

CALIFORNIA DEPARTMENT OF JUSTICE

TITLE 11. LAW

DIVISION 1. ATTORNEY GENERAL

**CHAPTER 4. SUPERVISION OF TRUSTEES AND FUNDRAISERS FOR
CHARITABLE PURPOSES ACT and**

**CHAPTER 15. ATTORNEY GENERAL REGULATIONS REGARDING
ADMINISTRATIVE ENFORCEMENT OF THE SUPERVISION OF TRUSTEES AND
FUNDRAISERS FOR CHARITABLE PURPOSES ACT**

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

None.

CORRECTIONS AND NON-SUBSTANTIAL EDITS

A “non-substantial change” is one that clarifies without materially altering the requirements, rights, responsibilities, conditions or prescriptions contained in the original text. (Cal. Code Regs., tit. 1, § 40.) The following minor additional issues were noted since publication of the Notice of Proposed Rulemaking and Initial Statement of Reasons:

§ 300. Initial Registration.

Assembly Bill 1756 (2023) changed the name of the Registry of Charitable Trusts to the Registry of Charities and Fundraisers. (Gov. Code, § 12580 et seq.) Subdivision (b) was amended to reflect the Registry’s new name. Subdivision (b) also incorporates Form CT-1 by reference. Form CT-1 was updated to reflect the Registry’s new name and the Department’s new seal. On page 4, grammatical corrections were made (regarding commas and periods). On page 7, the citations “sections 12580-12599.8” and “Sections 300-312.1” were updated to “sections 12580-12599.10” and “Section 300 et seq.”

§ 300.1. Educational Institution Exemption.

Subdivision (d) was amended to reflect the Registry’s new name.

§ 301. Periodic Written Reports.

Subdivision (b) was amended to reflect the Registry’s new name. Subdivision (b) incorporates Form RRF-1 by reference. Form RRF-1 was updated to reflect the Registry’s new name and the Department’s new seal. On page 2, grammatical corrections were made (regarding commas and periods).

Subdivision (c) was amended to reflect the Registry’s new name. Subdivision (c) incorporates Form CT-TR-1 by reference. Form CT-TR-1 was updated to reflect the Registry’s new name, the

Department's new seal, a January 2024 revision date, and the removal of the Registry's phone number. On page 2, grammatical corrections were made (regarding commas and periods). This subdivision was amended to reflect Form CT-TR-1's correct revision date.

§ 302. Place of Filing.

The section was amended to reflect the Registry's new name.

§ 303. Filing Forms.

The section was amended to reflect the Registry's new name.

§ 305. Annual Filing of Reports.

The section was amended to reflect the Registry's new name.

§ 309. Public Inspection of Charitable Trust Records.

The section's title and subdivision (a) were amended to reflect the Registry's new name.

§ 310. Use of Annual Registration Fee.

The section was amended to reflect the Registry's new name.

§ 311. Address of Record.

The section was amended to reflect the Registry's new name.

§ 312. Registrant Must Be In Good Standing to Operate or Solicit.

The section was amended to reflect the Registry's new name.

§ 313. Registration, Annual Filing, and Notice Requirements for Commercial Fundraisers for Charitable Purposes, Fundraising Counsel for Charitable Purposes, and Commercial Coventurers.

Subdivision (a) incorporates six forms by reference: Forms CT-1CF, CT-2CF, CT-2TCF, CT-2VCF, CT-8CF, and CT-9CF. All forms were updated to reflect the Registry's new name and the Department's new seal. On page 3 in Forms CT-1CF and CT-2CF and pages 3 and 4 in Forms CT-2TCF and CT-2VCF, grammatical corrections were made (regarding commas, periods, and spacing). Forms CT-8CF and CT-9CF were updated to reflect a January 2024 revision date and removal of the Registry's phone number. For page 2 in Forms CT-8CF and CT-9CF, grammatical corrections were made (regarding commas and periods), and the citation "§§ 300-316" was updated to "§ 300 et seq." This subdivision was amended to reflect the correct revision date for Forms CT-8CF and CT-9CF.

Subdivision (b) incorporates Form CT-3CF by reference. Form CT-3CF was updated to reflect the Registry's new name and the Department's new seal. On page 2, grammatical corrections were made (regarding commas and periods).

Subdivision (c) incorporates two forms by reference: Forms CT-5CF and CT-6CF. The forms were updated to reflect the Registry's new name and the Department's new seal. On page 3 of the forms, grammatical corrections were made (regarding commas, periods, and spacing). On page 4 of Form CT-5CF, Government Code section 12599.2, subdivision (c), was incorrectly cited as the law providing an exception for registration as a commercial coventurer. Rather, subdivision (b) provides the exception. The text was changed to correct this error by reflecting subdivision (b). On page 4 of Form CT-6CF, the citation to Government Code section 12599.2 was clarified by specifying "subdivision (c)" instead of just "(c)."

Subdivision (d) incorporates two forms by reference: Forms CT-10CF and CT-11CF. The forms were updated to reflect the Registry's new name and the Department's new seal. On page 1 of the forms, the text "Federal Employee I.D. Number" was changed to "Federal Employer I.D. Number," which is the correct name of the information requested. On page 2 of the forms, grammatical corrections were made (regarding commas and periods). This subdivision was amended to reflect the Registry's new name.

§ 314. Definitions Regarding Charitable Fundraising Platforms and Platform Charities.

Subdivision (*l*) was amended to reflect the Registry's new name.

Subdivision (o) was amended to correct a formatting error (the subdivision letter's italics was removed).

§ 315. Registration and Filing Requirements for Charitable Fundraising Platforms and Platform Charities.

Subdivision (a) incorporates Form PL-1 by reference. Form PL-1 was updated to reflect the Registry's new name and the Department's new seal. On page 4, grammatical corrections were made (regarding commas and periods).

Subdivision (b) incorporates Form PL-2 by reference. Form PL-2 was updated to reflect the Registry's new name and the Department's new seal. On page 4, grammatical corrections were made (regarding commas and periods).

Subdivision (d) incorporates Form PL-3 by reference. Form PL-3 was updated to reflect the Registry's new name and the Department's new seal. On page 3, grammatical corrections were made (regarding commas and periods).

Subdivision (e) incorporates Form PL-4 by reference. Form PL-4 was updated to reflect the Registry's new name and the Department's new seal. On page 6, question 15 list item L was changed from "Total \$ amount of fees deducted from donations (numeric only; e.g., 9999)" to "Total \$ amount of fees deducted from donations (numeric only; e.g., 9999; say 0 if no fees

deducted).” The reference to “say 0 if no fees deducted” was inadvertently omitted, and correcting this error makes question 15 consistent with similar question 16e, which correctly requests “Total \$ amount of fees deducted from all donations (say 0 if no fees deducted).” On page 14, grammatical corrections were made (regarding commas and periods).

§ 318. Consent from Recipient Charitable Organizations for Charitable Fundraising Platforms and Platform Charities.

Subdivision (a)(8) was amended to correct a grammar error (extra space was removed).

§ 328. General Provisions and Definitions for Notices and Requests.

Subdivision (e) was amended to reflect the Registry’s new name.

§ 329. Public Benefit Corporations.

Subdivisions (a) to (d) were amended to reflect the Registry’s new name.

§ 330. Mutual Benefit Corporations.

Subdivisions (a) to (d) were amended to reflect the Registry’s new name.

§ 343. Final Attorney General Decisions.

Subdivision (d) was amended to reflect the Registry’s new name.

SUMMARY OF COMMENTS AND DEPARTMENT RESPONSES

Written comments received in response to the 45-day comment period (both timely and untimely) are included in the rulemaking file under Exhibit 8.

Summaries of all timely public comments and corresponding responses are attached as Attachment A.

LOCAL MANDATE DETERMINATION

The proposed regulation does not impose any mandate on local agencies or school districts.

ALTERNATIVES DETERMINATIONS

In accordance with Government Code section 11346.9, subdivision (a)(4), the Department has determined that no alternative it considered, or that it otherwise identified, or was brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department considered other alternatives when drafting the regulations. In considering the alternatives, the Department sought to balance the benefits to the public and charitable organizations, the burden to charitable fundraising platforms and platform charities, and the purposes of The Supervision of Trustees and Fundraisers for Charitable Purposes Act (Act). The alternatives considered and rejected are below.

Effective Date of Regulations and Annual Reporting Form

The Department considered whether to extend the effective date of the regulations beyond the date when the regulations become final after review and approval of the Office of Administrative Law. Assembly Bill (AB) 488 amended the Act and, effective January 1, 2023, established that charitable fundraising platforms and platform charities are trustees for charitable purposes subject to the Department's supervision. The Department began the process of promulgating regulations in 2022. Some public comments requested that the Department delay the effective date of the regulations and annual reporting Form PL-4 to give charitable fundraising platforms and platform charities additional time to comply with the regulations or submit Form PL-4. The Department agreed to delay the effective date of sections 318 to 322 to January 1, 2025. Postponement for other sections and Form PL-4, or for sections 318 to 322 beyond January 1, 2025, would unreasonably delay the effective date for the regulations and reporting requirements beyond what is necessary, and this delay is not equally effective in implementing the statutory policy. See responses 2 and 21 in Attachment A.

Section 315

Section 315 requires the Department to provide notice to amend a Form PL-4 filing when the Department finds fee information is not confidential or trade secret information, and if the amendment does not occur in 45 days, the information will be made available for public inspection. Some public comments requested that the regulations provide for an administrative appeal if the registrant disagrees with the Department's determination that the information is not confidential, and to allow any information submitted in Form PL-4 to be confidential or trade secret information. In drafting these regulations, the need to protect confidential information was considered. The comment's proposed changes would not be more effective in carrying out the purpose and intent of the Act, which is to provide government oversight and public transparency over charitable fundraising (Gov. Code, §§ 12587, 12598). Any judicial review available to the registrant is not affected by the regulation, and administrative review of the Department's determination is neither required nor necessary. Form PL-4 also does not ask registrants to provide confidential or trade secret information, other than possible fee information. See responses 23 and 24 in Attachment A.

Section 316

Section 316 specifies the procedures for determining a charitable organization's good standing with the Department. Section 316 provides a five business day grace period to determine good standing for charitable organizations that appear for the first time on the May Not Operate or Solicit for Charitable Purposes List (MNOS List) made available at certain times of a month. Some public comments requested a longer grace period. The Department declined to further

expand the grace period because the alternative would not be more effective in carrying out AB 488's good standing requirement. (Gov. Code, § 12599.9, subds. (a)(3) & (d)(2).) The alternative would cause unreasonable delays in removing charitable organizations from solicitations on charitable fundraising platforms when they are not in good standing, and would create confusion if grace periods overlapped with the date when a new MNOS List is made available. See responses 30, 31, and 35 in Attachment A.

A public comment requested that the references to the Registry Search Tool be removed in section 316 and other regulations. The proposed change is not more effective in carrying out AB 488's good standing requirement. (Gov. Code, § 12599.9, subds. (a)(3) & (d)(2).) The references to the Registry Search Tool are needed to explain how to determine good standing, if a charitable fundraising platform or platform charity chooses to use the Registry Search Tool to determine good standing. See responses 32 and 36 in Attachment A.

Sections 317 and 318

Section 317 contains requirements for solicitation information on charitable fundraising platforms, including requiring applicable charitable fundraising platforms or platform charities to provide donors an option to give their name and contact information to recipient charitable organizations. Section 318 specifies the requirements for consent agreements between a recipient charitable organization and a charitable fundraising platform or platform charity, including requiring the agreements to allow a recipient charitable organization to acknowledge persons who made donations, as specified. The Department received a public comment to delete these requirements, or to only require them when donors are from California and when recipient charitable organizations are registered in California. The Department declined to delete or modify the requirement because recipient charitable organizations need this information to manage and control their fundraising for the benefit of the people of California who receive assistance from them. See response 13 in Attachment A.

Section 317 requires a charitable fundraising platform or platform charity to make disclosures to persons who engage in peer-to-peer charitable fundraising (fundraisers) and are sent donations for a recipient charitable organization. The Department received a public comment requesting that the disclosure not be required when the charitable fundraising platform provides an option for donations to go to a platform charity or fundraisers, and the platform captures a "representation" from fundraisers that they are not fundraising to benefit a charitable organization. The alternative is not more effective in carrying out the purpose and intent of the Act. The disclosure is necessary when donations are sent to fundraisers so they can understand their responsibilities in holding and sending donations to a recipient charitable organization, regardless of whether there is a platform charity that can receive donations, or whether a representation is captured. Also, capturing a representation does not prevent fundraisers from soliciting for charitable organizations. See response 38 in Attachment A.

The Department received public comments that the fee information referenced in consent agreements should be streamlined, and that recipient charitable organizations should provide consent through an annual notification, including consent for undetermined charitable fundraising platforms when notification was sent. The alternatives are not more effective in

carrying out the purpose and intent of AB 488. Charitable organizations are required to control fundraising conducted for their benefit (Gov. Code, § 12599.6, subd. (b)), and they cannot do so if they do not have complete information on fees or know to whom they are providing consent, along with other material terms. See responses 41 and 43 in Attachment A.

Government Code section 12599.9, subdivision (f)(2)(C), requires solicitation removal requests from non-consenting recipient charitable organizations to be promptly verified and honored, when applicable. Section 318 defines “promptly” as no later than three business days after written request for removal is made. Some public comments requested more time, but this is not more effective in carrying out the purpose and intent of AB 488. The time period is reasonable, and consistent with another three business day timeframe reference in the statute. Extending the timeframe would increase the potential for deceptive solicitations. It would also delay honoring removal requests, which should be implemented quickly because the requesting recipient COs, which have an obligation to control fundraising for their benefit, never consented to the solicitation. (Gov. Code, § 12599.6, subd. (b).) See responses 46 and 47 in Attachment A.

Section 320

Government Code section 12599.9, subdivision (h), requires donations to be sent “promptly.” However, “promptly” is not defined. Section 320 implements the statute by requiring donations to be sent within certain time periods depending on the context. Some public comments requested the deletion of section 320, or to consolidate or extend the timeframes for solicitation types A or B (e.g., for 180 days, as needed and determined by a charitable fundraising platform or platform charity). The proposed changes are not more effective in carrying out the intent of AB 488. More than one time period is necessary given the differences between consenting and non-consenting recipient charitable organizations, as explained in the Initial Statement of Reasons p. 27-28. The Department declined to delete section 320 and leave the term “promptly” undefined. The timeframes provide clear guidelines and make the statute easier to enforce. The Department did not extend the timeframes for solicitation types A or B as requested because this would result in unreasonable delays in sending donations. See responses 49-53 in Attachment A.

Section 320 requires charitable fundraising platforms and platform charities, for solicitation types A or B, to contact donors and seek designation of an alternate recipient charitable organization when donated funds cannot be given to the originally intended recipient charitable organization. Some commenters requested the deletion of this requirement, or proposed allowing refunds to the donors. This alternative is not more effective in carrying out the purpose and intent of AB 488. Unlike consumer transactions where a good or service is being purchased and may be refunded subject to a business’ return policy, a donation is a gift, and is completed when the donation is made. Furthermore, the acceptance of donations by a charitable organization, or anyone soliciting on behalf of the organization, establishes a charitable trust and a fiduciary duty to use the donations for the declared charitable purposes for which they were sought. (Bus. & Prof. Code, § 17510.8.) California law also favors charitable gifts, generally disfavors returning charitable gifts to donors, and courts seek to honor the purposes for which donations are made (e.g., *In re Los Angeles County Pioneer Soc.* (1953) 40 Cal.2d 852, 855-856, *Cohen v. Kabbalah Centre Int’l, Inc.* (2019) 35 Cal.App.5th 13). Thus, when donations cannot be sent to a donor’s selected recipient charitable organization because it is ineligible, requesting donor feedback on an alternate charitable organization is reasonable. See responses 56 and 57 in Attachment A.

Another commenter requested more time to send donations to an alternate charitable organization, but this is not more effective in carrying out the purpose and intent of AB 488. Extending the timeframe would result in unreasonable delays in sending donations. See response 54 in Attachment A.

Section 321

Section 321 establishes what information a charitable fundraising platform or platform charity must provide to a charitable organization when donated funds are sent. This section implements Government Code section 12599.9, subdivision (h), which requires donations be sent with an accounting of fees and in accordance with regulations. Some public comments requested the deletion of section 321, or that the donation information for certain solicitation types be streamlined (e.g., limit donation information for non-consenting recipient charitable organizations to just fee information for solicitation types A or B, and do not provide any donation information to non-consenting recipient charitable organizations for solicitation type C). The Department declined to delete section 321 because the requirement is necessary to promote transparency and accountability. Charitable organizations need the accounting and donation information to manage and control their fundraising for the benefit of the people of California who receive assistance from them. The Department declined to further modify section 321 because the alternatives would not be more effective, and in certain cases would not be less burdensome, in carrying out the purpose and intent of AB 488. See responses 59-64 in Attachment A.

Section 322

This section requires a charitable fundraising platform or platform charity to provide certain information to donors and platform users regarding donated funds sent to a recipient charitable organization or alternate charitable organization. Section 322 sets a 15-business-day deadline to provide this information. Public comments requested the deadline be extended, and for the deletion of section 322 for solicitation types C or D. The Department declined to delete part of section 322 because the requirement is necessary to promote transparency and accountability as to whether the donations were actually sent, and to whom. The Department also did not extend the deadline because the alternative was not more cost effective to affected private persons and equally effective in implementing the statutory policy. See responses 65 and 66 in Attachment A.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

The Department has determined that no proposed alternatives to the regulatory action would lessen any adverse economic impact on small business. Charitable entities are exempt from the definition of “small business” pursuant to Government Code section 11342.610, subdivision (b). However, some charitable fundraising platforms may meet the definition of “small business.”

All charitable fundraising platforms are required to pay an annual \$625 registration fee. The fee is authorized by Government Code section 12599.10, subdivision (a)(2)(D), and based on need (i.e., to cover the costs incurred by the Department discussed in the STD 399).

DOCUMENTS INCORPORATED BY REFERENCE

- Initial Registration Form (“Form CT-1” Rev. 01/2024)
- Annual Registration Renewal Fee Report (“Form RRF-1” Rev. 01/2024)
- Annual Treasurer’s Report (“Form CT-TR-1” Rev. 01/2024)
- Commercial Fundraiser for Charitable Purposes Annual Registration Form (“Form CT-1CF” Rev. 01/2024)
- Commercial Fundraiser for Charitable Purposes (“Form CT-2CF” Rev. 01/2024)
- Commercial Fundraiser for Charitable Purposes/Thrift Store Operations (“Form CT-2TCF” Rev. 01/2024)
- Commercial Fundraiser for Charitable Purposes/Vehicle Donation Program (“Form CT-2VCF” Rev. 01/2024)
- Fundraising Counsel for Charitable Purposes Annual Registration Form (“Form CT-3CF” Rev. 01/2024)
- Commercial Coventurer Annual Registration Form (“Form CT-5CF” Rev. 01/2024)
- Commercial Coventurer Annual Financial Report Form (“Form CT-6CF” Rev. 01/2024)
- Deposit by Assignment in Lieu of Commercial Fundraiser for Charitable Purposes Surety Bond Form (“Form CT-8CF” Rev. 01/2024)
- Receipt for Notice of Assignment in Lieu of Commercial Fundraiser for Charitable Purposes Surety Bond Form (“Form CT-9CF” Rev. 01/2024)
- Notice of Intent to Solicit for Charitable Purposes - Commercial Fundraiser for Charitable Purposes Form (“Form CT-10CF” Rev. 01/2024)
- Notice of Intent to Provide Services Related to Charitable Solicitation - Fundraising Counsel for Charitable Purposes Form (“Form CT-11CF” Rev. 01/2024)
- Initial Registration for Charitable Fundraising Platforms (“Form PL-1” Orig. 01/2024)
- Registration Renewal for Charitable Fundraising Platforms (“Form PL-2” Orig. 01/2024)
- Notification from Platform Charities (“Form PL-3” Orig. 01/2024)
- Annual Fundraising Report for Charitable Fundraising Platforms or Platform Charities (“Form PL-4” Orig. 01/2024)

The above forms are incorporated by reference because it would be cumbersome, unduly expensive, or otherwise impractical to publish the forms in the California Code of Regulations. During the rulemaking proceeding, the forms were made available upon request, and were available for viewing on the Department’s website.

NON-DUPLICATION

Some of the regulations may repeat or rephrase in whole or in part a state or federal statute or regulation. This was necessary to satisfy the clarity standard set forth in Government Code section 11349.1, subdivision (a)(3).