

JUNE 27, 2022

## California Attorney General Releases Proposed Regulations Addressing Online Charitable Fundraising Platforms

On May 27, 2022, the California Attorney General's office issued proposed regulations supporting **Assembly Bill 488**, which targets online "charitable fundraising platforms" and charities that use their services in the state. The public can submit comments on the proposed regulations to the Attorney General's office until July 12, 2022. A public hearing is scheduled for July 13, 2022. All of the materials released by the Attorney General and information on comments and the public meeting can be found here: <https://oag.ca.gov/charities/regs/platforms>.

The proposed regulations were highly anticipated, as the law is set to go into effect January 1, 2023. In October 2021, we provided an **overview** of the topics addressed in the new law: What are online charitable fundraising platforms? What are platform charities? What are their obligations for registration and reporting, disclosures, and distributions to recipient charities, among other new requirements?

The proposed regulations provide some additional clarity and specific requirements for these newly regulated activities, which generally break down into the following categories:

**Classifications of Charitable Fundraising Platforms.** The proposed regulations expand on the statutory descriptions of the types of solicitations that take place on charitable fundraising platforms, resulting in five types of charitable fundraising platforms: commercial, peer-to-peer, marketing, consulting, and coventuring.

**Registration, Renewal, and Reporting Requirements.** In addition to the proposed regulations, the Attorney General has issued proposed forms that charitable fundraising platforms and platform charities may be required to file to register and report activities to the Registry of Charitable Trusts. The proposed regulations outline the filing obligations and due dates, the content of such filings (though filers may withhold trade secret information from the public), and guidance on the limited situations in which a platform charity partnering with charitable fundraising platforms might be able to file some reports on behalf of its partners.

**Due Diligence on Recipient Organizations.** Charitable fundraising platforms and platform charities should only be soliciting for and supporting charities in "good standing" in California. The proposed regulations clarify that platforms can rely on the Attorney General's "May Not Operate or Solicit for Charitable Purposes" list, and offer a five-day grace period after a recipient charity appears on this list for the first time.

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Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

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**Conspicuous Disclosures to Donors.** The law provides that platforms must provide information to donors at the point of solicitation, including (among other things) any fees deducted from donations, the maximum time for a donation or recommended grant to be delivered to the recipient charity, and identifying the party initially receiving the donations. The proposed regulations provide guidance on how to make sure such disclosures are “conspicuous” and clarify that payment processing fees are not required to be disclosed to donors at the point of solicitation.

**Charity Consent or More Disclosure.** Platforms must obtain the written consent of a charity before using its name on the platform or in a solicitation. Under the proposed regulations, obtaining consent from a recipient charity requires, among other things, getting the charity’s agreement to be listed on one or more platforms and its approval of information about the recipient charity the platform will use to solicit, and committing to furnish the recipient charity with an accounting of donations collected and any fees subtracted (for this purpose, “fees” include payment processing fees, tips, and other amounts). However, even if a platform has not obtained the requisite consent, the platform can still list a recipient charity if it limits the information provided on the charity, makes certain disclosures, and honors the request of any recipient charity that asks to be removed from the platform or the solicitation. The proposed regulations require promptly verifying a recipient charity’s request to be removed from the platform prior to effectuating the removal.

**Transfer of Funds and Information to Recipient Charities.** The proposed regulations include detailed provisions that specify various periods of time to transfer funds to recipient charities, depending on the category of charitable fundraising platform and whether the recipient charity has given consent or not (among other factors). These time periods are typically thirty (30) to forty-five (45) days. There is also information on how to redirect donations when a particular recipient charity doesn’t qualify. The proposed regulations also provide certain requirements related to receipting for donors and information that a platform must provide to the recipient charity about donations processed by the platform.

The Attorney General will finalize forms and regulations to administer the new law following the closure of the comment period, so look for more information as we get closer to January 2023. We may also see other states follow California’s lead.

*The authors of this blog post are members of Adler & Colvin’s Online Philanthropy and Charitable Solicitations Team.*