

## **ISSUES MEMORANDUM PROTECTION OF CHARITABLE ASSETS ACT**

### **1. Model or Uniform Act**

The Executive Committee has concurred with the Drafting Committee's recommendation that this Act be designated as a Model Act. The Committee believes that the Act best meets the criteria (yellow book, p. 121) of a Model Act. This is a very important subject, but states with established and sophisticated acts are unlikely to adopt it, and diversity in approaches as to the subjects of registration and exclusions are likely to occur. The purpose of the Act is to promote uniformity and minimize diversity. Every state can benefit from its provisions even if it is not adopted by every state.

### **2. Registration and Reporting**

The registration and reporting requirements provide information to the Attorney General's office to allow that office to do a better job of providing oversight for charitable assets. Some states will not have the resources to handle the registration and reporting and may choose not to enact these sections. The committee decided it was best to include the sections in the model act for the states able to use these sections, while recognizing that some states may not adopt these sections.

### **3. Religious Organizations**

The Act's provision on oversight (Section 3) covers all charities, including religious organizations. This broad inclusion is in keeping with current law. With respect to registration and reporting, the Act provides options for states to consider. One option is not to exclude religious organizations. The other three options are three different ways to exclude either "houses of worship" or religious organizations. Some, but not all, of the registration statutes currently in force exclude religious organizations.

### **4. Political Advocacy**

The Act provides an optional exclusion from registration and reporting requirements for an organization that "has as its primary activity advocacy on issues of public or governmental policy." Section 4(b)(7). This provision is in brackets, and the Committee would like guidance on whether to leave this provision in the Act. A concern is the possible vagueness of this exclusion.

### **5. Threshold for Registration and Reporting**

The uniform act which POCAA replaces has no threshold amount for registration and reporting. Some states that have adopted the prior act have adopted it without

a threshold and some states have added a threshold amount. For example, in Illinois, charities with more than \$4,000 in assets must register. The Committee decided to propose a relatively high amount - \$50,000 in assets – to minimize the burden on small charities. The advantage of a smaller amount is that small charities are often the ones that get into trouble. The amount in the Act will be in brackets, but the Committee would like guidance as to whether \$50,000 is the right amount to suggest.

## 6. Coverage of Trusts

The National Conference of Lawyers and Corporate Fiduciaries has suggested that requiring trusts to register will create a burden on banks that act as trustees. The Committee does not want to distinguish registration of charities based on organizational form. None of the states that currently require registration exempt trusts, although Ohio exempts charitable remainder trusts and Minnesota exempts split-interest trusts. The Committee believes that an exemption for trusts would be inappropriate but wanted to bring this concern from the bankers to your attention.