

Tis the Season for Nonprofit Fundraising Risk: Part 1



By Erin Gloeckner

Resource Type: Risk eNews

Topic: General

*'Twas the month before the new calendar year,
Not a creature was stirring, not even a reindeer.
The development officers hung their stockings with care,
In hopes that new funding would soon be there.*

You may recognize the inspiration for the poem above ('Twas the Night Before Christmas' or 'A Visit from St. Nicholas'), and you may also be familiar with the emotions evoked by the poem. Excitement, hope, anticipation. Feelings we experience before a holiday, but also feelings that nonprofit leaders experience during any major fundraising campaign. In the final months of each calendar year, we witness countless nonprofits pull out all the stops as they roll out ingenious, compelling fundraising campaigns—all in the hopes that their missions will receive a year-end boost.

As you wrap up an ongoing campaign, or as you reflect on this year's efforts as inspiration for next year's fundraisers, ensure that your nonprofit mitigates legal risk related to fundraising by complying fully with the law.

Fundraising Law: What You Need to Know

By asking for a charitable donation or by selling goods/services that will benefit a charitable cause, you may trigger the legal requirement to register as a charitable soliciting organization in your state (or in certain states if you solicit funds within their borders). You must register before soliciting funds in most states. If you solicit donations regionally or nationally—whether in person, through mailings, online, or otherwise—you will be subject to the registration laws of multiple states. Many states accept a common registration form, the Uniform Registration Statement.

The [Unified Registration Statement](#) (URS), currently accepted by 36 states, provides a common form and 'represents an effort to consolidate the information and data requirements of all states that require registration of nonprofit organizations performing charitable solicitations within their jurisdictions.' The URS is organized by the National Association of State Charities Officials (NASCO) and the National Association of Attorneys General.

[Use the interactive map on the URS website](#) to learn about registration requirements in your state. Colorado,

Florida, and Oklahoma require registration of charitable soliciting organizations, but they do **not** accept the URS common form. The following states do not require registration: Idaho, Indiana, Iowa, Montana, Nebraska, Nevada, South Dakota, Texas, Vermont, and Wyoming.

Aside from registration as a charitable soliciting organization, your nonprofit should be aware of and comply with the CAN-SPAM Act of 2003. The Controlling the Assault of Non-Solicited Pornography And Marketing Act (CAN-SPAM), protects consumers and businesses from unsolicited commercial electronic mail messages, as well as text messages sent to mobile devices (e.g., smartphones). Your nonprofit team must follow the CAN-SPAM guidelines whenever you send commercial emails-whether they are individual or bulk emails. The regulations apply even if you are sending emails to another business.

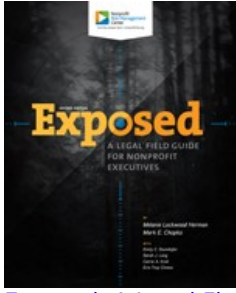
According to the Federal Trade Commission's [Compliance Guide for Business](#), the CAN-SPAM Act's main requirements include:

- **Don't use false or misleading header information.** Your "From," "To," "Reply-To," and routing information – including the originating domain name and email address – must be accurate and identify the person or business who initiated the message.
- **Don't use deceptive subject lines.** The subject line must accurately reflect the content of the message.
- Identify the message as an ad. The law gives you a lot of leeway in how to do this, but you must disclose clearly and conspicuously that your message is an advertisement.
- **Tell recipients where you're located.** Your message must include your valid physical postal address. This can be your current street address, a post office box you've registered with the U.S. Postal Service, or a private mailbox you've registered with a commercial mail receiving agency established under Postal Service regulations.
- **Tell recipients how to opt out of receiving future email from you.** Your message must include a clear and conspicuous explanation of how the recipient can opt out of getting email from you in the future. Craft the notice in a way that's easy for an ordinary person to recognize, read, and understand. Creative use of type size, color, and location can improve clarity. Give a return email address or provide a link to help recipients communicate their mail preferences. You may create a menu to allow a recipient to opt out of certain types of messages, but you must include the option to stop all commercial messages from you. Make sure your spam filter doesn't block these opt-out requests.
- **Honor opt-out requests promptly.** Any opt-out mechanism you offer must be able to process opt-out requests for at least 30 days after you send your message. You must honor a recipient's opt-out request within 10 business days. You can't charge a fee, require the recipient to give you any personally identifying information beyond an email address, or make the recipient take any step other than sending a reply email or visiting a single page on an Internet website as a condition for honoring an opt-out request. Once people have told you they don't want to receive more messages from you, you can't sell or transfer their email addresses, even in the form of a mailing list. The only exception is that you may transfer the addresses to a company you've hired to help you comply with the CAN-SPAM Act.
- **Monitor what others are doing on your behalf.** The law makes clear that even if you hire another company to handle your email marketing, you can't contract away your legal responsibility to comply with the law. Both the company whose product is promoted in the message and the company that actually sends the message may be held legally responsible.

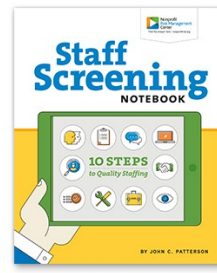
The Federal Communications Commission also provides a [Spam Fact Sheet](#) regarding regulations for solicitations to mobile phones and other mobile devices.

This holiday season, do your due diligence and ensure that your fundraising practices uphold the law-and the reputation of your nonprofit. Order a copy of [Exposed: A Legal Field Guide for Nonprofit Executives](#) or [Staff Screening Notebook!](#)

Risk Resources



[Exposed: A Legal Field Guide for Nonprofit Executives](#)
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[Staff Screening Notebook](#)
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For more information about legal and ethical fundraising, refer to the following resources:

- [Fundraising resources](#) from the National Council of Nonprofits
- [Nonprofit Fundraising: Legal and Tax Concerns](#) from NOLO Press
- [Fundraising Legal Tips](#) from the Nonprofit Law Blog

The Center wishes you well on any final campaigns for 2015! 'Happy holidays to all, and to all a goodnight!'

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