

CALIFORNIA DEPARTMENT OF JUSTICE

TITLE 11. LAW

DIVISION 1. ATTORNEY GENERAL

CHAPTER 4. SUPERVISION OF TRUSTEES AND FUNDRAISERS FOR CHARITABLE PURPOSES ACT and CHAPTER 4.6. NONPROFIT RAFFLE PROGRAM

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

§ 301. Periodic Written Reports.

Paragraph (2). The Department amended this subdivision to clarify that Schedule B of the Internal Revenue Service (IRS) Form 990 is not required to be filed when submitting the Form RRF-1. On July 1, 2021, the United States Supreme Court ruled in *Americans for Prosperity Foundation v. Bonta* that charitable organizations may not be required to disclose the names and addresses of major donors in Schedule B of the IRS Form 990. This amendment is necessary to conform the proposed regulations and the form to that ruling.

§ 311. Annual Registration Fee.

Subdivision (a)(2). The Department amended this subdivision to replace “gross annual” with “total” revenue when reporting revenue on the Form RRF-1. This amendment is necessary to conform the proposed regulations and the Form RRF-1 to the IRS Form 990’s use of “total revenue” so that nonprofits know how to accurately report their revenue and calculate the fees owed.

Form RRF-1.

The Department amended the Form RRF-1 to replace “gross annual” with “total” revenue when reporting revenue on the Form RRF-1. This change was necessary to conform to the IRS Form 990’s use of “total revenue” so that nonprofits know how to accurately report their revenue and calculate the fees owed. The RRF-1 also was amended to include “noncash contributions” in the “total revenue” to align with IRS Form 990, and ensure that nonprofits are accurately reporting their revenue and calculating their associated fees.

The instructions on Form RRF-1 were also revised to include a statement that Schedule B is not required. This change was necessary because on July 1, 2021, the United States Supreme Court ruled in *Americans for Prosperity Foundation v. Bonta* that charitable organizations may not be required to disclose the names and addresses of major donors in Schedule B of the IRS Form 990. The instructions were also revised to reflect the change to “total revenue” rather than “gross annual,” and that “total revenue” includes “noncash contributions” and “special event revenue.” These changes were necessary to align with IRS Form 990 and would allow the nonprofits to accurately report their revenue and calculating their associated fees.

SUMMARY OF COMMENTS AND DEPARTMENT RESPONSES

On April 2, 2021, the Department published the Text of Proposed Regulations as well as the Initial Statement of Reasons. During the 45-day public comment period that commenced on April 2, 2021 and concluded on May 18, 2021, the Department received one written comment. On May 19, 2021, the Department held an online public hearing and received one oral comment on the proposed regulations. The Department did not receive any untimely comments.

In an effort to analyze and respond to each component of the two comments received by one individual, components of the written comment were assigned a distinct number following the letter 'A,' while components of the oral comment were assigned a distinct number following the letter 'B.'

On August 9, 2021, the Department published the Notice of Modifications to Text of Proposed Regulations. The 15-day public comment period concluded on August 25, 2021. The Department received no comments, including untimely comments.

General Comments

Comment A1. Jan Masaoka (California Association of Nonprofits): “We acknowledge the need for ongoing updates to the Attorney General’s Registry of Charitable Trusts (Registry) website and the important role Registry personnel play in enforcing reporting and registration requirements and in providing educational materials to charities.”

Response: The Department welcomes this comment. No change has been made in response to this comment. This comment offered background information and commentary, so no further response is required.

Comment A2. Masaoka (cont.): “We also recognize that the Registry has not updated the fee schedule in more than a decade, while the number of charities in California has doubled in that time, increasing Registry workload.”

Response: The Department welcomes this comment. No change has been made in response to this comment. This comment offered background information and commentary, so no further response is required.

Comment A4. Masaoka (cont.): “However, we object to the timing of the proposed fee increases described in the Notice. Although the fee increases may not constitute a significant burden for an individual nonprofit, the idea of fee increases during a pandemic that has hit nonprofits and our communities so hard seems poorly considered.”

Response: In response to this comment, and based on the need to educate the nonprofit community on the updated forms and fees, the Department will utilize Government Code section 11343.4, subdivision (b) to request an effective date of January 1, 2022.

Comment A6. Masaoka (cont.): “The timing of the proposed fee increases is particularly difficult for our sector given that there is a significant surplus in the state budget this year. With billions of dollars going to bolster schools, small businesses, and other state infrastructure, it seems ill-timed to ask nonprofits to foot the bill now for Registry website improvements and additional personnel.”

Response: The Department understands the commenter's statement. However, as another comment noted, while the number of charities have doubled in number, there has not been a corresponding increase in the fees, which has affected the Department's ability to address the increased workload, support the technology requirements and personnel needed to administer and enforce the Act, and protect charitable assets in California. An increase in registration fees would benefit the health and welfare of California residents and promote fairness, social equity, and transparency by improving online public access to reports filed with the Registry, and by dedicating more staff and resources to investigating and prosecuting mismanagement and diversion of charitable assets. The increased enforcement activity will safeguard, preserve, and recover charitable assets for the benefit of California residents who receive assistance from charitable organizations. However, in response to other comments, the Department will ask for a January 1, 2022 effective date of the regulations.

Comment A7. Masaoka (cont.): “We recommend that, instead of increasing registration and raffle fees this year, the DOJ include in its 2021/2022 budget an allocation for Registry website improvements and additional personnel. Then DOJ leaders can engage the state’s nonprofit community in discussions in the coming fiscal year to determine reasonable fee increases when the pandemic and its immediate financial effects are over.”

Response: In response to this comment, and based on the need to educate the nonprofit community on the updated forms and fees, the Department will utilize Government Code section 11343.4, subdivision (b) to request an effective date of January 1, 2022.

Comment B1. Masaoka (cont.): “We appreciate the fact that you've taken a lot of care and a lot of time and that you haven't raised fees in a long time.”

Response: The Department welcomes this comment. No change has been made in response to this comment. This comment offered background information and commentary, so no further response is required.

Comment B2. Masaoka (cont.): “This is a tough year in which to raise fees for nonprofits even though the fees may be relatively minor.”

Response: Response: In response to this comment, and based on the need to educate the nonprofit community on the updated forms and fees, the Department will utilize Government Code section 11343.4, subdivision (b) to request an effective date of January 1, 2022.

Comment B3. Masaoka (cont.): “With the combination of the economic problems that have hit the nonprofit community as a result of COVID-19 and California's state budget surplus, request that the Department delay or defer the fee increase until a later year.”

Response: In response to this comment, and based on the need to educate the nonprofit community on the updated forms and fees, the Department will utilize Government Code section 11343.4, subdivision (b) to request an effective date of January 1, 2022.

§ 300. Initial Registration.

Comment A5. Masaoka (cont.): “And although dollar amounts of the increases are small, the percentage increase is quite large in some cases. For example, the proposed increase in the initial registration fee from \$25 to \$50, as described in Section 300 of the Notice, is a 100 percent fee increase.”

Response: No change has been made in response to this comment. The Department considered alternative scales and amounts for the proposed increase in fees. Although the percentage may seem large from \$25 to \$50, the dollar amount is quite small, as that is only a \$25 increase. Additionally, the Department estimates that this fee increase will only impact approximately 5,000 initial registrants. (See Initial Statement of Reasons, p.3.) Additionally, this proposed fee is necessary as it would allow the Department to update its website and expand its enforcement activities. The Department anticipates the initial registration fee increase for charities would result in additional revenues of approximately \$126,250.

§ 311. Annual Registration Fee.

Comment A3. Masaoka (cont.): “And we appreciate the attention to equity in the revenue-based sliding scale proposed for renewal fee increases, as described in Section 311 of the Notice.”

Response: The Department welcomes this comment as it recognized the attention to equity in the revenue-based sliding scale. In response to this comment, the Department revised the proposed section and Form RRF-1 to conform to the IRS Form 990’s use of “total revenue” so nonprofits would know how to calculate their fees and accurately report their revenue.

§ 418. Fee for Registration.

Comment A8. Masaoka (cont.): “Although dollar amounts of the increases are small, the percentage increase is quite large. A \$10 increase in the raffle registration fee, as described in Section 418 of the Notice, is a 50 percent fee increase.”

Response: No change has been made in response to this comment. The Department considered alternative scales and amounts for the proposed increase in fees. Although the percentage may seem large from \$20 to \$30, the dollar amount is quite small, as that is only a \$10 increase. Additionally, the Department estimates this fee increase would only impact approximately 5,000 registrants. (See Initial Statement of Reasons, p.7.) Additionally, this proposed fee is necessary as it would allow the Department to expand its enforcement activities related to Penal Code section 320.5.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

ALTERNATIVES DETERMINATIONS

In accordance with Government Code section 111346.9, 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.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

The Department received a comment that cited the economic effects of the COVID-19 pandemic and its impact on California's nonprofit community. The comment proposed delaying the promulgation of the proposed regulations and the fee increase they include until a later date.

The Department maintains that these fee increases are necessary to maintain and expand enforcement activities and to update the Registry's information technology to ensure public access and transparency. The fee increases are nominal and should be absorbable by charitable organizations. As Government Code section 14837(d)(1)(A) defines a small business as having revenues not exceeding \$15 million, these proposed regulations would only increase the annual registration fee for small businesses by \$25-\$50, or .0003 percent of a charity with revenue of \$15 million per year.

DOCUMENTS INCORPORATED BY REFERENCE

1. Initial Registration Form and Instructions, CT-1, (Rev. 02/2021).
2. Annual Registration Renewal Fee Report to Attorney General of California and Instructions, RRF-1, (Rev. 02/2021).
3. Commercial Fundraiser for Charitable Purposes Annual Registration Form and Instructions, CT-1CF, (Rev. 02/2021).
4. Fundraising Counsel for Charitable Purposes Annual Registration Form and Instructions, CT-3CF, (Rev. 02/2021).
5. Commercial Coventurer Annual Registration Form and Instructions, CT-5CF, (Rev. 02/2021).
6. Application for Registration Nonprofit Raffle Program and Instructions, CT-NRP-1 (Rev. 02/2021).

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).