

States Step Up Oversight

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Colleges, universities, schools, and institutionally related foundations involved in fund raising may be required to register in a growing number of states before soliciting gifts.

The traditional exemption from state charitable solicitation statutes and registration requirements that colleges, universities, and schools have enjoyed is fading.

States that require not-for-profit organizations to register before soliciting gifts may treat foundations related to colleges and universities differently than they treat the educational institutions themselves.

While 15 states now require educational institutions to register, according to a survey we conducted for this article, 24 may require institutionally related foundations to register.

The historic basis for education's exemption has been that colleges, universities, and schools solicit contributions from core constituencies who already know them well: trustees, alumni, students, parents, and faculty. As a

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practical matter, state regulators rarely receive complaints about educational fund raising, and if questions arise they know where to find the educational institutions.

Since the 1960s, states have become increasingly active in their oversight of charitable organizations and solicitations. They have enacted legislation to inform contributors about charities that solicit them, and to protect these contributors from deception and fraud.

In the last seven years especially, states have been requiring more types of not-for-profit organizations to register and file reports, requiring them to report in greater depth, and stepping up enforcement. Today, 46 states

plus the District of Columbia regulate charitable solicitation in some fashion.

During the last four years alone, eight states have limited or removed

exemptions they formerly allowed for educational institutions. They are Maryland, Minnesota, Ohio, Oklahoma, Oregon, South Carolina, Virginia, and Wisconsin. The other seven states where educational institutions may have to register are Alaska, Colorado, Florida, Hawaii, Kentucky, Massachusetts, and Wisconsin.

In Ohio, for example, the Ohio Charitable Solicitation Act exempts educational institutions only when they restrict solicitations to alumni, faculty, trustees, and students and their families. If they solicit beyond these core constituencies, they must register.

Ohio requires foundations related to educational institutions to register when solicit-

ing anyone in the state.

Other states that limit educational institutions' exemption to solicitations of core constituencies are Hawaii, Kentucky, Maryland, Oklahoma, Oregon, Virginia, and Wisconsin.

In Oregon, educational institutions based within that state lost their exemption about five years ago, when a university and its foundation used designated contributions for other purposes. Other charitable organizations questioned why they had to register and pay fees for enforcement while educational institutions were exempt and paid nothing. Now Oregon-based institutions as well as their foundations must register.

Another practice that may affect exemptions is contracting with independent professional solicitors. Minnesota, for example, now requires colleges, universities, or schools to register if

they contract with solicitors. Educational institutions and their related foundations must register campaigns in Colorado if they contract with solicitors. In Maryland, educational institutions must register if they contract with solicitors to contact any prospects, including core constituents.

Foundations related to educational institutions may need to register if they are located or will solicit prospects in any of these 24 states: Alaska, Arkansas, California, Colorado, Florida, Hawaii, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, South Carolina, Virginia,

Washington, and Wisconsin.

In nine of these states, foundations may have to register while their educational institutions are exempt from registration no matter whom they solicit. These nine states are Arkansas, California, Louisiana, Maine, Michigan, New Hampshire, New Jersey, New Mexico, and New York.

In contrast, 17 jurisdictions exempt educational institutions and their related foundations from registration, no matter whom they solicit. They are Arizona, Connecticut, District of Columbia, Georgia, Illinois, Kansas, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, and West Virginia.

Finally, 10 states do not require registration by any charitable organizations: Alabama, Delaware, Idaho, Indiana, Iowa, Montana, Nevada, South Dakota, Vermont, and Wyoming.

Exemption from registration spares time-consuming and sometimes costly paperwork. But it may not mean that educational fund raising is totally exempt from regulation. Even where they don't have to register, educational institutions and related foundations should keep appropriate records and be prepared to submit them to state officials on demand.

In any case, charitable solicitation statutes are just one of the many types of state laws and regulations with which educational institutions and their related foundations may have to comply.

Here are other points to bear in mind:

- States regulate fund raising within their borders regardless of where the fundraising organization or institution is based. Educational institutions or their foundations soliciting alumni nation-

Your institution and foundation may have to register as more states extend regulation.

