

THE NONPROFIT TIMES™

The Leading Business Publication For Nonprofit Management • www.nptimes.com • \$6.00 U.S. February 15, 2008

REGULATION *KARL E. EMERSON*

It's A New Year

It's time to get in compliance with state rules

If you're one of those who thought Congressional scrutiny of the nonprofit sector was going to end just because Sen. Charles Grassley (R-Iowa) is no longer chairman of the Senate Finance Committee, think again. Not only has the senator continued to expend considerable effort investigating actual and perceived abuses in the sector, his colleagues at the House Oversight and Government Reform Committee recently joined his efforts by holding a lengthy hearing on sector abuses.

Committee members expressed outrage at the conduct of certain charities detailed at the hearing and indicated that they plan to hold additional hearings early this year. Of course, this heightened Congressional scrutiny has been fueled by the steady stream of stories about actual and alleged abuses in the sector that has regularly appeared in news media across the country on an almost daily basis for many years now.

Because of this heightened Congressional and media scrutiny, perhaps the single most important thing a charity can do to start the new year out right is to have a comprehensive compliance assessment performed to determine whether it has any actual or potential problems that, if not addressed in an appropriate and timely manner, could lead to damaging media stories and/or state or federal prosecutions. If your organization has one or more actual or potential problems, it would be far better to uncover the problems yourself and take appropriate action to correct them rather than having the problems discovered by a state or federal regulator, an inquisitive investigative reporter, or, worse still, by Grassley or one of his Congressional colleagues.

So, here are just five of the many items that should be reviewed during a comprehensive compliance assessment. In future columns, other, equally important, items will be covered.

First, is your organization in compliance with all applicable state charitable solicitation statutes?

At least 39 states and the District of Columbia have statutes governing the solicitation of charitable contributions. Is your organization properly registered in all states where it solicits that have registration requirements? For charities that aren't excluded or exempt from registering, this can be a time-consuming and costly

process. However, it's the law and a charity that solicits in a state with a registration requirement without being properly registered risks having significant fines imposed against it if caught.

For example, Section 17(b)(3) of Pennsylvania's solicitation law authorizes fines of up to \$1,000 per violation and additional penalties of up to \$100 per day for every day a violation takes place.

If a charity isn't registered and should be, technology is increasingly enabling regulators to document this fact. For example, Pennsylvania has obtained information in electronic format on all Pennsylvania-based charities that reported to the Internal Revenue Service on their federal Form 990 that they had contributions. Pennsylvania has run this information against its database

sional fundraisers the charities hire must also register and file copies of their contracts too. Failure to do so can again result in the unregistered entities being subjected to significant fines and penalties as well as other legal sanctions. In Pennsylvania, an unregistered fundraiser that failed to file hundreds of contracts was fined \$45,000.

Third, are all your organization's solicitation materials truthful and free of material false statements, misrepresentations, and/or omissions?

For example, Pennsylvania recently settled a case with a prominent regional charity that regularly represented to the public in promotional materials and otherwise that it had given significantly more to a medical research center than it actually had. Some years the charity's founder would even hold

clearly and conspicuously state that "The official registration and financial information concerning the soliciting charity is available by calling [Pennsylvania's] toll-free number and that registration . . . does not imply endorsement."

Failure to include this statutorily-required disclosure statement is a fairly common violation and each solicitation, written confirmation, receipt, and reminder of a contribution made without the required disclosure statement could result in up to a \$1,000 fine being imposed for each violation.

Fifth, and finally, is your organization keeping true and accurate fiscal records?

This is a fairly uniform and commonsense requirement and, yet, unfortunately, it's also a very common violation for charities of all sizes - whether they're run completely by volunteers or by full-time paid professional staff. All charities soliciting contributions have to be able to clearly show exactly how much money they've collected and how they've spent it - even if they're exempt from the annual registration requirements.

Therefore, a charity needs to make sure it can clearly account for every dollar collected and show it spent every dollar for purposes consistent with its charitable purposes. In fact, the failure to keep "true and accurate" fiscal records is itself a violation in many states.

So, how do you feel right now? "Good" because your organization is in compliance in all these areas, or "somewhat concerned" because it isn't? If it's the latter, resolve to start the new year right by getting your organization into compliance in all these areas as soon as possible.

You'll sleep a lot better and will look forward to picking up the morning paper because you'll know that, should your organization be featured in an article on the front page, it will be for all the good work it's been doing rather than because it was found to not be in compliance in one or more of the above areas. *NPT*

Karl Emerson, after a 25-year career with the Commonwealth of Pennsylvania, retired in June 2007 as director of the Pennsylvania Bureau of Charitable Organizations. He now practices law with Montgomery, McCracken, Walker & Rhoads, LLP in Philadelphia, Pa. His email is KEmerson@mmwr.com



Do your organization's solicitation materials contain all statutorily-required disclosure statements?

of registered charities and has started to follow up with each organization that needs to get registered based on the information reported on the organization's Form 990.

In Pennsylvania, like in most states, it's always better for a charity to register "voluntarily" rather than wait until it gets "caught" because the fines and penalties for voluntary registrants are typically far less than for those the states have to have their investigators and attorneys follow up on. So, if a charity is supposed to be registered and isn't, its number one priority should be to get into compliance in every state where registration is required.

Second, are all your organization's professional fundraisers properly registered and have they filed copies of their contracts with the appropriate state oversight agencies?

Not only do charities that aren't specifically exempt or excluded have to typically register with the states before they solicit contributions, any private, for-profit profes-

sional fundraiser the charities hire must also register and file copies of their contracts too. Failure to do so can again result in the unregistered entities being subjected to significant fines and penalties as well as other legal sanctions. In Pennsylvania, an unregistered fundraiser that failed to file hundreds of contracts was fined \$45,000.

Third, are all your organization's solicitation materials truthful and free of material false statements, misrepresentations, and/or omissions?

For example, Pennsylvania recently settled a case with a prominent regional charity that regularly represented to the public in promotional materials and otherwise that it had given significantly more to a medical research center than it actually had. Some years the charity's founder would even hold

a press conference where he would present one of those big, oversized checks to a representative of the research facility. The only trouble was that there wasn't always a real little check that actually transferred the entire sums in question to the research facility. As part of the Settlement Agreement, the charity was required to live up to the representations it had made over the years and, among other things, actually transfer four million dollars to the research facility. This is just one example of how critical it is that you make sure your organization is living up to the representations it makes to the public.

Fourth, do your organization's solicitation materials contain all statutorily-required disclosure statements?

Many states have disclosure statement requirements. For example, Section 9(k) of Pennsylvania's solicitation law requires that every solicitation, written confirmation, receipt, and reminder of a contribution