

TOPIC:

REGISTRATION ROUNDUP: A SUMMARY OF STATE REQUIREMENTS FOR CHARITABLE ORGANIZATIONS

AUTHOR:

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INTRODUCTION:

Most states have charitable solicitation laws that require charitable organizations to register with a state charity office prior to soliciting contributions from their residents. The term "charitable organization" is often defined broadly: educational institutions and other 501(c)(3) organizations, as well as other tax exempt nonprofits may be required to register under these state laws. The act of soliciting donations for a charitable purpose is an activity with expansive boundaries and in most states includes: (1) any request for anything of value; (2) any announcement over the press or any written advertisement; or, (3) the sale of, or offer to sell, something in return for a charitable contribution.

The majority of states exempt educational institutions from the state's charity registration requirements. However, this exemption is not automatic in many states; often, educational institutions must demonstrate proof of their exemption. The registration and proof of exemption process varies for each state and usually involves filing an application form, submitting additional documents (IRS 990 form, charter, bylaws, IRS determination letter, etc.), and paying a fee. Most states also require a renewal registration to be filed either annually or biennially. The penalties for failing to register or renew registration vary from state to state.

This NACUANOTE provides a brief, high level overview of state charitable registration requirements and their applicability to colleges and universities. Readers are encouraged to consult the list of resources provided at the end of this NACUANOTE for charts and additional information on state-specific requirements, which can vary widely.

DISCUSSION:

1. Who has to register?

Thirty-nine states and the District of Columbia have laws that require charitable organizations to register with a state charity agency prior to soliciting donations from that state's residents. [1] The following states do not have charitable registration laws or registration requirements: Delaware, Idaho, Indiana, Iowa, Montana, Nebraska, Nevada, South Dakota, Texas, Vermont, and Wyoming. [2] States that have charitable solicitation laws define "charitable organization" broadly to include 501(c)(3) and other tax exempt nonprofits. For example, Connecticut and a number of other states define a charitable organization as one established for, "any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic or eleemosynary purpose, or for the benefit of law enforcement officers, firefighters or other persons who protect the public safety." [3]

In addition to requiring charities to register, many of those 40 jurisdictions with charitable solicitation laws *also* have laws governing the registration and regulation of professional fundraisers. Of the 11 states that do not require registration for charities, only five also exempt professional fundraisers from registering: Montana, Nebraska, Nevada, Texas, and Wyoming. In some states, it is illegal for a charitable organization to work with, or solicit based on work performed by, an unregistered professional fundraiser. Therefore, if an institution hires a professional fundraiser, it should ensure that the fundraiser is registered in all necessary states where the institution may engage in fundraising.

An organization would most likely begin by registering in its "home," or domiciled, state. Beyond that, it is typically the act of *soliciting* donations in a state, not the *receipt* of donations from a state, that triggers the requirement to register, so it is helpful to understand what it means to "solicit" a donation.

2. What is covered?

The definition of solicit varies from state to state. Most state solicitation laws use the model charitable solicitation law developed by the National Association of Attorneys General as a guide. [4] In short, the model law defines "solicit" to mean any request, oral or written, and either direct or indirect, for anything of value; any announcement over the press or any written advertisement; or, the sale of, or offer to sell, something in return for a charitable contribution. [5] Some states' laws are broader than the model law, while others are narrower. For example, in addition to standard activities of asking alumni and foundations for donations, which would count as direct solicitation, offering to sell merchandise or tickets to an event can trigger the requirement to register in some states.

Another possible trigger for the requirement to register is the solicitation of donations online. Since state laws generally define "solicit" broadly, the National Association of State Charity Officials ("NASCO") developed a set of non-binding guidelines called the "Charleston Principles" to provide guidance regarding the application of state registration requirements to charities soliciting donations online. [6] These principles attempt to define more narrowly the type and extent of internet activity that would trigger the requirement to register in a state. The guidelines suggest that:

Organizations that are domiciled within a state and use a website to solicit contributions must register with that state. Organizations located outside of a particular state must register if they use their website to specifically target people in that state, or receive contributions from the state on a repeated and ongoing basis or a substantial basis through its website. [7]

The Principles do not specifically define “ongoing” or “substantial.” That is left up to each individual state. [\[8\]](#) Without the Charleston Principles, every organization that has a link to donate on their website would be required to register in every state whose definition of solicit is broad enough to include a donate link, regardless of whether the organization intentionally targets residents in that state.

While most states have either codified the Charleston Principles or stated their intent to use them as a guide, some states do not accept the Charleston Principles and have statutes broad enough to include a simple link to donate. For example, New York does not follow the Charleston Principles and defines “solicit” as: “To directly or indirectly make a request for a contribution, whether express or implied, through any medium.” [\[9\]](#) Arguably, the broad language used in New York’s definition could include a link to donate button on a website, which could trigger the requirement to register there.

3. Are colleges and universities exempt from state registration requirements?

Most of the forty jurisdictions that require registration provide an exemption for educational institutions. The following have no exemption for educational institutions and require registration: Alaska, Arizona, Colorado, District of Columbia, Massachusetts, New Hampshire, Oregon, and Washington. Since there is little uniformity among state laws, exemptions for educational institutions vary and should be examined individually. For example:

- In some states the exemption for an educational institution does not apply if a professional fundraiser is used. [\[10\]](#)
- An institution’s accreditation status may affect its exemption status.
- In some states, the exemption only applies to institutions that solicit donations from state residents who have an affiliation with the institution, such as alumni, faculty members and corporations.

However, in the overwhelming majority of states with an exemption, an accredited educational institution is exempt regardless of who they solicit. It is also important to note that while a majority of states exempt the educational institution and any institutionally-related organizations, such as foundations, alumni associations, or booster clubs, [\[11\]](#) some exempt only the educational institution. [\[12\]](#)

Some states require that the institution claiming an exemption confirm their exempt status by applying or otherwise providing notice (writing a letter) to the state before soliciting. Some states do not require advance approval, but it is recommended that a letter be filed with the state notifying them that the institution believes itself to be exempt. This puts the state on notice and can help mitigate penalties should the state decide to require the institution to register.

4. How does an institution register if it is *not* exempt?

Each state requiring registration has its own application form, additional document requirements (IRS 990 form, charter, bylaws, IRS determination letter, etc.), filing procedures, filing deadlines, fees, and fines. Most states have nominal initial registration fees of less than \$100. Most states also require a renewal registration to be filed either annually or biennially, usually accompanied by another nominal fee. Institutions should refer to individual states’ charitable solicitation laws to

ensure compliance with their registration requirements.

To streamline the application process across states, the National Association of State Charity Officials (“NASCO”) developed the Unified Registration System (“URS”) to serve as a common application form that could be used in any state that accepted it. [13] However, the URS was designed to standardize only the application form for registration. Each state still requires a variety of additional documents that must be included with the application. The URS also covers information required by many states, making it longer and more difficult to complete than most state applications. While most jurisdictions with a registration requirement accept the URS, many states require a supplemental application form to be submitted in addition to the URS, and only a handful of states accept the URS for renewal, arguably defeating the purpose of having a common form. Accordingly, only colleges and universities registering in multiple states for the first time are benefitted by the URS.

5. Are there federal law requirements to register a nonprofit?

Generally, nonprofit registration is conducted at the state level. However, the IRS Form 990, which is required of educational institutions and most non-religious nonprofits, now includes questions related to an organization’s state registrations. Form 990 asks that organizations identify the states in which they do business that require organizations to file Form 990 with those states. Nearly all of the states that require registration, exemptions notwithstanding, also require that organizations file the Form 990 with a state agency. While the IRS cannot force an organization to register in a state, it can impose harsh financial penalties on organizations who file incomplete or inaccurate Form 990s.

6. Are there consequences for failing to register?

The consequences for failing to register vary among states, and in theory can include both civil and criminal penalties. Penalties include state fines that reach into the tens of thousands of dollars as well as possibly requiring an institution to return all solicited funds. Other states’ penalties are less severe, granting institutions time to comply and only assessing fees after that grace period. That said, there have been no accounts of states enforcing the full extent of available penalties under the law against a college or university for failing to register. Generally, states have few resources to prosecute violators of charitable registration laws to the fullest extent authorized under statute. [14] Further, state bureaus of charity generally exercise discretion when choosing which, and the amount of, penalties to impose upon violators. [15] Charitable solicitation laws were designed to protect the public against fraud; so provided an institution makes a good faith effort to comply with laws and address registration deficiencies when noticed, an institution will likely avoid extensive penalties. Given this, registration and renewal requirements may be best thought of as a routine task to be completed by institutions, not necessarily an overwhelming burden.

CONCLUSION:

Most states have charitable solicitation laws that require organizations soliciting their residents to register. The definition of “solicit” is so broad that as a practical matter, many colleges and universities solicit residents in every state. The simple act of sending an alumni newsletter encouraging donations, or hosting a website with a donate link, would trigger registration requirements in some states.

However, colleges and universities are also exempt from many state charitable registration requirements. In some instances, institutions will be required to confirm their exempt status by completing an application or filing a letter with the state. Educational institutions should refer to each state's charitable registration law to ensure they meet the state's exemption or registration requirements.

There are many law firms and other agencies across the country that are available to assist with filings in all states (or as many as are needed) for a reasonable fee. In addition, the resources below may be helpful.

ADDITIONAL RESOURCES:

The resources below serve as helpful reference guides. Due to the fluid nature of state law, they should be independently examined by counsel or other appropriate administrators.

[Nonprofit Fundraising Registration: The 50-State Guide](#), 2d Ed., R. Barrett & S. Fishman (2012).

[Chart of State Nonprofit Registration and Solicitation Requirements Resources](#), Lion's Club International (2013).

[Charitable Solicitation Requirements Chart](#), Copyright 2013 by Asiatico & Associates, PLLC. Reprinted by permission of Asiatico & Associates, PLLC.

[Laws for Change: Resource Page for Fundraising, State Requirements, etc.](#)

[White Paper, Application of Charitable Solicitation Registration Statutes to Tax-Exempt Educational Institutions and Related Organizations](#), Council for Advancement and Support of Higher Education (2010).

[National Association of State Charity Officials](#) (NASCO)

[The Unified Registration Statement: The Multi-State Filer Project](#)

ENDNOTES:

[1.](#) In addition to state registration requirements, some states require disclosure statements to be printed on solicitation materials. These include: Colorado, Florida, Georgia, Illinois, Maryland, Michigan, New Jersey, New York, Pennsylvania, Virginia, Washington, and West Virginia.

[2.](#) These states may have registration requirements for doing business in the state. The regulations and requirements for registering to do business are beyond the scope of this note.

[3.](#) Connecticut General Statute § 21a-190a.

[4.](#) National Association of Attorneys General, [A Model Act Concerning the Solicitation of Funds for Charitable Purposes](#) (1986).

5. *Id.*

6. NASCO, [The Charleston Principles: Guidelines on Charitable Solicitations Using the Internet](#) (2001).

7. [Association of Fundraising Professionals resource center on the Charleston Principles.](#)

8. *Id.*

9. New York Executive Law § 171-a.

10. Maryland, South Carolina and Minnesota are examples. In these states, an otherwise exempt institution would be required to register if they hire a professional fundraiser.

11. These include Alabama, Georgia, Illinois, Kansas, Kentucky, Maine, Minnesota, Mississippi, Missouri, New Mexico, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Virginia, West Virginia, and Wisconsin.

12. These include Arkansas, California, Connecticut, Florida, Hawaii, Louisiana, Maryland, Michigan, New Jersey, New York, North Dakota, and Oklahoma.

13. Information about the URS can be found at <http://www.multistatefiling.org/>.

14. James J. Fishman, *Improving Charitable Accountability*, 62 Md. L. Rev. 218, 262-64 (2003).

15. Fundraising groups that have been targeted often are accused of fraud. For example, "Helping Hands, Inc." of Winger, Minnesota, was issued a cease and desist order in 2012 when the Minnesota Consumer Protection Division received complaints that the organization was soliciting contributions for St. Jude Children's Research Hospital without any agreement with the hospital or registration to solicit charitable donations, <http://www.ag.state.nd.us/cpat/AVC/CDHelpingHands.pdf>. In another instance, the New York Attorney General's Office examined charities involved in marketing campaigns representing that a portion of the sales will support breast cancer research or screening after complaints that certain groups were "sham charities" organized to benefit the founders. <http://www.thenonproffitimes.com/news-articles/n-y-attorney-general-examining-cause-related-marketing/>.

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