and phased in for the pilot states during the second and third years of the project. Public access search features will be completed and launched in the second year, and the “back-page” regulators-only charity analysis tools will be completed and implemented in the final year of the pilot project. Throughout all phases, NASCO, the Urban Institute, and Columbia Law School’s Charities Oversight and Regulation Project will work with the states to coordinate strategic planning and implementation, harmonize forms and develop necessary interface for payments and validation of signatures, develop outreach and education for the public, and develop the plan for securing the participation of the remaining thirty-two states on the Singlepoint Website.

### **Overcoming the Challenge of Funding in a Recession Economy**

NASCO anticipates that the cost of the Pilot Project to build and launch the Singlepoint Website will be approximately \$3 million. This important public policy initiative will significantly advance the necessary interaction of nonprofits with state governments by bringing the functionality of that interaction into correspondence with the electronic management, fundraising, and communication tools that are now commonplace in the nonprofit and fundraising sectors. The Singlepoint Website represents basic common sense in cost savings and efficient use of resources, for charities and for state governments.

Unfortunately, as a result of the severe economic pressures of the last decade, state governments do not have sufficient resources to undertake the upgrades and new systems necessary to implement electronic registration, and no resources at all to coordinate with other states to implement the far more practical unified electronic registration system proposed by NASCO and its partners as the Singlepoint Website.

To overcome this handicap, NASCO and its partners are reaching out to the nonprofit sector to join with us to implement these common sense efficiencies that will significantly benefit the sector and the public. The financial support of the nonprofit sector for the Singlepoint Pilot Project will enable NASCO and its partners to build a sound infrastructure and launch a unified electronic charities reporting system that will allow ease of use for charities, their professional fundraisers, and state governments, and for the first time, will make possible efficient public access to the wealth of valuable information collected by the states under state registration laws.

**PURPOSE OF THE SINGLEPOINT WEBSITE**  
**Correcting Inefficiencies That Burden Charities and State Governments**

Rapidly changing technology and an increase in interstate solicitation by nonprofit organizations has rendered the current system of state charities registration inefficient. In nearly every state, the Attorney General or Secretary of State<sup>1</sup> has broad general powers to enforce laws governing charitable solicitations and the administration of charitable assets.<sup>2</sup> Forty states mandate registration by nonprofit organizations and fundraising professionals who solicit contributions from the public and five of those states require some form of electronic filing to fulfill some or all of the registration requirements.<sup>3</sup> Most of the forty states require financial reporting by registered nonprofit organizations. Some states require registration of charitable trusts, and a few require registration by all nonprofits doing business within the state.

Nonprofits are confronted with unique requirements in each of the forty states. While the information sought across the states is similar, no two states' requirements are identical. Most accept the Uniform Registration Statement, but there exists no uniform renewal form, and the uniform paper statement is not accepted by the electronic filing states. Adding to the inefficiency and duplicative nature of these filings, no mechanism exists for states to easily share their registration information. As a result, there is a great deal of data duplication. Further, there is no mechanism for matching the data collected by state charity offices with the IRS Form 990s to eliminate duplication of common data entry for charities and to enable state governments to identify discrepancies that often signal fraudulent activity.<sup>4</sup> These inefficiencies will only increase as technology continues to change. The proposed Singlepoint Website will alleviate many of those burdens.

Singlepoint unified registration will save charities measurable time and charitable dollars. For example, one of the widely-used attorneys assisting nonprofits with registration charges a flat rate of \$7500 to register a nonprofit in all forty states,<sup>5</sup> in addition to each state's registration fee. A large nonprofit, Independent Sector, spends \$8,250 a year to have a law firm handle state registrations, plus an additional \$4,325 in fees, and about 16 staff hours annually supporting this process. The Land Trust Alliance spends \$5,200 per year for basic services, but they estimate their staff time associated with the process to be about 200 hours per year, applied to a variety of tasks: development, accounting, human resources, and senior staff time (check requests, signatures, follow-up, etc.). These costs will only increase as states adopt individual electronic filing systems. Nonprofits that register in multiple states, and their professional advisors, are currently able to achieve some efficiency from uniform statements. That efficiency does not

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<sup>1</sup> In eighteen of the forty states that have registration laws, a second agency, typically the Secretary of State, is responsible for registration and reporting. In those states, the registrar agency typically has legislative authority to initiate administrative enforcement actions for violations of charitable registration laws.

<sup>2</sup> The National Conference of Commissioners on Uniform State Laws' Model Protection of Charitable Assets Act states that the Attorney General has a broad duty to represent the public interest in the protection of charitable assets.

<sup>3</sup> Hawaii, Colorado, Michigan, New Mexico, and Ohio.

<sup>4</sup> In future development, NASCO hopes to include on its Single-Point Website an interface with IRS 990s and other publicly available data from IRS.

<sup>5</sup> Karl Emerson, *of counsel* at Montgomery McCracken Walker & Rhoads LLP.

carry over to electronic filing, however, where each website requires that information be uniquely submitted.

### **Effects of Growth and Innovation in the Sector**

As the nonprofit sector and forms of charitable solicitation continue to rapidly expand, inefficiencies resulting from disunity in state registration systems will only increase. Charitable giving by individuals, corporations and foundations in 2011 was estimated at \$298 billion, an increase of 4% over 2010.<sup>6</sup> By 2010, charitable organizations recognized as exempt under I.R.C. § 501(c)(3) had annual revenues of \$1.51 trillion and assets of \$2.71 trillion.<sup>7</sup> Charitable organizations are expected to control an additional \$2 to \$3 trillion in charitable assets by the year 2020.<sup>8</sup> In 2010, there were more than 1.5 million tax-exempt organizations in the United States, more than 950,000 of which are public charities or private foundations. As of 2007, nonprofit organizations employed 8.7 million workers, or 5.9 percent of all workers.<sup>9</sup> In 2010, nonprofits accounted for 9.2% of all wages and salaries paid in the United States.<sup>10</sup> In 2008, 26.8 percent of Americans volunteered their time to or through a nonprofit organization at a rate of 17 million volunteers per day; this represents a \$280 billion contribution at average wages.<sup>11</sup>

Online solicitations and social media are rapidly changing how charities solicit donations. Online giving reportedly grew by 35% in 2010, and represented nearly 8% of all charitable giving.<sup>12</sup> While nearly all nonprofit organizations have websites and solicit donations on those websites, marketing and fundraising through social media over the past four years has become mainstream and continues to increase in sophistication in organizations of all sizes.<sup>13</sup> At least 27 organizations raised more than \$100,000 on Facebook in 2010 and an increasing number of organizations are raising substantial funds on house networks developed by the organization.<sup>14</sup> Disasters such as the earthquake in Haiti and Hurricane Katrina generated millions of dollars in high-volume, “instant” donations through both mobile phones and social networks.

These new solicitation methods, including one-click donation, have made it easier for nonprofits to reach larger groups of donors and raise more money for their causes, because online fundraising is not state-specific, and it allows nonprofit organizations greater flexibility and greater reach in attracting donors. Predictably, this newfound accessibility and immediacy

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<sup>6</sup> Giving USA 2012: *The Annual Report on Philanthropy*. (GivingUSA Foundation).

<sup>7</sup> “*The Nonprofit Sector in Brief*” Urban Institute, National Center for Charitable Statistics.

<sup>8</sup> Havens and Scherish, *Millionaires and the Millennium: New Estimates of the Forthcoming Wealth Transfer and the Prospects for a Golden Age of Philanthropy*, Boston College Social Welfare Research Institute, October 1999, pp.17-19.

<sup>9</sup> “*Wages in the Nonprofit Sector: Management, Professional and Administrative Support Occupations*” Bureau of Labor Statistics, U.S. Department of Labor (2009).

<sup>10</sup> “*The Nonprofit Sector in Brief*” Urban Institute, National Center for Charitable Statistics.

<sup>11</sup> *Id.*

<sup>12</sup> “*Online Giving Up Significantly in 2010*” Philanthropy News Digest, The Foundation Center, February 20, 2011, citing *Blackbaud Press Release 2/15/11*.

<sup>13</sup> *2011 Nonprofit Social Network Benchmark Report*, Nonprofit Technology Network – Common Knowledge – Blackbaud, [www.NonprofitSocialNetworkSurvey.com](http://www.NonprofitSocialNetworkSurvey.com) p. 3; *2012 Nonprofit Social Network Benchmark Report*, Nonprofit Technology Network – Common Knowledge – Blackbaud, [www.NonprofitSocialNetworkSurvey.com](http://www.NonprofitSocialNetworkSurvey.com) pp. 12, 15, 26, 27.

<sup>14</sup> *Id.* *2011 Report*, p. 3.; *2012 Report*, pp. 22, 33.

provides heightened opportunities for fraud. The FBI reported that more than 2,000 Internet sites soliciting relief for Hurricane Katrina victims were fraudulent.<sup>15</sup> State regulators cannot respond quickly to these threats because paper-based and disparate electronic state registration systems prevent regulators from keeping pace with these technological advancements.

Estimates of the amount of fraud and personal enrichment in the sector range from 6 to 13 percent of the total amount of charitable donations each year. The Association of Certified Fraud Examiners places the costs of fraud to nonprofit organizations in the billions of dollars.<sup>16</sup> Obviously, state charities regulators have their hands full. While the nonprofit sector has always attracted many public-minded individuals, it simultaneously attracts a small minority who abuse nonprofits for personal gain. Unfortunately, when their misdeeds come to light, this small minority has a disproportionate impact on public perceptions of the whole nonprofit sector.

### **The Public Benefits of Efficient State Registrations**

State charity officials represent the front-line defense against these abuses and the harm they cause to the reputation of the sector. Over the past ten years, charities officials have been responsible for stopping hundreds of cases of fraud and misappropriation of funds. Some of these efforts occur in the public eye, but officials also regularly work behind the scenes to educate boards about their duties and to ensure that fundamentally well-meaning organizations are preserved. Along with the IRS and investigative journalists, state enforcement officials are necessary to ensuring a sector that acts reliably in the public interest.

The first and primary resource for identifying possible fraud is the analysis of data contained in – or absent from – state nonprofit organizations filings. The data collected under state registration laws provides charity regulators with information about who is soliciting in their states, how much money is being raised and how those funds are being used and overseen. State charity and law enforcement officials use that information to identify potential problems and develop hundreds of cases each year addressing legal violations such as excess compensation, failure to use assets for charitable purposes, improper self-dealing, mismanagement of charitable assets, and outright fraud. But the systems' inefficiencies limit regulators' effectiveness. Enforcement is too often reactive rather than proactive, because the personnel-intensive nature of processing data gathered in accordance with state registration laws limits the resources available for analysis, investigation and enforcement.

Quick electronic access to the collective registration data from all states on NASCO's Singlepoint Website will enable state officials to more rapidly identify and investigate potential problems. In turn, quicker and more efficient investigations will allow state regulators to more promptly issue public warnings and respond to fraudulent solicitations. The Website will provide a vital public resource for information about the identity and credibility of solicitors, their solicitation activities and the nonprofit organizations for which they are soliciting. This quick and easy single access-point for solicitation information will be especially valuable in the

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<sup>15</sup> Greenlee, Fischer, Gordon and Keating, "An Investigation of Fraud in Nonprofit Organizations," Nonprofit and Voluntary Sector Quarterly, September 26, 2007, p. 677.

<sup>16</sup> Strom, "Report Sketches Crime Costing Billions: Theft From Charities," The New York Times, March 29, 2008.

case of disaster relief efforts and solicitations. For the first time, the states will be able to share with the public the vast amount of information – presently warehoused in files or state-specific databases – received through registration systems and enforcement actions. The Website also will enable better use of that information cooperatively among the states to protect the public from fraudulent fundraising and misuse of charitable assets.

In most states, personnel process nonprofit organizations' registration information by hand upon receipt. The resulting data must then be accessed and analyzed manually in order to identify irregularities or to determine whether a complaint from the public is substantiated. States such as Mississippi and New Hampshire, two of the pilot project states, rely on row upon row of filing cabinets for storing registration data submitted by charities. In Maryland, personnel manually process paper application forms for more than 10,000 nonprofit organizations and then scan them as images for electronic storage, without the capability of searching specific data contained in the images.

State regulators tasked with ensuring transparency and accountability in the charitable sector have encountered diminished budgets due to the recent economic downturn. As a result, insufficient funds are available to upgrade information technology necessary to keep pace with changing nonprofit practice and fundraising. At the same time budget cuts have resulted in a reduction in the number of personnel devoted to charities regulation and protection. The reduction in essential tools and personnel places at risk the donations made to nonprofit organizations by generous citizens.

NASCO's Singlepoint Website will exponentially expand existing regulatory resources by consolidating all of the information gathered by states, significantly enhancing states' ability to identify, investigate and, when necessary, take action to stop fraudulent fundraising, self-dealing and waste of charitable assets. Meeting state registration and annual filing requirements will cease to be an inefficient drain on resources for charities, and the public will have unprecedented access to information about charitable solicitation campaigns and judgments obtained by the states for fraudulent activity.

### **THREE MAJOR COMPONENTS OF THE SINGLEPOINT WEBSITE**

1. **The Registration Website**: This innovation will provide nonprofit organizations and professional fundraisers with an easy-to-use system for meeting all of their state filing requirements. Professional fundraisers will be able to register events and campaigns in multiple states. Duplication of data entry will be eliminated, as well as the need to research what forms or supplemental documents are required in each state. The system will prompt the submission of all required information for the states identified by the registrant at the beginning of the process.

Most states require the IRS Form 990 as part of registration or annual filing. NASCO's Singlepoint Website will integrate with the Urban Institute's existing Form 990 Online so that organizations can complete the Form 990 and the system will automatically load information from the Form 990 into the state forms, and/or submit the complete 990 if required as part of state filing requirements.

**2. Public Website:** State registration materials and financial reports are public records in every state. Yet only a few of the forty states that have registration laws currently provide easy access to this information online and even then, the information is only available through individual state-specific websites. For the first time, members of the public will have easy access to the collective wealth of information held by the states about nonprofit organizations and professional fundraisers at this single hub.

This vital component of NASCO's Singlepoint Website represents a new and important benefit to the public not only by providing information about nonprofit organizations soliciting donations and providing services throughout the country – information that is not available on other websites such as Guidestar and Charity Navigator – but by offering extraordinary transparency and accountability to an important government function; regulation of charitable activity and charitable assets. Researchers and other approved users may be able to download data for academic, analytical and policy assessment purposes that will serve the public interest.

**3. Registration Manager and Analysis Tools for State Charity Officials:** The third component of NASCO's Singlepoint Website will include simple tools to identify in registrations outliers that will help to catch organizations that fail to file or file fraudulently. In addition, state-of-the-art analytical and comparative programs will be constructed to analyze unusual patterns in registration and identify potential fraudulent activity. These tools will be available exclusively to State officials, and will significantly enhance their ability to protect the public from fundraising fraud and loss of charitable assets.

### **NASCO AND ITS PARTNERS IN THE SINGLEPOINT PILOT PROJECT**

**NASCO** is a national coalition of all state regulators involved in registration and enforcement of charities and protection of charitable assets, including Attorneys General from all states, and Secretaries of State or Commissioners for other State agencies that manage registration functions in accordance with the laws of the eighteen states for which the Attorney General is not responsible for registration. NASCO is in a unique position to guide the multistate effort to provide a solution to the inefficiencies that plague nonprofits in meeting charities registration laws and handicap the states in carrying the duty to the public to prevent fraud and protect charitable assets. *See nasconet.org.*

**The Urban Institute**, through its Center for Nonprofits and Philanthropy and National Center for Charitable Statistics, will design and build the Singlepoint system. The Urban Institute is the perfect partner for NASCO for the Singlepoint Website because Urban has already successfully implemented electronic registration filings in Hawaii, Michigan and other states. In addition, the Urban Institute, working with the Internal Revenue Service, has developed an electronic platform where charities can file their annual Form 990 informational return. That platform will be interfaced with the Singlepoint Website so that those charities that file their 990 electronically can, at the same time, complete their state registrations and renewals without reentering data included on the 990, and the system will also automatically attach the completed Form 990 to state registrations (required by most states). The Urban Institute's

development of the Singlepoint Website with NASCO corresponds with its objective to save government and communities time and money through research on effective and efficient programs as part of its mission to foster sound public policy and effective government. *See* <http://www.urban.org/center/cnp/index.cfm>.

**The Charities Regulation and Oversight Project of Columbia Law School's National State Attorneys General Program** (The Charities Project) will assist NASCO with – and provide professional resources for – the significant management, administration, and coordination necessary to successfully implement and maintain this multi-state project that will transform charity registration and regulation in the United States. The Charities Project serves as an important educational resource and clearinghouse of scholarship, information and best practices for State Attorneys General and other state charities regulators in fulfilling their respective duties in the protection of assets held for charitable purposes. The Charities Project also serves as a conduit between state regulators and the nonprofit sector in identifying issues important to the sector and implementing policies to address those issues. The Charities Project and the National Association of Attorneys General for many years have provided professional resources and support to NASCO. The Charities Project's participation in the Singlepoint Website Pilot Project will further that historic and successful partnership by bringing the Project's professional knowledge and experience to development of protocols for the Singlepoint Website and strategic planning for bringing the remaining thirty-two states onto the Singlepoint Website after it is fully launched and operating. *See* [http://www.law.columbia.edu/center\\_program/ag/policy/CharitiesProj/about](http://www.law.columbia.edu/center_program/ag/policy/CharitiesProj/about)

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