



# How Compliance Affects Grantseeking

■ A Comprehensive Guide for Foundations,  
Nonprofits, and Fundraising Professionals



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# Executive Brief

Grants are an exciting opportunity for foundations and nonprofits to drive positive change. Yet in the rush to assemble winning proposals and forge successful partnerships, the fact that grants are a form of charitable solicitation requiring registration in a majority of states is often overlooked. These requirements are ignored at the peril of nonprofits and their leadership, who can be held personally liable for failing to meet their legal obligations.

Forty-one states require nonprofits to register or complete similar requirements before fundraising. A few states exclude certain grantseeking activities from the requirements, but in the majority of states, nonprofits will need to review the requirements and potentially register before submitting grant applications.

Most states are eager to work with nonprofits to close this gap. Working proactively to meet registration requirements in each state where you solicit grants safeguards your nonprofit and paves the way for worry-free fundraising and grantseeking. Registration also promotes transparency and accountability, which are keys to earning the public trust.<sup>1</sup>

This white paper provides nonprofits with key information and strategies to ensure compliance and eliminate unnecessary risks to their funding and operations. Charitable solicitation requirements in all 50 states are examined, with a focus on how they apply to grant activities such as submitting applications; receiving funds; soliciting online; and employing grant writers, professional solicitors, and other fundraising professionals.

*Whatever your role in grant solicitation, this guide will help you understand which fundraising registration requirements apply to your activities and how to meet them so you can eliminate the risks of unlicensed solicitation.*

When managed proactively, charitable solicitation registration opens the door to significant fundraising and grant opportunities. This white paper outlines the steps and investment involved in registration to help you evaluate your options and map out a strategy that works best for your situation.

Ultimately, the goal of this paper is to help nonprofits and others involved in the grant solicitation process capitalize on opportunities and forge winning partnerships founded on sustainable, compliant foundations.

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<sup>1</sup> "Mission, Vision, Values," Foundation Center. Web. <http://foundationcenter.org/about-us/mission-vision-values>

# Why Register?

Grants represent exciting opportunities for funders and nonprofits alike. For grantmakers, they are a chance to enable meaningful work, support worthy nonprofits, and drive positive change in the world. For nonprofits, grants can represent a quantum leap forward in the ability to deliver programs and impact, where progress is often made in smaller, hard-won steps.

Grants are a valuable source of funding for nonprofits, with more than \$60 billion in foundation grants and roughly twice that amount in government grants awarded annually in the U.S. in recent years.<sup>23</sup>

A successful grant partnership takes a lot of research and preparation on both sides, from articulating a vision and sorting out the best matches to managing grant materials and, ultimately, navigating the application and review processes. With all of that paperwork involved before a single dollar changes hands, it's not surprising that state regulations are often lost in the shuffle.

In fact, many nonprofit leaders are unaware that **grant applications are considered charitable solicitation, potentially requiring registration with authorities in 41 states**. Contracting with fundraising professionals such as grant writers triggers further requirements: 43 states require professional fundraising firms to register; 15 of those states require individual paid solicitors to register as well; and 31 states require fundraising counsel or consultants to register. Because charitable solicitation is regulated independently by state authorities, the laws vary widely from state to state, making the regulatory landscape even more complex and challenging to navigate.

Yet it is crucial that grantmakers, nonprofits, and fundraising professionals understand the laws to ensure that their legal obligations are not lost in the excitement and flurry of partnering for grants. As the source of the grant and the creator of the application process, grantmakers should be familiar with requirements so they are in a position to support and encourage compliance by the nonprofits they choose to invest in. On the nonprofit side, board members have fiduciary duties of care, loyalty, and obedience. The Ohio Attorney General's office counts compliance as one of those duties, writing:

*"Charities have important legal obligations. Board members must ensure that their charity follows registration requirements, solicitation laws and tax provisions."<sup>4</sup>*

Fundraising professionals, including grant writers, have just as much at stake in the grant application process, since they have separate requirements of their own to potentially fulfill with state offices, and they are held individually accountable for meeting them.

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<sup>2</sup> The Nonprofit Sector in Brief 2015: Public Charities, Giving, and Volunteering, Urban Institute, October 29, 2015. Web. <https://www.urban.org/research/publication/nonprofit-sector-brief-2015-public-charities-giving-and-volunteering>

<sup>3</sup> Foundation Center Stats, The Foundation Center. Web. <http://data.foundationcenter.org/>

<sup>4</sup> "Resources for Nonprofit Board Members," Ohio Attorney General. Web. <http://www.ohioattorneygeneral.gov/Business-Services-for-Charities/Resources-for-Nonprofit-Board-Members>

## How Compliance Affects Grantseeking

Today, nonprofits face unprecedented scrutiny and pressure to demonstrate their viability, legitimacy, impact, and ethical operations. State charity laws protect the public and promote vital transparency. By meeting their legal requirements fully and proactively, nonprofits can affirm their position as ethical operators in the charitable space.

Perhaps most importantly, we've seen time and again that nonprofits succeed when they are built on a strong, compliant foundation. Compliance provides long-term stability in programming and operations and helps nonprofits affirm their strength and readiness to grantmakers, potential donors, and other key stakeholders.

This white paper breaks down laws governing grants as a form of charitable solicitation in all 50 states, including implications for funders, grantseekers, and fundraising professionals. It includes links to references that complete the circle and best strategies to help organizations of all sizes and types enjoy the full benefits of total compliance.

## Charitable Giving Quick Facts



**86,203**

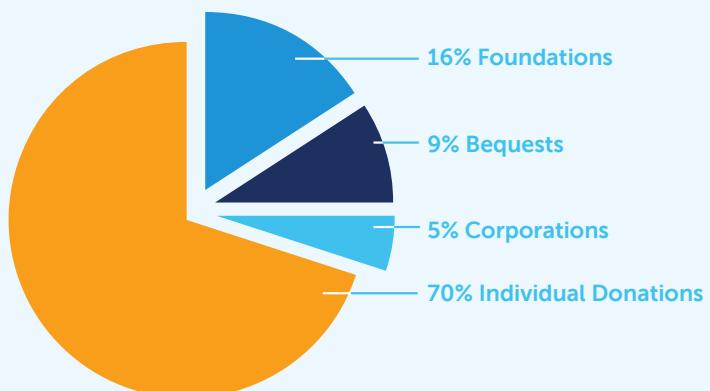
Grantmaking  
Foundations in the US



**\$62.8 billion**

Total Annual Grant  
Foundation Giving

### Sources of Contributions in 2017



## What Is Charitable Solicitation?

Charitable solicitation is the act of asking for contributions to support a charitable purpose. Contributions are broadly defined as the promise, pledge, or grant of money, property, financial assistance, or any other thing of value to a charitable organization. Generally, membership fees requested from an organization's own members are excluded, although there are nuances and exceptions that require closer examination in each state. While each state defines charitable solicitation independently, two key aspects are universal.

First, it's the request that constitutes solicitation, not receipt of funds, so even if a nonprofit doesn't receive money in response to a request, it has nonetheless solicited by asking.

Second, solicitation happens where the request is made. The "ask" follows the prospective donor, not the requestor. For example, if a Nevada nonprofit requests a contribution from a New York foundation, the solicitation occurs in New York, and is subject to New York state laws.



# Are Grant Applications Considered Solicitation?

Since solicitation is a request for contributions, regardless of whether funds are received in return, grant applications fall under the general definition of charitable solicitation. A few states address the question specifically, some to exclude certain grant applications from solicitation, or grant monies from contributions, others to expressly include them.

In Maryland and Wisconsin, for example, government grants are excluded from the definition of charitable contributions.<sup>5</sup><sup>6</sup> In Washington state, grant applications to "a foundation or similar entity which has an established application and review procedure" are not considered solicitation.<sup>7</sup> Virginia excludes grant proposals submitted to for-profit corporations, 501(c)(3) nonprofits, and private foundations.<sup>8</sup> Florida and Hawaii exclude grant applications to government agencies as well as tax exempt organizations from the definition of charitable solicitation.<sup>9</sup><sup>10</sup>

Utah state law, on the other hand, stipulates that "'Charitable solicitation' or 'solicitation' includes . . . an application or other request for a grant."<sup>11</sup>

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<sup>5</sup> "Maryland Solicitation Act." Web. <http://sos.maryland.gov/Documents/MarylandSolicitationAct.pdf>

<sup>6</sup> "Charitable Organizations Frequently Asked Questions," State of Wisconsin Department of Financial Institutions. Web. [https://www.wdfi.org/CharitableOrganizations/faq.htm#COR\\_when](https://www.wdfi.org/CharitableOrganizations/faq.htm#COR_when)

<sup>7</sup> Charities: Consumer Tips and Frequently Asked Questions, Washington Secretary of State. Web. [https://www.sos.wa.gov/charities/consumer\\_faq.aspx#aregrantsconsideredsolicitations](https://www.sos.wa.gov/charities/consumer_faq.aspx#aregrantsconsideredsolicitations)

<sup>8</sup> Code of Virginia, Chapter 5, "Solicitation of Contributions." Web. <https://law.lis.virginia.gov/vacode/title57/chapter5/>

<sup>9</sup> "The 2017 Florida Statutes, Title XXXIII Chapter 496." Web. [http://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=0400-0499/0496/Sections/0496.404.html](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0496/Sections/0496.404.html)

<sup>10</sup> "Answers To Frequently Asked Questions About Hawaii's Charity Registration Requirements," Hawaii Department Of The Attorney General Tax & Charities Division. November 2016. Web. <https://ag.hawaii.gov/tax/files/2017/02/FAQs.pdf>

<sup>11</sup> Utah Code, Title 13 Chapter 22, Section 2 Definitions. Utah State Legislature. Web. [https://le.utah.gov/xcode/Title13/Chapter22/13-22-S2.html?v=C13-22-S2\\_2017050920170509](https://le.utah.gov/xcode/Title13/Chapter22/13-22-S2.html?v=C13-22-S2_2017050920170509)

## How Compliance Affects Grantseeking

Some states require nonprofits to report grants received as part of charitable solicitation registration. West Virginia asks for the total amount (but not names) of all foundation and government grants received in the previous reporting year. California and New York ask for an unredacted IRS Schedule B, including a list of contributors, to accompany their charitable renewals. Despite coming under some judicial review,<sup>12</sup> both states still require the Schedule B. Several states' registration applications, including Hawaii, Mississippi, and New Mexico, ask charities to report whether they receive financial support from other nonprofit organizations such as foundations, public charities, or combined campaigns. The Unified Registration Statement (URS) also asks for this information.

Private foundations must list all of the grants they award each year in their 990 filing, including each grantee's name and grant amount. This information is subject to public disclosure and review by charity officials.

In the majority of states, grants are not distinguished from other forms of charitable solicitation in charity rules and statutes, and therefore qualify as charitable solicitation.



## GRANTS: GIFTS VS. EXCHANGE TRANSACTION

Some grants are awarded in exchange for goods or services provided back to the grantmaker. For example, many government grants are awarded as contracts for services that advance a public purpose such as scientific research, human welfare, education, or agriculture. When services or goods are returned to the grantmaker, the grant may be considered an exchange transaction rather than a charitable contribution. The difference is generally based on the amount of benefit provided to the grantmaker and the amount of control retained by the grantee. It is not unusual for grantmakers in these exchanges to require monthly reporting that details units of service, time spent on specific services, and/or number of service recipients. If the grantmaker receives a benefit equivalent to the grant award, or exercises a lot of control over delivery of the goods or services, it is generally an exchange rather than a grant.<sup>13</sup>

Why? Because a gift or contribution, unlike an exchange of services, is an unequal transaction. Something of value is given for little or nothing in return. Grants that are exchanges for services are not charitable solicitation because they are not gifts.

<sup>12</sup> Center for Competitive Politics v. Kamala D. Harris, No. 14-15978 (9th Cir. 2015). Web. <https://cdn.ca9.uscourts.gov/data-store/opinions/2015/05/01/14-15978.pdf>

<sup>13</sup> "Is Grant Proposal Writing a Fundraising Expense?" Nonprofit Quarterly, March 21, 2003. Web. <https://nonprofitquarterly.org/2003/03/21/grant-proposal-writing-fundraising-expense/>

# When Is Registration Required?

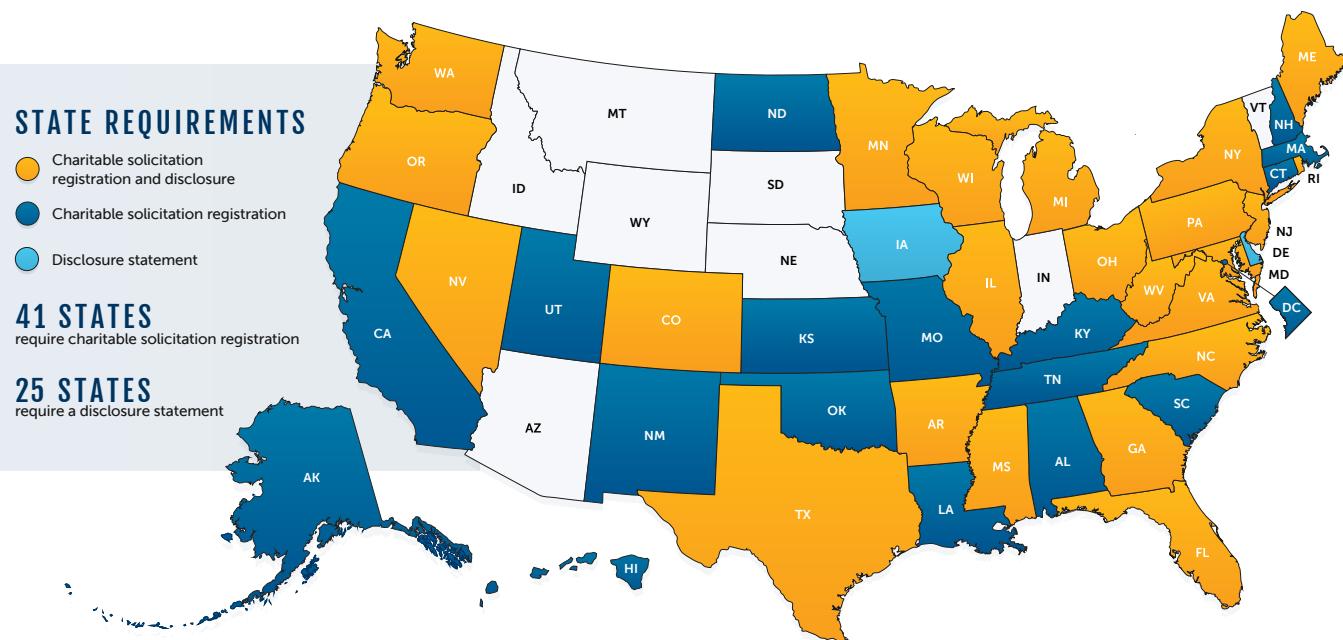
Because grant applications qualify as charitable solicitation in most states, nonprofits must comply with [state registration requirements](#) whenever they plan to apply for grants. As we've noted, the act of solicitation—in this case, the grant application—triggers requirements, not receipt of funds. In most states with registration requirements, nonprofits must register before solicitation begins. New Jersey, Pennsylvania, and Tennessee allow nonprofits that are exempt based on revenue levels to register retroactively so long as they apply within 30 days of breaking the threshold. New Hampshire's law is silent on timing, merely noting that registration is required.

In many states, smaller organizations might be exempt from registering to solicit based on their revenue or contribution levels. Where provided, thresholds range from \$0 to \$50,000, with the majority coming in under \$25,000. However, the grant amount may impact the need to file if it is large enough to push contributions over the state's threshold for exemption. Organizations that are exempt may still need to file exemption requests or fulfill other requirements. For that reason, it's important to research specific state requirements before submitting a grant application in any state.



# Where Is Registration Required?

Registration takes place where the foundation giving the grant is located, not necessarily where the nonprofit organization operates. For example, if a Pennsylvania nonprofit applied for a grant from a corporate foundation based in California, the nonprofit would generally be required to follow the solicitation laws in California.



Forty-one states have laws requiring charities to register with a state agency before soliciting residents for contributions. Within those states, requirements vary widely. Six states exclude certain types of grant applications from the definition of solicitation, as outlined above. Many states exempt certain types of charities from registration requirements, including religious organizations, educational institutions, and organizations soliciting donations from their own members. In Mississippi and Louisiana, exemptions are so broad that they apply to most nonprofits, while in California and Illinois, the opposite is true.

Because of the varying requirements, it's important for nonprofits to examine state laws wherever they plan to solicit and determine how the rules apply to their specific situations.

## Steps for States Where Exemptions Apply

Where exemptions are provided, they are not always automatic. Some states require nonprofits to file an application for exemption, and exemptions usually have to be renewed annually. For this reason, qualifying for exemption from charitable solicitation registration may reduce state registration fees, but doesn't necessarily reduce the amount of time a nonprofit has to spend filling out forms to meet state requirements.

Nonprofits that fall under state exemption criteria must still weigh other factors that may influence the need to file. First, they must consider whether the amount of the grant would put their revenues or contributions over the state's thresholds, negating their exemption. Second, hiring professional solicitors, fundraising counsel, and grant writers often triggers separate fundraising requirements, which we will examine below.



# Foreign Qualification and Registered Agent

In addition to registering for charitable solicitation, eight states require charities to register with the secretary of state to qualify as an out-of-state or “foreign” nonprofit corporation. The secretary of state issues a certificate of authority allowing the nonprofit to operate within the state, establishing the nonprofit’s “good standing” with the state. As part of this process, nonprofits must appoint a [registered agent](#) located within the state to receive service of process and other legal documents on behalf of the organization.

To maintain good standing from year to year, the nonprofit must file periodic reports, typically annually, and renew its registered agent service.

The states that require foreign qualification are Colorado, District of Columbia, Illinois, Michigan, Nevada, North Dakota, and Oregon. California, Florida and Georgia strongly encourage, but do not require, foreign qualification.

Many additional states require nonprofits to maintain a registered agent, but do not require foreign qualification, including Hawaii, Mississippi, New Hampshire, New Mexico, South Carolina, Utah, and Virginia. Kentucky and Louisiana require a registered agent when using a common registration form known as the Unified Registration Statement (see highlighted text below).

In addition to the requirements to foreign qualify for fundraising registration, organizations may be required to qualify for other reasons. Those commonly include maintaining a presence in a state, employing workers, or otherwise transacting operations.



## UNIFIED REGISTRATION STATEMENT

The Unified Registration Statement (URS) is a consolidated registration form created by the National Association of State Charities Officials and the National Association of Attorneys General. The form is designed to streamline the charitable solicitation registration process for nonprofits that need to register in multiple states, yet it has not achieved widespread use for a number of reasons. The URS is currently accepted in more than 30 states. Many states, including Alaska, Colorado, Florida, Maine, Ohio, Oklahoma, and South Carolina, use online registration forms that are not compatible with URS. Other states require additional supplements to be included with URS registrations.

**The URS itself is longer and more complex than regular state forms, and state examiners do not prefer the URS over their own documents.** As a result, states often take longer to approve the URS than their own forms.

While the URS was designed with the best intentions, for now, it is generally faster and easier for nonprofits to register using states’ unique forms.

# How to Register

In most states, the government agency that oversees registration is the **Charities Division of the Office of the Attorney General** or the **Secretary of State**.

State applications generally consist of the state's specific form, a filing fee, and supporting documentation. Applications often must include the organization's IRS Determination Letter, IRS Form 990, and a list of officers and directors, among other items. An officer of the nonprofit corporation is generally required to sign the forms. In some states multiple corporate officers' signatures are required. This may require coordinating with board members so they can sign forms prior to filing, so this is not a process to leave to the last minute.

Fees vary by state and are typically calculated based on total gross revenue in the previous year or amount of contributions received in the state. Charitable solicitation registration fees are generally modest; in many states, registration is free. Usually fees are tiered based on annual revenues. To register in all 41 states, total state fees would likely range from \$1,400 to \$5,000 for most organizations. Applicants with under \$100,000 in gross revenue are generally on the lower end of that range, while applicants with over \$1 million in gross revenue per year would be at the higher end of the range to register nationwide.

Because the fees are relatively low compared to the opportunities they open up, many nonprofits choose to simply register nationwide. **Registering nationwide allows nonprofits to solicit everywhere, including through email blasts, social media, and websites, in addition to grants.**

For a complete list of state charity offices with contact information, as well as application instructions and fees, consult this [fundraising compliance guide](#).

# Registering to Solicit Nationwide

State charity laws recognize that nonprofits of all sizes and phases of development need to be able to meet their legal obligations. That's why revenue thresholds and fees for charitable solicitation registration are generally tailored to be manageable for all types of nonprofits. In many states, registration is free.

Yet the paperwork and research involved in meeting registration requirements state by state can be a major drain on staff time and other administrative resources. Many organizations find it faster and easier to simply budget proactively for nationwide fundraising and outsource the paperwork to a compliance partner. While registration must still be managed state by state, a compliance partner can manage the filings in a fraction of the time that it takes internal staff, making it a cost-effective choice for organizations of all sizes. State fees are generally low, often in the \$0 to \$50 range, and are tiered based on revenue, bringing them within reach for organizations of all sizes. For charities with more than \$1 million in gross annual revenue, state fees for nationwide registration would total approximately \$5,000; for nonprofits with \$100,000 in revenue, fees would be closer to \$1,400, while those with annual revenue of under \$30,000 may find that their costs are significantly lower thanks to state exemptions. Once they're registered nationwide, nonprofits can solicit online, reach out on social media, send email blasts, apply for grants, and receive donations wherever opportunities arise without fear of running afoul of state laws.

For more information on nationwide charitable solicitation registration, you can explore [nationwide charitable solicitation requirements](#).



## Renewals and Extensions

In most cases, charitable solicitation registrations and exemptions must be renewed annually to remain effective. For charities registered nationwide, renewals must be handled on a state-by-state basis. Where grant activities span state filing periods, organizations may need to file renewals and financial reports. Since states' charitable registration periods do not always align well with nonprofit fiscal years and Internal Revenue Service (IRS) Form 990 filing deadlines, many nonprofits find that they must file for extensions on their state charitable solicitation registration renewals to accommodate their financial reporting schedules.



# Grantseeking and Charitable Solicitation Registration

## GRANT APPLICATION REQUIREMENTS

A typical grant application may include attachments such as:

- IRS Determination Letter
- Most recent 990 (this generally cannot be a 990-N postcard)
- Compiled, reviewed, or audited financial statements as required under state guidelines
- Up-to-date financial statement
- Proof of charitable solicitation registration
- Budget for the organization
- Budget for the specific project or proposal with justifying narrative
- Governance information, such as list of board members and key executives
- Occasionally articles, bylaws, and other policies

Don't forget what a grant application really is, which is a request for funding based on the merits of an organization's charitable programs, or even more likely, a specific project being proposed. An applicant must also argue capably that their proposal aligns with the mission of the foundation, and that the money will truly benefit the intended constituents.

## GRANT TYPES AND REGISTRATIONS

There are numerous types of grants, and in some cases they influence charitable solicitation requirements.

**Government grants** are reported differently from foundation grants on the IRS Form 990. Many states exclude government grants from the definition of charitable contributions, so government grants are not considered solicitation in as many states. This can influence whether the nonprofit falls under the contribution threshold for exemption.

**Private grants** include a range of grants from private foundations, corporate foundations, donor advised funds, for-profit corporations, and corporate foundations. All of these are treated equally as contributions as far as charitable solicitation is concerned.

Challenge grants and volunteer grants involve additional activities that may trigger charitable solicitation requirements. For example, in-person solicitations trigger county and municipal fundraising registration requirements in many states. Additionally, if officers, board members, and other associates of the nonprofit make personal appeals for funds as part of a challenge or other campaign, those appeals generally qualify as charitable solicitation.

Grantmakers are not required to register for charitable solicitation as part of the grant consideration and award process, and grantmaking is generally not considered “doing business” within a state. For example, Oregon law states:

*“The mere making of grants or donations to institutions or beneficiaries within the State of Oregon, or the investigation of applicants for such grants or donations, does not constitute doing business in this state. However, the solicitation of funds for charitable purposes in this state shall constitute doing business therein.”<sup>14</sup>*

As major sources of charitable contributions, however, grantmakers do have a supporting role to play in state charitable solicitation requirements. Registration is not a guideline or best practice; it is the law, and many nonprofits are unaware of how the requirements apply to their activities, particularly surrounding grants. Failing to register puts the nonprofit and its officers at risk. Foundations can help support nonprofits through the grantmaking process and encourage adherence to state laws by:

- Verifying charitable solicitation registration as part of the application process
- Directing grantseekers to pursue registration where required
- Including the funds required for registration in grant awards

Including compliance in the grantmaking “conversation” and providing funding to back it eases the pressure on nonprofits that are under pressure to minimize operating and fundraising expenses.

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<sup>14</sup> Oregon Revised Statutes, Chapter 128: Trusts; Charitable Activities, 2017 Edition, Oregon State Legislature. Web. [https://www.oregonlegislature.gov/bills\\_laws/ors/ors128.html](https://www.oregonlegislature.gov/bills_laws/ors/ors128.html)

# Other Factors and Players

## FISCAL SPONSORS

For nonprofits operating under a fiscal sponsor, the fiscal sponsor is the grantee of record and bears responsibility for charitable solicitation registration and other state requirements.<sup>15</sup>

In some cases, grants are not available to nonprofits operating under fiscal sponsorship, so be sure to research grant requirements thoroughly before beginning any applications.

## FUNDRAISING PROFESSIONALS

Using a professional fundraiser or fundraising consultant in any capacity, including applying for grants, may trigger additional registration requirements. For example, in Louisiana, nonprofits are generally not required to register unless they use a professional fundraiser. In many states, professional fundraisers and fundraising consultants must also register and maintain their own licenses.

Fundraising counsel and professional solicitors are independent contractors hired to support fundraising efforts. They do not include officers, employees, volunteers, legal counsel, or financial advisors.

**Professional fundraisers or professional solicitors** actively participate in solicitation. It is important to note that while many solicitors collect and handle funds, this is not required in order to be considered a solicitor. *The act of asking is enough.*

While state requirements vary, 45 states require professional solicitors to register and provide copies of their contracts before soliciting. Contracts must also be submitted whenever the solicitor enters a new agreement, generally at least 10 days prior to the start of the solicitation. In addition, professional solicitors must typically submit a financial report within 90 days after the completion of a charitable campaign, although this requirement also varies by state.

Like many regulated professions, professional fundraising may require licenses for individual solicitors as well as firms. Firm licenses authorize corporations, partnerships, or other entities to provide services within the state. Consult these comprehensive online licensing guides to find requirements in every state for individual professional solicitors [individual professional solicitors](#) and [professional solicitation firms](#).

**Fundraising counsel or consultants** provide advice or help with managing your charitable campaign. They don't actively solicit donations. State requirements for fundraising counsel are similar to those for professional fundraisers, though slightly less stringent. For example, Oregon requires registration for professional fundraisers, but not fundraising counsel.<sup>16</sup> To learn more, consult this comprehensive guide to [state requirements for fundraising counsel](#).

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<sup>15</sup> "10 Questions Funders Should Ask Grantees Who Use Fiscal Sponsors," National Network of Fiscal Sponsors. Web. <http://www.fiscalsponsors.org/pages/10-questions-funders-should-ask-grantees-who-use-fiscal-sponsors>

<sup>16</sup> <https://www.doj.state.or.us/charitable-activities/for-professional-fundraisers/for-professional-fundraisers/>

## GRANT WRITERS

Because grants are charitable solicitation, professional grant writers fall under the broad definitions of fundraising consultants and potentially professional fundraisers. Whether they write a small amount of copy for the application or prepare the entire package and submit it, as long as they are outside professionals paid to contribute to the application, grant writers still fall under the definition of professional solicitor or fundraising counsel in many states. Most states are silent on their specific position under charitable solicitation laws, but a few provide specific guidance.

In California, for example, the Attorney General has clarified that grant writers are fundraising counsel if they are paid a flat fee, and not a percentage, and if they don't control funds or assets, with certain exceptions.<sup>17</sup> Colorado, on the other hand, excludes grant writers from registration requirements "unless their compensation is based on a percentage of the grants or contributions brought in by the organization as a result of their efforts."<sup>18</sup> New York specifies that "an individual engaged solely to draft applications for funding from a governmental agency or an entity exempt from taxation pursuant to section 501(c)(3) of the internal revenue code, shall not be deemed a fund raising counsel."<sup>19</sup>

Generally, anyone who is hired to assist with a nonprofit's grantseeking falls under one or the other category of fundraising professional and is subject to state charitable solicitation registration requirements.



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<sup>17</sup> Attorney General's Guide for Charities: Best practices for nonprofits that operate or fundraise in California," California Department of Justice Charitable Trusts Section, p.77. Web. [https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/publications/guide\\_for\\_charities.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/publications/guide_for_charities.pdf)

<sup>18</sup> "Charities and Fundraisers FAQs," Colorado Secretary of State. Web. <https://www.sos.state.co.us/pubs/charities/FAQ/registration.html#fn4>

<sup>19</sup> New York Consolidated Laws, Executive Law - EXC Section 171-a. Definitions. FindLaw. Web. <http://codes.findlaw.com/ny-executive-law/exc-sect-171-a.html>



## REPORTING FUNDRAISING EXPENSES

Many nonprofits treat grant proposal writing and related grant expenses as management or program expenses rather than fundraising expenses, and not without support. In Ohio, per Attorney General Dewine, "staff expenses, a fair portion of overhead expenses, costs to secure a grant, produce an item, or perform a service are also considered program services."<sup>20</sup>

Yet IRS Form 990 instructions define fundraising expenses as "expenses incurred in soliciting cash and non-cash contributions, gifts, and grants," and even affirms that instruction:

*Report as fundraising expenses all expenses, including allocable overhead costs, incurred in: (a) publicizing and conducting fundraising campaigns and (b) soliciting bequests and grants from individuals, foundations, other organizations . . .*<sup>21</sup>

In addition to what may seem like conflicting guidelines about expense reporting, many nonprofits feel pressure to reduce fundraising expenses in response to public perceptions about efficiency and reasonable costs. **Grant proposal writing is, however, a fundraising expense that should be consistently tracked for the benefit of the sector as a whole. Further, studies have shown that nonprofits with restricted funding struggle with inadequate administrative and fundraising infrastructure.**<sup>22</sup> In fact, inadequate funding for operating expenses has been proven to hamper nonprofit performance and impact. Nonprofits cannot be expected to perform without investing in their operations, including expenses involved in meeting state fundraising requirements.

<sup>20</sup> "What can be considered as a program expense?", Ohio Attorney General's office. Web. <http://www.ohioattorneygeneral.gov/FAQ/Charitable-registration-online-filing-assistance#Top>

<sup>21</sup> IRS Tax Map 2017, Part IX, "Statement of Functional Expenses." Web. <https://taxmap.irs.gov/taxmap/instr2/i990-024.htm>

<sup>22</sup> "Getting What We Pay For: Low Overhead Limits Nonprofit Effectiveness," The Nonprofit Fundraising and Administrative Cost Project, Urban Institute Center on Nonprofits and Philanthropy, Indiana University Center on Philanthropy. August 2004. Web. [https://philanthropy.iupui.edu/files/research/nonprofit\\_overhead\\_brief\\_3.pdf](https://philanthropy.iupui.edu/files/research/nonprofit_overhead_brief_3.pdf)

# Consequences of Failing to Register

Nonprofit leaders are often anxious about registering for fundraising. In some cases, they have already solicited without realizing they were subject to requirements, and fear that registering after the fact will unleash an avalanche of penalties. Sometimes they simply fear that registration will divert precious time and dollars away from their mission. In fact, registering proactively is always less expensive and time consuming than registering in answer to a citation or other government notice.

States are becoming more active in enforcing charitable solicitation regulations. State agencies that once served simply as registration offices, now have CPAs and prosecuting attorneys on full time staff to audit, investigate, and prosecute illegal activity in the nonprofit sector, including those relative to charitable solicitation laws. And they do so to protect not only donors in their state but also legitimate charities, as well. In fact, an Urban Institute survey of regulators found that fundraising abuses were the most common area of enforcement by state charity offices, followed by trust enforcement and governance.

Since grantmakers report grant awards and recipients on Form 990s, and since most of these state records are electronic today, it is relatively easy to cross reference documents and identify unregistered nonprofits. At that point, your nonprofit is subject to significant penalties and other far-reaching consequences.

**Penalties and Fines.** In South Carolina, charitable organizations that solicit without being registered are subject to fines of up to \$2,000 for each violation.<sup>23</sup> In Tennessee, violations of the Charitable Solicitations Act can bring penalties of up to \$5,000 per violation.<sup>24</sup>

**Director and officer liability.** Nonprofit leadership can be held legally and financially responsible for failing to meet state charitable solicitation laws and requirements. In Massachusetts, for example, officers may be held liable for violations if they had “the authority to cause the public charity to comply with the registration requirements of this section but . . . neglected or refused to do so . . .”<sup>25</sup>

In California, for example, officers and directors may be held personally liable for penalties levied for failure to meet state requirements, on the grounds that “use of charitable assets to pay avoidable penalties would constitute waste and misuse of charitable assets.”<sup>26</sup>

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<sup>23</sup> “Public Charities,” South Carolina Secretary of State. Web. <https://www.sos.state.co.us/pubs/charities/FAQ/registration.html#fn4>

<sup>24</sup> “Charitable Organization FAQs,” Tennessee Secretary of State. Web. <https://sos.tn.gov/products/charitable-solicitations-and-gaming/charitable-organization-faqs>

<sup>25</sup> Laws of the Commonwealth of Massachusetts, Chapter 165 Section 1. Web. <https://malegislature.gov/Laws/SessionLaws/Acts/2010/Chapter165>

<sup>26</sup> “Final Statement of Reasons, Proposed Adoption of Regulations Pursuant to the Supervision of Trustees and Fundraisers for Charitable Purposes Act,” California Office of the Attorney General. Web. <https://oag.ca.gov/search-results/?query=charitable+assets+used+to+pay+avoidable+cpsts>

**Enforcement actions and audits.** State agencies can initiate audits of an organization, and the IRS can also audit whether an organization has complied with disclosure requirements and fundraising solicitations.<sup>27</sup>

**Loss of state recognition of tax exemption.** In severe cases, a charity's tax exempt status may be revoked in some states. For example, the California Franchise Tax Board has the power to revoke a charity's state tax exemption for failure to file a registration or annual report with the attorney general.

**Revocation of right to solicit.** Perhaps the worst consequence a charity can face is losing its ability to fundraise in a state altogether. New Jersey is just one of several states that may revoke or suspend a charity's registration for failure to comply with registration requirements.

**Bad publicity.** A state investigation for noncompliance or potentially illegal behavior can create a public relations nightmare for a charity, particularly with so much information published online. State governments, the media, and donors pick up on these activities. Even if a charity is cleared or resolves the issue, news of the investigation will remain on the internet forever.

**Missed grant and donation opportunities.** Thirty-nine states have online search tools for donors and grantmakers to identify whether charities have registered. Many grants require that charities are registered for charitable solicitation in order to be eligible to apply. Numerous states publish public notices of legal actions against nonprofits including complaints, litigation, and settlements.

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<sup>27</sup> "Charity and Nonprofit Audits: Scope of Audits and Compliance Checks," The Internal Revenue Service. Web. <https://www.irs.gov/charities-non-profits/scope-of-audits-and-compliance-checks-of-exempt-organizations>

# Benefits of Compliance

While it is important to minimize risks to your nonprofit's organizations, the best reasons to register for fundraising are positive ones. Organizations that proactively register enjoy the following benefits:

**Broadens the nonprofit's reach.** Registering broadly or nationwide allows your nonprofit to spread the word and fundraise without borders, including applying widely for grants. State fees are tiered, making it economical even for smaller charities to register nationwide.

**Builds trust and encourages donations.** The Federal Trade Commission's website advises potential donors to "find out if the charity or fundraiser must be registered in your state by contacting the National Association of State Charity Officials" before donating to a charity.

**Demonstrates grant readiness and viability.** Part of the grantmaker's duty is to invest in organizations that are capable of succeeding and creating the desired impact. Registration demonstrates an organization's soundness, reliability, and commitment to ethical practices.

**Provides a firm foundation.** Having a legal, compliant foundation is fundamental to a nonprofit's long-term success. Compliance eliminates risk and promotes sound, sustainable operations.



## GENERAL FUNDRAISING REGISTRATION REQUIREMENTS

Beyond grantseeking, there are many aspects of fundraising registration that are not widely understood. Many nonprofits are unaware of fundraising registration requirements and the breadth of activities that trigger them, particularly where online solicitation is concerned. Today, organizations of all sizes are soliciting through websites, email, social media, and other online platforms to expand their audiences and invite donations. Like grant requests, these fundraising appeals constitute solicitation in the states where the messages are broadcast. In the case of a donation appeal on a nonprofit's website, solicitation is potentially occurring nationwide.

For this reason, many nonprofits simply decide to invest up front in nationwide fundraising registration, throwing the door open to embrace all types of fundraising activities, including grants, throughout the country.

For a comprehensive breakdown of the full breadth of fundraising requirements that apply in all 50 states, consult this online [fundraising compliance guide](#).

# Compliance Is a Nonprofit Best Practice

In a very basic sense, maintaining legal compliance is a best practice for nonprofits, and is a major area of the Standards for Excellence® code of ethics and accountability. Fundraising and licensing compliance are important aspects of running a lawful and responsible organization.

More importantly, compliance is the foundation of a successful nonprofit, one that donors, grantmakers, volunteers, and others can confidently invest in and support.

So how can an organization with limited resources invest in compliance to enjoy those benefits?

## BUDGET FOR COMPLIANCE

If there's no budget for it, it often doesn't get done. Regulatory requirements should be a line item in every nonprofit budget to create buy-in and ensure follow-through.

## CONSIDER OUTSOURCING

Fees may be modest, but the time involved to manage state requirements can be substantial, particularly for nonspecialists. Most organizations stand to benefit substantially by writing a check and getting back to bigger things, like mission and impact.

## GET BUY-IN FROM THE BOARD

Since grantseeking is operational, board members are often inactive participants in the grant partnership process. As champions of the nonprofit's fundraising efforts and in light of their accountability for compliance, board members should regularly review information about where revenues, including grant dollars, are being sought and budget for registration where required.

To ensure compliance, share this guide and other information on charitable solicitation registration with the board of directors, and include regulatory requirements in strategic planning.

## CONSIDER NATIONWIDE REGISTRATION

Researching and navigating each state's requirements one by one as the need arises puts a major drain on staff time. Many organizations find it simpler and more profitable to budget for nationwide registration and position their nonprofits for fundraising everywhere.

## RENEW REGISTRATIONS AND MAINTAIN GOOD STANDING

Just as nonprofits make sure to file the IRS Form 990 each year, nonprofits should make sure to renew their charitable solicitations annually. Deadlines vary, so be sure to track them closely to avoid registration lapses.

## About Harbor Compliance



At Harbor Compliance, our mission is to help businesses and nonprofits enjoy the advantages and peace of mind that come from total compliance. Our business is founded on the belief that in the long run, doing something the right way is easier, more profitable, and more sustainable.

Harbor Compliance has helped thousands of nonprofits gain tax exempt status, manage state and federal filings, and achieve worry-free fundraising compliance nationwide. We offer comprehensive support services for every phase of the nonprofit lifecycle. Key services include nonprofit formation, tax registration and exemption, charitable solicitation registration, nonprofit corporate filings, and industry-specific licensing. When you partner with us, you'll have direct access to a team of compliance experts and cloud-based software for accessing documents 24/7/365. We make compliance easy, so you can focus precious time and resources on accomplishing your mission and maximizing your impact.

We deliver exceptional client experience and value through:

- Dedicated account teams who understand the unique needs of your nonprofit.
- Compliance experts including attorneys and industry practitioners.
- Cloud-based software that provides real-time reporting and document access.
- Same-day onboarding, expedited filing, and proven service with 100 percent success rate on filings.
- Direct phone and email access to your team of compliance specialists.

Harbor Compliance is not an accounting or law firm and does not provide tax, financial, or legal advice.

## About Foundation Center



Established in 1956, [Foundation Center](#) is the leading source of information about philanthropy worldwide. Through data, analysis, and training, it connects people who want to change the world to the resources they need to succeed.

Foundation Center maintains the most comprehensive database on U.S. and, increasingly, global grantmakers and their grants — a robust, accessible knowledge bank for the sector. It also operates research, education, and training programs designed to advance knowledge of philanthropy at every level. Foundation Center offers [Foundation Directory Online](#) (FDO), an advanced search and comprehensive research tool that helps nonprofits effectively prospect and fundraise.

Thousands of people visit Foundation Center's website each day and are served in its five regional hubs and its network of more than 400 funding information centers located in public libraries, community foundations, and educational institutions nationwide and around the world.

Our mission is to strengthen the social sector by advancing knowledge about philanthropy in the U.S. and around the world.

This guide is provided in accordance with our beliefs that:

- Philanthropy is an engine for positive social change worldwide.
- Transparency and accountability are keys to earning the public trust.
- Knowledge about philanthropy starts with accurate information.
- Access to accurate information about philanthropy advances responsible and effective use of resources.
- Grantmaker and nonprofit effectiveness is enhanced by shared information and understanding.

# Grant Glossary

**Annual Campaigns:** Annual fundraising drives to support an organization.

**Capital Campaigns:** Fundraising campaigns to support enduring purposes such as building construction or land acquisition.

**Capacity-Building Grants:** Provide support for internal infrastructure projects and outside expertise to provide programs and services in a more impactful, efficient, and effective manner.

**Challenge Grants:** Funds disbursed by one party (the grantmaker), usually a government agency, corporation, foundation or trust (sometimes anonymously), typically to a nonprofit entity or educational institution (the grantee) upon completion of the challenge requirement(s).

**Charitable Solicitation:** The act of asking for donations or other support for a charitable cause.

**Charitable Solicitation Registration:** The process of registering with state authorities before soliciting residents for donations. Required in 41 states.

**Corporate Philanthropy:** Investments and activities a company voluntarily undertakes to responsibly manage and account for its impact on society. (Council on Foundations).

**Corporate Social Responsibility (CSR)** is the popular term used to describe actions taken by for-profit businesses to assess and take responsibility for the company's effects on environmental and social wellbeing. CSR encompasses not only corporate philanthropy, but also environmental issues, employee engagement, and corporate governance. (Grantspace.org)

**Corporate Foundations (Company-Sponsored Foundations):** Philanthropic organizations that are created and financially supported by a corporation. The foundation is created as a separate legal entity from the corporation, but with close ties to the corporation. (Council on Foundations).

**Corporate Giving Program:** Organized donation programs created by businesses to support nonprofit causes and encourage community involvement by employees. These often include opportunities for employees to engage in volunteer projects with company support.

**Commercial Co-Venture/Cause Marketing:** A joint marketing venture between a for-profit company and a charitable organization in which a portion of proceeds from sales or other commercial transactions are donated to the charity.

# Grant Glossary

**Endowments:** Grants of funds to be kept and invested to provide income for continued support.

**Exemption:** In some states, nonprofits may be exempt from charitable solicitation registration requirements based on their size, organization type, amount of donations generated in the state, or other criteria.

**Fiscal Sponsorship:** A fiscal sponsorship is an arrangement in which a 501(c)(3) nonprofit organization (the "fiscal sponsor") offers its legal and tax-exempt status to another group for a project or an activity related to the mission of the nonprofit organization (the fiscal sponsor). (Cullinane Law Group)

**Foreign Qualification:** The process of registering with the secretary of state to operate as an out-of-state or "foreign" nonprofit outside of your home state of formation.

**Foundation:** Charitable organizations that generally get most or all of their funding from a single source and support charitable causes through grantmaking.

**Fundraising Consultant:** An independent (non-employee) consultant hired to provide campaign ideas, management, or other support.

**General Operating Support:** Funds to support a nonprofit's mission rather than a specific project or program.

**Nonprofit-Government Grants and Contracts:** Federal, state, and local governments enter into agreements with nonprofit organizations to deliver services, expanding the ability of nonprofits to achieve their missions and the ability of governments to serve their constituents.

**Grantmakers:** Entities that engage in grantmaking.

**Grantmaking:** Providing funds or resources to applicant organizations.

**Grant Writing:** Seeking or applying for grants.

**Grant Application:** A proposal for a project or program submitted to a foundation or other grantmaker in pursuit of a grant.

**Grant Proposal:** A request for grant funding typically including a cover letter, summary of the project, request for funds, and any supporting documentation requested by the grantmaker.

# Grant Glossary

**Internal Revenue Service (IRS) Schedule B:** A federal tax form that reports interest and dividend income received during the tax year.

**Letter of Inquiry:** A brief (1-3-page) letter to a foundation introducing the nonprofit and the proposed project. Sometimes grantmakers request a letter of inquiry as a precursor to a formal grant application; sometimes grant writers send them as an initial outreach.

**Letter Proposal:** A brief (1-4 page) request for grant funds describing the project and need in a letter format rather than a full-blown proposal.

**Matching Grants:** Grants made to match funds provided by another donor and grants paid only if the donee is able to raise additional funds from another source.

**Private Foundation:** A legal entity formed for charitable purposes and funded primarily from a single private source which is managed by its own trustees or directors. Types of private foundations include family and corporate foundations such as the Gates Foundation and Wal-Mart Foundation.

**Public Foundation:** Grantmaking public charities that gain funds from a variety of sources, which may include foundations, individuals, corporations, or public entities.

**Professional Fundraiser:** An independent (non-employee) professional who solicits donations or provides other fundraising support for pay.

**Program Development:** Grants for specific purposes or projects as opposed to daily operations or general mission support.

**Request for Proposals (RFP):** A call for grant applications issued by foundations that outlines the funds available, the intended charitable purpose, and the application requirements for charitable organizations.

# Sources and Further Reading

## White Papers, Briefs, and Studies

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"[Charitable Solicitation Compliance](#)," produced by Harbor Compliance and the National Council of Nonprofits.

[Executive Brief: Charitable Solicitation Registration](#), produced by Harbor Compliance and the National Council of Nonprofits.

[Philanthropy and the Social Economy: Blueprint 2017](#), by GrantCraft, Stanford Social Innovation Review, and the Center for Social Innovation at Stanford University.

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[Charitable Solicitation Registration - Navigating the Complexities](#), produced by Harbor Compliance and Charity Navigator.

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[Nonprofit-Government Contracts and Grants: Findings from the 2013 National Survey](#), The Urban Institute.

[Paying for Overhead: A Study of the Impact of Foundations' Overhead Payment Policies on Educational and Human Service Organizations](#), the Center on Philanthropy at Indiana University.

[Giving USA 2018 Infographic](#), Giving USA.

[The Nonprofit Sector in Brief 2015: Public Charities, Giving, and Volunteering](#), The Urban Institute.

# Sources and Further Reading

## Online Guides

[Harbor Compliance Fundraising Guide](#)

[Hiring a Professional Fundraiser](#)

[Professional Fundraisers, Fundraising Counsel, and Commercial Co-Venturers](#)

## Webinars

[Charitable Solicitation Compliance: What Does It Take to Be Compliant?](#), Harbor Compliance.

[Your Board and Fundraising](#), GrantSpace.

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