

OFFICE OF THE ATTORNEY GENERAL  
OF THE STATE OF NEW YORK

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In the Matter of the

Assurance No. 20-001

Investigation by PPGF Multistate Group of  
PayPal Charitable Giving Fund, Inc.

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**ASSURANCE OF DISCONTINUANCE**

This Assurance of Discontinuance (“AOD”) is between the PayPal Charitable Giving Fund, Inc. (“PPGF”), and the State of New York. In the spring of 2017, the State of New York joined several states in investigating concerns regarding PPGF’s 2016 giving campaign. New York joined the PPGF Multistate Group (the “Multistate”)<sup>1</sup>. PPGF is a District of Columbia corporation with its principal place of business at 1250 I Street N.W., No. 1200, Washington, D.C. 20005. PPGF is a nonprofit corporation doing business throughout the United States, including in each of the states in the Multistate.

**FACTUAL BACKGROUND**

Third-party fundraising platforms are entities that either facilitate charitable giving or solicit charitable funds using the world wide web. These platforms vary in structure and design. One such structure is comprised of a charity that receives charitable contributions from individuals and then makes grants to charities selected by those individuals. PPGF has this

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<sup>1</sup> The Multistate is comprised of Arkansas, Colorado, Connecticut, District of Columbia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New York, North Carolina Secretary of State, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, and Wisconsin. This resolution is part of the broader resolution that PPGF has agreed to with the Multistate. This AOD’s material terms and provisions are consistent with agreements entered into by PPGF and other states who comprise the Multistate.

structure. At no cost to the donor or the charity, individuals can donate to PPGF and select a charity to which PPGF will then distribute an amount equal to the individual's donation.

Selected charities are vetted by PPGF before the distribution occurs, and in some cases, the donor's selected charity does not pass PPGF's vetting requirements. When a selected charity does not pass PPGF's vetting requirements, PPGF redirects the charitable funds to a similar charity who has passed PPGF's vetting process. Prior to its 2016 giving campaign, PPGF only listed charities that registered with PPGF, maintained accounts with PayPal, and passed PPGF's vetting process ("enrolled charities").

For its 2016 giving campaign, on December 23, 2016, PPGF began also listing charities on its giving website ("Cause Hub") that had not enrolled with PPGF but that were on a list received from Guidestar of 501(c)(3) charitable organizations ("unenrolled charities"). Other third-party fundraising platforms also listed charities on their platforms that did not have a pre-existing relationship with those third-party fundraising platforms. PPGF's addition of "unenrolled" charities led a multistate group consisting of representatives of state Attorneys General, Secretaries of the State, and state consumer protection agencies to inquire into PPGF's fundraising practices during its 2016 giving campaign. On April 17, 2017, PPGF suspended the listing of unenrolled charities on its Cause Hub to address the Multistate's concerns pending a resolution to its inquiry.

The concerns identified by the Multistate related primarily to disclosure and vetting practices of PPGF during the 2016 giving campaign, including questions regarding whether PPGF adequately disclosed that:

- A donation made by a donor via the PPGF website was a donation made to the PPGF entity and not 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.
- A donation would not be provided to the intended charity that is listed on its website if the selected charity did not pass PPGF’s vetting process.
- PPGF might reassign their donations, also known as “exercising its variance power” over the donors’ donation, if the intended charities selected by the donors did not pass PPGF’s vetting process.
- Donors would not be informed that PPGF had “exercised its variance power” if the intended charities selected by the donors did not pass PPGF’s vetting process.
- Donors’ contact information may not be passed on to the intended charities if the selected charity is deemed ineligible to receive the donation.
- PPGF’s vetting process may not always include a review of each selected charity’s compliance with each state’s charitable registration requirements.
- The time frame it would take for potential donors’ donations to reach the intended charities.

This multistate inquiry included three in-person meetings between representatives of PPGF and the Multistate. In addition, the Multistate, through the Nebraska Attorney General’s Office, issued PPGF a Civil Investigative Demand and Subpoena, to which PPGF provided responses and a rolling production of documents. The Multistate has had follow-up questions

and requests throughout its information gathering process, all of which were responded to by PPGF.

PPGF has fully cooperated with the Multistate in its inquiries regarding PPGF's fundraising activities and has implemented industry-leading disclosure standards for the protection of consumers. Although PPGF denies any liability based on the allegations above, in order to avoid the time and expense of litigating this matter, PPGF and the Multistate agree to the following.

### **DISCLOSURE PROVISIONS**

After a fulsome dialogue with the Multistate relating to disclosures on its website, PPGF agrees to:

1. Make unavoidable and prominent disclosures that the donors are making donations to PPGF and not to the charity they select. For the purposes of this AOD, "unavoidable and prominent" means that the information is not included in an optional pop up window or on another page accessed by a link on the original page. It also means that the information must be located on a page that each and every donor must access prior to donating to PPGF and in a position on that page that is in immediate proximity to a necessary field or button used by each and every donor.
2. Not use language implying that potential donors are directly making a donation to their chosen charity.

3. Make unavoidable and prominent disclosures to potential donors regarding fees associated with using PPGF's online platform, or if no fees are charged, the absence of such fees.
4. Make unavoidable and prominent disclosures regarding the expected time frame in which the grant to the charity chosen by the donor will be made.
5. Make unavoidable and prominent disclosures that PPGF has the ability, under defined circumstances, to reassign funds to a similar charity.
6. Provide a general description of circumstances that would cause the reassignment of funds to a similar charity, including a straight-forward explanation of any vetting processes. The description regarding the circumstances of reassignment must be directly accessible from a link within the disclosure set forth above.
7. Disclose whether charities are reviewed for compliance with state charitable registration requirements.
8. Disclose to potential donors that their contact information will not be shared with charities that are ineligible to receive a grant as a result of any vetting procedures.
9. Notify donors when PPGF exercises its variance power and redirects a donation to an organization other than the one the donor selected.

#### **GENERAL PROVISIONS**

10. For purposes of this Assurance, the Effective Date shall be January 14, 2020.
11. PPGF agrees to provide the Multistate a spreadsheet that lists information relating to its use of its variance power on a biannual basis for the time period of July 2017 through

June 2020. Specifically, PPGF agrees to provide the date the grant was made, any known contact information for both the ineligible and replacement charity, the value of the grant made, and a confirmation that the donor has been notified of PPGF's use of variance power.

12. PPGF agrees that when PPGF partners with another online site to generate donations through the PPGF website, it will (1) include in its agreements with partners a provision that they comply with all regulatory requirements and (2) provide its partners with a copy of the disclosure provisions set forth in this AOD.
13. In situations in which PPGF exercises its variance power solely because of the charity's failure to meet with the terms of PayPal's Acceptable Use Policy, PPGF agrees to notify unenrolled charities of that failure. Enrolled charities will be notified by PayPal.
14. PPGF agrees to maintain open communications with the Multistate regarding the effectiveness of the disclosures on its and its partners' websites.
15. PPGF agrees to provide the Multistate with copies of all donor complaints it receives that specifically relate to any of the Multistate's disclosure provisions. This production shall begin simultaneously with the production required by paragraph 11 above, shall be provided every six months, and shall last for three years.
16. PPGF agrees that whenever charities are listed in the PPGF Cause Hub, each charity must be specifically identified as either enrolled or unenrolled and must have a direct link to what that designation means in practical terms for the donors.

17. PPGF agrees that whenever unenrolled charities are listed on one of PPGF's partners' websites, PPGF will encourage their partners in good faith to identify each charity as either enrolled or unenrolled and to offer a direct link to what that designation means in practical terms for the donors.
18. PPGF agrees that if the process of providing grants to enrolled charities and unenrolled charities differs with respect to any material issue, e.g., vetting or the timing of PPGF's grant, those difference(s) will be disclosed to the potential donor prior to the donation being made.
19. Within thirty (30) days of the effective date of this AOD, and in furtherance of the parties' joint interest in educating the sector on fundraising laws and regulations, PPGF shall donate Two Hundred Thousand Dollars (\$200,000.00) to the National Association of Attorneys General ("NAAG"), to be held and deposited in the NAAG Charities Enforcement and Training Fund.

#### **ADDITIONAL PROVISIONS**

20. The duties, responsibilities, burdens, and obligations, undertaken in connection with the provisions of this AOD shall apply to PPGF and all persons or entities that control or have the ability to control PPGF, including without limitation, officers, directors, employees, agents, successors, assignees, affiliates, merged or acquired entities, or wholly owned subsidiaries.

21. PPGF shall not, directly or indirectly, form a separate entity or corporation for the purpose of engaging in acts prohibited by this AOD or for the purpose of circumventing this AOD.
22. This AOD represents the full and complete terms of the settlement entered by the parties.
23. All parties participated in the drafting of this AOD.
24. This AOD may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect as, an original signature.
25. All notices under this AOD shall be provided via electronic and/or overnight mail to the following persons, unless a different address is specified in writing by the party changing such address:

For PPGF:

Andrew Ceresney  
Debevoise & Plimpton  
919 Third Avenue  
New York, New York 10022  
[aceresney@debevoise.com](mailto:aceresney@debevoise.com)

For the State of New York:

James Sheehan  
Bureau Chief, Charities Bureau  
New York State Office of the Attorney General  
28 Liberty Street  
New York, New York 10005  
[james.sheehan@ag.ny.gov](mailto:james.sheehan@ag.ny.gov)

26. Any failure by any party to this AOD to insist upon the strict performance by any other party of any of the provisions of this AOD shall not be deemed a waiver of any of the



provisions of this AOD, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this AOD.

27. If any clause, provision or section of this AOD is, for any reason, held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision or section of this AOD, and this AOD shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section or other provision had not been contained herein.
28. Nothing in this AOD shall be construed as relieving PPGF of the obligation to comply with all state and federal laws, regulations, and rules; nor shall any of the provisions of this AOD be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, and rules.
29. As circumstances and the law change, PPGF and the Multistate may propose modifications to the Disclosure Provisions and General Provisions of this AOD, and the other party will not unreasonably withhold consent thereto. No waiver, modification, or amendment of the terms of this Assurance shall be valid or binding unless made in writing, signed by all parties subject to the waiver, modification, or amendment, and then only to the extent set forth in such written waiver, modification, or amendment. To the extent that state law requires a waiver, modification, or amendment of this Assurance to be approved and entered by a Court, those state Attorneys General and PPGF agree to seek such Court approval.

30. PPGF shall deliver a copy of this AOD to, or otherwise fully apprise, its executive management having decision-making authority with respect to the subject matter of this AOD within thirty (30) days of the effective date of this AOD.
31. This AOD (including without limitation any and all legal and factual statements herein) is not intended to be and shall not in any event be construed or deemed to be, or represented or caused to be represented as an admission or concession or evidence of any liability or wrongdoing whatsoever on the part of PPGF or an admission of any fact or violation of any law, rule, or regulation on the part of PPGF. This AOD is made without adjudication of any alleged issue of fact or law and without a finding of liability of any kind. PPGF believes that its conduct has been lawful and has not violated any charitable registration, consumer protection, or other laws or the common law of the States and enters into this AOD for settlement purposes only.
32. This AOD shall not be construed or used as a waiver or limitation of any defense otherwise available to PPGF in any pending or future legal or administrative action or proceeding relating to its conduct prior to the effective date of this AOD or of PPGF's right to defend itself from, or make any arguments in, any individual or class claims or suits relating to the existence, subject matter, or terms of this AOD.
33. The settlement negotiations resulting in this AOD have been undertaken by PPGF and the States in good faith and for settlement purposes only, and no evidence of negotiations or communications underlying this AOD, or this AOD itself, shall be offered or received in evidence in any action or proceeding for any purpose.

34. Nothing contained in this AOD, and no act to be performed hereunder, shall require PPGF to waive (a) any attorney-client privilege, work-product protection, or common interest/joint defense privilege, or (b) confidential, proprietary, or trade secret exception under the States' public records laws.
35. Nothing in this AOD shall be construed to limit the authority or ability of an Attorney General to protect the interests of his/her State or the people of his/her State. This AOD shall not bar the Attorney General or any other governmental entity from enforcing laws, regulations, or rules against PPGF for conduct subsequent to or otherwise not covered by this AOD. Further, nothing in this AOD shall be construed to limit the ability of the Attorney General to enforce the obligations that PPGF has under this AOD.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto as of

January 14, 2020

**LETITIA JAMES**

Attorney General of the State of New York  
28 Liberty Street  
New York, New York 10005

By: 

James Sheehan  
Bureau Chief  
Charities Bureau

*Counsel for the State of New York*

Date: January 14, 2020

**PAYPAL CHARITABLE GIVING FUND**

By: 

NICK ALDRIDGE, CEO, PPGF

Date: January 14, 2020