
Canada Revenue Agency releases new fundraising guidance

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[Previous](#) | [Next](#)

On April 20 of this year, **Canada Revenue Agency** released its new *Fundraising by Registered Charities Guidance: CG-013* (the "New Guidance"). It updates and replaces CRA's earlier *Guidance (CPS-028): Fundraising by Registered Charities* ("CPS-028") that had been released on June 11, 2009.

The New Guidance represents a significant improvement over *CPS-028*, as it is much more readable and practical in its structure. However, it is still a complex document that will require careful reading.

CRA has advised that the New Guidance does not represent a new policy position of CRA, but rather provides information on the current treatment of fundraising under the *Income Tax Act* ("ITA") and the common law. As such, the New Guidance will have a significant impact on current CRA audits, not just future audits. As well, the New Guidance applies to both receipted and non-receipted fundraising.

Fundraising must be ancillary

The New Guidance is intended to provide general advice for charities to follow and is based on the legal principle, established by case law, that fundraising must be seen as a necessary means-to-an-end for a charitable purpose, rather than an end-in-itself. In this regard, it is possible for a charity to engage in fundraising activities, provided that the fundraising is ancillary and incidental to the primary purpose of achieving the charity's purposes.

In addition to complying with the New Guidance, charities must continue to meet all other requirements of the ITA, including the 3.5% disbursement quota. The fundraising ratio referenced in the New Guidance (which remains the same as in *CPS-028*) results from data that is included in a charity's T3010. As such, it will be important for the board to review and approve the charity's T3010 before it is filed with CRA, given that the information contained in it can later be scrutinized by donors and the press, as well as members of the public.

Fundraising defined

The New Guidance explains that as a general rule, fundraising is any activity that includes a solicitation of present or future donations of cash or gifts in kind, or the sale of goods or services to raise funds, whether explicit or implied. Fundraising may include a single action, such as an advertisement, or a series of related actions, such as a capital campaign. It includes direct activities, such as face-to-face canvassing, or indirect related activities, such as researching and developing fundraising strategies and plans.

Fundraising activities can be carried out by either the registered charity or by another party acting on the charity's behalf, but does not include seeking grants, gifts, contributions or other funding from governments or other registered charities, or recruiting volunteers to carry out the general operations of the charity, or related business activities. This means that not only are the costs associated with such requests not included in the fundraising expenses, but the resulting income from government and other charities is also not included in the income with regards to the fundraising ratio explained below.

When is fundraising not acceptable?

The New Guidance states that the following conduct is prohibited and will be grounds for revocation of a registered charity's status, imposition of sanctions or other compliance actions, or denial of charitable registration. Each of the following types of conduct are described in detail in the New Guidance:

1. Fundraising that is a purpose of the charity
2. Fundraising with a more than incidental private benefit
3. Fundraising that is illegal or contrary to public policy
4. Fundraising that is deceptive
5. Fundraising that is an unrelated business

Allocating fundraising expenditures

Registered charities must report fundraising expenditures (all costs related to any fundraising activity) on their annual T3010. Where some fundraising activities include content that is not related to fundraising, some of these costs may be able to be allocated to charitable, management, administrative or political activities. However, the onus is on the charity to explain and justify the allocation.

The New Guidance provides a helpful and more user-friendly explanation of the recommended approach to take when allocating expenditures, compared to *CPS-028*. CRA has three guidelines that are designed to support a reasonable and consistent approach to allocating and reporting expenditures related to fundraising, explained in greater detail in the New Guidance: 100% allocation to fundraising, no allocation to fundraising, and pro-rated allocation of costs to fundraising and other expenditures.



Evaluating a charity's fundraising

The following are examples of some of the indicators that CRA will generally consider to be evidence of unacceptable fundraising. Each of the factors below is explained in detail in the New Guidance and should be carefully studied.

1. Resources devoted to fundraising are disproportionate to resources devoted to charitable activities
2. Fundraising without an identifiable use or need for the proceeds
3. Inappropriate purchasing or staffing practices
4. Fundraising activities where most of the gross revenues go to contracted third parties
5. Commission-based remuneration or payment of fundraisers based on amount or number of donations
6. Misrepresentations in fundraising solicitations or disclosure about fundraising costs, revenues or practices
7. Fundraising initiatives or arrangements that are not well documented
8. High fundraising expense ratio

The fundraising expense ratio is a global calculation for a fiscal period, determined by dividing fundraising expenditures (line 5020) by fundraising revenue (lines 4500 and 4630) using the entries from the charity's T3010.

In this regard, it is important to point out that just because a charity may have a fundraising ratio that exceeds 35% in any one given year does not necessarily mean that it is non-compliant with CRA's requirements under the New Guidance, only that CRA will examine the average ratio over recent years to determine if there is a trend of high fundraising costs requiring a more detailed assessment of expenditures.

Factors that may influence CRA's evaluation of a charity's fundraising

In this regard, CRA recognizes that the charitable sector is very diverse and fundraising efforts will vary between organizations. CRA will therefore look at a number of factors to evaluate a charity's fundraising activity that involves high fundraising costs, for example, the size of the charity, charities that advance causes with limited appeal, donor development programs, and gaming activities such as lotteries or bingos.

Best practices

CRA advises that adopting the best practices outlined in the New Guidance may reduce the risk of CRA finding that a charity is engaging in unacceptable fundraising. The New Guidance describes the following best practices, each of which should be carefully studied.

1. Prudent planning processes
2. Adequate evaluation processes
3. Appropriate procurement and staffing processes
4. Managing risks associated with hiring contracted (third party) fundraisers
5. Ongoing management and supervision of fundraising
6. Keeping complete and detailed records relating to fundraising activities
7. Providing disclosure about fundraising costs, revenues, practices, and arrangements
8. Maintaining a reserve fund policy and ensuring that fundraising is for an identified use or need

Conclusion

Although the New Guidance is a longer document than the earlier CPS-028, it is a much better organized resource tool and eliminates a lot of the confusion that had been experienced with CPS-028 concerning allocation of fundraising expenses.

However, the improvements to the New Guidance will likely create an expectation by CRA that charities should now be able to understand and comply with the New Guidance. This is reflected in the fact that the New Guidance uses the more directive "should" as opposed to the previous permissive language of "may" in many places within the New Guidance. Charities will want to carefully study and ensure compliance with the New Guidance on a go forward basis.

The new [Fundraising by Registered Charities Guidance: CG-013](#) (20 April 2012) can be accessed online from Canada Revenue Agency.

The earlier *Fundraising by Registered Charities Guidance CPS-028* (11 June 2009) can be accessed online from Canada Revenue Agency at [I](#).

A more detailed analysis is available in *Charity Law Bulletin No. 283*.

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[Back to top](#)

[Previous](#) | [Next](#)