July 26, 2011

Thomas A. Calcagni
Acting Director
New Jersey Division of Consumer Affairs
P.O. Box 45027
Newark, NJ 07101

Re: PPR 2011-001 - Disclosures to the Public

Dear Mr. Calcagni:

On behalf of the Center for Non-Profits, a charitable non-profit umbrella organization providing public education, legal and management assistance and membership services for New Jersey's charitable community, I thank you for the opportunity to comment on Pre-Proposal 2011-001, which would establish a series of mandatory donor designation and disclosure requirements for covered organizations.

The Center has a long history of working cooperatively with the Legislature, the Division of Consumer Affairs and the Executive Branch to promote policies that will protect donors, legitimate charities and the public while minimizing the administrative burdens of compliance with the law. We believe that the state's charitable fund raising laws and regulations are stronger as a result of this ongoing dialogue and our joint efforts.

Unfortunately, this pre-proposal would not only fail to achieve the goals that it seeks to advance, but would also prove significantly damaging to charities in the process. Our primary concerns include the following:

**<u>Encouraging donors to restrict their donations would undermine the effectiveness of charitable organizations and hamper their ability to respond to community needs.</u>**
Donors have always been free to place restrictions on their gifts, and charities are legally bound to honor those restrictions as a condition for accepting the donation. Through this proposal, however, the Division seeks to go significantly further by <u>actively encouraging</u> donors to restrict their contributions, thereby reducing available funds for general operations, overhead or organizational flexibility to respond to unanticipated community needs. With charities already reeling from the impact of reduced funding from the recession, PPR 2011-001 would make it even harder to generate general support dollars that are so desperately needed to remain nimble and adjust to changing times.

**<u>The proposal fails to recognize administrative, fund raising and overhead as integral to an organization's overall health.</u>**
While everyone wants to see program purpose dollars maximized, the fact is that administrative and fund raising expenses are a necessary part of running an organization. They help to ensure efficiency, accountability and compliance with the law; can help an organization by increasing awareness of and support for its activities; and can lead to stronger operations through the building of a more diversified funding base.

Therefore, one the most disturbing parts of this pre-proposal is its implied characterization of administrative and fund raising costs as inherently "bad." The underlying message in the required disclosure statement is fairly obvious: if a donor doesn't designate his/her gift to a specific program, the charity may direct it to presumably less desirable uses such as administration or fund raising.

Conversely, as currently worded this proposal would also mean that if a donor did designate one or more programs, the charity could use NONE of the contribution for administration or fund raising – a condition which, if all donors were to impose it as the Division seems to wish, would be impossible for an organization to meet.

Worse still, this pre-proposal may actually hinder accountability and transparency by hampering charities' ability to comply with the law. Compliance with most laws and regulations, government contract requirements, consumer protections, transparency and accountability, all require some administrative expenses. Encouraging donors to restrict their gifts to programmatic use makes less money available for these vital activities, thus compromising accountability as a result. This pre-proposal would actually divert money away from compliance – which is contrary to the best intentions of non-profits and contrary to the public good.

**Paradoxically, this proposal will actually increase administrative and fund raising expenses for many charities**.
Compliance will be an extremely onerous undertaking for most covered organizations, and ironically, this pre-proposal will likely have the effect of increasing the expenses it seeks to de-fund. Extra expenses will include:

- The printing of new pledge cards and new solicitation materials to include the required disclosures, expenses which will be exacerbated for any organization that also solicits contributions in other states;
- Increased bookkeeping, accounting and auditing expenses to provide for proper fund allocation and internal controls to assign what could, in many cases, be very small gifts;
- Increased fund raising costs to generate extra dollars to make up the overhead expenses that will no longer be available if donors designate their gifts as envisioned in this proposal.

**The proposal is vaguely worded and subject to confusion and inconsistent interpretation.**
Does a general overview of a charity in a fund raising appeal – which by necessity must describe at least some of its services – constitute a "description of one or more programs" which would trigger a donor designation requirement? Will opponents of controversial or unpopular causes be able to use these distinctions as the basis for legal challenges and formal complaints? How will the Division enforce this provision, and what are the consequences if a charity is found to be noncompliant?

**Although some organizations provide donor designation options voluntarily, establishing a regulation to require it is a needlessly intrusive, unfunded mandate.**
Although some larger organizations and federated campaigns routinely provide formal donor designation mechanisms, this does not mean that such mechanisms are necessary or right for every charity. A far better solution is to foster informed giving decisions by encouraging donors to ask intelligent questions about the use of funds and the impact of a charity's programs.

**<u>This proposal runs counter to U.S. Supreme Court rulings that have banned similar requirements as unconstitutional forced speech</u>**. In a series of decisions, the U.S. Supreme Court has consistently held that charitable solicitations are protected speech under the First Amendment. By imposing explicit point-of-solicitation disclosures designed to encourage donors to restrict their gifts, this proposal is similar to other government restrictions that have been found to violate the free speech protections that have been repeatedly affirmed by the Court.

**<u>The Division of Consumer Affairs already has a wide array of enforcement and education tools at its disposal, which we believe are far better alternatives to Pre-Proposal 2011-001.</u>** While clearly outrageous, the fraudulent cases described in “Operation False Charity” that apparently helped to inspire this pre-proposal were in fact prosecuted, and the perpetrators dealt with. In our experience, cases such as these represent a tiny fraction of the charitable community, which on the whole is highly ethical and accountable in its behavior. We applaud the Division for aggressively enforcing the law and punishing abusers whose actions hurt everyone. But proposing a sweeping regulation based on extreme cases is excessive, and in this instance, could prove far more harmful overall to charities, to donors and to everyone who needs the programs charities provide.

We respectfully urge you to withdraw this proposal. Thank you for your consideration.

Very truly yours,

/s/

Linda M. Czipo
Executive Director