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**Testimony Before the Subcommittee
on Federal Workforce, U.S. Postal
Service and the Census, Committee
on Oversight and Government
Reform, House of Representatives**

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**A Donor Advocate's
Perspective on the
Proposed Office of
Personnel Management
Changes to the
Combined Federal
Campaign (CFC)**

**Statement of Ken Berger,
President & CEO, Charity Navigator**

Chairman Farenthold, Ranking Member Lynch and members of the subcommittee:

Thank you for this opportunity to share my thoughts on the OPM proposed regulation changes to the CFC program. In particular I was asked to comment on these proposed changes from the perspective of a donor advocate and watchdog.

I am the President & CEO of Charity Navigator. Charity Navigator is a charity watchdog group and charity rating service. Our mission is to be a "guide to intelligent giving" for donors to charities of every kind. We accomplish this mission by operating a web site where we rate the performance of charities, as well as provide a wide variety of resources to help charitable givers/social investors make the best decisions and direct their precious donations to the highest performing nonprofits. Last year we had over 6 million visits to our web site and estimate that we influenced approximately \$10 billion dollars of charitable donations made by the amazingly generous American public. Therefore, we believe we are the largest charity rating service in the world today. We also speak out in the public square on charitable giving issues and the nonprofit sector as a whole, from the donor's perspective.

However, today I am not expressing the official views of Charity Navigator on these matters, since the organization has not taken any such position. Rather, I am speaking based upon my independent perspective which is informed by many years of experience running charities, my five years having the privilege of helping to lead Charity Navigator, as well as my personal experience as a donor to charities. In particular I will try and express a perspective that is sensitive to the concerns of donors and how I believe the OPM proposed changes to the CFC program will impact them if approved.

Overall Concern:

Better Data Needed to Inform Future CFC Decisions

The CFC-50 Commission was made up of a broad group of experts from across the government as well as the charitable sector. My overall concern about the CFC program was made by a number of commission members, at various times, during our roughly one-year tenure leading up to our commission report (submitted in July of 2012).¹ We argued strenuously that OPM should not simply have a static list of recommendations 50 years into the CFC program and then consider the work done. Instead, we recommended that OPM develop a continuous improvement approach that engaged federal employees on an ongoing basis.

This approach should involve creating a working group made up of a representative sampling of federal employees that would be consulted ongoing by OPM regarding the CFC program and changes being considered over time. I believe it should also be a vehicle for federal employees to initiate new ideas and recommendations for OPM to consider. In addition, I and a number of other commission members urged OPM to institute a system of conducting ongoing surveys, throughout the federal employee workforce. As OPM already sends out a Federal Employee Viewpoint survey to most federal workers periodically, this could be an excellent vehicle to get feedback on the CFC program in general (with questions such as "Did you donate to CFC this year, and if

¹ CFC-50 Commission, Federal Advisory Committee Report on the Combined Federal Campaign (<http://www.opm.gov/combined-federal-campaign/cfc-50-commission/2012-report.pdf>), July 2012

not, why not?"). The survey could also solicit federal employees' reactions to new CFC policies and systems to determine if employees view them as working well, and if that is found not be the case, OPM would make course corrections as needed. This would entail implementing a much more data driven decision making process where pilot testing of new ideas could be the first step toward incremental change over time. I am glad to see that at least the idea of surveys is reflected in our report.² However, I see no record of the recommendation that was made to create this ongoing federal employee working group. This was the most important recommendation of all for some of us.

Everything that follows in my testimony is shaped by the aforementioned recommendation. I remain fundamentally concerned that many of the proposed regulations are "static" and do not indicate any intention of pilot testing and further data analysis. Thus, rather than an objective assessment over time on the pros and cons of different recommendations, the OPM proposed regulations are in some cases based solely on anecdotal evidence and individual member viewpoints (including my own). I believe this was in part due to the very tight time frame we had to get to a final report, as well as the limited resources OPM had available to supply such data to us. However, the need for such a process is critical to the integrity of the CFC program to meet the present day heightened concern for transparency and accountability, as well as best practices of securing ongoing constituent feedback. Therefore these steps should become standard practice going forward.

At the same time, I believe that Keith Willingham (Director of the CFC and designated federal official) as well as The Honorable Tom Davis and The Honorable Beverly Byron, led the proceedings of the CFC-50 Commission with an open minded attitude and listened carefully to the members' ideas. Yet, what is reflected in the OPM proposed regulatory changes do not mirror those same ideas. I remain hopeful that the explanation for this apparent disconnect relates to actions requiring regulation and those that do not. However I urge the subcommittee to review the entire set of CFC-50 Commission recommendations, as well as the notion of an ongoing federal employee working group, with OPM to find out what it is and is not planning to implement.

Now on to the four issues that have been raised regarding the OPM proposed regulations:

1. Administrative Costs: All Charities Pay an Application Fee

During the CFC-50 Commission deliberations I made the point that the vast majority of charities in the US (approximately 83%) are less than \$1 million in annual revenues.³ As a result, I expressed the warning that this proposed regulation will bias the CFC program toward the larger nonprofits that do not represent the profile of the majority of charities. Whereas currently, at least to some degree, all the charities share the burden because there is a percentage deducted from the CFC donations to cover program costs, under the proposed changes an application fee would be given to all charities up front. This application fee would be charged regardless of the amount of money the charity received from the campaign. Depending on how much the application fee would be and whether the percentage system would still be in place to some degree is unclear, we have no

² Ibid.

³ Taking this a step further, data also indicates that roughly 45% of all US registered nonprofits are less than \$100,000 in annual revenues. See highlights of the Urban Institute 2012 report – [The Nonprofit Almanac](http://nccsdataweb.urban.org/NCCS/extracts/nonprofit Almanacflyerpdf.pdf) (<http://nccsdataweb.urban.org/NCCS/extracts/nonprofit Almanacflyerpdf.pdf>)

details on the methodology in the information OPM submitted for the changes. However, as it stands, there is a significant risk that the bigger charities, that get larger amounts of money, would end up helping to cover much less of the overall cost, relative to the amount of CFC funding they receive. They already get the lion's share of donations, but in this system they will get a whole pride of lions as their share! On the other side, the smaller charities, that can be heavily dependent on the CFC dollars, even if a small amount, could end up paying a correspondingly higher rate for the benefit that they receive.

The argument that this change will shift the costs of the CFC program from the donors to the charities doesn't really hold water. Much, if not all, of the charities' money comes from donors in the first place, so when the charity pays the up-front fee for participation, it's donors' money that's being used.

The cost of administration of the program is not likely to change much by charging the application fee instead of the percentage of donations. What will change is the burden of paying that cost. Instead of being shared equitably in proportion to the benefit received, it could fall much more heavily on those who can least afford it. In many cases, I believe that this burden could be enough to discourage the smaller charities from participating in the program. This reduction in the population of eligible charities benefits neither the donors nor the CFC program itself.

2. Electronic Donations: Discontinue Other Options

I am concerned that any move to eliminate non-electronic donations by OPM in the CFC program is going to reduce the number of federal employees who participate, as well as the overall amount of money raised each year. CFC data for 2012 indicates that roughly 10% (approximately \$27 million) of all donations were made via cash, check or money order.⁴ This is a substantial sum to risk sacrificing for administrative convenience. Every charitable dollar raised is of tremendous importance. \$27 million is certainly significant enough to keep the non-electronic donation option in place.

3. Local Governance Structure: Create Regional Coordinating Committees

During my time on the CFC-50 Commission, I learned that there is a real problem with a lack of consistency and quality control from one LFCC to the next. The recommendation that some of us made to OPM was to create a rigorous training program to assure that LFCC leadership followed best practice and OPM policies across the county. In addition, we recommended that OPM increase its oversight and auditing of local campaigns to maintain quality control and minimize abuse and waste. I believe the proposal to move to Regional Coordinating Committees was in this same spirit - an attempt to help improve quality, consistency and oversight of the campaigns. All of this is critically important, and was reinforced for many commission members when we read the OPM Inspector General's report on the CFC of the National Capital area that came out during the commission's work.⁵ This report outlined in detail the evidence that there was a real problem in oversight of the CFC. However, it is also true that more local campaigns are

⁴ U.S. OPM, Combined Federal Campaign, Report C-17 CFC 2012 Pledge Report, April 2013

⁵ U.S. OPM, Office of the Inspector General, Office of Audits, Audit of the 2007 Through 2010

Combined Federal Campaigns of the National Capital Area – Alexandria Virginia

([http://archive.opm.gov/oig/pdf/AuditReports/3A-CF-00-10-](http://archive.opm.gov/oig/pdf/AuditReports/3A-CF-00-10-034%20CFC%20for%20the%20National%20Capital%20Area%202007-2010%20Redacted.pdf)

[034%20CFC%20for%20the%20National%20Capital%20Area%202007-2010%20Redacted.pdf](http://archive.opm.gov/oig/pdf/AuditReports/3A-CF-00-10-034%20CFC%20for%20the%20National%20Capital%20Area%202007-2010%20Redacted.pdf)), March 2012

likely to raise more money due to the personal solicitations that can be made at that level. I believe the evidence for the best course of action here is not clear. Therefore, I recommend that this effort be pilot tested to see what the best balance is between regional and local coordinating committees.

4. Elimination of Paper Processes.

OPM proposes to eliminate printing and distributing of various campaign materials and make them available exclusively through electronic means. However, experts have estimated that roughly 80% of all federal employees use paper forms to make their CFC campaign pledges. Furthermore, many federal employees have limited access to electronic information in their workplaces. Therefore, I recommend that this proposed change only occur in locations where such electronic data is easily accessible and understandable to federal employees. Once again, further research and perhaps pilot testing is required before such a determination can be made.

In addition to the four changes that others have expressed concern about, I also think the following two changes are problematic and require additional information before a decision is made whether or not to implement them:

(1) *Streamlined Application Process.* Charities already in the CFC program would produce a more limited specified set of documents, via a reduced application form, to be admitted for the subsequent two years. From my work at Charity Navigator, I know that with changes in charity leadership, problems can arise quite quickly. We see this all the time and an annual review reduces the likelihood of questionable charities staying in the program. Therefore the additional information required to make a decision on this change, is what the specific content is of the documents that will not be produced annually. Unless it is very benign (address, mission statement, etc.), I would oppose this change. At minimum, I believe that charities that get the larger amounts of funding each year (quite a few get millions of dollars) should not have this annual requirement lifted.

(2) *Audit of Small Charities.* OPM is proposing to waive the audit requirement for organizations reporting less than \$100,000 in annual revenue to the IRS. In addition, they propose that an organization with annual revenue of at least \$100,000 but less than \$250,000 not be required to undergo an audit, but have their statements reviewed by an independent certified public accounting firm. Once again, given my awareness of the significant amount of fraud and unethical behavior in the nonprofit sector, I worry that organizations that are charities in name only will be able to “fly under the radar” and take advantage of well meaning donors. Although such audits can be costly and therefore difficult for smaller charities to afford, I believe that for the integrity of the CFC program and to protect donor dollars, it is risky to lift this requirement entirely. Further analysis should be conducted to assure that, even if a charity is small in overall size, if it gets more than a certain amount of money from the CFC campaign each year, it should be required to have an audit conducted.

My concern about both of these proposed changes reflects back to issues that Charity Navigator staff has raised about the CFC program at least as far back as 2007.⁶ Essentially, of the roughly 24,000 charities that are participating in the CFC program, Charity Navigator found evidence that some of them are the poorest performers we evaluate and a number of others are engaged in activities that have caused us to impose

⁶ www.charitynavigator.org, CFC Contributors Beware: Not All of the Participating Charities Deserve Your Support (<http://www.charitynavigator.org/index.cfm?bay=content.view&cpid=659>), October, 2007

a Donor Advisory (wherein we completely discontinue rating the charity for a period of time) because of questionable information about their activities (such as a governmental investigation, major law suit or highly atypical practices indicated on the 990 form).⁷ Therefore, another CFC-50 recommendation that I think is critical to assure the future integrity and viability of the CFC program and is not reflected in the OPM proposed regulatory changes is the following:

“The Commission suggests that OPM review current eligibility requirements to ensure that participating charities meet the CFC’s traditional high standards of accountability, transparency and programmatic service. Requirements should be strengthened to assist in screening out charities that have questionable fund raising or management practices. The focus should be on integrity and accountability of charity operations and quality of services provided. Changing the eligibility requirements to meet a higher level of accountability to the donor community may require changes in laws or regulations. If, as a result, this recommendation encounters implementation delays, OPM should, as a first step, require online providers to include additional information to donors such as links to charity rating services, number of years a charity has been in business, and the CFC revenue received by the charity to help donors make informed choices.”⁸

The CFC-50 Commission also recommended that:

“As PCFOs and donors rapidly move toward web-based search and pledging, the online world offers the CFC the opportunity to provide information and online searches which allow donors to determine the background and operations of CFC charities. Examples of additional information that could be provided to donors through a web-based system include:

o Descriptions of the charity’s work on the IRS Form 990. Participating charities are required to describe their work on the second page of the Form 990. These descriptions can be made available to donors who can then compare them to what is presented in the CFC catalog/website.

o Links to third party charity review services. The CFC could provide links to third party charity review services on the Campaign’s own websites. Providing these links to outside, independent evaluations would offer donors greater insight into the activities and operations of participating charities and could be a tool that would help donors resolve any issues of controversy surrounding individual groups.

o Length of time a charity has been in existence. OPM could publish in the CFC catalog and website the number of years a CFC charity has been in operation.”⁹

Again, I urge the subcommittee to inquire of OPM whether or not it intends to implement these recommendations. If so, and no regulatory change is required, all is well. If not, I believe OPM should be strenuously encouraged to do so.

⁷ www.charitynavigator.org, [How Do We Decide to Post a Donor Advisory?](http://www.charitynavigator.org/index.cfm?bay=content.view&cpid=1072)
(<http://www.charitynavigator.org/index.cfm?bay=content.view&cpid=1072>)

⁸ CFC-50 Commission Report, page 17.

⁹ Ibid., page 18.

The Other 7 of the 13 Proposed Changes that are Not Contested.

I believe the following seven proposed changes are good ones that will help to improve OPM's oversight of the CFC program, cut unnecessary costs, as well as improve the CFC's ability to meet the needs of federal employees who donate through the program. As I recall, all these changes had virtually unanimous approval of the CFC-50 Commission members:

- (1) *Changing the Campaign Solicitation Period* - from September 1 to December 15 by one month, so that it would begin on October 1 and end on January 15.
- (2) *Immediate eligibility*. Currently, new employees may not begin participating in the CFC until the next scheduled campaign solicitation period begins. New employees will now be provided information on the CFC at orientation and be able to make pledges within 30 days of being hired if hired outside of the solicitation period. This will enable those employees who wish to make an immediate contribution to do so.
- (3) *Disaster Relief Program*. Currently, each disaster requires a new authorization from the OPM Director for a special solicitation period. The amended regulation will provide for the creation of a Disaster Relief Program that would be available to donors within hours after a disaster.
- (4) *Training and Oversight*. OPM will provide for additional training and oversight of the campaigns. The trainings will be conducted by OPM staff and will focus on oversight responsibilities, charity eligibility requirements, and how to select a marketing organization and review/approve its reimbursable marketing expenses.
- (5) *Streamlining Campaign Administration*. Responsibilities for back office functions will be consolidated via establishing one or more Central Campaign Administrators (CCA). The CCA will either perform these functions itself or will set up regional receipt and disbursement centers.
- (6) *Oversight of Federations*. Federations will provide a copy of each member organization's application, require dates upon which disbursements must be made to members, add additional reporting requirements, and prohibit deductions of dues/fees from the disbursement of CFC contributions.
- (7) *Payroll Deduction Disbursements*. Payroll offices will either distribute funds to the charities directly or, if funds are transmitted to the CCA, provide more detailed reports. Currently, Federal payroll office disbursement reports vary in format and level of detail, which adds to the administrative costs of the campaign administrators responsible for ensuring the accuracy of disbursements to designated charities.

Conclusion

I believe all of these proposed changes are well intentioned and reflect a genuine desire to improve the operations of the CFC as well as to drive down overhead costs so that federal employees who make donations via the CFC can see evidence that more of their dollars end up in the hands of good charities. These are very important goals with which I wholeheartedly agree. Many other CFC-50 Commission recommendations supported the same purpose but are not evident in the proposed regulatory changes. I hope that this subcommittee will urge OPM to reconsider the problematic changes noted above, in view of the potential negative results associated with them. In addition, I once again strongly recommend that a federal employee working group be convened, on at least a quarterly basis, to assess how the CFC program is working, test different approaches, make recommendations of their own to improve the program and help OPM to continuously improve the CFC program over the years to come. This recommendation, while discussed

during our meetings, is not in the CFC-50 Commission final report. If the CFC does not have such a process "baked in" to its design going forward, I fear that the long term viability of the CFC program will be far less likely and the decline in participation in the CFC will continue.

My sense of the CFC leadership, based on the interactions with my fellow commission members and OPM staff, is that they sincerely want to make the program the best that it can be. Therefore, I remain hopeful that in the end, all of the great ideas suggested by the commission members, along with the insightful testimony received during the CFC-50 Commission's public hearings, will make the program as good as it can be going forward.

The heart and generosity of the federal workforce is enormous and OPM has a vitally important responsibility to help assure that every precious charitable dollar is used as effectively as possible. I hope the CFC program will achieve this critically important goal so that federal employees have confidence in it and the best charities get the most support. This will result in many more people and communities receiving the vital help they need. That is what it's all about.

Mr. Chairman, this concludes my statement. I would be happy to respond to any questions that you or other members of the subcommittee may have at this time.

If you have any questions on matters discussed in this statement, please contact Ken Berger at (201) 293-0419 or kberger@charitynavigator.org.

Committee on Oversight and Government Reform
Witness Disclosure Requirement – “Truth in Testimony”
Required by House Rule XI, Clause 2(g)(5)

Name: Ken Berger, President + CEO, Charity Navigator

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2010. Include the source and amount of each grant or contract.

None

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

Charity Navigator. I am the President + CEO.

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2010, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

None

I certify that the above information is true and correct.

Signature:



Date:

6-17-13



Ken Berger
President & Chief Executive Officer

Ken Berger joined Charity Navigator in 2008 after almost thirty years experience working in the charitable non-profit sector. He has held leadership positions at a variety of human service and health care agencies, both large and small, and has operated programs serving the homeless, the developmentally disabled, the mentally ill, substance abusers, the medically underserved, and persons with HIV/AIDS, among many others.

Most recently, Ken was a Chief Operating Officer (COO) of Jawonio and earlier in his career Director of Operations at Professional Service Centers for the Handicapped, in both positions he oversaw residential, educational, employment, clinical and health care service to individuals with disabilities and special needs. Prior to Jawonio, Ken was the Executive Vice President & COO and then the President & Chief Executive Officer of The Floating Hospital, an agency that provided health care, social services and education to disadvantaged, lower income or at risk adults, children and families across New York City. Ken also held several leadership positions at Volunteers of America - Greater New York and the Morris Shelter (now called [Homeless Solutions](#)) managing a wide array of services to thousands of homeless families and individuals.

Ken has a deep passion for helping donors become wise social investors (charitable givers who see their donations as a long term social investment) by learning how to identify and then support high performing nonprofits. He also has a deep interest in encouraging charitable non-profits to perform effectively and thrive even in challenging times. He is a regular presenter at conferences on both the domestic and international stage, is frequently interviewed by regional, national and international media on nonprofit issues and has published numerous articles on issues affecting the nonprofit sector's effectiveness. He was a member of the [CFC-50 Commission](#) which was formed under the U.S. Office of Personnel Management to strengthen the integrity, operation and effectiveness of the Combined Federal Campaign (the largest workplace giving campaign in the world). He is also a member of both the [Alliance for Effective Social Investing](#) and a founding member of the [Social Impact Analysts Association](#). He is the author of [Ken's Commentary](#), a blog about his thoughts on the non-profit sector. Ken earned his Bachelor's degree at the University of Buffalo. He went on to obtain a Master's degree in Psychology from Antioch University and a Master's degree in Business Administration from Rutgers University.