

Regulation of Nonprofit Organizations in the U.S. – An Overview

Nonprofit organizations (NPOs) in the United States are subject to a complex system of regulation and oversight that combines registration, reporting and monitoring at the federal, state and local levels. These regulatory regimes mostly revolve around raising, spending and accounting for funds, protecting the public from fraud, and encouraging charitable contributions. The First Amendment protections for freedom of association, assembly and expression guard against undue regulation of NPOs. In some cases, religious organizations are exempt from regulatory requirements to avoid entanglement of church and state.

Federal Regulation

Federal regulation of NPOs primarily focuses on exemption from taxation and is administered by the Internal Revenue Service (IRS). The tax code recognizes more than two dozen types of NPOs, ranging from charities to credit unions. Charities make up the largest category of exempt organizations, as it is the only category that allows a tax deduction for donations. All nonprofits must operate for the benefit of the public and dedicate their resources solely to their exempt purpose.

To become tax-exempt, an organization must file an application with the IRS, providing extensive details on governance, finances and how its activities will meet an exempt purpose. Once approved, charitable organizations and private foundations must file annual information returns with the IRS (Forms 990 and 990PF). This includes information on donors and the IRS applies a complex “public support test” to determine whether any donor has disproportionate influence in the organization. Charities with international activities must include Schedule F describing their activities and expenses. NPOs must make their tax-exempt status application and Form 990 available to the public. [Guidestar](#) provides an online database of annual Form 990 submissions.

Nonprofits that receive federal grants must undergo additional detailed reviews by the grantmaking agency and submit audits that meet the standards set by OMB Circular A-133.

State and Local Regulation

U.S. nonprofits incorporate at the state level by filing articles of incorporation and by-laws that set out their governance structure and procedures. Most NPOs must file reports to state regulatory authorities on an annual basis. Additional state and local rules apply to fundraising from the general public.

For additional detail, see the resources listed below:

RESOURCES

Overview

www.hg.org/nonprofit-organizations.html

This brief overview includes links to useful resources.

Federal Regulation

1. Internal Revenue Service (IRS)

- Webpage on Charities & Nonprofits - www.irs.gov/charities-non-profits
- Applying for federal tax-exempt status - www.irs.gov/charities-non-profits/applying-for-tax-exempt-status
- IRS page to search whether an organization is recognized as tax-exempt - <https://apps.irs.gov/app/eos/>
- IRS Form 990 – Federal Return of Organization Exempt From Income Tax
 - Public charities www.irs.gov/pub/irs-pdf/f990.pdf
 - Schedule F for activities outside the U.S. - www.irs.gov/pub/irs-pdf/f990sf.pdf
 - Private foundations www.irs.gov/pub/irs-pdf/f990pf.pdf
 - Thresholds for filing Form 990 - www.irs.gov/charities-non-profits/form-990-series-which-forms-do-exempt-organizations-file-filing-phase-in. See IRS chart below.

<i>Status</i>	<i>Form to File</i>
Gross receipts normally \leq \$50,000 Note: Organizations <u>eligible</u> to file the <i>e-Postcard</i> <u>may choose to file a full return</u>	990-N
Gross receipts $<$ \$200,000, and Total assets $<$ \$500,000	990-EZ or 990
Gross receipts \geq \$200,000, or Total assets \geq \$500,000	990
Private foundation - regardless of financial status	990-PF

2. Federal Trade Commission - on avoiding scam fundraisers

- www.consumer.ftc.gov/articles/0074-giving-charity

3. Federal grantees

- Eligibility requirements - USAID compliance for grantees - www.usaid.gov/compliance
- “The Compliance Division in the Office of Management Policy, Budget and Performance serves to:
 - Track compliance with U.S. federal regulations by partner organizations or individuals working directly with USAID
 - Take suspension and/or debarment actions against firms, organizations, and/or individuals that are not presently responsible
 - Evaluate contractor or grantee disclosures of organizational or compliance issues
 - Manage corrective actions with partner entities
 - Track trends in partner performance issues
 - Conduct outreach at the missions with both staff and USAID partners
 - Adjudicate disputes and appeals to the Assistance Executive under grants and cooperative agreements

The Compliance Division works closely with the USAID Office of Inspector General (OIG) and other USG oversight bodies on waste, fraud, and abuse matters. The division proactively

manages alleged reports of non-compliance or ethical concerns associated with USAID development partners.”

- Audit requirements in OMB Circular A-133

[Wikipedia –](#)

“The **OMB A-133 Compliance Supplement** is a large and extensive [United States federal government](#) guide created by the [Office of Management and Budget](#) (OMB) and used in [auditing federal assistance](#) and [federal grant](#) programs, as well as their respective [recipients](#). It is considered to be the most important tool of an [auditor](#) for a [Single Audit](#).”

[Greater Washington Society of CPAs, Introduction to OMB Circular A-133](#)

“The A-133 compliance supplement describes 14 types of compliance requirements and related audit objectives and procedures to be considered in performing audits subject to Circular A-133.” These range from cash management to subrecipient monitoring.

State and Local Regulation

1. [IRS Page on state regulation](#)

“Charitable Solicitation - State Requirements

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.”

2. **National Association of State Charity Officials (NASCO)**

“The National Association of State Charity Officials (NASCO) is an association of state offices charged with oversight of charitable organizations and charitable solicitation in the United States...The requirements and procedures for forming charitable organizations differ from state to state, as do the registration and filing requirements for organizations that conduct charitable activities or solicit charitable contributions. Please consult the resources listed on this website for links to both national and state-specific information.”

NASCO's Resources page: www.nasconet.org/resources/ links to:

- Federal government (IRS, FTC)
- National resources (a comprehensive list of nonprofit compliance programs, umbrella groups, research institutes and resource providers)
- Guidebooks and publications by state regulatory authorities
- Contact information for state regulatory authorities

3. Example of a state charitable solicitation rule

Adler & Colvin, CHARITABLE SOLICITATION REGULATION: Frequently Asked Questions by David A. Levitt April 2016

[www.adlercolvin.com/pdf/public_charities/FAQ%20on%20charitable%20solicitation%20regulation%20\(00782811xA3536\).pdf](http://www.adlercolvin.com/pdf/public_charities/FAQ%20on%20charitable%20solicitation%20regulation%20(00782811xA3536).pdf)

4. State regulation of solicitation by charities

NACUANotes, [REGISTRATION ROUNDUP: A SUMMARY OF STATE REQUIREMENTS FOR CHARITABLE ORGANIZATIONS](#) by Jessie Brown, Associate General Counsel, American Council on Education

“This NACUANOTE provides a brief, high level overview of state charitable registration requirements and their applicability to colleges and universities. Readers are encouraged to consult the list of resources provided at the end of this NACUANOTE for charts and additional information on state-specific requirements, which can vary widely.”

5. Some local governments have solicitation regulations

Example: [Jefferson County, Kentucky Charitable Street Solicitation Rules](#)

For more information about nonprofit regulation or about the work of the Charity & Security Network, contact us at:

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