

A Beginner's Guide to State Nonprofit Registration and Audit Requirement Rules

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Why You Might Be Noncompliant, and Two Ways to Act Now

Every nonprofit knows that they are subject to federal and state regulations for the state(s) in which they operate, but some state requirements are easy to overlook.

Say your organization operates in only one state and you therefore assume you are not required to register or comply with nonprofit regulations in any other state. Is this a safe assumption? Could you be required to register and comply with all the nonprofit regulations in any other states?

As online fundraising has become pervasive, the answer is this is not a safe assumption. Your organization could be subject to other state rules.

First, take note of the Charleston Principles, which were developed by the National Association of State Charity Officials (NASCO). [The Charleston Principles](#) address whether online charitable solicitations by a nonprofit constitute an activity that requires a nonprofit to register in a state. Simply put, the Charleston Principles state that so long as you do not specifically target persons located in a state, do not routinely receive contributions from persons in that state and do not otherwise have to register in that state, your nonprofit would not need to register in that state just by conducting a general online solicitation. The Charleston Principles are not mandatory, but were offered as a guide to be adopted or adapted on a state-by-state basis, and indeed many states have made use of them.

Thirteen states, however, didn't adopt the Charleston Principles. These states consider the "donate" button on a nonprofit organization's website an act of active solicitation in their state, triggering registration requirements. These states are Alabama, Florida, Georgia,

Illinois, Kansas, Louisiana, Maine, New York, North Dakota, Ohio, Oklahoma, Rhode Island and Utah.

Then there is the state of California. The good news is that California did adopt the Charleston Principles. California, however, represents about 10 percent of the population of the United States. Almost all nonprofits with more than a purely local focus likely routinely receive contributions from Californians and are therefore likely required to register in California.

The annual filing in California is simple: completing a one-page form and submitting it by the deadline along with your latest Form 990 and a relatively small filing fee. However, nonprofits that are required to register in California are also subject to California's nonprofit annual audit requirement.

State nonprofit audit requirements are common — 27 states require that certain nonprofits registered in that state have an audit. [Which nonprofits](#) are subject to the requirements varies state by state. Often, a nonprofit already obtaining an audit will have little extra to do other than submit the audit to the state. However, California's audit requirements are a bit different.

If a nonprofit is required by California law to have an audit, California has specific requirements as to the composition of the Audit Committee. Beyond requiring an Audit Committee, California law mandates that no more than half the Audit Committee can be comprised of individuals who are members of the Finance Committee, prohibits certain other individuals from serving on the Audit Committee and prohibits the chair of the Audit Committee from serving on the Finance Committee.

You may now be thinking that you may be required to register your nonprofit and file in other states, and it's

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tempting to wonder if you can just “let sleeping dogs lie” and only file in other states if it’s requested. As a nonprofit advisor, I would be concerned if I heard an organization was only willing to consider pursuing compliance with state laws after being contacted by a governmental agency. There is a reputational risk that your organization’s name might appear on the website of a state charity regulator with other non-compliant charities. It stands to reason that stakeholders and donors would prefer the organizations they support take a more proactive approach — knowing what state laws they are supposed to follow, then taking steps to comply before any issues arise. To me, proactively complying with all state laws is a fiduciary duty of those in governance roles.

Some may wonder if states like California really expect nonprofits domiciled in other states to register and follow their audit requirements. The answer is, of course, yes. California has the highest audit threshold in the U.S., \$2 million, which helps avoid over-burdening small nonprofits. But if you need to register in California and comply with the California nonprofit audit requirements, the state government believes you have no excuse not so do so.

Some organizations might think that a state government like California’s is unlikely to reach out to inquire if they should be registered. This could happen if, for example, a California donor tries to research a nonprofit on the California Attorney General’s website, doesn’t find the nonprofit registered and submits an inquiry to the Attorney General. Not registering in a state when registration is required, or registering but then not complying with the audit requirements, risks losing that donor’s support. Probably not a good business decision.

What can nonprofits do to ensure they avoid these compliance pitfalls?

1. If you are anything other than a relatively small nonprofit supported by and solely serving your local community, consult with a state compliance service provider to check that you are filing in all the states in which you are required to file.
2. If you are filing in multiple states, you should double-check on the specific audit requirements of each state, determine the most stringent of such requirements and comply with those.

As we discussed, many 501(c)(3) organizations with a national focus and online solicitations will likely find that

they should be filing in California, if they are not already doing so. Organizations that meet the California audit requirement criteria should have Audit Committees constituted in accordance with the California requirements as noted above.

California law also spells out the five required duties of the Audit Committee and certain other requirements. Please contact the author if you would like more information on this.

Special thanks to California nonprofit attorney David Wheeler Newman and California-based Charity Compliance Solutions, Inc. for their assistance with this article.

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