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Does My Nonprofit Really Have to Register Before Asking For Money?

What you need to know about fundraising regulations.

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Whether a nonprofit organization has been recently formed and is looking to engage in initial fundraising efforts or is well-established and is planning to expand its fundraising nationwide, the organization will need to consider compliance with states' charitable solicitation registration and reporting laws.



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Currently, 39 states, plus the District of Columbia, require charitable and other nonprofit organizations to register before “soliciting” contributions within the jurisdiction.¹ “Solicitation” is broadly defined. Solicitation is usually defined to include oral, written, or online requests for contributions, meaning that the organization does not have to be physically present in the state to engage in potentially registrable solicitation activities. If registration is required, an organization’s failure to register may result in state investigation and fines, questions from the Internal Revenue Service, and scrutiny from potential donors.

Overall, charitable solicitation laws are intended to provide donors with increased transparency and to protect the public from misrepresentation and fraud. Accordingly, charitable solicitation registration and reporting involves disclosure about an organization’s activities and finances.

“Does my nonprofit need to register?”

The need to register is triggered by “solicitation” efforts by the nonprofit, such as asking for a contribution or selling goods/services that will benefit a charitable cause. An organization does not need to actually receive a donation to trigger registration in most states.

Online Fundraising: While it is clear that a fundraising event or donation request sent by mail would constitute solicitation, online requests for donations require a closer look, as most states do not address Internet fundraising specifically in their statutes or regulations. The so-called “[Charleston Principles](#)” were adopted in 2001 by the National Association of State Charity Officials in an effort to provide some level of common guidance on when an organization’s Internet fundraising triggers charitable registration requirements in a state. Under the Charleston Principles, registration for online solicitation is generally required if (1) the charity specifically targets a person in a particular state; or (2) the charity engages in passive solicitation and has “ongoing” or “repeated” contacts with state residents. For example, if an organization uses a “donate now” button and receives a substantial number of donations from a particular state, registration would likely be required in that state. However, the Charleston Principles were not widely adopted² and, in most cases, simply serve as informal guidelines that were developed before the Internet became what we know it as today. Although these principles are helpful as a non-binding

indicator of how a state may view particular online solicitation activities, state policies may change at any time. Thus, whether your organization would trigger a particular state's registration laws solely based on Internet activity would be dependent on that state's rules and the nature of the online activity involved.

Ultimately, an organization should register in its state of incorporation, any state(s) in which it has a physical presence, and any state(s) in which it targets state residents or has ongoing contact with state residents. If an organization is using a webpage to solicit donations, the organization will need to consider its target audience and monitor the sources of its donations. Further, a follow-up email or letter to a state resident following an online donation would be considered active solicitation that triggers registration. Often large charities may choose to register nationwide rather than go through the process of analyzing the sources of income and donations received by various states' residents, but this is not necessarily the preferred approach for every organization.

Exemptions: Certain organizations are exempt from state registration. The requirements for exemption vary by state, but exemption often applies to educational organizations, religious organizations, membership organizations that only solicit their members, or organizations that receive below a certain threshold in monetary donations. On the latter point, even the revenue level at which an organization may be exempt from registration varies widely by state—ranging from \$25,000 to a mere \$5,000 in some jurisdictions. Finally, even if an organization qualifies for exemption from registration, consider that some states require organizations that meet the criteria for exemption to formally apply for recognition of this status. Advance planning and consideration of an organization's plans for growth will help guide whether a nationwide or state-by-state approach will best serve an organization's needs.

What does registration entail?

To register, the organization must submit a registration statement, supporting documentation, and often a filing fee to the respective state agency—either online or in hard copy. Although the Unified Registration Statement (URS) was developed in an attempt to streamline the registration process nationwide the process is not necessarily the simpler route, as many states request supplemental forms to be submitted with the URS. Instead, organizations may find it easier to use the state-

specific forms that are available on each state's respective regulatory website.

Generally, registration statements request basic information about the organization, its registered agent, governance, and finances. Several states also require the organization to provide a list of its officers and directors, professional fundraisers (if any), and any other states in which it solicits or plans to conduct solicitations. In addition, the organization will be asked to provide supporting documentation, including its IRS Determination Letter, a copy of its Articles of Incorporation and Bylaws, and its IRS Form 990 or functional equivalent.

Registration statements must also be signed by the organization's leadership. Typically, states require the signatures of the chief executive officer and/or chief financial officer, though additional persons may be required to sign state filings, too.

Note that the organization's registration information will mostly be available to the public and the organization should be careful not to include any personal information, such as Social Security numbers or bank account information.

What if my nonprofit is registering late?

Under most state charitable solicitation statutes, registration should take place prior to any solicitation. However, sometimes organizations start to fundraise and personnel are unaware of registration requirements. In this case, the organization should register as soon as it becomes aware of its registration obligations. Often, state agencies will process a "good-faith" late registration without penalty if the organization can provide a justifiable explanation for its lack of earlier registration.

What do annual reports require?

Once the organization has been registered to conduct solicitations, state agencies require annual or biennial reports to maintain its good standing. Annual reports are usually tied to the fiscal year end of the organization or the anniversary of the organization's date of registration.

Similar to the registration process, each state's renewal application and fees vary. Many states require the organization to submit its most recently filed Form 990 with its renewal application. The organization may also be required to include audited financial statements or CPA reviewed statements depending on the organization's

total contributions.

It is important for the organization to timely file its registration renewals in order to maintain its ability to solicit contributions within the state and avoid late filing fees. If an organization fails to file its annual renewal, the organization will risk having its registration status revoked by the state.

Given the patchwork of state laws addressing charitable solicitation registration and reporting and the potential for significant fines for failure to comply, it is usually advisable to consult with counsel to assist in the process.

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¹ Although charitable solicitation laws are generally thought of at the state level, registration requirements may also exist at the county or city levels. Often these requirements are particular to singular fundraising events, but in some cases may supplement a particular state's filing requirements. In the interest of brevity, this article only addresses state charitable solicitation laws, but [Venable LLP](#) can assist with local requirements, if needed.

² For example, Colorado and Tennessee both formally adopted the Charleston Principles. See [8 Colo. Code Regs. 1505-9, Rule 10](#); [Tenn. Comp. R. & Regs. 1360-03-01-.07](#).