

CA Crowdfunding Regulations: Last Chance to Comment

11.23.22 | Linda J. Rosenthal, JD



California's landmark crowdfunding law, [AB 488](#), is set to go into effect on New Year's Day 2023, some fifteen months after the measure was signed into law by California's governor. See [A New Crowdfunding Law – At Last!](#) (September 28, 2021).

It was no understatement in the fall of 2021 when Jan Masaoka, head of the California Association of Nonprofits, described the state's newly enacted (and first-of-its-kind in the U.S.) legislation as impacting “...[every single person](#) who clicks on that ‘donate now’ button and every single nonprofit that receives funding this way.”

It was [years in the making](#): an intensive collaborative effort among legislators and regulators, nonprofit-sector representatives, academics and other experts, and other stakeholders and interested parties.

The delayed effective date was included to give the California Attorney General's Office time to thoughtfully consider, draft, and consider public feedback on, proposed regulations designed to fill out the new law with the necessary specific details of how it will work.

The government published a set of proposed regulations in late May 2022 with a public-comment period ending in mid-July. On November 21, 2022, the AG's office [issued amendments](#) to those proposed regulations.

The last chance for any interested person or organization to [provide comments](#) or reactions is on or before December 7, 2022.

The development of this legislation has been closely watched nationwide and will likely serve as a model for new laws in other jurisdictions.

A Bit of Background

Crowdfunding is not a new concept, as we explained eighteen months ago in [Crowdfunding Then and Now](#) (May 5, 2021), as AB 488 was still making its way through the California legislature. Consider the intriguing successes in long-ago offline crowdfunding of two already-acclaimed nineteenth century men.

In the 1840's, French philosopher Auguste Comte turned to his worldwide cadre of admirers in an audacious go-fund-me campaign to support himself beyond the relatively paltry sums he was earning from publishing learned treatises. He and many of his devotees were already engaged in a regular course of letter writing. His fundraising appeal went out through that excruciatingly slow but still effective pattern of frequent communication.

And a few decades later, American publishing powerhouse Joseph Pulitzer used his spectacular marketing skills to raise money from small donors around the nation to buy a base for the Statue of Liberty. The generous gift from the people of France had included the body of the imposing monument itself but Lady Liberty arrived without any foundation on which she could stand and welcome America's immigrants. The stodgy appeals from elite fundraising committees flopped miserably. But Mr. Pulitzer's ingenious plan included naming each and every donor, no matter how small the contribution, in his famous newspaper, the *New York World*. That did the trick.

Fast forward to today. Crowdfunding has exploded in popularity. The factor most responsible is the *medium* through which these fundraising appeals are made. "The [internet supercharges](#) the method of communicating the appeals and responding to them. Charitable fundraising + the internet + crowdfunding is sometimes described as a 'marriage made in heaven.'"

The bottom line, though, is that "fundraising via crowdfunding is [still fundraising](#) – pure and simple." And the states, generally through the attorneys general, have jurisdiction to protect the public by regulating any and all appeals for charitable funds and support."

But standard charitable-solicitations laws were outdated; they had been drafted and approved with the more traditional fundraising campaigns in mind. Complicating this dilemma has been the rapid pace of technology advances; government regulatory attempts are repeatedly rendered obsolete and irrelevant.

Initial Regulations Proposed

In [CA Charitable Crowdfunding: New Proposed Regs](#) (May 31, 2022), we brought the conversation and background information about recently enacted AB 488 up to (that) date.

The next step after passage of a new statute is the drafting of administrative regulations to implement the purposes and goals of the legislation.

For California's crowdfunding law, the goal all along (through a few years of unsuccessful attempts to reach consensus on a package of acceptable oversight measures) 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*. The new statute provides that "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 order to get the ball going rapidly with the regulations-development process, AG Rob Bonta’s staff hosted a preliminary – open to the public – online forum on December 1, 2021. It was successful in its purpose to gauge initial reaction to AB 488 as well as discuss ideas, questions, and concerns about some of the particulars that would be needed or helpful for the implementation of the new statute’s goals and requirements.

On May 27, 2022, the AG’s office published proposed regulations for public review and comment. At that time, Attorney General Rob Bonta explained that the proposed regulations would 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 added, gives his “office the tools [they] need to match today’s virtual market and safeguard charitable donations made through online platforms.”

See our post for particulars on May 2022 proposed regulations. See also *California Issues Notice of Proposed Rulemaking Affecting Charitable Fundraising Platforms and Platform Charities* (June 17, 2022) Ashleigh Allione, Esq., *et al*, *Venable LLP* [excellent discussion of background and goals of AB 488 and content of proposed regulations].

The deadline for written submissions on July 12, 2022, was followed up the next day with another online public forum.

Amendments

Following customary practice, the Attorney General’s office has made revisions to the May 2022 proposed regulations. See Notice of Amendments to Regulations: Charitable Fundraising Platforms and Platform Charities (November 21, 2022) including:

- [Text of Modified Proposed Regulations, pdf](#)
- [Notice of Modifications to Text of Proposed Regulations and Forms Incorporated by Reference, pdf](#)

In the Text document, there are markups and notations showing the changes from the original proposed regulations.

There is a 15-day public-comment period that closes at 5:00 pm on December 7, 2022. “Any interested person or their authorized representative may submit written comments regarding the proposed regulatory action” by mail or email following the specific instructions included. “All timely comments that specifically pertain to the proposed regulations will be reviewed and responded to by Department staff.”

Conclusion

In our [May 2022 post](#) on the publication of the initial set of proposed regulations, we wrote: “With California’s first-of-its-kind new rules, some of the Wild-West confusion and chaos should subside.”

Beginning in January, we may begin to learn if this new statute and whatever final regulations are formally adopted can succeed in that goal.

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