

State Solicitation Requirements

As of April 2020, approximately 40 states have enacted charitable solicitation statutes. Under these statutes, a nonprofit organization must register with the relevant state agency if the nonprofit is directly or indirectly soliciting funds for charitable purposes from that state's residents. These solicitation laws vary by state, therefore, the solicitation requirements with which an organization must comply need to be addressed on a state-by-state basis.

This whitepaper provides a general overview of the different points a nonprofit organization should consider in order to comply with state solicitation requirements.¹

I. Initial Registration.

Generally, a nonprofit organization must register with the relevant state agency if the organization is soliciting funds for charitable purposes from that state's residents. A state resident may be an individual residing or a company located in the state. Further, these registration requirements apply to both active and passive solicitation. Active forms of solicitation include fundraising events, emails, or letters, while passive forms of solicitation include the placement of a "donate here" button on a website.

An organization usually registers to solicit donations in a particular state by filing a registration form with the appropriate state agency (commonly a department within the attorney general's office). The registration process often involves submitting corresponding documentation, such as a copy of the nonprofit corporation's articles of incorporation, a copy of its current bylaws, and information related to its financial history. The fee associated with initial registration varies by state but is often less than \$60. Some states adjust the fee required by the amount of total contributions a nonprofit received in the previous year. For example, a charity intending to register to solicit donations in Florida will pay a \$10 fee if it has received less than \$5,000 in contributions but a \$75 fee if it has received \$99,000 in contributions. Below are a few differences in state requirements that a nonprofit organization should consider.

- a. **Registration Timing.** Depending on the relevant state statute, an organization may be required to register with a state agency either before or after soliciting donations. For example, New York requires nonprofits to register to solicit donations before soliciting any donations from New York residents. California, on the other hand, requires nonprofits to register to solicit donations within 30 days of receiving donations from California residents. It is therefore important to understand when, during the solicitation process, the nonprofit corporation should register with each state agency.
- b. **Exemptions to Registration.** Many state statutes exempt certain organizations from the requirement to register in order to solicit donations. State registration exemption criteria usually fall into two categories:

¹ This article should be treated as a general summary, not an exhaustive list, of the types of requirements with which a nonprofit must comply in order to legally solicit donations. If you have any questions about requirements identified in this document, we recommend that you contact the relevant state government and/or an attorney licensed to practice in the relevant jurisdiction.

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1. Exemption based on Organization Type. This exemption applies to certain types of nonprofit organizations, such as educational institutions or religious congregations. If an organization believes it may qualify for the exemption, it must check the relevant state statute. Although most state statutes exempt similar types of organizations, the qualification criteria for exempt organizations varies from state to state.
2. Exemption based on Revenue. This exemption typically applies to organizations with revenue below a certain threshold, which do not engage professional fundraisers to solicit donations. The thresholds vary from state to state. For example, Massachusetts's threshold is \$5,000, New York's threshold is \$25,000, and Washington's threshold is \$50,000. How the statutes define what money can be counted toward the threshold also varies. For example, Florida counts total generated revenue of the organization, while New York counts total contributions from New York State residents. Furthermore, some state statutes contain additional criteria to qualify for exemption. Massachusetts, for example, requires that the organization not receive contributions from more than ten people or pay any part of the organization's assets or income to an officer or member.

II. Annual Reports.

Nonprofit organizations must also file periodic financial reports to renew their solicitation certifications in the states in which they solicit donations. Annual filing forms for renewing certifications are provided by the relevant state governments and can often be found online. Like initial registration requirements, the requirements for renewing solicitation certifications vary by state. Usually, an organization must submit a copy of its IRS Form 990 or Form 990-EZ for the immediately preceding financial year. Some states, like Florida, also require organizations to submit a copy of the organization's conflict of interest policy. Annual renewal reports are due shortly after the close of the nonprofit's tax year, with specific deadlines varying by state.

III. Soliciting Donations Online.

There is an open question as to whether certain online activity constitutes solicitation of donations for which registration is required. For example, it is unclear whether a nonprofit organization requesting donations through its website using a "donate now" button is required to register in every state from which it receives a donation. Some state statutes, like those of Florida, Massachusetts, and New York, define "solicitation" to include indirect requests. In these states, online processing of contributions constitutes solicitation and triggers registration and reporting requirements.

Many states have not explicitly addressed the use of "donate now" buttons. The National Association of Attorneys General and National Association of State Charity Officials created a set of recommendations called the *Charleston Principles* that are relevant to the question of online solicitations. The *Charleston Principles* state that a nonprofit with an interactive website, such as a website with a "donate now" button, must register if it "specifically targets state residents for contributions" or "receives substantial contributions from state residents on a repeated and ongoing basis through or in response to the website solicitation." Therefore, according to the *Charleston Principles*, a "donate now" button on a website is considered "active" solicitation, and thus the nonprofit should register in the relevant state, if the online solicitation falls into one of the above two categories.

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It is important to note, however, that the *Charleston Principles* are guidelines for how state charitable solicitation authorities should handle internet fundraising. They are not law. Many states follow the *Charleston Principles*, like Pennsylvania and Maine, and some states have enacted laws based on the *Charleston Principles* (like Colorado and Tennessee), but some states do not follow the *Charleston Principles*.

The safest method to ensure compliance with state solicitation laws is to register for charitable solicitation in all states from which a nonprofit receives donations. If you feel this is a financial impossibility, you can implement a policy to not accept donations from states where the nonprofit is not registered (and state this on the website) or try to limit amounts received from those states so that you fall within registration exemptions in those states.

IV. Other Compliance Requirements.

In addition to the registration and annual disclosure requirements, nonprofit organizations may also be subject to additional requirements that pertain to contributions. Two such requirements that a nonprofit organization should keep in mind before soliciting donations are below.

- a. Solicitation Disclaimer.** Charitable organizations may be required by a state's statute to make disclosures when soliciting donations from the public. State statutes that mandate such an obligation, including Florida, Washington, and New York, provide disclosure language that must be obviously, clearly, and conspicuously displayed on all solicitations, confirmations, receipts, or reminders of a contribution. These disclosure rules also often require disclosure of the city of the charitable organization's principal place of business and information pertaining to where a person can obtain the charity's registration information.
- b. Commingling of Charitable Contributions.** Some state statutes also have clear rules about how donations solicited from public must be handled. States like Florida, for example, prohibit commingling charitable contributions with noncharitable funds. This means that a charitable organization must keep donations in a separate bank account from funds that are not used for a charitable purpose. Additionally, charitable organizations are required to keep documents to show how contributions are used.

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