

**STATE OF MARYLAND**

EXECUTIVE DEPARTMENT

**LARRY HOGAN**  
GOVERNOR

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LT. GOVERNOR



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**JOHN C. WOBENSMITH**  
SECRETARY OF STATE

December 1, 2015

The Honorable Lawrence J. Hogan, Jr.  
Governor of Maryland  
The State House, 100 State Circle  
Annapolis, Maryland 21401

The Honorable Thomas V. Mike Miller, Jr.  
President of the Senate of the State of Maryland  
H-107 State House  
Annapolis, Maryland 21401

The Honorable Michael E. Busch  
Speaker of the House of the State of Maryland  
H-101 State House  
Annapolis, Maryland 21401

**RE: HB150/Ch. 73, 2015 -MSAR #10631**

Dear Governor Hogan, Senate President Miller, and House Speaker Busch:

Please accept the attached interim report of the Charitable Enforcement and Protection Workgroup created under House Bill 1352 during the 2014 legislative session. House Bill 150 signed into law during the 2015 legislative session extended the workgroup and changed interim report dates to reflect the extension of the workgroup. In 2015, the workgroup studied ways to ease filing burdens on charitable organization, improve operations within the Office of the Secretary of State, and improve communications with the donating public and nonprofit sector.

The attached interim report is jointly filed with a final report on late fees and penalties also required by House Bill 1352.

December 1, 2015  
MSAR #10631

If you have any questions or concerns, please feel free to contact me at (410) 260-3865 or email at [kathleen.smith1@maryland.gov](mailto:kathleen.smith1@maryland.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Smith". The signature is fluid and cursive, with a large initial "K" and "S".

Kathleen Smith  
Assistant Secretary of State  
Charities and Legal Services Division

- cc. Sarah T. Albert, Mandated Reports Specialist, Department of Legislative Services (5)  
Zenita Hurley, Director of Legislative Affairs & Civil Rights, Office of the Attorney General  
Josaphine B. Yuzuik, Assistant Attorney General, Office of the Secretary of State  
Michael Schlein, Investigator, Office of the Secretary of State

The Charity Enforcement and Protection Workgroup created under House Bill 1352 convened on July 1, 2014 to study the information that should be reported to the Secretary of State by charitable organizations, charitable representatives, and fund-raising counsel and how that information can be most effectively and efficiently collected without imposing an unnecessary burden on those subject to reporting. The workgroup created is also to study how the information reported by charitable organizations should be shared within and among government agencies or made publicly available to promote the goals of protecting the public from unscrupulous solicitations and fraud and facilitating the prevention and correction of any misuse or misapplication of charitable assets.

Effective October 2015, members of the workgroup include:

1. Kathleen Smith, Chair, Assistant Secretary of State, Office of the Secretary of State
2. Josaphine Yuzuik, Co-Chair, Assistant Attorney General
3. Michael Schlein, Office of the Secretary of State
4. Jonathan May, Maryland State Bar Association, Whiteford Taylor Preston
5. Melanie Styles, Foundations, Abell Foundation
6. Carole Carlson, Certified Public Accountant, The Rights and Resources Initiative
7. Karl Emerson, General Public, Montgomery McCracken
8. Robin Jacobs, Nonprofits, Community Law Center
9. Chris Cash, National Association of State Charities Officials, Colorado Dept. of State
10. Ryan Galloway, General Public, The Galloway Groupe
11. Kyle Roberts, Internal Revenue Service
12. Kate McGuire, Fundraising, The Arc of Baltimore

### **JUNE 10, 2015 MEETING**

At the first meeting of 2015, the workgroup convened to review the prior year's work, discuss the status of the Charity Division at the Office of the Secretary of State and plot a course moving forward for 2015. Discussion topics agreed upon by the group for 2015 included: a better partnership between the Office of the Secretary of State and the non-profit sector; improving communication and education with the non-profit sector; automatic extensions as a means of reducing the filing burden on charities and the processing burden on the Office of the

Secretary of State; electronic filing system status; and the protection of charitable assets law passed in 2014. Dates for future workgroup meetings were discussed.

### **JULY 22, 2015 MEETING**

The second meeting of 2015 was held July 22, 2015. The workgroup was provided a status update on the new charity registration system, discussed automatically granting extensions to the charity registration deadline, and discussed information sharing with the public and charity community. A new electronic filing system has not been created, but is in the conceptual stages. A new Assistant Attorney General dedicated to enforcement of the Maryland Solicitations Act and protection of charitable assets is expected to start in the next month.

The workgroup reviewed current law and regulations regarding extensions. Automatic extensions were recommended by the workgroup, for the purpose of easing the filing burden on charities and operational process burdens on the Office of the Secretary of State. The rules currently provide that the Office of the Secretary of State may automatically grant up to two extensions to a requesting charity seeking an extension as long as the organization's registration is current. The extensions coincide with the extensions of time granted by the IRS for completion of the IRS Form 990. Also, the rules provide that an organization can seek an additional 4.5 months to file with the Office of the Secretary of State (*for example: if registration due 6/30/15, an extension until 11/15/15 can be granted*). It is estimated that over half of the charities request at least one extension and most of those requesting one extension request a second extension. Granting automatic extensions for charities will allow the Office of the Secretary of State to improve operational effectiveness and efficiency. This change in current regulations will need to be requested by the Secretary of State's Office. Little opposition to this change, if any, is expected from the charity sector. The workgroup considers this change beneficial for both the charity sector and the Office of the Secretary of State.

Action: A motion was made, seconded, and approved by the workgroup in favor of changing the regulation to allow automatic extensions.

The workgroup discussed how the Office of the Secretary of State can better educate the non-profit sector as well as communicate and share information with the public. Recommendations included initiating educational outreach by providing better information on the website regarding non-profit governance and reporting requirements. Suggestions included:

Distributing press releases regarding updates impacting the non-profit sector and to distribute new information or actions to the public. Non-profits that specialize in educating and assisting other non-profits were cited as good outlets for information sharing because they have extensive networks that reach a wide range and volume of non-profit organizations. Information sharing between the Office of the Secretary of State and the Corporate Charter Division at the Maryland Department of Assessments & Taxation was also mentioned. On the topic of improving communications and sharing information with the public, the workgroup discussed the current need to get more usable data available for the public. Currently, the Secretary of State's website provides information on which charities are registered and provides a summary of their overall financial position. More detailed data on individual fundraising campaigns is available on professional solicitor accounting reports as well as on the contracts between charities and their professional fundraisers. It was recommended that the Office of the Secretary of State consider including this data when constructing a new registration system.

### **SEPTEMBER 23, 2015 MEETING**

At the third meeting of 2015, held on September 23, 2015, the workgroup received updates on the regulation change to allow for automatic extensions; reviewed annual reports from the charities divisions in Colorado, New York, and Pennsylvania; and discussed the protection of charitable assets law passed in 2014. The workgroup was informed that the Office of the Secretary of State was drafting the documents, and gathering the information needed by an agency that seeks to change a regulation.

The workgroup reviewed available data, forms, and reports used by other states. These states' annual reports provide information to the public based on each registered charity's revenue including the percentage of revenue spent on program services expenses, management and general expenses, and fundraising expenses. These reports also provided data on individual solicitation campaigns conducted by professional fundraisers. The data included the percentage of revenue generated by each fundraising campaign and percentages allocated to the charity and solicitor. The workgroup discussed the use of an Annual Report by the Office of the Secretary of State to better educate the public about wise giving. As an automated registration system is developed, the workgroup suggested that the Office of the Secretary of State should consider a system that would create and retain reports and data that can be available for the public.

Discussions included the new protection of charitable assets law, which was modeled after the Model Protection of Charitable Assets Act. The group discussed conduct that could constitute potential waste as the subject of an enforcement action, and available guidance on what the law is intended to cover.

### **OCTOBER 21, 2015 MEETING**

The fourth meeting of 2015 was held October 21, 2015, the workgroup discussed the idea of raising or changing the thresholds at which financial reviews and audits are required, protection of charitable assets, and information sharing/outreach by the Office of the Secretary of State. In the spirit of wise stewardship and to relieve undue financial burdens, the consensus of the workgroup was the audit threshold should be raised. Currently, a registered charity must have an audit conducted when it receives \$500,000 or more in contributions. The group suggested raising the threshold to \$750,000 or \$1,000,000. It was reported that the current market rate for an audit is at least \$15,000. A complex audit may cost \$20,000-\$25,000 or more. A discussion about raising the threshold for a financial review was inconclusive, that said, similar concerns were raised regarding costs. The consensus was that if a change is made, it should not be raised significantly. A financial review may be the first interaction a charity has with an independent certified public accountant competent in the nonprofit sector. The financial review is beneficial for charities because it creates a conversation with the certified public accountant, and for some this is the first opportunity to understand their financial condition. Encouraging charities to engage a certified public accountant can lead to the institution of better financial processes and controls. Members of the workgroup believe that raising thresholds for audits would face little opposition. It was reported the state CPA association endorsed raising audit threshold when it was proposed in Pennsylvania.

The workgroup discussed the protection of charitable assets law and realized the difficulty with defining examples regarding the use of charitable assets. The difference in definitions of terms between states and then between a state and the federal government was discussed. The workgroup pointed to potential guidance found in the comments section of the Model Protection of Charitable Assets Act, as well as existing, well-known language created by the Internal Revenue Service for the non-profit sector. UPMIFA (Uniform Prudent Management

of Institutional Funds Act) was also mentioned as a potential guide in determining definitions of terms in the statute. A discussion ensued regarding benefit corporations and asset protection. The member from Colorado reported no uniformity with fitting benefit corporations into Colorado's solicitation law. In Colorado, those cases are handled on a case-by-case basis.

Mechanisms to facilitate education, improved information sharing, and outreach by the Office of the Secretary of State was discussed as well as providing more information on the website about non-profit governance issues, training, etc. to educate the non-profit sector. Email blasts by the Office of the Secretary of State to its charity registrants was mentioned as a cost effective way to distribute information to registrants on a variety of relevant topics. Other states provide training materials and links to sources for educational and training information. The workgroup expressed unanimous concern regarding the Governance matter to ensure financial literacy among board members. Adding a link to the Life Cycle of a Public Charity page on the IRS website was suggested as well. The IRS website has a page explaining all steps in the life cycle of a public charity, providing information about what must be done at various stages of a public charity's existence. Providing more donor education information was suggested.

On the topic of enforcement, it was shared that the primary duty of the new Assistant Attorney General is enforcement of the protection of charitable assets, and efforts are underway to improve internal capacities so that the Office of the Secretary of State can increase enforcement activity. In 2015, enforcement efforts of the new Assistant Attorney General have been focused on preexisting investigations of the Office of the Secretary of State and litigation of Maryland's pending claims in a multistate suit involving several cancer charities.

## **CONCLUSION**

During 2015, the workgroup studied suggestions aimed at easing the filing burden on charities while easing the operational and processing burden on the Office of the Secretary of State, how to better share information and communicate with the public, the non-profit sector, and considerations for the enforcement of protecting charitable assets. The workgroup provided suggestions for the Office of the Secretary of State's consideration to improve service delivery to donors and the non-profit sector, and build capacity for enforcement of the protection of charitable assets. The workgroup approved a motion to change a regulation and was open to

raising the threshold regarding audit requirements under the Maryland Solicitations Act. The Office of the Secretary of State expects to act on the regulation change about extensions and raising the threshold for an audit.

The workgroup suggested several topics for consideration in 2016 to include: improving the website of the Office of the Secretary of State by adding Frequently Asked Questions pages for various areas of interest for the non-profit sector, development of a more effective electronic registration systems, and continued discussions about enforcement of the protection of charitable assets law. The workgroup will schedule six (6) meetings in Calendar Year 2016, two more than in the previous year, to allow additional time to address topics of importance and agreed to cancel the two additional meetings if topics were adequately discussed in fewer meetings.

### **Appendixes**

Appendix A: Minutes from Workgroup meeting on June 10, 2015

Appendix B: Minutes from Workgroup meeting on July 22, 2015

Appendix C: Minutes from Workgroup meeting on September 23, 2015

Appendix D: Minutes from Workgroup meeting on October 21, 2015

Meeting start time: 10:12am

Meeting end time: 11:33am

**In attendance:**

<u>Name</u>	<u>Organization</u>	<u>Email</u>	<u>Phone Number</u>
Zenita Wickham Hurley	OAG-OCR	<a href="mailto:zhurley@oag.state.md.us">zhurley@oag.state.md.us</a>	410.818.4890
Tiffany Harvey	OAG-OCR	<a href="mailto:tharvey@oag.state.md.us">tharvey@oag.state.md.us</a>	443.463.0751
Robin Jacobs, Esq.	Community Law Center	<a href="mailto:robinj@communitylaw.org">robinj@communitylaw.org</a>	410.366.0922
Melanie Styles	Abell Foundation	<a href="mailto:styles@abell.org">styles@abell.org</a>	410.547.1300
Jonathan May	Maryland State Bar	---	---
Karl Emerson	Montgomery, McCracken	<a href="mailto:kemerson@mmwr.com">kemerson@mmwr.com</a>	215.772.7314
Henry Bogdan	Maryland Nonprofits	<a href="mailto:hbogdan@mdnonprofit.org">hbogdan@mdnonprofit.org</a>	443.438.2318
Michael Schlein	Secretary of State	<a href="mailto:michael.schlein@maryland.gov">michael.schlein@maryland.gov</a>	
Peter Fosselman	Deputy Secretary of State, Charities and Legal Division	<a href="mailto:peter.fosselman@maryland.gov">peter.fosselman@maryland.gov</a>	410.974.5521

**On Phone:**

Carole Carlson

**Agenda topic: Goals of the workgroup**

*Peter:* A new position has been created, implementing an Assistant Attorney General (AAG) and that person should join the work group.

- (those present nod in agreement)
- New legislation now gives more authority for Secretary of State Charities and Legal Division (SOSCL) to enforce the existing rules .
- There have been a lot of complaints for non-enforcement but also because of the division's lack of authority, but the new AAG should help that.
- Also the office's forms are very bureaucratic and long. The work group has sifted through the problems within the form trying to consolidate and eliminate the unnecessary forms and questions.
- Henry is not officially part of the group but he has been a cheerleader and advisor while spearheading the mission to help get these efforts done.
- The office's goals are to simplify the process and up the ante on forms and on how information can be most effectively and efficiently collected and gathered .

*Michael:* (goes through packets)

- All new forms are live and online, any work done last year is up and in use.
- Forms are works in progress but they tried to encapsulate all recommendations made at previous meetings.
- Everyone should take a look and let him know if any changes should be made.
- New forms have already ameliorated a couple of the registration problems in the past No one has complained thus far, there are less issues.

- Ex: COF85 is simpler. It is 2 pages, collecting no unnecessary information. He's heard a lot about that form in particular because people often complained about the old one but he's directed people to go back and look at the revised version.
- There used to be 10 forms but now there are 7 with a more consistent format among all of them.

*Jonathan:* Now is the time to document such progress since the outcome has been positive. This helps other work groups see how well this has worked. It took a lot of stress but it worked.

*Peter:* You're right Jon. It's like a model for others.

*Jonathan:* Yeah, it can be very tough but why hide light under a bushel, let people know.

*Robin:* Oftentimes people don't know what to do nor know about changes so let us know how our org (Community Law Center) can help educate and let people know about compliance with charities

*Melanie:* We'd be happy to comply as well. There are a lot of neighborhood organizations interested in being charitable but don't know how so it would be helpful to share, like Jon said, about how to do that

*Robin:* we've (Community Law Center) helped people become 501c3's so this is our bread and butter

#### **Agenda topic: Update on registration status**

*Michael:* There is no more back log. We are no longer 60-75 days behind.

*Robin:* I've heard good feedback. The nonprofit sector really appreciates that.

*Michael:* Yeah it's good, much better now. Now we're not telling people they're not in compliance when they are in compliance. This has also lessened the amount of phone calls received because it's up to date. There are times when applications received (filers) are heavier than other. So around this time, between June 15 and June 30 it's heavy because some apps are due June 30 because of how some fiscal years are set up so there may be some back log around now. The updating process is cyclical so keep that in mind. Nov 15-Dec 31<sup>st</sup> is also heavy because it's of the December fiscal year. People also heavily submit then. But the office selected the slowest time of year to make updates so it was perfect timing.

*Henry:* Can we discuss the vacant position?

*Peter:* That is on our agenda so we will get to that

*Karl:* Why can't the due dates be extended? More states are granting extensions because they are short staffed and dealing with more and more charities. More states area granting it, have you guys considered it?

*Michael:* We do something internally with extensions. Extensions are more relevant when we're behind on mail so internally we do extend. So online, it would still show up current online when they were behind until the internal extension ended because we didn't want people to think they weren't

compliant when they already mailed in their applications. Applications are due within 6 months of the due date or any other date the Secretary of State sets.

*Karl:* People can typically get a 6 month extension from the IRS if they ask for one. In Pennsylvania, if a good cause is shown and you submit a written extension, you can get one. Before we had computer systems sending automatic delinquent letters saying someone's registration expired when it was just sitting waiting to be processed. The bureau said we can't keep up with it so we'll just automatically extend. The bureau extended, not the charity because it was a formality on the bureau's part. Most people apply for an extension anyway. The bureau in PA now gives people more time to send in November rather than in June.

*Jonathan:* Just move the goal post if you know people can't comply and meet the date. Just extend it.

*Karl:* Washington does it.

*Jonathan:* Move it 6 months ahead to alert and then as time approaches then notify again.

*Karl:* People submitting might already be non-compliant so you probably won't grant the extension. You should give people the time and then you can free up time to go after bogus groups like the big FTC problem. People want to see the office going after the people and charities that are ripping them off.

*Michael:* We'll take it back to office. Getting back on schedule, if there are any problems let us know. Discussing the form format the attachments section is clear, we've put things in bold too.

*Peter:* The General Assembly has approved a position for AAG in our office. We spoke to Liz Harris yesterday and the week before. Liz, Zenita and Tiffany are screening resumes and forming a panel for interviews and will narrow to two people. They'll pick, submit a name to me and we'll see if they fit what we need them for. The person is really working for Frosh just being loaned to us which is good because they'll know more of the legal process than we will. We're hoping to get them in for July. The position starts July 1 budget wise. Back to Henry's question. 2 positions in the office that the staff wanted have been taken away from us. One dealing with the problems we've had with charities and the other with notaries. The office has gone from 67 to 23 people. I myself am processing 1/3 of notary applications a day because we're really understaffed. So they wanted to take 2 more away from us. So we got a team together, met with senators, made calls and thanks to Henry supporting our office and letting everyone know we could not afford to lose 2 more they're revisiting the issue. We still have 2 more hurdles: the Dept. of Budget Management is in the process of reviewing the 2 positions they wanted to take away. When they're done, they will impose a hiring freeze because those 2 positions are currently vacant. The two people left and then we were frozen out so they have been out. We have to wait until September to see what the decision is. The positions are notary officer and public information/special assistant. The public information person handles executive orders and flag protocol. I've been doing that on the side. To serve that position, we've borrowed someone from The First Lady's office. Everyone picked up extra duties. Condos trademarks, community housing authorities, homeowner assoc.

You would think notary officer wouldn't have an affect but we now have to pull the charities workers to process the 18k notaries. We're hoping to get the two positions filled by September. April 2015 is how far behind in notaries we are.

*Karl:* I know the dilemma as having been a charity directory. The office is always understaffed but politically you have to say the Governor has perfectly staffed the office.

*Peter:* Let's not blame Hogan because he's new to this.

### **Agenda Topic: Online System for Charities**

*Peter:* This group is not really responsible for this but it's a good idea because we should run up to IT and know this is going to work and everyone can pretend to apply

*Henry:* There was a Tampa Bay Times story and we wanted to see if Maryland was doing something similar. Delegate Morhaim mentioned something to extend the life of this work group. It was about back logs but not just involving compliance. During the Ehrlich administration the office approached us for help on a bill that was interpreted as: once you mailed your application, you could solicit. And the remedy to the office for that was that if you found someone soliciting when they weren't supposed to, you went to the Circuit Court for Anne Arundel County but then the time frame extended to years before you could stop someone from soliciting. The bill passed and then you had 10 business days to stop someone, letting them know that registration doesn't allow you to solicit. But now people don't open mail so you can't stop at the outset. How bad does it have to get for Maryland to find a way to stop the bad guys so the process isn't extensive and doesn't take years to find out? We need to stop at the get go.

*Peter:* So is this a future topic you want to discuss?

*Henry:* yeah, that's what the delegate intended when the bill passed to extend work group life

*Jonathan:* We should look at language again because we tabled it last year. It's been accomplished largely but we should look at part 2, other things in the statute, work on info gathering and sharing issues. How do we use the system to inoculate against bad apples? It's going to take a lot of discussion so we should discuss this more because we can't solve it all. I wouldn't want to devolve into a situation where we streamline a system because we're worried about catching 1 or 2 bad apples vs. helping what we just put in place to help people--the 99% of good charities

*Peter:* It's a liability issue if we create a hotlist, if we don't have evidence that these people are bad apples, we're going to get in trouble. How do we know they're really bad?

*Mike:* South Carolina has a scrooge list: 10 of their worst charities based on salaries or fund raising percentage; but the notion wasn't like a hotlist. It wasn't to try and catch someone up front but more of on the backend. We have these people registered. List notifies public about charities with high overhead.

*Karl:* State regulators can't say don't donate to these charities because the money goes to administrative costs.

Henry: If/When we get a fully online environment, the fundraising contracts (we should be allowed to dictate format), if we have a way to tease out the disclosure, then we get the info to be a public document

Mike: So we make them file electronically

Henry: Yes, it should be public info so the public can see

Mike: In Colorado, you can search charities, look at their solicitors and see how much of the funds go to what and then you have an accurate look when you get a phone call and know where your money is actually going

Karl: Solicitors have to file those reports. Public gave this much, charities got this much. PA and NY do this

Pete: Can we stay on task? The task is to come up with topics for next meeting

**Mike: We collect but it doesn't go on the website or database. You can't look up accounting reports and find how much was used for an event, expenses or received but they file fundraising notices and I guess we can upload that online.**

**Jonathan: if we're going to talk info gathering, why are we gathering? To warn the public, for enforcement, educational, it is for highlighting bad apples? We have to say what the end purpose is because its bad to gather for no reason because it creates ill will on the good folks and creates bureaucracy if no reason.**

**Melanie: isn't that what we did?**

Jonathan: Are we trying to stop organizations at the front end. How realistic is that really? If you're not in the system, you're suspect because either you're ignorant or if you're a bad apple. We need to know how to go after that aspect. Once in the system and reporting, we need to know what's valuable to the public and enforcement side. It doesn't matter how much paper you collect if no one knows about it.

Robin: A topic can be making information useful to the public and how to enforce

John: We're picking and choosing what public has to know, so that if a fundraiser thinks percentage of overhead is a big deal, then they should know. Whether you use professional fundraisers. We have to decide what information has to be out there because if you don't assess its just a data dump.

Pete: In a Maryland charity campaign with United Way we cracked down on the process and if there was over 25% of overhead, you don't get in. You have to be in compliance with the state to be in campaign. We get dozens of charities not registered with the state then that gives Mike a way to go after them. That's an interesting tool.

Mike: we get less each year, 4-5 charities, not the big fish the public would be interested in us catching because we catch them early.

Henry: It's good we have so many people to see what you all are doing and make changes.

Mike: Maybe do a presentation for what he (Karl) does on the front end with charities since he files all over the county so we can see what does and doesn't work. I told him if we ever get into e-filing I will (visit and observe him) when he extended the invitation.

Online systems should encourage compliance not discourage national center for charity statistics. We got it and no one used it because not user friendly. PA I volunteered us as guinea pig and it wasn't good.

Pete: online system should be topic of discussion

Notary database is complete but not online and it'll take credit cards. An outside contractor is creating the database. Don't know when or whether will be live but maybe we do a demonstration so it sees how it works like an outsider. The Charity database, not sure of its status.

Melanie: are they basing it off other state's successes?

Peter: Delaware has a good notary system but I don't know what they're getting it from. Charities, I don't know either.

Karl: other states have done the heavy lifting and paid to figure out how to do it so find one that's already used, learn from others experiences.

Pete: they're not novices I'm sure it's not from bottom up

Karl: paper filing is easier, online doesn't excite me because sometime it's more complicated. Can I do it in less than 30 seconds? Right now I can submit the same if there's a unified system. Ohio you can do it so quick.

Pete: so why do online then?

Karl: no one wants to do paper

Jonathan: that part isn't about filing, it's about enforcement. Either hire data entry person or let the computer do it.

Robin: can we keep the paper apps around for a bit because older people don't know how to do the online apps and it's hard

Karl: New Mexico said no more paper apps and it was a disaster because of glitches and it took so long more difficult

Pete: it would definitely help because what's causing the back log is how long it takes to put in data but online the person can do it themselves

Robin: 1023ez people are so quick to hit submit

Karl: There's a way people can use a default address online so you don't have to submit the same address each time. It's tedious. I've spent hours doing that.

I go in and put in solicitor address and have to stop because online says they're not registered then I have to call the state and they tell me they are registered and I can't even go further. That's happened to me with Florida. It takes 3 hours and what do I do now? You want to have it be effective. We should sit down and do it ourselves, sit and fill out a registration. Test it. Online filing should definitely be a topic next meeting.

In PA there was huge charity fraud and the legislature wanted to pass new laws to stop it, I had to push for no new laws because they already violated the existing statutes. What you need is a staff of enforcement then we got investigators and officers and auditors. Even still we were just scratching the surface. Get your prosecutor on board and team up and even with 1 AAG you still need a bigger staff.

Jonathan: if we're going to have enforcement along the lines of statute, waste mismanagement etc. then what info gathering is relevant and how is it going to be use?

Pete: Mike and I wrote job descriptions and didn't run it by you guys, we should have

Mike: it's taken from the bill

Jon: when you have 1 AAG what's going to be the best use of their time and how do we provide info to them. Are they going to be sifting with regard to enforcement?

Those are 2 different buckets. What does public need to know?

You can't design system without knowing what it's used for

Effort to get people registered isn't thrust of charitable protection act. It's about taking action when you know there's a problem

Enforcement principles and priorities! We haven't talked about it and that's a HUGE topic.

Robin: I agree

Karl: people engaged in charity fraud have lawyers lined up

Jon: if they're that big then they're multi-state

Zenita: like the cancer charity

Mike: If you want to make application online available, you can contract with Guide star, you can search for MD and it will look like it comes from us but it's really guide star

Karl: If new AAG gets picked, he should know what he needs to know and maybe we need another investigator

Henry: that's a budget action. If the funds were there, I would call a sponsor now.

Peter: There's enough pressure maybe

Zenita: What are you proposing be the discussion topic, wait until AAG's priorities are set?

Pete: yes, let's wait until they're selected so they're included in discussion

Mike: let's worry about enforcement after the next meeting when he's selected so when we come to recommendation for what we're asking online and how it should be disseminated. We should wait.  
NEXT let's handle online charity and enforcement stuff

Jonathan: we should know if the AAG is going to be reactive, proactive or both because they're different universes. That may require 2 different views on what's needed.

Karl: We could never do proactive stuff because so many things coming thru the door. Proactive is hard. The cancer problem was uncovered years ago but it's not realistic. It takes years.

Zenita: It's a resource issue.

Jonathan: What happens when stuff starts to come in? Maybe be proactive on the education side so people know what to do.

Karl: Getting a team in Pennsylvania didn't happen overnight.

11:20 CAROL EXITS PHONE CONFERENCE

Mike: TOPICS FOR NEXT MEETING

What are other states doing and use that as a basis to make recommendations for what we're going to do

When AAG is on, they can do enforcement later but after we figure out how things are collected elsewhere and who we should disseminate and how we can enforce. Let's give the AAG some time.

Karl: We pick a small charity with 4 board members and use them as a focus group. Like a bogus registration. We're not trying to fraud them but so we could use them for help.

Jonathan: we don't meet that often: but to put it all together

- We can agree : online system, free of bugs, and not discouraging
- Create relevant info

Melanie: based on successful models of other states

Karl: I'm assuming your guys know what they're doing but in Nevada I filled out one but it didn't ask any info I found to be pertinent so I didn't see how it helped. Yes, it was fast but it provided nothing. You want it to be simple, easy to use and not collecting tons of info, you want essentials and key things that will help others make informed decisions and be able to put that info on the website.

Peter: Let's set the next meeting because people have to go.

Next meeting 10am: July 22,

July 22, 2015  
Charitable Enforcement and Protection Workgroup  
10:00 a.m. - 12:00 p.m.  
Office of the Attorney General

Attendees Present:

1. Luis Borunda, Office of the Secretary of State
2. Tiffany Harvey, Office of the Attorney General
3. Michael Schlein, Office of the Secretary of State
4. Jonathan May, Maryland State Bar Association
5. Melanie Styles, Abell Foundation
6. Karl Emerson, General Public
7. Robin Jacobs, Community Law Center
8. Henry Bogdan, Maryland Nonprofits
9. Brian Morris, Office of the Secretary of State
10. Teresa Owens, Office of the Secretary of State
11. Kate Maguire, The Arc Baltimore

Attendees Not Present

1. Kyle Roberts, Internal Revenue Service
2. Chris Cash, National Association of Charity Officials (unknown if he called in)
3. Carole Carlson, The Rights and Resources Initiative (initially on call but was pulled into another meeting)
4. Ryan Galloway, The Galloway Groupe

Start time: 10:04 a.m.  
End time: 11:52 a.m.

**Agenda Item #2: Approval of June 10, 2015 Minutes**

Motion to approve last meeting's minutes was made and passed.

**Agenda Item #3: Update on New Charity Registration System**

Luis opened the meeting by apologizing for misinformation previously given to the workgroup regarding the status of the online registration process.

Brian then provided an accurate status update regarding the online notary system and online registration process. The notary online system is fully operational while the online registration system is still in the development phase. The online notary system will be in use by September.

The office intends to hire an additional programmer to assist with the development of the registration system. The estimated operational date is 8-10 months for the internal system and then an additional 4-5 months for the online system. Paper notary applications and paper registration forms will still be available after the online systems become operational.

The current backlog for applications has been reduced from 4 months to 3 weeks since January. The 3 week backlog is expected to be reduced even further once the current registration cycle ends.

Robin suggested that the workgroup explore some low tech avenues while we await the roll-out of the online registration. The following suggestions were made: connecting with other organizations, sending out press releases, advertising the new forms to alert nonprofits about the requirements and how to navigate them, working with local libraries who can push information out to persons who might have difficulty navigating the online process, host/facilitate workshops to educate people on the registration process, create "how to/what to" brochure for distribution, send emails and create interagency supports to ensure information is readily available and accessible to the intended audience.

Discussion took place regarding best practices that are currently being employed by non-profits to push information to their membership. Newsletters, e-news, social media posts, hyperlinks to additional resources and mailings lists are all used within the charity community to educate and push information to their members.

Recommendations were made to add links to the Secretary of States website, the Comptroller's website and the State Department of Assessments and Taxation website. Luis also suggested creating a brief paragraph regarding the registration process from the Office of the Secretary of State explaining the registration process. This information would then be shared with the non-profit community. In addition to the links previously mentioned, the IRS has a link, The Life Cycle of a Charity, which provides a step by step guide to forming and dissolving a charity. The link is extremely helpful in that it tells you what to do every step of the way and it has a link to all of the forms necessary throughout the life cycle of a charitable organization.

Karl raised the idea to try and collect registration fees from all colleges and universities who solicit within the State. A form letter could be sent to every college and university advising that fees are owed if the school intends to solicit within the State of Maryland. Michael believes that many colleges do register with the State. If the college is only soliciting from their membership then they are exempt from registration. Additional information will be gathered to determine how many colleges are registered within the State.

#### **Agenda Item #4: Automatic Extensions**

The idea behind automatic extensions is to keep charities in compliance and reduce the workload with the staffing issues. Probably half of the filers request extensions so the topic of automatic extensions for current organizations came up. Automatic extensions would alleviate the need to send approval notices. The Assistant Attorney General consulted raised some issues. More specifically, the current regulations require that extension requests be submitted in writing. After brief discussion and review of the statute, it is possible that the automatic extension is compliant with the statute. The AAG consulted recommended changing the regulation to allow extensions that follow the IRS extensions. Michael suggested that it would be easier to change the regulation to exclude the "upon written request" language than it would be to change the law. No opposition is anticipated to changing the regulation as the change will make compliance easier for organizations as well as lessening the load from an administrative perspective. New York, Washington, California, Pennsylvania, Ohio, North Carolina all have automatic extensions. Brian will provide the information necessary to change the regulation. Without any setbacks, the process takes approximately 46 days, plus 10 days after it is published. A motion was made to by the workgroup to recommend automatic extensions for charity registration. The motion was seconded and passed.

#### **Agenda Item #5: Wrap Up**

**Future Topics:**

- The Report is due December 1<sup>st</sup>
- Paid solicitor's forms
- Online fundraising contracts
- Transparency for campaigns (Pennies for Charities is what is used in New York)
- Report cards for accounting reports
- Mike to research annual reports for PA, New York, Colorado. What info is being collected? Who is using the information?

**Agenda Item #6: Set Next Meeting**

Sept 23<sup>rd</sup> and Oct. 21<sup>th</sup>. Same time and location. The new AAG should be on board before the September meeting.

## Charitable Enforcement and Protection Workgroup-Fifth Meeting Meetings

Meeting Date: September 23, 2015

Meeting Time: 10am to 11am

### Attendees In Person:

Kathy Smith, Secretary of Secretary

Tiffany Harvey, OAG

Josie Yuzuik, OAG/SOS

Melanie Styles, Abell Foundation

Carole Carlson, The Rights and Resources Initiative

Michael Schlein, Secretary of State

### Attendees by Phone:

John May, MSBA

Robin Jacobs, Community Law Center

Luis Borunda, Secretary of State

Karl Emerson, Public, Montgomery McCracken

### INTRODUCTIONS

Luis Borunda introduced Josie Yuzuik and Kathy Smith, who are new to the workgroup. Josie Yuzuik is the new Assistant Attorney General recently hired, one week ago, to work with the Secretary of State's Office on the Maryland Solicitations Act and enforcement actions filed under the Protection of Charitable Assets.

Kathy Smith is the new Assistant Secretary of State overseeing the Charities and Legal Notaries Services Division.

### Approval of July 22, 2015 Minutes

Michael Schlein had an addition to the minutes of July 22, 2015. He added that there was a motion to recommend the automatic extension regulations, and said motion was seconded. The motion passed.

### Update on Automatic Extension Regulation

Mike Schlein reported that the SOS is close to submitting a proposed regulation. The regulation will remove barriers to receiving an extension by (1) requiring that extension requests no longer have to be submitted in writing and (2) IRS approval of an extension request is not required. Also, the proposed regulation will have a maximum extension period of 10 ½ months so as to not create an indefinite extension. An internal process will need to be created to handle automatic extensions.

### Update on Annual Solicitation Reports

Mike Schlein shared reports from PA, NY and CO, and shared information he received indicating the CO fundraising reports have been viewed by over 1,000 people. We spent a brief amount of time comparing and reviewing the information contained in each report. The general consensus was that the New York annual report was the most user friendly to the public. Our hope is to find a way to use these reports as a framework as we build a new system.

### Discussion of Protection of Charitable Assets

This is modeled after the Model Non-Profit Act. Currently, the Attorney General does not have common law authority to protect charitable assets. The group discussed the definition of charitable purpose, and whether there was a need for a clarifying guidance for the nonprofit community. Robin Jacobs suggested making it consistent with the IRS definition of charitable purpose because of the familiarity with this definition. In addition to the definition of the charitable purpose, the group discussed whether there was need for guidance on the breadth and scope of the new enforcement law. John May offered that creating guidance would prevent going before the legislature to get approval for statutory changes. Carole Carlson questioned whether the new law is intended to cover a charity scam raising monies for an individual child or family, but not a community. Example given by Carole was raising money for a child with cancer. Mike Schlein shared that other laws may cover this type of fraud, and that under the Maryland Solicitations Act, raising money for an individual when the gross amount of contributions received is given to that individual would not require the individual to register. Josie Yuzuik suggested that the purpose of a charitable asset may provide a basis for enforcement action against a child with cancer scam. John May to look at how to inform the community of what the law is intended to cover, and suggested a need for guidance on what constitutes a waste of charitable assets and what it means to misapply a charitable asset. Jon is also to look at guidance for the meaning of the phrase "any other purpose whose achievement is beneficial to the community." Melanie and Tiffany suggested that we create an easy to use guidance geared at educating the non-profit on statutory intent. There was general consensus that the nonprofit community would benefit from examples of actions that the law is intended to cover. The group will review guidance models/examples from other states.

Josie Yuzuik volunteered to receive and compile additional comments and questions from the group on this topic for discussion at the next meeting.

### Wrap Up (Including Future Topics)

- Asset protection will be on the agenda for the next meeting
- Brian Morris from the SOS will present an update on the online capabilities
- Outreach from the SOS to the charitable sector
- Annual Report-Due December 2015
- -Audit/Financial Review Thresholds-whether to increase thresholds-agreement to include this topic on the next agenda and a discussion on whether a formal audit is a burden on smaller charities. Karl Emerson shared a growing trend across the country to increase audit thresholds and that it made sense to raise thresholds for smaller charities that operate locally or in state.

Next meeting to take place October 21, 2015 at 10 am at the Office of the Attorney General, Walsh Conference Room, 20<sup>th</sup> Floor.

Charitable Enforcement and Protection Workgroup-Fifth Meeting Meetings

Meeting Date: October 21, 2015

Meeting Time: 10am to 11am

**Attendees In Person:**

Kathy Smith, Secretary of Secretary

Michael Schlein, Secretary of State

Robin Jacobs, Community Law Center

Josie Yuzuik, OAG/SOS

Carole Carlson, Rights and Resources Initiative

Henry Bogdan, Maryland NonProfits

**Attendees by Phone:**

Jonathan May, MSBA

Melanie Styles, Abell Foundation

Chris Cash, Colorado Secretary of State's Office/NASCO

Karl Emerson, Public, Montgomery McCracken

**Approval of September 23, 2015 Minutes**

Mr. Jonathan May wished remove from the September 23, 2015 minutes that he was "to look at how to inform the community of what the law is intended to cover." A motion was made to amend the minutes with that removal and the motion passed.

**Discussion on changing the audit/financial review threshold**

Discussion on trends to increase thresholds. Little impact on large, national organizations who will be required to do an audit because of other states' with comparatively lower thresholds. Mr. Bogdan shared that a legislator may be looking at proposing the increase to \$750,000. There was a discussion that an increase to \$750,000 or \$1 million would benefit smaller, local charities due to the cost of an audit. Ms. Carlson shared that an audit, at a minimum, costs \$15,000 and \$20,000 for larger charities. The cost of a financial review is approximately \$10,000. Ms. Jacobs shared that clients of the Community Law Center tend to operate on budgets of less than \$10,000.

Mr. Schlein explained that in Maryland, the thresholds are based on contributions. In other states, audit thresholds are based on assets of the organization.

Ms. Carlson shared that auditors are generally in favor of increasing the thresholds because the amount a nonprofit is billed for an audit may be far less than the actual cost to the auditor to prepare the audit.

There was discussion about financial literacy amongst Boards of Directors and whether a CPA on the Board could potentially minimize risks and costs associated with audits and financial reviews. Ms. Carlson shared that the Maryland Association of CPAs does have a nonprofit committee and many do serve on the boards of nonprofits. She offered that nonprofits may request that information recruiting CPAs may be posted free of charge in the Maryland Association of CPA newsletters.

The group discussed the extent of state's review of 990s. Mr. Schlein shared he reviews 990s to ensure appropriate fees are paid, for management questions, interested party transactions, and other items. If he thinks there is an error, he looks to see if a CPA prepared the 990 and wants a more thorough review. His experience is that most 990s are done by a CPA.

Ms. Carlson shared concerns that board members do not typically review 990s, and there was discussion about the fiduciary responsibilities of Board members and lack of financial literacy.

Mr. Cash shared that in CO, they do not require nonprofits to submit 990s, but often compare information from their registration statement to a 990 and request further clarifying information.

Mr. Emerson's shared that in his experience in PA, information on 900 alone was not enough to open an investigation for fraud, and that in general, states do not have resources to review all 990s.

Ms. Styles stated that foundations do review all 990s/audits because funders require this review, but even if nonprofits are not required to get one, getting one is good practice.

A question was raised as to how many organizations would be impacted by an increase in the thresholds. Mr. Schlein agreed to review statistics from last year and distribute to the group.

#### **Discussion of Protection of Charitable Assets**

Continuing the discussion from last meeting on the definition of charitable purpose. We discussed the potential relevance of the Model Protection of Charitable Assets Act and the IRS definition to the definition of charitable purpose. A point was made that the IRS definition was taken out of the Model Act's comment section. There were concerns shared about a brightline in the statute or regulation.

There was a discussion of charitable purpose definition for property tax purposes in Maryland and the challenges of having varying definitions.

Mr. Cash shared this is an ongoing discussion (in reference to benefit corporations), and does not necessarily depend on 501(c)(3) status. The solicitations laws are written based on the activity, not tax exempt status.

There was discussion about whether a FAQ may help educate the public about this. Mr. Cash and Ms. Jacobs agreed to forward materials relating to FAQs on this topic.

#### **Information Sharing/Outreach by the Secretary of State**

There was a discussion about how the Secretary of State (SOS) can conduct outreach and education given the limited resources of the agency. Suggestions from the group included outreach through other organizations that are already reaching the nonprofit community.

On content of outreach materials, Ms. Jacobs shared an email blast year on the basics of where to turn for information on how to start of nonprofit. Mr. Emerson discussed the IRS' link to "Life Cycle of a Public Charity" and youtube channel on same.

The group discussed the need to educate board members and the challenge with reaching out to them. An idea to create issue-specific checklists on what a board may need to think about when engaging in certain fundraising activities.

Ms. Smith invited the group to give this more thought and to send Mr. Schlein an email on education materials already available.

**Wrap Up (Topics for Next Year)**

The following were suggested to pass for discussion in CY 2016:

- Goals for the website
- FAQs
- Efiling
- Role of the new AAG

**Annual Report (Due December 1, 2015)**

Mr. Schlein will draft and submit the final report before November 12, 2015

Meetings in 2016 to start earlier in the year. Mr. Schlein to send proposed dates.

It was recommended to schedule 6 meeting in 2016.