

WISE GIVING™

GUIDE

BBB WISE GIVING ALLIANCE : SPRING/SUMMER 2017

Appealing to Your Better **Judgment:** Truthfulness in Fundraising





A Publication of the
BBB Wise Giving Alliance

The *Wise Giving Guide* is published three times a year to help donors make more informed giving decisions. This guide includes a compilation of the latest evaluation conclusions completed by the BBB Wise Giving Alliance.

If you would like to see a particular topic discussed in this guide, please email suggestions to give@council.bbb.org or write to us at the address below.

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For over 100 years, the Better Business Bureau has been dedicated to advancing marketplace trust. Part of this mission is a tradition of encouraging truthfulness in advertising, which spills over into the legacy of BBB's Give.org, especially in our work examining truthfulness in charity solicitations. As the charitable giving landscape evolves, BBB's Give.org continues to scrutinize direct mail appeals while keeping abreast of newer methods of solicitation that have emerged in the digital age.

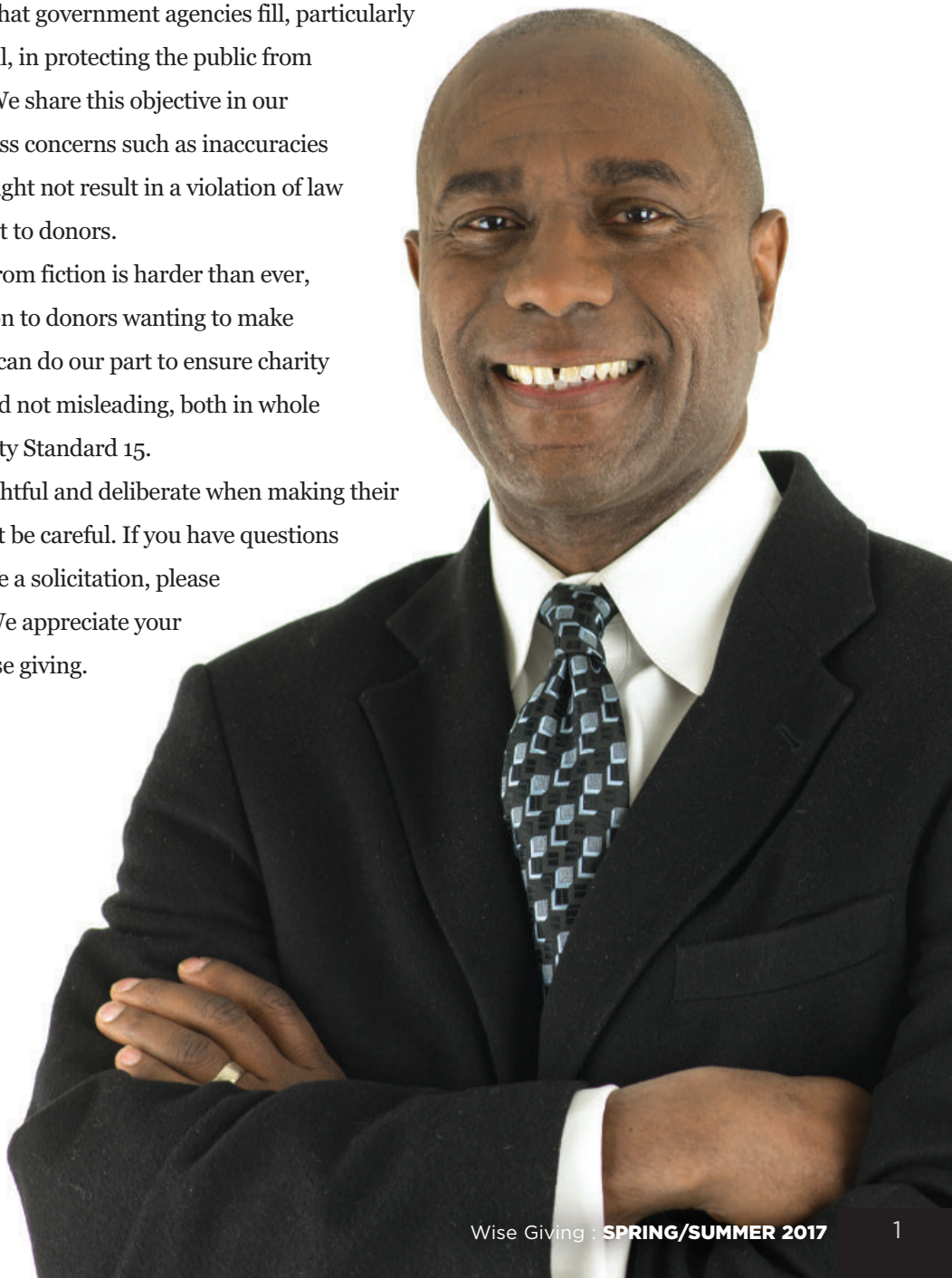
As a corollary to our discussion of assessing the truthfulness of charity appeals, we also recognize the important role that government agencies fill, particularly the state offices of the attorney general, in protecting the public from fraudulent fundraising solicitations. We share this objective in our evaluations of charities but also address concerns such as inaccuracies and misleading circumstances that might not result in a violation of law but fall short of being fully transparent to donors.

In a time when deciphering fact from fiction is harder than ever, BBB's Give.org continues its dedication to donors wanting to make sense of charity appeals. We hope we can do our part to ensure charity solicitations are "accurate, truthful and not misleading, both in whole and in part," as outlined in BBB Charity Standard 15.

We encourage donors to be thoughtful and deliberate when making their giving decisions. Be generous, but first be careful. If you have questions about a charity from which you receive a solicitation, please visit Give.org for more information. We appreciate your support and continuing interest in wise giving.



H. Art Taylor, *President & CEO*



Appealing to Your Better Judgment: Truthfulness in Fundraising

By Edward Loftin

In this edition of the *Wise Giving Guide*, we are calling for transparency and truthfulness from charities in their fundraising appeals to better enable donors to distinguish between those that give a clear picture of their organization's work and those that stretch the truth. First, we'll examine several landmark U.S. Supreme Court cases and their implications for protecting the giving public from bad actors. We then turn to cases of poor or deceitful practices, and take a deeper dive into scams. This edition also includes a section on the circumstances and vulnerabilities of younger donors. Finally, we'll show you what BBB Wise Giving Alliance (BBB WGA) does to ensure charities aren't "pulling the wool over your eyes," and we identify red flags to be aware of as you look through charity appeals.

Let's start at the top: Charity oversight by the Feds

Charities apply to the IRS to obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code. To date, the IRS has approved this status for over 1 million public charities in the U.S. but can revoke it if an organization abuses this privilege. This legal authority is an important tool in their traditional role of monitoring financial matters such as conflict of interest transactions and cases of private inurement, in which funds intended for public benefit are instead used for private gain.

While the IRS is generally viewed as the principal federal agency engaged in charity oversight, others are involved as well. The U.S. Postal Inspection Service can investigate charity fraud perpetrated via mail, telemarketing and the Internet. The Federal Trade Commission (FTC) role in consumer protection overlaps into charitable giving as well. The FTC can take legal action against for-profit entities, like professional fundraiser companies, or sham charities that make

material misrepresentations to donors. The FTC cohosted a conference with the National Association of State Charity Officials in Washington, DC on March 21, 2017. Entitled *Give and Take: Consumer, Contributions, and Charity*, the event included participation from a broad cross-section of the charity community, including BBB WGA, with topics such as motivations for charity giving, challenges for donors and regulators, and safeguarding donors against fraud and deception. The executive branch isn't the only arm of the federal government that impacts charitable fundraising; the Supreme Court's interpretation of the First Amendment has dramatically influenced state regulation over the past several decades.

The high court

A trilogy of U.S. Supreme Court cases during the 1980s limited state and municipal regulation of charity fundraising. The court opinions in *Village of Schaumburg v. Citizens for a Better Environment* (1980), *Joseph H. Munson Company, Inc. v. Secretary of State of Maryland* (1984), and *Randolph Riley v. National Federation of the Blind of North Carolina* (1988) all cited free speech protections in their decisions. The first two cases struck down the use of imposed percentage expenditure limits on fundraising by regulators, which ranged from 25 to 35 percent. In the third (Riley) case, the court held that states could not require professional fundraisers to tell potential donors, at their own initiative, what portion of collected contributions would be given to the cited charity.

In the 2003 case, *Madigan v. Telemarketing Associates*, the Supreme Court ruled that the precedent set in the 1980s trilogy did not provide a "blanket exemption from fraud liability for a fundraiser who intentionally misleads in calls for donations." The case involved the Illinois state attorney general charging telemarketers who worked on

behalf of a veterans' charity of civil fraud, alleging that the firm made misleading statements that gave an inaccurate impression about how donations would be used. While some charities sided with the telemarketing firm, others – including state attorneys general, the Solicitor General of the United States, AARP, and BBB WGA – supported Illinois' position to help give states more latitude to fight fraud and deception. BBB WGA, along with the Council of Better Business Bureaus, filed an *amicus brief* (friend of the court brief) in support of Illinois' position. Illinois won the case and state law enforcement agencies continue to address charity appeal issues, which is where we turn now.

Most troublesome features

Whether explicit deception or mild misrepresentation, deceptive fundraising practices are harmful to both donors and the intended targets of their goodwill. It's also against the law. In 2014, New York's Attorney General Eric Schneiderman, through an investigation by his state's Charities Bureau, announced that a \$24.6 million settlement was secured, which was "believed to be the largest amount of financial relief ever obtained in the U.S. for deceptive charitable fundraising." Although the parties to this settlement neither admitted nor denied the Attorney General's findings, the alleged abuses stemmed from the relationship with the Disabled Veterans National Foundation (DVNF) and its outside, for-profit direct mail vendors, Quadriga Art and Convergence Direct Marketing, and involved conflicts of interest and **misleading solicitations**. According to Schneiderman, the DVNF debacle illustrates the "most troublesome features of direct mail charitable fundraising," with fundraising firms "taking advantage of a popular cause and what was an unsophisticated start-up charity...." In a 2012 CNN report, in-kind goods provided by DVNF to a small veteran's charity included 11,520 bags of coconut M&M's® and 700 pairs of Navy dress shoes.

In the DVNF case, the lion's share of blame was targeted at the practices

of third-party fundraisers. Sometimes, however, charity leadership itself is responsible for knowingly betraying donor trust. In 2015, Cancer Fund of America and three other cancer charities run by James T. Reynolds, Sr., his family, and friends, were charged with scamming donors out of over \$187 million between 2008 and 2012. A Cancer Fund of America fundraising appeal during this period had two pennies glued to the letter. This appeal states, "You see, all of our funds are committed to the thousands of elderly and financially challenged cancer patients throughout the United States we currently assist." The two pennies enclosed, the appeal explains, were to "grow into something much bigger," but according to the FTC, professional fundraisers "often received 85 percent or more of every donation." Only about 3% of donations to the four charities were used for program expenses, while Reynolds and his cohorts had high salaries and used charity funds for concert tickets, dating services, and trips to Disney World® and the Caribbean.

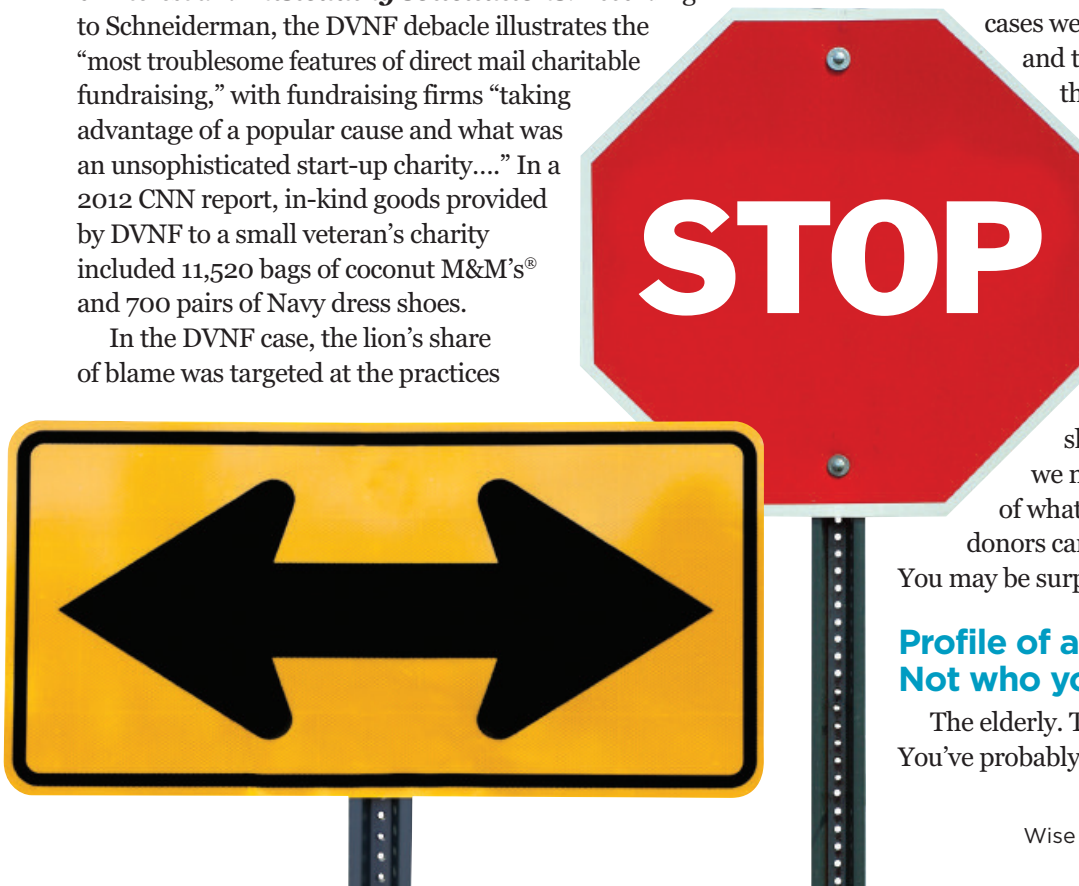
In what is commonly thought to be "the largest joint enforcement action ever undertaken" by the Federal Trade Commission and state charity regulators, two of the Reynolds' charities, Children's Cancer Fund of America and The Breast Cancer Society, settled in May 2015, with Cancer Fund of America and Cancer Support Services being dissolved in March 2016. According to the FTC, James Reynolds, Sr. along with three members of the sham charity leadership, including James Reynolds II, were, "banned from fundraising, charity management, and oversight of charitable assets...."

The results in the DVNF and Reynolds' cases were certainly victories for donors and the governments prosecuting the crimes. However, not all fundraising firms or charities are going to come under legal scrutiny. A common complaint among state charity regulators is a lack of funding and resources. As governments face limitations on how much protection they can offer the public from shady fundraising practices, we need to develop a better picture of what a scam victim looks like so donors can help protect themselves.

You may be surprised about what we found.

Profile of a scam victim: Not who you would think

The elderly. The uneducated. The poor. You've probably heard these stereotypical



demographic traits of scam victims before. However, *Cracking the Invulnerability Illusion: Stereotypes, Optimism Bias, and the Way Forward for Marketplace Scam Education*, produced in 2016 by the BBB Institute for Marketplace Trust, goes a long way to dispel this mythology. As defined in an article appearing in *Crime & Delinquency* (Titus, R.M., Heinzelmann, F., & Boyle, J.M. 1995, *Victimizations of Persons by Fraud*, (41)(2), 1-33), a scam is “the deliberate intent to deceive with promises of goods, services, or other financial benefits that in fact do not exist or that were never intended to be provided.” The results of a 2016 BBB survey of over 2,000 adults in the U.S. and Canada showed that **perceptions of the traits of scam victims** are perhaps what you would expect. For example, survey participants overwhelmingly *perceived* that individuals with the following traits — retired, female, older than 65, and with no high school education — were more likely than male students under 35 with a college degree to be the victim of a scam. Perhaps most striking of all, 83% of respondents **believed someone other than themselves was more likely to be victimized by a scam**, confirming an optimism bias or an individual’s belief that they are at less risk of experiencing negative events than others.

The data, on **which individuals are actually more likely to be victimized by a scam**, as you may have guessed, do not jibe with perception. Survey respondents under the age of 35 were far more likely than older respondents to report losing money to a scam. The least likely to report a loss? Those over age 65. So much for perception. Education level does not seem to be an accurate predictor of scam vulnerability either, as respondents with an advanced degree were overrepresented in the group that lost money to a scam, while those with a high school education were less likely to have reported a loss.

BBB Scam Tracker

In the fall of 2015, BBB unveiled BBB Scam Tracker, a crowdsourced online tool that collects scam and fraud data reported by users in the United States and Canada. The tool provides an interactive “heat map” by which users can locate reports from other users, and potentially avoid falling victim to shady activities already reported. The BBB Institute for Marketplace Trust’s *2016 BBB Scam Tracker Annual Risk Report* will hopefully prove useful for law enforcement, policymakers, consumer advocates and educators.

BBB Scam Tracker can also be useful for tracking charity scams, which the *Annual Risk Report* points out are particularly prominent in the wake of a natural disaster or other tragedy. There have been more than

500 alleged charity scams reported to BBB Scam Tracker since the application launched in 2015, with 20% related to scams supposedly aiding police, firefighters, or veterans. The most common scam attempt was a telemarketing scam, and the median lost income during the same time period was \$110. The BBB Scam Risk Index shows that scam susceptibility decreases with age while the average amount lost increases. The findings from *The Invulnerability Illusion* and the *2016 Risk Report* make a strong case for taking a closer look at younger donors and the circumstances that make them vulnerable to scams.

The younger donor

Younger, less-experienced donors need to be cautious when responding to appeals, especially in light of relatively new technologies and the multichannel fundraising approach now favored by charities, that enable a charitable gift with a few swipes and clicks. While convenient, easy access to charity websites, crowdfunding sites, and text messaging can lead to impulse giving. Nielsen.com reported in 2016 that 98% of millennials aged 18-24 and 97% of millennials aged 25-34 own smartphones, with Facebook being the app with the highest “active reach” among adults. Constant connection to peers and organizations through social media is the norm for young adults, but fundraising appeals shared by friends on Facebook need to be treated with the same skepticism as direct mail.

Crowdfunding is popular among young adults, and can be an effective tool for raising money online for almost any purpose. However, making a gift designated for a specific individual, whether helping someone cover medical expenses or jumpstarting an art project, is generally not deductible as a charitable contribution. Some platforms are explicitly for charity projects, such as GlobalGiving (which funds projects around the world to address poverty, education, health and other issues) and DonorsChoose (which funds classroom projects), but donors should be cautious of crowdfunding appeals from unknown sources that imply tax deductibility.

The same logic applies to viral campaigns. Success stories such as the Ice Bucket Challenge, which helped raise over \$100 million for legitimate ALS charities in 2014, demonstrate the potential of this medium. However, viral popularity does not ensure that charities are on the up and up.

Blackbaud Institute’s *2015 Charitable Giving Report* shows that online giving rose by 9.2% in 2015, while overall giving only increased by 1.6%. Young donors with smartphones and tablets are likely to continue to give online, and many of the appeals they receive will be electronic. Unfortunately, scammers know this too.

The good news is that technologically adept, younger donors can vet charity appeals just as easily as they can update their status on social media. Whether appeals come via text, email, or social media, young donors should take the time to visit charity websites and Give.org to help ensure trustworthiness before giving.

How we help protect you

BBB Charity Standard 15 is the primary tool used by the BBB WGA to help protect donors from misleading fundraising appeals, calling for solicitations and informational materials to be “**accurate, truthful and not misleading, both in whole and in part.**” BBB WGA asks detailed questions about fundraising methods and charitable solicitations, and often requests copies of appeals for further review. A recent example comes from the evaluation of a charity whose appeals included a heartrending story of an elderly homeless widow to persuade donors to give to the organization. When we requested updates on the individual and the age of the story used in the appeal, the charity responded that the story was 15 years old and that it had lost track of the person. BBB WGA reached the conclusion that ***the charity did not meet Standard 15 because the appeal was misleading.*** Over the years, we have uncovered appeals that exaggerate the financial need of the organization, some claiming “critical” and “emergency” situations, and “matching gift” appeals that falsely claim donations will be doubled.

Whether you’ve been giving to charities for decades but don’t know Facebook from FaceTime, or you’re a digitally adept Millennial whose only experience with giving is dropping a couple of bucks into a barista’s tip jar, knowing what to look out for can help you avoid falling victim to scam and ensure that your generosity is in the hands of someone you can trust. First and foremost, if you have a “bad feeling” about any fundraising appeal – whether it be a direct marketing letter, a suspect email, or a link shared by a high school friend on social media – remember that you are ***never obligated*** to support any cause or organization.

As we have seen, all branches and levels of government are involved in regulating charities and/or fundraising firms. Give.org, which features the holistic *BBB Standards for Charity Accountability*, also helps

donors by providing an easily accessible resource to quickly find out which groups are BBB Accredited Charities, don’t meet all of the BBB Standards, or fail to disclose information. With a little knowledge, however, donors can help themselves transition from “passive” recipient, overwhelmed by appeals, to an “active” donor able to differentiate the good, the bad, and the ugly of charity solicitations or potential scams. Trusting your instincts is one thing, but pairing your “gut feeling” with knowing what to look for can help donors of any age or demographic avoid becoming a victim. ■



POTENTIAL RED FLAGS IN CHARITY APPEALS:

- Exaggeration of financial need
- Sweepstakes appeals that imply exaggerated chances of winning
- Use of stories without dates specifying when the events occurred
- Solicitation letters that look like invoices
- Telemarketers pressuring donors to make “on-the-spot” donations
- Envelopes that mimic something other than a solicitation
- Crowdfunding campaigns that appear immediately after a tragedy or disaster