



Online Fundraising Compliance

 What Nonprofits Need To Know

Introduction

Today, nonprofits use multiple channels to connect online with donors. Virtual events, mobile asks, website “Donate Now” buttons, and online campaigns are common tools of mission advancement. Online fundraising offers charities cost-effective ways to access more supporters. It also provides nonprofit supporters with convenient ways to engage and donate remotely.

Digital fundraising has left many charities uncertain if their compliance has kept pace with their fundraising methods. This guide provides the information nonprofits need to evaluate whether their online fundraising is compliant.

While the IRS regulates federal tax exemption for nonprofits, the states regulate charitable solicitation. This means there is no one set of laws regulating the solicitation of charitable donations. There are 45 states that have laws regulating fundraising. Typically, these laws require nonprofits to register before fundraising within state borders. Most states also mandate that nonprofits renew their charitable solicitation registrations each year and report on their fundraising activities.

State fundraising registration and reporting are challenging for nonprofits to navigate. Most state laws were written before the internet existed and do not provide specific guidance on online fundraising registration requirements. To add to the confusion, fundraising registration forms, fees, deadlines, exemptions, and required documents differ from state to state. A viable unified application process does not exist. Nonprofits are understandably puzzled about whether they must register before soliciting online and in which states they must register.

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Fundraising Compliance and Donor Trust

Despite this confusion, nonprofits should make compliance a priority, not just because compliance is the law, but because winning and maintaining donor trust is crucial for every charity.¹ Trust is key to getting the first donation from a new supporter, and as the amount of a requested donation increases, so does the level of donor trust needed to secure the gift. During times of uncertainty, donor trust becomes even harder to win. Regulators regularly warn the public to research before giving to avoid scams, particularly when being solicited digitally. During disasters, public warnings both increase and intensify.

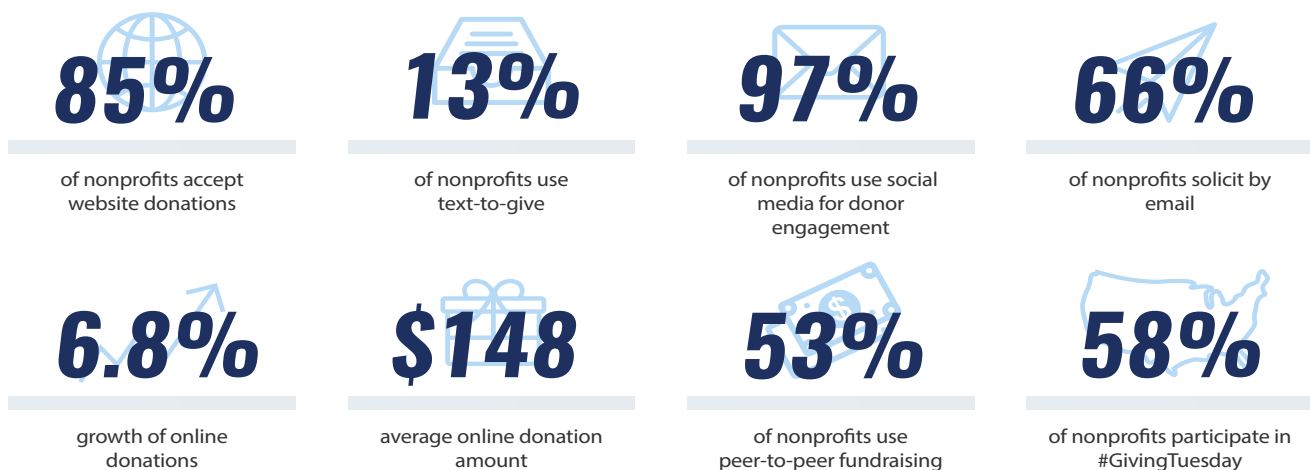
Charitable solicitation laws were enacted to protect the public. Fundraising registration is one part of that protection strategy and fundraising disclosures are the other part. At present, 25 states require nonprofits who solicit donations within their borders to include disclosure language in donor correspondence. These required disclosures provide the public with information on where to find information on the nonprofit, either from the state regulating authority or the nonprofit itself.

The internet has made it easy for the public to heed regulators' advice to research before giving. The status of nonprofits' charitable solicitation registrations are public. Charity rating databases and state charity bureau websites provide easy access to details on nonprofits, including their registration status. Prospective donors investigate nonprofits in these databases, before making donation decisions. Compliance is a way for nonprofits to show these supporters that they are worthy of their trust and donations. For this reason, as part of their registration strategy, savvy nonprofits use fundraising disclosures as an opportunity to broadcast their transparency and accountability.

State Regulation of Fundraising

States define charitable solicitation broadly. The precise definition varies from state to state, but in general terms, solicitation is the request for donations for a charitable purpose. Letters, phone calls, grants, and personal meetings seeking donations are universally viewed as solicitations. A number of states have made it clear that requests for charitable gifts made via emails, text messages, social media, or websites with "Donate Now" buttons are also solicitations.

Generally, charitable solicitation registration is required in any regulating state in which a nonprofit seeks to solicit donations. This is because it is the act of soliciting donations, not the receipt of donations, that usually triggers registration requirements. Solicitation occurs where the fundraising ask is received, rather than where the solicitor is located. This is true of both traditional and online solicitations.



REGULATION OF ONLINE FUNDRAISING

At present, 41 states require nonprofits to register before soliciting charitable contributions within their borders. The majority of nonprofits are required to register. Many states offer revenue-based exemptions from registration to very small nonprofits, however, these exemptions also need to be applied for and generally renewed. Before a nonprofit begins to fundraise, it may need to register in every state where its prospective donors are located. It is easy for nonprofits to determine where fundraising registration is required when they solicit supporters using traditional methods such as letters and visits. But in which states must nonprofits register when they are fundraising online?

In 2001, the National Association of State Charity Officials (NASCO) released a set of recommendations called the Charleston Principles to serve as advisory guidelines on how state charitable regulators should apply state charitable solicitation regulations to nonprofits engaged in internet fundraising.² The Charleston Principles suggest that an out-of-state nonprofit be subject to another state's charitable solicitation registration laws if the out-of-state nonprofit has an interactive webpage that solicits donations, and either specifically targets people physically located in a state, or receives contributions from people from in a state on either a repeated and ongoing basis, or on a substantial basis in response to the webpage solicitation. Yet, the Charleston Principles are not law. In fact, they are only followed by a few jurisdictions. It's important that nonprofits determining where to register do not rely on them.

Online fundraising methods can reach donors everywhere. That is what makes digital fundraising so appealing. It allows nonprofits access to previously unknown supporters. If the nonprofit is unsure where its solicitations are going to be received and from where it will receive donations as a result, as is the case with online solicitations, the nonprofit may well need to register nationwide.

Solicitations made through the use of a nonprofit's own website, social media feeds, or an online third party fundraising platform are all subject to state charitable solicitation registration regulations.

SOCIAL FUNDRAISING METHODS

For years, nonprofits have engaged in charitable crowdfunding, raising large sums of money for a special project or cause through smaller donations from their network of supporters. Today, nonprofit crowdfunding campaign solicitations and donations are often online. Modern nonprofits use their social media channels not only to solicit donations from supporters, but to encourage supporters to use social media to promote the nonprofit and fundraise on its behalf. This method of using existing supporters to engage new ones through social media is known as social fundraising.

Two of the most popular forms of social fundraising are giving days and peer-to-peer fundraising. Giving days are 24-hour online fundraising challenges that have a goal of rallying groups of people around donating through a giving day website to benefit a particular region, cause, event, or even a single nonprofit, often a college or university. The best-known example is #GivingTuesday. Peer-to-peer fundraising is a social fundraising strategy that empowers individuals and teams of individuals to reach out to others to raise money on behalf of a charitable cause. Well-known examples of peer-to-peer campaigns include walkathons and the Ice Bucket Challenge. Today, most peer-to-peer fundraising occurs online. Individuals set up personal or team fundraising pages often using a template created by the nonprofit who will receive the donations. When a donor makes a gift through the individual or team pages, the funds are transferred to the nonprofit.

THIRD PARTY FUNDRAISING PLATFORMS

Some nonprofits build social fundraising mechanisms like a crowdfunding page into their own websites. Other nonprofits use third party online fundraising platforms for their social fundraising campaigns. These online platforms offer sophisticated tools to facilitate interactions between nonprofit supporters and campaign donors. The platforms often charge a fee per donation to either the nonprofit or the donor.

Use of a third party fundraising platform does not necessarily eliminate a nonprofit's fundraising registration obligations. Whether a nonprofit is soliciting donations to be made on a crowdfunding page on its own website or through a third party platform, the nonprofit is soliciting. Even if a third party platform's contract and its onsite terms may not require state fundraising registration by a nonprofit, if the nonprofit is soliciting donations through the platform, it is subject to the same state fundraising registration requirements. If a nonprofit wishes to solicit using social methods that reach donors in every state, nationwide registration may be required before solicitation begins.

The structure of third party platforms varies greatly and nonprofits must use due diligence when using them to fundraise. Some third party platforms are for-profit organizations that do not solicit or accept donations on behalf of the nonprofit, but simply facilitate fundraising and sometimes gift processing for the nonprofit. Other third party fundraising platforms are themselves charities. These charity platforms use their own donor-advised fund to solicit for the nonprofit, then grant the funds to the nonprofit. Nonprofits ought to confirm with the IRS, the tax-exempt status of any fundraising platform claiming to be a charity. This will permit nonprofits to be transparent with supporters about the tax-deductibility of donations made through a platform, and who will issue a tax receipt.

Other third party fundraising platforms do not work directly with nonprofits at all, but instead acquire a database of all tax-exempt nonprofits and allow supporters to initiate peer-to-peer fundraising, sometimes without the nonprofit's knowledge. Though most states require third party platforms to obtain nonprofits' permission before soliciting on their behalf, permission is not always obtained. Nonprofits should remain vigilant about who is fundraising in their name, and request that to be removed from any third party platforms they do not want to solicit on their behalf.

Nonprofit fundraising platforms have their own independent obligation to register before fundraising in certain states, as do the nonprofits using the platform to fundraise. California has taken a strong stance on this, and other states are likely to follow.³ Depending on the state, a fundraising platform may be obligated to register and report as a commercial fundraiser, professional solicitor, fundraising counsel, or commercial co-venturer. For this reason, nonprofits need to determine their online platform's registration status in each state in order to properly report to the state their own relationship with the platform.⁴ Nonprofits should also determine the state fundraising registration status of any fundraising platform they use.

Fundraising Compliance

Most nonprofits want to broaden their circles of support and boost donations to their mission. Online fundraising provides opportunities for nonprofits to connect with current and future donors everywhere. But what is required to fundraise everywhere? Regardless of the method of solicitation, national fundraising may require nationwide compliance.

A nonprofit can achieve national fundraising compliance by two methods. A nonprofit may register or seek registration or exemption in every one of the 41 states that have such a requirement. This option allows a nonprofit to message their nationwide compliance to prospective donors. The alternative method is for a nonprofit to accept donations only from supporters in those states where they have registered and place disclaimers stating this on their digital solicitations and online donation webpage.

Nonprofits have two alternatives to manage fundraising compliance. They can rise to the challenge and manage nationwide fundraising registration and reporting themselves with the use of educational resources like Harbor Compliance's free guide.⁵ The other option available to nonprofits is to outsource registration to a compliance solutions provider such as Harbor Compliance. Many nonprofits find that this option provides them with peace of mind, and allows them to focus on their mission.

Nonprofits should make it a practice to regularly check the fundraising registration requirements triggered by their current solicitation methods, then confirm that they are registered where required. Thanks to the internet, nonprofits have the power to reach and engage supporters both near and far. By meeting all compliance requirements when fundraising online, nonprofits reassure donors that they are legitimate and all donations will be well spent in service of their mission.



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Founded by a team of government licensing specialists and technology trailblazers, Harbor Compliance is a leading provider of compliance solutions for nonprofits and companies of all types and sizes. Since 2012, we have helped more than 25,000 clients apply for, secure, and maintain licensing across all industries.

1-888-995-5895

info@harborcompliance.com

www.harborcompliance.com

REFERENCES

1. BBB Wise Giving Alliance, *2019 Give.org Donor Trust Report: State of Public Trust in the Charitable Sector*, 2019 <https://www.give.org/docs/default-source/donor-trust-library/2019-donor-trust-report.pdf>
2. National Association of State Charity Officials (NASCO), *Charleston Principles: Guidelines on Charitable Solicitations Using the Internet*, March 14, 2001 <http://www.nasconet.org/wp-content/uploads/2018/04/Charleston-Principles.pdf>
3. California Department of Justice, Charitable Trusts Section, *Attorney General's Guide for online Charitable Giving*, 2019 <https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/publications/guide-online-charitable-giving.pdf?>
4. National Association of State Charities Officials (NASCO), *Internet and Social Media Solicitations: Wise Giving Tips*, 2013 <http://www.nasconet.org/wp-content/uploads/2018/02/Internet-and-Social-Media-Solicitations-Wise-Giving-Tips.pdf>
5. Harbor Compliance and National Council of Nonprofits, *Charitable Solicitation Compliance: An explanation of state charitable registration requirements*, 2017 <https://www.harborcompliance.com/landing-pages/national-council-of-nonprofits-fundraising-compliance-white-paper>

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