



FEBRUARY 2020

PayPal Charitable Platform Settlement With 23 Attorneys General Raises Bar For Giving Platforms and Charities

In today's world of online giving, there are more and more ways to contribute to charitable organizations via an increasing number of companies, platforms and business models. A recent settlement with 23 state attorneys general seeks to make online giving more transparent for donors. Whether you're a donor, a charity that enrolls in third-party giving platforms or an organization that runs an online fundraising platform, you should take note.

The PayPal Charitable Giving Fund, Inc. (PPGF), the charitable giving arm of online payment platform PayPal, Inc., has agreed to adopt "industry-leading disclosure standards" to increase transparency surrounding the distribution of funds contributed through its fundraising platform. Recently, 23 attorneys general issued an [Assurance of Voluntary Compliance \(AVC\)](#), closing an investigation jointly launched in 2017 regarding PPGF's disclosure and vetting practices during its 2016 charitable giving campaign.

PPGF (a 501(c)(3) nonprofit corporation) is a third-party fundraising platform that facilitates charitable giving via its giving website, Cause Hub. Generally, PPGF receives contributions from donors and then makes grants of equivalent amounts to charities selected by the donors (at no additional cost to the donor or the charity). As is common with third-party fundraising platforms, donors' contributions to

PPGF are aggregated and then distributed to their designated charities. However, in the past the charity was required to meet PPGF's vetting process, which included that charities must register with PPGF and maintain a PayPal account.

During its 2016 giving campaign, PPGF also seemed to allow donors to contribute to charities PPGF had not vetted; however, PPGF failed to disclose to donors that PPGF would exercise its "variance power" with these donations and would not actually send donations to charities that did not meet the vetting requirements. Instead, PPGF would send those donations to a similar charity that passed PPGF's vetting process.

The AVC revealed major concerns with PPGF's disclosure and vetting practices during its 2016 giving campaign. The attorneys general raised a number of issues, including whether PPGF adequately disclosed that:

- A donation made by a donor via the PPGF website was a donation made to PPGF and not to the intended charity selected by the donor.
- PPGF did not have a prior relationship with all the charities listed on the website because some charities were "unenrolled" charities.

This publication may constitute "Attorney Advertising" under the New York Rules of Professional Conduct and under the law of other jurisdictions.

- A donation would not be provided to the intended charity listed on its website if the selected charity did not pass PPGF's vetting process.

The investigation involved the following states where PPGF does business: Arkansas, Colorado, Connecticut, District of Columbia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Texas and Wisconsin.

Disclosure Requirements

Under the AVC, PPGF agreed to make "unavoidable and prominent" disclosures to inform donors:

- That they are contributing to PPGF and not directly to the charity of their choice.
- Of any fees associated with using the online platform (or the fact that there are no fees, if none are charged).
- How long it may take for a charity to receive the donated funds.
- That PPGF can, under specific circumstances, reassign funds to a similar charity, including a general description of the circumstances under which reassignment of funds would occur and a straight-forward explanation of any vetting processes. (The description of the circumstances must be directly accessible from a link within the disclosure.)
- Whether a charity listed on the PPGF platform is an enrolled or unenrolled charity, with a direct link to what that designation means for the donors.

These disclosures must be "unavoidable and prominent," meaning that the information should be located on a page that every donor must access prior to donating, in a location that is in immediate proximity to a necessary field or button every donor must use. The disclosures cannot be included in an optional

pop-up window or on another page accessible by a link.

PPGF also must disclose:

- Whether its vetting includes compliance with state charitable registration requirements.
- Any material differences in the process of providing funds to enrolled and unenrolled charities.
- That donor contact information will not be shared with those charities it deems ineligible based on its vetting.

PPGF must also notify donors whenever it redirects donations to charities other than the one a donor has selected.

Ongoing Monitoring and Reporting Requirements

The AVC imposes additional requirements on PPGF, including detailed, biennial reporting regarding any use of its variance power. The report will include the date its grants were made, any known contact information for both an ineligible and replacement charity, the value of the grant made, and a confirmation that PPGF notified the donor that it used its variance power. PPGF also agreed to provide copies of all donor complaints related to disclosure provisions every six months, until 2023.

Moreover, PPGF must contractually require its partners to comply with all regulatory requirements included in the AVC and to provide those partners with a copy of the AVC's disclosure provisions.

PPGF will pay \$200,000 to the National Association of Attorneys General's Charities Enforcement and Training Fund, which helps pay for investigation and litigation costs and provides training and education to state charity regulators.

Please contact a member of our Nonprofit & Tax-Exempt Organizations or Advertising & Media practice with any questions.

Related Professionals

For more information, please contact:

Diara M. Holmes	dholmes@loeb.com
Robyn Mohr	rmohr@loeb.com

This alert is a publication of Loeb & Loeb and is intended to provide information on recent legal developments. This alert does not create or continue an attorney client relationship nor should it be construed as legal advice or an opinion on specific situations.

© 2020 Loeb & Loeb LLP. All rights reserved.

6206 REV1 02-06-2020