

## **Regulating Charitable Fundraising in the 21<sup>st</sup> Century**

*This resource is provided for informational and reference purposes only and should not be construed as legal advice. Specific legal questions regarding this information should be addressed by your organization's legal counsel*

Eileen Morgan Johnson  
Whiteford, Taylor & Preston LLP  
1025 Connecticut Avenue, N.W, Suite 400  
Washington, DC 20036  
202-659-6780 (office)  
202-327-6180 (fax)  
emjohnson@wtplaw.com

## Regulating Charitable Fundraising in the 21<sup>st</sup> Century

Most managers of charitable organizations know that their organizations need to be registered to solicit charitable contributions in the state where their office is located. Many do not realize that their registration and reporting obligation can extend beyond the state line. If an organization mails solicitation requests to donors and members in another state, publicizes fundraising events in another state or has a solicitation request on the organization's website, it could be subject to charitable solicitation registration and reporting requirements in more than just its home state.

### What is Regulated?

Most states regulate fundraising by or for charitable organizations. (They rarely regulate fundraising by other types of nonprofit organizations other than through consumer protection regulations.) Since charitable solicitation activity is regulated at the state level, there is no national consensus of the requirements for registration and reporting or even the terminology that is used. Generally, a **professional fundraising counsel** is someone who assists a charity in planning a fundraising campaign. That assistance can include setting fundraising goals, providing training to volunteers and staff, preparing solicitation and press materials, and advising on the progress of the campaign. A **professional solicitor** is someone who contacts prospective donors and asks them to make a donation. A **professional fundraiser** often serves a combination of functions, helping to plan the campaign and carry it out through paid solicitors.

It is important to understand how each state defines and regulates fundraising activity in that state in order to determine the organization's obligations. Usually there is an initial registration application and annual reports due thereafter. States usually impose additional reporting requirements on charities that use professional fundraising counsel, professional solicitors or professional fundraisers. They almost always impose strict registration and reporting requirements on fundraising professionals.

Exemptions from registration and reporting are sometimes available but they vary by jurisdiction. Many states exempt from registration and reporting requirements parent-teacher organizations, religious organizations or those that only solicit from their members. Some states exempt any organization that raises less than a specified dollar amount in a year with \$25,000 being the most common threshold for registration. Membership dues and fees are usually exempt by definition and not considered to be fundraising.

Managers may not realize the breadth of the charitable solicitation regulations that can impact their organization. A special event such as a concert or golf tournament may be considered a fundraising activity if admission is charged. The sale of products to support the organization may also be considered fundraising. Raffles, sweepstakes and contests are usually subject to special regulations and may require an additional permit or license, often issued at the local government level.

## **Registration and Reporting**

To ease the reporting burden on organizations with multi-state fundraising activities, many states accept the unified registration statement (URS). This form collects information about the organization's governance, programs and fundraising activities. It is usually filed with a copy of the organization's Form 990 (or a financial statement if the organization is not required to file a Form 990). Additional documents may be required to be submitted with the URS such as copies of fundraising materials or contracts with professional fundraisers or solicitors.

## **Disclosures**

Many states require organizations soliciting contributions from their residents to provide a disclosure statement to prospective donors at the point of solicitation. The state may outline in general terms what information must be provided or it can require the organization to use specific language. Organizations that solicit in multiple states with disclosure requirements will usually include all of the disclosure statements at the same time, often on a separate card inserted into a letter or at the bottom of a solicitation letter.

## **Fundraising and the Internet**

Since charitable solicitation regulation is a state function, each state may regulate solicitation of its residents including Internet fundraising. Care should be taken in multi-state fundraising since the definitions, regulations and exemptions are not consistent from state to state. If an organization based in one state conducts fundraising activities on its website or through the use of e-mail, it may be subject to regulation in other states. As a general rule, if a charitable organization has a place of business in a state and uses the Internet for fundraising, it must register for charitable solicitation activity in that state (if that state regulates fundraising). A charity may be subject to a registration requirement in a state where it does not have a physical presence if it conducts fundraising activities on its website. Examples of fundraising activity are a general appeal on its website for donations or the use of e-mail requesting donations directed to residents of that other state. A sale of a product or service on a charity's website or even another party's website might subject the charity to a charitable solicitation registration requirement if prospective purchasers are told that the charity benefits from the sale.

The disclosure statements that are required to be given to prospective donors at the point of solicitation must also be used in conjunction with Internet fundraising. Many organizations will use a generic disclosure notice on their web appeal pages and then link them to another page with the specific state disclosure notices that are required for that organization.

Special care should be exercised when conducting raffles, sweepstakes or contests on the Internet as these are heavily regulated in some states. An organization may have to use disclaimers such as “This is not an offer to residents of XX” on their website to avoid running afoul of other state laws.

Charities conducting fundraising activities on their websites or through e-mail should review the laws of the other 49 states and the District of Columbia and determine 1) if they qualify for any available exemptions or 2) have a registration and reporting obligation in any of those states where their message is received.

## **Conclusion**

State charitable solicitation registrations are one of the hurdles faced by organizations with diverse fundraising programs. With a little research into the organization’s activities, a review of the applicable state laws and a detail oriented staff, any organization can meet its registration and reporting obligations. From there the organization can reap the rewards of a broad fundraising program.