

# RIFT: MAJOR DEVELOPMENTS STRATEGIES MOVING FORWARD

for Nonprofit General Counsel & Leadership

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**R**elease

**I**RA

**F**unds

**T**imely



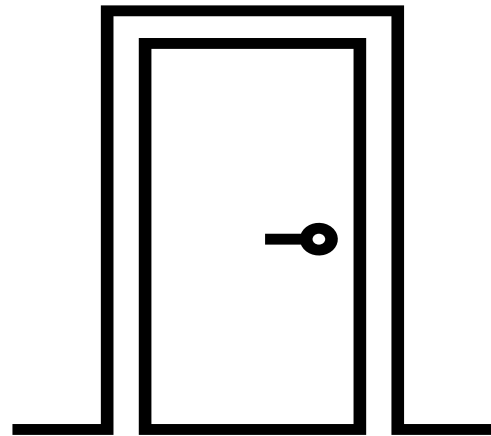
**RIFT**  
P R O J E C T

- All volunteer
- All pro bono

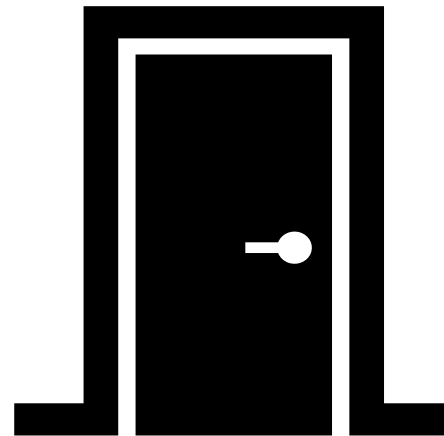


# KEY TO UNDERSTANDING

*Custodians pay death claims either one of two ways:*



**Door #1**

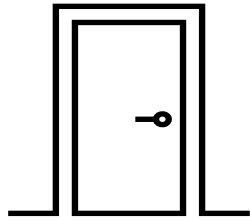


**Door #2**

# NO UNIFORMITY AMONG CUSTODIANS

- **It's up to each custodian how they pay the claim**
- **It's a business practice**
- **No consensus or uniformity**

# KEY TO UNDERSTANDING: DOOR #1



*Door #1 (the right way, IMHO)*

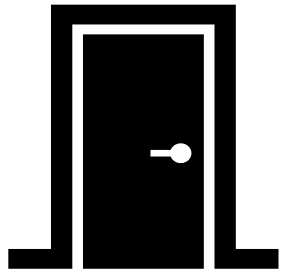
*After receiving basic info on the deceased and beneficiary, they pay the claim usually in 30 days*

# DOOR #1: CUSTODIAN'S REQUEST NORMAL INFORMATION TO PAY THE CLAIM

- Name of deceased
- Death certificate
- Tax exempt status/articles of incorporation
- Corporate resolution
- W-9



# KEY TO UNDERSTANDING: DOOR #2



## *Door #2:*

*Some IRA custodians won't pay claims to "beneficiaries."*

*They only pay if beneficiary (i.e., your charity) first becomes their new "customer."*

# DOOR #2: INTENSE PROCEDURES TO RECEIVE THE IRA DEATH PROCEEDS

- **Door #2** financial institutions require the charity apply for and open up a **new** account first & then they transfer the donor's IRA into it
- Called an Inherited IRA (aka Beneficiary IRA)
- In order to establish the new account, the Custodian interprets the charity as their **"new customer"**
- That's where things fall off the rails

# HOW DO WE KNOW WHICH DOOR?

- 50 pages of forms to complete
- Information to provide of control person, employees and/or board members
  - Social Security number
  - Driver's license
  - Home address
  - Personal financial statements
  - Home phone number
  - Spouse's maiden name, etc.
- Then charity must liquidate this new account with a whole new set of forms
- Delays, delays, delays

# WHO DOES NOT REQUIRE AN INHERITED IRA

As of 9/1/2024:

- Ameriprise
- Bank of the West
- BNY Mellon/Pershing
- Edward Jones
- Merrill Lynch
- Morgan Stanley\*
- ~~Raymond James~~
- TD Ameritrade (but now see Schwab)
- TIAA
- UBS (mostly)
- US Bank
- Vanguard\*
- Wells Fargo Bank & Advisors

*\*Yet TOD's require opening a new account*

# WHO'LL MAKE AN EXCEPTION?

As of 9/1/2024: KEY! Charities have to ask for the exception—it is not automatic. Use the RIFT letter made especially for this exception.

- Charles Schwab – very easy to work with once you ask for the exception. If you don't ask for it, they'll make you open the Inherited IRA.
- Equitable – Equitable will allow an exception if the charity pushes back against its requirements.

# MOST IMPORTANT!

- **No law requires a charity to open a new account**
- **NO LAW REQUIRES DOOR #2**
- It's the financial company's business/compliance own choice/policy

# WHY?

## *“Asset Conservation” Technique*

Used by Door #2 IRA Custodians

Stonewalls the payment to charities

# IMPACT ON CHARITIES

- Takes 1-2 years to pay
- Waited 6 years
- Resent the paperwork 8 different times
- Placed on phone “hold” by custodian for more than 8 hours straight
- Happens with every single death claim, every single time – no exceptions
- Erroneously withholding taxes on IRAs



# MORE IMPACT ON CHARITIES

- Never told it was beneficiary – 16 years went by
- Received 10 cents
- Fees to open account/close account
- Custodian staff turnover
- Custodian ‘loses’ paperwork
- Only will talk with CFO
- Must send paperwork within 60-day window with other charity beneficiaries

# WHY? IS IT THE PATRIOT ACT?\*

- Enacted to prevent terrorism after 9/11
- Is the charity a “known terrorist?”
- Why won’t they use IRS Publication 78?
- Legal Standard: “To form a reasonable belief that it knows the true identity of each customer”

\* *Know Your Customer, Customer Due Diligence, Customer Identification, Bank Secrecy, etc.*

# DOES THE PATRIOT ACT\* REALLY APPLY?

The Financial Crimes Enforcement Network (FinCEN) is the government agency that regulates compliance with the Patriot Act:

“If the beneficiary continues to maintain the account after the passing of the previous customer, the bank should treat them as a customer.”

-FinCEN's Resource Center, 6/20/2019

# FINCEN

- Reconfirmed in October 2022 with 7 of their lawyers
- But stay tuned...more later...

# SPRING 2024 FINCEN

- Broker-dealers still wanted SSN so RIFT met with FinCEN to clarify
- Pled our case
- FinCEN is worried charities could be funneling money to Hamas with death claims from IRAs

# SPRING 2024 FINCEN

Within a few days, on 3/1 FinCEN published this public Administrative Ruling: FIN-2024-R001

FinCEN said:

- a) IF the donor account is with a “Broker-dealer” AND
- b) IF Broker-dealer requires a new account (i.e., Door #2),

...then the charity HAS to give the SSN of its control person.

Issued pursuant to 31 CFR 1010.715

# SPRING 2024 FINCEN

What it didn't say:

That an Inherited IRA/2<sup>nd</sup> account (Door #2) is required by FinCEN to pay a death claim.

# ASSESS THE RISK

- Charities - “low” risk for money laundering and terrorist activity
- Regulated into absurdity – it would be funny if it wasn’t so serious – gov’t regulations run amok
- Beyond common sense!



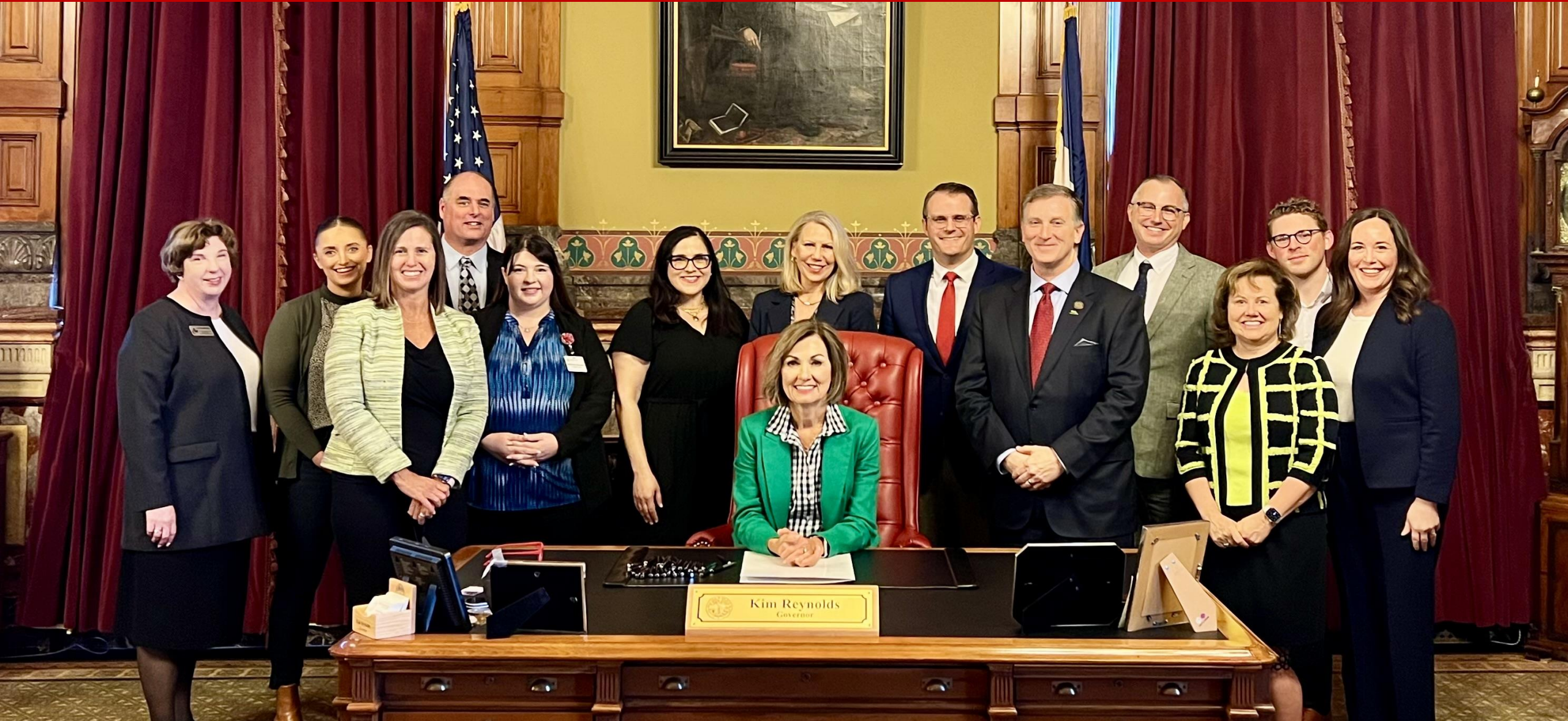
# STRATEGIES TO PUSH BACK

- State laws
- Federal law to prevent this
- Judicial – class action litigation
- FinCEN – U.S. Treasury exception request
- Nationwide advisory group

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# INTRODUCING **BILL GUSTOFF**



# WHAT IS HF 2366?

- Effective 7-1-2024
- Which nonprofits are protected?
  - Iowa charities



# HF 2366 PROVISIONS

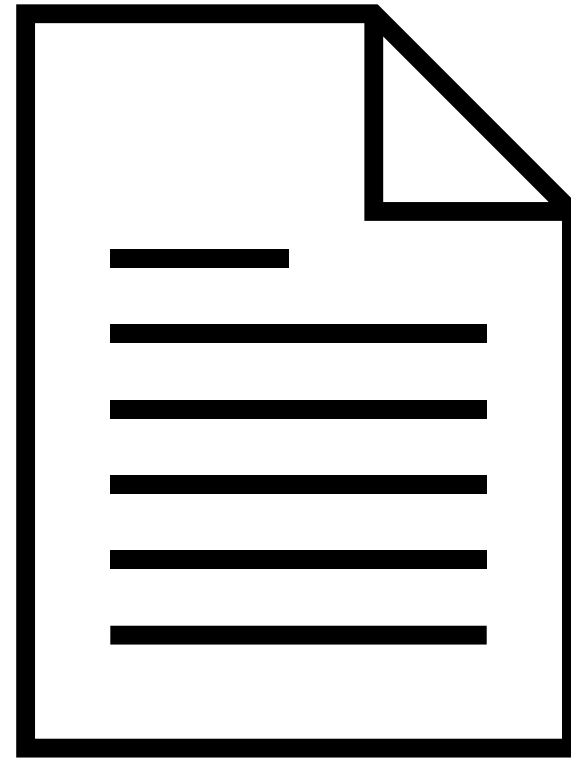
## Beneficiary Designations

- Annuity
- Insurance policy
- POD account
- TOD account
- Pension, profit sharing, retirement, other employment-related benefit plans
- Any other non-probate transfer at death

**Note -- not from a will or trust**

# HF 2366 PROVISIONS

When a charity is a beneficiary, it can give an affidavit to the financial company holding the account.



# AFFIDAVIT

## The affidavit shall state all of the following:

- The decedent's name and last known address
- A general description of the property to the extent known
- The charity's name, address and primary contact info
- The charity is a charitable organization as defined in Iowa Code 15E.311
- A request that the property be paid or transferred to the charity OR that the information about the property be given to the charity (e.g., amount of death benefit)
- No one else other than the charity has a right to the interest in the property listed in the affidavit
- The information provided is true and correct
- Signed by a duly authorized representative of the charity under penalty of perjury before a notary public

# AFFIDAVIT BACKUP DOCUMENTATION

**The affidavit must be accompanied by:**

1. Federal IRS determination letter
2. Iowa Secretary of State Certificate of Existence
3. A statement that the account owner is deceased supported by
  - a. Death certificate;
  - b. Probate notice in newspaper;
  - c. Receipt of paid funeral expenses; or,
  - d. Obituary
4. A corporate resolution or similar statement of the affiant to show he/she can act on behalf of the charity
5. IRS form W-9



# HF 2366 PROVISIONS

The financial institution **shall not ask** for any other personal information from any employee or board member of the charity.

The financial institution specifically **cannot ask for**:

- Social Security Number
- Driver's license number
- Contact information
- Personal financial information

# HF 2366 PROVISIONS

1. Financial company shall pay, deliver or transfer to the charity

OR

2. Deliver the information -- if information was requested (e.g., amount of the death claim)

The time the financial institution can take to verify the charity's information is **30 days** from the date of delivery of the affidavit (note send it certified mail, return receipt requested so you can document the start of the 30-day window)

# WHAT IF FINANCIAL INSTITUTION FAILS TO RESPOND?


If the financial institution refuses to pay the claim or provide the information requested within **30 days** of receiving the affidavit, the charity can bring an action against the financial institution to get paid or get the information requested.

The court action must be brought within one year after the date of the act or failure to act.

# CHARITIES' LEGAL REMEDIES

If the court finds the financial institution acted unreasonably in failing to pay or provide the information, the court may award the charity **any or all** of these:

1. Damages the charity sustained
2. Costs of the legal action
3. A penalty between \$500 and \$10,000
4. Reasonable attorney fees



**NOT ONE SINGLE VOTE  
AGAINST THIS LAW  
IN ANY OF THE 6  
HOUSE AND SENATE  
VOTES!**

**CAN THIS IOWA LAW BE  
SHARED WITH OTHER STATES?**

# **INTRODUCING THE MODEL LAW:**

**Charitable Organizations Privacy Protection Act**

**How does Iowa HF 2366 interact  
with the 2024 FinCEN ruling?**



# WHAT NOW?

- What we still don't know and needs researched:
  - What is the weight of authority of this FinCEN ruling. Is it considered “federal law?”
  - Does it trump the Iowa law or not?
- If it trumps, SSN may still be required for Iowa charities with broker-dealer accounts using door #2

# OTHER STATE EFFORTS

- Every state attorney general oversees the performance of charitable trusts and their fiduciaries.
- The state attorney general is charged with protecting consumers from unfair trade practices.
- Met with North Carolina Attorney General Josh Stein's office to explain the issue of charities being forced to become customers of a financial institution.
- NC Attorney General is looking into this.

# MORE STATE EFFORTS

- Presentation made to the Tennessee Attorney General's Office in August 2023

# STRATEGIES TO PUSH BACK

1. State laws
2. Federal law
3. Judicial – class action litigation
4. FinCEN – U.S. Treasury exception request
5. Nationwide advisory group

# FEDERAL LAW EFFORTS

- Working on finding a US Senator/Congressman champion to bring federal legislation stopping financial institutions from these predatory practices
- Lobbyist

# CONTACT SENATOR WYDEN

**Chair of Senate Finance Committee**

**Ron Wyden (OR)**

**Democrat**

P: (202) 224-5244

F: (202) 228-2717



# CONTACT SENATOR CRAPO

**Senator Mike Crapo (ID)**

**Republican**

**Ranking Member**

**Senate Finance**

**Committee**

**Phone: (202) 224-6142**

**Fax: (202) 228-1375**



# CONTACT JAMIE CUMMINS

## Jamie Cummins

Senior Tax Counsel  
Senate Finance Committee

Email: [Jamie\\_Cummins@finance.senate.gov](mailto:Jamie_Cummins@finance.senate.gov)

Charities need to share how hard this is on them.



# CONTACT

Contact Senator Tim Scott (South Carolina)

P: (202) 224-6121



Contact Senator Jerry Moran (Kansas)

P: (202) 224-6521

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# CONTACT FINCEN

- [www.fincen.gov/contact](http://www.fincen.gov/contact)
- Email to [FRC@fincen.gov](mailto:FRC@fincen.gov)
- Leave message @ 703-905-3591 hotline
- Andrea Gacki, Director
- Ms. Gacki – needs to hear how hard this is on charities
- Charities need an exception carved out to this ruling

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  - a. RIFT Advocates
  - b. General Counsels

# GET SUPPORT



## “RIFT Advocates” Bequest Working Group

For charities to participate, contact:

Karen Smedley – Duke University

[Karen.Smedley@duke.edu](mailto:Karen.Smedley@duke.edu)

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5. Nationwide advisory group
  - a. RIFT Advocates
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# GENERAL COUNSEL ADVISORY GROUP



## “RIFT” General Counsel Advisory Group

To participate, contact:

Johni Hays, JD – Thompson & Associates

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# WANT TO GET INVOLVED?

1. State Laws/Attorneys General
2. Federal Law
3. Judicial – Class action litigation
4. FinCEN-U.S. Treasury exception request
5. Nationwide advisory groups
  - RIFT Advocates (Contact Karen Smedley [Karen.Smedley@duke.edu](mailto:Karen.Smedley@duke.edu))
  - General Counsels



To get involved, contact:  
Johni Hays, JD – Thompson & Associates  
Phone: 515.988.8817  
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# QUESTIONS?



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