

# CA Charitable Crowdfunding: New Proposed Regs

05.31.22 | Linda J. Rosenthal, JD



"This legislation impacts every single person who clicks on that 'donate now' button and every single nonprofit that receives funding this way."

That's how Jan Masaoka, head of the California Association of Nonprofits, describes the state's landmark new charitable-crowdfunding statute. Assembly Bill [\(AB\) 488](#) was signed into law by Governor Gavin Newsom on October 7, 2021.

It was "... several years and many stakeholder meetings in the making." CalNonprofits has played a continuing and key role notwithstanding a few unsuccessful attempts at reaching agreement on a package of acceptable oversight measures. Throughout the process, the goal has been "to protect donors and charities from deceptive or misleading solicitations" in the uncharted waters of online fundraising. Finally, in 2021, a delicate compromise was achieved. See *2021 Wrap-Up: Eight New California Laws Impact Nonprofits (October 2021)* [CalNonprofits](#).

We've followed along and reported on developments, most recently on September 28, 2021: [A New Crowdfunding Law – At Last!](#)

The phenomenon of internet-giving exploded suddenly onto the scene not long ago, growing dramatically in popularity and use. But existing charitable-solicitation statutes (in California and around the nation) had been drafted years earlier in connection with traditional fundraising campaigns. They are inadequate now for coherent and meaningful government regulation of online appeals.

With California's first-of-its-kind new rules, some of the Wild-West confusion and chaos should subside. But there's a catch here: the Legislature approved an unusual delay of the effective date for AB 488. Many laws go into effect either immediately or at the start of the next year. In this case,

the law doesn't become fully operative until January 1, 2023.

There's a two-fold rationale. First, these 15 months or so give enough time for the attorney general's office to carefully craft regulations to fill in the all-important details not included in the statute. The rule making procedure mandates one or more public-comment periods. Second, the affected parties need enough lead time to adapt and adjust to the new final regulations.

On December 1, 2021, Attorney General Rob Bonta's staff hosted a preliminary online forum, open to the public, ahead of the formal drafting of proposed regulations. It was a productive session tossing around ideas and reaction to AB 488, as well as tackling questions and concerns about some of the particulars needed or helpful for the implementation of the new statute's requirements.

And now, the next step has been reached. On May 27, 2022, the official Notice of Proposed Rulemaking was published. The hot-off-the-press proposed regulations are now out for public comment. The deadline for written submissions is 5 pm on July 12, 2022. And another online public forum is scheduled for the following day, July 13, 2022.

### ***Key Provisions***

The California Association of Nonprofits included, in its October 2021 "wrap-up" of new California laws that impact nonprofits, a brief but to the point summary of AB 488: "Fundraising platforms will no longer be able to hide fees, use nonprofits' names to raise funds without permission, or hang onto donations indefinitely."

In addition, these platforms will also "have to disclose all processing fees upfront. They'll need to get consent, in most cases, before using a nonprofit's name to solicit funds. And they'll be required to distribute donations to nonprofits promptly and offer some transparency to the money's path. Online platforms will have to register with the Attorney General (AG), placing them under the AG's supervision going forward."

In its well-deserved victory lap post in October 2021, CalNonprofits also described the uphill battle over several years to achieve consensus and a viable legislative package. "This bill took several different forms in past years; in fact, CalNonprofits didn't support previous versions!"

Eventually, there was success "... through many conversations ... with multiple stakeholders — including representatives from big tech companies that host these platforms...[T]he bill improved to the point that we felt we could support it. All along the way, we pushed for better provisions until finally this year, the bill language fully aligned with our crowdfunding principles, developed with input from many of you."

CalNonprofits lauded the critical role of Rob Bonta, the Attorney General of California including — particularly — his game-changing decision in June 2021 to co-sponsor the draft legislation.

"[O]nce CalNonprofits could support the bill, we worked closely with the AG's and the bill author's (Assemblymember Jacqui Irwin) staff to champion the bill. We reviewed proposed amendments to see if they protected donors and nonprofits, we testified in hearings, and we helped address concerns from other stakeholders."

### ***Analyses of New Law***

According to Notre Dame law professor Lloyd Hitoshi Mayer, a leading expert on the emerging field of charitable crowdfunding law, “California has enacted what [he believes] is the first U.S. law specifically relating to crowdfunding for the benefit of charities....”

He has closely followed developments around the nation including in California: the 2021 success of AB 488 as well as the unsuccessful attempts in previous legislative sessions. All along, he has urged legislators and government officials to adopt a duly restrained approach to the regulation of internet fundraising: Any proposed law should include enough oversight and control to weed out the biggest bad actors without unduly stifling the development and viability of this exciting and promising new model of philanthropy fundraising.

In order to evaluate the proposed regulations, it’s important to become familiar with and understand the specific requirements of the statute and how the new regulatory scheme compares with prior law.

There are many helpful articles and blog posts examining and explaining AB 488’s terms and conditions. In addition to our September 2021 post, see also –

- [California Enacts First State Charitable Crowdfunding Laws](#) (November 10, 2021), Professor Lloyd H. Mayer, *Nonprofit Blogger* [includes analyses of key provisions from Legislative Counsel’s Digest]
- [Online Fundraising Platforms To Face Stricter Regulations in California](#) (October 25, 2021) Amanda L. Cole, *nonprofitpro.com* [helpful plain-English explanation]
- [Crowdfunding Laws: Platform Charities](#) (March 22, 2022) Gene Takagi, Esq., *NEO Law Blog* [detailed dive into specifics of new provisions]
- [New Law in California Addressing Online Charitable Fundraising Platforms](#) (October 15, 2021) Shirley McLaughlin, Esq. & Emily Chan, Esq. *Adler & Colvin Blog* [more specifics]
- [California Enacts Law Regulating Charitable Fundraising Platforms](#) (October 11, 2021) Eric S. Berman, Esq., *et al.*, *Venable LLP Blog* [more specifics]
- [California Enacts New Law Affecting Cause-Related Marketing Programs](#) (October 8, 2021) Ed Chansky, Esq., *Greenberg Traurig* [effect of new law on cause-related marketing].

### ***Proposed Regulations***

The formal Notice of Proposed Regulation published on May 27, 2022, by Attorney General Rob Bonta is a critical step towards eventual adoption of final regulations for AB 488 before the date the statute takes effect on January 1, 2023.

The general public now has the opportunity to weigh in on the officially proposed regulations with written public comments by 5 pm on July 12, 2022. The Notice includes instructions for email or regular mail submissions as well as for participation in the July 13th online forum open to the public. See *Attorney General Bonta Releases Proposed Regulations Implementing New Online Charitable Fundraising Law (May 27, 2022)*, [Press Release](#).

“In recent years, charitable fundraising on internet platforms has grown exponentially, altering the landscape of charitable giving....” explains California’s top law-enforcement official. “The reality is:

online solicitations are everywhere and charitable donations increasingly flow through crowdfunding sites and other third-party online platforms.”

Attorney General Bonta believes that the proposed regulations will allow his office “... to properly supervise charitable fundraising occurring on internet platforms and protect donors and charities from fraud and deceptive or unfair solicitations.”

“AB 488,” he adds, gives his “office the tools [they] need to match today’s virtual market and safeguard charitable donations made through online platforms.

### *Conclusion*

It’s widely expected there will be considerable nationwide interest in California’s new regulatory scheme even at this stage of proposed regulations. AB 488 may serve as a model for other states to use in writing their own new laws.

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