

INITIAL STATEMENT OF REASONS

PROPOSED ADOPTION OF REGULATIONS PURSUANT TO THE SUPERVISION OF TRUSTEES AND FUNDRAISERS FOR CHARITABLE PURPOSES ACT

I. GENERAL PURPOSE OF PROPOSED REGULATIONS

The Attorney General has the primary responsibility for supervising charitable trusts in California, for ensuring compliance with trusts and articles of incorporation, and for protection of assets held by charitable trusts and public benefit corporations. (Gov. Code, § 12598.) The Supervision of Trustees and Fundraisers for Charitable Purposes Act (“the Act”), Chapter 6 (commencing with Government Code section 12580) of Title 2 of Division 3 of the Government Code), codifies the Attorney General’s authority over persons and entities that hold charitable assets, and for-profit fundraising professionals, including commercial fundraisers, fundraising counsel and commercial coventurers. Sections 999.6 – 999.8 of Chapter 15 of Title 11, Division 1 of the California Code of Regulations are promulgated under the authority of the Act. These provisions require persons and entities holding charitable assets in California, and for-profit fundraising professionals, to register and file annual reports with the Attorney General’s Registry of Charitable Trusts. Under Government Code section 12598, subdivision (e)(1), the Attorney General may refuse to register an applicant, or may suspend or revoke an existing registration for violations of the Act. The proposed regulations and amendments clarify the reasons for which a registration may be rejected, suspended, or revoked, and the procedures for doing so. The proposed regulations are further needed to clarify the reasons on which DOJ may issue cease and desist orders and issue penalties, and the procedures for appealing such an order and/or imposition of penalties. These regulations are consistent with existing law and typical administrative enforcement procedures used by regulatory agencies. The regulations will benefit registrants and applicants by clarifying conduct that will subject a registrant to disciplinary action or, for unregistered entities, clarify the conduct that will result in a refusal to register the entity, and the procedures involved in appealing such decision.

II. TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS

The Attorney General’s Office did not rely upon any technical, theoretical or empirical study, report, or other similar document in proposing these amendments.

III. REASONABLE ALTERNATIVES TO THE PROPOSED AMENDMENTS TO REGULATIONS AND RELATED FORMS AND THE AGENCY’S REASONS FOR REJECTING THOSE ALTERNATIVES

The Attorney General’s Office must determine that no reasonable alternative would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected persons than the proposed regulation. The Attorney General’s Office believes that there are no reasonable alternatives to the regulations as proposed. However, the Attorney General’s Office invites, and will consider, all public comments on alternatives to the regulation.

IV. REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

Nonprofit organizations are excluded from the definition of a small business under Government Code section 11342.610, subdivision (b)(6). To the extent that a commercial fundraiser for charitable purposes, fundraising counsel or commercial coventurer may be a small business, the proposed regulations only impact small businesses that are violating the law as it currently exists. Small businesses that comply with the law will not be impacted. The Attorney General's Office has not identified any alternatives that would lessen any adverse impact on small businesses and none has been proposed.

V. EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Act currently provides that violations may result in the denial, suspension, or revocation of a registration submitted by a charity or commercial fundraiser or commercial coventurer for charitable purposes. This includes commercial fundraiser registrants that are also small businesses. Because the conduct already constitutes a violation of the Act, there is no new adverse economic impact. Further, by clarifying the bases upon which a registration may be denied, suspended, or revoked or civil penalties imposed, or a cease and desist order issued, registrants and applicants will have greater certainty of the type of conduct that may result in an adverse action.

1. Documents Relied Upon

The Department's Economic Impact Analysis

VI. PROPOSED REGULATIONS

1. Proposed Addition 1:

TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 4. REGULATIONS ADOPTED PURSUANT TO THE SUPERVISION OF TRUSTEES AND FUNDRAISERS FOR CHARITABLE PURPOSES ACT

[§ 313. Address of Record.](#)

Every registrant and applicant is responsible for keeping the Registry of Charitable Trusts informed of the registrant's or applicant's current address. Any notice, order or document issued by the Registry shall be deemed properly served if mailed to the registrant's or applicant's address of record. The address of record is the address listed on the most recent registration or renewal form filed with the Registry unless the registrant or applicant has subsequently notified the Registry of a change of address in writing.

Note: Authority cited: Sections 12584, 12585, 12586(a) and (b) and 12587 Government Code. Reference: Sections 12594, 12598(a), 12599, 12599.1, 12599.2 Government Code.

Specific purpose and rationale:

Registrants are required to submit a registration form and file an annual renewal report with the Registry of Charitable Trusts (e.g., Forms CT-1 and RRF-1, respectively). The existing forms require the registrant to provide an address. The Registry also receives information on nonprofit corporations from other government agencies, such as the Secretary of State and the Franchise Tax Board, that may include a different or additional address. The proposed regulation clarifies that for purposes of providing formal notice, including due process notices made in connection with the denial, suspension, or revocation of a registration, the Registry may rely on the address provided in the most recent renewal form filed with the Registry unless the registrant has notified the Registry in writing of a change of address. This regulation is not a policy or procedural change.

Enumeration of Benefits:

1. Clarification that registrant is responsible for maintaining current address with Registry.
2. The Registry is less likely to send notices to multiple addresses, out-of-date addressees or erroneous addresses. This will reduce mailing costs and staff time related to mailing notices.
3. Registrants are more likely to receive notices issued by the Registry.

2. Proposed Addition 2:

§ 314. Grounds for Issuance of Cease and Desist Order

(a) The grounds upon which a cease and desist order may be issued include, but are not limited to, the following:

- (1) Refusal or failure, after notice, to produce any records of the organization or to disclose any information required to be disclosed.
- (2) Making a material false statement in an application, statement, or report required to be filed.
- (3) Failure to file a financial report, or filing an incomplete financial report.
- (4) Engaging in any act prohibited pursuant to Government Code section 12599.6.

Note: Authority cited: Sections 11400 et seq. and 11500 et seq., 12581, 12584, 12585, 12587, 12598 Government Code. Reference: Sections 12581, 12581.2, 12584, 12585, 12586, 12588, 12591, 12591.1, 12595, 12596, 12597, 12599, 12599.1, 12599.2, 12599.6 and 12599.7 Government Code; Sections 17510, 17510.2, 17510.25, 17510.3, 17510.4, 17510.5, 17510.8, 17510.85, 17510.9 Business and Professions Code; Sections 5142, 5230, 51231, 5232, 5233, 5235, 5236, 5237, 5238, 6215, 7231, 7233, 7236, 7237 and 7238 Corporations Code.

Specific purpose and rationale:

Under Government Code section 12591.1, subdivision (b), the Attorney General may issue a cease and desist order whenever the Attorney General finds that any entity or person that is subject to the Act, or its agent, servant, or employee, has committed an act that would constitute a violation of, or is operating in violation of the Act or its implementing regulations, or an order issued by the Attorney General. This regulation clarifies specific bases upon which the Attorney General may issue such an order. The specific bases listed are not exclusive and do not restrict the Attorney General from taking action for other conduct that violates the Act. “Virtually every aspect of the activities of charities and their commercial fundraisers is subject to comprehensive regulation. The assets of nonprofit corporations..., organized solely for charitable purposes, are impressed with a charitable trust which the Attorney General has a duty to protect. A complete range of equitable remedies vindicates the public interest in charitable assets; such remedies include injunctions to prevent and correct breach of fiduciary obligations arising from a trust.” (*People v. Orange County Charitable Services* (1999) 73 Cal.App.4th 1054, 1074, internal citations omitted.) This regulation is not a policy or a procedural change.

Subdivision (a)(1) of the Section specifies that the refusal or failure to produce any records of the organization or to provide any information required to be disclosed shall be a ground for issuance of a cease and desist order. Corporations Code section 6320 requires that nonprofit corporations maintain adequate and correct books and records of account and Probate Code sections 16060 et seq. require trustees to reasonably inform beneficiaries about the assets, liabilities, receipts, and disbursements of a trust and require trustees to provide an accounting to the beneficiaries of the trust. The failure to maintain adequate and correct books and records constitutes a breach of fiduciary duty by directors and trustees for charitable purposes. Government Code § 12598, subdivision (a), codifies the longstanding principle that the Attorney General has primary responsibility for supervising charitable trusts in California, for ensuring compliance with trusts and articles of incorporation, and for protection of assets held by charitable trusts and public benefit corporations. The Attorney General is statutorily authorized to bring an action to enjoin, correct, obtain damages for, or to otherwise remedy a breach of a charitable trust pursuant to Corporations Code section 5142. The Attorney General is similarly authorized to recover attorney’s fees and actual costs from a defendant named in a charitable trust enforcement action under Government Code section 12598, subdivision (b).

Subdivision (a)(2) of the Section specifies that making a false statement in an application, statement, or report required to be filed with the Registry constitutes grounds for issuance of a cease and desist order. The Legislature has expressly found that fraud and deceit are significant problems in with the course of charitable solicitation and that the requirements set forth in Business and Professions Code sections 17510 through 17510.95 are necessary for protection of the public welfare “to safeguard the public against fraud, deceit and imposition,” and to foster and encourage fair solicitations and sales solicitations for charitable purposes. (Bus. & Prof. Code, § 17510.) This provision makes clear that the Attorney General may also discipline a registrant whose conduct results in the dissemination of false or misleading statements or other prohibited acts in the course of solicitation.

Subdivision (a)(3) of the Section specifies that the failure to file a required report, or incomplete report with the Registry constitutes grounds for issuance of a cease and desist order. Government Code sections 12586, subdivision (a), requires that charitable corporations, unincorporated associations and trustees file reports with the Attorney General setting forth

information regarding the nature of assets held for charitable purposes. The Attorney General is authorized to make rules and regulations so that the Attorney General may receive reasonably current, periodic reports as to all charitable trusts or other relationships of a similar nature, that will allow her to ascertain whether those assets are being properly administered. (Gov. Code, § 12586, subd. (b).)

Subdivision (a)(4) of the Section specifies that engaging in any act prohibited pursuant to Government Code section 12599.6 which pertains to misrepresentations of purpose by charitable organizations shall be a ground for issuance of a cease and desist order. In the legislative history for section 12599.6 the Legislature noted that the Attorney General's office provided case summaries describing commercial fundraisers or fundraising counsel that have raised funds on behalf of a charity, without the charity's authorization, and that the charity never received an accounting. (Sen. Rules Com., Off. Of Sen. Floor Analyses, reading analysis of Sen. Bill No. 1262 (2003-2004 Reg. Sess.) August 23, 2004.) The legislative history further notes that the enactment of section 12599.6 would further protect charitable organizations, the vital community services they provide, and the generous donors who support their programs. All reports and forms filed with the Attorney General by registrants must be signed under penalty of perjury. These reports and forms are available for public inspection. When organizations provide false or misleading information, the Attorney General's ability to regulate such organizations and to protect charitable assets is undermined, and prevents members of the public from making informed decisions about organizations they wish to support.

Enumeration of Benefits:

1. Clarifies the grounds for which the Attorney General may issue a cease and desist order.
2. Reduces the possibility that a registrant will mistakenly or inadvertently violate the law.
3. Increases public protection and confidence by restricting the ability of a registrant to solicit donations when it has engaged in conduct that violates the provisions of the Act.
4. Decreases the likelihood that a prospective donor will make a donation to an organization based on false or misleading statements made in the course of solicitation.
5. Increases a registrant's incentive to comply with the requirements of the Act.

3. Proposed Addition 3:

§ 315. Imposition of Penalty

(a) Penalties imposed on any person or entity shall not exceed one thousand dollars (\$1,000) per act or omission, for each act or omission that constitutes a violation of the Supervision of Trustees and Fundraisers for Charitable Purposes Act (Government Code section 12580 et seq.) or Chapter 15 (commencing with Section 999.6) of Division 1 of Title 11 of the California Code of Regulations.

(b) At least five days prior to imposing the penalty, the Attorney General shall provide notice to the person or entity that committed the violation by certified mail to the address of record.

(c) Penalties shall accrue, commencing on the fifth day after notice is given, at a rate of one hundred dollars (\$100) per day for each day until that person or entity corrects that violation.

When the Attorney General determines that the violation has been corrected, the Attorney General shall issue a written notice identifying the beginning and ending dates of the violation along with the total amount of the penalties accrued by the person or entity committing the violation.

(d) Unless a timely appeal has been filed, all penalties must be paid within thirty (30) days of the issuance of the notice setting forth the amount of the penalty, unless the Attorney General has agreed to a later date in writing.

Note: Authority cited: Sections 11400 et seq., and 11500 et seq., 12581, 12584, 12585, 12587, 12598, Government Code. Reference: Sections 12581, 12581.2, 12584, 12585, 12586, 12588, 12591, 12591.1, 12595, 12596, 12597, 12599, 12599.1, 12599.2, 12599.6 and 12599.7 Government Code; Sections 17510, 17510.2, 17510.25, 17510.3, 17510.4, 17510.5, 17510.8, 17510.85, 17510.9 Business and Professions Code; Sections 5142, 5230, 51231, 5232, 5233, 5235, 5236, 5237, 5238, 6215, 7231, 7233, 7236, 7237 and 7238 Corporations Code.

Specific purpose and rationale:

Under Government Code section 12591.1, subdivision (c), the Attorney General may impose penalties against any person or entity that is subject to the Act, provided that at least five days prior to imposing any penalty, the Attorney General provides written notice to the person or entity that committed the violation by certified mail. This regulation clarifies the date on which monetary penalties begin to accrue. “Virtually every aspect of the activities of charities and their commercial fundraisers is subject to comprehensive regulation. The assets of nonprofit corporations..., organized solely for charitable purposes, are impressed with a charitable trust which the Attorney General has a duty to protect. A complete range of equitable remedies vindicates the public interest in charitable assets; such remedies include injunctions to prevent and correct breach of fiduciary obligations arising from a trust.” (*People v. Orange County Charitable Services* (1999) 73 Cal.App.4th 1054, 1074, internal citations omitted.) This regulation does not constitute a policy or a procedural change.

Subdivision (a) of the Section specifies the maximum dollar amount that the Attorney General may impose per act or omission that constitutes a violation of the Act. The Legislature has expressly permitted monetary penalties against persons or entities that are found to have violated statutory prohibitions. Government Code section 12591.1, subdivision (c), permits a penalty not to exceed \$1,000 for each violation of the Act. This subdivision provides registrants an incentive to timely comply with the requirements of the Act and clearly identifies the date upon which any penalty begins to accrue.

Subdivision (b) of the Section specifies that at least five days prior to imposing any penalty, the Attorney General shall provide notice to the person or entity that committed the violation by certified mail to the address of record in the Registry of Charitable Trusts database. The purpose of this subdivision is to impose specific requirements that the Attorney General must follow in order to impose penalties. It limits the Attorney General’s ability to impose penalties by specifically requiring written notice of the violation(s) be sent to the registrant by certified mail.

Subdivision (c) of the Section specifies that penalties shall accrue, commencing on the fifth day after notice is given, at a rate of one hundred dollars (\$100) per day for each day until the person or entity corrects the violation; penalties shall stop accruing as of the date set forth in the written notice provided by the Attorney General that confirms that the violation or omission subject to penalties has been corrected or remedied. The purpose of this subdivision is to provide the registrant with a specific timetable for the accrual of penalties and rate at which the penalty will accrue per day. It provides the registrant with notice of the impact of imposition of penalties, the rate at which they will accrue and provide the incentive to cure.

Subdivision (d) of the Section specifies that unless a timely appeal has been filed, penalties must be paid within thirty (30) days of the issuance of the notice setting forth the amount of the penalty, unless the Attorney General has agreed to a later date in writing. The purpose of this subdivision is to provide the registrant with a specific deadline of when penalties must be paid.

Enumeration of Benefits:

1. Clarifies the specific amount of each penalty the Attorney General may impose.
2. Increase the likelihood of compliance with the Act by registrants.
3. Limits the Attorney General's ability to impose penalties arbitrarily by imposing procedural requirements.
4. Provides a registrant time to cure a violation by delaying accrual of penalties until five days after notice is given.

4. Proposed Addition 4:

§ 316. Suspension of Registration

(a) If the Attorney General assesses penalties under section 315, the Attorney General may suspend the registration of that person or entity in accordance with the procedures set forth in Section 999.6 et seq. of Title 11 of the California Code of Regulations.

(b) The registration of any person or entity that fails to timely pay a civil penalty shall be automatically suspended until the fine is paid and no registration shall be renewed until the fine is paid.

Note: Authority cited: Sections 11400 et seq., and 11500 et seq. 12581, 12584, 12585, 12587, 12598 Government Code. Reference: Sections 12581, 12581.2, 12584, 12585, 12586, 12588, 12591, 12591.1, 12595, 12596, 12597, 12599, 12599.1, 12599.2, 12599.6 and 12599.7 Government Code; Sections 17510, 17510.2, 17510.25, 17510.3, 17510.4, 17510.5, 17510.8, 17510.85, 17510.9 Business and Professions Code; Sections 5142, 5230, 51231, 5232, 5233, 5235, 5236, 5237, 5238, 6215, 7231, 7233, 7236, 7237 and 7238 Corporations Code.

Specific purpose and rationale:

Under Government Code section 12591.1, subdivision (d), the Attorney General may suspend the registration of any person or entity subject to the Act in accordance with the procedures set forth in Section 999.6 et. seq. of Title 11 of the California Code of Regulations; registration shall be automatically suspended until the fine is paid and no registration shall be renewed until the

fine is paid. This regulation clarifies the basis upon which the Attorney General may take such an action. “Virtually every aspect of the activities of charities and their commercial fundraisers is subject to comprehensive regulation. The assets of nonprofit corporations..., organized solely for charitable purposes, are impressed with a charitable trust which the Attorney General has a duty to protect. A complete range of equitable remedies vindicates the public interest in charitable assets; such remedies include injunctions to prevent and correct breach of fiduciary obligations arising from a trust.” (*People v. Orange County Charitable Services* (1999) 73 Cal.App.4th 1054, 1074, internal citations omitted.) This regulation does not constitute a policy or a procedural change.

Enumeration of Benefits:

1. Clarification of specific ground upon which the Attorney General may take action to suspend a registration and when a registration may be renewed.
2. Increase the possibility that a registrant will comply with the requirements of the Act by placing the registrant on notice that its registration may be suspended upon the assessment of a penalty.

5. Proposed Amendment 1:

TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 15. ATTORNEY GENERAL REGULATIONS ~~UNDER NONPROFIT CORPORATIONS LAW~~ REGARDING THE ADMINISTRATIVE REVIEW APPLICABLE TO VIOLATIONS OF THE SUPERVISION OF TRUSTEES AND FUNDRAISERS FOR CHARITABLE PURPOSES ACT

§ 999.6. ~~Charitable Entity Registration Refusal, Revocation or Suspension.~~ Violations of Government Code section 12580 et seq.

(a) The Attorney General may ~~refuse to register, or revoke, or suspend the registration of a charitable corporation, trustee, commercial fundraiser, fundraising counsel, and coventurer, for the reasons as specified in Section 12598, subdivision (e), of the Government Code.~~ take administrative action for violations of section 12580 et seq. of the Government Code, including but not limited to:

(1) refuse to register, or revoke, or suspend the registration of a charitable corporation, trustee, commercial fundraiser, fundraising counsel, and coventurer for the reasons as specified in Section 12598, subdivision (e), of the Government Code.

(2) issue a cease and desist order against any person or entity for reasons specified in Section 12591.1, subdivision (b), of the Government Code.

(3) impose a civil penalty on any person or entity for reasons specified in Section 12591.1, subdivision (c), of the Government Code.

(b) When ~~a registration is refused, revoked, or suspended,~~ an administrative action is taken, the Attorney General shall provide written notice which specifies the reasons for the action.

(c) ~~If the registrant seeks to appeal a registration action, it must request a hearing by filing a written appeal~~ An appeal of the Attorney General's action must be filed with the Registrar of Charitable Trusts within thirty (30) calendar days of the date of the written notice ~~'s issue date or the right to appeal is waived and notice becomes the final order of the Attorney General.~~

(1) The appeal must be in writing and shall include: ~~The written appeal shall contain~~ the name and entity affiliation (if any), address and telephone number of the person appealing, the registration number (if any), and a statement of the basis of appeal.

(2) Notice of the hearing date, time and place shall be provided in accordance with the procedures set out in Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The failure of the person or entity ~~who has appealed~~ to appear at the time and place of the hearing shall be deemed a withdrawal of the appeal, and the written notice of the registration refusal, revocation, or suspension, the imposition of civil penalty, or the cease and desist order shall constitute the Attorney General's final order subject to no further administrative review.

(d) All hearings provided for under this regulation shall be conducted by an administrative hearing officer appointed by the Attorney General. The hearing officer shall not have participated in the decision concerning the registration, civil penalty, or the cease and desist order that is the subject of the hearing, and is otherwise subject to the disqualification provisions of sections 11425.30 and 11425.40 of the Government Code.

(e) All hearings under this regulation shall be conducted in accordance with the procedures set out in Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except where as applicable those provisions requiring the designation of administrative law judges.

(f) Except as otherwise prohibited by law, the Attorney General may delegate any of the powers and duties under Section 12598, subdivision (e), of the Government Code and under these regulations to Department of Justice staff.

~~Note: Authority cited: Section 12598(e), Government Code. Reference: Sections 11400, et seq. and 11500, et seq., Government Code.~~

Note: Authority cited: Sections 11400 et seq. and 11500 et seq., 12581, 12584, 12585, 12586, 12587, 12598 Government Code; Reference: Sections 12581, 12581.2, 12584, 12586, 12588, 12591, 12591.1, 12595, 12596, 12597, 12598(e), 12599, 12599.1, 12599.2, 12599.6, 12599.7, 12599.8 Government Code; Sections 17510, 17510.2, 17510.25, 17510.3, 17510.4, 17510.5, 17510.8, 17510.85, 17510.9 Business and Professions Code; Sections 5142, 5230, 5231, 5232, 5233, 5235, 5236, 5237, 5238, 6215, 7231, 7233, 7236, 7237 and 7238 Corporations Code.

Specific purpose and rationale:

The Attorney General has the primary responsibility for supervising charitable trusts in California, for ensuring compliance with trusts and articles of incorporation, and for protection of assets held by charitable trusts and public benefit corporations. (Gov. Code, § 12598.) The Act, Chapter 6 (commencing with Government Code section 12580) of Title 2 of Division 3 of the Government Code), codifies the Attorney General’s authority over persons and entities that hold charitable assets and persons and entities that are involved in fundraising for charitable purposes. Presently, sections 999.6 – 999.8 of Chapter 15 of Title 11, Division 1 of the California Code of Regulations are promulgated under the authority of the Act. These provisions require persons and entities holding charitable assets in California, and for-profit fundraisers soliciting charitable contributions in California, to register and file annual reports with the Attorney General’s Registry of Charitable Trusts. Under Government Code section 12598, subdivision (e)(1), the Attorney General may refuse to register an applicant, or may suspend or revoke an existing registration for violations of the Act. Under Government Code section 12591.1, subdivision (b), the Attorney General may issue a cease and desist order whenever the Attorney General finds that any entity or person subject to the Act, or its agent, servant, or employee, has committed an act that would constitute a violation of, or is operating in violation of the Act or its implementing regulations, or an order issued by the Attorney General. The proposed amendments to 999.6 clarify the actions and penalties the Attorney General may take when a violation is determined and clarify the procedures for the review of actions taken by the Attorney General against an applicant or registrant, including but not limited to, refusal to register, suspension or revocation of a registration, or the issuance of a cease and desist order. The amendments are consistent with existing law and typical administrative enforcement procedures used by regulatory agencies.

Subdivision (a)(1) is a restatement, with minor edits for grammar, of the language in subdivision (a).

Subdivisions (a)(2), (a)(3), (c)(2), and (d) clarify the Attorney General’s authority under Government Code 12591.1 which became effective in January 2013 and pertains to the issuing of a cease and desist order and imposition of civil penalties.

The amendments to the Notes section clarify citations to the Authority and Reference underlying the regulation.

Enumeration of Benefits:

1. The amendments to the regulation will benefit registrants and applicants by clarifying the appeals process of actions taken by the Attorney General.

6. Proposed Amendment 2:

§999.7. Review of Hearing Officer’s Proposed Decision.

(a) Within 15 days after service of the hearing officer’s proposed decision as provided for in Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, any party to a registration [or a civil penalty action, or to a cease and desist order](#)~~-action~~ may file a written brief served on all parties seeking review by the Attorney General of the

proposed decision. Failure of a party to timely file such a brief waives the party's right to such a review.

(b) Briefing Procedure

(1) No later than 15 days after service of the written brief requesting review of the proposed decision, an opposition to the request (if any) must be filed and served on the parties.

(2) The parties' briefing may address the following:

(A) Whether the facts stated in the proposed decision are consistent with the evidence presented;

(B) Whether the proposed decision contains an accurate statement and/or application of the law; and

(C) Whether additional evidence exists that could not, with reasonable diligence, have been discovered and presented at the administrative hearing.

(3) The Attorney General may in his/her discretion upon a showing of good cause, extend the time requirements set forth herein unless irreparable harm would result from granting such an extension.

~~Note: Authority cited: Section 12598(e) Government Code. Reference: Sections 11517, 11518.5, and 11519 Government Code.~~

Note: Authority cited: Sections 11400 et seq. and 11500 et seq., 12581, 12584, 12585, 12586, 12587 Government Code; Reference: Sections 11517, 11518.5, 11519, 12581, 12581.2, 12584, 12586, 12588, 12591, 12591.1, 12595, 12596, 12597, 12598(e), 12599, 12599.1, 12599.2, 12599.6, 12599.7, 12599.8 Government Code; Sections 17510, 17510.2, 17510.25, 17510.3, 17510.4, 17510.5, 17510.8, 17510.85, 17510.9 Business and Professions Code; Sections 5142, 5230, 5231, 5232, 5233, 5235, 5236, 5237, 5238, 6215, 7231, 7233, 7236, 7237 and 7238 Corporations Code.

Specific purpose and rationale:

The Attorney General has the primary responsibility for supervising charitable trusts in California, for ensuring compliance with trusts and articles of incorporation, and for protection of assets held by charitable trusts and public benefit corporations. (Gov. Code, § 12598.) The Act, Chapter 6 (commencing with Government Code section 12580) of Title 2 of Division 3 of the Government Code), codifies the Attorney General's authority over persons and entities that hold charitable assets and persons and entities that are involved in fundraising for charitable purposes. Presently, sections 999.6 – 999.8 of Chapter 15 of Title 11, Division 1 of the California Code of Regulations are promulgated under the authority of the Act. These provisions require persons and entities holding charitable assets in California, and for-profit fundraisers soliciting charitable contributions in California, to register and file annual reports with the Attorney General's Registry of Charitable Trusts. Under Government Code section 12598, subdivision (e)(1), the Attorney General may refuse to register an applicant, or may suspend or

revoke an existing registration for violations of the Act. Under Government Code section 12591.1, subdivision (b), the Attorney General may issue a cease and desist order whenever the Attorney General finds that any entity or person subject to the Act, or its agent, servant, or employee, has committed an act that would constitute a violation of, or is operating in violation of the Act or its implementing regulations, or an order issued by the Attorney General. The proposed amendment clarifies the procedures for the review of actions taken by the Attorney General against an applicant or registrant, including but not limited to, refusal to register, suspension or revocation of a registration, or the issuance of a cease and desist order. This amendment is consistent with existing law and typical administrative enforcement procedures used by regulatory agencies.

Subdivision (a) is amended to clarify the Attorney General's authority under Government Code 12591.1 which became effective in January 2013 and pertains to the issuing of a cease and desist order and imposition of civil penalties.

The amendments to the Notes section clarify citations to the Authority and Reference underlying the regulation.

Enumeration of Benefits:

1. The amendment to the regulation will benefit registrants and applicants by clarifying the appeals process of actions taken by the Attorney General.

7. Proposed Amendment 3:

§999.8. Final Attorney General Decisions.

(a) Upon completion of the briefing process or after 15 days of service of the proposed decision, the Attorney General may do any of the following:

- (1) Adopt the proposed decision in its entirety.
- (2) Reduce or otherwise mitigate the proposed decision in its entirety.
- (3) Make technical or non-substantive changes which do not affect the factual or legal basis of the proposed decision and adopt it as the final decision.
- (4) Non-adopt the proposed decision. If the proposed decision is not adopted, the Attorney General may decide the case upon the record, including the transcript, or may refer the case back to the hearing officer to take additional evidence. If the case is remanded back to the hearing officer for taking additional evidence, another proposed decision shall be prepared based upon this additional evidence. The proposed decision shall be subject to the review and adoption procedures set out in these regulations.

(A) Before deciding any case on the record, the Attorney General shall give the parties the opportunity to present further written argument.

(B) If the record and/or the parties' arguments reveal the need for additional evidence, the Attorney General in his/her discretion may order the taking of additional evidence either by the Attorney General or by the hearing officer. Following the receipt of any additional evidence, the Attorney General may require further written or oral argument before deeming the case submitted for final decision.

(b) The proposed decision shall be deemed adopted by the Attorney General 100 days after service of the proposed decision by the hearing officer, unless within that time: (1) the Attorney General notifies the parties that the proposed decision is or is not adopted or is otherwise modified, or (2) the matter is referred to the hearing officer to take additional evidence.

(c) The decision shall become effective 30 days after it is mailed to the parties, unless reconsideration of the decision is ordered within that time or the Attorney General orders that the decision shall become effective sooner.

(d) The Attorney General may designate as precedent the decision or any part thereof that contains a significant legal or policy determination that is likely to recur.

(1) Once a decision is designated as precedent, parties may cite to such decisions in their briefs to the Attorney General, hearing officer, and the courts.

(2) If the Attorney General decides to designate precedent decisions under this regulation, then an index of significant legal and policy determinations made in these decisions shall be maintained and made available to the public at the Charitable Trust Registry as well as publicized annually in the California Regulatory Notice Register. The index shall be maintained at least annually, unless no precedent decisions have been designated since the last preceding update.

~~Note: Authority cited: Section 12598 (e) Government Code. Reference: Sections 11425.10(a)(7), 11425.60, 11517, 11518.5, and 11519 Government Code.~~

Note: Authority cited: Sections 11400 et seq. and 11500 et seq., 12581, 12584, 12585, 12586, 12587, 12598 Government Code; Reference: Sections 11425.10(a)(7), 11425.60, 11517, 11518.5, 11519, 12581, 12581.2, 12584, 12586, 12588, 12591, 12591.1, 12595, 12596, 12597, 12598(e), 12599, 12599.1, 12599.2, 12599.6, 12599.7, 12599.8 Government Code; Sections 17510, 17510.2, 17510.25, 17510.3, 17510.4, 17510.5, 17510.8, 17510.85, 17510.9 Business and Professions Code; Sections 5142, 5230, 5231, 5232, 5233, 5235, 5236, 5237, 5238, 6215, 7231, 7233, 7236, 7237 and 7238 Corporations Code.

Specific purpose and rationale:

The Attorney General has the primary responsibility for supervising charitable trusts in California, for ensuring compliance with trusts and articles of incorporation, and for protection of assets held by charitable trusts and public benefit corporations. (Gov. Code, § 12598.) The Act, Chapter 6 (commencing with Government Code section 12580) of Title 2 of Division 3 of the Government Code), codifies the Attorney General's authority over persons and entities that hold charitable assets and persons and entities that are involved in fundraising for charitable

purposes. Presently, sections 999.6 – 999.8 of Chapter 15 of Title 11, Division 1 of the California Code of Regulations are promulgated under the authority of the Act. These provisions require persons and entities holding charitable assets in California, and for-profit fundraisers soliciting charitable contributions in California, to register and file annual reports with the Attorney General’s Registry of Charitable Trusts.

The amendments to the Notes section clarify citations to the Authority and Reference underlying the regulation.

Enumeration of Benefits:

1. The amendments to the Notes section clarify and make more specific citations to the Authority and Reference underlying the regulation.

8. Proposed Addition 5:

§ 999.9. Grounds for Refusal, Revocation or Suspension

(a) The grounds for which a registration may be refused, suspended or revoked include, but are not limited to:

- (1) Misuse of charitable assets.
- (2) False or misleading statements and/or conduct in connection with a solicitation for charitable purposes, including any conduct in violation of sections 17510 through 17510.95 of the Business and Professions Code and section 12599.6 of the Government Code.
- (3) False or misleading statements in a document required by law to be filed with a government agency, including the annual registration and renewal reports filed with the Attorney General and informational returns filed with the Internal Revenue Service and Franchise Tax Board. The omission of material information in response to a question in a document required by law to be filed with a government agency constitutes a false or misleading statement.
- (4) Failure to comply with the Standards of Conduct for nonprofit corporations in sections 5230 through 5239 and 7230 through 7238 of the Corporations Code.
- (5) Failure to prepare annual financial statements using generally accepted accounting principles that are audited by an independent certified public accountant in conformity with generally accepted auditing standards, as required by Section 12586, subdivision (e), of the Government Code.
- (6) Failure to produce records in response to a subpoena or written request from the Attorney General.
- (7) An adverse action by a governmental entity related to the operation of charity or the conduct of a solicitation for charitable purposes, including misuse of

charitable assets and unlawful or misleading conduct related to solicitation for charitable purposes.

- (A) An adverse action by a governmental entity, includes but is not limited to, suspension, revocation or denial of registration, civil or criminal judgment, assessment of civil penalty, entry of assurance of voluntary compliance or enforceable settlement agreement, or an equivalent action regardless of its title.
- (B) This includes any entity which has an officer, director, or key employee, or which is owned or operated by a person who was the subject of an action or who owned or operated such an entity, or was directly involved in such actions.

Note: Authority cited: Sections 11400 et seq. and 11500 et seq., 12581, 12584, 12585, 12586, 12587, 12598 Government Code; Reference: Sections 11425.10(a)(7), 11425.60, 11517, 11518.5, 11519, 12581, 12581.2, 12584, 12585, 12586, 12588, 12591, 12591.1, 12595, 12596, 12597, 12599, 12599.1, 12599.2, 12599.6 and 12599.7 Government Code; Sections 17510, 17510.2, 17510.25, 17510.3, 17510.4, 17510.5, 17510.8, 17510.85, 17510.9 Business and Professions Code; Sections 5142, 5230, 5231, 5232, 5233, 5235, 5236, 5237, 5238, 6215, 7231, 7233, 7236, 7237 and 7238 Corporations Code.

Specific purpose and rationale:

Pursuant to Government Code section 12598, subdivision (e)(1), the Attorney General may refuse to register, or may revoke or suspend the registration of a charitable corporation or trustee, or fundraising professionals who have violated or is operating in violation of any provisions of the Act. This regulation clarifies specific bases upon which the Attorney General may take such actions. The specific provisions listed are not exclusive and do not restrict the Attorney General from taking action for violation of the Act against any entity that engages in conduct not listed in the regulation. “Virtually every aspect of the activities of charities and their commercial fundraisers is subject to comprehensive regulation. The assets of nonprofit corporations..., organized solely for charitable purposes, are impressed with a charitable trust which the Attorney General has a duty to protect. A complete range of equitable remedies vindicates the public interest in charitable assets; such remedies include injunctions to prevent and correct breach of fiduciary obligations arising from a trust.” (*People v. Orange County Charitable Services* (1999) 73 Cal.App.4th 1054, 1074, internal citations omitted.) This regulation is not a policy or a procedural change.

Subdivision (a)(1) of this Section specifies misuse of charitable assets as a ground for disciplinary action. Assets raised or held for charitable purposes are subject to a charitable trust. Business and Professions Code section 17510.8 codified longstanding trust principles that the acceptance of charitable contributions by a charity or any person soliciting on behalf of a charity establishes a charitable trust and a duty on the part of the charity and the person soliciting on behalf of the charity to use those charitable contributions for the declared charitable purposes for which they are sought. Misuse of charitable assets constitutes a breach of trust and breach of the

directors' or trustees' fiduciary duty. Government Code section 12598, subdivision (a), codifies the longstanding principle that Attorney General has the primary responsibility for supervising charitable trusts in California, for ensuring compliance with trusts and articles of incorporation, and for protection of assets held by charitable trusts and public benefit corporations. The Attorney General is statutorily authorized to bring an action to enjoin, correct, obtain damages for or to otherwise remedy a breach of a charitable trust pursuant to Corporations Code section 5142. This provision makes clear that the Attorney General may also discipline a registered person or entity that is misusing charitable assets or refuse to register an applicant that previously misused charitable assets.

Subdivision (a)(2) of this Section specifies that false or misleading statements or conduct in connection with charitable solicitations constitute grounds for disciplinary action and references specific provisions in both the Act and the Business and Professions Code that prohibit such conduct. The Legislature has expressly found that fraud and deceit are significant problems in connection with charitable solicitations and that the restrictions contained within Business and Professions Code sections 17510 through 17510.95 are necessary for protection of the public welfare. (Bus. & Prof. Code, § 17510, subd. (a).) This provision makes clear that the Attorney General may also discipline a registrant that has engaged in false or misleading statements or conduct in connection with a charitable solicitation or refuse to register an applicant that previously engaged in such conduct.

Subdivision (a)(3) of this Section specifies that providing false or misleading statements in documents filed with government agencies constitutes grounds for a refusal to register or suspension or revocation of a registration. This provision also clarifies that a false or misleading statement may be accomplished both by an affirmative representation, or an omission of material information. In general, documents filed with the Attorney General are available for public inspection and are posted on the Attorney General's website (<http://oag.ca.gov/charities>). (Gov. Code, § 12590.) These documents not only assist the Attorney General in performing her mandate to supervise charitable trustees, they assist the public in making decisions about charitable donations. Subdivision (a)(3) also clarifies that the Attorney General may suspend or revoke a registration if the applicant provides false or misleading statements in an application that were not discovered until after the registration was issued. Applications for registration are submitted under penalty of perjury. (See, e.g., Forms CT-1, CT-1CF, CT-3CF and CT-5CF.) Additionally, registrants are required by law to file annual reports regarding the registrant's activities. These reports are also submitted under penalty of perjury and require the registrants to provide information regarding the charitable assets solicited or under their control and disclose certain types of events or activities, such as misuse of charitable assets or self-dealing transactions. Charities must also file annual informational returns regarding their charitable activities and assets with the Internal Revenue Service, under penalty of perjury. These informational returns must also be filed with the Attorney General and are available for public inspection. When organizations provide false or misleading information it undermines both the Attorney General's ability to regulate such organizations and protect charitable assets. It also prevents members of the public from making informed decisions about organizations they wish to support.

Subdivision (a)(4) of the Section specifies that failure of the officers or directors of a nonprofit corporation to comply with the Standards of Conduct for nonprofit corporations, as set forth in

sections 5230 through 5239 and 7230 through 7238 of the Corporations Code, constitutes grounds for discipline. These standards require that a director perform the duties of a director in good faith, in a manner that director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. (Corp. Code, §§ 5231, 7231, 7238.) The standards also place restrictions on financial transactions between the corporation and its officers and directors (section 5233), excessive compensation (sections 5235, 7233, 7238) and loans of charitable assets (sections 5236, 5237, 7235, 7236). Violation of these standards constitutes a breach of the directors' fiduciary duty to protect the corporation's charitable assets. These corporate governance requirements are designed to protect the charitable assets held in trust by the corporation and the failure to comply with these requirements jeopardizes the charitable assets.

Subdivision (a)(5) of the Section applies to charities which report at least \$2 million in gross revenue on its annual IRS informational return. Pursuant to Government Code section 12586, subdivision (e)(1), for each year in which over \$2 million in gross revenue is reported, such organizations are required to have prepared audited financial statements using generally accepted accounting principles that are audited by an independent certified public accountant in conformity with generally accepted auditing standards. This provision specifies that the failure to do so constitutes grounds for discipline.

Subdivision (a)(6) of the Section specifies that failure to comply with a written request or subpoena to produce records constitutes grounds for discipline. Multiple provisions of the Act provide that the Attorney General may inspect and compel the production of records necessary for the Attorney General's office to fulfill its oversight responsibilities, including audited financial statements (section 12586(e), (f)), and contracts with fundraising professional (sections 12599(i), 12599.1(f).) The Act requires that records be maintained for least 10 years and that they shall be available for inspection upon demand by the Attorney General. (Government Code sections 12596, 12599.7.) The Attorney General may issue an order pursuant to Government Code sections 12588 and 12589 requiring the production of records. The Attorney General may also issue subpoenas pursuant to Government Code section 11180. A registrant that refuses to comply with such a request or subpoena violates the Act and undermines the Attorney General's ability to protect charitable assets.

Subdivision (a)(7) of the Section specifies that the Attorney General may take disciplinary action against a registrant or refuse to register an applicant which has been the subject of adverse action by another governmental entity if the action was related to the operation of the charity or the conduct of a solicitation for charitable purposes, including misuse of charitable assets and unlawful or misleading conduct related to solicitation for charitable purposes. Many charities registered in California operate or solicit in other states. The violation of the laws of another jurisdiction demonstrates a threat to both charitable assets and the public. The regulation makes clear that, in order to constitute grounds for discipline, the adverse action must be related to the operation of the charity or solicitation for charitable purposes. Fundraising professionals are currently required to affirmatively disclose such actions. (See, e.g., Forms CT-1CF, CT-3CF, CT-5CF.)

Subsection (A) of Subdivision (a)(7) clarifies the types of discipline that may be considered to be an adverse action by a governmental entity.

Subsection (B) of Subdivision (a)(7) clarifies that this provision applies to any entity which has an officer, director, or key employee, or which is owned or operated by a person who was the subject of an adverse action. This provision prevents individuals from avoiding the consequences of their conduct by simply joining or creating a new or different entity.

Enumeration of Benefits:

1. Clarification of specific grounds upon which the Attorney General may take action to refuse to register an entity, or suspend or revoke a registration.
2. Clarification of specific types of discipline that may be considered an adverse action by a governmental entity.
3. This provision will reduce the possibility that a registrant or applicant will mistakenly or inadvertently violate the law.

9. Proposed Addition 6:

§ 999.9.1 Automatic Suspension

- (a) A registration shall be automatically suspended if any of the following occur:
- (1) The organization's tax-exempt status is suspended or revoked by the Internal Revenue Service or Franchise Tax Board.
 - (2) The registrant fails to file a complete Form RRF-1 for three consecutive years. The Form RRF-1 is not complete if it is not accompanied by the required attachments, renewal fee and the appropriate informational return filed with the Internal Revenue Service.
 - (3) A corporation's corporate status is suspended or revoked by the California Secretary of State.
 - (4) The registration of a commercial fundraiser for charitable purposes, fundraising counsel or commercial coventurer shall be automatically suspended if any of the following occur:
 - (A) Failure to file a completed annual registration form, including the payment of the required fees, on or before January 15;
 - (B) Failure of a commercial fundraiser to maintain a valid bond or cash deposit in the amount of \$25,000; or
 - (C) Failure to file completed annual financial reports on or before January 30.
- (b) A registrant must notify the Attorney General in writing within five days of any change in its tax-exempt status or corporate status.
- (c) A registration which has been continuously suspended for one year pursuant to this regulation shall be automatically revoked.

(d) A registrant whose registration has been automatically suspended may appeal the suspension in the manner prescribed by section 999.6 et seq., however, the suspension shall remain in effect while the appeal is pending.

(e) The registration of any person or entity that fails to timely pay a civil penalty shall be automatically suspended until the fine is paid and no registration shall be renewed until the fine is paid.

Note: Authority cited: Sections 11400 et seq. and 11500 et seq., 12581, 12584, 12585, 12586, 12587, 12598 Government Code. Reference Sections 12599, 12599.1, 12599.2, 12599.5 Government Code.

Specific purpose and rationale:

Under Government Code section 12598, subdivision (e)(1), the Attorney General may refuse to register or revoke or suspend the registration of a charitable corporation or trustee, commercial fundraiser, fundraising counsel, or coventurer whenever the Attorney General finds that the charitable corporation or trustee, commercial fundraiser, fundraising counsel, or coventurer has violated or is operating in violation of any provision of the Act. This regulation identifies specific circumstances under which the suspension will take effect immediately. The suspension will be lifted when the registrant corrects the particular violation. These situations generally involve a formal determination by a government entity which has oversight authority over a charity. Such actions frequently involve organizations which have discontinued operations without providing the notice required by law or have otherwise failed to comply with the legal requirements for dissolving an entity holding charitable assets. Because the actions by other agencies result in a formal determination, there is not likely to be a factual dispute over the existence of the action; however, if there is a dispute, the registrant may request an administrative hearing in the same manner as other appeals of actions taken by the Attorney General.

Subdivision (a)(1) of the Section applies to a situation in which an organization's tax-exempt status has been suspended or revoked by the Internal Revenue Service or Franchise Tax Board. Subdivision (b) requires the organization to notify the Attorney General within 5 days of the change in its tax-exempt status. A suspension or revocation would occur in a situation in which an organization has engaged in conduct that violated the laws under which it was granted tax-exempt status or, more likely, because the organization has failed to file the annual informational returns required by law. Donors are put at risk if they claim tax deductions for charitable contributions to charities that have lost their tax-exempt status. The loss of tax-exempt status demonstrates a breach of the directors' fiduciary duty to oversee the organization's activities and their failure to adequately protect the charitable assets they hold in trust. If an organization's tax-exempt status is reinstated, its registration is also reinstated.

Subdivision (a)(2) of the Section applies to a situation in which the registrant fails to file a complete registration renewal form (Form RRF-1) for three consecutive years. Organizations holding charitable assets are required to file Form RRF-1 annually, along with the informational return filed with the Internal Revenue Service. (Cal. Code Regs., tit. 11, section 301.) This information is public and is posted on the Attorney General's website

(<http://oag.ca.gov/charities>.) (Gov. Code, § 12590.) An organization that fails to timely file Form RRF-1 is classified as delinquent until all delinquent reports are filed. A registrant's failure to report for multiple years constitutes a breach of fiduciary duty and a failure to adequately protect the assets subject to a charitable trust. Such breach of fiduciary duty prevents the Attorney General's office from adequately overseeing the charitable assets and limits the public's ability to make informed decisions about supporting the organization. If the registrant files the delinquent renewal forms, its registration is reinstated.

Subdivision (a)(3) of the Section applies to a situation in which an entity's corporate status has been suspended or revoked. This situation is most likely to occur when the corporation has failed to file documents with the Secretary of State as required by law. This demonstrates a lack of corporate governance by the directors and their failure to adequately protect the assets subject to a charitable trust. It is unlawful to exercise the powers, rights, and privileges of a corporation that has been suspended and a suspended corporation lacks the capacity to bring or defend a legal action. (Corp. Code, §§ 19719, subd. (a) and 23301.) If a corporation's status is reinstated by the Secretary of State, its registration is also reinstated.

Subdivision (a)(4) of the Section applies to registration of for-profit fundraising professionals. Registration is valid for one year and must be renewed annually, on or before January 15. (Bus. & Prof. Code, §§ 12599, subd. (b), 12599.1, subd. (d), 12599.2, subd. (b)(3)(c); Cal. Code Regs., tit. 11, § 308.) "Professional fundraisers for charitable purposes," which by definition directly solicit and receive donations, must also submit annual reports under penalty of perjury to the Registry of Charitable Trusts regarding their activity for the prior year, and these reports include information regarding the amount of charitable funds raised, the categories of expenses and net amount given to charity. This information is public and is posted on the Attorney General's website (<http://oag.ca.gov/charities>). Failure to provide such information prevents the Attorney General's office from adequately overseeing the charitable assets and limits the public's ability to make informed decisions about supporting a charitable organization, and the ability to determine the amount of their donation which will be retained by for-profit fundraisers rather than used for charitable purposes. When the required renewal forms and reports are filed, the registration will be reinstated.

Every commercial fundraiser for charitable purposes is also required to maintain a \$25,000 surety bond or cash deposit so long as it is registered to solicit in California, pursuant to Government Code section 12599.5. This provision is intended to protect any person damaged as a result of the commercial fundraiser's solicitation activities. If the surety revokes the bond, such as when it has paid out the amount of the bond on a claim, the public loses the protection provided by the bond. As a result, the commercial fundraiser will be suspended until the bond or cash deposit is reinstated or replaced.

Subdivision (c) of the Section provides that if an organization has failed within one year to correct the circumstances resulting in suspension pursuant to this regulation, the registration is revoked. The circumstances resulting in suspension pursuant to this regulation arise as a result of the registrant's failure to meet its most basic obligations for operating. Further, the length of the suspension is entirely within the registrant's control because it will be lifted when the registrant cures the underlying violation. A registrant's failure to resolve the suspension within one year demonstrates that the registrant is either unable or unwilling to resolve the underlying

violation, frequently because it has discontinued operations without providing the notice required by law, or has otherwise failed to comply with the legal requirements for dissolving an entity holding charitable assets. Revocation is appropriate under such circumstances.

This regulation is a change of policy and procedure. There are more than 120,000 registrants in the Registry database. The Registry does not currently have a mechanism for automatically suspending or revoking registrations. As a result, a significant amount of time is spent on registrants that have ceased to operate without notifying the Registry. This undermines public protection because it limits the ability of the Registry to properly identify defunct entities and make the public aware of their true condition.

Subdivision (d) of the Section provides that a registrant whose registration has been automatically suspended may appeal the suspension in the manner prescribed by section 999.6 et seq. but the suspension will remain in effect while the appeal is pending. This subdivision provides a registrant greater clarity as to the status of its registration pending an appeal.

Subdivision (e) of the Section provides that the registration of any person or entity that fails to timely pay a civil penalty will be automatically suspended until the fine is paid and no registration will be renewed until the fine is paid. This subdivision provides a registrant greater clarity as to the consequences of not timely paying a civil penalty.

Enumeration of Benefits:

1. Creates an expedited process to restrict a registration when another governmental agency has made a formal determination resulting in an adverse determination against the registrant.
2. Increases public protection by providing more timely notice to the public of problems with a registrant.
3. Restricts the ability of a registrant to solicit donations when it is not legally entitled to do so.
4. Decreases the likelihood that a prospective donor would make a donation to an organization whose tax-exempt status has been revoked based on the prospective donor's mistaken belief that the organization is tax-exempt.
5. Increases a registrant's incentive to timely comply with the registration, reporting and other filing requirements of government agencies to avoid the suspension of the registration.
6. Increases public protection by suspending the registration of a commercial fundraiser who fails to maintain the full \$25,000 bond while doing business in California, as required by law.
7. Increases public protection by providing an efficient mechanism for revocation of the registration of a registrant who is unable or unwilling to cure a deficiency after one year.
8. Increases greater clarity for registrants pertaining to when a registration remains in effect.

10. Proposed Addition 7:

§ 999.9.2. Refusal to Renew Registration

(a) The Registry of Charitable Trusts may refuse to renew the registration of any registrant which has:

(1) Failed to file a document with the Registry as required by law.

(2) Failed to pay fees or late fees.

(3) Failed to file a complete Form RRF-1 for three consecutive years. The Form RRF-1 is not complete if it is not accompanied by the required attachments, renewal fee and the appropriate informational return filed with the Internal Revenue Service.

(4) Been the subject of an adverse action by a governmental entity related to the operation of a charity or the conduct of a solicitation for charitable purposes, including misuse of charitable assets and unlawful or misleading conduct related to solicitation for charitable purposes.

(A) An adverse action by a governmental entity, includes but is not limited to, the suspension, revocation or denial of registration, civil or criminal judgment, assessment of civil penalty, entry of assurance of voluntary compliance or enforceable settlement agreement, or an equivalent action regardless of its title.

(B) This includes any entity which has an officer, director, or key employee, or which is owned or operated by a person who was the subject of an action or who owned or operated such an entity, or was directly involved in such actions.

(b) Every registrant that is the subject of an adverse action by a governmental entity other than the California Attorney General must provide written notice to the Registry of Charitable Trust of the adverse action. The notice must be made within thirty (30) days of the action or prior to renewing the registration, whichever is sooner.

(c) A registrant whose renewal has been refused may appeal the refusal in the manner prescribed by section 999.6 et seq.

Note: Authority cited: Sections 11400 et seq. and 11500 et seq., 12581, 12584, 12585, 12586, 12587, 12598 Government Code. References Sections 12584, 12585, 12586, 12586.1, 12588, 12589, 12590, 12591 12599, 12599.1 and 12599.2

Specific purpose and rationale:

Under Government Code section 12598, subdivision (e)(1), the Attorney General may refuse to register, or revoke or suspend the registration of a charitable corporation or trustee, commercial fundraiser, fundraising counsel, or coventurer whenever the Attorney General finds that the charitable corporation or trustee, commercial fundraiser, fundraising counsel, or coventurer has violated or is operating in violation of any provisions of the Act. All registrations are valid for one year and must be renewed annually. This provision clarifies the circumstances in which the

Registry may refuse to renew an organization's registration. An organization whose registration is not renewed is classified as delinquent. The refusal to renew a registration may be appealed in the same manner as other disciplinary actions taken by the Attorney General. This regulation constitutes a change in policy and procedure.

Subdivision (a) of the Section provides that the Registry may refuse to renew the registration of any registrant that fails to comply with the requirements for renewal, including submitting renewal fees and accompanying records, and the reports required to be filed by law. (See, e.g., Cal. Code Regs., tit. 11, §§ 301, 303, 305 and 308.)

Subdivision (a)(4)(A) of the Section clarifies the types of discipline that may be considered to be an adverse action by a governmental entity.

Subdivision (a)(4)(B) of the Section provides that the Registry may refuse to renew the registration of any registrant which has an officer, director or key employee who was the subject of a disciplinary action, or person who owned or operated such an entity. This provision prevents individuals from avoiding the consequences of their conduct by simply joining or creating a new or different entity.

Subdivision (b) requires every registrant that is the subject to an adverse action by a governmental entity other than the California Attorney General to provide written notice to the Registry of Charitable Trust of the adverse action. There are more than 120,000 registrants in the Registry database. The Registry does not currently have a mechanism for automatically determining adverse actions against a registrant. As a result, a significant amount of time is spent on determining whether a registrant has been the subject to an adverse action by another government agency. For example, if the registrant is a corporation, the Registry does not currently have a mechanism to determine in a timely manner whether the registrant's rights have been suspended by the California Secretary of State. This undermines public protection because it limits the ability of the Registry to properly identify entities that cannot legally operate in California.

Subdivision (c) of the Section provides greater clarity as to registrant's appeal rights.

Enumeration of Benefits:

1. Clarification of specific grounds for which the Attorney General may refuse to renew a registration.
2. Reduce the possibility that a registrant will mistakenly or inadvertently violate the law resulting in the inability to renew a registration.
3. Annual reports filed by registrants are posted on the Attorney General's website and available for public inspection. This provision increases public protection by ensuring that a registrant that fails to file the reports required by law will not be able to renew its registration.
4. Increases public protection by providing more timely notice to the public of problems with a registrant.
5. Increases efficiency by avoiding redundant hearings for violations that have already been addressed by another government agency.

11. Proposed Addition 8:

§ 999.9.3. Revocation

- (a) Within 30 days of the revocation of a registration, the registrant shall provide an accounting of all charitable assets within its possession, custody or control for 180 days prior to the effective date of the order, unless the Registry of Charitable Trusts specifies a different period of time in the order. The Registry, in its discretion, may require the registrant to provide an accounting of all charitable assets received, held, or distributed by the registrant for a period of up to ten years before the effective date of the suspension or revocation.
- (b) A registrant which has been suspended or revoked may not distribute or expend any charitable assets or assets subject to a charitable trust without the written approval of the Attorney General. Members of the board of directors or any person directly involved in distributing or expending charitable assets may be held personally liable in a civil action brought by the Attorney General for any charitable assets or assets subject to a charitable trust that are distributed or expended in violation of this regulation.
- (c) The Attorney General may direct a registrant whose registration has been suspended or revoked to distribute some or all of its charitable assets or assets subject to a charitable trust to another charitable organization or into a blocked bank account.

Note: Authority cited: Sections 11400 et seq. and 11500 et seq., 12581, 12584, 12585, 12586, 12587, 12598, 12599, 12599.1, 12599.2 and 12599.7 Government Code. Reference: Sections 12596 Government Code.

Specific purpose and rationale:

Under Government Code section 12598, subdivision (e)(1), the Attorney General may suspend or revoke the registration of a charitable corporation or trustee, commercial fundraiser, fundraising counsel, or coventurer whenever the Attorney General finds that the charitable corporation or trustee, commercial fundraiser, fundraising counsel, or coventurer has violated or is operating in violation of any provisions of the Act. Because these organizations hold all assets subject to a charitable trust, the Attorney General has a responsibility to ensure that charitable assets are protected and distributed to an appropriate successor trustee. This regulation provides a mechanism for ensuring the protection of charitable assets when a registration is suspended or revoked. This regulation is a change in procedure, not policy. Corporations holding charitable assets are required to give notice to the Attorney General prior to dissolution or disposition of substantially all of their assets. (Corp. Code, §§ 5913, 6615, 6716, 7238 and 7913.)

Subdivision (a) of the Section provides that the Registry may require an accounting of all charitable assets to be produced within 30 days of revocation. The default period for the accounting shall be 6 months (180 days) unless the Registry reduces or extends the period, up to 10 years, which is the statute of limitations set forth in the Act. (Gov. Code, § 12596.)

Subdivision (b) of the Section prohibits the distribution of charitable assets by a registrant which has been suspended or revoked without written approval by the Attorney General. This prevents a disciplined organization from improperly diverting charitable assets and will allow the Attorney General to ensure that such assets are properly distributed to a successor trustee. The provision also makes clear that trustees and directors may be held liable for violations of the provision. Such conduct, by definition, constitutes a breach of trust.

Subdivision (c) of the Section provides that the Attorney General may direct a registrant whose registration has been suspended or revoked to distribute some or all of its charitable assets or assets subject to a charitable trust to another charitable organization or into a blocked bank account. This ensures that the assets are used for their intended charitable purpose or that they are safeguarded until a decision is made regarding distribution of the assets, for example, through a *cy pres* proceeding to determine the successor trustee.

This regulation does not represent a policy change as all entities or individuals holding assets subject to a charitable trust have always been responsible for accounting for those assets to the Attorney General and are required to notify the Attorney General before disposing of such assets. This is a procedural change as it now provides for a formalized approach to the accounting and distribution of assets for an organization that ceases to operate due to a revocation rather than through the dissolution process.

Enumeration of Benefits:

1. Ensures that charitable assets under the control of a registrant whose registration is being revoked will be properly accounted for and distributed in a manner consistent with the purposes for which the assets are restricted.

12. Proposed Addition 9:

[§ 999.9.4. Registrant Must Be In Good Standing to Operate or Solicit](#)

[Any registrant whose registration is delinquent, suspended or revoked is prohibited from engaging in conduct for which registration is required, including but not limited to solicitation for charitable purposes.](#)

[Note: Authority cited: Sections 11400 et seq. and 11500 et seq., 12581, 12584, 12585, 12586, 12587, 12598, 12598\(e\), 12599, 12599.1 and 12599.2 Government Code. Reference: Sections 12585, 12586 and 12586.1 Government Code.](#)

Specific purpose and rationale:

Unless exempt, trustees or entities holding charitable assets must register and file annual reports with the Attorney General within 30 days of initially receiving charitable property. (Gov. Code,

§ 12585, subd. (a).) Fundraising professionals must register and file annual reports with the Attorney General before soliciting contributions in California. (Gov. Code, §§ 12599, subd. (b), 12599.1, subd. (c), 12599.2 subd. (c).) Under Government Code section 12598, subdivision (e)(1), the Attorney General may suspend or revoke the registration of a charitable corporation or trustee, commercial fundraiser, fundraising counsel, or coventurer whenever the Attorney General finds that the charitable corporation or trustee, commercial fundraiser, fundraising counsel, or coventurer has violated or is operating in violation of any provision of the Act. This regulation clarifies that in order to meet the registration requirements for operating in California, the registrant must be in good standing with the Registry. A registrant whose registration is delinquent, suspended or revoked may not engage in conduct for which registration is required. This regulation is not a policy or procedural change.

Enumeration of Benefits:

1. Clarifies that registrants that fail to comply with the registration requirements may not operate or solicit funds in California during the time the registrant is out of compliance.
2. Increases public protection by clarifying that registrants that are not in good standing may not solicit donations in California.

13. Proposed Addition 10:

§ 999.9.5. Reinstatement

A revoked registrant may petition the Registrar of Charitable Trusts for reinstatement after the Order of Revocation has become final. The petition shall be in writing and must establish that registrant is entitled to the relief sought. If the Registrar, in his or her discretion, determines there is no threat to the public or to charitable assets, the Registrar may reinstate the registration upon proof of compliance with all of the terms and conditions, if applicable, set forth in the Order of Revocation. The Registrar may grant or deny the petition for reinstatement or may impose additional terms and conditions as deemed appropriate as a condition of reinstatement.

Note: Authority cited: Sections 11400 et seq. and 11500 et seq., 12581, 12584, 12585, 12586, 12587, 12598 Government Code. Reference: Section 11522 Government Code.

Specific purpose and rationale:

Under Government Code section 12598, subdivision (e)(1), the Attorney General may revoke the registration of a charitable corporation or trustee, commercial fundraiser, fundraising counsel, or coventurer whenever the Attorney General finds that the charitable corporation or trustee, commercial fundraiser, fundraising counsel, or coventurer has violated or is operating in violation of any provisions of the Act. There will be circumstances in which a former registrant whose registration was revoked has addressed the issues that resulted in the revocation and, therefore, no longer poses a threat to the public or the charitable assets it holds in trust. In such situations, the revoked registrant may wish to have its registration reinstated. The Administrative Procedure Act provides a mechanism for reinstatement in Government Code

section 11522. This regulation provides an alternative which is more closely tailored to the circumstances for registrants under the Act.

Upon receiving a written petition, the Registrar will have the authority to reinstate a registration if the Registrar determines that doing so poses no threat to the public or charitable assets and that the petitioner has complied with the terms of the revocation order. The Registrar may, as a condition of reinstating a registration, impose such terms and conditions as are necessary to adequately protect the public and charitable assets.

This regulation is both a policy and procedural change. There is currently no mechanism in place for reinstatement of revoked registrations other than Government Code section 11522.

Enumeration of Benefits:

1. Establishes a process by which a registrant whose registration was revoked may seek reinstatement of the registration.