

Nonprofit Fundraising is Under the Microscope

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If you plan to fundraise in any of approximately 40 states and the District of Columbia, you are required to register and be approved for fundraising before you may begin. After that, you must file annual state registrations to continue fundraising. Some states don't require registration for nonprofits such as religious institutions and organizations related to law enforcement, but most organizations are required to register. Failure to do so may be punishable by civil or even criminal penalties.

Assume you will be scrutinized

State regulators have been stepping up their game in recent years, increasing oversight of nonprofit fundraising. They've been tightening the laws and procedures that govern nonprofits, fining violators, and taking serious offenders to court. Where consumers have been found to be defrauded, charities have been dissolved. With improving coordination among state regulators, you should assume your organization will be scrutinized.

What do state regulators consider to be “fundraising”?

Fundraising that takes place in a geographic location within a state, such as a benefit dinner, auction, or tournament, as well as cause marketing campaigns, are always considered “fundraising.” A fundraising campaign undertaken via US mail, email, or phone and directed to individuals or companies in specific states is similarly considered fundraising in those states and generally triggers state registration requirements.

Passive online fundraising, without specific targeting by group or geography—for example, by using a “donate” button—generally does not trigger state registration requirements. There are exceptions, however, and distinguishing between these different types of fundraising is not always easy. With registration in multiple states simply unmanageable for many nonprofits, you may need help.

What if we're using professional fundraisers?

Many states require you to have contracts in place with professional (paid) fundraisers, and the contracts may need to specify how funds will be raised and reported and how the fundraisers will be paid. Paid fundraisers, in turn, may need to register with the states in which they're fundraising and provide information about their past affiliations and campaigns and other details about their business practices. Frustratingly, different states impose different requirements on organizations and professional fundraisers, so again, [you may need help](#) figuring it all out.

The [National Association of State Charity Officials](#) and the [National Association of Attorneys General](#) have been working — forever, it seems — to develop a [Unified Registration Statement](#) to ease the registration burden for organizations that wish to fundraise in multiple states. The goal has been to standardize and simplify compliance under the multitude of state laws. In addition, a [Single Portal Initiative](#) has been

underway to allow organizations and professional fundraisers to comply with multiple state registration and annual filing requirements through a single online portal.

May it happen in our lifetime! Stay tuned.

With years of experience both as in-house and outside counsel, [Ellen Lubell](#) provides guidance to nonprofit leaders on fundraising, as well as policies and practices to avoid liability, preserve tax-exempt status, and assure the proper expenditure of resources.