

IMPROVING THE CLIMATE FOR PROGRAM AND SERVICE DELIVERY FOR THE PEOPLE OF NEW JERSEY

2014 Statement and Recommendations to the Red Tape Review Commission

The Honorable Kim Guadagno, Chairperson

The Honorable Steven V. Oroho
The Honorable Jeff Van Drew
The Honorable John J. Burzichelli
The Honorable Scott T. Rumana

The Honorable Brian D. Levine
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Endorsed by:

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Hyacinth AIDS Foundation
New Jersey Alliance for Children, Youth & Families
New Jersey Association of Community Providers
New Jersey Association of Mental Health and Addiction Agencies, Inc.
New Jersey State Association of Jewish Federations
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EXECUTIVE SUMMARY

The recommendations in this paper are the result of extensive discussions among the working group of New Jersey non-profit organizations whose names appear on the cover, as well as outreach and feedback from the broader community of non-profits and service providers. We thank the Governor, the Lieutenant Governor, and the members and staff of the Red Tape Review Commission for the opportunity to present our comments and recommendations, and for focusing on non-profit and social concerns as part of the Commission's work.

Non-profit organizations and service providers are a vital part of New Jersey's economic and social fabric.

- New Jersey is home to **nearly 30,000 charitable organizations**, which collectively **employ over 304,000 workers** – nearly 10% of the state's private work force – and hold combined assets of over \$75 billion.
- New Jersey public charities **spend more than \$38 billion each year** combined, making them a powerful contributor to our state's economy.
- Non-profits also leverage the time and talents of **more than 1.6 million volunteers** who contribute **services worth an estimated \$4.3 billion annually**.
- New Jersey non-profits **employ more people than the construction, transportation or public utilities industries, and more than finance and insurance combined** – providing jobs to individual taxpayers and pumping payroll taxes into government coffers.
- Non-profits **save taxpayers untold dollars** by providing vital programs and services that make our communities better places to live, work and visit. Government relies heavily on non-profits and other service providers to do things that it can't or won't do on its own.

However, the economic downturn, rising demand and reduced or flat funding have taken a severe toll on the ability of these organizations to provide the vital services that people need. The current contracting system, which has been developed piecemeal over many years and is plagued by fragmentation, needless duplication and complexities, has only exacerbated the situation for many organizations.

Despite significant progress through the leadership of the Red Tape Review Commission and under other auspices to streamline the way business is conducted and services are provided, there is clearly more that could be done. There remain numerous ways in which regulations, policies, and, in some cases, statutes could be changed in order to reduce needless duplication and improve efficiency and effectiveness, toward the ultimate goal of ensuring that services are available and provided in the best manner possible.

Summary of Major Recommendations

CREATE A CLIMATE FOR IMPROVED COMMUNICATION AND POLICYMAKING

- Establish a mandatory system of **information sharing and coordination** within government **across departments and divisions**, in partnership with and reflecting strong input from regulated and contract entities, grantees and other outside experts, in order to reduce conflict and duplication in the development and implementation of policies and procedures. Consolidate contract reform task forces across divisions/departments in order to better utilize the recommendations and reports of these work groups, foster consistency and leverage expertise and creativity. This system of information sharing and coordination should include a mechanism to report back to the Lieutenant Governor's office on the impact of the reduction of conflict and duplication.

BOOST EFFICIENCIES AND QUALITY THROUGH IMPROVED CONTRACTING

- **Create a centralized contracting unit to cut down on redundancies and duplicative monitoring and reporting.** Ensure that the Department of Treasury's new e-procurement system, NJSTART.gov, and centralized vendor database includes a secure "document vault" for non-profit and provider contracting purposes that would allow one-time filing – or reductions in duplicative filing – of basic information, and features an interface that allows for easy navigation for non-profit organizations and the types of programs/services that are common to non-profits. It is also essential that this centralized contracting unit be staffed by programmatic experts to define and recognize appropriate program costs across disciplines.
- **Establish a contracting boilerplate** for certain components, applicable across departments and divisions, to save time and duplication in submitting repetitive organizational information.
- **Work jointly with non-profit organizations to establish and adopt clear and consistent definitions** of administrative costs, indirect costs, and overhead for use in the contracting and reporting process.
- **Repeal arbitrary limits on indirect costs** in contracts, and instead encourage payment of reasonable and legitimate indirect costs as a standard contracting procedure.
- **Conduct an outside efficiency review of the purchasing process**, including review and establishment or revision of timelines for contract execution, modifications, documentation review and approval.
- **Establish a mandatory prompt contracting process** to cut down on delays in executing paperwork needed to process payment.
- **Review and revise the current prompt payment requirements** to prevent cash flow problems and ensure continuity of service.
- **Review county and local purchasing processes and procedures** in order to reduce duplication and needless bureaucracy in funding, contracting and purchasing practices, and ensure prompt processing of grant and contract paperwork and payments.
- **Apply the "common sense" provisions of Governor Christie's Executive Order # 2 (2010) to state department contracting policies/manuals and similar non-regulatory procedures** to provide for opportunities for regulated entities and other experts to provide advanced input on regulatory proposals during the development stage. Require state agencies to demonstrate compliance with Executive Order # 2 with respect to contract RFPs, policies and amendments.
- **Establish an inter-departmental task force, comprised in equal proportions of government and non-profit/provider representatives**, to develop *comprehensive* contract reforms across departments and divisions to foster consistency and efficiency.
- **Consolidate licensing, inspections, monitoring and auditing requirements** to minimize duplication and provide for more reciprocity.
- **Implement "deemed status"** to recognize the national or international accreditations of non-profits and providers in order to streamline repetitious state monitoring, licensing and auditing practices. Provide greater options for multi-year contracting to accredited organizations.

- **Reform the registry and background checking/fingerprinting systems**, to remove needlessly duplicative checks and fees while ensuring ready access to a single, consolidated up-to-date database so that potential problems can be uncovered quickly. Provide a complete listing, in layperson's terms, of the organizations/circumstances in which background checks are required or available and of the criminal offenses that disqualify individuals from employment.
- **Reward efficiencies** by allowing organizations to reinvest in contracted programs or to retain modest reserves for unanticipated program-related needs.

REMOVE OBSTACLES TO RESPONSIBLE FUND RAISING

- Establish a **voluntary electronic filing system** for charities registration and financial reports.
- **Update and reform Legalized Games of Chance (bingo and raffles) laws and regulations** (last updated in 1954) to eliminate antiquated and duplicative licensing and reporting requirements. These include greater acceptance of scans and copies; streamlined licensing for organizations that conduct multiple events or events in different localities; electronic filing for registration and reporting; and clearer guidance regarding rules and procedures for regulated entities.

FACILITATE COMPLIANCE WITH CORPORATE FILING AND OTHER REQUIREMENTS

- **Utilizing the Department of State's Web portal for non-profits, ease compliance with online non-profit incorporation and corporate filing requirements** under the Division of Revenue by providing easier access to non-profit-specific reporting areas, and clearer assistance for organizations seeking federal tax exemption from the IRS (including providing a template certificate of incorporation that includes the language required by the IRS).
- Require each department to provide **readily locatable online access to departmental policies (internal and external), current laws, current and pending regulations, and similar online compliance information**, and require departments to provide plain language versions to facilitate understanding and compliance. Provide links to this information through the Department of State's Web portal for non-profits.
- **Modernize the Title 15A, the New Jersey Nonprofit Corporation Act**, to reflect evolutions in thinking and technological advances in order to enhance non-profit operations and governance.

ENCOURAGE INNOVATION AND INVESTMENT IN TECHNOLOGY AND BEST PRACTICES

- **Actively embrace and pursue the utilization of up-to-date technologies** to facilitate coordination, compliance, filing of reports, contract processes and boost overall efficiency and effectiveness.
- **Abandon requirement of faxed or handwritten reporting** in favor of secure electronic versions.
- Explore ways to improve opportunities to access **affordable health and other forms of insurance** for organizations and their employees through small employer purchasing alliances and other means.
- **Invest in the capacity and health of New Jersey's non-profit and provider community by establishing a "Management Assistance Fund"** to enable New Jersey organizations to access funds to secure technical assistance and other infrastructure support.

Recommendations to the Red Tape Review Commission

The recommendations in this paper are the result of extensive discussions among a working group of New Jersey non-profit organizations, as well as outreach and feedback from the broader community of non-profits and service providers.

We thank the Governor, the Lieutenant Governor, and the members and staff of the Red Tape Review Commission for the opportunity to present our comments and recommendations, and for focusing on non-profit and social concerns as part of the Commission's work.

Background

Non-profit organizations and service providers are a vital part of New Jersey's economic and social fabric.

- New Jersey is home to **nearly 30,000 charitable organizations**, which collectively **employ over 304,000 workers** – nearly 10% of the state's private work force – and hold combined assets of over \$75 billion.
- New Jersey public charities **spend more than \$38 billion each year** combined, making them a powerful contributor to our state's economy.
- Non-profits also leverage the time and talents of **more than 1.6 million volunteers** who contribute **services worth an estimated \$4.3 billion annually**.
- New Jersey non-profits **employ more people than the construction, transportation or public utilities industries, and more than finance and insurance combined** – providing jobs to individual taxpayers and pumping payroll taxes into government coffers.
- Non-profits **save taxpayers untold dollars** by preventing and curing disease, educating and nurturing children, providing affordable housing, feeding the hungry, providing employment and skills training, and protecting the environment. They purchase goods and services from businesses, and they attract residential and tourism dollars through artistic, cultural, historic preservation, economic development and other activities that make our communities better places to live, work and visit. Government relies heavily on non-profits and other service providers to do things that it can't or won't do on its own.

In short, **non-profits and service providers are an integral part of what makes New Jersey more affordable, more vibrant, and more livable.**

Unfortunately, non-profits and service providers are struggling under the weight of the prolonged economic downturn, rising demand for services and shrinking funding. Although circumstances have improved somewhat since the worst of the recession, significant challenges remain. According to a March 2014 survey report by the Center for Non-Profits:

- **Four-fifths (82%)** of responding organizations reported that **demand for services had increased** during the past year, and a similar percentage **(80%) expected demand to continue rising in 2014**.
- While 82% saw increased demand in 2013, **only 70%** indicated that they **had been able to increase services** in the same period.
- Forty-six percent reported relatively level funding in 2013 vs. 2012, but **31% reported that expenses exceeded support and revenue** during their most recently completed fiscal year.
- **Seventy-four percent expected their total expenses to increase** in 2014, but **only 58% expected total 2014 funding to increase**.

This climate, along with the other issues identified in this report, poses significant implications for the ability of non-profit organizations to provide the vital programs and services that our communities need and that help make New Jersey strong.

The Red Tape Climate

Non-profits, service providers and government share the common goal of improving the quality of life in our communities, state and nation. The non-profit and provider community has a long tradition of working in partnership with government to identify and address public needs, and government is relying increasingly on non-profits to deliver vital programs and services. This relationship depends upon the ability of both partners to exchange information, ideas and recommendations freely.

When policies are enacted on a piecemeal basis or without sufficient input, or when government grants or service contracts cross inappropriately into micromanagement, the result is inefficiency, ineffective or counterproductive policies, and wasted resources for non-profits, providers, the state and broader communities alike. The situation has consequences that extend far beyond contracting entities to organizations, funders and communities statewide.

Non-profit and provider organizations continue to work to advocate for a restructuring and reforming of the state regulatory system to avoid overlapping and duplicative requirements; to achieve regulatory relief from unfunded mandates; to reduce regulatory barriers; to decrease excessive and unnecessary administration and oversight; to minimize and end unwarranted penalization; to increase coordination among the various divisions and departments of government; to encourage outcomes based on achievable goals; and to generate greater awareness and responsiveness to organizational operations and fiscal realities so that they can best meet the needs of those they serve.

We believe that both short- and long-term changes could be made that would improve our partnership with government, help to ensure the efficient provision of high quality programs and foster a climate of creativity and innovation for the public good.

Progress has already been made over the past several years in several important legislative and regulatory areas, including:

- The raising of the mandatory audit threshold for charities under the Charitable Registration and Investigation Act.
- The creation of a web portal through the Department of State to allow non-profits to more easily access funding, compliance, and other information and to help the public find non-profit resources.
- In certain departments, some allowance for “deemed status” for provider organizations that are certified by certain national or international accrediting bodies.
- Increased ability to accept electronic contract applications and supporting documents.
- Helping to stop red tape before it starts, such as the withdrawal of the Division of Consumer Affairs’ donor designation fundraising pre-proposal 2011-001 three years ago.
- Advancement of legislation (S-1941/A-1883), sponsored by Senators Oroho and Stack, and Assemblymen Burzichelli and Rumana, to relax some of the rules related to door prize raffles conducted by non-profits.
- Re-introduction of legislation (A-1879/S-1736) to prevent conflict in administrative rulemaking between different regulatory agencies.

Additionally, we would like to thank the members of the Red Tape Review Commission and its staff for continuing to work with us to explore solutions to the issues that we have raised previously.

Clearly, many vital steps have been made in the right direction, but there is also much more that can be done. There remain numerous ways in which regulations, policies, and, in some cases, statutes could be changed in order to reduce needless duplication and improve efficiency and effectiveness, toward the ultimate goal of ensuring that services are available and provided in the best manner possible.

The information that follows reiterates and updates our previous submissions to the Commission. We again thank you for your interest in and attention to the concerns of non-profits in the state.

Guiding Principles

We respectfully offer the following guiding principles as a basis for our recommendations:

- Government, non-profits and service providers are partners in providing essential programs and services that strengthen New Jersey's economy and quality of life. Our recommendations recognize that all are staffed by dedicated people working hard in furtherance of the public good. Our recommendations are in no way intended to diminish the value of the work of any these talented individuals.
- We recognize that the state is facing protracted and unprecedented economic challenges. In this environment, ensuring that New Jerseyans are served in the most efficient and effective manner will require all parties to work collaboratively and explore creative solutions in an open-minded, mutually respectful manner.
- Recognizing that there are many necessary differences among the various programs that departments oversee and non-profits and service providers implement, there are nonetheless many instance in which standardization of formats and submission mechanisms of basic information would help organizations to leverage scarce resources to maximum effect.
- Laws, regulations and policies should strike an appropriate balance to ensure accountability, transparency and protection without needlessly overburdening organizations.
- We believe that streamlining a variety of regulations and government procedures would promote innovation and flexibility, further improving efficiency and effectiveness for organizations and the State alike. We believe that organizations should be encouraged to remain creative and innovative in their approaches to service delivery and administration.
- Regular communication and joint problem-solving among public/private partners are key to fostering quality, accountability, transparency, innovation and creativity in the effective provision of programs and services.
- We believe that there are many short-term solutions that would bring immediate relief to our organizations and increased efficiencies to the state. However, we also believe it is important to invest in the exploration and development of long-term solutions and new ways of providing effective programming.
- Although government and non-profits may enter into contractual relationships for the provision of a wide array of services, those contracts do not – and should not – alter the independence of non-profit organizations as autonomous entities. Once contract terms are accepted, it is important that an organization be given the flexibility to execute that contract in the best manner it sees fit.
- Although non-profit organizations have social missions in furtherance of the public good, we are just like any other business in that we have expenses to meet, staff to hire and retain, laws and regulations to comply with, and many more issues that are specific to non-profit organizations as well as our particular fields of service. It takes expertise, dedication and financial resources to run a successful, effective organization, including making strategic investments in administration, planning and infrastructure – just as in any successful business.
- Improving the public/private partnership and reducing needless red tape for non-profits and service providers will enhance the quality, effectiveness, efficiency and accountability of our programs and services for the people in our communities.

CREATE A CLIMATE FOR IMPROVED COMMUNICATION AND POLICYMAKING

Rules and regulations that affect non-profits and service providers are scattered across numerous departments, divisions and agencies, and are often enacted piecemeal or in isolation. We believe that policymaking and program delivery would be significantly enhanced with better coordination and more opportunities for communication and the exchange of ideas across all interested parties.

Recommendations

- Establish a mandatory system of **information sharing and coordination** within government, **across departments and divisions**, in partnership with and reflecting strong input from regulated and contract entities, grantees and other outside experts, in order to reduce conflict and duplication in the development and implementation of policies and procedures. Benefits of such a system could include identification of emerging trends; greater reciprocity between departments and agencies; and development of new, creative solutions to community needs. This system of information sharing and coordination should include a mechanism to report back to the Lieutenant Governor's office on the impact of the reduction of conflict and duplication.

BOOST EFFICIENCIES AND QUALITY THROUGH IMPROVED CONTRACTING

The State of New Jersey relies on non-profit organizations and community service providers to fulfill a broad array of essential health, social service, educational, artistic, cultural, vocational and other needs for our state's residents. Generally speaking, we believe that the relationship works best on both sides when the focus is on the big picture:

- *What are the outcomes that we seek to achieve?*
- *What service or program is being paid for?*
- *Are the agreed-upon services being provided safely and in a high-quality fashion, and are they having an impact?*

But in New Jersey and throughout the country, the contracting system is fraught with problems that have widespread significant social and economic implications across sectors. In 2013, the Urban Institute conducted an updated national study of non-profit organizations, in which New Jersey organizations participated, highlighting a series of pervasive problems with the contracting system. Although contracting problems were prevalent across the country, state-specific data released last month show that New Jersey's situation, especially compared with other states, is particularly troubling.

The following were the most commonly reported problems by non-profit respondents in the Urban Institute survey, and the percentage of each identified by New Jersey organizations:

- **Contracts that don't cover the full costs of providing services** – identified as a problem by 76% of New Jersey respondents, ***the worst in the nation in a state-by-state comparison.*** The problem can take the form of match requirements – some as high as 50%; high costs of compliance; limits on reimbursable overhead or indirect costs under the contract; or limits on allowable overhead costs for the organization overall.

- **Complex or time consuming application requirements/procedures** that increase costs and discourage some worthy organizations from applying altogether – identified as a problem by 81% of organizations, placing New Jersey fifth among the worst states according to this criterion.
- **Late payments to providers**, and delays in processing contract paperwork, wreaking havoc on non-profit cash flows and credit ratings. Late payments were identified as a problem by 53% of New Jersey respondents, ranking New Jersey ninth worst in the country.
- **Complex or time consuming reporting requirements** that drive up costs and divert scarce resources – identified as a problem by 75% of New Jersey respondents, ranking New Jersey twelfth worst in the country.
- **Governments that change the terms of the contract in mid-stream**, such as imposing additional program requirements or expectations without providing additional resources – identified as a problem by 45% of New Jersey respondents. New Jersey ranked 22nd worst in the nation.

In addition, organizations continue to struggle under the burdens of **duplicative or contradictory** government **monitoring and auditing** procedures and compliance requirements, as well as **outdated, incompatible or nonexistent technologies** that encourage inefficiency and siphon scarce resources away from mission and program.

Our group conducted a short follow-up survey in June 2014 to see the extent to which these problems had improved or worsened for organizations in New Jersey since January 2013. The chart below lists some of the most common contracting problems and the degree to which the experiences of surveyed organizations have changed over the past 1 ½ years.

Common Contracting Problems and Changes in New Jersey Non-Profits' Experiences since 1/1/13 compared with 2012				
	Better	About the same	Worse	N/A
State dollars not covering full cost to provide services under contract	2%	38%	53%	7%
Timely contract processing or renewal	5%	49%	42%	4%
Late payments	6%	55%	27%	12%
Changes made by state contract terms after execution	3%	41%	36%	20%
Complexity and time required for preparing contract applications	5%	37%	54%	4%
Complexity and time required for contract reporting	2%	47%	47%	3%
Duplication/overlap of monitoring or reporting requirements (for organizations with multiple state contracts)	2%	38%	47%	3%
<i>N = 135</i>				
Source: Rapid Response Survey conducted June 2014 (currently unpublished)				

Non-profits' frustration with the contracting climate was expressed repeatedly in the survey comments, such as the following:

- *"Exponential increase in reporting requirements and unfunded mandates"*
- *"There have been no funding increases in contracts for more than 6 years, and the 0.5% that was to come to us this fiscal year has recently been pulled back by the state. Our program deficit has risen to an untenable level. Our current payment is late. A current service we provide is being eliminated. We are now contracting with another state department with different contracting and reporting requirements. Some reporting requirements don't match the service we are offering ... causing problems despite several previous discussions."*
- *"There is absolutely no ability to discuss concerns and make reasonable modifications to the system. So much more paper work and regulatory requirements. If you have contracts with 3 divisions within a department... you have to submit 3 sets of boiler plate attachments as if they were separate departments. This is terribly wasteful, time consuming, and costly. And, not at all necessary."*
- *"The time from award to first payment runs from 2-3 months. Bi-annual payments and final payments are delayed by 2-3 months. Example - Reports and financial info due January 31 payment not received until May 1 or longer. This places stress on the organization's cash flow."*
- *"I would like to be able to accrue money forward from one contract year to another to help offset expenses in the new contract year. There is no provision for simply accruing savings that can be used for any increases in costs for the next year. It's still "use it or lose it" which is so counterproductive to encourage providers to find ways to reduce expenses in one contract year so the savings could be used in the next year."*
- *"Several departments are beginning to require that we input entire agency budget even for non-funded items (line by line)."*
- *"...well-intended program analysts do not understand the true impact of their decisions. The constant need to educate them on the real need for General and Administrative costs in each contract is frustrating. For example, I have one contract that demands monthly fiscal reporting, but caps G&A at 10% and disallows charging anyone on my fiscal team as a direct cost. The G&A does not cover the cost of having the contract, but the agency mission and community needs means we figure it out."*
- *"Much greater scrutiny of every line items including micro-detail. Awarded 3 special grants retro to 7/1/13, contract docs received in 12/13 and returned same month, executed in 1/14 with assurances that due to delays contracts could be extended and possibly renewed additional year. As of 6/4/14 no knowledge as to whether contract will in fact end on 6/30/14."*
- *"Agency has not been paid for services for January, February, March, April and May of 2014 - no payments have been received."*

These failures are forcing non-profits and providers to make difficult decisions with significant ramifications for their ability to deliver the programs and services that our communities need:

- 53% froze or reduced employee salaries in response to their government grant or contracting situation
- 40% reduced employee benefits
- 33% reduced programs
- 32% were forced to borrow funds from a bank or against a line of credit

There is little doubt that the current situation is unsustainable, and does a gross disservice to the people of our state. Reform in this area would reap significant and enduring benefits for the State, non-profits and the communities we serve.

Recommendations

- As a matter of good practice:
 - **Purchase of service contracts should fully cover the actual cost** of services to be provided, including reasonable levels for indirect costs that are standardized across departments.
 - **Contracts and grants should focus primarily on the outcomes, quality of service and community impact**, while allowing organizations to retain flexibility and autonomy regarding their internal operations.
 - **Organizations should be allowed to invest in continuing quality improvement**, via staff development, investment in appropriate technology/infrastructure and other program-relevant means.
 - **The grant and contracting process should avoid excessive focus on administrative details** or information that duplicates what organizations already provide to satisfy existing legal, compliance or grant requirements and which are tangential to the performance of the contract.
- Many contracts include requirements that organizations provide continuing education and training to all levels of professional and para professional staff, including doctors, nurses, clinicians including social workers, addictions counselors, licensed professional counselors, and the like. Unfortunately, third-party contract amendments adopted in 2010 by the Department of Human Services and the Department of Children and Families have placed a \$5,000 cap on the amount that organizations can use from contracted dollars toward this purpose and overall staff development, including the pursuit of degrees and licensure. The cap is \$5,000 per organization, regardless of the number of employees. This limitation on professional education and training is not only contradictory to the contract requirement, but has tremendous implications for staff retention and long-term effectiveness. It is our understanding that similar amendments are being processed by the Department of Health and Senior Services as well.
- The same 2010 contract modifications also placed significant restrictions on the circumstances under which agencies can replace fleet vehicles or even provide basic refreshments at organization functions. These changes result in no improvement to program quality and effectiveness, and instead divert oversight attention and resources that could be better served focusing on outcomes for clients.

Reducing inefficiency

- **Create a centralized contracting unit to cut down on redundancies and duplicative monitoring and reporting. Ensure that the Department of Treasury's new e-procurement system, NJSTART.gov and centralized vendor database includes a secure "document vault" for non-profit and provider contracting purposes** that would allow one-time filing – or reductions in duplicative filing – of basic information, such as address, tax ID numbers, CEO and members of boards of trustees, IRS determination letters, registration numbers, good standing certificates, tax clearance certificates, corporate annual reports, IRS Form 990 information returns and other standardized information. The current lack of electronic filing or a centralized information system means that organizations waste time, paper and expense, often to purchase and provide the same basic information over and over. It is also essential that this unit be staffed by programmatic experts to define and recognize appropriate program costs across disciplines.
- Ensure that NJSTART.gov features an interface and classification system that allow for easy navigation for non-profit organizations and the types of programs/services that are common to non-profits.

- **Repeal arbitrary limits on indirect costs** in contracts, and instead encourage payment of reasonable and legitimate indirect costs as a standard contracting procedure. New Jersey is identified as among the “worst” in the nation for contracts that fail to cover the full cost of providing services. The causes are multifaceted, but one reason lies in the strict caps, or sometimes outright prohibition on allowable indirect costs, or overhead – insurance, rent, utilities, technology, audits and similar items that are integral to operations but might not be directly tied to a particular grant or program. Although numerous studies have shown that, like successful for-profit entities, it is normal for effective non-profits to have indirect costs of 25-35% of total expenses, many governments arbitrarily set caps that are far less – and some allow no indirect costs at all. In New Jersey, more than half (55%) of non-profit respondents to the Urban Institute study reported that their contracts either imposed limits or completely prohibited indirect costs for the *specific programs* being funded, while 61% reported that *organization-wide* indirect costs were either capped or prohibited. Among those organizations reporting limits, one-fifth said their contracts did not allow any organization overhead at all.

The U.S. Office of Management and Budget (OMB) has issued comprehensive new uniform guidelines for federal awards (including state and local pass-throughs) that, among many other provisions, require the allowance of reasonable indirect costs. OMB’s action is significant because it recognizes that indirect costs are valid and important, and stipulates that contracts using federal funds cannot disallow such costs as some have in the past.

We urge this Commission and the Governor’s office to issue guidance to the various state departments that would ensure that OMB’s indirect cost directive is implemented in accordance with its intent. However, we also urge the State to carry the spirit of this directive to its logical extension to other levels of government and require *non-federal* governmental awards in New Jersey to also allow reasonable and legitimate indirect costs, without cutting into the amount that would normally be allocated for direct costs.

- **Establish a contracting boilerplate** for certain information that would be applicable across departments and divisions to save time and duplication in submitting repetitive organizational information.
- **Conduct an outside efficiency review of the purchasing process**, including review and establishment or revision of timelines for contract execution, modifications, documentation review and approval.
- **Establish a mandatory prompt contracting process** to cut down on delays in executing paperwork needed to process payment.
- **Review and revise the current prompt payment requirements** to prevent cash flow problems and ensure continuity of service.
- **Review county and local purchasing processes and procedures** in order to reduce duplication and needless bureaucracy in funding, contracting and purchasing practices, and ensure prompt processing of grant and contract paperwork and payments.

Encouraging Communications and Transparency

- **Apply the “common sense” provisions of Governor Christie’s Executive Order # 2 (2010) to state department contracting policies/manuals and similar non-regulatory procedures.** In providing for opportunities for regulated entities and other experts to provide advanced input on regulatory proposals during the development stage, Governor Christie’s Executive Order #2 is a

tremendous step forward in improving communications, transparency and sound policy development by government agencies working in partnership with private entities and the public. It is natural, then, to request that these ***common-sense principles be extended to state government contracting policies***, which effectively carry the some weight of regulations but which are often enacted piecemeal and often without meaningful opportunities for input by the organizations and providers that have to abide by them in order to remain eligible for these contracts. We believe that the increased opportunities for input at the early stages will result in a more efficient, effective contracting partnership and better quality programs and services for the people of New Jersey.

- **Require state agencies to demonstrate compliance with Executive Order # 2 with respect to contract RFPs, policies and amendments.**
- **Establish an inter-departmental task force, comprised in equal proportions of government and non-profit/provider representatives**, to develop *comprehensive* contract reforms across departments and divisions to foster consistency and efficiency. A key focus of this task force could be the establishment of shared principles that restore the primary focus on program delivery, outcomes and impact.

Reducing Needless Duplication of Effort

- **Accept the report/findings of an independent, single audit rather than the current, common practice of multiple, duplicative audits being performed by separate governmental units.**

Audits are a crucial accountability tool to analyze the financial health of an organization, strengthen financial systems and safeguard against fraud. For those non-profits receiving more than \$500,000 in federal funds (including those passed through the State), the federal Single Audit Act requires an annual audit conducted in conformance with especially rigorous accounting standards and compliance with various state and federal recordkeeping, reporting and legal requirements, pursuant to the requirements of OMB Circular A-133. The Single Audit Act prevents non-profits from having to contract out for multiple audits to satisfy the terms of different government contractors. However, it does NOT prevent different government agencies from conducting ***their own*** separate audits with their own personnel/firms, and too often, that's exactly what happens. Audits are time-consuming and expensive, and multiple duplicative audits needlessly sap scarce resources from both non-profits and government. Requiring some form of "reciprocal audit acceptance" among government agencies would reduce costs and improve efficiency.

- **Consolidate program inspections and site visits.** Community programs are frequently stymied by the fact that they must adhere to multiple licensing authorities, program and contract compliance visits and standards, across numerous departments, divisions, and levels of government, with no coordination among them. Such visits can easily eat into days and weeks of staff time, and often occur in consecutive fashion from one department or division to the next. By synchronizing state site visits or replacing multiple visits with a single visit similar to OMB A-133 audits, lengthy and often-unnecessary site reviews that redirect staff time away from direct care services to prepare for site visits would be eliminated while the government's interests in oversight are achieved. Limited government resources would also be freed up for other uses.
- **Recognize the rigorous accreditations by national entities** of provider organizations ("deemed status") in order to streamline repetitious state monitoring practices and eliminate redundant program reviews, licensing reviews, monitoring visits and audits. Although some

departments provide deemed status in certain circumstances, many do not; and the procedures in the current process need to be streamlined and standards applied more universally.

- **Provide greater options for multi-year contracting** to accredited organizations and proven high-performers.
- **Revise duplicative and conflicting statutes to eliminate the need for repeated fingerprinting** of the same staff to satisfy the contractual requirements of multiple state agencies.
- **Develop a consolidated system to facilitate state and national level background checking of employees/volunteers across departments/agencies** that would incorporate the various separate registries that have been established pursuant to statutory requirements.

Many organizations, especially those that serve children, people with disabilities, the elderly or other vulnerable populations, conduct some form of background checking or screening of potential employees or volunteers. Some of these checks are required by law, while others are conducted voluntarily. Criminal history and other background checks can cost the State or the service organization from \$70.25 to several hundred dollars. While providing adequate screening is clearly essential, the current system generally does not permit one background and/or fingerprint check to satisfy the requirements of multiple government agencies. Instead, employees or volunteers frequently have to conduct duplicate checks and fingerprinting to satisfy the requirements of each separate government agency with which the organization does business, needlessly driving up costs. Additionally, each organization must perform employee checks against each of the multiple registries, and is subject to penalties if it fails to check any one.

Under a consolidated system, a prospective employee/volunteer would only need to submit to the time and expense of a single check, and an organization would have “one-stop” access to the broader array of background records so that potential criminal history problems could be discovered more quickly and less expensively.

- **Direct the Attorney General to maintain a web page, accessible through the Department of State’s non-profit web portal, to provide a current and complete listing of the constantly growing number of laws that require or permit criminal background checks** and, with respect to each such law, a summary of what organizations are covered by the law, which offenses (in layperson’s terminology as opposed to citations to NJSA section numbers) are automatic disqualifiers, which offenses are discretionary disqualifiers, and which organization (i.e., a governing agency or the non-profit employer) makes the determination that a worker is disqualified.
- **Consolidate contract reform task forces across divisions/departments.**
Over the years, many departments and divisions have convened contract reform workgroups with provider organizations. The recommendations and reports of these workgroups could be utilized in a more meaningful way and not used as a means of justifying predetermined contracting changes. Many aspects of contract reform/streamlining are broadly applicable across types of organizations, services and departments/divisions. Elevating and consolidating the various task forces and efforts to improve the contracting process would reduce fragmentation, minimize duplication and increase the effectiveness of such efforts.

Reward Operational Efficiencies

- **Allow organizations to channel savings or efficiencies into the establishment of reserves or capital funds** to be carried over to the next contract year to further the purposes of the contract

or to be used for unanticipated program-related expenses (higher-than anticipated snow removal at facilities, etc.).

- **Provide for more multi-year contracting** for proven high-performers.
- **Transfer certain capital assets to the provider community**
The State should enable providers to gradually take ownership of capital assets over extended periods of time, thereby reducing the cost of borrowing for capital improvements and reinforcing organizations' financial stability, without requiring further state expenditure.

REMOVE OBSTACLES TO RESPONSIBLE FUND RAISING

Non-profits rely on the donations of generous individuals in New Jersey and nationwide in order to be able to do their work. For many organizations, fundraising is more challenging than ever in the current economy, in which funding remains below pre-recession levels and has not kept pace with the skyrocketing demand for services.

Donors, the public and responsible organizations alike need a regulatory system that is fair, addresses abuses vigorously, and safeguards against fraud without needlessly hampering the ability of charities to raise funds.

The New Jersey Division of Consumer Affairs has a dedicated, talented staff with whom we have worked cooperatively for many years to pursue this balance. Still, we believe that there are areas of simplification that would benefit everyone.

Charitable Solicitation, Registration and Reporting:

- As a general principle, the state should **avoid regulations that would excessively and unnecessarily limit non-profits' ability to raise unrestricted funds.**
- We also encourage the Division of Consumer Affairs to work to **establish technologies that would establish a voluntary electronic filing option for charitable registrations**, reports and supporting documents.

Legalized Games of Chance

The current state regulations for raffle licenses have become burdensome to charities and limit opportunities to raise dollars that are needed to service our communities. This is true not only for organizations like the American Cancer Society that are organized on a statewide basis, but also for small organizations that rely on raffles and games of chance to stretch scarce resources. Organizations that conduct raffles or games of chance are subject to a myriad of confusing, outdated and inconsistent rules of compliance, and a dual (state and municipal) registration/licensing requirement that is at once duplicative, expensive and often inconsistent.

The current framework requires both a state-level registration and local-level licensing; limits on dollar values of door prizes and the like that are decades old; requirements for the provision of original documents rather than secure electronic copies; and unclear eligibility standards that may be applied inconsistently and that may exclude organizations from participating.

The New Jersey Law Review Commission has, in prior years, recommended a series of changes to streamline and update the laws pertaining to charitable gaming. These recommendations can be explored along with the suggestions that appear below.

- **Propose a ballot question** to amend the State Constitution to **allow all charities to use their bingo and raffle proceeds to support their organizations**, as is currently enjoyed by veterans' and senior citizen organizations.
- **Eliminate Legalized Game of Chance requirement that the original raffle license registration certificate, rather than photocopy or electronic scan**, be presented to the appropriate governing body in order to expedite local permits.
- **Frequency and location of games** (N.J.A.C. 13.47-6.11)
 - Replace the limit of one off-premise 50/50 cash raffle per month to one 50/50 cash raffle per county per month.
 - Eliminate current limit of six per week for the maximum number of on premises draw raffles as long as no prize exceeds \$100.00.
- **Door Prizes** – increase the value of door prize where no license is required from its current, outdated level of \$50.00.
- **Limit the restrictions for on premise raffles**, particularly when they involve prizes of retail value under \$100.00.
- **Extend the time for the report of raffle** operations from the 15th day following the month of the raffle to 60 days.
- Include with the license/approval **a letter that indicates the duration of time** that non-profits need to keep sold and unsold raffle tickets.
- **Provide guidelines** for promotion/payment of raffles utilizing **on-line fundraising tools**.
- **Establish a system for voluntary electronic registration and reporting** by regulated entities.
- **Modify the licensing framework** so that organizations that conduct multiple events can hold a single license that would be valid for a specified number of events.
- **Direct the Division of Consumer Affairs to issue online guidebooks, in laypersons' terms**, to help the non-profit community navigate the requirements of the various charities registration and games-of-chance laws and regulations and the permitting/licensing processes.

FACILITATE COMPLIANCE WITH CORPORATE FILING AND OTHER REQUIREMENTS

For many organizations, a significant amount of red tape could be cut simply by making essential information easier to find and understand, and by providing names/links to outside resources that can provide additional guidance and assistance. Additionally, existing corporate laws and regulations should be reviewed and updated in order to reflect advances in technology and evolved thinking about governance and good practice.

- **Modernize the Title 15A, the New Jersey Nonprofit Corporation Act**, to reflect evolutions in thinking and technological advances in order to enhance non-profit operations and governance. Title 15A has not been updated in a comprehensive way since it was first enacted in 1983. Consequently, the law does not expressly allow non-profits to utilize newer technologies in order to expedite governance.
- **Ease compliance with online non-profit corporate filing requirements** under the Division of Revenue by providing easier access to non-profit-specific reporting areas (incorporation, annual report filings, registered agent and the like).
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- **Provide specific online guidance and sample certificate of incorporation (COI) language/templates** for newly forming non-profit organizations that intend to seek federal tax exemption with the IRS. Many non-profits that incorporate with the State of New Jersey plan to also seek federal tax exemption under Section 501(c)(3). Because the IRS requires certain extra language in COIs that the state does not, countless organizations end up needing to file restated or amended certificates if they are not aware of this requirement ahead of time. Although the Department of Treasury, Division of Taxation does provide some instructions to address this issue, the Division of Revenue's Public Records Filing For New Business Entity form at www.state.nj.us/treasury/revenue/pdforms/pubrec.pdf does not include this specific information. A sample certificate, complete with language that would satisfy both the State of New Jersey and the IRS, would be the most helpful solution for newly forming non-profits.
- **Revise coding on the incorporation and online annual report filing** sections to accommodate more information, longer text fields and a greater number of board members.
- **Require each department to provide readily locatable online access to current laws, current and pending regulations, and similar online compliance information** relevant to that department, as well as plain-language summaries of the major points for each, (including explaining who is covered, what conduct is regulated, any licensing requirements, and the process for obtaining a license), and make this information readily accessible through the non-profit Web portal at the Department of State. One example of a site that makes a complicated topic fairly easy to navigate and understand is the **Department of Banking & Insurance's Small Employer Health Benefits Program** web site at www.state.nj.us/dobi/division_insurance/ihcseh/sehguide/index.html.
- **Establish a New Jersey equivalent of the federal "Plain Writing Act of 2010,"** which directs government agencies to generate "plain language" documents to help the public obtain and learn about government benefits and services, as well as to comply with government requirements.
- **Have agencies that administer overlapping laws issue joint, online guidance documents** that will help organizations navigate the confusing and seemingly conflicting obligations of the laws (e.g., the overlap of the New Jersey Family Leave Act and the New Jersey Law Against Discrimination, which are administered by the Division on Civil Rights, and the New Jersey family leave insurance, temporary disability insurance and workers' comp laws, which are administered by the Department of Labor & Workforce Development.)
- **Prescribe a specific window of time by which departments are required to update their online information to reflect changes in laws, regulations and procedures.** Recognizing that there may be a reasonable time lag between the passage of a law/adoption of a rule and the ability to post a substantive summary, a shorter period of time can be used for the government entity to post a notice to make users aware that an update has been enacted and more detailed information forthcoming.
- **Designate a specific individual or individuals within departments to whom corrections to posted information can be submitted.** When errors are detected, it would help to have a specifically designated point of contact so that they can be reported and the information can be promptly corrected.

ENCOURAGE INNOVATION AND INVESTMENT IN TECHNOLOGY AND BEST PRACTICES

An up-front investment in best practices, technology and innovation can yield dividends in terms of creative solutions, a more efficient partnership with government, better community outcomes and stronger organizations that are better positioned to serve the public good.

Recommendations

- **Actively embrace and pursue the utilization of up-to-date technologies** to facilitate coordination, compliance, filing of reports, contract processes and boost overall efficiency and effectiveness. As an immediate first step, **allow reasonable uses of technology** to facilitate more efficient documentation, reporting and compliance, including alternative software platforms that satisfy reporting requirements. We understand and appreciate the fiscal and technological constraints faced by the State. While progress has been made toward utilization of up-to-date technologies, it is important that the State take steps not only to update its own technologies but not to impede the use of more modern technologies by others that would expedite contract performance or reporting on technologies within the State system as well as externally. This is important because organizations that contract with the State are forced to work with the State computer systems, but often are not permitted to interface with the State system so the contracted entities are required to do double data entry. In addition, when entities are able to purchase newer technology they may not be permitted to use it because the State cannot work with the advanced technology.
- **Abandon requirement of faxed or handwritten reporting** in favor of **allowing encrypted electronic reporting** (e.g., critical incident reporting).
- **Accept electronic signatures and secure electronic filing** of reports and applications.
- **Embrace the use of current and emerging secure technology**, including increased use of Web portals, cloud technology, and modern electronic devices to facilitate quality programs and services, efficiency, transparency, and constructive communication.
- Direct the Office of Technology and Information Services (OTIS) to **develop or adopt a coordinated information technology platform** to support accountability, transparency, efficiency, safety, and value-added operations, in conjunction with end users such as departmental entities, providers and other community organizations, and other experts.
- **Invest in the capacity and health of New Jersey's non-profit and provider community by establishing a "Management Assistance Fund" to enable New Jersey organizations to access funds to secure technical assistance and other infrastructure support.**
Both the State and Federal government help to provide infrastructure support to targeted segments of the for-profit sector to increase productivity, create jobs and grow business to benefit the economy. Give the social and economic contributions of New Jersey's non-profit community, which employ nearly 10% of the state's private work force, it makes good sense to make more such opportunities available to non-profits as well. While some limited federal capacity building programs have been available in the past, many have been discontinued, and the dollars appropriated pale in comparison to the need for such infrastructure support. The creation of State and other funds to maintain and improve managerial support and infrastructure in the non-profit sector – like those already in existence for small businesses – would be a wise investment in and for New Jersey. It would be an investment that would help non-profits to run more effectively and efficiently in service to the people of our state.

We thank the Lieutenant Governor and the Red Tape Commission members and staff for the chance to work with you to improve the way we deliver vital programs and services to the people of our state. We look forward to continuing our constructive partnership.

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