

## **Memorandum**

To: Drafting Committee, Oversight of Charitable Assets Act

From: Susan Gary, Co-Reporter

Re: February 4-6 meeting

Date: January 14, 2011

A new draft of the Oversight of Charitable Assets Act reflects decisions made at the fall 2010 meeting. Here are several issues we will want to discuss at our February meeting, and there are likely other items that require further discussion.

You will note in the draft that we have deleted the definition of “covered charity.” You will find the inclusions and exclusions that had been in the definition section now in the section that covers registration. That then forms the definition for use elsewhere in the act (“persons required to register”). Remember that “person” is a defined term, so it can mean a charity organized as a trust, a nonprofit corporation or otherwise. The act uses “individual” when that meaning is intended.

### Who does the Act cover?

This remains the overarching question. A particular concern exists with respect to religious organizations. In addition, questions about de minimis requirements for registration, reporting, and notice remain.

### Section 4

I am not sure we agreed on this change (adding “reasonable belief”). We discussed whether to require “reasonable belief,” but I think we also discussed the need for the AG to get information to determine whether something bad had happened. We should draft assuming good faith on the part of the AG, and we should discuss whether “reasonable belief” would hamper efforts by the AG or would provide appropriate protection from unwarranted investigations.

### Section 5

Investments assets. In Section 5(b)(c) I added “other than assets held primarily for investment purposes” because I think we want to exclude bank accounts and other investments. We could delete “primarily” if that seems better. We need to think about how (b) and (c) interrelate.

Religious organizations. I was not certain whether we reached agreement on which religious organizations to exclude from registration and how to do it. I left in the

provision based on the California statute. We can discuss this further, and discuss the Internal Revenue Code version. (We discussed both at the fall meeting, on Sunday.) As I understand the issue, we have several countervailing concerns – the need for supervision over assets held by churches and church-related organizations (misuse of church funds for personal purposes), constitutional issues (constitutional concerns seem misplaced here as long as supervision does not affect doctrine), and strong resistance from churches and church-related organizations (which will affect enactability). One option would be to require registration for churches but provide for opt-out by states.

This is the alternative church provision:

(B) a church, an association of churches, a convention of churches, or an integrated auxiliary of a church

I looked at the “integrated auxiliary” explanation in IRS documents and so far I have not found good language explaining what that means (i.e. language that could be used in a statute).

FOYA and confidential information. We discussed whether to remove Section 5(g)(2) because the information required for registration should not include any confidential information (in other words, 5(g)(2) may be unnecessary). I’ve left the subsection in for now, but we may want to remove it. We also discussed having a separate section that could address FOYA concerns. Information obtained by the attorney general through investigations could be of a confidential nature. We may want to protect that sort of information from public disclosure.

Registration form. I am not sure whether the registration form will be part of the statute or will be in the comments.

## Section 6

I was not clear (and found conflicting notes) as to whether we had decided to permit the filing of a copy of the IRS form in lieu of an annual report or require a short annual report plus the IRS form. The current draft says “and” (both required), but we could change that to “or.” The annual report would be a form with yes/no boxes for most of the items and would require completion only if an issue indicated arose during the prior year, so the burden of filing a short annual report may be minimal. The advantage of requiring the form is that a short form could provide a quick review for the attorney general – a way to determine whether review of the Form 990 would be necessary.

Because this is undecided, I have not revised the comments to Section 6 (so for this draft they are out of synch with the Act).

We have not decided whether to exempt some charities that must register (assets more than \$5,000) from the annual report requirement. Illinois exempts charities with less than \$15,000 in assets. We might also exempt charities that receive less than a specified amount of income/receipts. We need to discuss this further.

### Section 7

As with the duty to file annual reports, we need to discuss whether all charities that must register also must provide notice of certain life events or whether some charities above the registration threshold should be exempt from the duty to provide notice.

Is it sufficiently clear to whom a charity must provide notice – which state?

In connection with Section 7(a)(4), I looked at META and I'm not sure what language should be used here.

In connection with notice from a probate estate or a revocable trust, David English (on behalf of the JEB) requests that notice be required of charitable trusts created for general charitable purposes but not for trusts created for the benefit of a specified charitable entity (named public charity). This notice provision should be coordinated with notice to the charity under the Uniform Trust Code. I have not figured out how to do this yet and will confer with David before the meeting.

I look forward to seeing those of you who will be able to attend the meeting in person. If anyone receiving this memo, including observers, will not be able to attend and has comments on these questions or on the draft, please send them to me and I will make sure they are discussed at the meeting. My email address is:

sgary@uoregon.edu