

RESEARCH REPORT

State Regulation and Enforcement in the Charitable Sector

Cindy M. Lott
URBAN INSTITUTE AND
COLUMBIA LAW SCHOOL

Elizabeth T. Boris
URBAN INSTITUTE

Karin Kunstler Goldman
OFFICE OF THE NEW YORK
ATTORNEY GENERAL

Belinda J. Johns
OFFICE OF THE CALIFORNIA
ATTORNEY GENERAL
(RETIRED)

Marcus Gaddy
URBAN INSTITUTE

Maura Farrell
INNOVATIONS FOR POVERTY
ACTION

September 2016





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Acknowledgments

We are grateful to the C. S. Mott Foundation, which provided support for this report and other work undertaken by the Charities Regulation and Oversight Project at Columbia Law School and the Urban Institute. We thank all of our funders who provide operational and other support and make it possible for the Urban Institute and Columbia University to advance their respective missions.

The views expressed are those of the authors and should not be attributed to the Urban Institute or Columbia University, their trustees, or their funders. Funders do not determine research findings or the insights and recommendations of Urban or Columbia University experts. Further information on the Urban Institute's funding principles is available at www.urban.org/support.

In addition, the authors are grateful for the assistance of Faisal Sheikh, former staff attorney for the Charities Regulation and Oversight Project, and Mary Shelly, Uniform Law Foundation Fellow at the Uniform Law Commission, for their contributions to the legal aspects of the study; to Rachel Mosher-Williams, director of learning and impact at Community Wealth Ventures, for assistance with the interview portion of the research; and to Carol De Vita, senior fellow at the Urban Institute, for her writing and editing assistance.

Executive Summary

This study is the first systematic analysis of state-level oversight and regulation of charities in the United States. Conducted by the Charities Regulation and Oversight Project at Columbia Law School and the Center on Nonprofits and Philanthropy at the Urban Institute, the analysis has three components: a legal analysis of laws pertaining to charities in 56 US jurisdictions; a survey of all state and territory offices with oversight, regulatory, and enforcement authority over charities (with at least one office within 47 jurisdictions completing the survey); and interviews with officials in over two-thirds of those offices.

Major findings include the following:

- No single state law of charities oversight exists; instead, oversight involves a complex mix of substantive areas, including charitable trust law, governance, criminal law, solicitation and registration requirements and compliance, corporate transaction review, and conservation easements.
- Organization and staffing of state charity offices vary greatly across the country; in 41 percent of states, one office has primary responsibility, but in 59 percent of states, responsibility is shared with other agencies or offices.
- Within an attorney general's office, 13 jurisdictions have a charities bureau, and 14 jurisdictions house charities oversight within the consumer protection division of the office.
- Most registration oversight is lodged in state attorneys' general offices (21 states), followed by secretary of state offices (15) and other state-level charity offices, typically, consumer affairs or business/financial regulation (8).
- Lawyers and non-legal staff who oversee charities number approximately 355 in the 48 reporting jurisdictions.
- Thirty-one percent of jurisdictions have less than one full-time-equivalent staff, 51 percent have between 1 and 9.9 full-time-equivalent staff, and 19 percent have 10 or more full-time-equivalent staff.
- Training state charities staff is a mix of internal and external provision, with the smallest offices less likely to provide any training and the largest offices providing in-house training.

- Uniform laws and model acts encourage uniformity among states in particular legal areas; for example, the Uniform Prudent Management of Institutional Funds Act was adopted in 49 states, the District of Columbia, and the US Virgin Islands.
- States have different requirements for reporting by charities. Some rely upon required reporting on Internal Revenue Service Forms 990, some require registration information, and some require independent audits and notification of certain transactions.
- In the 47 responding jurisdictions, 68 percent require charity fundraisers to register, and 60 percent require charities to register.
- Twenty-two states require charities to file independently audited financial statements, and most of the jurisdictions requiring such audits have a \$500,000 revenue threshold before an audit is required.
- Where charities must inform the attorney general's office of certain major transactions, mergers (43 percent), voluntary dissolution (41 percent), and sale of assets (33 percent) are the top three triggers of the notice requirement.
- Fundraising abuses (62 percent), trust enforcement (36 percent), and governance (36 percent) are the three most common areas of enforcement by charity offices.
- Of the fundraising methods overseen by state charities officials, traditional methods such as telephone (82 percent), direct mail (80 percent), special events (80 percent), and in-person solicitations (80 percent) are the most common subjects of oversight, followed by Internet-based (76 percent) and social media-based (70 percent) solicitations.
- State-level enforcement actions are more likely to be informal resolutions (85 percent) or involve correspondence with organizations (98 percent) or settlements (88 percent) than fines and penalties (80 percent) or other formal litigation such as injunctions (79 percent).
- Nearly all respondents may refer matters to other local, state, or federal agencies, and most undertake joint investigations.
- Major tools to facilitate regulatory compliance include data collection, with the largest state charity offices maintaining a database regarding charities or fundraisers doing business in the state.

- Offices vary in their efforts to provide education and outreach to the nonprofit sector or to the public, ranging from basic press releases (82 percent) and donor advisories (77 percent) to trainings (32 percent) and webinars (7 percent).
- More than half the state charity offices work with their state nonprofit association, state bar, certified public accountant association, or advisory groups.

Chapter 1. Introduction

This report is the first systematic overview of the regulatory and enforcement structure of state charity officials' offices. Jointly undertaken by Columbia Law School's Charities Regulation and Oversight Project (the Charities Project) and the Urban Institute's Center on Nonprofits and Philanthropy, the study collected and analyzed data from 56 US jurisdictions (all 50 states, the District of Columbia, and five US territories) to better describe and assess how state charity offices oversee charitable-sector activities. This groundbreaking research focused on

1. the structure of state charity offices (*state charity offices* includes all state-level offices that have jurisdiction over charities, including state attorney general offices and other state agencies, such as secretaries of state),
2. oversight authority at the state level and the types of charities overseen and monitored, and
3. tools used by state charity offices to facilitate and enforce regulatory compliance within the charitable sector.

The survey intended to gain a broad overview of the types of enforcement strategies used. It is beyond the scope of this report to comment on relative amounts of enforcement between or among states or across time.¹

This study sheds light on actions and programs undertaken at the state level. Apart from its utility for policymakers at all levels of government, practitioners, and the academic community, the research results can assist states in the perennial challenges of setting priorities and allocating limited human, financial, and technological resources. These stakeholders share the mutual goals of effective legislation, enhanced compliance, and effective enforcement. The study's findings provide new insights into developing more effective and efficient charity regulation that can benefit the charitable sector. This report is a primer and road map for all who wish to gain insight into the state regulatory structures that oversee the charitable and nonprofit sector; in addition, it will be useful for state and federal regulators who seek comparative information from their fellow regulators.

Working both independently and with state and federal law enforcement agencies, state charity offices play a large role in regulating the nonprofit sector. State charity offices are the primary regulatory and enforcement players in the federalist scheme. State charity offices also protect charitable assets to assure they are used as intended. These offices also propose or review proposed state legislation affecting charities. Lastly, state charity regulators educate the charitable sector (regarding permissible and prohibited activity), the donating public, and other funders. Although all 50

states and the US territories can regulate and enforce state laws in the charitable sector, little systematic information exists on the parameters, frequency, consistency, challenges, and benefits of the state regulatory and enforcement structure. Understanding state structures is complex, as the body of law that gives state charity offices jurisdiction over the charitable sector varies by state, and multiple agencies within a state or territory may share jurisdiction.

Notwithstanding a long history at common law, and now under statutory law, state charity office functions often remain opaque to the sector, policymakers, and other regulators. Inherent in the role of state charity offices as both regulators and enforcement officers is tension between prosecutorial discretion and confidentiality versus transparency that might aid further understanding of the sector. Regulatory functions and structure have never been inventoried, nor have the relationships among these functions been analyzed in an empirical manner.² Although high-visibility board issues, fundraising scandals, and other dysfunctional or unlawful behavior in the sector may generate extensive media coverage, most regulatory and enforcement actions receive little attention and are unknown even to other agencies within the state. The sensitive nature of nonprofit issues, particularly governance, is believed to lead to underreporting state action. Although stakeholders routinely call for improving state regulation and enforcement, state and federal regulators, policymakers, academics, and the sector itself do not have reliable data on which to base the analysis to make the requested improvements. This study is a starting point for further research and analysis.

Chapter 2. Overview of Study Methods

Data for the study were collected in 2013 and 2014 and consisted of three parts.

First, the legal team at the Charities Project analyzed laws pertaining to the charitable sector in 56 US jurisdictions, encompassing all states and most US territories. Researchers focused on the role state charity offices play in charities enforcement and regulation, which state agency or agencies held jurisdiction over charities, and the legal authority by which state charity offices derive their responsibility to oversee and regulate the sector. Researchers gauged the scope of the statutory basis of state charity offices across the states, providing contextual foundation for the study and a basis for comparing data obtained from the study's other components. The results of this legal research component are made public through the "State Law Compendium for Charitable and Nonprofit Oversight," now available at the Center on Nonprofits and Philanthropy (<http://urbn.is/2bWnnFO>).

Second, researchers surveyed state attorneys' general offices and secretary of state or other state charity offices that oversee or regulate charities in the 50 states, the District of Columbia, and several US territories. This component was developed and conducted jointly by the Charities Project and the Center on Nonprofits and Philanthropy. The survey collected information on each state charity office, including information on staffing, educational outreach, data collection, tracking and transparency, and enforcement practices. Ninety-two percent of the 61 survey respondents responded to the survey, representing 50 states, DC, and territories.³ Respondents were asked to respond for 2008 (the start of the latest US recession) to 2013. This period is especially important for responses to questions regarding staffing and training.⁴

Finally, researchers conducted telephone interviews with 39 of the 61 offices to obtain more nuanced information on state charity regulation and enforcement. These interviews were overseen by the Columbia Law School team but conducted by a lawyer and a social scientist. Because state regulatory structures varied, the research team designed four interview modules to tailor questions to the offices involved in regulatory and enforcement activities. The interview data were analyzed using qualitative methods. Responses were grouped into major themes and used to supplement findings from the survey and legal research.

In all three data collection phases, state charity offices were ensured confidentiality to encourage their cooperation and elicit frank and detailed remarks. The interview components (e.g., identities of the

respondents and their jurisdictions) and the survey results remain anonymous. See appendix A for the study's research methods.

Chapter 3. The Structure of State Charity Offices

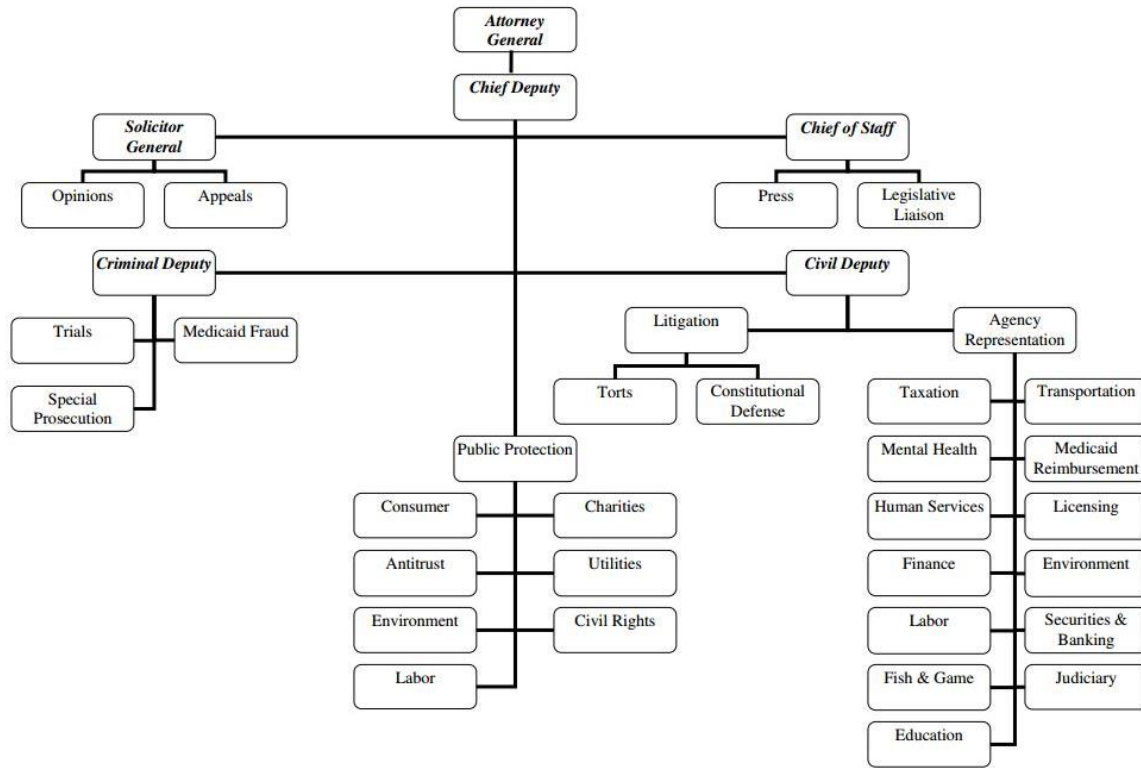
Each state charity office has its own structure, staffing patterns, and regulatory duties and responsibilities for overseeing the charitable sector. In mapping a framework for the state charities regulatory system, three basic facts are relevant to the functioning of the individual offices:

- About 40 percent of responding jurisdictions reported that one office oversees charities, and the remaining 60 percent share responsibility with another government office or agency.⁵
- Shared oversight occurs when a state statute requires solicitation activity to be registered with an office other than an attorney general's office. Shared responsibility for charity oversight most often involves the state's attorney general's office sharing oversight with the secretary of state's office.
- An office may have a dedicated charities oversight unit. Thirteen jurisdictions have a charities division or bureau in the attorney general's office, and 14 jurisdictions house the charities oversight unit within the consumer protection division. The size and nature of this division or bureau varies greatly across the jurisdictions.

The organization of an attorney general's office is not consistent throughout the United States, but there is a typical structure for subdividing civil and criminal litigation, state agency representation, consumer protection, antitrust and appellate responsibilities, and the office of the solicitor general in most jurisdictions. Figure 1 depicts the major elements and organizational structure of a generic state attorney general's office.

FIGURE 1

Generic Attorney General's Office



Source: James Tierney, "Generic State Attorney General's Office Organization Chart," Columbia Law School, National State Attorneys General Program, accessed August 15, 2016, http://www.law.columbia.edu/null?&exclusive=filemgr.download&file_id=612433&rtcontentdisposition=filename%3DAG%20rganizational%20Chart.pdf.

This generic depiction of an attorney general's office shows a separate bureau or division for charities work within the public protection division. Charities oversight within attorney general's offices may be a separate bureau or embedded within a consumer protection section. In addition, most attorneys' general offices, even those with a designated charities bureau, rely on attorneys and staff from other divisions within the office, including consumer protection, antitrust, bankruptcy, criminal, appellate, and the solicitor general or special counsel, to address charities-related matters. The diffused staffing comprising the charities regulation team reflects the various substantive areas of law required for this work and lack of sufficient funding in many state offices for charities regulation.⁶

Bifurcation of Authority over Charities and Fundraisers

Another major structural difference found among state charity offices involves bifurcated regulatory and enforcement jurisdiction—that is, an attorney general’s office and another state-based office share jurisdiction over the state’s charitable sector.⁷ In many states, overseeing charitable organizations that solicit donations—either directly or via fundraisers who solicit on their behalf—is exclusive to the state’s attorney general, who typically has broad regulatory authority over all property committed to charitable purposes within the state and over the fiduciaries to whom those assets are entrusted.⁸ Requirements to register and file annual financial reports with attorneys general apply to all charitable trustees,⁹ without regard for solicitation activity. Typically, such requirements are set forth in a more complete statutory structure that reflects the attorney general’s responsibility to supervise all charitable trustees and the assets under their control. Exemptions may apply to the registration and reporting requirements.

Attorneys general do not always have exclusive jurisdiction overseeing charities that solicit donations. In 23 jurisdictions, the authority to regulate public fundraising campaigns by and on behalf of charities is shared by the attorney general and another state-level office, usually the office of the secretary of state, whose authority is conferred by state charitable solicitation statutes.¹⁰ The statutory authority that gives these other state offices jurisdiction requires (1) soliciting charities and their professional fundraisers to register before solicitation and to file annual reports, (2) the state charity office to maintain a registry of such filings, and (3) the office to enforce registration and reporting requirements. Prohibited acts and practices in charitable fundraising campaigns may be delineated in the enabling legislation or enforced under the state’s consumer protection laws. In this instance, the attorney general has authority over all charitable trustees, disposition of assets, changes in structure, and governance issues.

Ideally, in jurisdictions with bifurcated authority, the attorney general and the other state office would coordinate their enforcement activities to avoid redundancy. Representatives from both offices may regularly discuss ongoing investigations and incoming complaints against charities or their fundraisers.¹¹ The offices may also work together on public education initiatives, including joint press releases of enforcement activities and issuance of wise giving tips and alerts, especially during the holiday season and after natural and man-made disasters. In these bifurcated jurisdictions, the office that administers the registration and reporting requirements enforces compliance with those reporting requirements, as well as prohibitions against false and misleading statements made in solicitation.

Charity Offices' Staff

There are 355 state charity regulators nationwide (attorneys and other non-attorney support staff). Research confirms that most state charity offices have few staff to conduct their work and carry out their responsibilities. Our survey found that about a third of responding jurisdictions¹² had less than one full-time-equivalent (FTE) employee dedicated to charities oversight (table 1). More than half have fewer than three FTEs. (*Staff* includes accountants, investigators, and support staff assigned to charities oversight.)

TABLE 1

Staff Size of State Charity Regulatory Offices

FTE staff	Staffing levels in AG offices	Percentage of AG offices	Staffing levels by jurisdiction, AG and non-AG offices	Percentage of jurisdictions
Less than 1 FTE	16	39	15	31
1 to 2.9 FTEs	9	22	10	21
3 to 4.9 FTEs	6	15	7	15
5 to 9.9 FTEs	3	7	7	15
10 or more FTEs	7	17	9	19
Total offices	41	100	48	100

Source: Urban Institute and Columbia Law School Survey of State Charities Regulatory Offices 2013–14.

Notes: AG = attorney general. FTE = full-time-equivalent. Totals may not add to 100 percent because of rounding. Non-AG offices include other charity regulatory agency in the state.

The number of staff assigned to charities regulation has been relatively stable in recent years. Fifty-three percent of survey respondents reported that staff size has been the same since the onset of the recession in 2008. Thirty-one percent of survey-respondent offices indicated an increase in staff, while 13 percent said staff size decreased. Most small offices (less than one FTE) were likely to report no change in staff; large offices (10 or more FTEs) were more likely to report an increase. The relative stability of the offices since 2008 may surprise some observers, as state budgets were under enormous constraints during the recession and layoffs and mandatory furloughs were implemented. However, given that over 50 percent of the offices have fewer than three FTEs, the numbers could not have gotten much lower.

Staff Training

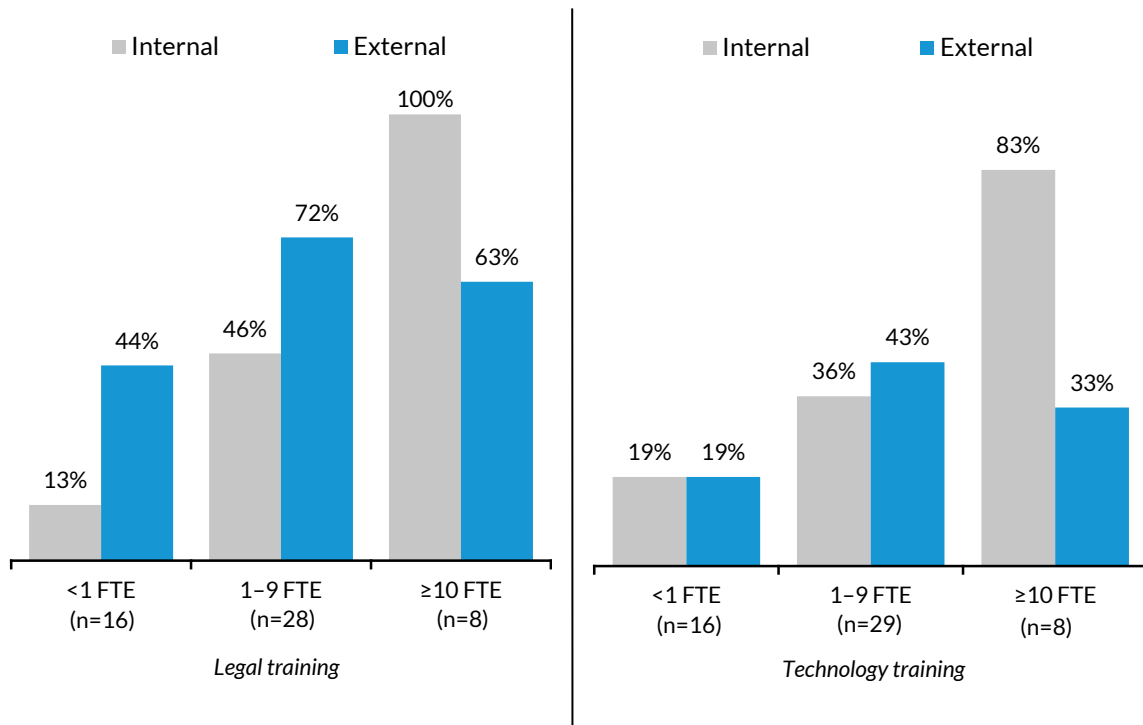
The jurisdiction of state charity regulators spans several substantive areas of law. Attorneys general, for instance, have broad authority over charitable trustees in multiple areas of law codified in statutory schemes and charitable trust law (figure 3). To fulfill their regulatory mandate, legal staff must spot issues based on the facts presented. Discerning oversight requires understanding the legal context for each issue that arises and all available causes of action and remedies. Accordingly, training staff in each area of law is paramount. Because of registration and filing requirements and issues raised by use of social media for soliciting and marketing, state charity regulators must also have access to and training in certain technological applications. State-level budget constraints were cited consistently by survey respondents who reported that their offices either had no training budget, would pay only for state-offered training (usually unrelated to charitable trust law), or offered only training outside of the office.

It is more common for a state charity office to provide training on applicable substantive law than in charity-related technology (e.g., use of databases, Internet research, or use of social media). Seventy-five percent of survey respondents provided legal training to staff (e.g., attorneys, accountants, investigators, and support staff), while 55 percent provided technology training.

The size of the office often reflects the type of training provided and whether it is provided in-house or externally.¹³ Of those with training programs, small offices (less than one FTE) are least likely to provide any training compared with other offices (figure 2). In those smaller offices, legal training is likely to be performed by external providers (44 percent)—such as the Columbia Law School Charities Project and the National Association of State Charities Officials—while technology training could be either in-house (19 percent) or external (19 percent). Midsize offices (one to nine FTEs) also rely heavily on external training. Three in four offices use external providers for legal training, and two in five use external providers for technology training. Nonetheless, many midsize offices offer internal training—46 percent offer legal training and 36 percent offer technology training in-house. Large offices (10 or more FTEs) tend to rely more on internal training. All large offices offer legal training in-house, while 83 percent offer in-house technical training. Many large offices also rely on training from external sources: 63 percent for legal training and 33 percent for technology training. Smaller offices either offer little internal training or rely almost exclusively on external training; larger offices rely more heavily on internal training but employ external training as well.

FIGURE 2

Legal Training and Technology Training by Office Size



Source: Urban Institute and Columbia Law School Survey of State Charities Regulatory Offices 2013-14.

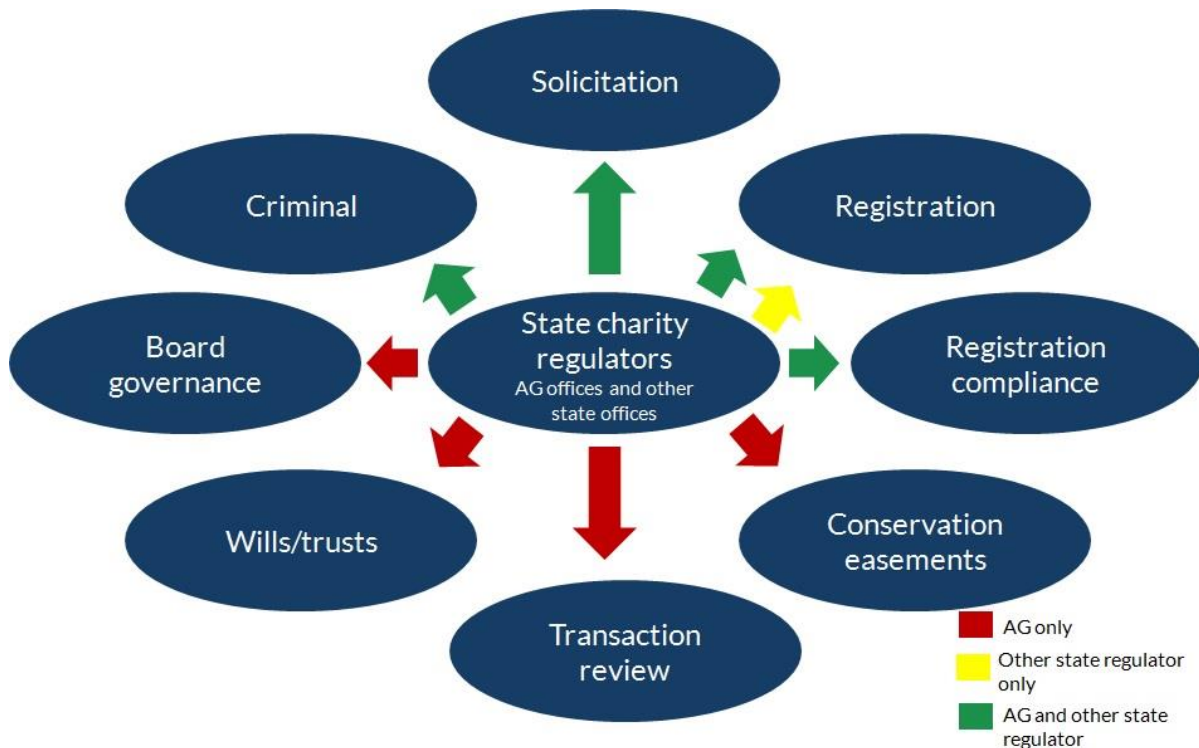
Areas of Authority in State Regulation of Charities

State attorneys general derive their authority from English common law and statutory law. In the absence of statutory law, common law gives an attorney general authority over charities; the principle of fiduciary duty, and therefore governance, originates in common law. Regulatory actions are based on either one or both of these judicial principles. Some states have more robust statutory authority than others. In some states, regulation is split between two agencies. In addition, the types of charitable entities that are regulated vary among states, as do the types of regulation and enforcement areas that a state pursues. Not all offices have staff dedicated to charities oversight. Additionally, most offices, according to survey responses, have fewer than three FTEs. Such low numbers of staff make it difficult for an office to develop expertise in this area of law. If that staff member is housed in another division, such as the consumer protection section, it is likely that he or she also handles consumer law cases and

is split between substantive areas. State regulation of charities thus varies considerably from state to state.

FIGURE 3

Areas of Responsibility



Common Law versus Statutory Authority

Common Law

Many people do not know that most attorneys general have broad powers over constituents' activities based on common law, without regard for the presence or absence of any statutory law regulating charities. Common law is composed of old laws predating statutory provisions. Common law, based upon custom and shaped by judicial precedent, forms the basis of attorney general jurisdiction in the absence of statute and is the basis on which an attorney general enforces fiduciary duty in charitable trust matters. Common law may also be the basis for an attorney general's legal standing to pursue a matter, and before codification of that standing, may have been the only legal basis needed. In charities

regulation and enforcement, common law is particularly important, as neither donors nor beneficiaries have automatic legal standing to challenge activities of a trustee.¹⁴

The attorney general's standing to protect a grantor's charitable intent is universal under common law and has been codified in a majority of states. Under common law, a donor or grantor is without standing to enforce the terms of a charitable trust unless she reserved the right to do so at the time she made the gift. Under common law or statutes in most states, the attorney general is a necessary party in any litigation involving a charitable trust. Furthermore, some states have enacted statutes or judicial rules requiring notice to the attorney general of probate proceedings involving charitable assets, such as administration of estates with bequests for charitable purposes and accountings for charitable trusts. (Myers 2013)

Attorney general authority over charitable assets has its historical roots in English common law.¹⁵ In the 15th century, the courts of chancery began to enforce trusts for projects that benefitted the community (Scott 1967, 395). The attorney general, representing the Crown, brought the enforcement actions. That authority was confirmed in an 1844 US Supreme Court decision that held charitable trusts were enforceable under common law despite the absence of a state statute.¹⁶

Some jurisdictions are without common law authority over charities, but 82 percent of the jurisdictions with such authority said they use it in their enforcement activities.

Statutory Authority

Statutory authority arises from state laws that codify common law and augment common law authority. Fifty-five jurisdictions have statutory authority, although the level of authority varies from state to state.

Beginning with the codification of the common law in New Hampshire in 1943, states enacted charitable trust registration and reporting statutes to facilitate oversight...[T]hese statutes authorized investigations into charitable trust activities and possible breaches of fiduciary duty. (Myers 2013)

The legal research in connection with the survey determined (1) the legal authority granted to and the role of regulators in overseeing and enforcing statutory obligations of charities and organizations that raise funds on charities' behalf, and (2) the agencies involved in such oversight and regulation. Research included review of the statutory framework of all jurisdictions, including granted jurisdiction to attorneys general and other state agencies, registration and reporting requirements for charitable entities and their fundraisers, oversight responsibilities of state charity regulators for transactions (e.g., sales, mergers, amendments of purposes and dissolution) involving charitable entities, obligations of

charities to give notice of those transactions to the attorney general, and the range of enforcement remedies available to charity regulators. See <http://urbn.is/2bWnnFO> for the compendium.

Uniform versus Model Acts

In drafting legislation, states may utilize uniform acts and model acts, two types of laws promulgated by organizations such as the Uniform Law Commission (<http://www.uniformlaws.org>) and the American Bar Association (<http://www.americanbar.org/aba.html>). Model acts may form the basis for a regulatory structure that can be augmented by additional provisions a state determines necessary to fulfill its regulatory role.

Uniform laws are enacted as drafted and approved by the Uniform Law Commission. These laws encourage uniformity among the states in a legal area, and the commission lobbies for passage of these uniform acts in each state. For example, the Prudent Management of Institutional Funds Act sets requirements for investment and expenditure practices by charitable entities. It was adopted in 49 states (not Pennsylvania), the District of Columbia, and the US Virgin Islands, with only a few variations.¹⁷ Another example is the Trust Code, which governs charitable trusts and has been enacted in 30 states.¹⁸

A model act is drafted in response to new or problematic areas of the law, or areas in which a problem in interpretation has developed. A model act provides a platform to develop new approaches, not necessarily to achieve uniformity. States use the concepts and language in model acts to draft statutes for its needs. For example, the Model Protection of Charitable Assets Act, finalized by the Uniform Law Commission in 2011, is an "off-the-shelf" act that could be a basis for legislation in states with little or no statutory authority.¹⁹ Only Maryland has adopted this model act, but Hawaii has codified one section that articulates the attorney general's authority to protect charitable assets and the primary means of enforcement to preserve charitable assets. The American Bar Association also drafts model acts, including the influential Revised Model Nonprofit Corporation Act (amended in 1987 and now in effect in over half the states).²⁰

Chapter 4. Information Available to State Charity Offices through Required Filings

State charity offices rely on various information to exercise their regulatory authority. Most important is information contained in financial filings that registered organizations must submit. Those filings include the Internal Revenue Service (IRS) Form 990, which details organizations' finances, identifies their board members and key employees, and includes responses to questions concerning governance practices (Lott and Fremont-Smith 2016). The Form 990 also requires detailed information concerning related-party transactions, grantmaking, and fundraising. Some states also require charitable entities to file independent audited financial statements that provide further analysis of finances and identify areas of concern raised by the accountants.

States and territories have different filing requirements for both charities and fundraisers; some states have no registration requirements, and some have a robust roster of required filings (e.g., registration, independent audits, and notice to the attorney general's office of certain transactions). Information available to regulators is contingent upon filing requirements, leading to information about any given entity, but inconsistent information across jurisdictions. No technology platform allows regulators to share this information across jurisdictions.²¹

Registration of Charities and Fundraisers

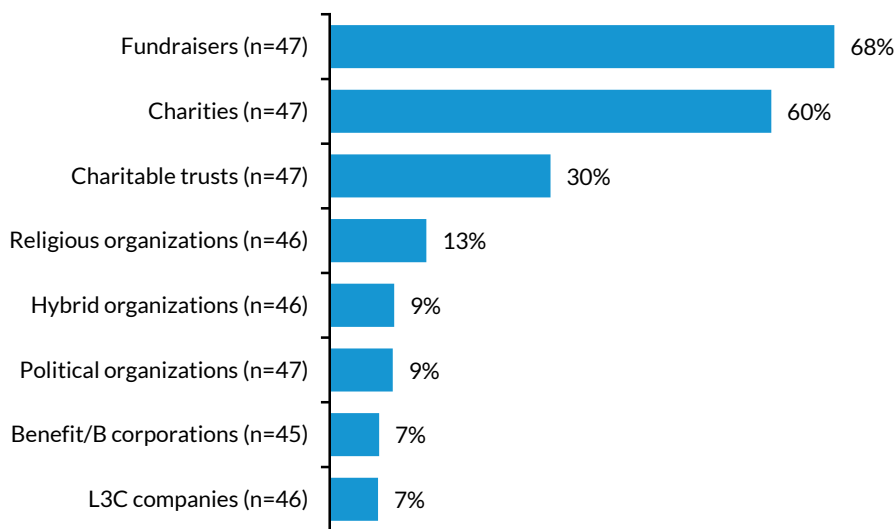
Registration is one of the most common ways state charity offices oversee charities and their fundraisers. More than two-thirds of the 47 responding jurisdictions require fundraisers to register, and three-fifths require charities to register. Far fewer jurisdictions require other types of organizations to register (figure 4).

A state that requires registration is likely to keep a registry or database (internal or public) on these organizations. However, non-attorneys' general offices reported registration requirements and keeping databases more frequently than attorneys' general offices. Fourteen of the 17 attorney general's office respondents that indicated registration requirements for charities also maintained a

database of charities; all 12 non-attorney general's office respondents with registration requirements for charities maintained databases.

FIGURE 4

Percentage of Jurisdictions with Registration Requirements, by Type of Organizations



Source: Urban Institute and Columbia Law School Survey of State Charities Regulatory Offices 2013-14.

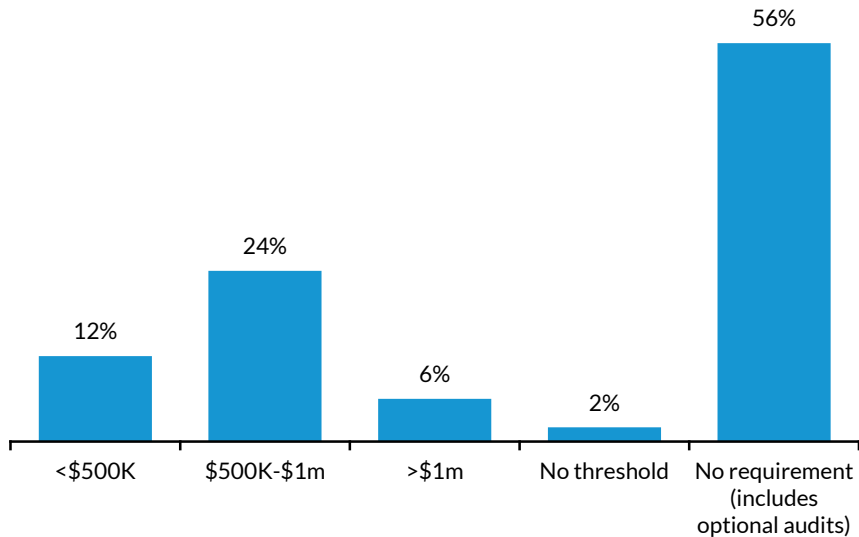
Note: L3C = low-profit limited liability company.

Audits

State charity offices can oversee and monitor the charitable sector by reviewing independent audited financial statements.²² Fewer than half (44 percent) of the 50 states required charitable organizations to file these independent audited financial statements. Many of those states only require filing if revenue meets a certain threshold, most commonly between \$500,000 and \$1 million (figure 5). Larger state charity offices are more likely to require filing than offices with fewer staff, but this relationship is not statistically significant. Required audit filing could be of great use to the smallest state charity offices, if the staff has the time or technology to review them.

FIGURE 5

Audit Requirement Threshold for 50 Jurisdictions



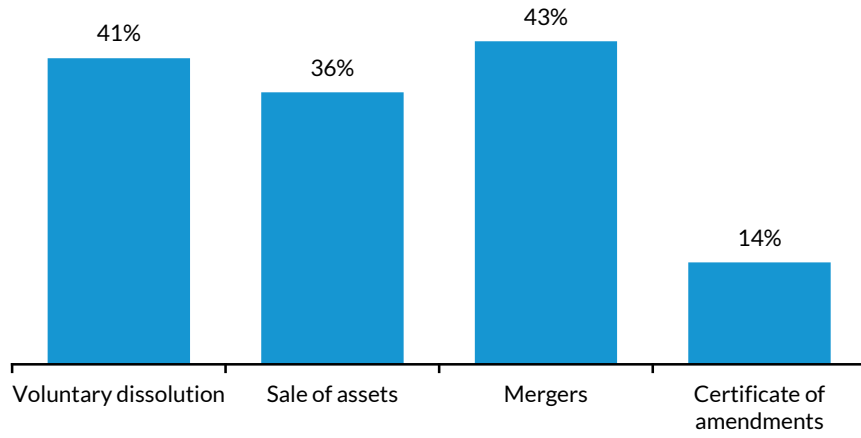
Source: Urban Institute and Columbia Law School Survey of State Charities Regulatory Offices 2013-14.

Notice to the Attorney General: Requirements for Specific Transactions

Because attorneys general are responsible for protecting charitable assets, many states have statutes that require notice to the attorney general of “life cycle” events, such as voluntary dissolutions, mergers, and sales of assets that affect assets held in trust by charities. Notice requirements assure that attorneys general oversee the administration of charitable assets. Notice of these events alerts attorneys general to transactions that may affect the character and disposition of assets and allows the office to assure that those assets continue to be used for their intended charitable purposes. Nearly 44 percent of attorneys’ general offices (in the 44 reviewed jurisdictions) require notice of such events. However, only 14 percent require notice for amendments to articles of incorporation (figure 6).

FIGURE 6

Notice Requirements to Attorneys General in 44 Attorneys' General Offices



Source: Urban Institute and Columbia Law School Survey of State Charities Regulatory Offices 2013-14.

Chapter 5. Enforcement

All the attorneys' general offices that responded to the survey reported that they had authority through common law or statute to remedy violations of law in the charitable sector. Attorneys general protect charitable assets and enforce laws governing charitable organizations. This dual role may influence how states view enforcement. If an attorney general takes action against a noncomplying charity, the publicity may diminish the public's trust in that charity and reduce contributions. The dual role of protecting charitable assets and enforcing the law, as well as the resources available to state charity offices, may explain why "minor" statutory violations are frequently resolved informally.

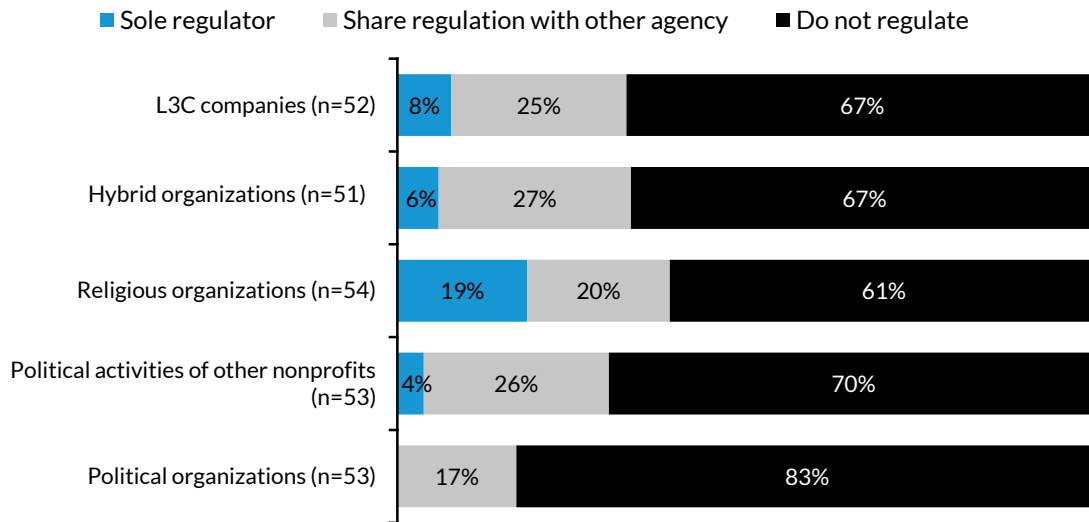
Enforcement authority varies from state to state but mostly includes actions to remedy breaches of fiduciary duties, misuse of charitable assets, fraudulent solicitation, and failure to register or file reports. The survey did not gather data concerning how often such actions are brought (an excellent topic for further research) but instead identified the nature of that authority, the staffing and resources available to exercise the authority, and the ways such authority is exercised, such as informal resolution or court action.

Although many states exempt certain charitable organizations (e.g., political and religious organizations) from registration, they may still have regulatory authority over them. Some state charity offices regulate hybrid and flexible-purpose corporations that, although not charitable in character, may hold assets in trust for charitable purposes (Tyler et al. 2015; Wexler 2013).

State registration laws exempt some charitable entities from registering and filing annual financial reports with state charity offices; these laws vary state to state. The most common exemptions apply to religious organizations, educational institutions, and hospitals.²³ Some organizations may be exempt from registration for certain purposes but are required to register for others. In New York, registration is required of organizations that hold charitable assets in New York or solicit charitable contributions in New York. Some organizations do not fall into both categories: hospitals are only required to register in New York if they solicit contributions (even if they hold charitable assets in New York), and educational institutions are required to register to solicit contributions in New York unless they file annual reports with New York State's Department of Education. Even where a state may not require registration, the attorney general oversees authority over the charitable assets the entity holds.

FIGURE 7

Entities Regulated by State Charity Offices



Source: Urban Institute and Columbia Law School Survey of State Charities Regulatory Offices 2013-14.

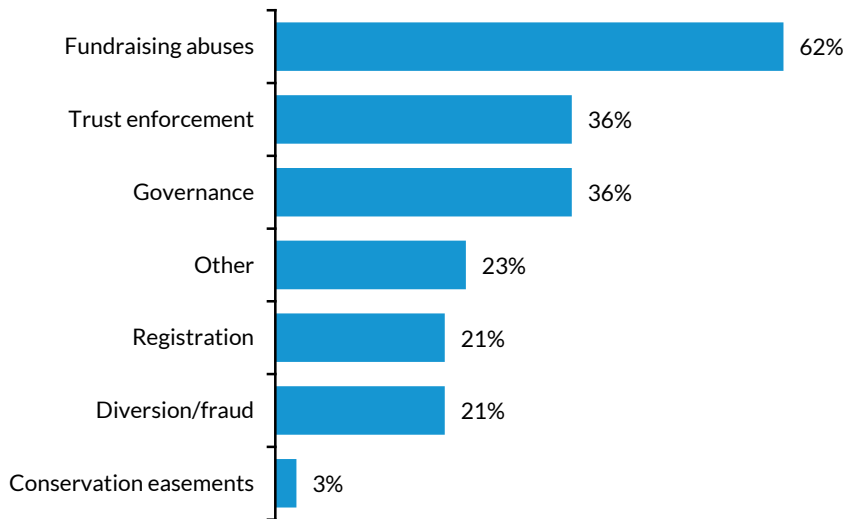
Note: L3C = low-profit limited liability company.

Most Common Areas of Enforcement

Governance issues and trust enforcement are fundamental to the duty of attorneys general to protect charitable assets, but as multiple issues compete for regulators' attention, our interviews probed the most common areas of enforcement (figure 8). Fundraising abuse was the most-cited focus of enforcement (62 percent of the 39 interviewees), followed by governance and enforcement of trusts (36 percent of interviewees). About one in five interviewees included registration, diversion, and fraud as common areas of enforcement.

FIGURE 8

Most Common Areas of Enforcement for 39 Attorneys' General Offices



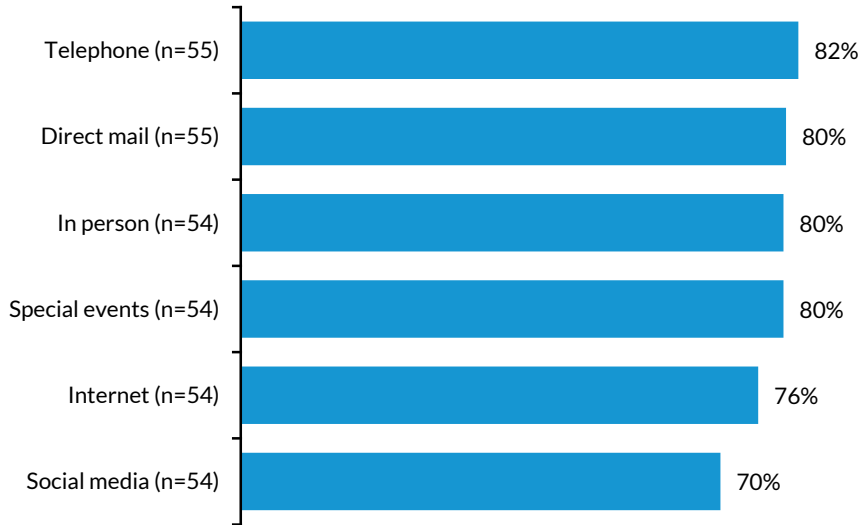
Source: Urban Institute and Columbia Law School Survey of State Charities Regulatory Offices 2013-14.

Fraud and diversion of assets arise in fundraising when fundraisers make false and misleading statements to induce donors to make contributions.²⁴ These cases often arise when professional solicitors engaged by charities make false claims to potential donors; these cases sometimes result from the charities' failure to oversee the activities of the solicitors. Some of the most egregious cases involve purported charities formed to benefit those who created them. In such cases, the attorney general may, in addition to dissolution and restitution, seek to bar the people involved from further involvement with charities and refer them for criminal prosecution. In charitable trust law, *restitution* does not mean returning money to a donor; instead, the state will utilize *cy-pres*, which provides that when it is impossible or impracticable to use assets given in trust for the original charitable purpose, a court may direct the assets toward something similar to its original intended purpose.

More than 80 percent of state charity offices reported regulating solicitations from well-established methods (e.g., in-person soliciting, direct mail, and telephone). Regulation of newer methods (e.g., Internet and social media) was lower (figure 9).

FIGURE 9

Fundraising Methods Regulated by State Charity Offices



Source: Urban Institute and Columbia Law School Survey of State Charities Regulatory Offices 2013-14.

Governance issues arise in organizations that have a dysfunctional, “captive,” or self-serving board of directors, inadequate fiscal controls, or a governance structure that puts the organization at risk for misappropriation or diversion of assets.²⁵ A board may be “led” by one person who excludes other members from participation and who funnels assets to himself or herself or fails to adhere to the organization’s mission in using assets. In other situations, a board may abdicate its responsibilities and cede all authority to a “runaway” executive director, who grants himself, herself, or others excessive compensation or other personal benefits. Remedies available to attorneys general include recovering misapplied or diverted assets, requiring the restructuring of a board, and removing board members. In the most egregious cases, charities involved in pervasive fraud, an organization may be involuntarily dissolved.

In trust enforcement, attorneys general assure adherence to the terms of a trust. A trustee may not use assets for purposes other than those permitted by the trust or claim excessive fees or reimbursement for unjustified expenses. Remedies include recovering diverted funds, removing and replacing trustees, terminating the trust and distributing assets to intended beneficiaries, and determining the next best use of the trust assets if terms of a trust cannot be fulfilled.

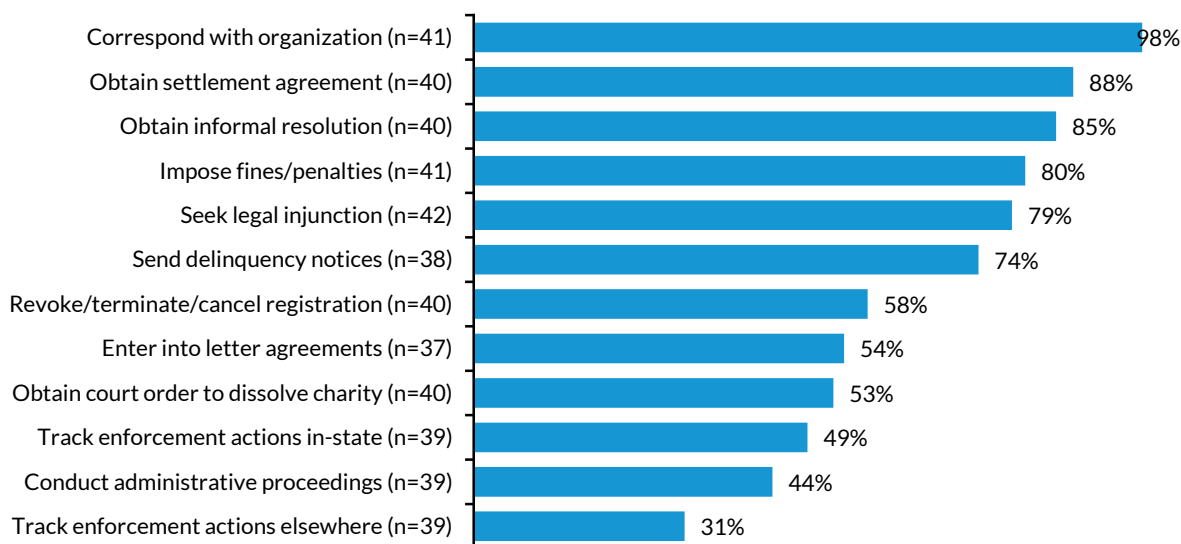
Types of Enforcement Actions

Although public education and outreach to the charitable sector efficiently increases compliance with legal and regulatory requirements, enforcement actions are critical for sector oversight. Among all survey respondent offices, the most common approach is to investigate an allegation of noncompliance, followed by use of informal means of resolution or bringing civil actions in court.

Nearly all state charity offices in our survey indicated that they correspond with charitable organizations regarding violations, and at least 85 percent of the offices try to obtain an informal resolution or settlement agreement (figure 10). Informal resolutions typically do not generate press releases or other public notices, thereby avoiding possible negative consequences for an otherwise compliant charity. Such pragmatic and low-cost options require limited attorney and staff time to achieve compliance. Many informal resolutions such as discussions with a board or executive director are achieved outside a public forum, especially when violations are not egregious. Resolutions may become public; a settlement agreement can be posted on the state charity office’s website or may be obtained by stakeholders through a freedom of information request.²⁶

FIGURE 10

State Charity Office Enforcement Actions



Source: Urban Institute and Columbia Law School Survey of State Charities Regulatory Offices 2013–14.

State charity offices use other enforcement tools to achieve compliance. To remedy registration and reporting violations, over 70 percent of survey respondents send delinquency notices, seek legal injunctions, and impose fines or penalties when enforcing the law. About 60 percent revoke, terminate, or cancel a charity's registration, and half obtain a court order to dissolve a charity. Fewer than half conduct administrative proceedings to enforce registration requirements.

Monetary penalties, dissolution, and injunctive relief are the most common remedies available to state charity offices for substantive law violations. Attorneys general offices may seek restitution to charities and remove board members, though less often than other remedies. Nearly 40 percent of attorneys' general offices file criminal cases compared with only 20 percent non-attorneys' general offices. Most often, criminal cases are filed by district attorney or US attorney's offices. Attorneys' general offices do not have jurisdiction over all enforcement elements unless codified in statute. There is no statistical relationship between taking these actions and the size of the state charity office staff. Large and small offices have a similar likelihood of engaging in these practices, although larger offices are more likely to pursue criminal remedies and seek restitution for the charity.

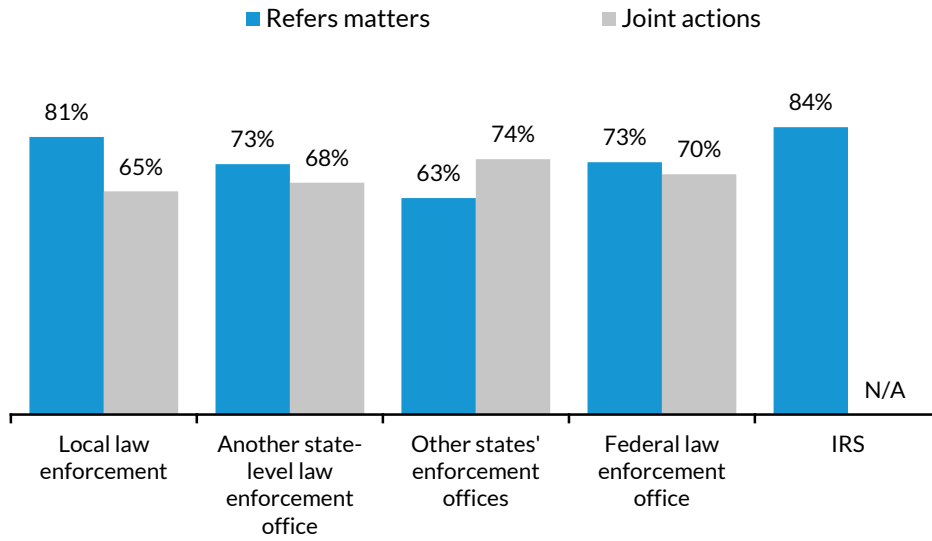
Working with Other Agencies

To enforce the law, state charity offices may work with other government agencies in joint investigations or court actions or in referrals, where the information from the regulating office is sent to the office or agency that can most effectively enforce the applicable law. Nearly all of the 54 survey respondents (93 percent) refer matters to at least one other government office or agency, two-thirds undertake joint investigations with at least one other government office or agency, and half engage in joint actions with at least one other office or agency (figure 11).²⁷ For example, 74 percent of state charity offices work with state charity offices in other states, 68 percent work with another state-level office in their own state, 70 percent work with federal agencies, and 65 percent work with local law enforcement agencies on joint investigations or joint actions. There are no efficient legal mechanisms for states to enter joint actions with the IRS against a tax-exempt organization as defendant.²⁸

FIGURE 11

State Charity Offices with Interoffice Cooperation

Offices (n=54)



Source: Urban Institute and Columbia Law School Survey of State Charities Regulatory Offices 2013–14.

Note: N/A = not applicable.

Chapter 6. Tools to Facilitate Regulatory Compliance

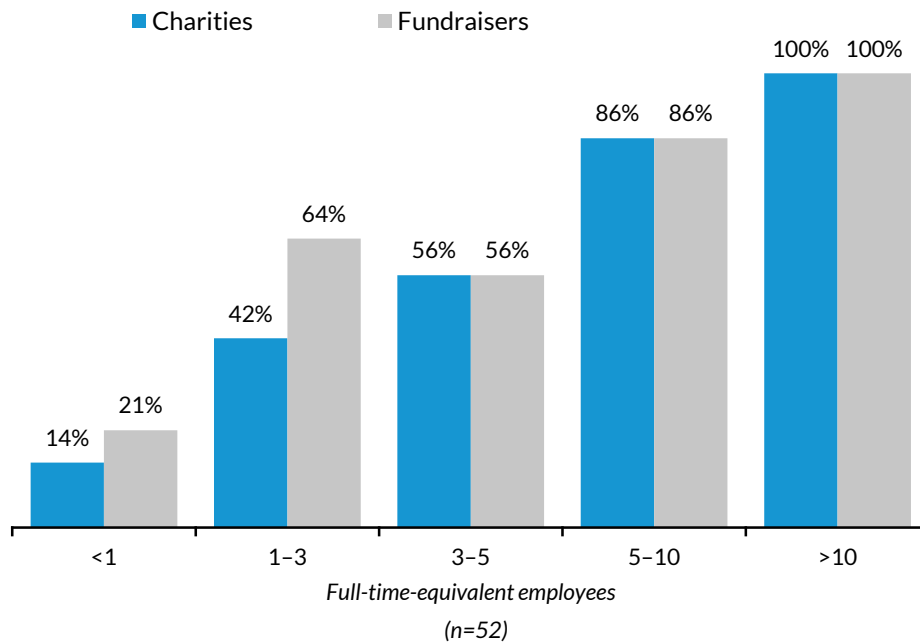
State charity offices use various tools to increase regulatory compliance, including collecting data and making that data available to stakeholders, educating the nonprofit sector and public, and working with other state and federal offices on investigations. What tools are used in which offices depends on the number and type of staff members assigned to charities work, the technology available, the relationship between the attorneys' generals and other non-attorneys' general offices in bifurcated states, and the focus of the attorney general, secretary of state, or other state officials in their administration.

Data Collection and Transparency

One of the most important aspects of regulation and enforcement is identifying and tracking which entities are incorporated or doing business within a jurisdiction, although not all jurisdictions require registration of charities or their fundraisers. Sixty percent of state charity offices maintain a registry or database containing information on charities and their fundraisers (religious and political organizations are among exempted organizations). Of the offices with a database, 82 percent track charities; the larger the staff, the more likely the office is to maintain a database (figure 12). Only one in five offices with less than one FTE employee have a database, whereas all offices with more than 10 FTEs maintain a database for charities and fundraisers. These databases may be for regulators only or have a public interface.

FIGURE 12

Relationship between Staff Size and Database Use, among Offices with a Database



Source: Urban Institute and Columbia Law School Survey of State Charities Regulatory Offices 2013-14.

Typically, a state charity office database includes organizational information such as a charity’s name, address, and phone number (97 percent of offices with charity databases collect this type of information); financial information and reports (91 percent); and organizing documents such as state articles of incorporation, IRS Form 1023 (application for tax exemption), and IRS Form 990 (informational return filed by charities with IRS).²⁹ Other information collected by roughly 70 percent of offices with databases include information on a charity’s board of directors, records of enforcement, and regulators’ correspondence with charities. Nearly all state charity offices (93 percent) that have databases include information on fundraising professionals engaged by charities.

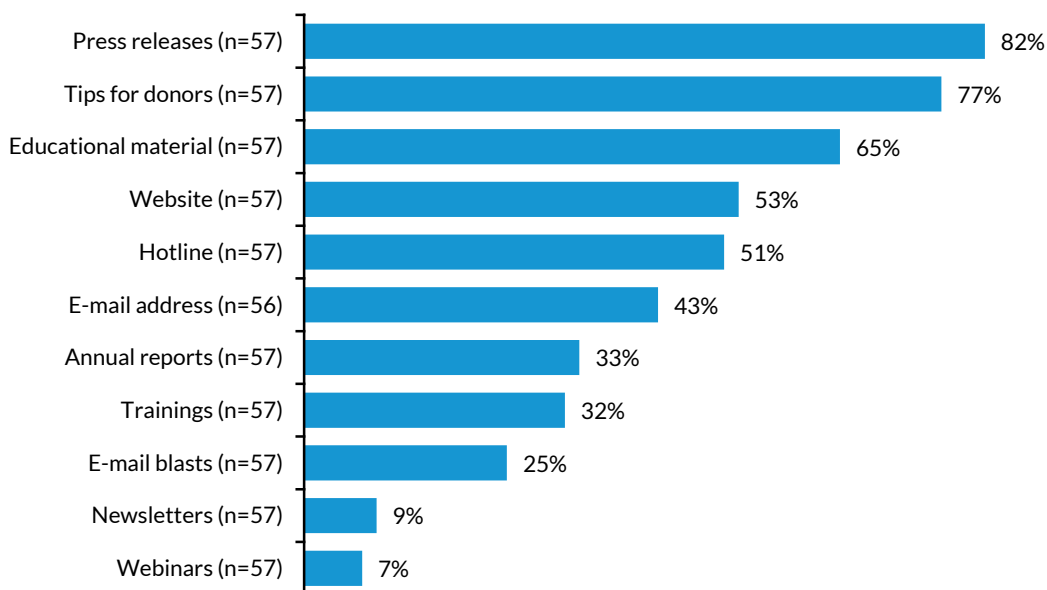
Charity regulators also rely on external sources for routine information: 92 percent of survey respondents indicated that they use Internet research for financial and other information annually; 77 percent conduct Internet research monthly. GuideStar—a database of US nonprofits—was heavily cited, with 88 percent of survey respondents indicating that they access the service annually; 57 percent use it monthly or more frequently. Annual outreach to other state agencies (86 percent of respondents) and the IRS (85 percent) follow. Rates of annual use for other services are sharply lower.

Chapter 7. Education and Outreach

Educating nonprofit leaders and the donating public about the laws and regulations governing charitable organizations is an important function of a regulatory office, although regulators differ in the degree of public education offered. Education may also encourage compliance with state laws and regulations. Myriad activities provide information to interested stakeholders (figure 13).

FIGURE 13

State Charity Office Education and Outreach Activities



Source: Urban Institute and Columbia Law School Survey of State Charities Regulatory Offices 2013–14.

The most common practices include press releases, tips for donors about giving choices that will help ensure their donations are used as intended, and educational materials. Maintaining a website or an e-mail address or hotline for questions and complaints are also common. These practices enable nonprofits, the public, and other stakeholders to view information online or communicate directly with the regulatory office via phone or Internet. Over one-quarter of surveyed offices conduct training sessions, issue annual reports, or send e-mail blasts, although less than a tenth conduct webinars or publish newsletters.

The number of education and outreach activities undertaken is related to the size of a state charity office (table 2). More than half of offices with 10 or more FTEs perform nearly all the activities listed in figure 13, and smaller offices are likely to engage in fewer activities. Large offices undertake multiple outreach methods; small offices are likely to issue press releases, tips to donors, and educational materials, but little else. Only three small offices had a website. The frequency with which midsize offices (1 to 9.9 FTEs) engage in outreach activities varies. Almost all issue press releases; most issue tips to donors and other educational materials; about half have websites, hotlines, and e-mail addresses, and conduct training sessions; only a handful hold webinars or produce newsletters. Cognizant of their role as prosecutors, some attorneys' general offices are hesitant about providing educational programming to the sector, maintaining that such initiatives are not within the purview of an office that can launch an enforcement action against a charity or fundraiser.

TABLE 2

Outreach Activities Conducted by State Charity Offices

Outreach activity	Percentage of small offices (<1 FTE) N=16	Percentage of midsize offices (1–9.9 FTEs) N=29	Percentage of large offices (≥10 FTEs) N=8
Issue press releases	56	93	100
Issue tips for donors	63	83	100
Issue educational materials	44	69	100
Have a website dedicated to charities	19	62	88
Have a hotline for complaints and questions	19	59	88
Have an e-mail address	6	55	75
Issue annual reports	6	45	63
Send e-mail blasts	13	31	38
Conduct training sessions	6	48	38
Hold webinars	0	7	25
Produce newsletters	0	10	25
Issue advisory letters ^a	0	21	13

Source: Urban Institute and Columbia Law School Survey of State Charities Regulatory Offices 2013–14.

^a Advisory letters may be issued to registrants by any state charity office. *Attorney general opinions* are issued (in New York and California pursuant to statute) by attorneys' general offices to government agencies upon the agency's request.

Interviewees noted that some of their outreach activities don't occur regularly. State charity regulators may speak at a meeting of attorneys or accountants or give a lecture at a university or law school. Some offices target their outreach toward charitable organizations (e.g., a half-day workshop for newly incorporated organizations that focuses on legal requirements and governance issues); others target consumers and donors by issuing media alerts about how to avoid scams by sham charities or tips

for wise giving practices during holiday seasons and after disasters. One state developed a mobile charity app for smartphones to help consumers find charities.

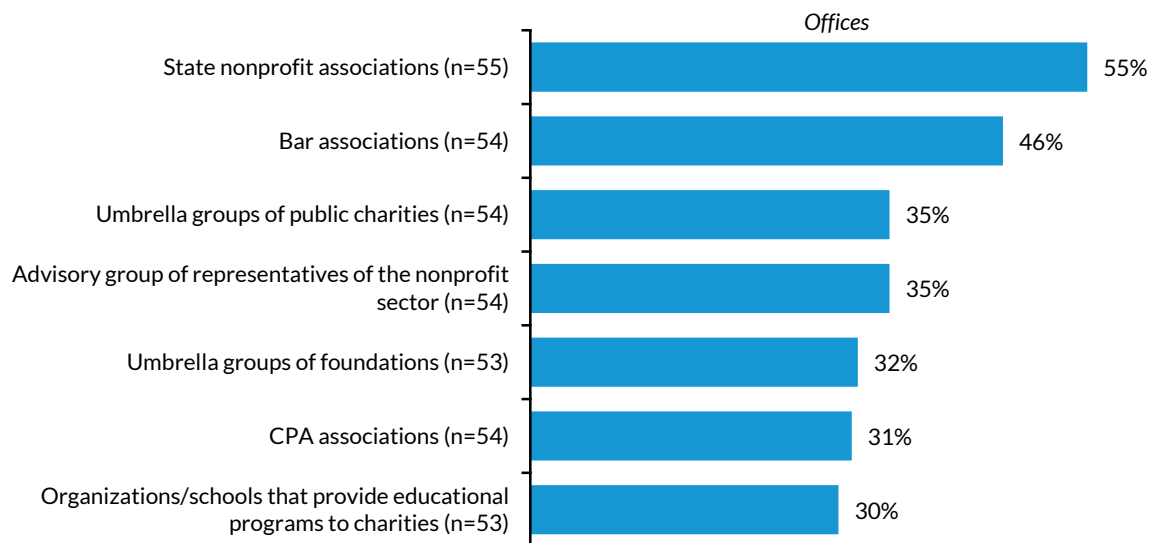
Chapter 8. Working with Other Sector Organizations

State charity offices sometimes work with nonprofit organizations to facilitate outreach efforts. Partners in education and outreach can reach a wide audience and help share regulatory information and educate nonprofit leaders about meeting regulatory requirements.

More than half the regulatory offices reported working with a state nonprofit association (figure 14).³⁰ Some respondents described their office’s relationship with the state nonprofit association as “close,” others said it was “cordial,” and a few said they had no relationship with a state nonprofit association.

FIGURE 14

Partners in Education and Outreach



Source: Urban Institute and Columbia Law School Survey of State Charities Regulatory Offices 2013-14.

Note: CPA = certified public accountant.

State and local bar associations were the second-most-frequently cited partners. Some interviewees work with their state bar association by attending conferences and giving presentations at bar meetings. Such presentations educate attorneys who work with or advise nonprofit organizations. About a third of state charity offices work with other groups identified in the survey, such as certified

public accountant associations, umbrella organizations of public charities or foundations, or schools or organizations that provide education programs to charities.

Thirty-five percent of offices work with an advisory group composed of nonprofit-sector representatives. About a third of these offices are required by state statute to form these advisory groups, while two-thirds do so on a voluntary or discretionary basis.

The size of the regulatory office has a strong association with how many offices work with partners (table 3). Small offices with few staff are less likely to partner with any of these groups compared with large offices, even though smaller offices might benefit most from partnering and sharing information and resources.

TABLE 3

Potential Partners in Education and Outreach for State Charity Offices

Potential partners	Percentage of small offices (<1 FTE) N=14	Percentage of midsize offices (1-9.9 FTEs) N=29	Percentage of large offices (≥10 FTEs) N=8
State nonprofit association	43	59	86
Bar association	29	46	88
Umbrella groups of public charities	4	32	88
Certified public accountant associations	7	34	86
Umbrella groups of foundations	14	29	75
Advisory group of representative of the sector	7	41	71
Organizations and schools that provide educational programs to charities	7	36	71

Source: Urban Institute and Columbia Law School Survey of State Charities Regulatory Offices 2013-14.

Chapter 9. Areas for Further Research

This study is a starting point for further research and analysis of state-level regulation and enforcement of charities. This study does not address rates of enforcement, neither comparative across jurisdictions nor over a particular period. Quantifying enforcement in the charitable sector is difficult for reasons outlined in this report, but this question is important to the sector.

The survey used for this report did inquire about funding within jurisdictions, but the data retrieved were neither useful nor valid. Discerning funding within a state budget for overseeing charities has proven difficult. Policy questions about whether to increase funding for oversight cannot be answered until we have a baseline of expenditures.

We also need to better understand criminal prosecution in the charitable sector and the extent to which states prosecute defendants criminally, particularly where the alleged activities are egregious and harm the perception of the sector.

Lastly, we need to assess the jurisdictional and institutional relationships among local, state, and federal regulators, including the Federal Trade Commission and IRS. Mapping the interlocking nature of this regulatory ecosystem will allow a better understanding of regulatory and enforcement gaps and inefficiencies.

Chapter 10. Conclusions

State-level oversight of charities reflects the federalist system of the US legal framework. Charities oversight and enforcement involves a complex mix of areas of law that developed from common law. States enacted uniform laws and model laws in addition to that shared basis of common law. As a result, structures, resources, and activities of charity offices vary from state to state. Although state attorneys' general offices retain some oversight over charities in every state, only one-fourth of US jurisdictions have dedicated charity bureaus; other state-based offices with jurisdiction over charities are found in different permutations across the states, defying a predictable structure. In addition, some oversight and enforcement functions are in the attorneys' general offices, and other functions are in other agencies and offices.

Although this study does not incorporate state funding data, resources devoted to charities oversight (i.e., FTE staff) are minuscule compared with the oversight they are expected to provide. Charities are a growing part of the US economy where a million charities, thousands of fundraisers, and hundreds of thousands of other types of nonprofits and trusts are overseen by 355 FTE charities staff, which includes non-lawyers spread across agencies who often have other responsibilities. Fifteen jurisdictions have less than one FTE staff member dealing with charities.

The activities of charities offices documented in this study suggest that state-level activities are significant and more robust than people in the charitable sector assume. However, charities oversight continues to rely heavily on stakeholder and public oversight, a system built on trust and maintained through outreach and partnerships. Staffing for oversight of the US charitable sector has not grown with the charitable sector. Investment in technology, data sharing, staff, and other resources would enhance the ability of these offices to fulfill their important missions.

Appendix A. Study Methodology

This study was a collaborative effort between Columbia Law School's Charities Project and the Urban Institute's Center on Nonprofits and Philanthropy. It involved former and current regulators, lawyers, legal experts, and nonprofit researchers. The legal research team mapped the regulatory environment across all states and territories and aggregated the legal data for public use—a new tool providing public information not available previously. Building on the legal framework of each state, the institutional partners devised a survey of charity regulators to understand the complex and sometimes opaque structure and activities of regulators' offices. Finally, interviews with regulators yielded detailed data on regulatory processes, strategies, and objectives. These three phases of research offer the most in-depth view of US charities regulation that is publicly available. Each of the components is described in more detail below.

Legal Research

The study's legal component was conducted by the Charities Project within the National State Attorneys General Program at Columbia Law School. The multipronged, multilevel data collection strategy focused on state and territorial laws to understand the role state regulators play in charities enforcement and regulation, the state agencies involved, and the legal authority by which state regulators derive their power to oversee and regulate the sector and the types of charities they oversee. Most states have common law authority to oversee and regulate charities within their jurisdiction. However, analyzing and gathering state statutes allowed team members to gauge the level, scope, and nature of a state agency's role relative to charities and their fundraisers. The legal research provides a contextual foundation for the study and a basis of comparison with survey responses and interview answers.

Administration and Design

The legal research team determined categories regarding the areas or issues that state agencies may be involved in when overseeing charitable entities. The categories include requirements a state's law imposes on charities (e.g., audits), notices to a state attorney general, and the scope of a state regulator's power and authority over the affairs of charitable organizations (e.g., legal recourse or

remedies for resolving conflicts or dissolving a nonprofit, or notice requirements when nonprofits merge).

The legal research team devised questions to focus the research. These questions became the basis for variables that captured what a state’s statute said or did not say about an issue. The legal research looked at state laws to determine the following:

- Which states have common law or statutory authority to oversee charitable entities?
- What charitable entities are exempt from a state’s registration requirements?
- Does state law require charitable entities to perform an audit, and if so, what is the revenue threshold?
- What legal recourse (remedies) do state officials have against troubled or problematic charitable entities?
- Which transactions require notice or involvement by the state attorney general or responsible state agency?
- Which states require charitable entities to register with a state agency other than the attorneys’ general office?

The legal team reviewed state statutes through a state website or through Lexis and Westlaw databases. Most statutes pertaining to nonprofits were found within “Corporations” or “Business Organizations” sections in state statutes, although nonprofit statutory provisions were often scattered throughout other sections of a state’s respective statutes.

The legal research team provided the data to the Urban Institute research team to conduct quantitative analysis. The legal data were formatted so that every state had a binary (yes/no) response for each variable, which enabled the Urban Institute research team to use statistical programs to analyze the legal data with the other datasets and make comparisons across states.

In light of ever-changing statutory laws and legal precedent, and the breadth and scope of the legal research, the two teams created a downloadable Excel file that houses the legal data. The file contains a spreadsheet with sources and citations and a spreadsheet that displays binary responses for each variable by state, linked to the source material in the first spreadsheet. This legal research will compose a State Law Compendium for Charitable and Nonprofit Oversight. Staff at the Center on Nonprofits and Philanthropy will update the spreadsheets periodically to reflect recent changes in law or to correct

data points. In a publicly accessible file, the data can spur further research into the laws that govern charities enforcement and regulation at the state level. The compendium can be found at <http://urbn.is/2bWnnFO>.

The Survey

A survey of state regulatory and enforcement agencies was developed and conducted jointly by the Charities Project and the Center on Nonprofits and Philanthropy. The survey captured an empirical understanding of the parameters, frequency, consistency, challenges, scope, and benefits of state charity regulators.

The survey collected information on charities regulation at the state level and determined the office structures that lead to various types of regulation. States vary in practice and jurisdiction, and the survey shows how these differences affect regulatory outcomes. This information may enable policymakers and regulators to maximize the efficiency and quality of charitable oversight within their state.

The survey provides an overview of various enforcement strategies. It did not capture amounts or rates of enforcement. It is beyond the scope of this report to comment on relative amounts of enforcement between states or across time.

Population Surveyed

The survey population consisted of attorneys' general offices in the 50 states, the District of Columbia, and five US territories, and appropriate secretary of state or other offices that oversee and regulate charities. Contacts from 66 offices in 56 jurisdictions were invited to participate in the survey. The legal team compiled names, addresses, phone numbers, and e-mail addresses.

Questionnaire Design

The Urban Institute team and the Charities Project developed the survey. Questions that could be answered through legal research were not included. The final questionnaire had 37 questions and 172 variables. It was divided into six sections: the respondent's office, staffing, outreach/

press/transparency, funding, data and tracking, and enforcement (see appendix C for the full survey). The questionnaire was administered online.

Human Subjects Research Review

The Urban Institute team completed the review form for the Urban Institute's institutional review board, which reviews human subject procedures and compliance with federal regulations for human subject research. The board approved the study for full implementation on October 11, 2013.

Pretest

Six respondents completed the Charities Project's representative pretest sample. The pretest tested the wording and branching of the questionnaire and the ease and time needed to complete it. Pretest respondents were asked six questions about the structure and content of the survey to identify areas that needed improvement. After reviewing these data, several changes were made to the survey. Data collected during the pretest were not used in the final analysis, and pretest respondents completed the survey again once it was finalized.

Data Collection

A key element of the survey procedure was to implement carefully designed and scheduled contacts with the survey respondents. The first contact was a letter signed by Cindy M. Lott, executive director and senior counsel of the National State Attorneys General Program. The letter introduced the study and provided respondents with a username and password. This letter was sent electronically and allowed respondents to complete the survey over the phone if they preferred.

Nonrespondents received e-mails and telephone calls to encourage participation. Nonrespondents were also allowed to schedule a phone interview and complete the survey via telephone. If the respondent did not answer the phone during the initial reminder call, the survey team left a voicemail and called back within two days.

Response Rates

Sixty-one of 66 respondents started the survey, and 54 completed it. In eight cases, the survey was administered over the phone. Forty-one of 45 respondents from attorneys' general offices completed the survey, while 13 of the 16 respondents from other offices completed the survey. We received complete responses from offices in 47 states and territories.

Data Cleaning and Analysis

We exported survey data from the online survey system and created a directory linking survey codes to labels and values in statistical software programs (Stata and SAS). We analyzed data once they were available in SAS.

Preliminary analyses were conducted for national and state review. Based on the findings, the legal and research teams developed an instrument guide for regulator interviews with survey respondents.

Interview Component

The Columbia University legal research team conducted interviews with survey respondents to obtain nuanced data on state charity regulation and enforcement. The interviews allowed us to learn more about the processes within each state. The interviews also add context to the survey and legal data.

The interview protocol has two sections (appendix D). The first section elicits further information about topics covered in the survey. The second section includes four modules that were administered to certain respondents based on the types of offices involved in registration and enforcement, and the level of enforcement. The modules were structured as follows.

- Module 1 contained questions for “all-in-one” states, where registry and enforcement are handled in one office.
- Module 2 had questions for states with enforcement authority but not registration. This module included such questions as, “how do you know which charities are active in your state?”

- Module 3 contained questions for bifurcated states, where registration is in one office and enforcement is in another. This module was designed to understand the relationship between offices.
- Module 4 was administered to states with active and consistent enforcement. This module included questions about what sources of information identify issues for investigation and how regulators identify matters for investigation.

Interviewers reviewed survey responses and asked clarifying questions about survey questions to which the respondent gave no response, a partial response, or an inconsistent response. In some cases, these clarifications resulted in updates to the survey response data.

Every respondent was asked to participate in an interview. Thirty-nine of the 61 respondents were interviewed. Most of the interviewees were people who took the survey, but sometimes a different person from the same office was interviewed.

Thirteen interview questions were coded into binary or categorical variables for use in quantitative analysis combining the legal, survey, and interview data. All interview data were analyzed qualitatively. Responses were grouped into major themes to supplement findings from the survey and legal research.

Analysis

First, we looked at response frequency to every question in the study to get an overview of the data. This provided a picture of the regulatory environment and office structures across the country.

Next, we compared answers across sources of information (legal research, survey, and interviews) to look for patterns. We combined all the quantified data using Stata and SAS. Each data source had a different number of responses. To combine survey data and interview data, we matched each interview with its corresponding survey response. Some jurisdictions with bifurcated regulation had more than one survey respondent because they had one from each office. For these jurisdictions, the legal data were duplicated when we combined the results so that each office respondent would have a complete set of associated data. This allowed us to compare office characteristics with legal characteristics; some of our analyses present results at the office level, not at the jurisdiction level, which means that crosstabs are valid on the respondent level but do not accurately represent the jurisdiction. We compared responses with different variables to obtain an overview of funding, data, staffing, transparency, technical support, interview topics, and legal topics. Office-level indicators are important

for understanding how office structure may determine which enforcement issues those offices can address and how they address them.

To produce jurisdiction-level findings for variables on authority, educational outreach, oversight, enforcement, investigations, and joint actions, we combined the answers within jurisdictions. In jurisdictions with more than one survey or interview respondent, the data were collapsed such that if a respondent in any office reported that the office performed the actions, the jurisdiction was marked as having those actions. (If the attorney general's office in State X reports that they do educational outreach, but the secretary of state's office reports that they do not, State X is recorded as having educational outreach.) These state-level indicators are useful for comparing jurisdictions and for categorizing states into analytic groups. Jurisdiction-level indicators are useful when comparing legal structures across jurisdictions.

Appendix B. Bifurcated Jurisdictions’ Non-Attorney General Regulatory Offices

Jurisdiction	Office Name
Arizona	Secretary of State (As of September 2013, registration of charities is not required; only veterans organizations must register.)
Colorado	Secretary of State
District of Columbia	Department of Consumer and Regulatory Affairs
Florida	Department of Agriculture and Consumer Services
Georgia	Secretary of State
Kansas	Secretary of State
Maine	Department of Professional and Financial Regulation
Maryland	Secretary of State
Mississippi	Secretary of State
Nevada	Secretary of State
New Jersey	Division of Consumer Affairs
North Carolina	Secretary of State
North Dakota	Secretary of State
Oklahoma	Secretary of State
Pennsylvania	Secretary of State
Rhode Island	Department of Business Regulation
South Carolina	Secretary of State
Tennessee	Secretary of State
Utah	Division of Consumer Protection
Virginia	Department of Agriculture and Consumer Services
Washington	Secretary of State
West Virginia	Secretary of State
Wisconsin	Department of Financial Institutions

Appendix C. Survey

Survey of State Charities Regulators

Thank you for your time and participation in this online survey regarding state charities regulation and enforcement. The survey is being conducted as a joint project between the Charities Regulation and Oversight Project at the National State Attorneys General Program at Columbia Law School and the Urban Institute's Center on Nonprofits and Philanthropy. *Your participation is voluntary and information you provide will be kept confidential.* This survey, in conjunction with further telephone interviews, is anticipated to result in a public, published report collating results. ***All public results from this survey shall be anonymized; no individual who participates in the survey shall be identified, nor shall any individual state office be identified in the public results.***

The survey should take approximately 30 minutes to complete. If you need to pause during the completion of the survey, you may save results and complete at a later time.

If you have any questions about the survey, please call Sarah Pettijohn at 202-261-5441 or email NonprofitSurvey@urban.org and reference the "Survey of State Charities Regulators."

For the purposes of this survey:

"**Office**" is the governmental department, office, sub-division or other state office that has jurisdiction over charities and/or fundraisers, e.g., state attorney general's office, secretary of state, etc.

"**Division**" is the bureau, division, section or other subpart of the office that carries out the office's jurisdiction over charities and/or fundraisers, e.g., Charities Bureau, Consumer Division, etc.

"**Staff**" includes all office or division employees, including attorneys, paralegals, clerical staff, investigators, CPAs, etc.

Your Office

1. Is your office solely responsible for the oversight of charities in your state?
₁ Yes
₂ No

2. Is there a division/sector/bureau within your office that carries out the oversight of charities for your office?
₁ Yes
₂ No → go to question 4 or 6 (dependent upon Q1)

3. What is the name of the division/section/bureau?

Note: Only show if Q1=No

4. With what other office or division does your office work with to oversee charities in your state?

5. Approximately what percentage of your office's financial resources is dedicated to oversight of charities? %

Staffing

6. Approximately how many full-time equivalent (FTE) employees are dedicated to charities oversight? (FTE is a unit of measure showing how many employees work full-time (40 hours/week). For example, 3 employees that work 20 hours per week on charities oversight would be the equivalent of 1.5 full-time employee.)

7. Are there any information technology (IT) staff available to do charities work for your office?
₁ Yes
₂ No

8. Since 2008 has the number of staff dedicated to charities within your office increased, stayed the same, or decreased?
₁ Increased
₂ Stayed the same
₃ Decreased
₄ Don't know

9. Approximately what percentage of time is spent on registration and enforcement by staff in your office on charities oversight? (For example, if there are ten clerks and one works on enforcement, or two clerks spend half their time on enforcement, this would be the equivalent of ten percent of time on enforcement.)

	Percentage of time spent on enforcement	Percentage of time spent on registration
	▼	▼
Attorneys	_____	_____
Accountants	_____	_____
Legal Assistants	_____	_____
Investigators	_____	_____
Clerical/Support Staff	_____	_____
Information Technology	_____	_____
Other (please specify): _____	_____	_____
Other (please specify): _____	_____	_____
Other (please specify): _____	_____	_____

10. Do staff members (attorneys, accountants, investigators, support staff, etc.) within your office who do charities work receive training about charities law while in your office or division?

	Yes	No
	▼	▼
Internal legal training	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
External legal training.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂

11. Do staff members within your office who do charities work receive training in charities-related technology (e.g., use of databases, Internet research, use of social media by charities, etc.)?

	Yes	No
	▼	▼
Internal technology training	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
External technology training.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂

Outreach/Press/Transparency

12. Does your office have/conduct the following activities specifically related to charities regulation and enforcement?

	Yes	No
	▼	▼
Website dedicated to charities.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Press releases about actions by your office or division regarding charities.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Webinars.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Produce newsletters.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Educational material.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Email blasts or other electronic transmission of information.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Trainings.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Hotline for complaints and/or inquiries concerning charities.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Dedicated email address.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Issue advisory letters	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Tips for donors	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Annual reports	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂

13. Briefly describe any types of public education programs your office conducts specifically related to charities regulation and enforcement.

14. Specifically relating to charities regulation and enforcement, does your office interact with any of the following entities for purposes of educational programs, encouraging compliance, assisting in office outreach, etc.?

	Yes ▼	No ▼
Bar associations.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
CPA associations.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Umbrella groups of foundations.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Umbrella groups of public charities.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
State nonprofit associations.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Advisory group of representatives of the nonprofit sector.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Organizations/schools that provide educational programs to charities.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Other (please specify):	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂

Funding

15. Is your office's charities staff or charities division funded through the following:

	Yes ▼	No ▼
Legislative budget appropriations.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Fees paid to office or division.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Litigation settlement fund or distribution, cy pres.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Grants.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
State nonprofit associations.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Organizations/schools that provide educational programs to charities.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Other (please specify):	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂

Note: Only show if Q2=Yes

16. What is the approximate annual budget of the division tasked with overseeing charities?

\$

₉₉₈ Don't know

17. How has the division budget in your division changed since 2008?

- ₁ Increased
- ₂ Stayed the same
- ₃ Decreased
- ₄ Don't know

18. How are financial payments resulting from settlements or judgments used? (check all that apply)

- ₁ Payment is made to the office or division and then sent to the general fund.
- ₂ Payment is made to the office or division and then transferred to the charity.
- ₃ Payment is made directly to the office or division for its use.
- ₄ Payment is earmarked for particular programs (e.g., public education, enhancement of oversight, etc.)
- ₅ Payment is made for refund to donors
- ₆ Other (please specify): _____
- ₇ Don't know

19. Does your office or division charge fees to charities and/or fundraisers in connection with registration and/or other functions?

- ₁ Yes
- ₂ No → go to 24

20. Approximately how much revenue was received from fees in 2012?

\$ → if \$0 go to question 24

21. How much of that sum was received from: Percentage

▼

Charities.....

Fundraisers.....

How much of that sum was received from: Percentage

▼

One time payments (e.g., one-time registration fees).....

Annual registration and/or filing fees.....

22. Do any of those fees... Yes No

	Yes	No
	▼	▼
Go to office or division's general fund.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Fund charities regulation.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Go to state's general fund.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Other (please specify):	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂

23. Approximately what percentage of fees is dedicated to funding charities regulation?

\$

- ₉₉₈ Don't know

Data and Tracking

24. Does your office or division require registration of the following:

	Yes	No
Charities.....	▼ <input type="checkbox"/> ₁	▼ <input type="checkbox"/> ₂
Charitable trusts	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Fundraisers.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Political organizations	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Religious organizations	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Hybrid (business/nonprofit) organizations.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Low-profit limited liability (L3C) companies.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Benefit/B corporations	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Other entities that solicit and/or hold assets for charitable purposes	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂

25. Does your office or division maintain a registry/database of the following:

	Yes	No
Charities.....	▼ <input type="checkbox"/> ₁	▼ <input type="checkbox"/> ₂
Charitable trusts	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Fundraisers.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Political organizations	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Religious organizations	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Hybrid (business/nonprofit) organizations.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Low-profit limited liability (L3C) companies.....	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Benefit/B corporations	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Other entities that solicit and/or hold assets for charitable purposes	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂

If no to all, go to Q 27

26. What information does your office or subdivision maintain in the database?

	Yes	No
Organizing documents (e.g., State Articles of Incorporation, Form 1023, Form 990, Certificate of Incorporation, Bylaws, etc.)	▼ <input type="checkbox"/> ₁	▼ <input type="checkbox"/> ₂
Organizational information (name, address, phone, etc.)	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Information on board of directors	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Records of enforcement	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Correspondence with organization	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Financial Information/reports	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Fundraising professionals engaged by charities	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Other (please specify):	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Other (please specify):	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Other (please specify):	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Other (please specify):	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂

27. How frequently does your organization use the following sources for financial or other information?

	Never	Less than once per year	Annually	Several times per year	Monthly or more
Better Business Bureau Wise Giving Alliance	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5
Charity Navigator	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5
Charity Watch	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5
Economic Research Institute (ERI).....	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5
Foundation Center	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5
GuideStar	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5
Internal Revenue Service (IRS).....	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5
Urban Institute's National Center for Charitable Statistics	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5
Internet research	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5
Other state offices or agencies	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5
Other (please specify):	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5

28. Specific to charities, does your office or division keep a database either internally or publicly that contains any of the following:

	Yes	No
Complaints and/or inquiries that are submitted to the office.....	<input type="checkbox"/> 1	<input type="checkbox"/> 2
Number of matters handled in court.....	<input type="checkbox"/> 1	<input type="checkbox"/> 2
Number of whistleblower complaints.....	<input type="checkbox"/> 1	<input type="checkbox"/> 2
Number of requests from the public for intervention that do not go to court.....	<input type="checkbox"/> 1	<input type="checkbox"/> 2
Freedom of Information or equivalent state open records request	<input type="checkbox"/> 1	<input type="checkbox"/> 2
Number of hits on your office's website.....	<input type="checkbox"/> 1	<input type="checkbox"/> 2

Enforcement

29. Does your office or division regulate fundraising solicitations conducted via:

	Yes	No
Telephone	<input type="checkbox"/> 1	<input type="checkbox"/> 2
Direct mail	<input type="checkbox"/> 1	<input type="checkbox"/> 2
Internet	<input type="checkbox"/> 1	<input type="checkbox"/> 2
Social media	<input type="checkbox"/> 1	<input type="checkbox"/> 2
In person.....	<input type="checkbox"/> 1	<input type="checkbox"/> 2
Special events.....	<input type="checkbox"/> 1	<input type="checkbox"/> 2
Other (please specify):	<input type="checkbox"/> 1	<input type="checkbox"/> 2

30. Does your office or division have authority to conduct the following actions as to charities and/or fundraisers? (check all that apply)

	Charities	Fundraisers
Investigate	<input type="checkbox"/> 1	<input type="checkbox"/> 2
Bring civil actions in court against.....	<input type="checkbox"/> 1	<input type="checkbox"/> 2
Bring criminal actions against	<input type="checkbox"/> 1	<input type="checkbox"/> 2
Pre-litigation settlements	<input type="checkbox"/> 1	<input type="checkbox"/> 2

31. Does your office or division enforce any violations of registration requirements?

- ₁ Yes
- ₂ No → go to question 33

32. How does your office or division enforce registration requirements?

	Yes	No
	▼	▼
Revoke/terminate/cancel registration	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Impose fines/penalties	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Seek legal injunction	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Tracking of enforcement actions in your state	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Tracking of enforcement actions in other states, and/or local and federal law enforcement agencies	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Correspondence with organization	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Obtain court order to dissolve charity	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Conduct administrative proceedings	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Obtain settlement agreement	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Send delinquency notices	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Enter into letter agreements	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Obtain informal resolution	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂

33. Does your office or division regulate the following:

	Sole Regulator	Share regulation with other agency	Do not regulate
	▼	▼	▼
Political organizations	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
Political activities of other nonprofits	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
Religious organizations	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
Hybrid (business/nonprofit) organizations	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
Low-profit limited liability companies (L3C)	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
Benefit/B Corporations	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

34. Does your office or division participate in investigations and/or joint court actions against charities/fundraisers with other government offices?

	Yes	No	
	▼	▼	
Investigations against charities	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	} If no to all, go to Q 36
Investigations against fundraisers	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	
Joint actions against charities	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	
Joint actions against fundraisers	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	

35. With which offices does your office participate in investigations and/or joint court actions?

	Yes	No
	▼	▼
Local law enforcement	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Another state-level law enforcement office	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Federal law enforcement office	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Internal Revenue Service (IRS)	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Other states' enforcement offices	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Other (please specify):	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂

36. Does your office or division ever refer matters to other offices or agencies (e.g., District Attorney, Internal Revenue Service, etc.)?

- ₁ Yes
₂ No → **end survey**

37. Which offices or agencies does your office or division refer matters to (e.g., District Attorney, Internal Revenue Service, etc.)?

	Yes	No
	▼	▼
Local law enforcement agency	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
State law enforcement agency	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Federal law enforcement agency	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Internal Revenue Service (IRS)	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Federal Trade Commission (FTC)	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Other states	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂
Other (please specify):	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂

Thank you, we greatly appreciate your time and cooperation!

Appendix D. Completed Interview Protocol

Ask clarification questions from previously distributed surveys (appendix C).

I. Further information from all interviewees:

1. Does your state have a nonprofit association? If so, what is your office's relationship with the association?
2. What is your office's policy about which enforcement actions and outcomes become public?
3. Does your office issue advisory opinions concerning charities issues? If so, is your office's authority based on common law or statute? To whom are opinions issued?
4. Does your office sponsor or participate in advisory councils or committees concerning charities issues? If so, is the advisory committee required by statute, or is it discretionary?
5. Does your office sponsor legislation concerning charities issues or participate in the legislative process? If so, is someone who handles charities matters involved?
6. Does your office have common law authority over charities? If so, is it utilized?
7. What training in charities law does your office provide? Is funding allocated for training?
8. What types of educational programs for the public does your office provide or participate in?
9. If you could not answer the questions concerning budget or fiscal resources, who in your office can answer?

II. Module Questions

Module 1: Registry and enforcement in one agency

Q: What are the most common areas of enforcement?

Module 2: Enforcement but no registry

Q: How do you know which charities are

1. domiciled,

2. active in your state, or

3. soliciting contributions in your jurisdiction?

Q: What are the most common areas of enforcement?

Module 3: Bifurcated states

Q: Can you describe the statutory or other relationship between your office and the state agency in charge of enforcement or registry?

Q: What are the most common areas of enforcement?

Module 4: States with robust enforcement

Q: What are your state's procedures for identifying cases?

Notes

1. Enforcement rates and trends, however, are a fundamental aspect of the sector that requires further inquiry.
2. For a thorough exposition of the legal jurisdiction and basis of state and federal regulation in the nonprofit sector, see Fremont-Smith (2004).
3. In 23 jurisdictions, authority is shared with another state agency. See “Bifurcation of Authority over Charities and Fundraisers” in chapter 3 for an explanation of bifurcated regulatory structures, and appendix B for a list of states that share jurisdiction.
4. Although survey and interview questions included queries regarding funding of state charity regulators, respondent data in this area were insufficient to draw conclusions. This area requires further research.
5. See “Bifurcation of Authority over Charities and Fundraisers” below for an explanation of bifurcated regulatory structures, and appendix B for a list of states that have shared jurisdiction and agency titles.
6. As discussed in “Charity Offices’ Staff” below, while the number of state charity regulators has stayed roughly the same, the charitable sector continues to grow. See also McKeever (2015, 2).
7. Attorneys general have jurisdiction over all charities operating in their states; state-level offices that share regulatory responsibility have authority over charities and their fundraisers that solicit in their states.
8. Under the common law and statutory authority of most states, attorneys general ensure that assets held on behalf of the public for charitable purposes are used for their intended purpose. Most courts and state attorneys general believe this authority extends to corporations and trusts such that state attorneys general may sue to ensure charitable assets are not misappropriated or wasted by charitable associations, corporations, trusts, or fiduciaries.
9. *Charitable trustees* are individuals, charitable trusts, estates with charitable interests, charitable corporations, and unincorporated associations who hold assets in trust for public charitable purposes.
10. The bifurcated jurisdictions are Arizona, Colorado, the District of Columbia, Florida, Georgia, Kansas, Maine, Maryland, Mississippi, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin.
11. In recent years, state charity regulators have increased their visibility within the sector and increased their cooperation and collaboration with each other. For example, the National Association of State Charity Officials’ annual conference has shifted its focus to engage more with the public and the charity sector. The National Association of Attorneys General added a Special Charities Committee to its roster of standing committees in 2015. Additionally, regulators have developed an online platform to ease registration for nonprofits and fundraisers and to provide data to regulators and researchers, to be launched in 2016. See <http://mrfpinc.org/>.
12. *Responding jurisdiction* means any of the 50 states, the District of Columbia, and US territories.
13. In-house training may include informal advising and on-the-job training under a more experienced staff member; in-house training does not necessarily denote formalized training sessions or continuing legal education offerings.
14. Although, a handful of recent cases indicate that donors and other stakeholders are challenging this notion, perhaps a sign that changes to the common law standing rules are on the horizon. One case is *Dickson v. Gospel for Asia, Inc., et al.*, No. 16-5027 PKH (D. Ark. filed Feb. 8, 2016) (Donors are bringing a class-action suit against a charity. The donors claim they agreed to give on the condition that 100 percent of their gift be used for a specified charitable purpose but discovered that the charity did not use 100 percent of their gift money for those specified purposes); See also Jonathan Ellis, “Sons want accounting of how Schwan Foundation lost

- hundreds of millions,” *Argus Leader*, April 18, 2016, <http://www.argusleader.com/story/news/2016/04/18/sons-want-accounting-how-schwan-foundation-lost-hundreds-millions/83188868/> (Two sons of the donor, members of the trustee succession committee of a private foundation, claim they have a fiduciary duty to monitor the losses sustained by the foundation and have asked a court to supervise it; the trustees argue that the sons do not have standing under state law to do so. The case is pending before the Supreme Court of North Dakota).
15. Common law is based on precedent (i.e., case law).
 16. *Vidal v. Girard’s Executors*, 43 U.S. 127 (1844).
 17. “Legislative Fact Sheet–Prudent Management of Institutional Funds Act,” Uniform Law Commission, accessed August 15, 2016, <http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Prudent%20Management%20of%20Institutional%20Funds%20Act>.
 18. “Legislative Fact Sheet–Trust Code,” Uniform Law Commission, accessed August 15, 2016, <http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Trust%20Code>.
 19. “Protection of Charitable Assets Act, Model,” Uniform Law Commission, accessed August 15, 2016, <http://www.uniformlaws.org/Act.aspx?title=Protection%20of%20Charitable%20Assets%20Act,%20Model>.
 20. See American Bar Association (2016). Recently, however, the IRS has scaled back the amount information it collects from charities, prompting the states to take a more active role. For more information regarding the shrinking footprint of the IRS on the regulation of charities, see Boris and Lott (forthcoming).
 21. In addition, certain provisions of the Pension Protection Act of 2006 have made sharing information between the IRS and state regulators burdensome. The few states that had cleared the initial hurdles to establishing an information-sharing agreement with the IRS have since withdrawn because the requirements were too burdensome. In 2011, forty-three attorneys general sent a letter to Senators Baucus and Hatch of the Senate Finance Committee, requesting that Congress amend the Pension Protection Act to make sharing information easier (see National Association of Attorneys General, “Pension Protection Act of 2006 Provisions Regarding Information Sharing Between the Internal Revenue Service (IRS) and State Charity Regulators (Attorneys General),” letter to Max Baucus and Orrin Hatch, October 28, 2011, <http://www.nasconet.org/wp-content/uploads/2013/01/NAAG-Info-Share-Letter.pdf>). In the meantime, one goal of the Multistate Registration and Filing Portal is to be a mechanism for participating states to collect and share information more easily (see “Single Portal Multistate Charities Registration,” Multistate Registration and Filing Portal Inc., accessed August 15, 2016, <http://mrfpinc.org/files/MRFP-one-pager-3716.pdf>).
 22. An independent audited financial statement is prepared by an outside auditing firm hired by the charity. It is not an audit conducted by a state charity office. The regulator is thus relying on information provided by the registrant.
 23. There have been recent debates and court cases about whether such institutions deserve property tax exemptions, a debate that could expand into a discussion of charitable exemptions across the board. See *Liberty Assembly of God*, 44 A.3d 507 (N.H. 2012): <http://www.courts.state.nh.us/supreme/opinions/2012/2012055libertyassembly.pdf>; Victor Fleischer, “Stop Universities From Hoarding Money,” *New York Times*, August 19, 2015, http://www.nytimes.com/2015/08/19/opinion/stop-universities-from-hoarding-money.html?_r=0; Ruth McCambridge, “In Connecticut, New Bill Would Base Hospital Property Taxes on CEO Pay,” *Nonprofit Quarterly*, March 2, 2016, <https://nonprofitquarterly.org/2016/03/02/in-connecticut-new-bill-would-base-hospital-property-taxes-on-ceo-pay/>.
 24. See *FTC, 50 States, and D.C. v. Cancer Fund of America, Inc., et al.*, No. CV-15-00884-PHX-NVW (D. Ariz. filed May 18, 2015), <https://www.ftc.gov/system/files/documents/cases/150519cancerfundcmpt.pdf>; Office of

Consumer Protection (2012); “Navy Veterans Investigation,” *Tampa Bay Times*, accessed August 15, 2016, <http://www.tampabay.com/topics/specials/navyveterans.page>.

25. For a recent example, see Jonathan Ellis, “Sons want accounting of how Schwan Foundation lost hundreds of millions” *Argus Leader*, April 18, 2016, <http://www.argusleader.com/story/news/2016/04/18/sons-want-accounting-how-schwan-foundation-lost-hundreds-millions/83188868/>.
26. Federal Trade Commission, “FTC, All 50 States and D.C. Charge Four Cancer Charities With Bilking Over \$187 Million from Consumers,” news release, May 19, 2015, <https://www.ftc.gov/news-events/press-releases/2015/05/ftc-all-50-states-dc-charge-four-cancer-charities-bilking-over>.
27. California, Hawaii, and New York participated in a pilot project with the IRS to find ways the IRS could share information—pursuant to provisions of the Pension Protection Act—with state charity offices. All three states withdrew from the project because compliance with IRS procedures for maintaining such information and restrictions on use of disclosed information were more onerous than anticipated and did not outweigh the limited value of receiving IRS information. The IRS has also made additional changes resulting in less interaction with state regulators. The IRS Advisory Committee on Tax Exempt and Government Entities will no longer meet in subcommittees and will instead focus on more general tax administration issues; Congress has passed legislation prohibiting the IRS from issuing guidance regarding tax issues applicable to social welfare organizations; and formal guidance responsibility has shifted to the Office of the Chief Counsel. See ACT (2016).
28. National Association of Attorneys General, “Pension Protection Act of 2006 Provisions Regarding Information Sharing Between the Internal Revenue Service (IRS) and State Charity Regulators (Attorneys General),” letter to Max Baucus and Orrin Hatch, October 28, 2011, <http://www.nasconet.org/wp-content/uploads/2013/01/NAAG-Info-Share-Letter.pdf>.
29. The IRS recently reduced the amount of information collected about a charity by introducing the 1023-EZ, a move that made more organizations approved for charitable status than before (see IRS, “National Taxpayer Advocate Delivers Annual Report to Congress; Focuses on IRS’s Future Plans for Taxpayer Service,” news release, January 6, 2016, <https://www.irs.gov/uac/newsroom/national-taxpayer-advocate-delivers-annual-report-to-congress-focuses-on-irss-future-plans-for-taxpayer-service>). For more on the recent changes to the regulatory framework, see *Nonprofit Quarterly* Editors and Cindy M. Lott, “The Shifting Boundaries of Nonprofit Regulation and Enforcement: A Conversation with Cindy M. Lott,” *Nonprofit Quarterly*, August 3, 2016, <https://nonprofitquarterly.org/2016/08/03/shifting-boundaries-nonprofit-regulation-enforcement-conversation-cindy-m-lott/> and Lloyd Hitoshi Mayer, “The Rising of the States in Nonprofit Oversight,” *Nonprofit Quarterly*, August 11, 2016, <https://nonprofitquarterly.org/2016/08/11/rising-states-nonprofit-oversight/>.
30. State nonprofit associations are umbrella organizations whose members are nonprofits within the state.

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About the Authors

Cindy M. Lott is program director for Nonprofit Management at Columbia University's School of Professional Studies. She develops the curriculum for and teaches in the MS program for nonprofit management. Before her current position, she was executive director and senior counsel to the National State Attorneys General Program at Columbia Law School, and within that program was the developer and lead counsel to the Charities Regulation and Oversight Project. Lott is also a senior fellow at the Center on Nonprofits and Philanthropy at the Urban Institute. She develops and moderates a series of national convenings on state and federal regulation of the charitable sector and is engaged in research regarding regulatory capacity and enforcement at the state level. Lott is a frequent speaker at national conferences in philanthropic and nonprofit state regulation, compliance, management, and governance. Lott serves on the IRS Advisory Committee on Tax Exempt and Government Entities, the public policy committee of Independent Sector, is active in the Association for Research on Nonprofit Organizations, worked with major foundation leaders on behalf of the Council on Foundations, and is a former board member of the national charity monitor Wise Giving Alliance. She is a lecturer at Columbia University's School of Professional Studies and has taught as an adjunct at Columbia Law School and Indiana University School of Public and Environmental Affairs. Lott's consulting practice focuses on policy, legal, and research strategy for national advocacy groups and nonprofit organizations. Lott was chief counsel to the 2004 Democratic National Convention and was deputy counsel to the 2000 Democratic National Convention. She has worked at large firms as a chief counsel and section chief in a state attorney general's office. Lott is a 1993 graduate of the Yale Law School and clerked for the United States Court of Appeals, First Circuit. She is admitted to practice in the District of Columbia, Indiana, and Massachusetts.

Elizabeth T. Boris is an Urban Institute fellow at the Center on Nonprofits and Philanthropy. In August 2015, she became the Waldemar A. Nielsen chair of philanthropy in the McCourt School of Public Policy at Georgetown University. In September 1996, Dr. Boris became the founding director of the Center on Nonprofits and Philanthropy. From 1991 to 1996, Boris was founding director of the Aspen Institute's Nonprofit Sector Research Fund, the first grantmaking program supporting research on the nonprofit sector and philanthropy. Before her tenure at the Aspen Institute, Boris was vice president for research at the Council on Foundations, where she developed the research program and directed it for 12 years. The author of many research publications on philanthropy and nonprofit organizations, she is editor with C. Eugene Steuerle of *Nonprofits and Government: Collaboration and Conflict*. Boris speaks often on nonprofits and philanthropy and is an adviser and board member for several nonprofit organizations.

Boris is co-chair of the Association for Research on Nonprofits and Voluntary Action's conference host committee. She is also on the host and program committees for the Independent Sector and is on the advisory board of the Center for the Study of Philanthropy and Civil Society at the City University of New York; advisory board of Nonprofit Vote; and honorary council of the Washington Area Women's Foundation. She is on the advisory board of *Nonprofit Management and Leadership* and on the editorial board of *Nonprofit Policy Forum*.

Karin Kunstler Goldman is the deputy bureau chief in the New York State Attorney General's Charities Bureau. Goldman was the 2001–02 president of the National Association of State Charity Officials and is a founding member of the Governance Matters. From 2003 to 2007, she served on the advisory board of New York University's National Center on Philanthropy and the Law and was a member of the Internal Revenue Service's Advisory Committee on Tax Exempt Entities from 2008 to 2011. As a volunteer, Goldman participated in training programs conducted for charity regulators throughout the country by the National State Attorneys General Program on Charities Regulation and Oversight Project at Columbia University Law School. Before joining the attorney general's office, Goldman was a Reginald Heber Smith fellow and a staff attorney at South Brooklyn Legal Services Corporation. As an Eisenhower Exchange fellow in Hungary, she worked with nonprofit organizations, government officials, and legislative drafters in developing the law and regulations affecting Hungary's nonprofit sector. She has consulted with government officials and legislative drafters in Ukraine and China on developing statutory regulation of charitable organizations. Goldman was a guest of the People's Republic of China at its 2007 International Symposium on Charity Legislation in China, at which she was a speaker, and in 2015, when she participated in workshops on the developing nonprofit law. Goldman has a bachelor's degree from Connecticut College, a master's degree from Columbia University, and a law degree from Rutgers University Law School.

Belinda Johns was a member of the charitable trusts section of the California attorney general's office from 1989 until her retirement in 2013. As a deputy attorney general, her practice was focused primarily on prosecuting charity and charitable solicitation fraud. In 2000, Johns was promoted to supervising deputy attorney general for Northern California. In 2004, she was promoted to senior assistant attorney general, supervising attorneys, auditors, paralegals, and the staff of the Registry of Charitable Trusts. Johns was active in nonprofit issues at the national level and was president of the National Association of State Charity Officials from 2002 to 2003. She also served on the advisory committee for and participated in national training programs for regulators conducted by the Columbia Law School Charities Regulation and Oversight Project at the National State Attorneys General Program.

Marcus Gaddy is a research associate in the Urban Institute's Center on Nonprofits and Philanthropy, where his recent work has focused on how the nonprofit sector interacts with the government and operates in communities. Before joining the center in 2014, Gaddy was a research assistant at the University of Maryland School of Public Policy and legislative associate at the American Civil Liberties Union of Ohio. Gaddy graduated with a BS in economics cum laude with honors in the arts and sciences from Ohio State University, and he holds an MPP from the University of Maryland.

Maura Farrell is a research associate at Innovations for Poverty Action, where she works on a randomized controlled trial on solutions to financial inclusion in Bangladesh's garment industry. She is interested in private-sector approaches to solving development challenges. Farrell was previously a research assistant at the Urban Institute in Washington, DC. She received a BS in economics from American University.

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