



# HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

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## **State Ethics Commission Staff Recommendation** **Regarding Fundraising for Private** **Charities in State Offices**

**December 9, 2014**

The State Ethics Commission (the “Commission”) construes the State Ethics Code to allow state agencies to use their resources, including facilities and personnel, to fundraise for Aloha United Way (“AUW”) and for a very limited number of other charitable organizations. Except in very rare instances, state employees cannot use their agencies’ resources to support other private charities.

In response to recent and increasing questions and complaints about fundraising in state offices to support private charities, Commission staff (“Staff”) believed that it was timely and appropriate for the Commission to re-examine how it applies the State Ethics Code to fundraising and to consider whether the State’s current workplace fundraising program, the AUW campaign, is consistent with the underlying purpose of the State Ethics Code.

To more thoroughly consider the issues, including the reasons for and against allowing state employees to use agency resources to support and fundraise for private charities, Staff invited a number of state employees, members of public interest groups, and others (collectively, the “Group”) to participate in a series of discussions.<sup>1</sup> The Group considered the AUW campaign and the Combined Federal Campaign (“CFC”), the workplace fundraising program for federal employees. Staff also reviewed and

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<sup>1</sup> The Group included Amy Luke, Executive Assistant to the Chief of Staff, Office of the Governor; Hugh Jones, Deputy Attorney General, Tax & Charities Division, Department of the Attorney General; Keith Yamamoto, First Deputy Director, Department of Health; Judy Nagasako, Educational Specialist, Corporate and Community Partnerships, Communications and Community Affairs Office, Department of Education; Ruth Silberstein, Kaimuki-McKinley-Roosevelt Complex Area Superintendent, Department of Education; Presley Pang, Associate General Counsel, Office of Vice President for Legal Affairs and University General Counsel, University of Hawaii System; Tammy Mori, Communications and Community Relations Director, Judiciary; Chuck Totto, Executive Director and Legal Counsel, and Laurie A. Wong, Associate Legal Counsel, City and County of Honolulu Ethics Commission; Kevin Nakata, Union Agent, Hawaii Government Employees Association; Lisa Maruyama, President and Chief Executive Officer, and Nikki Love Kingman, Public Policy Director, Hawaii Alliance of Nonprofit Organizations (HANO); Barbara Polk, Interim Board Chair, Common Cause Hawaii; Sherry Menor-McNamara, President and CEO, Chamber of Commerce of Hawaii; and Melissa Pavlicek, President, Hawaii Public Policy Advocates. Both houses of the State Legislature, the Hawaii State Teachers Association, and the United Public Workers were also invited to participate but declined to send representatives to the meetings.

compiled information about other states' workplace fundraising programs and provided this information to the Group.<sup>2</sup>

As explained below, it is Staff's opinion that the current workplace fundraising program creates a significant advantage for one private charity, AUW.<sup>3</sup> That advantage appears contrary to one of the State Ethics Code's underlying and foundational tenets: state employees cannot use their positions to give an unwarranted advantage or preferential treatment to a private organization, including a charity. If state employees can fundraise in their state offices to support private organizations, the State Ethics Code requires that the playing field be "level." Staff believes that private charities should be given reasonably equal access to solicit donations from state employees. Accordingly, Staff recommends that the Commission formally propose a new workplace fundraising program model, as described herein, which allows all qualified private charities to compete more equally for donations from state employees.

## **I. The State Ethics Code and the AUW Campaign**

### **A. "Fair Treatment" Under the State Ethics Code**

The State Ethics Code, which is mandated by the State Constitution,<sup>4</sup> establishes a code of conduct for all state employees.<sup>5</sup> It reflects the minimum standards of conduct that every employee must adhere to in order to preserve the public's confidence in state government.<sup>6</sup> The Commission is explicitly directed to liberally construe the law to promote high standards of ethical conduct.<sup>7</sup> It is within this context that Staff reviewed the issue of workplace fundraising.

The key provision of the State Ethics Code that is relevant to the question of workplace fundraising is the "fair treatment" law. The fair treatment law prohibits an employee from using the employee's state position to give the employee or others an unfair advantage or preferential treatment. It also explicitly prohibits an employee from using state resources for private business activities. Specifically, in relevant part, the statute provides:

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<sup>2</sup> The Group met five times between June and September, 2014. Staff thanks the members of the Group for their dedication and assistance in this project. The issues that the Group considered were numerous and complex; many issues invoked passionate and thoughtful discussion.

<sup>3</sup> Staff believes that the fundraising activities involving students from Department of Education schools are different and legally distinguishable from the employee workplace fundraising program discussed herein. For this reason, Staff recommends that the Commission consider student-based fundraising for private charities separately.

<sup>4</sup> Hawaii Constitution, Art. XIV.

<sup>5</sup> The State Ethics Code applies to state legislators, state officials and state employees (collectively "employees"). HRS section 84-2. State judges and justices are not subject to the State Ethics Code.

<sup>6</sup> HRS chapter 84, Preamble.

<sup>7</sup> HRS section 84-1.

No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

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- (3) Using state time, equipment or other facilities for private business purposes.<sup>8</sup>

The term “business” is defined to include both for-profit as well as non-profit organizations, which includes private charities.<sup>9</sup>

In the context of fundraising in the workplace, on its face, the “fair treatment” law prohibits state employees from using agency resources, which include state facilities and personnel, to support or fundraise for a private charity. Despite the literal language of the fair treatment law, the Commission has construed the law as allowing one significant charitable fundraising effort, the AUW campaign.

#### **B. Application of the State Ethics Code to the AUW Campaign**

In 1976, the Commission considered whether the State’s program to raise funds for AUW was consistent with the State Ethics Code.<sup>10</sup> More specifically, the Commission was asked whether it was appropriate for employees, during their work hours, to organize and oversee their respective state agency’s fundraising to support AUW.

At the time, the Governor had directed agencies to commit state resources to support an employee fundraising campaign for AUW. The Commission concluded that AUW was an organization with “broad-based community support” and specifically noted that AUW’s “annual solicitation program involved participation by many segments of the community.” The Commission believed that, based on the community-wide support of AUW, fundraising for AUW was “public business.” Because the fair treatment law only prohibited the use of state resources for “private business” purposes, the Commission concluded that the State Ethics Code did not prohibit the State from using its resources to support employee fundraising for AUW.

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<sup>8</sup> HRS section 84-13.

<sup>9</sup> “‘Business’ includes a corporation, a partnership, a sole proprietorship, a trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.” HRS section 84-3.

<sup>10</sup> Opinion No. 245 (dated March 19, 1976).

Consistent with the 1976 opinion, the Commission has interpreted, and continues to interpret, the fair treatment law to allow the State to commit resources to support and fundraise for AUW through its annual workplace fundraising program. The Commission also has construed the statute to permit the State's use of its resources, both facilities and personnel, to support and fundraise for several other private charities: Hawaii Foodbank, Blood Bank of Hawaii, March of Dimes, and the Troy Barboza Law Enforcement Torch Run, which benefits the Special Olympics Hawaii.<sup>11</sup> In each instance, the Commission reasoned that the then-Governor had determined that support of these charities served a state or "public business" purpose. Consequently, the fair treatment law did not prohibit the use of state resources to fundraise for these charities.

## **II. Workplace Fundraising Programs**

The AUW fundraising campaign is one example of a workplace giving campaign. There are several alternative models. With the assistance of the Group, Staff reviewed these models and compared them to the AUW model.

### **A. The State's Annual AUW Workplace Fundraising Campaign**

#### **1. Aloha United Way and the Neighbor Island United Ways**

Staff reviewed the general fundraising practices of the AUW State campaign and related United Way campaigns. Staff spoke to Norm Baker, AUW's Chief Operating Officer and Vice President, Community Impact; Jeanine Atebara, Hawaii Island United Way's President and Chief Professional Officer; Laksmi Abraham, Maui United Way's President and Chief Professional Officer; Scott Giarman, Kauai United Way's Executive Director; and Karen Holt, Friendly Isle United Fund (Molokai)'s Executive Director, to understand their respective organizations' structure and the current state employee giving campaign.

The annual AUW campaign is the existing state employee giving campaign. AUW characterizes itself as "a change agent that improves lives by addressing the community's most pressing needs in early childhood education, poverty prevention and homelessness, and health and human services."<sup>12</sup> AUW serves as a fundraiser for local charities, most of which are AUW "partner agencies."<sup>13</sup> The AUW's Donor Choice Program allows donors to direct their donations to any of these partner agencies. When this occurs, the designated partner agency receives 100% of the donation. AUW does not take a percentage of these directed donations. According to AUW, all non-profit

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<sup>11</sup> Hawaii Foodbank, March of Dimes, and Special Olympics Hawaii are AUW "partner agencies" and also may receive donations through the AUW campaign.

<sup>12</sup> <https://www.auw.org/who-we-are/>.

<sup>13</sup> Over 1,400 companies and organizations, including the State, run fundraising campaigns for AUW. <https://www.auw.org/help/campaign/>.

organizations on Oahu that meet certain basic criteria are eligible to be an AYW partner agency.<sup>14</sup> Except in extreme cases, AYW does not exclude a charity on the basis of its mission or purpose. Charities must reapply each year to be partner agencies. Currently, there are approximately 214 partner agencies.

Although the AYW fundraising campaign includes the Donor Choice program, which allows donors to designate a specific partner agency as a recipient, most donors do not avail themselves of that option. The amount of undesignated donations received far exceeds the amount of designated donations.<sup>15</sup> In 2013, AYW reported receiving \$9,163,742 in donations from its fundraising campaigns, including the State campaign. Approximately two-thirds of this amount was undesignated.

AYW takes a percentage of the undesignated donations to fund its overhead costs.<sup>16</sup> The remaining amount is distributed to charities selected by AYW. AYW selects charities that provide services on Oahu in the areas that AYW believes the community is most interested in supporting.<sup>17</sup> Those areas, which AYW calls “impact areas,” currently are: (1) education; (2) poverty prevention; and (3) safety net.<sup>18</sup> Any charity that provides services in an impact area, whether or not it is a partner agency, may apply to receive these funds. Applications are reviewed by teams of community volunteers who determine whether to fund the applicant’s program and the amount of financial support to award to the applicant.

The communities on the islands of Hawaii, Maui, and Kauai each have their own United Way organization.<sup>19</sup> Although affiliated with the same international United Way, each neighbor island United Way operates independent of AYW. In some aspects, they are more restrictive than AYW. For instance, Hawaii Island United Way and Maui United Way partner only with charities that provide services in the areas of education, income sustainability, and health. Kauai United Way partners only with charities that provide services relating to health and human welfare.

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<sup>14</sup> In order to qualify, an applicant must be a non-profit organization; have revenues of over \$25,000 for each of the three preceding years; have a physical local presence on Oahu; and be registered and in good standing with the Department of Commerce and Consumer Affairs and the Department of the Attorney General. In addition, AYW reviews an applicant’s most recent financial audit and IRS Form 990.

<sup>15</sup> For purposes of this discussion, the donations that AYW through the Donor Choice program are referred to as “designated” donations. Donations that are not earmarked for a specific partner agency are referred to as “undesignated.”

<sup>16</sup> In 2013, AYW reported overhead costs of 18.1%.

<sup>17</sup> AYW, itself, does not provide services in the areas that it believes the community supports. Rather, AYW provides funding for other charity’s programs using the donations that it receives.

<sup>18</sup> Safety net programs help the most at-risk people in the community who are experiencing crisis or emergencies and having immediate need of assistance.

<sup>19</sup> Molokai has a private charity similar to AYW called Friendly Isle United Fund, sponsored by the Molokai Community Service Council. Staff was advised that the Friendly Isle Fund is a member of the statewide association of United Way agencies.

## **2. The Annual Solicitation of State Employees**

Each year, the State supports AYW's campaign by allowing and helping AYW to solicit donations from state employees using state personnel and resources during state work hours. Prior to the fundraising campaign period, which is generally from August to October,<sup>20</sup> agencies are asked to designate one or more of their employees to serve as the agency's "AYW coordinator." The agencies' AYW coordinators attend AYW campaign meetings during work time and are generally responsible for their respective agencies' AYW campaign.<sup>21</sup> The AYW coordinators are provided with pledge forms that must be distributed to each agency employee, as well as suggestions on how to generate more donations, such as "Campaign FUNrai\$er Ideas."

During the fundraising campaign period, AYW solicits employee donations and encourages employees to organize fundraising activities to benefit AYW, including bake sales, silent auctions, and contests. Employees make monetary donations through the State pledge form, indicating their "TOTAL PLEDGE" in the middle part of the form.<sup>22</sup> Donations can be by cash or check, credit card, automatic bank transfer or payroll deduction. At the bottom of the pledge form is an "OPTIONAL DONOR CHOICE" section, which allows employees to direct their donations to: (A) AYW Community Care Fund, (B) AYW "programs",<sup>23</sup> (C) AYW Community Needs;<sup>24</sup> (D) Neighbor Island Care;<sup>25</sup> and (E) Agency/Program Support.<sup>26</sup> If the employee does not direct his or her donation through the Optional Donor Choice selection to one of the eligible programs or

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<sup>20</sup> Campaign periods vary from island to island. The Oahu campaign runs from August 5-September 30; Kauai runs from August 15-October 31; Maui runs from August 19-October 31; the Big Island runs from August 27-October 31.

<sup>21</sup> The AYW coordinators receive a "Campaign Coordinator Toolkit" from AYW which describes "keys to running a successful [AYW] campaign." The Toolkit explains the AYW coordinator's responsibilities, such as developing an effective campaign plan, recruiting other employees to assist in raising funds, coordinating the agency's kick-off and mahalo events, educating co-workers, and encouraging co-workers to donate.

<sup>22</sup> A copy of the 2014 State Pledge Form is Attachment "A".

<sup>23</sup> AYW programs include its "211 Information and Referral Service," which is a confidential telephone service that helps connect people who need help with the appropriate governmental, non-profit or human service provider, and its "Get Connected/Gifts-in-Kind" program, which connects the community with volunteer opportunities and non-profit organizations with gently used items.

<sup>24</sup> Community Needs are the "impact areas" described above that AYW has determined the community believes needs the most support. Those areas are education, poverty prevention, and safety net.

<sup>25</sup> A donor is able to designate donations to AYW, Friendly Isle United Fund (Molokai), Hawaii Island United Way, Kauai United Way and Maui United Way. There is a minimum donation of \$48 per island charity.

<sup>26</sup> An employee wishing to direct his or her donation to a specific charity must insert the charity's unique "Code #" from the list of codes available on the AYW website. There is a minimum donation of \$48 per designated charity.

charities, the donation is considered “undesigned” and becomes a general donation to AUW.

AUW supports only Oahu-based non-profit organizations, meaning that the undesigned donations received by AUW are used to fund programs directed to and benefiting Oahu residents. The AUW campaign, however, allows employees to direct donations to the neighbor island United Way organizations, the Friendly Isle United Fund, as well as a limited number of neighbor island non-profit organizations through AUW’s Donor Choice program.<sup>27</sup>

In 2013, AUW received approximately \$849,000 from the State campaign. Although Staff was not provided with the proportion of undesigned to designed donations, Staff assumes that roughly two-thirds of the donations were undesigned. This assumption is based on the fact that of the total amount received by AUW in all of its 2013 fundraising campaigns, approximately two-thirds of the donations were undesigned.

## **B. The Combined Federal Campaign**

Nita Yates, Director of the Hawaii-Pacific Area Combined Federal Campaign,<sup>28</sup> provided information to the Group about the CFC, which is the federal government’s annual workplace fundraising program for its employees.<sup>29</sup> Among other things, Ms. Yates explained how the CFC is managed, the application process for private charities to be eligible to receive donations from the campaign, and the CFC’s strong preference for employees to designate the specific charities that they intend their donations to support.

The CFC generally runs from September 1 through December 15. During this period, federal employees can use federal resources to fundraise for qualified private charities. No charitable solicitations in federal offices are allowed outside of the campaign period.

According to Ms. Yates, the Hawaii-Pacific Area CFC (the “Local Campaign”) is managed by AUW. AUW provides the administrative support to the Local Campaign

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<sup>27</sup> Staff understands that, for employees working on Oahu wishing to donate to a neighbor island non-profit organization, the Donor Choice program allows direct donations to: (1) one of the neighbor island United Way organizations; (2) Friendly Isle United Fund; and (3) a limited number of neighbor island non-profit organizations. The program also allows a neighbor island employee to donate to AUW; however, it does not allow an employee working on a neighbor island to direct his or her donation to other Oahu non-profits.

<sup>28</sup> The Hawaii-Pacific area includes Hawaii, Guam, Northern Marianas, and American Samoa.

<sup>29</sup> The CFC was created in 1961 through Executive Order by President John F. Kennedy. Today the campaign raises over \$200 million each year for charities across the United States.

under a contract with the federal Office of Personnel Management.<sup>30</sup> The Local Campaign employs Ms. Yates and another fulltime program coordinator and has an annual budget of \$320,000 to \$350,000.<sup>31</sup> The Local Campaign's expenses are paid, pro rata, by the charities that receive donations through the Local Campaign.<sup>32</sup>

The intent of the CFC is to create an "all-inclusive" fundraising program that allows non-profit organizations, without regard to mission, to be eligible to receive donations from federal employees. Non-profit organizations that wish to be eligible to receive donations from the Local Campaign, annually, must submit an application, a recent audit, and the organization's IRS Form 990.<sup>33</sup> Moreover, to be eligible, a non-profit organization must have an office in the Hawaii-Pacific area. A committee comprised of volunteer federal employees reviews the applications and determines whether the non-profit applicant should be included in the Local Campaign. In 2014, the Local Campaign included approximately 2,800 eligible non-profit organizations.<sup>34</sup>

Ms. Yates emphasized that a primary goal is to create a "level playing field" that allows all of the eligible charities to compete equally for federal employee donations. During the campaign period, a federal agency may allow its employees to use federal resources for activities, such as bake sales and car washes, to raise funds for a particular charity. However, if it does so, it must allow its employees to use similar resources to fundraise for other eligible charities.<sup>35</sup> Similarly, to avoid favoritism or the appearance of favoritism, an agency that requests a speaker does so through the Local

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<sup>30</sup> AUW, as the campaign's Principal Combined Fund Organization, is responsible for supporting the Local Campaign's designated campaign chair and planning team, training volunteers, preparing campaign materials, administering the day-to-day operation of the campaign and serving as its fiscal agent. AUW also is responsible for disbursing the campaign receipts.

<sup>31</sup> According to the Local Campaign, its overhead costs are approximately 6% of the total donations that the campaign generates. The national average of other local campaigns' overhead costs is approximately 10%. In 2013, the actual overhead costs were \$302,451.

<sup>32</sup> The amount of the Local Campaign's expenses that a particular charity pays is based on the percentage of the donations that charity received relative to the total donations under Local Campaign. For example, if Charity A receives .032% of all of the designated donations, it reimburses .032% of the costs of the campaign.

<sup>33</sup> The application period for the Local Campaign is from March 1 through March 31 of each year. As described, the application process to be eligible to receive donations through the Local Campaign is more rigorous than the process to be an AUW partner agency. For instance, the Local Campaign's application process requires smaller charities to submit "pro forma" IRS Form 990s since, because of their size, they may file "short form" versions with the IRS. In contrast, Mr. Baker remarked that, if it takes more than 15 minutes to complete the AUW application, the charity is doing something incorrectly.

<sup>34</sup> The Universal Giving program of the CFC also allows donors to designate any charity participating in the CFC, no matter where it is physically located.

<sup>35</sup> According to Ms. Yates, the Local Campaign generally recommends that fundraising events should not be held to benefit a specific charity; rather, the Local Campaign encourages federal employees to use events to raise "undesignated" donations. As explained below, the charities receiving donations through the Local Campaign receive their pro rata share of the undesignated donations.



Campaign's "Speakers' Bureau." The Speakers' Bureau arranges for speakers from different "randomly" selected charities to address the agency's employees. This method is intended to ensure that all of the charities have a similar opportunity to inform federal employees about their organizations.

Employees cannot be coerced into donating through the Local Campaign. Supervisors may not solicit donations from subordinates. In addition, federal agencies are not permitted to set a 100% participation goal or include an employee's name on a list of those who have or have not donated to the Local Campaign.

The Local Campaign strongly encourages employees to direct their donations to a designated organization. Over 97% of the donations are designated to specific non-profit organizations. The donations that are undesignated are distributed, pro rata, to the organizations that received directed donations. For example, if a charity received 12% of the total donations from the Local Campaign, the charity would receive 12% of the undesignated donations; if a charity did not receive any donations, it then would not receive any of the undesignated donations. In 2013, federal employees pledged approximately \$5,068,403 through the Local Campaign.<sup>36</sup>

### **C. Combined Fundraising Campaigns in Other States**

Approximately 45 states have adopted a "combined campaign" for their respective workplace fundraising campaigns.<sup>37</sup> These combined campaigns are state programs that are overseen by a state agency. They operate in a manner similar to that of the CFC. Like the Local Campaign, states generally contract with a private organization, such as AUW, to administer their workplace fundraising campaigns. The campaigns are funded by the donations received. Generally, the managing organization will front the costs of the campaign and reimburse itself from the donations received.

Although they tend to be broadly inclusive of charities, some states restrict eligibility to those organizations that provide services in a particular area. For example, some state programs include only charities that serve health and human welfare; some programs exclude organizations with religious missions or charities that engage in lobbying activities; some states allow only "umbrella" charities, i.e., organizations with a certain number of member charities, to be part of the campaign. The majority of states require some proof of a non-profit organization's "legitimacy" and financial responsibility. For example, eligibility may be restricted to non-profit organizations that are registered within the state and spend no more than 15% of their revenues on operating expenses.

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<sup>36</sup> Of the total amount pledged, \$4,925,534 was directed to specific charities by the federal employees giving through the campaign. Only \$143,324 of the donations was undesignated. AUW is one of approximately 2,800 non-profit organizations that federal employees can direct their donations to support. In 2013, AUW and its partner organizations received \$1,036,246 through the Local Campaign.

<sup>37</sup> Through internet research, Staff was unable to discover combined campaigns in: Arkansas, Nevada, and North and South Dakota

Notwithstanding the different requirements, the state campaigns are generally structured similar to the Local Campaign in that they create an equal opportunity, i.e., a “level playing field,” for the participating charities. The state campaigns also appear to encourage their employees to direct their respective donations to a specific organization. Like the Local Campaign, states appear to distribute “undesignated” donations to the participating charities.

#### **D. Washington State’s Workplace Fundraising Campaign**

The Washington State campaign is a combined campaign that is unique in its heavy reliance on a web-based giving mechanism. The Washington State Combined Fund Drive (“CFD”) is a state program managed through the Office of the Secretary of State. The CFD allows employees to donate to eligible non-profit organizations primarily through a state-managed website. Participating charities pay the administrative expenses proportionate to the donations that they receive. In 2013, the administrative costs totaled approximately \$537,000, which was approximately 11% of the total donations through the CFD.

The CFD, generally, allows any 501(c)(3) organization that is registered with the State of Washington to be eligible to receive donations. Much like the AUW campaign, the CFD encourages employee coordinators to raise donations through events, like bake-offs, silent auctions and contests, during work hours and using state resources. One key difference between the CFD and the AUW campaign, and similar combined campaigns, is that, through its website, the CFD operates year round.

State employees can access the CFD website at any time to donate to the CFD or to a designated charity. The CFD website provides basic information about each of the participating charities. There are almost no restrictions on eligibility and the CFD does not review or assess the participating charities. Under the program, employees are responsible for assessing the charities’ missions and for determining which organizations they intend their respective donations to support.

Through its website, the CFD allows both one-time donations as well as recurring donations through payroll deductions. Contributions are collected each pay period and deposited in an interest-bearing CFD account maintained by the State Treasurer. The donations are then distributed quarterly to the designated charities or to the “non-specified” Friends of CFD fund, net of the actual administrative expenses for the particular quarter.<sup>38</sup>

### **III. Commission Staff’s Recommendations**

Staff reviewed these government employee fundraising programs in the context of the State Ethics Code. Giving consideration to the language and intent of the State Ethics Code, Staff identified a number of factors and other considerations that Staff

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<sup>38</sup> In 2013, Washington State employees donated approximately \$4,523,000 through the CFD to specific charities; approximately \$339,000 was “unspecified” and was received by the Friends of the CFD fund.

believes are important in determining the most appropriate workplace giving program for the State.<sup>39</sup> (1) the primary purpose of the State's workplace fundraising program; (2) whether the program should create a "level playing field" that allows non-profit organizations similar opportunities to solicit employee donations; (3) non-coerciveness; (4) ease of administration/no net cost to the State; and (5) exceptions to the fundraising program.

#### **A. Purpose of the State Workplace Fundraising Program**

Staff suggests that a fundamental question in determining the most appropriate workplace giving program is:

What is the primary purpose of an employee fundraising campaign?

The answer to that question likely provides direction as to the type of workplace giving program that is appropriate for the State, i.e., whether it is the current AUW campaign or whether a combined campaign-type model should be considered.<sup>40</sup>

From its research, Staff suggests that there appear to be two established approaches to workplace fundraising programs:

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<sup>39</sup> An initial question considered by Staff was whether state resources should ever be used to support a private charity. Several members of the Group believed that an employee fundraising program is not and should not be the official business of the state. They reasoned, among other things, that a workplace fundraising campaign is disruptive and interferes with the agency's statutory duties. Moreover, employees are able to support private charities outside of the workplace.

Although the concerns about state employee fundraising campaigns are reasonable and may be widely shared, Staff believed that such a position would likely have little political support and is unlikely to be adopted by the State. Government employee fundraising programs are ubiquitous throughout the nation and appear to be generally accepted as being part of government's legitimate functions, i.e., support of private charities. But, see, for example, Advisory Opinion No. 199, issued March 2010, by the Nebraska Accountability and Disclosure Commission, prohibiting firefighters from using duty time or other government resources to participate in the Muscular Dystrophy Association's "Fill the Boot" campaign. Staff does not suggest that the Commission reconsider its opinion regarding the AUW campaign or recommend that workplace fundraising be prohibited in the future.

<sup>40</sup> The Commission is not empowered to dictate the purpose of the State's employee giving program. The Commission's authority is limited to those powers specifically conferred in the State Ethics Code and the State Lobbyists Law, HRS chapter 97. In Staff's view, important policy decisions that affect every state employee, which include the purpose of the State's workplace giving program, are appropriately made by the Governor.

Staff, however, suggests that the Commission can and should provide relevant and necessary information, as well as a recommendation, to the Governor for his consideration in determining the appropriate workplace giving program for the State. Staff believes that it is important that the Governor be informed of the State Ethics Code, its underlying purpose, and the current application to the AUW campaign should he decide to review the current program.

- (1) To facilitate donor giving to a “clearinghouse” type organization which then determines which organizations to support; or
- (2) To facilitate donor choice.

The general intent of a workplace giving program under either approach is similar: to encourage philanthropy and to provide a mechanism for employees to improve the quality of life for all residents. Under both approaches, employee donations are tax-deductible and can be accomplished through payroll deductions, either as one-time gifts or as recurring donations.

### **1. The First Approach: Donations to a Clearinghouse Organization**

The first approach is the current AUW campaign. Although the AUW does provide for designated donations through its Donor Choice program, the overwhelming percentage of the donations received are undesignated. AUW uses these undesignated donations to support charities that it selects. AUW does not directly provide services to address the community needs; rather, AUW “invests” the donations in local organizations that are able to provide services on Oahu in the areas that AUW believes the community wants to support. Stated differently, the AUW approach is a workplace giving program that results primarily in undesignated donations to AUW. AUW then decides how to best use those donations towards the betterment of the community.

### **2. The Second Approach: Donor Choice**

The second approach is exemplified by the CFC/combined campaign-type programs. The intent of a combined campaign is to provide a relatively convenient means for employees to donate to specific non-profit organizations that they wish to financially support. The actual donations received in 2013 through the AUW campaign as opposed to the Local Campaign highlight the difference between the two approaches. AUW reported less than one-third of the donations through its workplace giving campaigns were designated to specific local non-profit organizations. In contrast, more than 97% of the donations received through the Local Campaign were directed to a specific charity. Other combined campaigns report similar percentages of directed donations in relation to the total donations.

To Staff’s knowledge, the vast majority of the jurisdictions – federal, state and municipal -- that have workplace giving programs have adopted a combined campaign model. These combined campaigns are government programs rather than private campaigns. Although these workplace giving programs vary in certain respects, one common element is that they offer a convenient vehicle for employees to make charitable contributions to any organization that has been approved to solicit donations under the respective program.

The reports from other workplace giving programs reviewed by Staff reflect that almost all of the donations through those programs are donor directed. Organizations with missions similar to A UW may be eligible to solicit donations through these combined campaigns, but those organizations are only one of the many organizations that are eligible to receive donations through the campaigns. They must equally compete for the finite amount of employee donations.

### **3. Staff's Recommendation**

The A UW campaign encourages employees to support an organization which then selects those particular charities that will receive donations. In contrast, a combined campaign encourages employees to select the specific charities that will receive their donations and discourages "undesignated" or "unspecified" donations.

Staff believes that each approach has certain benefits and drawbacks. For example, in Staff's opinion, the most significant advantage of the A UW campaign is that it offers a simple vehicle for employees to financially support the local community and those who may be in immediate need of assistance. A UW is responsible for determining the causes that require community support and which organizations best address those needs. Many employees may not be aware of the community's immediate needs or may be unfamiliar with the broad-range of non-profit organizations and their programs that currently exist. The A UW approach removes those uncertainties. A UW vets the non-profit organizations and their respective programs through the process under which non-profit organizations apply for funding. A UW monitors the programs that receive funding to insure the promised outcomes.<sup>41</sup>

In contrast, the most significant advantage of a combined campaign is that it provides greater control for donors. A combined campaign provides donors with the certainty that their donations will support the organization of their choice. Because donors are encouraged to make their own selection, there is far less likelihood that they will end up funding an organization that they do not support.

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<sup>41</sup> The A UW approach includes other features that may be important in considering the appropriate purpose of the State's employee giving program:

a. A UW has a network of community volunteers and non-profit organizations that deliver services to support those causes that are most in need. With A UW regularly reviewing and assessing the community's needs, it is likely that the donations are more effectively spent to address those impact areas.

b. It is a proven workplace giving approach. The State has participated in the A UW campaign since at least 1976. Over 1,400 local business and organizations also have their own A UW campaigns. In 2013, the A UW campaign raised more than \$9 million that was used to provide services to help the local community, many programs of which depend entirely on the funding from A UW.

c. There is little, if any, monetary cost to the State to support the A UW campaign as the State's workplace giving program.

Staff believes that the selection of the approach is a policy issue for the State to consider. Staff suggests, however, that it is telling that the vast majority of jurisdictions, including the federal government, operate giving campaigns as government programs that stress donor choice.

**B. A “Level Playing Field”**

Closely related to the consideration of donor choice is the issue of a “level playing field.” Whichever approach is appropriate, Staff believes that the State Ethics Code requires that eligible charities compete for donations in a fair manner. A fundraising campaign should not advantage one charity over another.

The fair treatment provision prohibits employees from using their official positions to secure “unwarranted” advantages or preferential treatment for themselves or others. The provision, generally, requires employees to exercise their official duties in an impartial manner. That means, absent a legitimate and defined state purpose, employees cannot use state resources to support a specific private organization, including a non-profit organization, while prohibiting the use of similar state resources to support other private organizations. In Staff’s view, such selective support of one private organization creates an “unwarranted” advantage for that organization, especially where the State’s support “disadvantages” other similar organizations.

It is Staff’s opinion that the AUW state fundraising campaign creates an unfair benefit for AUW. AUW is granted a significant opportunity to solicit donations from state employees that other non-profit organizations do not similarly enjoy. The question is whether that advantage is “unwarranted.” The Commission determined in 1976 that AUW was an organization with “broad-based community support,” and apparently for that reason, construed the State Ethics Code to allow the State to use resources to fundraise for AUW. Staff suggests, however, that “broad-based community support” does not justify the advantage that the State confers on AUW through its support of the AUW campaign. In Staff’s opinion, there are numerous other non-profit organizations that provide important community-related services that, like AUW, are dependent on donations. Staff regularly receives “complaints” from employees and others about the State’s perceived “favoritism” of AUW.

AUW does provide a Donor Choice program that allows partner agencies to compete with each other and with AUW for donations. Staff believes, however, that it is disingenuous to suggest that this creates a level playing field between AUW and the partner agencies. The current workplace giving program is prominently “branded” and promoted as an AUW campaign.<sup>42</sup> Staff believes that this prominence advantages AUW. This is reflected in the high percentage of undesignated donations that AUW receives. The percentage of directed donations in relation to the total donations through the AUW campaign very clearly distinguishes the current program from a combined

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<sup>42</sup> For that reason, many employees misunderstand the program to benefit only AUW. Staff receives numerous complaints every year that the State only supports AUW.

campaign approach. As noted above, in 2013, approximately 30% of the donations through the AUW campaign were designated to specific local non-profit organizations. In contrast, more than 97% of the donations received through the Local Campaign were directed to a specific charity.

In Staff's opinion, the State's support of AUW and its mission, as well-intentioned as it may be, is inconsistent with both the language and intent of the State Ethics Code. The AUW campaign is a private program that operates under the banner of AUW and so grants unwarranted prominence to AUW. Staff believes that a more appropriate workplace giving program, operated by the State, will allow all eligible organizations to equally compete for employee donations. With the ever-growing number of local non-profit organizations and finite amount of funds, the "playing field" created by the program should be "level." In Staff's opinion, the current AUW campaign creates an unfair advantage for AUW, excluding other organizations from fairly competing for employee contributions through the workplace giving program. Staff believes this is inconsistent with the fair treatment provision of the statute.

### **C. Non-Coerciveness**

In evaluating the different employee giving programs, Staff also considered the issue of coercion. The Commission has consistently interpreted the fair treatment law as prohibiting pressuring or coercing a state employee to donate to a charity. Through Staff, the Commission has informally advised, among other things, that: state agencies may not require 100% participation in an AUW campaign; state agencies may not publish a list of which employees have donated; supervisors may not solicit donations from subordinates; and state employees may not be required to participate in fundraising activities. As discussed above, the CFC has similar restrictions.

Based on its research, Staff believes that neither the AUW campaign nor a combined campaign is inherently more subject to abuse in this area. Both models must comply with the prohibition against coercion. Staff recommends, however, that policies prohibiting coercive practices be adopted in a more formalized manner.

### **D. Ease of Administration and Cost to the State**

Staff recognizes that any program that the State adopts to facilitate employee giving must be easy to administer and should not involve any state funding to manage. The AUW campaign is already in place as the State's employee giving campaign. Continuing with the AUW campaign would not require any additional action by the State. AUW provides most of the administrative support for the campaign. This is not to say, however, that the AUW campaign results in no administrative burdens or costs to the State. State time, personnel, facilities and other resources are used to support the AUW campaign.

Clearly the establishment of a state combined campaign would result in some administrative burden and initial costs. It was beyond the scope of Staff's review to determine the specific mechanics to develop, implement and maintain a combined

campaign. The jurisdictions that Staff contacted in its research of this issue, however, appeared very willing to offer the State assistance in developing a combined campaign by sharing information. Washington State has offered to share the technology that supports its program.

Although the specific criteria for eligibility and the process by which organizations must apply to be eligible to solicit donations through the campaign is beyond Staff's expertise, Staff understands that there are a number of different procedures developed and used by the Local Campaign, AUW, and other combined campaigns. Staff believes that many of these procedures could be adopted by the State to minimize any administration burden.

Staff's review of other jurisdictions revealed that considerable administrative resources are used towards reviewing and vetting applicant charities. In order to reduce the burden on resources, Staff suggests that the State shift the onus to the employee to determine the "worthiness" of the organization that the employee wishes to support. In order to facilitate this, Staff further suggests that the State explore an internet-based platform, similar to Washington State's, that allows employees to learn about the workplace giving program, to obtain information about and link to the website of each organization that is eligible to receive donations through the program, and to direct their donations to the specific organizations that they wish to support, either through a one-time or recurring payroll deduction.<sup>43</sup>

## **E. Exceptions**

Staff recommends that, generally, non-profit organizations' opportunity to solicit State employees be limited to the workplace giving program, which presumably will have a defined period during which employees may be solicited; however, Staff recognizes that certain limited exceptions to the program's rules may be appropriate. Staff suggests that the Commission's recommendation include the following limited exceptions. These exceptions allow state resources to be used to support non-profit organizations in certain situations that may be outside of the workplace giving program.

### **1. Natural Disaster Relief**

To assist and support those affected by natural disasters such as the Japan tsunami, Hurricane Haiyan or the lava flow in Puna, the local community may raise funds through relief organizations like the Hawaii Chapter of the American Red Cross. State agencies regularly participate in fundraising activities to support those efforts, whether organized by the State, employees, or non-state organizations. The Commission currently does not construe the State Ethics Code to prohibit the use of state resources for fundraising to support natural disaster relief efforts.

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<sup>43</sup> The AUW Campaign is primarily premised on donations through payroll deductions. Staff is unaware of whether AUW or the Department of Accounting and General Services is involved in and responsible for ensuring that the donations intended by each employee are properly deducted from their respective pay.



Staff believes that fundraising for such relief efforts in state facilities, during state time, and using other state resources should continue to be permitted, assuming that the agency administrator approves of the activities. These are extraordinary events that, generally, require extraordinary humanitarian assistance. The federal government, as an example, allows fundraising in the event of a natural disaster despite the prohibition against fundraising outside of the CFC. Staff recommends that the state similarly allow fundraising to assist those affected by natural disasters.

## **2. “Pass the Hat” to Support a Co-Worker**

The Commission, generally, has construed the State Ethics Code to allow fundraising within an agency to assist a co-worker in paying extraordinary expenses that are incurred because of the co-worker’s or an immediate family member’s medical condition. Agencies, generally, “pass-the-hat” and solicit donations to support and assist the co-worker. Staff recommends that the workplace giving program include an exception that allows “pass-the-hat” fundraising activities, with the important caveat that donations must be voluntary and members of the public cannot be solicited to contribute.

## **3. Tangible (Non-Monetary) Donations**

Some non-profit organizations solicit and encourage donation of non-monetary goods. For example, the Hawaii Foodbank accepts donations of food items; Toys for Tots accepts donation of children’s toys; the Hawaii Blood Bank accepts donations of blood. A workplace giving program, generally, is not intended to address tangible donations, many of which are needed throughout the year and, therefore, outside of the program period.

Historically, the Commission has allowed agencies to use their facilities to receive tangible items donated by employees to support organizations’ non-monetary donation drives, including hosting blood donation drives. Staff recommends that the workplace giving program continue to allow state resources to be used to support those activities if the non-profit organization has been approved to solicit donations under the workplace giving program.

## **IV. Conclusion**

Staff recommends that the Commission advise the Governor that he explore developing a combined campaign to serve as the State’s workplace giving program that will replace the current AUW campaign. As explained above, Staff believes that a combined campaign better supports what Staff understands is the appropriate purpose of a workplace giving program, i.e., to facilitate a convenient opportunity for employees to donate to the charities of their choice, and is more consistent with the State Ethics Code.

# Attachment "A"

## 2014 STATE PLEDGE FORM

MAHALO for making a difference in our community!



Aloha United Way

200 N. Vineyard Blvd., Suite 700 • Honolulu, Hawaii 96817 • auw.org



MY INFORMATION

All information must be complete. (Please type or print clearly.)

Mr.  Ms.  Other \_\_\_\_\_  Suffix (Jr., M.D., Sr.) \_\_\_\_\_ SS# XXX-XX-\_\_\_\_\_ PR-DIST. NO.: \_\_\_\_\_

NAME (Last, First, Middle Initial): \_\_\_\_\_ AGT: 002

HOME ADDRESS: \_\_\_\_\_ CITY/STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

BILLING ADDRESS (If different from above): \_\_\_\_\_ ZIP: \_\_\_\_\_

HOME PHONE: \_\_\_\_\_ BUSINESS PHONE: \_\_\_\_\_ CELL PHONE: \_\_\_\_\_

HOME E-MAIL: \_\_\_\_\_ BUSINESS E-MAIL: \_\_\_\_\_

I have been a United Way donor for 25 years or more.  Please check here if you don't want to receive further information via email.

My spouse/partner also gives to AUW. Spouse/Partner Name & Employer: \_\_\_\_\_

**OUR PRIVACY PLEDGE TO YOU:** Aloha United Way respects the privacy of its contributors and does not rent, trade or sell its contact information. Your information is used only to properly credit your contribution and to communicate about Aloha United Way and related program information.

MY TOTAL PLEDGE & HOW I CHOOSE TO PAY

Your 2014 pledge will be distributed in 2015.

**PAYROLL DEDUCTION:** I authorize the Comptroller to deduct beginning January 2015.

Last Four Digits Of SS# Required For Payroll Deduction.

**CASH**  **CHECK** (Make checks payable to Aloha United Way.)

\* **CREDIT CARD:** I authorize a one-time charge be processed upon receipt of this pledge. In lieu of completing this pledge form, you can make your donation online via credit card at [auw.org/donate](http://auw.org/donate) for immediate processing.  
 Visa  M/C  AMEX Card # \_\_\_\_\_ Exp. Date \_\_\_\_\_

\* **AUTOMATIC TRANSFER:** I authorize my financial institution to transfer (monthly) from my checking account to AUW beginning \_\_\_\_\_ 15, 2015 or on the next business day. (Attach voided check.)  
 month

\* **BILL ME** (Minimum of \$48.00)  per month  per quarter  one time on \_\_\_\_\_ / \_\_\_\_\_  
 month / year

\*The "My Information" section above must be completed.

\$
\$
\$
\$
\$
\$
\$
<b>\$ TOTAL PLEDGE</b>

**OPTIONAL DONOR CHOICE ~ This form must be signed and returned to Aloha United Way no later than December 31, 2014.**

The "My Information" Section must be completed by the donor to process the gift. Focus my gift in one or more of the following areas:

A. Aloha United Way Community Care Fund (80100) \$ \_\_\_\_\_  
 Please direct my gift to the greatest needs of our community.

B. Aloha United Way Programs (See reverse for description)  
 211 Information and Referral Service (80106) \$ \_\_\_\_\_  
 Get Connected/Gifts-in-Kind (80107) \$ \_\_\_\_\_

C. Community Needs (See reverse for description)  
**Education**

Ensure our keiki are ready to succeed in kindergarten. (80101) \$ \_\_\_\_\_

Increase high school graduation rates. (80108) \$ \_\_\_\_\_

**Poverty Prevention**

Reduce homelessness, especially among families with children. (80103) \$ \_\_\_\_\_

Help families build assets and become financially secure. (80102) \$ \_\_\_\_\_

**Safety Net**

Provide services to those in our community experiencing crisis or emergencies. (80105) \$ \_\_\_\_\_

D. Neighbor Island Care (\$48 MINIMUM PER ISLAND)  
 Aloha United Way (80000) \$ \_\_\_\_\_

Friendly Isle United Fund (Molokai) (70580) \$ \_\_\_\_\_

Hawaii Island United Way (70560) \$ \_\_\_\_\_

Kauai United Way (70550) \$ \_\_\_\_\_

Maui United Way (70570) \$ \_\_\_\_\_

E. Agency/Program Support (\$48 MINIMUM PER CHOICE)  
 My gift is designated to one or more specific agencies or programs  
 For list of codes, visit [auw.org/donor-choice](http://auw.org/donor-choice).

Code #      \$ \_\_\_\_\_

Code #      \$ \_\_\_\_\_

Code #      \$ \_\_\_\_\_

Code #      \$ \_\_\_\_\_

**TOTAL GIFT(S) DESIGNATED (A-E)** \$ \_\_\_\_\_

(Must not exceed total pledge.)

Your 2014 payment will be distributed in 2015.

SIGN HERE

**SIGNATURE REQUIRED** (No goods or services of more than nominal value given in return for this contribution.)

**Original Signature Required.**  
**NO PHOTOCOPIES OF SIGNATURES ACCEPTED.**  
 Contact Aloha United Way at 536-1951 for additional forms or visit our website at [auw.org/toolkit-downloads](http://auw.org/toolkit-downloads).  
 AUW - Original • DONOR - Please make copies for your records.

**Mahalo for your support!**