

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

GORDON J. MACDONALD
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

July 18, 2018

Terry J. Care, Esq., MFRCEA Committee Chair
National Conference of Commissioners on Uniform State Laws
111 N. Wabash Ave., Suite 1010
Chicago, IL 60602

Re: Draft of Proposed Management of Funds Raised
Through Crowdfunding Efforts Act (MFRCEA)

Dear Mr. Care:

Thank you for offering observer status to members of the crowdfunding working group of the National Association of State Charity Officials (NASCO) with respect to the work of the drafting committee for MFRCEA. As you know, NASCO is an association of charities regulators based in state attorneys general and other state governmental offices. This letter represents comments from individual members of our working group concerning the draft presented to the April 13-14 meeting. It does not represent the official position of NASCO or of any state government offices

I have participated in several conference calls held by your committee. NASCO member Chris Cash from the Colorado Secretary of State's office attended your drafting committee meeting on April 13-14, 2018 in Denver. Our working group has discussed MFRCEA in conference calls. Several members of our group have taken a deeper dive into the purpose for the statute, its language, and its relationship to charity regulation statutes.

The use of the internet for fundraising is transforming how people give and to whom they give. It includes peer to peer fundraising through social media, giving opportunities through fundraising portals, use of donor advised funds as intermediaries, and fundraising connected to online product sales. The power of crowdfunding can be illustrated by the \$37 million that J.J. Watt raised on YouCaring in 2017 for hurricane relief and the \$20 million in peer to peer giving on Facebook in recent weeks to benefit RAICES working with migrant families.

This changed landscape triggered the formation of our crowdfunding working group. State laws that govern charitable fundraising were adopted before the internet. Fundraising for individuals may fall outside of those laws, and also may fall outside of consumer protection

laws. Crowdfunding offers tremendous promise for individual and charity fundraising, so policymakers must tread carefully.

It is with this perspective that we reviewed MFRCEA. Its major thrust is the creation of rules to govern the disposition of excess funds raised through individual fundraising efforts. While that can be a problem, we respectfully think it touches on but a small part of the policy issues that arise from crowdfunding, whether for individuals or for charities. Issues arise over the disclosure of platform fees, fraudulent appeals, consent by the subject of the fundraising, and public reporting of amounts raised.

We are wrestling with these difficult issues. Earlier this year legislation was introduced in the California legislature to address some of these topics, but the bill died in committee. This is a complicated area and we are concerned that MFRCEA may give some state legislators a false sense that they have fully dealt with it.

MFRCEA specifically excludes charitable appeals. But many of the issues apply equally to charitable and non-charitable giving. And the exclusion for charities proposed in MFRCEA – tied to registration - may not apply in those eleven or so states that do not register charities. Moreover some states, like New York, currently have statutory language that addresses “charitable solicitation for the relief of an individual”. Exec. Law 7-A Section 172-a(2).

We may have suggestions with respect to specific language, but we choose to keep our comments at this “higher” level for now. We stand ready to continue our cooperation with the committee with respect to MFRCEA, and we would be prepared to work with the committee should it choose to work on legislation that may be broader in scope.

Finally, we look forward to learning about the discussions concerning MFRCEA at the ULC annual meeting in Louisville.

Sincerely,

Thomas J. Donovan
Director of Charitable Trusts
(603) 271-3591
tom.donovan@doj.nh.gov

TJD/tjd