



**FEDERAL FUNDRAISING REGISTRATION AND REGULATION**

**Steptoe & Johnson LLP**

**David Roll**

To protect residents, legitimate charitable organizations and the charitable community, most states have laws requiring 501(c)(3) charitable organizations that solicit contributions from the public, including those in the social sector, to register and file periodic reports. The states that do not require registration are: Vermont, Indiana, Iowa, South Dakota, Nebraska, Texas (with limited exceptions), Wyoming, Montana, Idaho and Nevada.

Although specifics vary, the 40 states and the District of Columbia that regulate charitable fundraising generally require covered organizations to register with a state agency before soliciting the state's residents for contributions. Most of the state fundraising statutes exempt certain organizations from their registration and filing requirements. For example, in Pennsylvania, charitable organizations receiving annual contributions of \$25,000 or less are exempt from the state registration requirements as long as they do not compensate anyone to conduct solicitations. In addition bona fide religious organizations, hospitals, educational institutions, firefighters and numerous other types of organizations are exempt from the Pennsylvania law.

The information that must be submitted in or attached to the state registration forms varies from state to state. Many states accept a copy of IRS Form 990 in place of some or all of the required financial reports. In addition, other documents, such as articles of incorporation and bylaws, typically are required to be submitted. All information submitted in the registration reports is generally made available to the public.

In addition to registration, the states that regulate charitable fundraising generally require covered organizations to file periodic financial reports. In Pennsylvania, for example, covered organizations are required each year to file reviewed financial statements if their gross contributions exceed \$25,000 per year and audited financial statements if their gross contributions exceed \$100,000 per year.

To determine specific registration and filing requirements, social sector charitable organizations that are engaged in or about to engage in fundraising should consult these guides, experienced counsel and the agencies in the states in which the organization expects to be "doing business." "Doing business" in a particular state may include any of the following: (1) soliciting contributions by mail, phone or otherwise from individuals, businesses or other charities located

in the state; (2) conducting mission-based programs; (3) employing individuals; (4) maintaining a checking account; or (5) owning or renting property.

In some states, local governments or municipalities may also require organizations soliciting charitable contributions to register and file periodic reports. These local regulations are beyond the scope of these guides.

Many states, including some that do not require charities to register and report, regulate fundraising activity by professional solicitors and fundraising counsel.

## **1. Unified Registration Statement**

The Unified Registration Statement (URS) is an alternative to filing separate registration forms in cases where covered charitable organizations are soliciting contributions in multiple states. Thus, the URS proves most useful to nonprofits soliciting regionally or nationally and, therefore, subject to the registration laws of *multiple* states. The form is an ongoing project of the National Association of Attorneys General (NAAG) and the National Association of State Charities Officials (NASCO) in collaboration with the Multi-State Filer Project, Inc. (MFP).

All states that require covered charitable organizations to register will accept the URS in lieu of their own registration form except for the states of Colorado, Florida and Oklahoma. The states that accept the URS form, however, continue to require annual filing of financial information or some other type of financial report. In addition, the following states also require the filing of supplemental forms and/or information in addition to the URS: Arkansas, California, Georgia, Maine, Mississippi, North Carolina, North Dakota, Tennessee, Utah, Washington, West Virginia, Wisconsin and the District of Columbia. Massachusetts accepts the URS for initial registration only.

The URS can be downloaded by following the instructions at <http://www.multistatefiling.org>. This website contains helpful information about registration requirements and an up-to-date list of the states that accept the URS and those that don't.

## **2. Fundraising via the Internet; the “Charleston Principles”**

Most of the state statutes that require registration literally apply to internet solicitations that reach residents of the state. However, minimum contacts with the state and the practicality of applying these statutes to activities beyond more traditional fundraising techniques (e.g., telephone, direct mail, in-person solicitations) raise a number of issues that have troubled and perplexed state charity officials. Therefore, the National Association of Attorneys General/National Association of State Charity Officials have published the “Charleston Principles” that provide guidelines to states as to when internet solicitations by otherwise

covered charities should be required to register. The Charleston Principles are guidelines only; they are not binding on the states and may change as laws change.

Under the Charleston Principles, a charitable organization that has its principal place of business in the state (and is thus “domiciled” in the state) and uses the internet to solicit contributions in that state must register in that state. If the organization is not domiciled in a state, it still must register if it (1) specifically targets persons in the state or receives contributions from persons in the state on a repeated and ongoing or substantial basis through or in response to website solicitations or (2) its non-internet activities alone would require registration in the state (e.g., direct mail or telephone solicitation into the state). The foregoing is a summary only. For more information on the Charleston Principles, including a complete copy with annotations, see <http://www.nasconet.org>.

It is strongly recommended that social sector charitable organizations intending to solicit contributions via the internet should seek the advice of experienced counsel concerning registration under one or more of the state fundraising laws.

### **3. Prohibited Conduct**

Most states have statutes that prohibit a variety of false, misleading, unfair and/or deceptive practices in connection with charitable fundraising. For example, states typically prohibit organizations from making statements that funds are being solicited for a charity or will be used for charitable purposes when such is not the case. These statutes authorize state attorneys general to prosecute violations and courts may impose monetary fines and in some cases criminal penalties.

### **4. Resources**

- “Annual Survey of State Laws Regulating Charitable Solicitations as of January 1, 2009.” Giving USA Spotlight Issue 1, 2009  
[http://www.fundraising123.org/files/spotlight09\\_issue1.pdf](http://www.fundraising123.org/files/spotlight09_issue1.pdf)
- National Association of State Charity Officials, <http://www.nasconet.org>
- Multistate Filing, The Unified Registration Statement, <http://www.multistatefiling.org>
- Internal Revenue Service, <http://www.irs.gov/charities/charitable/article/0,,id=123045,00.html>
- 50 State Statutory Surveys, Business Organizations, Non-Profit Organizations (Thomson Reuters/West, June 2008)
- American Institute of Philanthropy, <http://www.charitywatch.com>

- BBB Wisegiving Alliance, <http://www.bbb.org/us/charity/>
- Charity Navigator, <http://www.charitynavigator.org>
- GuideStar, <http://www2.guidestar.org>