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## **Compliance Issues for Online Fundraising**

As charities struggle to cope with the effects of the recent economic crisis on charitable giving, they are turning increasingly to online fundraising as the most cost-effective means of reaching both old and new donors. In its recent analysis of 2009 donations, for instance, The Chronicle of Philanthropy reported that online contributions rose 5%, even as overall contributions decreased by 9%. This advisory outlines the regulatory framework that governs online fundraising and suggests some practical ways to assure compliance with these rules.

### The Applicable Law

Roughly 38 states and some municipalities require nonprofits to register with them before the organizations solicit funds from the public for charitable purposes, provided they raise or expect to raise \$25,000 in all the states where the organization solicits, taken together. Unregistered solicitation may result in heavy penalties. Most states define “solicitation” so broadly that the registration requirement appears to cover virtually any request for funds, including requests that appear on an organization’s website. So, what happens if a potential donor residing in Hawaii stumbles upon the website of a New York-based organization that actively fundraises only in New York State, and that individual makes a contribution, via credit card, to the organization through its website? Is the charity suddenly required to register in Hawaii?

The answer is not entirely clear. Hawaii might take the position that this transaction brings the New York charity under its jurisdiction and will require registration. However, the New York charity’s connection to Hawaii is so attenuated that requiring registration might violate the federal constitution to impose jurisdiction on an entity that has such a minimal “presence” in Hawaii.

### The “Charleston Principles”

In 2001, the National Association of State Charities Officials (“NASCO”), working with representatives of the private bar, enacted a set of voluntary principles to deal with this issue and related problems. They decided that registration would be required of entities that raise funds online from residents of a state where they are not “domiciled” would depend on factors such as whether the nonprofits specifically target as potential donors persons physically located in that state, receive substantial online donations from that

state, have a website that can be navigated by its users, or have offline interaction with online donors after the donations are made. If any of these factors are present, the Charleston Principles support registration in that state. In the absence of these factors, the Charleston Principles state that registration should not be required in that state.

There has been no systematic move by state legislatures to amend their statutes to deal with the ambiguities in state jurisdiction over online solicitation, but it appears that the states generally follow the Charleston Principles in determining when to require registration of organizations that raise funds from residents of that state solely via the Internet. Thus, the letter of the law still requires nonprofits engaging in online solicitation to register.

### Practical Solutions

What steps should nonprofits that raise funds via their websites take to assure that they are complying with the law? For nonprofits already conducting solicitation nationwide, the answer will likely be that no further action is necessary. Having already registered to solicit nationwide, they will need to do nothing further. The situation is different for organizations with geographically limited activities and small budgets that are registered in their home state and perhaps one or two others, but have websites that allow online contributions from anywhere in the country.

For a nonprofit in this situation, it is important to monitor online contributions carefully. If it receives more than a few contributions from a particular state – or even one significant contribution from a far-flung state, it should consider registration in that state. Another approach is to post the organization’s most recent 990 on its website or invite members of the public to view its 990 on some other site where it is already available, like [www.guidestar.org](http://www.guidestar.org). While this is not technical compliance with registration statutes, it does provide the disclosure contemplated by those statutes, making the enforcement of registration statutes a less compelling priority for regulators in a distant state.

Unfortunately, there is no fool-proof solution to this problem. Given the uncertain state of the law, we recommend caution.

*For more information on these issues, please contact one of our attorneys at 212-566-3200 or by email:*

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