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NONPROFITS: FUNDRAISING & DEVELOPMENT

Issues in Online Giving

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When government regulators meet, they make lists of the most pressing topics that keep them up at night.

These lists aren't static, especially given the fast pace of technological change that is having an impact on many aspects of the philanthropic sector including – of course – fundraising.

One of the hottest topics right now is online fundraising and technology.

With technology driving so much of today's social innovations, it should come as no surprise that nonprofits are increasingly harnessing its power to propel fundraising and communication efforts. New technologies are being used to communicate with donors and members in an increasingly interactive, data-driven, and customized way.

Emerging legal issues include: (1) whether these new tools are safe and secure; and (2) whether they comply with fundraising and solicitations laws.

The recently filed litigation which we discussed in "Lawsuit Against Paypal Giving Fund" illustrates some of the current questions on this topic. The plaintiffs, who hope to be designated the lead parties when, and if, the class is certified, allege misrepresentation and confusion about whether the designated charities from a particular donor actually received the money.

Online Giving Issues

Federal and state regulators have identified key issues. They include:

Donation Deductibility

For donations to be tax-deductible, donations must be made to 501(c)(3) tax-exempt organizations, which must have authorized the collection of donations on their behalf. If an online contribution is made to a group which has not authorized the online platform to collect and process money for it, then the donor may not be allowed to claim the deduction. This type of situation could raise other issues, too: for example, was the online platform designated and qualified to perform solicitation functions, or did the online platform violate the donee-organization's trademark rights?

DAFs as Conduit

"Some platforms operate by receiving all donations through a tax-exempt public charity operating a donor-advised fund (DAF). The charity operating the DAF is the legal recipient of all donations, and issues donation tax receipts to the donor. Organizations with this model must clearly disclose the flow of funds, including notably, that the charity operating the DAF has exclusive legal control and discretion over the funds, but makes grants to other charities pursuant to donor recommendations."

Data Security

The news stories every day make clear that technology security must be at the top of the list of concerns for all for-profit as well as nonprofit entities, and for governments. Not only are there security issues surrounding the sending of funds electronically, but the matter of security of the underlying donor data is of high priority.

"Before signing up with any new fundraising platform, take time to confirm that the platform has proper data security protocols in place, and carefully review and negotiate contract provisions to ensure that appropriate protections exist in the event of a security breach"

Risk of Fraud

One of the overriding concerns of regulators is the prevention of fraud in connection with charitable solicitations and donations. Charity regulators have trouble keeping up with the many, and rapidly changing, fraud schemes and scams – in regular (non-technological) giving. When technology is thrown into the mix, the concerns grow exponentially.

"The National Association of State Charity Officials (NASCO) posted a set of 'Wise Giving Tips' at the end of 2013, advising charities selecting fundraising platforms to examine whether the platform takes steps to prevent solicitation fraud. NASCO similarly advised fundraising platforms to develop and follow policies and procedures to detect more sophisticated attempts at fraud."

Registration

In recent years, the states have dramatically increased regulation and oversight of charitable solicitations by organizations as well as by commercial fundraisers. "Regulators are closely examining new and existing fundraising platforms to determine whether their activities fall into any of the regulated categories, and thus require the entity to register and comply with related applicable laws." This includes, of course, the issue of interstate (or international) fundraising, which may subject a charity or its fundraisers to registration obligations in many jurisdictions. Failure to register properly may subject these entities or persons to substantial penalties."Charities should … understand whether they are contracting with a platform that would "be required to be registered

Conclusion

As the technology evolves, and new online programs and platforms are developed, there will be additional compliance and legal issues and concerns.

– Linda J. Rosenthal, J.D., FPLG Information & Research Director