



UTAH | COMMERCE

CHARITY REGULATION

REVIEW OF CHARITABLE SOLICITATION STATUTE –
INTERIM BUSINESS & LABOR COMMITTEE DISCUSSION

PRESENTED 9 AUGUST 2023

TODAY'S DISCUSSION

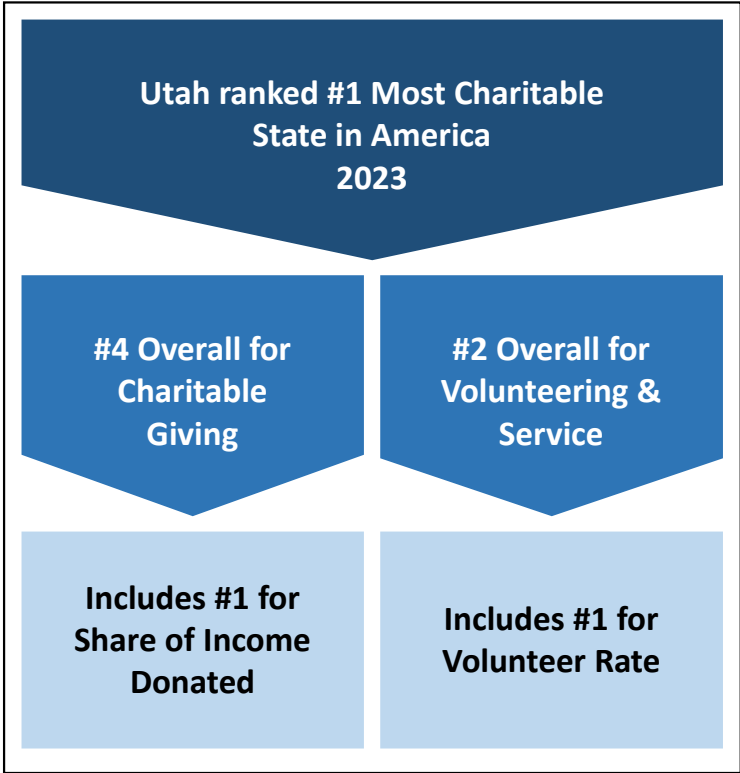
1. Share findings from DCP's review of the Charitable Solicitations Act (CSA)
 - a. Charitable sector in Utah
 - b. Regulatory environment for Utah's charitable sector
 - c. Implementation of the CSA
2. Hear Committee input on approach to overseeing charitable activity in Utah
3. Determine next steps



1a. CHARITABLE SECTOR IN UTAH

THE NON-PROFIT SECTOR IS PROMINENT IN UTAH

Study: Utahns rank among most generous states in the country
– ABC4, December 2021



Why Utah tops the list of most generous US states
– Christian Science Monitor, August 2012



1a. CHARITABLE SECTOR IN UTAH

UTAH HAS ISSUES WITH AFFINITY FRAUD, THOUGH EXTENT OF FRAUD IN CHARITABLE SECTOR IS HARD TO MEASURE

What we know...

- **Utah has a high rate of affinity fraud** (e.g., highest rate of Ponzi schemes per capita in the U.S.)
- **Affinity fraud is driven by traits that also encourage charities fraud** (e.g., strong social networks, culture of trust, entrepreneurial environment)
- **A major wealth transfer is anticipated** from older to younger generations
- **Fundraising abuse is the most commonly reported area of charity enforcement** by other state AG offices

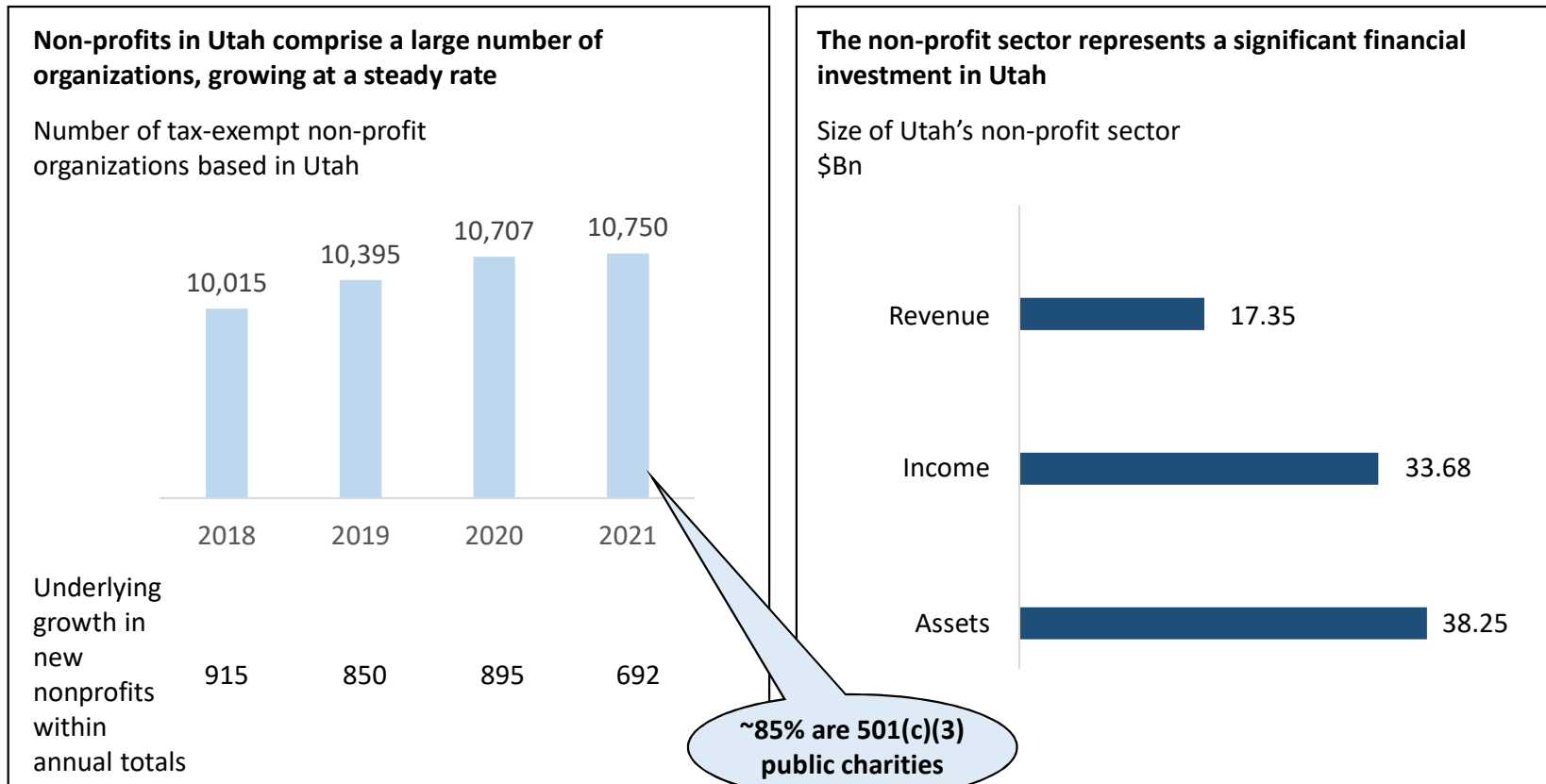
What we don't know...

- **Extent of charities fraud, e.g.,**
 - Donors may not learn if their donation was fraudulently solicited in the same way a product or service is found defective
 - Much enforcement action by state AG offices is informal and not publicly reported
- **To what extent charitable giving is more or less susceptible to fraudulent misrepresentations**
- **Types of charities or charitable structures in which this is more likely to occur**



1a. CHARITABLE SECTOR IN UTAH

UTAH HAS >10,000 NON-PROFIT ORGANIZATIONS THAT ATTRACT SUBSTANTIAL FINANCIAL CONTRIBUTIONS

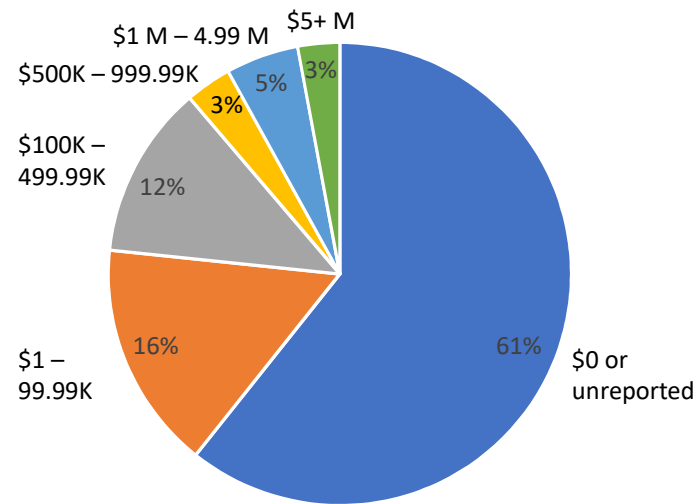


1a. CHARITABLE SECTOR IN UTAH

UTAH’S NON-PROFIT SECTOR IS FRAGMENTED, COMPRISING MOSTLY SMALL ORGANIZATIONS SERVING A DIVERSE RANGE OF CAUSES

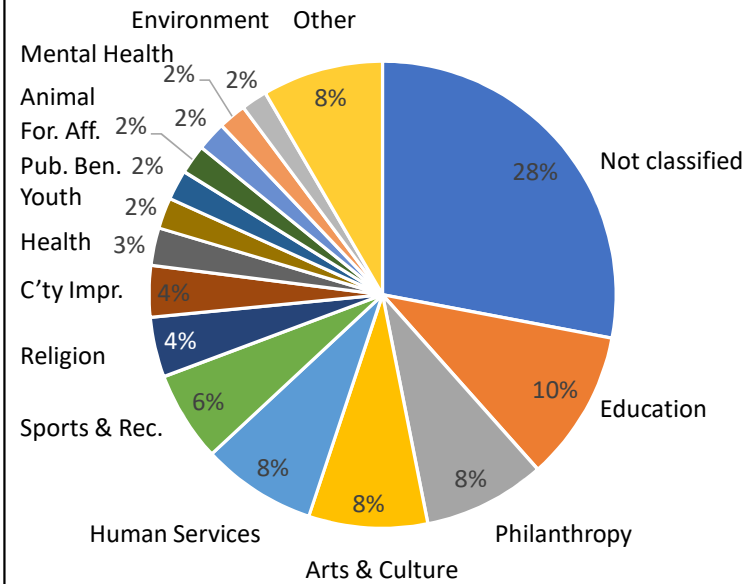
Most Utah non-profit organizations are very small

Utah non-profit sector by income group
N = 10,750



Utah’s non-profit sector serves a diverse range of causes

Utah non-profit sector by NTEE code
N = 10,750



1b. REGULATORY ENVIRONMENT

THE CHARITABLE SOLICITATIONS ACT REGISTERS CHARITIES AND PROFESSIONAL FUNDRAISERS SOLICITING DONATIONS IN UTAH

Purpose

- Provide accountability to the public through **information**
- Provide **oversight** of organizations soliciting donations in Utah
- **Enforce** against misrepresentations in fundraising

Organizations it applies to

- **~7,000 registered charitable organizations**, >95% are 501(c)(3) public charities
- **~250 registered professional fundraisers (PFRs) and counsels/consultants (PFCs)**
- **~1,900 one-time exemptions** covering charities already overseen, are in the public interest to exclude, or that involve micro-level solicitations

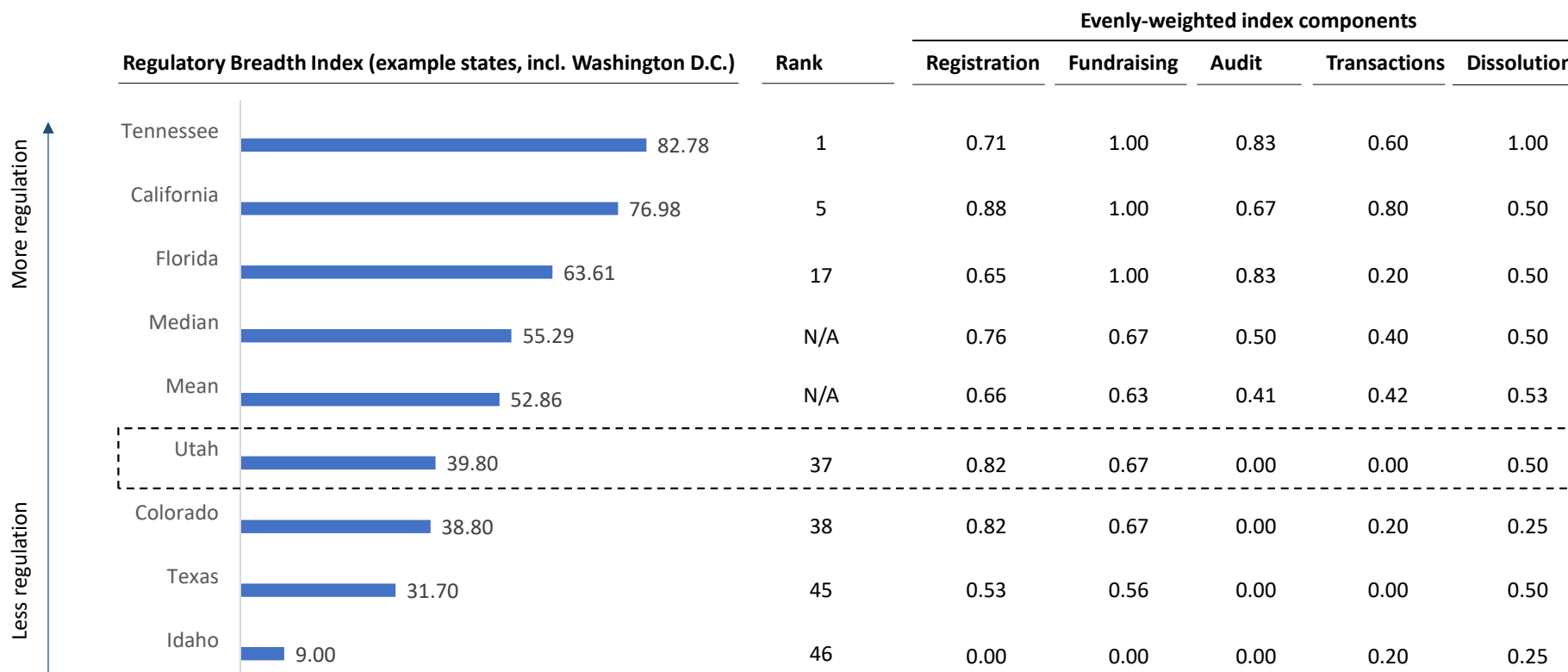
DCP responsibilities

- **Register** charities and PFRs/PFCs soliciting donations in Utah
- **Investigate** and potentially bring actions for violations
- **Provide education** to the public, applicants or registrants



1b. REGULATORY ENVIRONMENT

UTAH IS IN THE LOWEST THIRD OF STATES FOR BREADTH OF OVERALL CHARITY REGULATION, PARTICULARLY DUE TO ITS ABSENCE OF AUDIT REQUIREMENTS OR REVIEW OF TRANSACTIONS





NON-PROFIT ACTIVITIES ARE SUBJECT TO OTHER REGISTRATION REQUIREMENTS AND STATE LAWS

Registration requirements other than CSA		Other laws applicable to charity oversight	
Within Department of Commerce*	Outside Department of Commerce (LG/Auditor)	Within Department of Commerce*	Outside Department of Commerce (AG/Courts)
<p>Registration with Division of Corporations by domestic and foreign nonprofits if required under the statute</p>	<p>Registration with Lieutenant Governor’s Office and reporting to State Auditor</p> <ul style="list-style-type: none"> • Applies to non-profit organizations receiving >\$25,000 public money • Requires registration details similar to DCP, e.g., <ul style="list-style-type: none"> — Organization contact details — Board members and term duration — Formation documents — Sources of revenue 	<p>Consumer Sales Practices Act enables DCP or an individual to bring an action regardless if a charity is registered/exempt</p> <p>Nonprofit Corporation Act allows for dissolution of a nonprofit</p>	<p>Charitable Trust Act outlines how trusts must operate to preserve designated charitable distributions</p> <p>Uniform Probate Code allows for removal of a trustee</p>

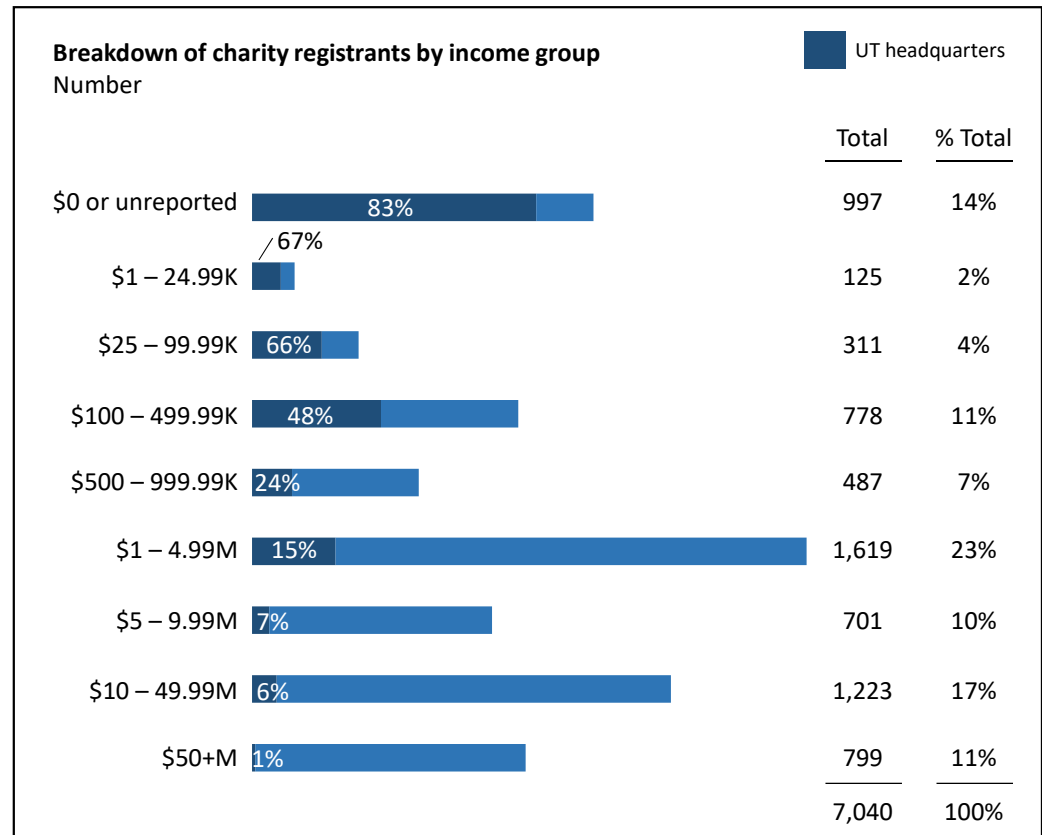
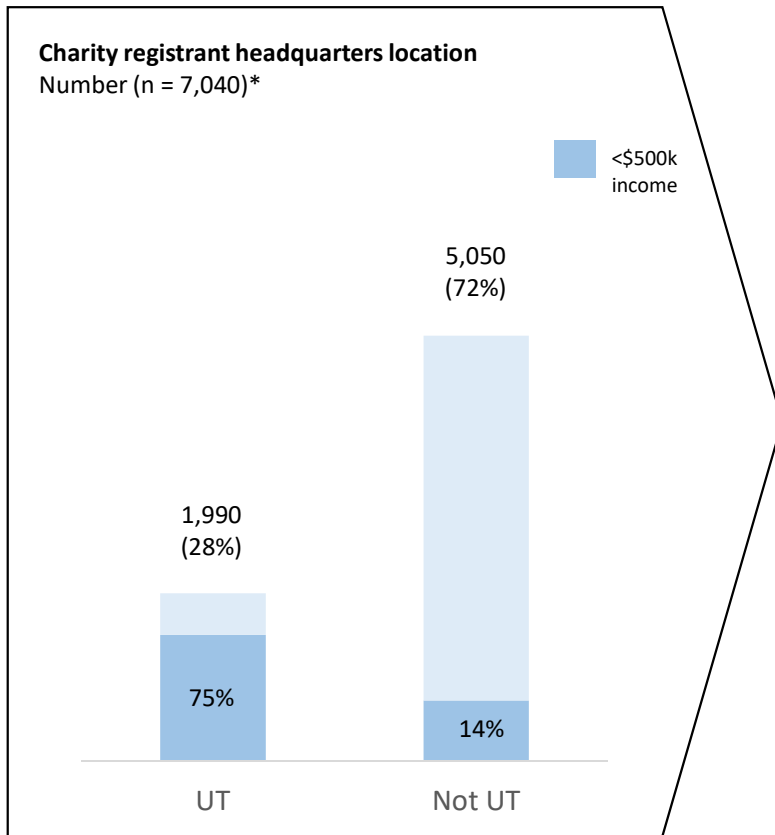


CURRENT FEDERAL REGULATION OF CHARITIES IS LIMITED IN ITS SCOPE AND EFFICACY

<u>Federal agency</u>	<u>Mandate re charities</u>	<u>Limitations</u>
 <p>Internal Revenue Service (IRS)</p>	Oversee compliance with requirements for tax exemption in Federal code	<ul style="list-style-type: none">• Provides limited oversight due to abbreviated recognition and reporting processes, e.g.<ul style="list-style-type: none">— Self-attestation, rather than documents, is relied on for majority of IRS tax-exemption applications— Limited information is available about charities, particularly those using Forms 990-N (<\$50k income)• Lags in release of public 990 information• Lacks resources to investigate political activity inconsistent with exempt status• Is limited in ability to share data with states, or conduct joint enforcement
 <p>Federal Trade Commission (FTC)</p>	Protect public from deceptive or unfair business practices arising from interstate commercial activity	<ul style="list-style-type: none">• Is reliant on cooperation of states to pursue actions• Focuses on largest and most egregious sham charity cases (e.g., Cancer Fund litigation)



A MAJORITY OF CSA REGISTRANTS ARE OUT-OF-STATE CHARITIES, PARTICULARLY ABOVE \$500K INCOME



* Of 7,328 registrants, 288 were not matched to a state using EINs



1c. IMPLEMENTATION OF CSA

IMPLEMENTATION OF THE CSA ISN'T FULFILLING THE FULL RANGE OF PUBLIC BENEFITS ANTICIPATED BY THE STATUTE - EXAMPLES

Public Information

- DCP is not widely known as a source of data on charities
- Required % of contributions to program metric needs adjusting
- No other collected information is published

Oversight

- Not all eligible organizations are registered
- Few applications are denied*
- 171 reported co-venture arrangements
- Lack resources to audit proactively

Enforcement

- Rely on complaints but few complaints received
- Lack resources to investigate proactively
- Enforcement actions are typically brought under CSPA



1c. IMPLEMENTATION OF CSA

SOME STATES PUBLISH SIGNIFICANTLY MORE INFORMATION ABOUT CHARITIES IN AN ACCESSIBLE FORMAT USING DATA FROM CHARITABLE SOLICITATION REGISTRATION – EXAMPLES

Example information	Example states – Collected and published				Utah		On Full 990*
	Colorado	Massachusetts	New Mexico	North Carolina	Info collected	Published	
Directory of charities in the state	✓						
Link to Corporations/Sec. of State filing	✓						
IRS tax-exempt date/history	✓	✓	✓	✓	✓		
Registration filing history + documents	✓	✓	✓	✓			
Other names for charity	✓		✓		✓		DBA
Organizational purpose	✓	✓	✓	✓	✓		✓
All states registered to solicit in	✓	✓	✓	✓			✓
List of officers & directors/Compensation	✓	✓	✓	✓	✓		✓
Related party information	✓	✓	✓				✓
Latest 990	✓	✓	✓	✓	✓		✓
Financial metrics/Metrics over time	✓	✓	✓				✓
% to program metric	✓		✓		✓	✓	
Latest financial audit		✓	✓				
List of PFRs/PFCs	✓	✓	✓	✓	✓		If spent >\$15k
PFR/PFC campaigns over past year		✓	✓	✓			If raised >\$15k
PFR/PFC campaign results/% to charity	Fees	✓	✓	✓			If spent >\$15k
Other (e.g., contractor payments, responsible individuals, auditor names, bank names, contracts)		✓	✓	✓	Contracts/ Transcripts		Political activities, Contractors if paid >\$100k 13

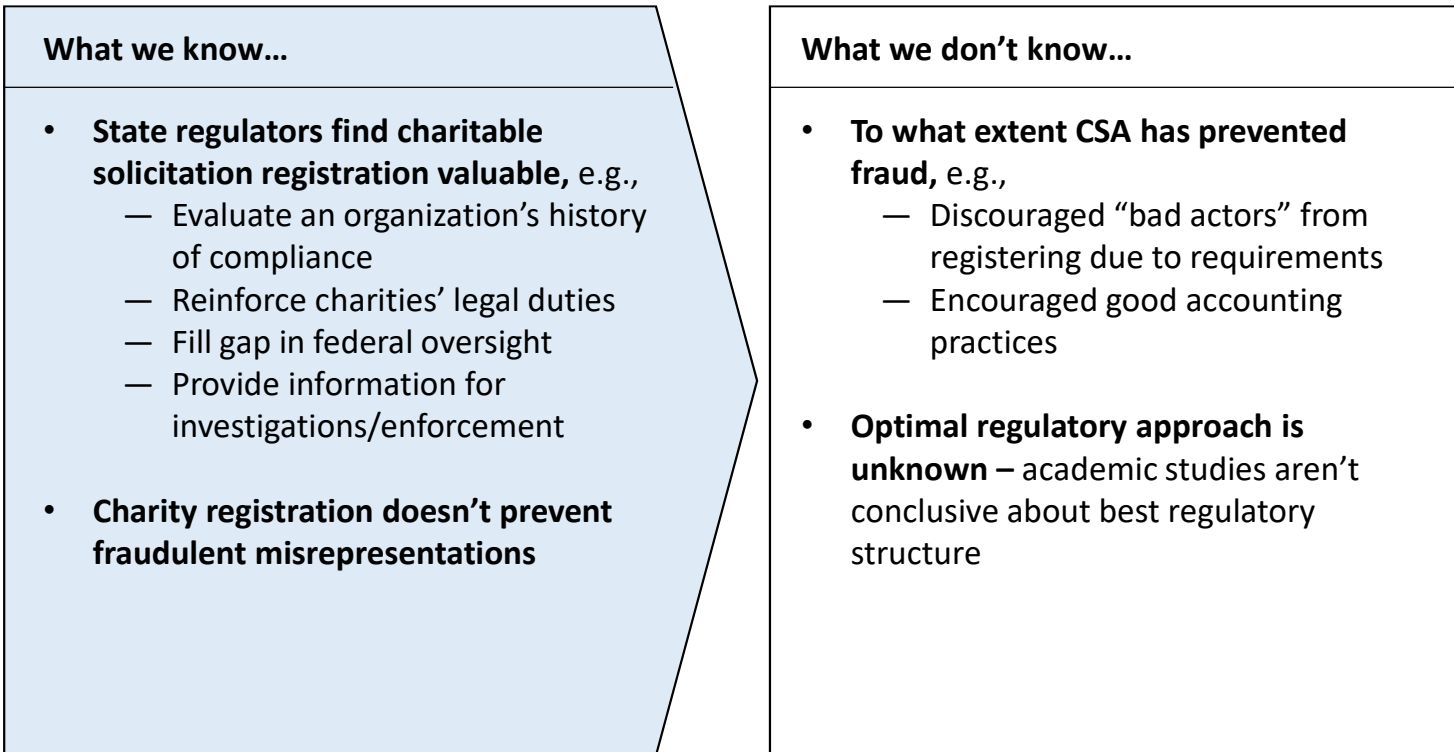


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* 990-EZ excludes DBA; asks for abbreviated compensation and financial information; excludes PFR/PFC information

Source: State registration websites; IRS 990 forms; DCP analysis

AT THE SAME TIME, THE OPTIMAL REGULATORY APPROACH ISN'T KNOWN



DCP SUGGESTS TWO MAIN OPTIONS FOR IMPROVING REGULATION OF CHARITIES

Option 1 – Maintain registration & improve CSA

Underlying rationale

- Greater public information reduces potential for fraud and other data sources aren't adequate
- Registration aids state oversight and enforcement
- Registration provides standards for charities

Example recommendations, including:

- **Publish significantly more information** about registered charities
- **Streamline requirements** (e.g., reporting of co-ventures, filing for an exemption, data gathered from charities vs professional fundraisers)
- **Add to up-front disclosures**
- **Align remedies/enforcement** between CSA and CSPA

Option 2 – Emphasize education & enforcement

- State resources can be used more effectively emphasizing education, complaint reporting, investigations
- Utahns can access sufficient information about charities through other sources (though is challenging for small charities)
- Telemarketing still warrants oversight via registration

- **Continue registration for professional fundraisers** and charities that solicit via telemarketing (under CSA or TFPA)
- **Update CSPA**
- **Promote DCP** as source of complaints
- **Ensure “do not call” covers charitable solicitation** by updating Telephone and Facsimile Solicitation Act*

