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Online Fundraising in 2024: Update on Attorney General Proposed Regulations of Charitable Fundraising Platforms

Charities and companies conducting fundraising activities on online platforms patiently awaited additional guidance on compliance with [Assembly Bill 488](#) (the “Law”), California’s new law regulating online “charitable fundraising platforms” and charities that use their services in the State (see our earlier [blog post](#)). Last November, the California Attorney General’s office issued the long-awaited third draft of proposed regulations (the “Draft Regulations”). (All of the materials released by the Attorney General can be found [here](#).)

The Draft Regulations are the latest indication of the possible rules that might be finalized this year. Until then, charitable fundraising platforms and platform charities should be aware of some of the proposed changes in the Draft Regulations in preparation for registration and full compliance some time in 2024. Below are some of the notable changes in the Draft Regulations:

Defining Terms and Types of Solicitation Activities. The Draft Regulations provide a helpful definition of “platform,” meaning “a website, mobile device application, computer software application, or other internet-based interactive electronic medium.” In addition, the Draft Regulations label and define several types of solicitation activity:

- › [Type A](#) includes soliciting donations or recommended donations, such as micro donations, round up donations, or donations of any amount, from platform users by listing or referencing by name one or more recipient charitable organizations to receive donated funds.
- › [Type B](#) includes permitting or enabling crowdfunding campaigns created by platform users engaging in peer-to-peer charitable fundraising, or otherwise permitting or enabling platform users to solicit donations or recommended donations made by other platform users for one or more recipient charitable organizations.
- › [Type C](#) includes solicitations through charitable sales promotions, coventuring or cause marketing campaigns, or free action programs in which platform users can select one or more recipient charitable organizations to receive donated funds from the charitable fundraising platform or a third party based on the purchases made or other activity performed by platform users.
- › [Type D](#) is similar to Type C, except instead of recipient selection by the platform user, the charitable fundraising platform selects one or more recipient charitable organizations to receive donated funds.
- › [Type E](#) includes providing a charitable fundraising platform to charitable organizations that can be private-labeled or otherwise customized, that is subject to a software-as-a-

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service license agreement between the charitable fundraising platform and charitable organizations, and that allows charitable organizations to solicit donations.

Registration, Renewal, and Reporting Requirements. The Draft Regulations clarify that charitable fundraising platforms and platform charities must submit all of the new filings online, and specify the requirements for submitting confidential or trade secret information on the annual report. The Attorney General will consider granting an exception to public disclosure only with respect to *fee* information.

Due Diligence on Recipient Organizations & Alternates. The Law provides that charitable fundraising platforms and platform charities may only solicit for and make payments to charities in “good standing” (with the Internal Revenue Service, Franchise Tax Board, and the Attorney General). The Draft Regulations specify that the Attorney General’s “May Not Operate or Solicit for Charitable Purposes List” (the “List”), naming organizations that are not in good standing, will be published semi-monthly on the first and third Wednesdays of each month. In addition, the proposed grace period to continue to solicit for or hold or send funds to a charitable organization that is not in good standing is now five business days from the List publication date (prior draft regulations proposed ten business days).

If a charitable fundraising platform or platform charity that engages in solicitation Type A or B needs to determine an alternate organization to receive the funds, the Draft Regulations provide a more flexible timeline for distributing funds to such alternate. Under prior drafts, the platform would have had up to thirty days to send funds to an alternate organization *from the date the donor actually recommended* an alternate. Instead, the Draft Regulations allow the platform to send such funds to the alternate no later than thirty days *after the last day the donor could have recommended* an alternate (which is thirty days from the date of notice to the donor, regardless of when or if the donor actually responds).

Conspicuous Disclosures. The Law requires certain disclosures to donors before the donor can complete a donation or select a charitable recipient organization if the charitable fundraising platform engages in Types A, B, or C solicitation activities. The Draft Regulations clarify that one of these, regarding disclosure of the most pertinent reasons under which the platform may deem a charitable recipient ineligible to receive donated funds, does not apply if the platform has no policy or standard under which a charitable organization’s receipt of the funds is precluded. At the same time, the Draft Regulations extend this disclosure requirement to Types D and E solicitation activity, and extend to Type D solicitation activity the disclosure requirement regarding the maximum length of time to send donations to recipient organizations.

Written Consent Terms. Under the Law, platforms must obtain the written consent of a charity before using its name on the platform or in a solicitation. Under the Draft Regulations, the required fee disclosure as part of the consent requirements is limited to only the total amount of fees charged by each platform (no longer including other partnering vendor or digital payment processing fees).

We will provide an update when the Attorney General announces final regulations, forms, and filing deadlines.