

REPORT ON PROFESSIONAL SOLICITATIONS FOR CHARITY IN 2012



OFFICE OF THE MASSACHUSETTS ATTORNEY GENERAL
NON-PROFIT ORGANIZATIONS/PUBLIC CHARITIES DIVISION

JANUARY 1, 2012 TO DECEMBER 31, 2012

NOVEMBER 2013

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REPORT HIGHLIGHTS

Registration and Reporting in 2012

- Number of professional solicitors registered: 104
- Number of professional solicitors reporting on 2012 campaigns: 82
- Solicitation campaign reports filed: 823
- Number of charities that used professional solicitors: 462

Professional Solicitation: Results in 2012

- Total amounts raised in calendar year 2012 in campaigns by professional solicitors: \$266,624,653
- Net proceeds to charities, in calendar year 2012, from those campaigns: \$90,970,380
- Percentage of proceeds to charities: 34.12%¹

¹ This figure represents the simple calculation of the gross receipts over net proceeds during calendar year 2012. While this percentage calculation is important, it does not tell the full story about the goals and results of professional solicitation campaigns, as explained more fully in this report.

INTRODUCTION

The Office of the Attorney General (AGO) regulates over 25,000 public charities. Most charities rely on donations from the public to accomplish their goals. Some charities raise funds on their own, and some hire professional fundraising organizations to raise funds on their behalf. Professional solicitors are individuals or businesses that are hired by a public charity to do fundraising on behalf of the charity. A professional solicitor may also organize a fundraising event for or on behalf of a charity. In some cases they might be hired by a non-charity to conduct a fundraising campaign that includes a charitable appeal.

Pursuant to [M.G.L. c. 68, § 24](#), each professional solicitor must register with the AGO and must file certain information about each fundraising campaign it conducts. A professional solicitor must file the following:

1. Registration Statement (containing identifying information): [Form 10](#)
2. \$25,000 bond: [Form 9](#)
3. Filing fee of \$1,000, made payable to the Commonwealth of Massachusetts
4. With respect to each campaign,:
 - i. a copy of the fundraising contract along with [Form 10A](#), Registration Addendum (to be filed with registration or within 10 days or signing and prior to the commencement of any solicitation)
 - ii. [Form 11A](#), Financial Statement (containing financial results of the campaign) (to be filed by February 28 following the calendar year in which a charitable solicitation took place)

Each year, the AGO releases a report on the amount of charitable contributions raised by professional solicitors and the amount of those contributions that went to the charity, as opposed to monies raised and retained by the professional solicitor to fund the campaign or as a fee for their service. There is no requirement that a minimum percentage or amount of funds donated through professional solicitor campaigns be passed through to the charity on whose behalf the donations are given. In fact the United States Supreme Court has held that charitable solicitation is a form of speech protected by the First Amendment and that states are not permitted to establish a requirement that a minimum percentage of funds raised through solicitors go to the charity.²

Because the amount of donations going to the charity may vary widely and cannot be directly regulated by the Commonwealth, the AGO issues this report as a source of information and a reminder to the donating public that persons seeking donations may be professional for-profit solicitors and may be paid from the proceeds of charitable fundraising campaigns. The AGO compiles this information using the annual financial data provided on [Form 11A](#). This report outlines the financial results of those individual campaigns conducted in Massachusetts during calendar year 2012. As described under Findings, some campaigns may have begun prior to 2012 and others may be scheduled to continue beyond 2012.

² For example, see [Riley v. National Federation of Blind of N.C., Inc.](#), 487 U.S. 781 (1988) (U.S. Supreme Court held that the Constitution's protection of free speech barred North Carolina from requiring that professional solicitor fees not exceed certain percentages of funds raised, on the grounds that solicitation involves protected speech such as advocacy and communication of information, and state law setting ceilings on solicitor fees was not narrowly tailored to further the state's interest in preventing fraud).

FINDINGS

In 2012, 823 charitable fundraising campaigns conducted by 82 different professional solicitors were registered in Massachusetts. Appendix I reports campaign results by the name of the professional solicitor. Appendix II reports results by the name of the charitable organization.

A. PERCENTAGE TO CHARITY IN 2012

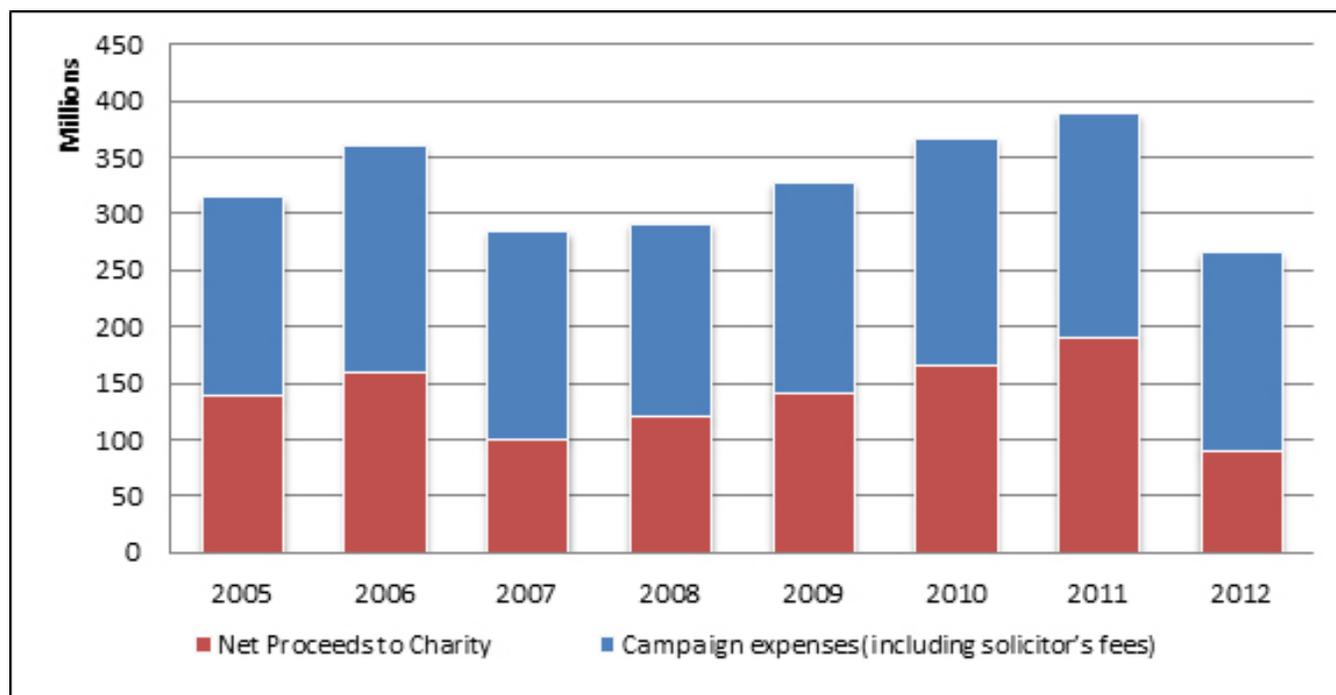
In 2012, professional solicitors registered with the AGO raised over \$266 million, which was about \$122 million less than in 2011. Of this amount almost \$91 million or 34% of the amount raised ended up with the charity. More than \$175 million, or 66% of the total raised, paid for the professional solicitors' services.

These numbers are averages across annual reports for 823 fundraising campaigns. As shown in Appendices I and II, campaign-specific results varied widely.

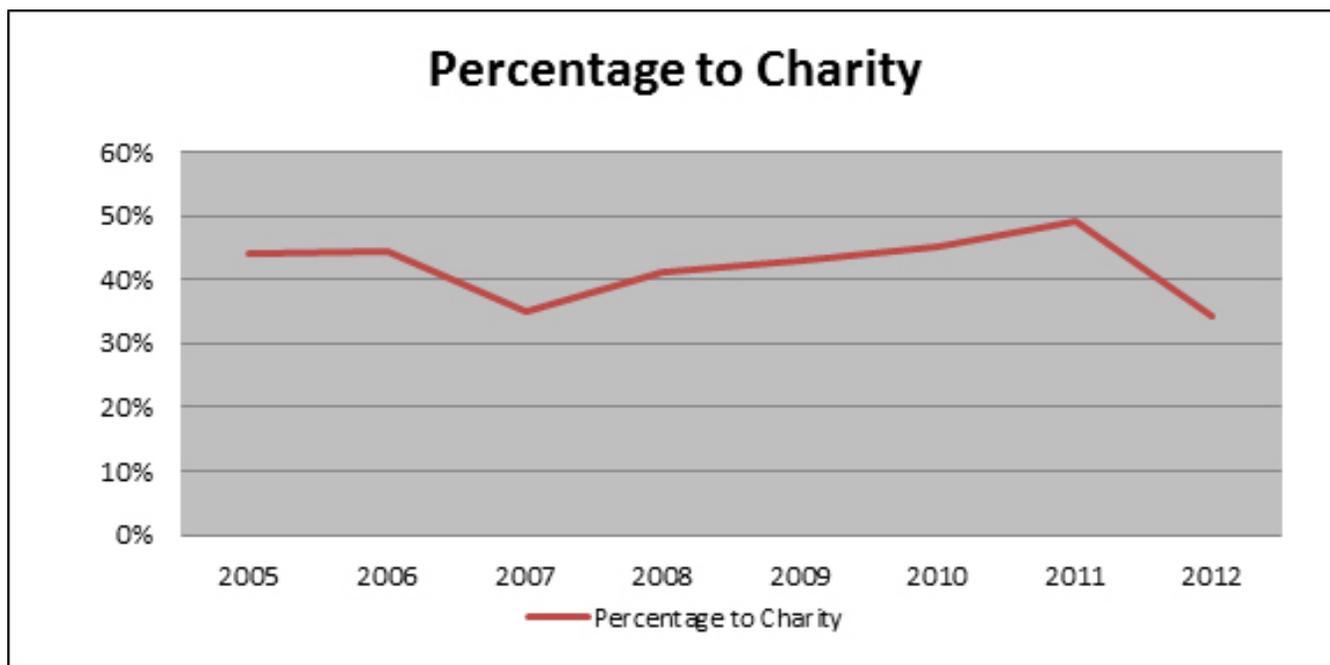
B. MONIES RAISED BY SOLICITORS V. MONIES RECEIVED BY CHARITY

Annual campaign results forms filed with the AGO report the total amount raised and the amount that went to the charity in the calendar year. The charts below show the totals for all campaign results reports for each year in dollar amounts and in percentage going to the charities.

DOLLARS RAISED (CAMPAIGNS USING PROFESSIONAL SOLICITORS)



PERCENTAGE OF NET PROCEEDS TO CHARITY (CAMPAIGNS USING PROFESSIONAL SOLICITORS)



The percentage of monies raised that goes to the charity can vary widely. The terms of each campaign are agreed upon by both the solicitor and the charitable organization and are reflected in the contracts that are filed with the AGO. In some contracts, the charity agrees to accept a percentage of funds raised, but it is far more common for the contract to set forth the solicitors' cost of performing the services involved in the campaign (for example, a per-call or per-contact charge or an hourly charge) and for the charity to agree to pay those costs and then retain the remainder of gross proceeds from the campaign. The percentage of gross proceeds received by the charity in those types of arrangements depends on the cost of the service and the results of the campaign rather than an agreed-upon percentage.

The cost of the solicitation service, in turn, also depends on a number of factors, including the type of campaign the professional solicitors are hired to run. Some firms are hired to run major events; some are hired to conduct telemarketing; some are retained to do face-to-face canvassing. Still others are hired to help with "fulfillment" during a fundraising campaign. This last category includes organizations that maintain 24/7 phone banks to receive calls from potential donors generated by television, radio or other advertisements that may be viewed well outside of normal business hours.

Ultimately, the amount of the funds raised that goes to the charity is a function of the agreement that the charity and the professional solicitor have made and the results of the campaign. As noted above, there is no legally required minimum amount or percentage of funds raised that must go to the charity, and the Supreme Court has said it would be unconstitutional to attempt to establish one. Donors who care about what portion of their donation will go to the charity should ask about this before making a donation.

BEHIND THE NUMBERS

Looking at the numbers, well more than half of the donated dollars in Massachusetts over the last several years went to professional solicitors rather than to charities. The AGO has endeavored to look beyond the raw numbers to gain a more complete picture of professional solicitation practices.

First, the information reported has certain limitations. Campaign results are reported on a calendar year basis, but some campaigns straddle two (or more) calendar years.³ Sometimes the costs of a campaign are front-loaded (for example, a campaign may incur significant database development and infrastructure costs in the first month, and if the campaign straddles two or more years, those costs will be reported only in the first year, and will be evaluated only in comparison to the donations received in that same calendar year). Moreover, some campaigns capture recurring annual donations or new donors who will become part of a charity's regular donor base for years to come. In a "sustainer campaign" designed to obtain multi-year donation commitments, the donations attributable to the campaign may come in for years after the campaign has ended. Such donations received in subsequent years may be directly attributable to a particular campaign, but are not reflected in the annual report for the year in which the campaign was conducted and, in fact, may never be reported in a manner in which they are attributable to the work of a professional solicitor.⁴

In addition, some charities have a variety of goals for fundraising campaigns, some of which may not be reflected in the financial results of the professional solicitation engagement.

For example, even where the net proceeds going to a charity were low, in some cases this may be a function of the type of campaign and a conscious investment by the charity to obtain long term benefits other than immediate donations. In some cases, a campaign might be geared to reach new audiences not otherwise familiar with the charity. Other campaigns involve the hiring of professional solicitors to handle donations or inquiries around-the-clock resulting from television, radio or direct mail appeals (thereby allowing the charity to capture those donations without having to invest in extra staff for evening shifts). Still other charities do not have sufficient resources to hire permanent staff to do outreach, and engage professional solicitors to perform outreach for them.

Some charities view the return on investment from professional fundraising campaigns in a broader perspective than that reflected by the percentage of funds raised going to the charity in a particular year. They consider increases in donor base, increased exposure and avoidance of alternative fundraising costs, in addition to the financial results reflected in the reports submitted to the AGO.

According to the AGO's discussions with charities that sponsored facially un-productive campaigns, some charities view the return on investment from professional fundraising campaigns in a broader perspective than that reflected by the percentage of funds raised going to the charity in a particular year. They consider increases in donor base, increased exposure and avoidance of alternative fundraising costs, in addition to the financial results reflected in the reports submitted to the AGO.

³ Certain aspects of reporting, including the calendar-year basis of reports, the aggregate raised and the percentage going to the charity, are prescribed by statute, specifically, section 24 of chapter 68 of the Massachusetts General Laws.

⁴ These factors may affect the performance of a particular campaign as reported for a calendar year. However, the overall percentage of funds to the charity has remained below 50% for many years (see "Percentage to Charity" Chart on page 7); these factors do not alter that overall trend.

Although this broader perspective may explain some of the results discussed above, the unfortunate truth remains that some charitable solicitation activity in the Commonwealth benefits principally the owners and staff of for-profit professional solicitors. As discussed in the next Section, it also remains true that certain solicitors' deceptive practices can make it difficult for donors to tell whether their contributions are benefitting the charities they want to support.

Ultimately, prospective donors must decide what they think. Donors can determine whether they accept the costs of professional fundraising or whether they prefer all or most of their donation to advance directly the charity's mission. To strike that balance, prospective donors should ask questions:

- Ask whether a solicitor that calls your home is a volunteer or a professional fundraiser (keep in mind that professional fundraisers must disclose this fact).
- Ask what percentage of your donation will go directly to the charity, as compared to the percentage that is kept by the professional solicitor. Professional solicitors will have this information and must disclose it if asked.
- If you are uncomfortable with any answers you receive from a professional solicitor, you always have the option to hang up. You can conduct your own research and contact the charity directly before making a donation decision.

DECEPTIVE PRACTICES IN SOLICITATION

Pursuant to [M.G.L. c. 68 § 28](#), professional solicitors are required to disclose certain information to those from whom they are requesting a charitable donation: a professional solicitor is required to give the name, address and telephone number of the charitable organization at the time of solicitation and to disclose that he or she is a “paid solicitor.”

A solicitor’s registration with the AGO in no way constitutes an endorsement or approval by the AGO of a solicitor or a campaign. It is a prohibited deceptive practice for a professional solicitor to reference registration with the AGO so as to lead the public to believe otherwise.

When considering donating to a charity through a professional solicitor it is important to consider the following:

- Preying on the natural instinct to want to help in one’s own community, the professional solicitor may lead potential donors to believe that the benefitting organization is a local charity, that a donation will benefit local individuals, and that he or she is a volunteer for the organization, even when this is not the case. Making this type of misrepresentation in a solicitation is unlawful and should be reported to the AGO.
- A professional solicitor is not permitted to use the name of any charitable organization during the course of solicitation unless that charitable organization has given permission for the use of its name.
- “False pledges” are also a common deceptive practice. In response to a solicitation pitch, a potential donor may respond by saying “I’m not sure. Send me something in the mail.” The professional solicitor may follow-up by sending that person a pledge card. A pledge card sent by a professional solicitor for a donation is deemed to be a deceptive practice when an individual has not made the pledge or agreed to a donation.

In general, charitable solicitors are not allowed to mislead prospective donors and cannot misrepresent any material facts. Although it is not necessarily a material misrepresentation for the solicitor to provide a pseudonym when identifying him or herself, it is considered a misrepresentation should the solicitor claim to be a volunteer for the organization when he or she is a paid solicitor.

While the most effective tool in preventing fraud is an educated donating public, the AGO has at its disposal a variety of tools to address these practices. In cases in which there is sufficient evidence of unfair and deceptive conduct, the AGO can file enforcement actions which can result in settlement agreements and fines and collection on the surety bonds required of every solicitor.

For example, in [August 2012](#), the AGO sued a Somerset charity, Bay State Vietnam Veterans, Inc. and its Rhode Island-based fundraiser, Dynamic Marketing Solutions, Inc. for using deceptive fundraising tactics in violation of state charitable solicitation and consumer protection laws. A court ordered the organizations to stop a number of alleged deceptive practices in their efforts to raise money.

The AGO also has the authority to administratively assess civil penalties against professional solicitors who violate certain sections of [M.G.L. c. 68](#). When the AGO receives verifiable information that there are violations of those sections, the AGO may commence the civil penalty process by sending a warning letter

to the person(s) engaging in solicitation fraud. If the solicitor fails to provide an appropriate response, civil penalties may be assessed against those persons individually. Under the statute, the civil penalties are up to \$500 per day, with a maximum of \$25,000. This administrative process is supported by the AGO's authority to go to court in the event of a failure to pay assessed civil penalties.

The AGO is always interested in receiving reports from the public about seemingly deceptive solicitation calls and what was said during those calls. Instances of deceptive practices may form the basis of a lawsuit or the commencement of a civil penalty process, and our receiving that information is crucial to our enforcement role. To report any material misrepresentations or deceptive practices please contact the AGO at 617-963-2315 or by emailing Charities@state.ma.us. Please see the [Professional Solicitor Guide](#) for more information on unfair or deceptive practices.

IMPORTANT INFORMATION ON GIVING

Potential donors should review the Attorney General's reports [Donating Dos and Don'ts: A Guide to Charitable Giving](#) and [The Attorney General's Guide for Donors](#), which provide more information. Likewise, potential donors should ask how much of the donation will actually go the charity and how much is going to the professional solicitor. Potential donors should ask for the exact name of the charity and for a precise description of what the charity does. Often, charities have similar names and potential donors should clarify if there is any relationship between charities that have similar names. Before donating, donors should review this report to determine in prior campaigns, how much money ended up with a charity.

Potential donors can call the Attorney General's Office 617-963-2315 to find out if the charity and its solicitor are registered to operate in the Commonwealth. The Attorney General does not endorse specific charities but does collect financial information which is available for public inspection. There are other issues that potential donors should consider when making charitable donations.

NOTES ON APPENDIX I AND II

Appendix I reports campaign results by the name of the professional solicitor; Appendix II reports results alphabetically by the name of the charitable organization.

- The first column on the left lists the professional solicitors alphabetically by name, and then lists alphabetically the charitable campaigns they conducted. In Appendix II, the first column lists the names of all the charitable organizations alphabetically, and the second column notes the solicitor responsible for each campaign.
- The “Interim” column notes whether or not the filing covers an entire campaign. If checked, the report covers only the 2012 portion of a multiyear campaign. Note that if it is an interim report, it may reflect costs spread out over the life of the campaign but only reflect the proceeds for that reporting period.
- The next column states the total amount of money raised during 2012 in each of the charitable solicitation campaigns. Please note that this amount often reflects the results of a regional or national solicitation effort and not just the results of activity conducted in Massachusetts. In addition, it may only reflect the funds received or pledged during the reporting period which, for sustainer campaigns may be only a portion of the funds likely to result from the solicitation.
- The final two columns list the amount the charity received at the end of the campaign for the year both as a dollar amount as a percentage of the total generated revenue.

The financial reports filed for each solicitation campaign are available for public inspection via the Annual Filing Document Search Website located at: www.mass.gov/ago/charitiesreports. Professional fundraising annual financial reports (Form [11A](#) and [11B](#)) and the registration documents (Form [10A](#) and [10B](#)) are listed as an “Other/Misc.” document type under the applicable charity for which the fundraising campaign is held. Information regarding solicitation campaigns can also be obtained by calling 617-963-2315. Please be aware that only recent documents are available online; older filings may be available by contacting the AGO. Forms [10A](#) and [10B](#) for multi-year campaigns will generally be listed under the year the campaign commenced.



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