

CHARITABLE SOLICITATION REGISTRATION

Navigating the Complexities

PRESENTED BY



Introduction

Charity Navigator has long been an advocate for promoting financial health and good governance practices in the nonprofit sector. Since 2001, Charity Navigator has helped millions of donors and social investors make informed giving decisions and direct their gifts to organizations that create the greatest impact for their investment.

Labyrinth, Inc. is the foremost authority on licensing compliance for the nonprofit sector, including registrations specific to fundraisers and charities. Known for its client focused approach, Labyrinth, Inc has been helping nonprofits, professional fundraisers, and commercial co-ventures maintain compliance with government regulations for more than 30 years. Labyrinth, Inc. is dedicated to empowering charities to focus their time and resources on mission-critical activities.

In an effort to further their shared missions of enhancing the nonprofit sector through information and education, Charity Navigator and Labyrinth, Inc. have partnered to create resources on the regulations that apply to charitable nonprofits. These resources will be geared to both donors and charities. This document covers what charities need to know to make sense of the complex area of charitable solicitation registration.

What follows is an overview of the state regulations that all nonprofits face when raising funds. This guide begins with a definition of charitable solicitation and an overview of the applicable regulations. Special focus is given to the regulatory implications of online fundraising, what it takes to register (including costs), and strategies charities can use to simplify the process. The guide concludes with a picture of the regulatory landscape moving forward and reference table of each state's requirements.

Let this be your definitive guide to navigating the complexities of charitable solicitation registration. Let's dig in.

What is state charitable registration?

States regulate nonprofits that solicit donations. Generally, states require nonprofits to register with an agency in their state before they solicit donations. This process is called state **charitable registration**.

Requirements vary by state. Currently, 41 states require nonprofits to register to solicit their residents, and renew the registrations regularly, usually each year. In addition, 25 states require certain information to be disclosed on solicitation materials.

Clearly, meeting the definition of charitable solicitation is a low bar to cross. With 41 states requiring registration, nearly all organizations face the requirements. While regulations for charitable solicitation are not new, states have become more stringent with their enforcement. States are trending towards increased regulation and oversight.

State agencies that once served simply as registration offices now have CPAs and attorneys on fulltime staff to audit, investigate, and prosecute violations of charitable solicitation laws.

While these laws do place a burden on organizations, they are in place to protect not only donors, but also legitimate organizations themselves and the sector as a whole.

FROM THE U.S. Internal Revenue Service (IRS)

Many states have laws regulating the solicitation of funds for charitable purposes. These statutes generally require organizations to register with a state agency before soliciting the state's residents for contributions, providing exemptions from registration for certain categories of organizations. In addition, organizations may be required to file periodic financial reports. State laws may impose additional requirements on fundraising activity involving paid solicitors and fundraising counsel.

Charitable Solicitation

Generally speaking, charitable solicitation is the act of asking for something of value. Solicitation can take many forms. Conventional examples include direct mail, phone calls, emails, and radio and television ads. Online fundraising via a "Donate" button on the charity's website or through social media generally constitutes charitable solicitation. Other common options include applying for grants or hosting in person, virtual, or hybrid fundraising events.

Why is registration so important?

Registering for charitable solicitation is important, because, first and foremost, it's the law. But even more importantly, donors care! Charity Navigator users are among the most engaged, informed supporters of nonprofits. It's in their nature to inquire how their funds are being used. They want to know that their investment is going to a responsible organization. Meeting state requirements and registering for charitable solicitation is one important way to demonstrate responsibility and accountability.

Negative consequences to avoid

Organizations that don't abide by these rules can be subject to penalties and fines. No responsible donor wants their gift to be squandered on these sorts of avoidable costs. However, it's not only the donors' money that could be in jeopardy. For example, California has the ability to impose penalties against boards of directors whose charities are not registered to solicit funds in their state.

These penalties cannot be paid out of the organization's general fund. Instead, the board members themselves must pay any fines out of their own pockets. This is just one example of the type of repercussions that can result from fundraising without being registered to do so.

Beyond state fines, other consequences include forced financial audits, loss of state tax exemption, and even revocation of the right to solicit within a state. Worst of all, the loss of reputation resulting from a violation can cause long term damage to a nonprofit's goodwill and credibility. The good news is that these penalties are entirely avoidable. Proactive registration circumvents any such fallout.

Proactive registration should not be feared

Charities sometimes fear being penalized by states for failing to file in past years. They worry that the charities bureaus will try to collect fines in addition to their initial registration application fees. States don't want to punish charities that are doing their best to follow the rules. Penalties can usually be avoided by being proactive. The most opportune time to register and begin your organization's path to compliance is right now.

Compliance affords key benefits

Many grant-making institutions will not accept applications from nonprofits that are not registered and require proof of state charitable registration be submitted with grant application. But some states can take weeks or months to process applications, so waiting until you have a grant opportunity to register could disqualify your organization from those grants. Eligibility for grants is another benefit of proactive registration.

When you register for fundraising, you engender trust in your donors. Compliance can - and should - be a badge of honor. Don't look at the requirements as onerous. Savvy development teams see compliance as an opportunity to demonstrate their dedication to transparency and meeting their legal obligations. Show your supporters that your practices are not only lawful but beyond reproach.

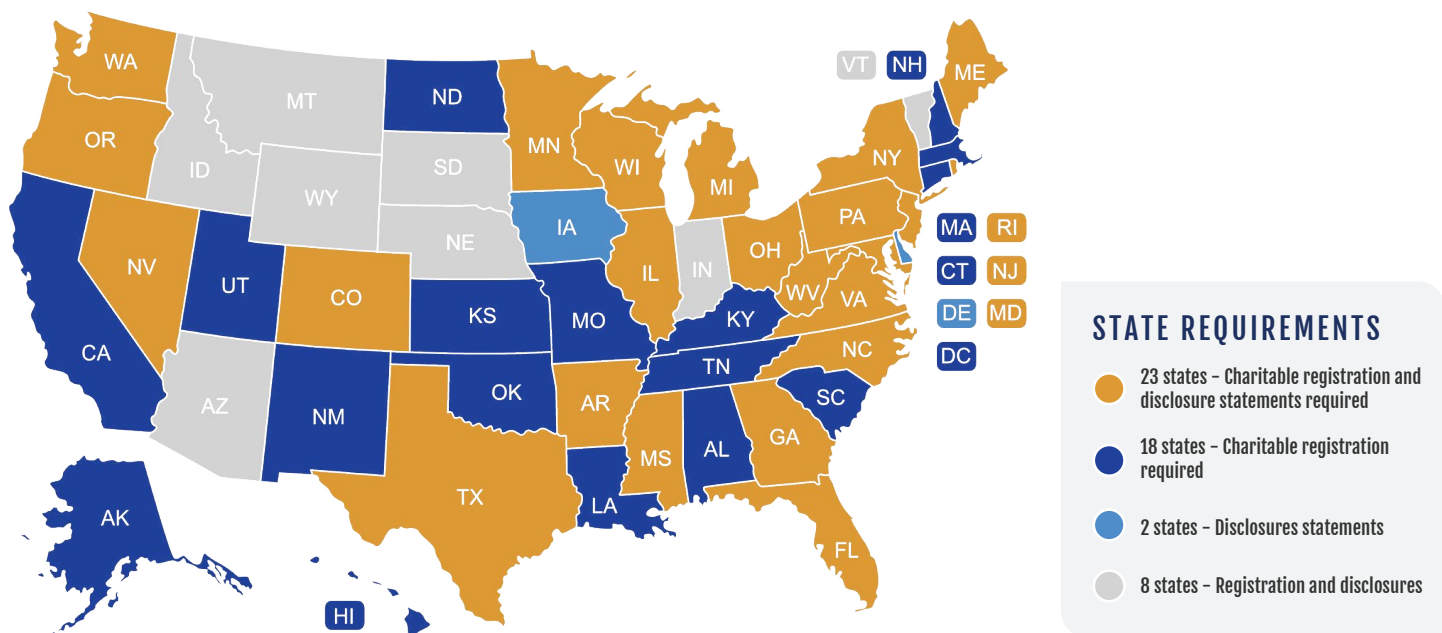
While maintaining registrations requires investment, the upside is tremendous. Being registered enables charities to solicit without restriction or fear of penalties. Not only that, but donors gain reassurance from the fact that the organization they're giving to is in compliance. Thanks to the efforts of organizations like Charity Navigator, donors are becoming increasingly adept at conducting research on the nonprofits they are considering for support and Charity Navigator continues to encourage nonprofits everywhere to respond proactively to state requirements.

Do the requirements apply to our charity?

41 states currently have charitable solicitation registration requirements. Solicitations made by phone, direct mail, in person, by email, or online in those states generally subject a nonprofit to registration requirements. In addition, solicitations through professional solicitors, fundraising consultants, and commercial co-ventures trigger registration requirements in many of the same states

Common forms of solicitation that may require registration:

- > Board members asking their friends to make a donation
- > In-person, hybrid or virtual fundraising events
- > Year-end letters asking for a contribution
- > Phone calls requesting a gift
- > Fundraising requests via email
- > "Donate" buttons on a nonprofit's website
- > Grant proposals submitted to a foundation
- > Radio and TV spots that include a request to give
- > Crowdfunding events, such as giving days



Requirements vary by jurisdiction, and it can be difficult to tell exactly what a nonprofit's obligations are. However, if your organization engages in any of the above activities, registration of some type will generally be required. The majority of states require nonprofits to register before they begin soliciting, regardless of whether any donations are received.

How is online fundraising regulated?

While state charitable registration laws have existed for many years, most were passed before fundraising via the Internet was common. Most states have not specifically addressed online fundraising in their regulations. Some states have taken strict stances that use of a “Donate Now” button constitutes solicitation in their states. Consequently, there is often confusion about how the laws apply.

Generally speaking, online fundraising is considered soliciting nationwide. Solicitations occur where they are received by supporters. “Donate Now” sections on charity websites, emails to newsletter subscribers, and social media are all solicitations that can - and often do - reach citizens of every state. When charities receive donations as a result of those solicitations and then follow up with those givers to ask for additional donations, those charities are then furthering their charitable solicitation activities. Charities that solicit in these ways would generally need to register in all jurisdictions where requirements exist.

How are third party fundraising platforms regulated?

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 do not require state fundraising registration by a nonprofit, if the nonprofit is soliciting donations through the platform, it is subject to the state fundraising registration requirements. If a nonprofit wishes to solicit 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.

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. 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. Nonprofits should also determine the state registration status of any fundraising platform they use.

Where should our organization register?

Registering nationwide is the best way to avoid any semblance of impropriety. It is a critical strategy for highly scrutinized nonprofits. It preempts any bad press or penalty fees, and provides peace of mind to boards of directors. Of course, not all organizations have the ability to register in all states. Budgetary constraints are a common challenge, particularly for very small charities. For these organizations, a more measured approach may be best. An organization could choose to confine their fundraising efforts to a limited number of states and only accept donations from donors in states where they are compliant. The organization must weigh the cost of charitable registration against the opportunity cost of not accepting donations from supporters in that state.

What is the registration process?

The registration process varies from state to state, and each organization's path to compliance will be different. The best approach for all organizations to is to follow these four main steps: **research**, **apply**, **monitor**, and **renew**.

1 RESEARCH

The first step is to identify whether or not your organization will be required to file a registration application or an exemption. Applicants may claim an exemption based on their organization type, its solicitation methods, or its revenue. For instance, a church, hospital, or university may be exempt from registering in many states, while foundations supporting any of these types of nonprofits will likely need to register broadly.

Some states will allow an exemption for charities that do not contract with professional fundraisers. Also, organizations that raise less than a state's minimum threshold are able to file for exemption until they exceed the minimum limit. However, even exemptions generally require application and renewal.

The next step is to gain an accurate understanding of your organization's current registration status in each state. Careful research should be done prior to submitting any applications. The appropriate application for your situation depends on whether your group has previously registered and if so, whether your registration is in good standing.

These details inform the applicable state fees and which supplemental documents are required. In some states, there are certain prerequisites before you can register. For instance, the nonprofit may need to obtain corporate registration in the state and appoint a registered agent for service of process. Knowing these requirements up front will help you save time and money by avoiding rejected or delayed applications.

Registration Exemption

Permission by a jurisdiction for certain entities to avoid filing typical charitable registration applications. They may be granted based on a number of organization-specific factors. For example, if an organization's annual contributions do not meet a given jurisdictions' threshold for requiring registration, the group would not need to file an application. Other determining factors include the methods of solicitation the organization uses and whether or not the group is a religious, healthcare, or educational organization.

2 APPLY

In each state, you will have to complete the necessary applications accurately and compile required documents as requested by the state. This requires line-by-line review of each form and its instructions. Once the necessary documents have been compiled, ensuring proper delivery is essential. Sending the applications to the right agency and address may seem obvious, but some states require applications to be filed online or by email. Submission by any other method would result in a rejection.

WHAT NEEDS TO BE FILED?

In each state, you will have to complete the necessary applications accurately and compile required documents as requested by the state. This requires line-by-line review of each form and its instructions. Once the necessary documents have been compiled, ensuring proper delivery is essential. Sending the applications to the right agency and address may seem obvious, but some states require applications to be filed online or by email. Submission by any other method would result in a rejection.

- > Organizing document
- > Bylaws
- > IRS Determination Letter
- > Audited financial statements, or certified financial reports
- > IRS Form 1023
- > List of all officers, directors, trustees, and key executives
- > Lists of affiliated nonprofits or other entities
- > IRS Form 990
- > State-specific supplemental forms, as applicable in certain states
- > Contracts with professional fundraisers, solicitors, and consultants
- > Contracts that describe activities defined as "commercial co-ventures"

You may have heard of the Unified Registration Statement (URS). This document was created in an effort to streamline the application process in all states. The idea was to create a single form that could be completed once and submitted to all the states simultaneously. However well-intentioned it may have been, the URS has not been successful. Not all states accept it, and many require additional supplements to be included. We generally recommend that nonprofits use the state-specific registration forms instead.

**TOTAL FEES TO
REGISTER IN
41 STATES COULD
RANGE FROM
\$1,500 TO \$9,500.**

Application 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. To put a finer point on it, organizations with under \$100,000 in gross revenue will generally pay close to \$1,500 in state fees to register nationwide, whereas organizations with over \$10,000,000 in gross revenue will pay approximately \$9,500 to the states to register nationwide.

Potential prerequisites

Registered Agent

An organization's legal appointee located within a given jurisdiction intended to receive notice of lawsuit and other legal or government notices from that jurisdiction. State law requires that all organizations have a registered agent listed in their state formation documents, but appointments for other purposes are common. The registered agent must be located within the jurisdiction. Some jurisdictions require nonprofits to list a registered agent on their charitable registration forms but do not require foreign qualification with the Secretary of State.

Foreign Qualification

The process by which a certificate of authority for an out of state organization is retrieved from its jurisdiction of incorporation. It is required prior to transacting business in a new jurisdiction for the first time, and it involves the appointment of a registered agent in the new jurisdiction's Secretary of State records. For example, an organization formed in Delaware that wishes to open an office in the District of Columbia would need to first provide a certificate of authority from Delaware, and appoint a registered agent in the District of Columbia state records. Certain states require nonprofits to register with their secretary of state office prior to registering for charitable solicitation.

State Tax Exemption

Permission by a jurisdiction for certain entities to avoid paying franchise or business taxes. It is automatic for 501(c)(3) entities in most states. However, others may require an additional filing to avoid having to pay. Foreign qualification triggers tax requirements in most jurisdictions. To avoid having to pay the tax, the entity would need to file for the exemption following the foreign qualification.

Independent Audits

Twenty-three states require larger nonprofits to include independently reviewed or audited financials with their charitable registration renewals. The minimum threshold for an audit is \$300,000 in annual gross revenue, but most states with requirements won't request the audit or certified financial statements until the organization's gross revenue has reached \$500,000.

3 MONITOR

Some states take just a few weeks to process applications, while others can take months. During that time, you'll need to ensure your applications were properly received and are being processed. Mistakes can happen from time to time on behalf of the charities bureaus. You'll need to proactively reach out to make sure your documents are in queue. Rejected applications can be even more time-consuming to deal with, so it's important to be vigilant.

Be sure to document the initial registration process, as you'll need to repeat a similar process when you renew. Pay close attention to the issues that come up during this phase, so as to inform next year's process. This is also the ideal time to develop a system for tracking your renewal dates. You'll need something dynamic that can account for changes in due dates resulting from changes in state legislation.

Once you begin receiving application approvals, you'll need to be mindful of additional disclosure requirements.

Twenty-five jurisdictions require charities to include disclosure statements on their written solicitations.

The specific required language varies by jurisdiction. Disclosures inform donors where to obtain more information about a nonprofit, either from a government agency or from the organization itself. Charitable disclosures typically must be included on any written solicitations including an organization's website if they're soliciting online.

Disclosure Statements

Language intended to be listed on solicitation materials providing details on a nonprofit's state charitable registration status. Additionally, directions on where to find more information on the entity's mission and financials may need to be included. There are currently 25 jurisdictions that require them, each with their own expectations for content.

4 RENEW

As with initial registrations, renewal applications require careful review of the directions. State fees will often be different for renewals. Supporting documentation is often different as well. However, the main difference between initial and renewal filings is that renewal filings have a hard-and-fast deadline. States may assess penalties for missed filings, making tracking deadlines paramount to containing cost.

Since renewal applications typically draw on information contained in the IRS Form 990 and audited financials, organizations that file an extension with the IRS will be hard-pressed to file on time. In those cases, it is necessary to file an extension with each jurisdiction in order to stay in good standing. The process of filing for a renewal extension varies in every jurisdiction but often includes submitting a copy of the IRS Form 8868 to the charities bureau.

State Charitable Registration Renewal Extension

Similar to the Form 8868 extension some organizations file for their tax return, these forms allow you to push back the deadline of your charitable registration renewal application. Since states require information from the Form 990 to be included on the renewal application, extending the due date of that filing will be necessary whenever the return is not available before the regular due date.

Should we outsource the work?

By definition, nonprofit organizations are mission-driven enterprises. Practically speaking, if you were to place a dollar amount on staff time spent on these registrations, you would likely save money by outsourcing the work. Consider enlisting the assistance of a thirdparty team of charity registration specialists with a robust understanding of the various state requirements, and a commitment to client focused communication to keep you informed every step of the way.

If you decide to manage state compliance internally, be sure to allocate sufficient staff time. Take into account the steep learning curve to become proficient in each state's requirements and processes, and consider the expertise lost with staff turnover. State registration requires considerable attention and timely handling or adverse consequences can result. This work should not be treated as a nominal duty.

We recognize that registering nationwide isn't for every group. However, even smaller organizations can benefit greatly from outsourcing these tasks. If you're only considering registering in one or two states, the budget impact is minimal and not significant enough to make or break a budget. By starting with outsourcing at the beginning, the cost increases that occur will be incremental. Outsourcing state charitable registration is part of building a strong support team around you.

Moving forward

State charity offices recognize that registering for charitable solicitation in multiple states is burdensome. Government regulators also realize that to encourage compliance, the process will need to be streamlined and made less expensive. Accordingly, the National Association of State Charity Officials (NASCO) launched the “Single Portal” initiative as a potential solution to ease the burden. This project is in the preliminary stages. It remains to be seen whether all states will adopt a unified technology. In the immediate term, the existing maze of state charitable registration requirements are state law and should be respected as such.

Both Charity Navigator and Labyrinth, Inc. encourage nonprofits to proactively register in every state in which they fundraise. Nonprofits can receive assistance with multi-state registrations through a full-service compliance company that can resources and provide better results. For more information or for assistance managing state charitable registration, please contact Labyrinth, Inc. to start a conversation.

Reference Table

	Charitable registration required?	Initial registration filing fees	Foreign qualification required?	Registered agent required?	Disclosure statement required?	Audit threshold
Alabama	✓	\$25				
Alaska	✓	\$40				*1
Arizona						
Arkansas	✓	\$0			✓	\$500,000 Gross Revenue
California	✓	\$50	✓ ²			\$2,000,000 Gross Revenue
Colorado	✓	\$10			✓	

	Charitable registration required?	Initial registration filing fees	Foreign qualification required?	Registered agent required?	Disclosure statement required?	Audit threshold
Connecticut	✓	\$50				\$500,000 Gross Revenue
Delaware					✓	
District of Columbia	✓	\$412.50 (biennial)	✓	✓		
Florida	✓	\$10-400			✓	\$1,000,000 ⁷ ¹ Annual Contributions
Georgia	✓	\$35 (biennial)			✓	\$1,000,000 ⁷ Annual Contributions
Hawaii	✓	\$0		✓ ⁵		\$500,000 Gross Revenue
Idaho						
Illinois	✓	\$15	✓ ²	✓ ⁸	✓	\$300,000 ¹⁰ Annual Contributions
Indiana						
Iowa					✓	
Kansas	✓	\$25				\$500,000 Annual Contributions
Kentucky	✓	\$0		✓ ⁹		
Louisiana	✓ ³	\$25		✓ ³		
Maine	✓	\$20			✓	
Maryland	✓	\$0-\$300			✓	\$750,000 ⁷ Annual Contributions
Massachusetts	✓	\$150-2,100				\$500,000 ⁷ Gross Revenue
Michigan	✓	\$0		✓	✓	\$550,000 ⁷ Annual Contributions

	Charitable registration required?	Initial registration filing fees	Foreign qualification required?	Registered agent required?	Disclosure statement required?	Audit threshold
Minnesota	✓	\$25			✓	\$750,000 Gross Revenue
Mississippi	✓	\$54		✓	✓	\$500,000 Annual Contributions
Missouri	✓ ⁴	\$15				
Montana						
Nebraska						
Nevada	✓	\$0			✓	
New Hampshire	✓	\$25				\$1,000,000 ⁷ Gross Revenue
New Jersey	✓	\$30-250			✓	\$500,000 Gross Revenue
New Mexico	✓	\$0		✓		\$500,000 Gross Revenue
New York	✓	\$25			✓	\$1,000,000 ⁷ Gross Revenue
North Carolina	✓	\$0-200			✓	*1
North Dakota	✓	\$25	✓	✓ ⁸		
Ohio	✓	\$0			✓	
Oklahoma	✓	\$17 or \$68				
Oregon	✓	\$0-\$200			✓	
Pennsylvania	✓	\$15-250			✓	\$750,000 ⁷ Annual Contributions
Rhode Island	✓	\$93			✓	\$500,000 Gross Revenue

	Charitable registration required?	Initial registration filing fees	Foreign qualification required?	Registered agent required?	Disclosure statement required?	Audit threshold
South Carolina	✓	\$52		✓ ⁵		
South Dakota						
Tennessee	✓	\$10				\$500,000 Gross Revenue
Texas	✓ ⁶	\$150 or \$250		✓	✓	* ¹
Utah	✓	\$75		✓ ⁵		
Vermont						
Virginia	✓	\$130-425		✓ ⁵	✓	* ¹
Washington	✓	\$60			✓	\$3,000,000 ⁷ ¹ Gross Revenue
West Virginia	✓	\$15 or \$50			✓	\$500,000 ⁷ Gross Revenue
Wisconsin	✓	\$15			✓	\$500,000 ⁷ Annual Contributions
Wyoming						

- 1 Audit requirements are conditional.
- 2 While it is possible to have a charitable registration application approved without foreign qualification, state categorizes fundraising as commercial activity.
- 3 Required only if the organization is using professional fundraisers.
- 4 501(c)(3)s request a letter of exemption from the attorney general.
- 5 Allow registrants to list the secretary of state as the service of process agent.
- 6 Registration with the attorney general is required for solicitation for law enforcement, public safety, or veterans' causes; registration with the secretary of state is required for telephone solicitors and public safety organizations, promoters, and publications.
- 7 May require reviewed financials at lower threshold.
- 8 Registered agent is required as a part of foreign qualification but must also be listed on the charitable registration filing.
- 9 Required if the organization does not file a IRS Form 990.
- 10 Audit threshold lowered to \$25,000 if a professional fundraiser is used to solicit in state.

About Charity Navigator

Charity Navigator is the world's largest and most-utilized independent nonprofit evaluator. Through our ratings, organizations are equipped with the nonprofit sector's premier trust indicator and a powerful platform to raise awareness and funds. We do not charge the nearly 200,000 organizations we evaluate, ensuring unbiased evaluations, nor do we charge the public for this trusted data. We use a combination of automated methods and technology-supported manual research and analysis to provide donors and nonprofits with four clearly-visualized indicators of organizational performance — we refer to these as beacons. Each beacon evaluates distinct areas that collectively influence a nonprofit's capacity to achieve impact. Nonprofit organizations can create accounts to manage their profiles and submit data for evaluation by visiting charitynavigator.org/portal.



About Labyrinth, Inc.

For more than 30 years, thousands of organizations across the country have trusted Labyrinth, Inc. to manage every aspect of their state charitable registrations. Labyrinth's helpful charity registration team focuses on each organization's unique objectives, determines the most effective solutions, then creates a custom compliance roadmap.



State charitable solicitation registration can be complex, but you don't have to go it alone. To learn more about how Labyrinth, Inc.'s team can help your organization chart its path to compliance, visit us online at www.labyrinthinc.com, or call us at 888-532-0723.

Published May 2022. The information contained herein is general in nature and does not apply to all organizations. Furthermore, this information is accurate as of the publication date and is subject to change. Labyrinth, Inc. does not provide tax, financial, or legal advice. Use of our services does not create an attorney-client relationship. Labyrinth, Inc. is not acting as your attorney and does not review information you provide to us for legal accuracy or sufficiency.

Copyright 2022 Labyrinth, Inc.. All rights reserved.