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Charitable Solicitations Regulation and the Principles of Regulatory Disclosure

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Abstract: Today, many regulators' operations publish information derived from registration and reporting by charitable organizations and commercial fundraising firms. Similar publication is found in a variety of situations – restaurant sanitation notices and hospital re-infection rates, among many others. Recent scholarship has explored the theory of regulatory disclosure, identifying how required disclosures can influence organizational behavior and potentially improve public welfare. An important feature of this theory is the “action cycle,” in which a requirement to disclose information about a process or product shapes consumers' choices, in turn inducing suppliers to modify their behavior in a desired direction. In this paper, we sketch briefly three widespread approaches that have at different times characterized the regulators' efforts, describe some of the inherent difficulties that regulators, whether independent or governmental, will encounter in connection with charitable activities, and explore the potential for constraining or eliminating abusive practices by required public disclosure of related information.

Keywords: charitable solicitations, state regulation (US), charitable organizations, fundraising

Introduction: Fundraising for America's Nonprofit Organizations

In the United States, charitable contributions provide are a significant contribution to nonprofit organizations' revenues. In 2014, individual donations to nonprofits amounted to an estimated \$259 billion. When bequests and grants are included, the total comes to \$358 billion (Giving USA Foundation 2015). Although the proportion

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of funding from individual donations certainly varies by agency size and field of service, charitable giving is an often indispensable component in the patchwork quilt that is a nonprofit's budget. From the recipient organization's point of view, the money itself, in whatever amount, is (obviously) important – the proceeds of fundraising are virtually unrestricted and hence available to meet expenses that grants and contracts often will not cover; donations allow budgeted shortfalls in earned income for important cultural (and other) institutions; and, for some types of organizations, donations are for all practical purposes the only revenue received.

From the donor's perspective, it is often impossible to ascertain whether a donation, no matter the size, is serving the intended result as fully as possible – for an obvious example, when the gift is intended to relieve poverty in a far-away land. This uncertainty leads to a reasonable concern about fundseekers' veracity, and there is ample evidence that this concern is well founded.¹

From a public policy perspective, many observers hold the view that donations (as tax-deductible for givers and as income for tax-exempt organizations) represent a loss of tax revenues and hence warrant special scrutiny (Brody and Tyler 2009). It is also reasonable to see society as a whole as a victim – after all, money diverted from charitable purposes could (and should) have been used for the public good. Further, there is a corrosive effect on generosity in general that stems from a perception of frequent misdeeds in the name of charity.

As transactions, though, donations are difficult to police. They do not fit comfortably within the scope of typical protections for consumers since no exchange of goods for money takes place. Frequently individual victims of deceptive practices have lost only relatively small amounts of money; they are sometimes embarrassed by (or oblivious to) their credulity. No ready advocate for redress of such losses exists and no straightforward method has been developed to apply any recovered sums to the causes from which they were diverted.

For these and other reasons, fundraising frauds and other abuses by fundraisers and charitable organizations have a strong claim on our attention and deserve strong efforts at prevention. Further, no matter what the scale of the loss, such abuses inspire a special sort of indignation. In commercial frauds, after all, the victim has usually received something of value – just not what was

¹ We use the term “fundseekers” to refer to both charitable organizations and commercial fundraising firms (and the other sorts of related firms that are often subject to regulation under charitable solicitations statutes). As Appendix I shows, 38 of the 51 jurisdictions we have studied require registration and reporting by both charitable organizations and related commercial firms (there is some variation in the types of organizations that are covered by the states' statutes). Where we discuss policies that apply in most cases to both, use of the portmanteau term permits somewhat more concise expression.

expected. Fundraising abuses, in contrast, depend on the generosity of a donor who expects to receive nothing but the satisfaction of having contributed to a better world. Awareness that such satisfaction is misplaced is infuriating, even when the donor is personally unaware that the gift has been misappropriated. It is no wonder that legislators and law enforcement agencies are inclined to act when confronted with credible tales of abused generosity.

The problem of addressing fraud in fundraising by regulation is complicated by the range of opinions donors and regulators have toward the intricacies of nonprofit administration and the practices of fundseekers. The “overhead myth” and many donors’ objections to fee-for-service fundraising have, in practice, blurred the distinction between outright fraud and wasteful management or misplaced priorities (Taylor, Harold, and Berger 2013; Schreifels 2013). And indeed many donors have strongly negative reactions to any use of donated funds that is not directly connected to the recipient’s charitable purpose (Gneezy, Keenan, and Gneezy 2014).

Part 1 – Approaches to the Regulation of Charitable Organizations

Since the earliest years of the twentieth century, three principal strategies for the regulation of charitable solicitations have been employed in a rough sequence: first, licensing and endorsement; second, application of fundraising standards; and third, public disclosures.

Licensing and Endorsement

Some of the earliest efforts to control fundraising involved municipal and state licensing. Various authorities were empowered by ordinance or statute to assess the merit of proposed fundraising appeals and, when approved, to grant licenses for conducting fundraising campaigns within their jurisdictions. Often, the principal motivation for these decisions appears to have been geographic – in many cases, campaigns for local organizations were clearly advantaged when compared with fundraising for more distant causes (Barber and Farwell 2014). In a similar way, private bodies like the National Charities Information Bureau (operating under various names from 1918 until 1971) endorsed approved campaigns and attempted to discourage fundraising efforts by groups that did not meet its standards.

There are no clear records that document the reasons for the shift from licensing to standards-based regulation. It is reasonable to speculate that with

the rapid growth in the number and sophistication of fundseeking appeals following World War II, it became increasingly burdensome for local and state officials to administer an approach that required detailed examination of fund-seekers' finances and operations as a precondition for issuing and overseeing licenses.

Local groups, often known as Community Chests and Councils ("3Cs"), were established in many localities with increasing frequency from the 1920s through the 1940s. 3C organizations conducted "federated" fundraising campaigns for approved organizations. In the early days, approval was contingent upon a pledge that the charity not engage in separate fundraising from the public, reinforced by a more or less explicit commitment of community leaders to refuse any support to appeals outside the federated campaign. These groups allocated campaign proceeds to the approved organizations and assured donors that both the recipients and the allocations had been scrutinized to prevent waste and duplication. Further, advocates for the federated campaigns claimed that reliance on volunteers for solicitations and allocations allowed them to be more efficient, *i. e.* to commit a larger proportion of the funds raised to charitable purposes (Cutlip 1965; United Way of America 1977; Barber 2012b). The national association of 3Cs adopted the name United Way in the early 1970s and its affiliates across the country continue to this day as a significant source of annual support for many local services. Payroll-deduction giving, once United Way's signature method, is now a much less common technique of fundraising, and pledges to eschew fundraising outside the annual United Way campaign are no longer a feature of its approach (Brilliant 1990). Changes in fundraising practices have reduced the once prevalent pattern of federated campaigns to just one among many appeals addressed to potential donors and hence have diminished the extent to which the managers of such campaigns can influence the behavior of fundseeking organizations.

Fundraising Standards

As the number of fundraising campaigns and related fundseeking organizations grew in the years preceding 1950, towns, cities, and some states began exploring how they might limit the possibility of abuses in charity work without the laborious process of review and approval implied by licensing. During the same period, concerns about fundraising practices were reinforced by the increasing number of increasingly successful fundraising operations that adamantly refused to participate in, and be limited by the policies of, federated campaigns (Cutlip 1965).

One approach that appealed to both regulators and the advocates for federated fundraising was the development of statutory fundraising standards. Though

such statutes took many forms, they commonly established some criterion – limits on fundraising costs or administrative expenses in general were common – while requiring fundseekers to register with the jurisdiction’s regulator to allow identification, and hence oversight, of anyone engaged in fundraising. Much of the attention was focused on commercial fundraising firms though such efforts also imposed limits on the activities of charitable organizations that raised funds broadly in many jurisdictions. Two themes emerged as municipalities and state governments extended the scope of their efforts. One limited the amounts that could be expended on fundraising; the other required solicitors to state the amount of any fundraising fees prior to requesting a donation. Both had their proponents: by 1980, 21 states had enacted statutes that placed some sort of limit on the fees that could be retained by a solicitor personally or by a commercial fundraising firm; by 1987, an overlapping list of 15 states had adopted rules requiring point-of-solicitation disclosure of such amounts – often stated as a percentage of the gift amount (Barber and Farwell 2014).

This focus also involved a new breadth in the issues addressed by governmental regulations. Early regulations were, as noted, usually based on the location of the fundseeker and obviously preferential for locally-based campaigns. Percentage limitations on fundraising expenses, or overhead in general, were founded on a concern with diversion of charitable resources from charitable purposes (Tucker 1974).

In the 1980s, governmental limitations on costs of fundraising or requirements for point-of-solicitation disclosure were foreclosed by the Supreme Court’s *Riley* decisions.² Given the widespread public aversion to fundraising fees, point-of-solicitation might well have resulted in a sharp reduction in fee-based fundseeking. The Court’s decisions, however, ended the practice before its effect could be fully assessed. At the same time, these decisions also laid the foundation for the third regulatory strategy, administrative disclosure by the regulators and, to a certain extent, by independent oversight bodies (Harris, Holley, & McCaffrey 1990).

Disclosure

In issuing the *Riley* decision, the majority opinion articulated two of the basic tenets of disclosure as it is known today:

² *Schaumborg* (1980, 444 U.S. 620) and *Munson* (1984, 467 U.S. 947) declared that requiring a percentage be committed to “program” prevented the organization from exercising its constitutionally guaranteed free speech rights. *Riley* (1988, 487 U.S. 781) held that requiring prior disclosure of fundraising costs was also unconstitutional, as “compelled speech.”

...of course, a donor is free to inquire how much of the contribution will be turned over to the charity. ...if the solicitor refuses to give the requested information, the potential donor may (and probably would) refuse to donate (487 U.S. 798).

...as a general rule, the State may itself publish the detailed financial disclosure forms it requires professional fundraisers to file. This procedure would communicate the desired information to the public without burdening a speaker with unwanted speech during the course of a solicitation (487 U.S. 800).

Even though states had already begun to adopt disclosure requirements when the *Riley* decisions were issued, the Supreme Court's clear identification of fundraising standards as unconstitutional signaled a change in states' approach to fundraising regulation. In 1988, 6 states had adopted disclosure statutes; by 2015, 29 states routinely published financial information about fundseekers on official websites (Figure 1 and Appendix II). As the Supreme Court suggested, states publishing such information rely on data derived from fundseekers' financial reports or from an IRS Form 990 filed with both the IRS and the charity office. The publication of information of this sort as a byproduct of reports to government agencies is one of the methods described in the recent scholarship (discussed below) on the topic of regulatory disclosure.

US STATES PROVIDING DETAILS FROM CHARITABLE SOLICITATIONS REGISTRATIONS ON AN OFFICIAL WEBSITE: 2014

Figure 1: Map of states with financial disclosures online.

The allocation of “joint costs” – costs associated with more than one activity (including fundraising) – is a focus of many regulators' attention. The standards

that govern such allocation affect the calculation of any cost-of-fundraising ratio and hence are inextricably tangled with fundraising regulation. The American Institute of Certified Public Accountants (AICPA) was not focused on regulatory issues, though, when developing *Statement of Position 98-2 – Accounting for Costs of Activities of Not-for-Profit Organizations and State and Local Governmental Entities That Include Fund Raising*. Instead the goal of SOP 98-2 was to assist accountants with making the best possible presentation of “the substance of the transactions” of their audit clients when preparing financial statements (AICPA 1998). Using joint-cost calculations in the preparation of financial statements has the effect of reducing the amount shown as committed to fundraising – a result permitted by SOP 98-2, strenuously opposed by the National Charities Information Bureau and, to this day, opposed by watchdogs such as Charity Navigator. These standards are difficult to apply, difficult to understand, and permit wide variation in the way roughly similar transactions are reported by different organizations.

Similarly, the IRS Form 990 has such broad reach and unquestioned significance for nonprofit administration that it has become the most common source of financial and other information used by regulators and watchdogs. The challenges with the information contained in the Form 990’s various versions are partly a consequence of the necessary focus on tax compliance that has informed the form’s decades-long development. Congress and the IRS itself have added further complexity by using the 990 as a convenient way to collect and summarize information on a wide variety of complex questions about management of tax-exempt entities. As a result, it is difficult to derive financial summaries from Form 990 data that are likely to be unambiguously useful to prospective donors (Feng et al. 2014).

In spite of widespread recognition of the limitations of this sort of data, there is little chance that any regulator can singlehandedly influence the content of currently available data and no suggestion of concerted action by regulators to address the issue. The General Accounting Office has noted, for example, the limited cooperation between the IRS and state charity officials (United States General Accounting Office 2014, 36–40).

Even with these concerns about the sorts of data that are, and could be, included in disclosures by regulators of charitable solicitations, it is possible to ask whether application of regulatory disclosure principles could benefit charitable fundraising: Could donors match their gifts more closely to their goals? Could they give more confidently? Would watchdog organizations, journalists, regulators and prosecutors, and policy makers have more powerful tools to curb unscrupulous exploitation of public generosity? Since fundseeker disclosures are today a key element of many state-level regulatory regimes, it is worth

considering whether analysis of regulatory disclosure can improve the resources used by donors to focus their giving on organizations that closely match their goals and by regulators to prevent abuses and pursue unscrupulous fundseekers.

Part II – Regulatory Disclosure in Charitable Solicitations: Current Use and Challenges

The majority of states currently employ solicitation-related public disclosures including some or all of the following elements – proactively or upon the prospect’s request (Appendix II, Appendix III):

- On the regulator’s website: Registration status; summary financial data derived from registration and reporting submissions; copies of filed documents possibly including fundraising contracts; financial declarations by fundseekers; copies of Internal Revenue Service Form 990s; reports of regulatory actions.
- In printed solicitation materials: A declaration concerning registration in one or more states (and that such registration does not indicate governmental approval); contact information to request further financial details from the regulator, the solicitor, or the benefiting organization.
- In oral solicitations: Declarations of paid solicitor status; the solicitor’s or the soliciting firm’s name; the location of the charitable organization which will receive the proceeds; a source for more information.
- In acknowledgements or confirmations sent to contributors: An address for more information; where applicable, federal or state tax information.

It is difficult to identify a clear objective for the disclosures that are required in 47 states (Barber and Farwell 2014). Anecdotally, though, it is clear that regulators publish fundraising information, at least in part, because they believe it may guide donors in their choices for charitable contributions (Appendix I; Barber 2013). For example, in South Carolina, the Secretary of State (the regulator) annually produces a list of “scrooge” organizations, characterized by “[spending] a significant amount of revenue on fundraising expenses.” This “Scrooges and Angels” report carries with it the advice to “guard against those who want to take advantage of [South Carolinian’s] generosity;” it is a particularly clear example of a regulator’s publication of fundseekers’ data with the goal of discouraging high-cost fundraising (South Carolina Secretary of State 2014). Similar to this South Carolina report, the online publication of “league

tables” – arranging the registered organizations in order by some statistic reflecting overhead or fundraising costs – suggests that many regulators share this concern that fundraising costs may be excessive (Figure 1 and Appendix II).

During the past two decades, an increasingly distinctive analysis of the impact of regulatory disclosures on behavior in markets has been evolving. Several scholars – Archon Fung, Mary Graham, and David Weil in particular – have articulated a theory of regulatory disclosure that provides a valuable framework for considering the utility of disclosure as a tool for regulating charitable solicitations. In this context, state officials may (as the Supreme Court suggested) publish information derived from the registration forms and periodic reports from fundseekers. In effect, such publication discloses to the public – and thus to prospective donors – selected aspects of the finances the solicitors and the recipient organizations. As a result of examining such information, donors may alter their behavior – for example, choosing to support organizations whose finances suggest greater commitment to the donor’s causes of interest. If these behavioral shifts are noticed by soliciting organizations (fundseekers, whether charitable organization or commercial fundraisers), they may adjust their behavior in ways that increase their donors’ satisfaction or produce other desirable outcomes. This “action cycle” (illustrated in Figure 2) is central to the theory of regulatory disclosure.

Figure 2: Action cycle.

Source: After Fung, Graham, and Weil (2007, 54).

Mandates for disclosure of information are certainly not a new idea (Cashore, Auld, and Newsom 2004; Gupta 2008; O’Rourke 2003). One ready example is The Safe Drinking Water Act of 1996, which required mailed reports on water quality to all water-district customers; researchers found an up to 57 % reduction of severe violations affecting public health in the following years (Benneer and

Olmstead 2008). Another, more widely known example is the posting of sanitation inspection results near restaurant entrances, which led to Los Angeles' 13.1% decrease in food-borne illnesses (Simon et al. 2005). These simple letter grades offer potential customers an easy (and immediately actionable) option: avoid a restaurant graded C. In turn, restaurant operators have a strong incentive to adopt an easy cure for lost business: clean the place up. The results: fewer unsanitary restaurants, lowered public health risks, and more confident diners. (The illustration in Figure 3 – of an ingenious effort on the part of the restaurant to avoid the full effect of an undesirable letter grade – is from *Consumer Reports*.³)

'B' is for ...

A diner in Brooklyn found a way to brag about a sanitation grade lower than "A."

Figure 3: Bar entry.

³ Copyright 2013 by Consumers Union of U.S., Inc. Yonkers, NY 10703-1057, a nonprofit organization. Reprinted with permission from page 67 of the November 2013 issue of *Consumer Reports* magazine for educational purposes only. No commercial use or reproduction permitted. www.ConsumerReports.org.

Of course, a donor's decision about whether or not to respond affirmatively to a fundseeker request is different from the choice made by a prospective diner standing at the door of a rated restaurant. The complex information a donor might want in support of a positive decision cannot be presented as a single rating on a single scale. Even imagining some more elaborate presentation of key characteristics of the possible recipient, the necessary data are neither currently collected and published in any standard form nor available in a timely fashion. Furthermore, donations differ from other transactions because they lack any *quid pro quo* – the charitable organization receives cash or goods, but the donor receives nothing but recognition and a “warm glow” in return (Tullock 1966; Andreoni 1989).

For action cycles to be effective, it is essential that the required disclosures about fundraising practices influence the prospective donor's behavior, a particular challenge for charitable donations. Often the circumstances of the gift transaction are such that the donor does not seek any information beyond that provided at the moment of the request. One study found that only 35 % of donors reported doing any research in connection with their gifts, and a scant 10 % reported looking at sources presenting information about many organizations in a consistent format (e. g. Charity Navigator) (Hope Consulting 2010). This study estimates that no more than 3 % of all donors compare information about multiple organizations before making decisions about which organizations, if any, to support. The most frequent sort of research was done after making the donation to reassure the donor that the gift did not result in a “bad donation.” A frequent basis for the decision to give is that a friend or colleague has made the request – augmented, perhaps, by the possibility of making a request for a cause of one's own to that person on another occasion (Hope Consulting 2010).

To look more closely at regulatory disclosure of fundraising, we draw upon the examination by Fung, Graham, and Weil of how 18 governmental programs exemplify the use of such disclosure to shape behaviors. On the basis of the success of some and the failure of others in this group, they develop a list of “ten principles for the design of effective transparency policies” (Table 1 provides a summary) (Fung, Graham, and Weil 2007, 177–180).

Regulators currently employ, in some fashion, three of these principles. The authorizing statutes for solicitations regulation authorize penalties for lapses like late or incomplete filings or more serious misdeeds (#8 in Table 1). These statutes commonly declare that violations of their provisions are also violations of the jurisdiction's consumer protection laws, which frequently offer clearer guidelines for official action and heavier penalties (#9 and #10) (Gerhart 1990). It is, however, unclear how frequently these sanctions are employed because few

Table 1: Principles of regulatory disclosure.

1. Provide information that is easy for ordinary citizens to use
2. Strengthen user groups (advocates, analysts, affected associations, e. g.)
3. Help disclosers [fundraisers] understand users' [prospects] changed choices
4. Design for discloser benefits
5. Design metrics for accuracy and comparability
6. Design for comprehension (match users' levels of attention and curiosity)
7. Incorporate analysis and feedback (accommodate changing circumstances)
8. Impose sanctions
9. Strengthen enforcement
10. Leverage other regulatory systems

Source: Adapted from Fung, Graham, and Weil (2007, 176–179).

regulators provide any public documentation of their enforcement actions (Barber and Farwell 2014). In addition, administrative penalties for failure to comply with reporting requirements or filing inaccuracies may simply be treated as a routine cost of doing business by some soliciting organizations. Further, a more severe penalty may be contested by the fundseeker; such proceedings can be, for the regulator, expensive, time consuming, and of uncertain outcome.

Several of the remaining principles suggest strategies that might be used to strengthen the role of the public in limiting or preventing diversion of charitable contributions into non-charitable uses. Each of these principles poses challenges for regulators. Providing information that is easy for ordinary citizens to use (#1) requires that the information be readily accessible. Regulators have been slow to adapt widely used approaches for meeting this standard: few allow retrieval of information using the Federal Employer Identification Number of the registered entities; common acronyms for charitable organizations are not included in the online listings; and some use unfamiliar abbreviations in recording the organizations' names. Perhaps most importantly, only half of state charities offices offer information about the connections between registered charitable organizations and the contractors they employ (who should also be registered). When it is offered, information about these links is often difficult to find; when found, it seldom provides much detail about the characteristics of the relationship (Appendix II).

There is a core difficulty with the principles related to design of the disclosures (#4, #5 and #6). As mentioned earlier, the standards for and implementation of the metrics most frequently employed by regulators are the province of other entities (namely the IRS and AICPA) over which the regulators themselves have no authority and little influence. On the other hand, regulators could

provide guidance to help users understand the nature of the fundraising enterprise and the significance of the information that is provided through their offices' websites and other communications. Regulators' websites in fact rarely discuss such topics, although nearly all offer some advice to donors (Barber 2012a). The scope and quality of this advice varies widely and often consists of little more than a note to check on whether or not the solicitor is properly registered with the state and to avoid responding to "high pressure" solicitations (Appendix III).

The remaining three principles embody suggestions from Fung, Graham, and Weil's analysis that would be difficult for state charities officials to implement. There are no "user groups" (#2) made up of people who make the sorts of donations that are the focus of most regulatory (and public) concern. Individual users (in this case, donors) of the disclosed data would be difficult to identify and consult in any systematic way. In the states where advisory councils exist, the membership is typically drawn from among the regulated organizations and their professional advisors.

Sophisticated fundseekers (charitable organizations and contractors alike) do extensive analysis of the efficacy of their fundraising efforts, but the available evidence suggests that the information collected and published by regulators has little if any effect on fundraising success (Bowman 2006; Irvin 2005; Szper and Prakash 2011). In any case, there are no published examples of regulators' initiatives directed at explaining to fundseekers how the information they disclose might encourage changes in fundraising or other administrative practices (#3). And lastly, public discussion by regulators (for example, at the meetings of the National Association of State Charities Officials) suggests little attention to the comments and concerns of the regulated fundseekers or the research results related to their work (#7) (NASCO 2014).

Without belaboring the point, it is clear that fully incorporating all ten of Fung, Weil, and Graham's principles into daily operations is beyond the current capacity of the state offices charged with regulating charitable solicitations: only 80 % of states have a distinct division or bureau responsible for regulation, and two-thirds of these offices have five or fewer employees (Boris and Lott 2014). Further, many of the general challenges that arise in regulation of charitable solicitations are beyond the scope of any individual regulator's responsibilities or abilities. As a practical matter, a regulator has the most control over how the regulations about disclosure address this goal, some control over how solicitors and charitable organizations will conduct themselves, and very little control (but perhaps some influence) over how donors will direct their charitable support. "Success," a critical review article notes, "requires three actors – lawmakers, disclosers, and disclosees – to play demanding parts properly. Rarely can each

actor accomplish all that is needed, and therefore mandated disclosures rarely work as planned” (Ben-Shahar and Schneider 2011, 679).⁴

Part III – Practical Steps

In spite of these challenges, there are straightforward changes in how data about fundseekers is presented by regulators that could improve ease of use for and relevance to donors. Regulators could make these changes on their websites and in other publications if they have not already done so. The result would be more effective regulation without large cost as well as making the information more useful to donors and further their understanding of charitable organizations and fundraising practices.

Multiple Paths to Organizational Information

Donors should get useful results from an online search using not only a charitable organization’s formal name but also the organization’s Federal Employer Identification Number (FEIN). Common misspellings and acronyms, as well as the actual name that appear on any solicitations materials, should also lead to a list of possible matches. Search algorithms that accommodate users’ typographic errors and other mistakes are in place at many websites and might be adopted without much difficulty. Collecting the FEIN and these additional identifiers would be a straightforward extension of the current registration and reporting procedures and would aid in searches of regulators’ published data.

Direct Links to Corporate (As Well As Charitable Solicitations) Filings

In addition to registration requirements for fundseekers, states generally require that nonprofit organizations operating within their borders file and maintain either evidence of having been incorporated within the state or a certificate that such information is on file in another jurisdiction. Drawing upon these filings

⁴ We are grateful to James Sheehan for calling our attention to this strongly argued challenge to the efficacy of mandated disclosures.

would permit a similar improvement in the information available on state websites: adding the name and address of every nonprofit doing business in the state to the file of registered fundseekers. In this way, the state website would give both exempt and noncompliant organizations equal visibility (if not treatment) with the reports of registered fundseekers. Lastly, organizations whose registrations have lapsed (or been cancelled) should be highlighted in the database with explanatory notes.

Search Results Include Summary of Key Information to Support Donors' Research

The results of a search should be useful for both strongly motivated searchers and casual scanners. Every organization's listing should have a summary page with routine organizational information (including the FEIN – a key asset in conducting further research) – and a link to the organization's own description of its programs. Because the names of commercial fundraising firms are not as well-known as those of their client charitable organizations, the reports available on official websites should identify any fundraising contractors as part of a charitable organization's listing and provide a link to summary pages about such contractors' services and fees. Any other information available through official sources should also be linked – for example, corporate registration statements and the most recently filed Form 990. If the regulator regularly publishes results of enforcement actions, they should also be linked to the records of the related fundseekers.

More Complete Explanation of Value and Limits of Cost-of-Fundraising or Overhead Statistics

As shown in Appendix III, 23 regulators' webpages include an estimate of some statistic which reflects the overhead expenses or fundraising costs of registered charitable organizations; an additional 5 offer summary statistics from which such a statistic can easily be calculated. Although this practice is deeply ingrained in the regulatory climate, regulators could accompany these statistics with a statement that such "efficiency" statistics have limited value for selecting among charitable organizations and provide a further explanation of the complexity surrounding the creation of any useful summary measure of an organization's financial affairs.

More Frequent Updates of Information Available Online

A somewhat more complicated enhancement of the regulators' web resources would be to automate the presentation so that new filings, late filings, or missing information would be immediately highlighted and visible to the public. The current lag between the close of a financial reporting period and official publication of related data, which can be as long as 15 months, undermines the utility of the online reports because of the possibility of significant unreported changes. A similar idea would be to follow the now-widespread practice of allowing listed organizations to post updates on a regulator's website with more current information under a short list of subject headings ("Program Developments," "Financial News," and the like) along with a clear notice that these updates have not been (and may never be) subject to verification by the regulator or any other reviewer.⁵

The IRS is currently moving toward a process that will include online publication of information as submitted on the Form 990 within a few weeks of receipt. As electronic filing of 990s becomes the standard, it will be possible to publish the data as submitted almost at the moment it is received. President Obama's 2016 budget and a recent court decision are encouraging this change (Daniels 2015; Ottinger and Wenner 2015; Perry 2015). More generally, the growing practice of publishing information from governmental records in an accessible format that can be analyzed by the public or used to create new information products (like Google's information on transit options) – often described as "Open Data" – suggests that the future holds many opportunities for more creative use of the information collected by the IRS and charity regulators. Currently, only 1 state publishes detailed information from fundseekers' financial reports online as text files that any visitor to the website can download and use as the basis for comparisons or calculations. Recent online publication by the IRS of data from several years of 990s has yet to be examined as a resource by regulators, researchers, and the public (IRS 2016; Olsen-Phillips 2016).

Conclusion

These and similar improvements would make the information regulators provide online more useful to prospective donors, but alone they would probably not

⁵ Guidestar, a nonprofit that publishes accessible images of charitable organizations' Form 990s, has for several years offered this sort of opportunity to organizations that complete a registration process. See <http://www.guidestar.org>.

have a significant effect on the overall climate for fundraising (and hence on the practices of fundseekers). This limited impact would be due, in part, to the limited number of prospective donors who routinely make use of any published information (Hope Consulting 2010). Even in the present environment, when checking online is common for such everyday activities as choosing a restaurant or comparing the prices of prospective purchases, the time and effort required to search of information about fundseekers on regulators' websites is a significant barrier. Restaurant sanitation ratings work, at least in part, because they are located at the entrance to the restaurant the diner is about to enter. No such convenience is possible for the prospective donor. The limited impact is also probably a result of limited public understanding of how to use information of the sort currently provided. Since many states routinely require registrants to inform prospective donors of how to access additional information about the charitable organization, there is strong rationale for providing guidance on how to interpret information from both the state and the organization itself. Donors should also be encouraged to come to the obvious conclusion about an organization for which only limited or seriously out-of-date information is available.

Of course, prospective donors are not the only members of the public who have access to information on official websites. That fact offers another avenue by which disclosures of this sort can have a positive impact on fundraising practices. In practice there is little regulators can do on their own about well-crafted misinformation in any but the most outrageous cases. Further, run-of-the-mill errors and omissions – including dilatory and incomplete filings – present a continuing and unwelcome drain on regulators' attention. Both of these burdens might be reduced by successful efforts to engage the public in the regulatory process. Regulators might find it helpful to receive reports of misleading information and questionable practices, especially reports made by employees of contractors involved on the shady side of the industry. The regulators should actively invite such whistle-blowing and put in place confidence-inspiring procedures to take advantage of the result. Organizations that engage in disreputable practices are more likely to present their operations dishonestly. It is easier to impose sanctions for dishonest messages than it is to take regulatory action against the underlying practices. Organizations engaging in large-scale dishonesty employ many people, some of whom may be motivated to step forward with documentation of the fabricated financial information (Perry 2013 provides an example). The combination of a responsive whistle-blower system on the part of the regulator, clear information about the standards for financial reporting, and a cadre of disgruntled employees might be enough to persuade unscrupulous commercial fundraisers and the irresponsible charitable organizations who are their clients to seek other sources of income. There is more to this topic than can be addressed

here, but the kernel of the recommendation is that enhanced disclosure policies could assist in the development and operation of functioning whistle-blower tools that would strengthen the oversight of charitable solicitations.

There are certainly ways for architects of charitable solicitation regulation to take advantage of the insights contained in the theory of regulatory disclosure. Many of these would be useful in their own right, whether or not powerful action cycles resulted from significantly increased use by prospective donors of the information provided by regulators. Journalists, researchers, and the regulators themselves could make good use of a larger stock of more up-to-date information. It is also true that regulators could give stronger guidance to donors about how to identify questionable solicitations and make use of the available information.

Honorable charitable organizations are very sensitive to threats to their reputations. This sensitivity is especially characteristic of organizations that are highly dependent on gifts and contributions to support their work. Presentation of methods that are useful for evaluating the management approaches and administrative standards of fundseekers may influence their practices not so much as a result of changes in the behavior of individual donors but by influencing the judgment of observers and peers. If a risk of damage to the reputation of their organizations reduces the temptation of nonprofit managers to exaggerate claims in appeals or enter into unwise agreements with fundraising contractors, that will be a very satisfactory result.

It is by no means clear that the outcome of every sort of donation decision can be improved by disclosures. Timely, streamlined, and more accessible information about charitable organizations could, though, have a positive effect on donor choices and, in turn, influence charitable organizations' solicitation practices in the desirable direction. A culture of transparency informed by improved disclosure regulations represents a goal that honorable nonprofits, concerned donors, and active regulators should join forces to build and maintain.

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Note: An earlier version of this paper was presented at the 2014 Conference of ARNOVA – The Association for Research on Nonprofit Organizations and Voluntary Action – Denver, Colorado, November 19–21, 2014.

Appendix I

	Date of initial legislation	Current regulation applies to
Alaska	1993	Both commercial fundraisers and charitable organizations
Alabama	1987	Both commercial fundraisers and charitable organizations
Arizona	1989	Since 2013, registration only from organizations soliciting donations for veterans.
Arkansas	1969	Both commercial fundraisers and charitable organizations
California	1972	Both commercial fundraisers and charitable organizations
Colorado	1975	Both commercial fundraisers and charitable organizations
Connecticut	1959	Both commercial fundraisers and charitable organizations
Delaware	1996	Solicitors, who must identify themselves and the recipient organization and disclose when requested the amount or percentage that will be retained by a compensated solicitor.
District of Columbia	1957	Both commercial fundraisers and charitable organizations
Florida	1965	Both commercial fundraisers and charitable organizations
Georgia	1962	Both commercial fundraisers and charitable organizations
Hawaii	1969	Both commercial fundraisers and charitable organizations

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	Date of initial legislation	Current regulation applies to
Idaho	None	
Illinois	1963	Both commercial fundraisers and charitable organizations
Indiana	1983	Commercial fundraisers only
Iowa	1913	Commercial fundraisers only
Kansas	1911	Both commercial fundraisers and charitable organizations
Kentucky	1928	Both commercial fundraisers and charitable organizations
Louisiana	1981	Both commercial fundraisers and charitable organizations
Maine	1977	Both commercial fundraisers and charitable organizations
Maryland	1964	Both commercial fundraisers and charitable organizations
Massachusetts	1911	Both commercial fundraisers and charitable organizations
Michigan	1975	Both commercial fundraisers and charitable organizations
Minnesota	1961	Both commercial fundraisers and charitable organizations
Mississippi	1991	Both commercial fundraisers and charitable organizations
Missouri	1986	Both commercial fundraisers and charitable organizations
Montana	none	
Nebraska	1947	Repealed 1996
Nevada	2014	Charitable organizations but not commercial fundraisers
New Hampshire	1966	Both commercial fundraisers and charitable organizations
New Jersey	1971	Both commercial fundraisers and charitable organizations
New Mexico	1963	Both commercial fundraisers and charitable organizations
New York	1954	Both commercial fundraisers and charitable organizations
North Carolina	1939	Both commercial fundraisers and charitable organizations
North Dakota	1975	Both commercial fundraisers and charitable organizations
Ohio	1955	Both commercial fundraisers and charitable organizations
Oklahoma	1965	Both commercial fundraisers and charitable organizations
Oregon	1971	Both commercial fundraisers and charitable organizations
Pennsylvania	1919	Both commercial fundraisers and charitable organizations
Rhode Island	1976	Both commercial fundraisers and charitable organizations
South Carolina	1972	Both commercial fundraisers and charitable organizations
South Dakota	1975	Paid telephone solicitors for charitable purposes
Tennessee	1961	Both commercial fundraisers and charitable organizations
Texas	1999	Solicitations for law enforcement, public safety, and veterans charitable purposes
Utah	1987	Both commercial fundraisers and charitable organizations
Vermont	1997	Commercial fundraisers only
Virginia	1924	Both commercial fundraisers and charitable organizations
Washington	1973	Both commercial fundraisers and charitable organizations
West Virginia	1977	Both commercial fundraisers and charitable organizations
Wisconsin	1991	Both commercial fundraisers and charitable organizations
Wyoming	none	

The table above shows the earliest date we have found for legislation regulating charitable solicitations in each state and the District of Columbia. In the right-hand column, the states’ registration and reporting requirements are broadly characterized. The District of Columbia and 38 states require most commercial fundraisers and charitable organizations to register prior with their state charities office prior to seeking funds from residents and to file annual reports of financial results, and occasionally other related information, for so long as they are actively soliciting in the state. Different registration and reporting requirements are found in 8 other states, including 3 that require registration and reporting only from commercial fundraisers. Three states do not require any registration or reporting.

State regulators’ websites were reviewed in December 2015 to collect the data in the table above.

Appendix II

The table below shows the kinds of information published online by state regulators: 34 states provide information about charitable organizations that have registered; 17 have information about commercial fundraisers; 19 link commercial fundraisers to their charitable organization clients if any, or vice versa, or link in both directions; 2 provide campaign-by-campaign details on commercial fundraising activities; 24 calculate some version of an “efficiency” statistic for fundraising or total overhead expense; and 5 others provide financial summaries from which such a statistic can be calculated.

	Type of information online					
	Charitable organizations	Commercial fundraisers	Links	Campaigns	“Efficiency” statistic	Financial Summary
Alaska	✓	✓	✓			
Alabama						
Arizona						
Arkansas	✓					
California	✓	✓	✓	✓	✓	
Colorado	✓	✓	✓	✓	✓	
Connecticut	✓		✓			
Delaware						

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	Type of information online					
	Charitable organizations	Commercial fundraisers	Links	Campaigns	"Efficiency" statistic	Financial Summary
District of Columbia						
Florida	✓				✓	
Georgia	✓		✓			
Hawaii	✓	✓	✓			
Idaho						
Illinois	✓	✓	✓		✓	
Indiana	✓	✓	✓		✓	
Iowa						
Kansas	✓				✓	
Kentucky	✓	✓	✓		✓	
Louisiana						
Maine						
Maryland	✓	— ^a			✓	
Massachusetts	✓					✓
Michigan	✓	✓	✓		✓	
Minnesota	✓	✓				
Mississippi	✓	✓	✓		✓	
Missouri	✓				✓	
Montana						
Nebraska						
Nevada						
New Hampshire		✓	✓		✓	
New Jersey	✓					✓
New Mexico	✓		✓			
New York	✓					— ^b
North Carolina	✓	✓	✓		✓	
North Dakota	✓					
Ohio	✓				✓	
Oklahoma	✓		✓			✓
Oregon	✓					✓
Pennsylvania	✓	✓	✓		✓	
Rhode Island	✓					
South Carolina	✓				✓	
South Dakota						
Tennessee	✓	✓			✓	
Texas	✓ ^c				✓	
Utah	✓				✓ ^d	
Vermont		✓	✓		✓	

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	Type of information online					
	Charitable organizations	Commercial fundraisers	Links	Campaigns	“Efficiency” statistic	Financial Summary
Virginia						
Washington	✓	✓	✓		✓	
West Virginia	✓	✓			✓	
Wisconsin	✓		✓		✓	
Wyoming						

^aMaryland’s online report on registered charities includes a box that can be checked to indicate use of paid solicitors.

^bNew York provides a link to the annual filing for each registered charitable organization which contains a facsimile of the organization’s federal Form 990 (and hence the financial information contained in that form); there is also a telephone number on the charity search index page for information about commercial fundraisers.

^cAvailable for law enforcement organizations only.

^dUtah’s web-search tool allows the user to find a report on the percentage to charitable purpose for a registered charitable organization by entering “00” in the designated search field.

State regulators’ websites were reviewed in December 2015 to collect the data in the table above.

Appendix III

The table below lists 23 states that offer a relative standard list of tips for “wise giving”, 7 that give limited advice to donors, and 10 that provide an extensive discussion, including information about the role of commercial fundraisers. In addition, 20 states offer advice and information about filing a complaint alleging improper behavior in the course of a charitable solicitation. A paid solicitor is required to disclose that status to a prospective donor prior to making a request in 28 states. In 13 states, the solicitor must accurately disclose the percentage or amount that will be retained by the solicitor or firm if requested. Solicitors must also provide an address from which additional financial information can be obtained in 18 states.

	Tips and warnings for donors	Advice on filing a complaint	Requirements to inform donors
Alaska	"Wise giving"		That the solicitor is paid
Alabama			That the solicitor is paid
Arizona	"Wise giving"		—
Arkansas	"Wise giving"		That the solicitor is paid; On request, the fee retained
California	Extensive	✓	On request, the fee retained; Additional information available
Colorado	Extensive	✓	On request, the fee retained; Additional information available
Connecticut	Extensive		That the solicitor is paid % ^a
Delaware	Limited		On request, the fee retained
District of Columbia			— ^b
Florida	Extensive		Additional information is available
Georgia			That the solicitor is paid; Additional information available
Hawaii	"Wise giving"	✓	— ^c
Idaho			—
Illinois	Extensive		That the solicitor is paid; Additional information available
Indiana	"Wise giving"		That the solicitor is paid
Iowa	"Wise giving"	✓	—
Kansas			That the solicitor is paid ^d ; Additional information available
Kentucky	"Wise giving"		That the solicitor is paid ^e
Louisiana	"Wise giving"	✓	That the solicitor is paid; On request, the fee retained
Maine	"Wise giving"		That the solicitor is paid; Additional information available
Maryland	"Wise giving"	✓	Additional information available
Massachusetts	"Wise giving"		That the solicitor is paid
Michigan	Extensive	✓	—
Minnesota	"Wise giving"	✓	That the solicitor is paid
Mississippi	Limited	✓	That the solicitor is paid; On request, the fee retained; Additional information available
Missouri	"Wise giving"		That the solicitor is paid; On request, the fee retained
Montana			
Nebraska			
Nevada			

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	Tips and warnings for donors	Advice on filing a complaint	Requirements to inform donors
New Hampshire	“Wise giving”		That the solicitor is paid; On request, the fee retained
New Jersey	“Wise giving”		That the solicitor is paid; Additional information available
New Mexico		✓	That the solicitor is paid; On request, the fee retained
New York	Extensive	✓	— ^f
North Carolina	“Wise giving”	✓	That the solicitor is paid; Additional information available
North Dakota	Limited		—
Ohio	“Wise giving”	✓	That the solicitor is paid; On request, the fee retained
Oklahoma	Limited		That the solicitor is paid ^g ; On request, the fee retained
Oregon	“Wise giving”		That the solicitor is paid ^h
Pennsylvania	“Wise giving”	✓	That the solicitor is paid; Additional information available
Rhode Island	Limited		That the solicitor is paid; On request, the fee retained
South Carolina	“Wise giving”		That the solicitor is paid; On request, the fee retained; Additional information available
South Dakota	Limited		— ⁱ
Tennessee	Limited	✓	That the solicitor is paid; On request, the fee retained
Texas	“Wise giving”	✓	Additional information available ^j
Utah	“Wise giving”		
Vermont	Extensive		That the solicitor is paid; Additional information available
Virginia		✓	Additional information available
Washington	Extensive	✓	That the solicitor is paid; Additional information available
West Virginia	“Wise giving”	✓	On request, the fee retained; Additional information available
Wisconsin	Extensive	✓	Additional information available
Wyoming			

^aConnecticut Chapter 419d § 21a-190f(e) requires a paid solicitor to disclose, prior to requesting a contribution, “the fact that such solicitor is a paid solicitor and the percentage of the gross revenue which the charitable organization shall receive....”

^bThe District of Columbia requires solicitors (whether or not paid) to “display” a solicitor information card which shows the name of the solicitor and the name of the registrant (the solicitor’s employer).

^cHawaii requires that paid solicitors disclose of the identity of the solicitor and the tax deduction (if any) that may be allowed.

^dKansas requires paid solicitors to disclose the paid solicitation license number at the time of solicitation.

^eKentucky prohibits a professional solicitor from representing that the recipient of contributed funds will be a charity if the charity will receive less than 50 % of the contribution unless there is “clear and conspicuous” disclosure of “the percentage of the funds which he was allowed by contract to receive.”

^fThe New York Attorney General publishes “Pennies for Charity: Annual Report on Telemarketing Campaigns In New York” with detailed information about the results of telemarketers’ fundraising. http://www.charitiesnys.com/pennies_report_new.jsp

^gOklahoma requires disclosure of paid status only on request.

^hOregon Chapter 128 § 824(2) “All commercial fund raising solicitations shall include a clear and conspicuous disclosure of the amount of the solicited funds to be paid to the nonprofit beneficiary....”

ⁱSouth Dakota requires that the purpose of any telemarketing call be disclosed within the first 30 seconds of the solicitation.

^jAvailable for public safety and veterans organizations only.

For an example of a “Give Wisely” webpage, see an example from the North Carolina Department of Justice: <http://tinyurl.com/grxooce>. For an amusing video on the theme, see this from the Washington Secretary of State: <http://tinyurl.com/z6daqrh>.

For an example of an extensive advice page, see an example from the Michigan Attorney General: <http://tinyurl.com/gn92ej2>.

For an example of a limited advice page, see the example from the Oklahoma Attorney General: <http://tinyurl.com/z6t4rbm>.

State regulators’ websites were reviewed in December 2015 to collect the data in the table above.