



NON PROFIT GPS

HELPING TO KEEP YOU ON THE RIGHT ROAD



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Nonprofit Nexus: Part Two

This article is a continuation of this topic from our winter issue.

Charitable Registration and Filing Considerations

There is widespread confusion and noncompliance with various state registration and annual filing statutes. This is a risky situation to be in because there are substantial penalties for soliciting in a state without proper and complete registration. For example, Pennsylvania can impose a penalty of \$1,000 per violation—they can add up fast!

The Charleston Principles

The Charleston Principles provide some guidance to charities that solicit contributions online. However, these are only guidelines. They have not been uniformly adopted by all of the states requiring registration.

Generally, if you use the Internet to conduct charitable solicitation in your home state, you must register in that state regardless of the method used for Internet solicitation. Charities domiciled outside of the state must register in states where they solicit contributions through a website and/or specifically request contributions from individuals in that same state by mail, email, or other means. If the charity's website doesn't accept contributions but does request offline activity to complete a contribution, or the charity follows up with some kind of contact, registration would be required.

The Charleston Principles were developed in 1999 and they didn't anticipate crowdfunding, but crowdfunding is becoming more popular. We believe most states view crowdfunding as solicitation.

Private Foundations

Federal law for private foundations requires them to file a copy of their annual report, 990 PF, with the Attorney General in the state where they are located, the state in which they were incorporated or organized, and other states where the foundation is registered.

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This month's WebStar Winner is: BoardSource

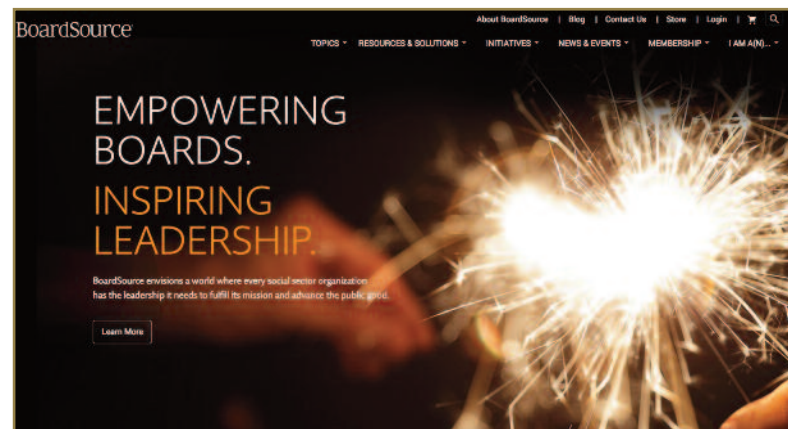
boardsource.org

We have selected BoardSource in the past but are selecting them again because they recently released guidance on measuring fundraising effectiveness.

They address the cost of fundraising and also identify a responsible and reasonable way of thinking about fundraising effectiveness based on key principles, including confirming efficiency and return on investment are not the only way of measuring fundraising effectiveness.

They developed a new benchmark called "The FundraisingNet" which is the amount raised minus fundraising expenses, a "Dependency Quotient" which measures how dependent you are on your largest five donors or funders, and a "Fundraising Efficiency" measure, calculated by dividing fundraising expenses by your Fundraising Net.

They provide useful information to include when having a conversation with your constituents about fundraising and fundraising costs.



Finally, they provide a toolkit with discussion guidance and a fundraising effectiveness calculator. On the BoardSource website go to "initiatives" and "measuring fundraising effectiveness" to find these.



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Professional Fundraisers, Fundraising Counsel, and Commercial Co-Venturers

Professional Fundraisers (who solicit contributions for organizations), Fundraising Counsel (organizations providing fundraising guidance for a fee) and commercial co-venturers (organizations that promote that a portion of their sales or service revenues will go to a charity) must register with the New York State Charities Bureau. This is also true in many other states, although the requirement for commercial co-venturer registration is not as widespread as charitable registration.

These organizations are subject to penalties for noncompliance with New York State and other state laws if they do not register—and so are the charities that contract with unregistered fundraisers.

Other Registration and Filing Issues

Soliciting a board member from another state generally isn't considered soliciting in that state. Soliciting alumni in other states will generally be considered solicitation in those states.

Some states, including New York, require the form 990 schedule B which contains donor information. Don't send schedule B to states that don't require it. They might not remove it.

Membership dues that are exchange transactions (a fee for services to be received), are not considered contributions.

Charitable contributions (even big ones) that are not solicited will cause a requirement for filing.

Call us if you have questions about registration requirements or need help with registration.

Subrecipient Monitoring

If you receive federal awards and pass some portion to other organizations, the first thing you should do is verify whether an organization is really a subrecipient or is a contractor.

A subrecipient:

- determines eligibility to participate in a federal program
- makes decisions about the program
- is responsible for complying with federal program requirements
- carries out the program



A contractor:

- provides goods or services as part of their regular business operations, which are similar to goods or services they provide to different purchasers,
- operates in a competitive environment,
- their goods or services are ancillary to the operation of the federal program.

If you pass money through to a subrecipient, you must provide them with:

- the federal award, name, and CFDA number,
- the federal awarding agency,
- the current federal award amount being passed through,
- the cumulative federal award amounts being passed through,
- the date of the award,
- the timeframe for performing services,
- the contact person with your agency,
- the passthrough entity's name and ID number, and
- the indirect cost rate (their rate if they have an approved indirect cost rate or have agreed to use the de minimis 10% rate).

Under Uniform Guidance, now you must also:

- assess the risk of the subrecipient not complying with all requirements (based on your prior experience with the subrecipient, or on the results of previous audits, or the results of federal monitoring that you are aware of),
- monitor subrecipients for performance and compliance (review reports of services they have provided, review audit reports, compare actual accomplishment to objectives, where appropriate. Calculate whether per unit costs are as expected, and obtain information about, cost overruns, failure to meet goals, delays and the like),
- consider withholding funds, if there are issues, until evidence of acceptable performance is received,
- consider additional monitoring and more detailed reporting, and
- If issues are identified consider training, consider onsite reviews or agreed upon procedures audits of aspects of their program.

The subrecipient entity must provide:

- confirmation of their indirect cost rate if they have one and
- access to records and financial statements.

Heveron and Company may be able to help with this process. We can provide subrecipient monitoring services or provide agreed upon procedures examinations to help assure subrecipient compliance. In either case you would have a report to document compliance with your responsibilities. Call us if we can help or if you have questions.



Foreign Bank Account Reporting: Easy and Important to Do

If your organization has a financial interest in or signature authority for a foreign bank, brokerage or similar account exceeding \$10,000 at any time during the year, you are required to electronically file a FBAR. This can only be done electronically at <http://bsaefiling.fincen.treas.gov/main.html>. This requirement is in addition to any information you might be required to put on form 990 Schedule F relating to your foreign grants or activities. Penalties for failing to file this notice are substantial.

To calculate whether you have \$10,000 or more at any time you must add all accounts together. If you do, you must report each of the accounts. The form must be submitted by June 30 each year. Contact us if you have questions.

New Rules for Raffles; Solving a Problem You Didn't Know You Had

If you conduct even an occasional raffle, you may not know that you can only accept cash for purchases of lottery tickets. You cannot accept debit cards, checks or charge cards. These rules have been on the books since 1995, but they only came to light for many charities when Governor Cuomo proposed new legislation to allow charities to accept checks, charges, credit and debit cards.

The new legislation will also make it easier to conduct games of chance at locations other than your own, and would simplify some of the paperwork for charities. For example, it allows alcoholic beverages to be included as prizes and it also increases the size of the allowable prizes.

The new legislation isn't law as we write this newsletter but we will watch the progress and you should as well if it affects you.

More Updates to the Nonprofit Revitalization Act

In case you missed it, there were additional updates to the Nonprofit Revitalization Act shortly before year's end. The new rules were designed to make compliance with related party transactions more manageable.

A new definition of "key persons" was provided to replace the "key employee" standard in the original law. The change focuses on the responsibilities of key persons.

An employee may now serve as board chair with the approval of two thirds of the entire board. That individual will not be considered an independent director.

Let us know if you would like more details about these changes.



Protecting Against Procurement Fraud

The AICPA and the chartered Global Management Accountants recently collaborated on a list of ways you can protect yourself against procurement fraud.

Nonprofits that do purchasing can benefit from these specs practices including:

- separate responsibilities. Separate responsibility for posting transactions from processing payments, have independent reviews of new vendors, and have independent reviews of invoices,
- have periodic independent reviews of purchasing documents,
- use competitive bidding or at least check prices on vendor websites,
- monitor vendor performance over time, and
- perform analytic and budget reviews to look for unexpected results in purchasing.

Case studies show these controls weren't in place when many frauds occurred.