

CALIFORNIA DEPARTMENT OF JUSTICE
TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 4. SUPERVISION OF TRUSTEES AND FUNDRAISERS FOR
CHARITABLE PURPOSES ACT and
CHAPTER 15. ATTORNEY GENERAL REGULATIONS REGARDING
ADMINISTRATIVE ENFORCEMENT OF THE SUPERVISION OF TRUSTEES AND
FUNDRAISERS FOR CHARITABLE PURPOSES ACT
INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

The Supervision of Trustees and Fundraisers for Charitable Purposes Act (Act), Government Code section 12580 et seq., provides the Attorney General with enforcement and supervisory powers over all charitable corporations, unincorporated associations, trustees and other legal entities holding property for charitable purposes, including commercial fundraisers for charitable purposes, fundraising counsel for charitable purposes, and commercial coventurers. The Act establishes the Registry of Charitable Trusts, which is administered by the Department of Justice. (Gov. Code, § 12587.1.)

Assembly Bill (AB) 488 amends the Act and, effective January 1, 2023, establishes that charitable fundraising platforms and platform charities are trustees for charitable purposes subject to the Attorney General’s supervision. The bill defines “charitable fundraising platform” to mean certain persons or legal entities that use the internet to provide a website, service, or other platform to persons in this state, and perform, permit, or otherwise enable acts of solicitation to occur. A “platform charity” is a trustee or charitable corporation as defined under the Act that facilitates acts of solicitation on a charitable fundraising platform.

The proposed regulations implement AB 488 and establish the following:

- Registration and reporting procedures for charitable fundraising platforms and platform charities;
- Notification requirements for platform charities;
- Procedures for determining the good standing of charitable organizations referenced in solicitations on charitable fundraising platforms;
- Requirements for consent agreements between charitable organizations and charitable fundraising platforms or platform charities, and procedures for when consent is not obtained from charitable organizations;
- Disclosure requirements in certain solicitations;
- Procedures for tax donation receipts sent to donors who use charitable fundraising platforms;
- Procedures for the prompt distribution of funds to charitable organizations;

- Accounting requirements for donations sent to charitable organizations;
- Procedures for donors and persons who use charitable fundraising platforms to learn whether donations were sent to charitable organizations; and
- Requirements for persons who engage in peer-to-peer charitable fundraising on charitable fundraising platforms, and are sent charitable donations made through the platforms.

BENEFITS ANTICIPATED FROM REGULATORY ACTION

Under California law, the Attorney General oversees charities, charitable trustees, professional fundraisers and other persons or legal entities that hold or solicit charitable donations to safeguard charitable assets for the charitable beneficiaries, ensure donations are used for their intended purposes, and to protect the public and charities from fraud and deceptive or unfair solicitations. The proposed regulations regulate and supervise persons and entities soliciting charitable donations on internet platforms. Soliciting and giving charitable donations over internet platforms has grown exponentially in recent years, and the proposed regulations allow the Attorney General to properly supervise charitable fundraising platforms and platform charities to better protect the public from fraudulent, deceptive, or unfair charitable solicitations occurring through the platforms, and to safeguard the solicited donations for the benefit of charities and the people of California who receive assistance from them. The Legislature adopted AB 488 to address the lack of specific authority to provide oversight over charitable fundraising platforms and platform charities that operate in California. These entities did not typically register and report under existing registration categories in spite of holding charitable assets or soliciting charitable donations. The newly enacted statutes and proposed regulations allow charitable fundraising platforms and platform charities to report aggregate and more relevant information about charitable donations solicited through their platforms consistent with their record keeping practices, rather than submitting reports for each charity individually, or submitting reports that did not adequately cover their solicitation practices. In addition to increasing protections for the public, the newly enacted statutes and proposed regulations promote transparency and accountability, which will increase donor and consumer confidence in online charitable giving.

The proposed regulations also reorder and renumber existing regulations so that all regulations pertaining to the Act will be in Chapter 4. The following chart shows the original sections and the proposed renumbering:

Current		Proposed		
Chapter	Section	Chapter	Article	Section
4	300	4	1	300
	300.1			300.1
	300.2			300.2
	301			301
	302			302
	303			303
	304			304
	305			305
	306			307
	308			313
	310			309
	311			306
	312			310
	312.1			308
	313			311
	15			999.9.4
999.1		328		
999.2		329		
999.3		330		
999.4		331		
999.6		336		
999.7		342		
999.8		343		
999.9		339		
999.9.1		341		
999.9.2		340		
999.9.3		345		
999.9.5	346			
4	314	4	3	337
	315			338
	316			344
	328.1		2	328.1

SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION

Chapter 4. Supervision of Trustees and Fundraisers for Charitable Purposes Act

Article 1. Registration, Reporting, and General Supervision of Trustees and Fundraisers

A new Article 1 is drafted to create better organization within Chapter 4.

§ 300. Initial Registration.

Subdivision (a) requires those subject to the Act to register with the Attorney General. A reference to Government Code section 12585 is added for clarity because the initial registration

is mandated by this statute. Inclusion of platform charities as an organization that is required to register is necessary so that the regulation is consistent with the new statute. (Gov. Code, § 12599.9, subd. (b).)

Subdivision (b) incorporates Form CT-1 by reference. The Form CT-1 was updated with a revision date of January 2024. This section was amended to reflect the correct revision date.

The Form CT-1 was updated to be consistent with the new statute. Two new questions, with corresponding instructions, were added to the Form CT-1 regarding whether applicants were also platform charities or charitable fundraising platforms, and to disclose any partnerships between them. These questions are necessary to determine the type or types of entities applicants may be, which could trigger additional requirements under the Act, including registration as a charitable fundraising platform. The new statute also requires notification of partnerships between platform charities and charitable fundraising platforms, which may occur through initial registration of the platform charity as a trustee, by filing a Form CT-1. (Gov. Code, § 12599.9, subd. (b)(3).) The partnership information assists the Attorney General in overseeing solicitations on charitable fundraising platforms, to protect the public and charities from fraud and deceptive or unfair solicitations. Non-substantive revisions (deleting phone number, updating fax number, and changing regulatory citations) were also made. Applicants filing this form may also indicate if they would like to receive email notifications from the Registry of Charitable Trusts. Many registrants have requested the ability to receive notices by email. Providing this option makes it faster and more efficient to communicate with registrants, and saves paper.

Subdivision (d) explains that the registration requirements for commercial fundraisers for charitable purposes, fundraising counsel for charitable purposes, and commercial coventurers are set forth in statute and section 313. This subdivision also explains that the registration requirements for charitable fundraising platforms are set forth in statute and section 315. This is necessary to inform these entities and persons of their registration requirements.

This subdivision further explains that commercial fundraisers for charitable purposes, fundraising counsel for charitable purposes, commercial coventurers and charitable fundraising platforms are not required to file certain legal formation documents as part of initial registration. The legal formation documents are not initially required as to these entities because fundraising professionals are typically for-profit entities.

Changes without regulatory effect. Authority and reference citations are amended.

§ 300.1. Educational Institution Exemption.

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., ensuring consistent capitalization of terms) are being made in subdivision (a). Authority and reference citations are amended.

§ 300.2. Government Exemption.

Changes without regulatory effect. Authority and reference citations are amended.

§ 301. Periodic Written Reports.

Subdivision (b) incorporates Form RRF-1 by reference. The Department updated the Form RRF-1 with a revision date of January 2024. Non-substantive revisions (deleting phone number) were

made. This subdivision must be amended to reflect the correct revision date. Registrants filing this form may also indicate if they would like to receive email notifications from the Registry of Charitable Trusts. Many registrants have requested the ability to receive notices by email. Providing this option makes it faster and more efficient to communicate with registrants, and saves paper.

Subdivision (e) is amended to explain that the reporting requirements for commercial fundraisers for charitable purposes, fundraising counsel for charitable purposes, and commercial coventurers are set forth in section 313 of the regulations. A statement that the reporting requirements for charitable fundraising platforms and additional reporting requirements for platform charities are set forth in section 315 is added. This is necessary to inform these organizations that there are additional reporting requirements.

Subdivision (f) explains that the reporting and registration renewal requirements apply to any unregistered person or entity for the time period that registration was required. This is necessary so that the Department will receive the information necessary to oversee charities, charitable trustees, and charitable solicitations to ensure that funds received are properly managed and devoted to charitable programs, and to protect the public from fraud and deceptive or unfair solicitations.

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., removal of superfluous language, ensuring consistent capitalization of terms) are being made throughout section 301. Authority and reference citations are amended.

§ 302. Place of Filing.

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., ensuring consistent capitalization of terms) are being made throughout section 302. Authority and reference citations are amended.

§ 303. Filing Forms.

The Department updated the Form RRF-1 with a revision date of January 2024. This subdivision must be amended to reflect the correct revision date.

§ 304. Time of Filing Reports.

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., ensuring consistent citation formats) are being made throughout section 304.

§ 305. Annual Filing of Reports.

The Department updated the Form RRF-1 with a revision date of January 2024. This subdivision must be amended to reflect the correct revision date.

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., removal of superfluous language) are being made throughout section 305. Authority and reference citations are amended.

§ 306. Annual Registration Fee.

Subdivision (a) adds platform charities to the list of organizations that are required to pay fees when registering or filing reports. Inclusion of platform charities as an organization that is required to pay fees is necessary so that the regulation is consistent with the new statute. (Gov. Code, §§ 12587, 12599.9, subd. (b).)

Subdivision (b) adds charitable fundraising platforms to the list of organizations that are not governed by this regulation. This is necessary to inform these organizations that they are not required to comply with section 306.

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., ensuring consistent capitalization of terms) are being made throughout section 306. Authority and reference citations are amended. The section is renumbered from existing section 311.

§ 307. Contents of Reports.

Changes without regulatory effect. The section is renumbered from existing section 306.

§ 308. Board or Trustee Review of Executive Compensation.

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., ensuring consistent citation formats) are being made throughout section 308. The section is renumbered from existing section 312.1.

§ 309. Public Inspection of Charitable Trust Records.

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., ensuring consistent capitalization of terms) are being made throughout section 309. The section is renumbered from existing section 310.

§ 310. Use of Annual Registration Fee.

A reference to Government Code section 12599.9 is added because subdivision (b)(2) of the statute requires the payment of a registration and renewal fee.

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., changing “this chapter” to “these regulations,” ensuring consistent capitalization of terms) are being made throughout section 310. Authority and reference citations are amended. The section is renumbered from existing section 312.

§ 311. Address of Record.

Changes without regulatory effect. Authority and reference citations are amended. The section is renumbered from existing section 313.

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

This section explains the good standing requirements to operate or solicit for charitable purposes in California. A charity is in good standing with the Attorney General when it is not prohibited from soliciting or operating in California by the Attorney General for failure to comply with applicable laws. “A person or entity subject to a cease and desist order is not in good standing” was added. Government Code section 12599.6, subdivision (f)(1), prohibits a person or entity

subject to the Act to operate in violation of an order of the Attorney General. Including this prohibition in the regulation is necessary to clarify that a person or entity subject to a cease and desist order cannot operate or solicit for charitable purposes in California.

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., ensuring consistent reference to the Act) are being made throughout section 312. Authority and reference citations are amended. The section is renumbered from existing section 999.9.4.

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

Subdivision (a) incorporates four forms by reference. The Department updated the Form CT-1CF, Form CT-2CF, Form CT-2TCF, and Form CT-2VCF with a revision date of January 2024. Non-substantive revisions (deleting phone number) were made. This subdivision must be amended to reflect the correct revision date.

Subdivision (b) incorporates Form CT-3CF by reference. The Department updated the Form CT-3CF with a revision date of January 2024. Non-substantive revisions (deleting phone number) were made. This subdivision must be amended to reflect the correct revision date.

Subdivision (c) incorporates two forms by reference. The Department updated the Form CT-5CF and Form CT-6CF with a revision date of January 2024. Non-substantive revisions (deleting phone number and fixing spacing) were made. This subdivision must be amended to reflect the correct revision date.

Subdivision (d) incorporates two forms by reference. The Department updated the Form CT-10CF and Form CT-11CF with a revision date of January 2024. Non-substantive revisions (deleting phone number) were made. This subdivision must be amended to reflect the correct revision date.

Subdivision (f) explains that the registration and reporting requirements apply to any unregistered person or entity for the time period that registration was required. This is necessary so that the Department will receive the information necessary to oversee charitable solicitations and fundraising professionals to ensure that funds received are properly managed and devoted to charitable programs, and to protect the public from fraud and deceptive or unfair solicitations.

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., removal of superfluous language, ensuring consistent citation formats) are being made throughout section 313 and incorporated forms. Authority and reference citations are amended. The section is renumbered from existing section 308.

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

This section defines 17 terms used or contemplated in the new statute that are undefined. The section is necessary to promote compliance from charitable fundraising platforms and platform charities, to protect the public from fraudulent, deceptive, or unfair solicitations, to safeguard from fraud or misuse donations that are for the benefit of charities and the people of California who receive assistance from them, and to promote transparency that will increase the public's confidence in online charitable giving.

Subdivision (a) defines “conspicuous” because, under the new statute (Gov. Code, § 12599.9, subd. (e)) and section 317 of these regulations, certain charitable fundraising platforms and platform charities are required to make conspicuous disclosures or disclosures through a conspicuous hyperlink when they perform, permit, or enable acts of solicitation. If a required disclosure is not conspicuous, then a charitable fundraising platform or platform charity is in violation of the law, and donors and other persons who use the platform to make a donation or support a recipient charitable organization may not see or hear the material information required to be disclosed. The “conspicuous” definition also addresses the placement and format of disclosures so that they can be seen and read even when viewed on different sized screens and monitors. For audio disclosures, the information disclosed shall use a volume and cadence to be easily understood and heard. The definition also uses language (e.g., “clearly calls attention, “volume and cadence,” and “difficult to miss”) consistent with other laws and Federal Trade Commission guidance, proposed regulations, orders, and judgments concerning conspicuous disclosures (e.g., Bus. & Prof. Code, § 17601, subd. (c); proposed 16 C.F.R. §§ 255.0(f) and 463.2(d); Final J. at 6, 7, 19, *Fed'l Trade Comm'n v. Cardiff*, No. 5:18-cv-02104 (C.D. Cal. Mar. 1, 2022); Final J. at 5, 6, *Fed'l Trade Comm'n v. Roca Labs, Inc.*, No. 8:15-cv-02231 (M.D. Fla. Jan. 4, 2019)), which promotes uniformity and efficiencies in complying with disclosure prominence for charitable fundraising platforms engaging in solicitations involving other jurisdictions or consumer protection laws. From a technical and design perspective, charitable fundraising platforms or platform charities can feasibly implement the requirements because they are consistent with current technology and web design usability principles.

Subdivisions (b) and (d) define “digital processing fee” and “fee,” which are referenced in the new statute and proposed annual reports (Form PL-4) to be filed by charitable fundraising platforms and platform charities. The definitions are necessary to clarify what type of fees are required and not required to be disclosed, as the new statute requires disclosures of all fees, except for digital payment processing fees. (Gov. Code, § 12599.9, subd. (e)(4).) The definitions also clarify what types of fees are to be specified in proposed annual reports (Form PL-4). When required fees are not disclosed to the public or specified in publicly available reports, donors who make donations through charitable fundraising platforms are more likely to be deceived, confused, or misled on how much of their donations are sent to their selected recipient charitable organizations. The “fee” definition accurately and reasonably covers the types of fees deducted from donations based on the solicitations performed, permitted, or enabled on charitable fundraising platforms. The term “fee” does not include tips or other amounts requested and added to a donation or recommended donation, or amounts paid by an employer to provide a charitable fundraising platform to employees that use the platform to make donations or recommended donations. This is necessary because fees are commonly understood to decrease the donation amount; thus any additional moneys added to a donation, which do not decrease the donation amount, should not be captured as a “fee.” The “digital payment processing fee” definition also accurately and reasonably clarifies that these are fees from a payment processor, credit card network, or a bank to accept and process payments of donations made online via credit card, debit card, bank accounts, or cryptocurrency.

Subdivision (c) defines “donated funds,” which is referenced in the new statute, proposed regulations, and proposed forms (Forms PL-3 and PL-4) to be filed by charitable fundraising platforms and platform charities. This term means a donation or grant of a recommended donation, such as when a charitable fundraising platform or platform charity sends a donation or

grant of a recommended donation to a recipient charitable organization or alternate charitable organization. This definition is necessary to clarify what is meant by the term, to streamline references to “a donation or grant of a recommended donation” in the regulations and forms, and to make the regulations and forms easier to read.

Subdivision (e) defines the “May Not Operate or Solicit for Charitable Purposes List,” which is the name of the electronic list to be used by charitable fundraising platforms and platform charities to determine good standing of an organization with the Attorney General pursuant to section 312 and as described in 316 of these regulations. This definition is necessary to provide a name for the list, which makes the regulations easier to read.

Subdivision (f) defines “misuse,” which is referenced in the new statute, proposed regulations, and proposed annual reports (Form PL-4) to be filed by charitable fundraising platforms and platform charities. This definition is necessary to better describe activity prohibited by Government Code section 12599.9, subdivision (h), and to make the regulations and forms easier to read.

Subdivisions (g), (h), and (i) define “partner,” “partnering platform,” and “partnership,” which are referenced in the new statute, proposed regulations, and proposed forms (PL-1 to PL-4) to be filed by charitable fundraising platforms and platform charities. The definitions are necessary to better describe the activities resulting in a partnership (in this case, a contractual relationship entered into to facilitate solicitations on a charitable fundraising platform) and the names of the respective parties (charitable fundraising platforms or platform charities) in the partnership. The definitions are also necessary to make the regulations and forms easier to read, including when a partnership is between two charitable fundraising platforms, and one charitable fundraising platform acts similarly to a platform charity when it meets the definition of both a platform charity and charitable fundraising platform, but is deemed only a charitable fundraising platform pursuant to Government Code section 12599.9, subdivision (b)(1).

Subdivision (j) defines “platform,” when the term is used by itself as referenced in the new statute and proposed forms (Forms PL-1, PL-2, and PL-4) to be filed by charitable fundraising platforms and platform charities. This definition is necessary to better describe the types of platforms (e.g., websites, mobile device applications) that would cause a person or entity to be covered by the definition of a charitable fundraising platform in Government Code section 12599.9, subdivision (a)(1) (assuming other parts of this definition are met), and to make the forms easier to read.

Subdivision (k) defines “platform user,” which is referenced in other definitions, proposed regulations, and proposed forms (PL-1 to PL-4) to be filed by charitable fundraising platforms and platform charities. This definition is necessary to better describe the different types of capacities in which persons use a charitable fundraising platform (e.g., donors, purchasers), and to make the other definitions, regulations, and forms easier to read.

Subdivision (l) defines the “Registry Search Tool,” which is the name of the online search tool that queries the Registry of Charitable Trusts database of organizations to determine good standing with the Attorney General pursuant to section 312 and as described in section 316 of

these regulations. This definition is necessary to provide a name for the search tool, which makes the regulations easier to read.

Subdivisions (m) to (q) define “solicitation type A,” “solicitation type B,” “solicitation type C,” “solicitation type D,” and “solicitation type E” based on the acts of solicitation performed, permitted, or enabled, as specified in the new statute Government Code section 12599.9, subdivision (a)(1)(A) to (E). The terms are named based on the corresponding subparagraphs in the statute that describes each act of solicitation, which provides a neutral and effective way to describe the acts of solicitation. A charitable fundraising platform is subject to different requirements in the new statute based on the acts of solicitation performed, permitted, or enabled. (E.g., Gov. Code, § 12599.9, subds. (e), (f)(2), & (g).) Thus, although all charitable fundraising platforms must provide annual reports under Government Code section 12599.9, subdivision (c) (Form PL-4), the information provided in the reports varies depending on the acts of solicitations (as discussed below in section 315). To draft clear and concise questions in proposed forms (PL-1, PL-2, and PL-4) that charitable fundraising platforms can answer accurately, it is necessary to establish terms based on the acts of solicitation that charitable fundraising platforms perform, permit, or enable. Without these terms, lengthy legal citations would be necessary whenever referring to charitable fundraising platforms based on their solicitations, which would be confusing to registrants and members of the public that review the publicly accessible forms. The potential for confusion further increases when charitable fundraising platforms engage in more than one act of solicitation. The use of these terms in the regulations also makes the regulations easier to read. The definitions for solicitation types A to E also provide examples of each solicitation type based on terminology used by charitable fundraising platforms today (e.g., solicitation type A references round up donations, solicitation type B references crowdfunding campaigns, solicitation types C and D reference charitable sales promotions and cause marketing campaigns, and solicitation type E references private-labeled or customizable platforms and a software as a service license agreement). This is necessary to better describe the different kinds of solicitations captured by each definition, particularly since the requirements under the new statute vary by the act of solicitation engaged in as discussed above.

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

This section establishes the registration and filing requirements for charitable fundraising platforms and platform charities. It is necessary to promote compliance from charitable fundraising platforms and platform charities, to protect the public from fraudulent, deceptive, or unfair solicitations, to safeguard from fraud or misuse donations that are for the benefit of charities and the people of California who receive assistance from them, and to promote transparency that will increase the public’s confidence in online charitable giving.

Subdivision (a) requires charitable fundraising platforms to register with the Attorney General’s Registry of Charitable Trusts by filing a new form and paying an initial registration fee. The form incorporated into this subdivision is Form PL-1: Initial Registration for Charitable Fundraising Platforms. Form PL-1 is necessary so that applicants provide information the Department needs to determine compliance with the Act, new statutes, and this regulation, to determine whether registration should be granted, to properly oversee charitable fundraising platforms, to supervise solicitations occurring on the applicant’s charitable fundraising platform (which involves protecting the public and charities from fraud and deceptive or unfair

solicitations), and to promote transparency that will increase the public's confidence in online charitable giving (as Form PL-1 and other forms are made publicly available through the Registry Search Tool pursuant to Government Code, sections 12584, 12587.1, subdivision (c), and 12590).

For example, Form PL-1 question A1 asks whether applicants currently engage in solicitations, and if so when this began. This question helps the Department determine whether applicants have complied with Government Code section 12599.9, subdivision (b)(1), which requires registration before engaging in solicitations. Question A2 asks whether applicants engage in certain solicitations (e.g., via telephone or direct mail) that would cause applicants to be deemed commercial fundraisers for charitable purposes instead of charitable fundraising platforms. (Gov. Code, §§ 12599, subd. (a)(5), 12599.9, subd. (a)(2)(D).) If an applicant engages in the solicitations listed in Question A2, they are a commercial fundraiser for charitable purposes, and thus required to register using Form CT-1CF, not Form PL-1. Questions B1 to B12 request identifying and contact information so that the Department knows who is applying and how to contact applicants. Questions C1 to C3, request the legal form of the applicant (e.g., corporation or limited liability company), the jurisdiction in which the applicant legally formed, and the applicant's jurisdiction entity identify number (a unique identifier for that jurisdiction). This also reflects identifying information that the Department uses to determine who is applying, particularly since different applicants may use a name that is the same or similar, as permitted by different jurisdictions. Pertinent legal documents filed with the appropriate jurisdiction, as well as good standing status with the jurisdiction, can also be researched by the Department as part of its supervisory role over applicants and registrants. Question C4 requests applicants to identify the type of solicitations they currently engage in or anticipate engaging in (e.g., solicitation types A or B as defined by section 314 of these regulations). When supervising solicitations, this information helps the Department understand what statutory and regulatory requirements applicants would need to comply with, which vary depending on the solicitation type. For example, Government Code, section 12599.9, subdivision (g), and section 319 of these regulations only apply to solicitation types A or B. Question C5 asks about the types of platforms used to perform, permit, or enable solicitations. This information helps the Department learn where the solicitations can be found when supervising those solicitations. Question C6 asks whether applicants have been the subject of government enforcement actions involving charitable fundraising or the use of charitable funds, and to provide information about those actions when applicable. When answered yes, this information assists the Department in determining whether registration should be granted, as misuse of charitable funds is a basis for refusing registration per section 339 of these regulations. Question C7 requests applicants to identify their partners (e.g., platform charity) that assist the applicants in performing, permitting, or enabling solicitations. This is necessary because the new statute requires notification of partnerships between platform charities and charitable fundraising platforms, which may occur through initial registration of the charitable fundraising platform. (Gov. Code, § 12599.9, subd. (b)(3).) The partnership information also helps the Department in supervising solicitations, which includes understanding who is assisting with the solicitations, and when that assistance began. Question C8 asks applicants whether they were retained by other charitable fundraising platforms to facilitate solicitations on their platforms, and to identify those charitable fundraising platforms when applicable. This is necessary because charitable fundraising platforms that answer yes to this question act like platform charities (e.g., Government Code, section 12599.9, subdivision (b)(1), requires applicants that meet the definition of a charitable fundraising

platform and platform charity to register as a charitable fundraising platform), and thus they should provide similar partnership information requested from platform charities when platform charities file Form PL-3 (discussed below). This information further helps the Department in supervising solicitations on the other charitable fundraising platforms that the applicant facilitates, and informs the Department on whether those charitable fundraising platforms are registered or not (which assists the Department in enforcing the new statutes). Questions C4 to C8 promote transparency to the public and the answers to the questions promote informed giving by the public.

Form PL-1 must be signed under penalty of perjury. The necessity for a signature under penalty of perjury is to impress upon applicants the seriousness and importance of signing the form, to attest to the accuracy and completeness of the information submitted, and to deter misrepresentations and submission of false information. The citations for definitions for key terms are also provided, which makes the form easier to understand, and ensures correct information will be disclosed. Form PL-1 also includes a privacy notice that conforms to Civil Code section 1798.17.

Form PL-1 and its registration fee must be filed and paid electronically on the Department's website. More specifically, Form PL-1 would be completed as a fillable form via an online filing service to be made available on the Department's website. Electronic filing through the online filing service will promote efficiencies in the completing, filing and processing of forms (e.g., the Department can leverage validation rules for completing forms correctly), will automate various administrative tasks (e.g., the updating and handling of address changes, the sending of electronic notifications to registrants), and will improve reporting for the Department that assists in supervising registrants (e.g., reporting about particular questions in forms). It also saves paper.

The Department proposes a \$625 initial registration fee. This fee is necessary to reimburse the Department's costs of supervising charitable fundraising platforms. The Department has noticed an exponential increase in charitable fundraising platform-based solicitations over the last seven years, and more staff and resources are needed to ensure charitable fundraising platforms are registered, filing annual reports, and complying with other requirements of the new statutes and regulations. For instance, beginning early 2024, the Department will require at least one additional Staff Services Analyst to intake and analyze form submissions, and at least one additional Deputy Attorney General, Investigative Auditor, and Legal Secretary to handle law enforcement referrals related to the new statutes. If an estimated 1,000 charitable fundraising platforms initially register beginning in early 2024, \$625,000 would be available to fund these expected costs. The estimated revenue will not exceed \$659,000, the estimated annual ongoing costs to implement the new statutes. Charitable fundraising platforms typically earn revenue unrelated to the charitable solicitations occurring on their platforms (e.g., through the sale of goods and services). When this is not the case, charitable fundraising platforms generate revenue (e.g., from fees) from solicitations occurring on their platforms. Given this, the initial registration fee is a small percentage of a charitable fundraising platform's gross revenue.

Form PL-1 must be filed before soliciting, permitting, or otherwise enabling acts of solicitation as required by the new statute. (Gov. Code, § 12599.9, subd. (b)(1).) The form may be filed at any time during the year. This allows charitable fundraising platforms to obtain registration for the remainder of the year in which the form is filed. (Gov. Code, § 12599.9, subd. (b)(2)). If

registration is granted, each charitable fundraising platform is assigned a registration number. This is necessary so that the Department has a unique identifier for supervising each registrant.

Subdivision (b) requires charitable fundraising platforms to renew their registration with the Attorney General's Registry of Charitable Trusts by filing a new form and paying a registration renewal fee. The form incorporated into this subdivision is Form PL-2: Registration Renewal for Charitable Fundraising Platforms. Form PL-2 is substantially similar to Form PL-1. Form PL-2 is necessary so that registrants provide information the Department needs to determine compliance with the Act, the new statutes, and this regulation, to determine whether registration should be renewed, to properly oversee charitable fundraising platforms, to supervise solicitations occurring on the registrant's charitable fundraising platform (which involves protecting the public and charities from fraud and deceptive or unfair solicitations), and to promote transparency that will increase the public's confidence in online charitable giving.

For example, Form PL-2 question A1 asks what calendar year registration renewal is for. This question is necessary so that the Department knows what year to renew registration for. Questions A2, B1 to B13, and C1 to C6 are the same questions as asked in Form PL-1 (although the time period is different and the questions involve registrants as opposed to applicants), and are necessary for the same reasons. Similarly, questions D1 and D2 are the same as those asked in Form PL-1 questions C7 and C8, and are necessary for the same reasons. However, questions D1 and D2 ask for partnership information in the prior year, versus the upcoming year. The prior year partnership information is used to determine whether the registrant's annual report for the prior year, Form PL-4 discussed below, may be filed by the registrant's partner, on the registrant's behalf. If the answers to D1 and D2 indicate the registrant may be eligible to have its Form PL-4 for the prior year filed by its partner, question D3 asks whether the registrant authorizes its partner to do so, and to specify the partner's registration number. Questions D1 to D3 are necessary to allow a charitable fundraising platform's annual report to be filed by its partner under certain circumstances, as permitted by the new statute (Gov. Code, § 12599.10, subd. (a)(2)(C)) and subdivision (f), discussed below.

Like Form PL-1, Form PL-2 must be signed under penalty of perjury, contains definitions, includes a privacy notice, would be filed as a fillable form through the Department's online filing service, and is subject to a \$625 renewal registration fee. The requirements for the online filing service and renewal registration fee are necessary for the same reasons discussed for Form PL-1. Furthermore, the renewal registration fee covers the Department's costs in handling Form PL-4 filings, discussed below, as no additional fee is associated with Form PL-4.

Form PL-2 would be filed by January 15 for each year in which the charitable fundraising platforms seeks to renew registration. This is a reasonable date to renew registration because it provides a sufficient amount of time to file the form for the calendar year for which a registration would be renewed.

Subdivision (c) requires platform charities to register as a trustee and file annual reports as set forth in sections 300 to 307 of the regulations. This is necessary because platform charities are subject to the same registration and reporting requirements as all other charities, as required by the Act and new statute. (Gov. Code, §§ 12582, 12585, 12586, 12599.9, subd. (b)(3).)

Subdivision (d) requires platform charities to notify the Attorney General's Registry of Charitable Trusts, by filing a new form, when it enters into a partnership with a charitable

fundraising platform, as required by the new statute. (Gov. Code, § 12599.9, subd. (b)(3).) The form incorporated into this subdivision is Form PL-3: Notification from Platform Charities. This form is necessary so that registrants provide information the Department needs to determine compliance with the new statutes and this regulation, to properly oversee platform charities (including learning about partnering platforms used by a platform charity to facilitate acts of solicitation), to supervise solicitations that platform charities facilitate, to determine a platform charity's responsibilities under the partnership, and to promote transparency that will increase the public's confidence in online charitable giving.

For example, Form PL-3 question A1 requests registrants to confirm whether they are a platform charity at the time of filing, which confirms their role in facilitating solicitations on charitable fundraising platforms (which can change over time), and ensures only platform charities file the form. Questions A2 to A13 request identifying and contact information so that the Attorney General knows who is filing the form and how to contact registrants. Question B1 asks platform charities to provide information about each charitable fundraising platform with which the platform charity entered into a partnership, including identifying information about partnering platforms (such as a registration number if registered), whether the partnership was entered into in the last 30 days, and the date the partnership began. This information assists the Department in overseeing solicitations on the partnering platforms (including those that are unregistered), to protect the public and charities from fraud and deceptive or unfair solicitations, and to confirm compliance with subdivision (d) (which requires notification within 30 days of entering into a partnership). Obtaining information on all partnerships is necessary because partnerships can be terminated any time based on the needs of the partners, and information provided about a prior partnership may no longer be accurate. Providing information on a partnering platform's registration number also informs the Department on whether it is properly registered as a charitable fundraising platform, which assists the Department in enforcing the new statutes. Question B2 requests information on the platform charities' responsibilities pursuant to each partnership entered into in the last 30 days. Checkboxes can be selected for possible duties (e.g., obtaining consent from recipient charitable organizations, receiving donations, sending donated funds, and providing accountings to recipient charitable organizations). This information informs the Department as it supervises solicitations on the partnering platforms and the handling of donations, which includes understanding the duties performed by platform charities. Providing this summary information is also more efficient than the alternative, which is for the Department to request and review partnership agreements between platform charities and charitable fundraising platforms. Questions B1 and B2 further promote transparency, as their answers inform the public on the platform charity's role and how the donation process works on the partnering platforms when deciding where to donate to and support charitable organizations online.

Like Form PL-1, Form PL-3 must be signed under penalty of perjury, contains definitions, includes a privacy notice, and would be completed as a fillable form via an online filing service to be made available on the Department's website. These requirements are necessary for the same reasons discussed for Form PL-1.

Form PL-3 is required to be filed no later than 30 days after entering into a partnership with a charitable fundraising platform, a reasonable amount of time to notify the Registry of Charitable Trusts of the partnership. However, the form is not required to be filed when applicable partnership information was disclosed in a prior filing.

Subdivisions (e) through (g) contain the annual report filing requirements for charitable fundraising platforms and platform charities. The form for annual reporting is Form PL-4: Annual Fundraising Report for Charitable Fundraising Platforms or Platform Charities, incorporated by reference into subdivision (e). This form is necessary so that registrants provide information the Department needs to determine compliance with the Act, new statutes, and new sections of the regulations, to determine whether registration should be renewed, suspended, or revoked, to determine whether cease and desist orders, penalties, or enforcement is necessary, to properly oversee charitable fundraising platforms and platform charities, to supervise solicitations occurring on charitable fundraising platforms and solicitations facilitated by platform charities (which involves protecting the public and charities from fraud and deceptive or unfair solicitations), and to promote transparency that will increase the public's confidence in online charitable giving. The form also implements Government Code section 12599.9, subdivision (c)(1), which requires the form to enable the Department to ascertain whether charitable funds have been properly solicited, received, held, controlled, or distributed in compliance with the Act, including through providing information on the number of donations, the amounts raised, the length of time for distributing donated funds, the fees charged by or through a charitable fundraising platform or platform charity, and information on charitable organizations that were sent or not sent donated funds. Importantly, Form PL-4 provides registrants the ability to report aggregate and other relevant information consistent with their record keeping practices, rather than submitting reports for each charitable organization individually, or submitting reports that did not adequately cover their solicitation practices. Before the new statute was enacted, platforms typically met the definition for another registration category, such as a commercial fundraiser for charitable purposes, commercial coventurer, or trustee, and were required to submit reports for each charitable organization or reports that provided information on their solicitation practices. (See, e.g., Gov. Code, §§ 12582, 12586, 12599, 12599.2.) Form PL-4 streamlines their reporting obligations and saves time and resources when providing requested information, compared to the status quo.

Part A of Form PL-4 contains three questions. The first question requests the calendar year for which the form is being filed. This question is necessary so that the Department knows what year applies to the form (typically, the prior year the form was filed in), and allows for submissions for prior years that are not timely filed. The second question asks who the registrant is filing for, if the registrant is an authorized partner that may file Form PL-4 for another registrant pursuant to Government Code, section 12599.10, subdivision (a)(2)(C), and subdivision (f) discussed below. The third question asks, if a Form PL-4 has already been filed for a year, whether the registrant wants to amend that filing. This question allows for amended filings, which registrants should do when new information can be provided that was not available previously, or to correct errors or incomplete answers (which is important since the form is filed under penalty of perjury).

Form PL-4 questions B1 and B2 ask whether registrants were a charitable fundraising platform or platform charity in the reporting year, and if a charitable fundraising platform, whether they were a partner to other charitable fundraising platforms. These questions help determine whether registrants should answer the form's Part C and Part D questions. Questions B3 to B15 request identifying and contact information so that the Department knows who the form is for and how to contact registrants.

Form PL-4's Part C is for charitable fundraising platforms and provides answers for the reporting year (typically the prior year). Question C1 and C2, regarding solicitation types and platforms, are the same as questions C4 and C5 in Form PL-1 and PL-2, and are necessary for the same reasons. Form PL-4 question C3 asks who donations were made to when platform user donors made donations, and question C4 asks who received and held donations based on answers selected in response to question C3. These questions help the Department understand how the donation process works for a registrant, and who receives, controls, or holds donations made. Knowing who receive receives, controls, or holds donations assists the Department in supervising solicitations and protecting the public and charities from fraud. Question C5 asks for fee information, such as who charged each fee, how it was calculated, and the fee's purpose. This information is required by the new statute (Government Code, section 12599.9, subdivision (c)(1)), and assists the Department in supervising solicitations and protecting the public and charities from fraud and deceptive or unfair solicitations. Questions C6 to C8 ask whether the good standing status of charitable organizations with the Internal Revenue Service, Franchise Tax Board, and the Attorney General was determined by the registrant, with the questions varying based on the solicitation type. These questions assist the Department in supervising solicitations, and determining compliance with the good standing requirements in the new statutes and regulations. Questions C9 to C12 are questions specific to solicitation types C or D, regarding the purchases or other activity performed by platform users that caused donations to be made, whether platform users could find out that donated funds were sent based on their purchases or other activity, the length of time it took to send donated funds, whether consent was obtained from recipient charitable organizations for type D solicitations, and disclosure information (including providing copies of disclosures). These questions assist the Department in supervising solicitations and protecting the public and charities from fraud, and deceptive or unfair solicitations, and in determining compliance with the disclosure, consent, timeframe, and platform user transparency requirements in the new statutes and regulations. The questions on length of time are also required by the new statute (Government Code, section 12599.9, subdivision (c)(1)). The disclosure information further assists the Department in determining whether registration should be suspended or revoked pursuant to renumbered section 339 of these regulations. Questions C13 and C14 are questions specific to solicitation types A or B, regarding disclosures, tax receipts, and whether donors could find out if their donations were sent. These questions also assist the Department in supervising solicitations and protecting the public and charities from fraud, and deceptive or unfair solicitations, and in determining compliance with the disclosure, tax receipt, and platform user transparency requirements in the new statutes and regulations. Questions C15 to C20 request information on charitable organizations that were sent or not sent donations depending on to whom donations were made, through providing Attachments 1 to 3 as described in the questions. Information requested in the attachments include identifying information about charitable organizations, the total number and dollar amount of donations, the total amount of fees deducted from donations, the total amount of donations sent, whether donations were sent within the maximum number of days required, the total amount of donations not sent to a charitable organization if they were deemed ineligible, and the total amount of donations sent to alternate charitable organizations. This information provided in the attachments is then totaled for all charitable organizations in response to questions C16, C18, and C20. These questions are required by the new statute (Government Code, section 12599.9, subdivision (c)(1)), and assist the Department in supervising solicitations and protecting the public and charities from fraud, and deceptive or unfair solicitations, and in

determining compliance with the timeframe and alternate requirements in the new statutes and regulations. Question C21 requests information on charitable organizations that were deemed ineligible to be sent donations and the donated funds that were not sent to alternate organizations. This question assists the Department in protecting the public and charities from fraud, and deceptive or unfair solicitations, and in determining compliance with the timeframe and alternate selection requirements in the new statutes and regulations. The question may also indicate possible misuse of funds, and if so, this information assists the Department in determining whether registration should be suspended or revoked pursuant to renumbered section 339 of these regulations. Question C22 asks information on the diversion or misuse of funds. This question assists the Department in protecting the public and charities from fraud and deceptive or unfair solicitations, in determining compliance with the prohibition of misusing funds in the new statutes, and whether registration should be suspended or revoked. Moreover, questions C6 to C8, C10 to 17, C21 and C22, for example, assist the Department in determining whether cease and desist orders, penalties, or other enforcement actions may be warranted pursuant to Government Code section 12591.1 and renumbered section 337 and 338 of these regulations. All questions in Part C further promote transparency, as their answers inform the public when deciding where to donate to and support charitable organizations online.

Form PL-4's Part D is for platform charities and charitable fundraising platforms that act similarly to platform charities because they were retained by another charitable fundraising platform to facilitate solicitations. This would include providing information from partnering platforms that have not registered, and thus there is no corresponding Form PL-4 from them. Questions D1 and D2, which ask for information and duties regarding partnering platforms pursuant to each partnership, are substantially similar to Form PL-3 questions B1 and B2, and are necessary for the same reasons. For instance, requesting this information on each partnership is necessary because partnerships can be terminated any time based on the needs of the partners, and information previously provided about a partnership may no longer be accurate. Form PL-4 question D3 is substantially similar to question C5, regarding fee information to be provided for each of the registrant's partnering platforms. Question D3 is necessary for the same reason as question C5. Question D4 asks whether the registrant was in good standing with the Internal Revenue Service, Franchise Tax Board, and the Attorney General. This question assists the Department in determining whether the registrant has complied with Government Code section 12599.9, subdivision (d)(1), or renumbered section 312 of these regulations, which requires the registrant to be in good standing. Questions D5 and D6 are substantially similar to questions C17 and C18, regarding information about charitable organizations and donations sent, with the difference being that the questions apply to all of the registrant's partnering platforms, and that Attachment 4 would be used to provide the requested information. Questions D5 and D6 are necessary for the same reasons as questions C17 and C18. Questions D7 and D8 are substantially similar to questions C21 and C22 pertaining to possible misuse of funds with the difference being that the questions apply to all of the registrant's partnering platforms. Questions D7 and D8 are necessary for the same reasons as questions C21 and C22.

Like Form PL-1, Form PL-4 must be signed under penalty of perjury, contains definitions, includes a privacy notice, and would be filed as a fillable form through the Department's online filing service. These requirements are necessary for the same reasons discussed for Form PL-1. In addition to providing citations for definitions, Form PL-4 defines "donor," which is not defined in the statute or section 314 of these regulations. This is because the definition for a

donor varies based on the solicitation type and certain questions are specific to certain solicitation types. Meanwhile, the new statutes, regulations, or other forms do not make these distinctions. Form PL-4 also defines “donation,” a term that is heavily used in Form PL-4, and not defined in the statute or regulations. It is also not used, or used much less, in other forms. “Donation” is defined as a donation or recommended donation made by a donor. Defining the term is necessary to streamline the form’s references to “a donation or recommended donation made by a donor,” and to make the form easier to read.

Form PL-4 is required to be filed by July 15 of the current calendar year to report on activities that occurred during the prior calendar year. The July 15 deadline is an adequate amount of time to send and report on donations even if a donation was made at the end of the prior year. For example, a donation that was made on December 31 on a charitable fundraising platform for an ineligible recipient charitable organization, and thus sent to an alternate charitable organization, could be accounted for when submitting aggregate data by July 15. Providing a Form PL-4 filing deadline that occurs after the Form PL-2 is filed also allows partners of charitable fundraising platforms to file a Form PL-4 on a platform’s behalf. (Gov. Code, § 12599.10, subd. (a)(2)(C).)

Subdivision (f) specifies the conditions when a charitable fundraising platform’s Form PL-4 may be filed by a partner, on the charitable fundraising platform’s behalf. These conditions are: the charitable fundraising platform retained a partner; the charitable fundraising platform authorized one of its partners to file its Form PL-4 for the prior year for which a Form PL-2 was completed and timely filed; the charitable fundraising platform examines and signs the Form PL-4 before it is filed by the partner; the charitable fundraising platform did not act as a partner for other charitable fundraising platforms; and the partner is registered with the Attorney General. These requirements are necessary to ensure a charitable fundraising platform remains responsible and accountable for its Form PL-4, even though it is filed by another, which is the case for other similar forms (e.g., tax forms submitted to the Internal Revenue Service or the Franchise Tax Board by a tax preparer on behalf of a client). The requirements also ensure the partner is accountable to the Attorney General and remains responsible for its own PL-4 filing, which would include reporting on solicitations facilitated on different partnering platforms. Similarly, a charitable fundraising platform that serves as a partner to other charitable fundraising platform should be responsible for filing its own PL-4, which would contain information on different partnering platforms. Moreover, the requirements ensure that only one Form PL-4 is submitted for each registrant, as the Department and the public should be able to review one filing to understand a registrant’s Form PL-4 submission. One filing also minimizes the possibility of duplicative and inconsistent information being submitted and streamlines the filing of amended filings. Providing authority in a timely filed Form PL-2 also informs the Department about who may file the charitable fundraising platform’s Form PL-4 so that the Department can adequately plan for and accept that filing through the Department’s online filing service, and provide adequate time to determine whether the charitable fundraising platform meets the criteria specified in subdivision (f). A partner filing Form PL-4 for a charitable fundraising platform also needs to be registered with the Attorney General in order to have an account with and submit filings through the Attorney General’s online filing service.

Form PL-4, questions C5 and D3, require the registrant to provide information on fees. When the registrant believes this fee information is confidential or trade secret, subdivision (g) allows a registrant to designate it as confidential or trade secret. If so designated, the fee information would be submitted separately from other information in the filing with an explanation as to why

it is confidential or trade secret. The Attorney General shall consider whether the public interest in maintaining the confidentiality of the fee information clearly outweighs the public interest in disclosure. If the Attorney General finds that the fee information is not confidential or trade secret, the Attorney General would provide written notification of this finding, and instruct the charitable fundraising platform or platform charity to amend Form PL-4 no later than 45 days after such notice is sent. If the charitable fundraising platform or platform charity fails to amend in accordance with the notice, the fee information that is not confidential or trade secret would be made available for public inspection. This process allows the fee information to remain confidential while its confidential status is pending review, and allows public access to information incorrectly designated confidential or trade secret after the 45-day notice period. Public access is required by Government Code section 12587 and renumbered section 309 of the regulations, and promotes transparency and accountability to the public, which in turn increases donor and consumer confidence in online charitable giving.

Subdivision (h) explains that the registration and filing requirements apply to any unregistered person or entity for the time period that registration was required. This is necessary so that the Department receives the information necessary to properly supervise charitable fundraising platforms and platform charities, to protect the public and charities from deceptive or unfair charitable solicitations occurring through charitable fundraising platforms, and to safeguard from fraud or misuse donations that are for the benefit of charities and the people of California who receive assistance from them.

§ 316. Good Standing of Charitable Organizations.

This section explains the procedures for determining good standing of charitable organizations. This section is necessary to promote compliance from charitable fundraising platforms and platform charities, and to protect the public from fraudulent, deceptive, or unfair solicitations. For example, when a charitable organization is not in good standing because it is prohibited from soliciting or operating in California, a charitable fundraising platform or platform charity should not be able to circumvent that prohibition by facilitating solicitations or funding on that charitable organization's behalf.

The new statute prohibits a charitable fundraising platform or platform charity from performing, permitting, or enabling solicitations for, or receiving, controlling, or distributing funds from donations for a charitable organization that is not in good standing with the Internal Revenue Service, the Franchise Tax Board, and the Attorney General. (Gov. Code, § 12599.9, subds. (a)(3), (d)(2).) Subdivision (a) incorporates this good standing requirement so that all requirements are in one place. Further, subdivision (a) allows a charitable fundraising platform or platform charity to hold or control funds from donations for a charitable organization not in good standing with the Attorney General for the length of time it takes to determine an alternate charitable organization to be sent the funds pursuant to section 320 of these regulations. This is necessary to allow a charitable fundraising platform or platform charity to hold the funds while determining an alternate consistent with the statute.

The May Not Operate or Solicit for Charitable Purposes List (“MNOS List”) and the Registry Search Tool, as defined in section 314 of these regulations and referenced in this section, are available to be used to determine whether a charitable organization is in good standing with the Attorney General. It is feasible for charitable fundraising platforms and platform charities to use the MNOS List and Registry Search Tool, as they do with similar lists and tools provided by

other agencies, such as the Internal Revenue Service and the Office of Foreign Assets Control, for vetting or screening charitable organizations for solicitation purposes.

Subdivision (b) explains that when a charitable organization is *not* on the most recent MNOS List, but a search through the Registry Search Tool indicates the charitable organization is not in good standing, a charitable fundraising platform or platform charity may nonetheless solicit, permit, or otherwise enable solicitations for, or receive, hold, control, or send funds from donations to the charitable organization. This situation will only occur for a short period of time until the MNOS List is next made available, but this is necessary to conform to Government Code section 12599.9, subdivision (d)(2).

Subdivision (c) explains that when a charitable organization *is* on the MNOS List, the charitable organization is not in good standing with the Attorney General for purposes of Government Code section 12599.9, subdivision (d)(2). Nonetheless, subdivision (c)(1) and (2) provides two grace periods for a charitable fundraising platform or platform charity to determine good standing for charitable organizations based on when the MNOS List is made available. More specifically, subdivision (c)(1) states that if a charitable organization is on the MNOS List available on the first Wednesday of the current month, but was not on the MNOS List available on the third Wednesday of the prior month, a charitable fundraising platform or platform charity may solicit, permit, or otherwise enable solicitations for, or receive, hold, control, or send funds from donations to the charitable organization for a five business day grace period beginning on the first Wednesday of the current month. Similarly, subdivision (c)(2) states that if a charitable organization is on the MNOS List available on the third Wednesday of the current month, but was not on the MNOS List available on the first Wednesday of the current month, a charitable fundraising platform or platform charity may solicit, permit, or otherwise enable solicitations for, or receive, hold, control, or send funds from donations to the charitable organization for a five business day grace period beginning on the third Wednesday of the current month. This is necessary to provide enough time to determine good standing for charitable organizations that appear for the first time on the most current MNOS List, but were not on the MNOS List available immediately prior to the current list. Five business days is a reasonable amount of time, and avoids a grace period that ends close to or overlaps with the date when a new MNOS List is available, including when holidays are accounted for. It would be confusing to have a grace period in effect for an older version of the MNOS List, when a newer version of the list is or is almost available (and which would be subject to another grace period).

When the MNOS List is made available twice in a month, versus monthly, its data on charitable organizations is more current. This benefits charitable fundraising platforms and platform charities that use only the MNOS List to determine good standing, which the Department understands many charitable fundraising platforms or platform charities do today. It also benefits charitable organizations that are newly removed from the MNOS List, as charitable fundraising platforms or platform charities can quickly determine whether to reinstate solicitations for, or send donated funds to, those charitable organizations. And for charitable organizations that are newly added to the MNOS List, having more current data benefits the public as they can be protected from fraudulent, deceptive, or unfair solicitations on a more expeditious basis.

Subdivision (d) explains that when the Registry Search Tool indicates a charitable organization is in good standing, a charitable fundraising platform or platform charity may solicit, permit, or otherwise enable solicitations for, or receive, hold, control, or send funds from donations to the

charitable organization. The Registry Search Tool reflects current data. Therefore, when the Registry Search Tool indicates an organization is in good standing, that organization is able to receive donations.

§ 317. Solicitation Information for Charitable Fundraising Platforms and Platform Charities.

The new statute requires conspicuous disclosures from charitable fundraising platforms or platform charities in solicitations, for solicitation types A to C, to prevent a likelihood of deception, confusion, or misunderstanding. (Gov. Code, § 12599.9, subds. (e), (f)(2)(B).) The Act also prohibits solicitations from using any unfair or deceptive acts, or engaging in fraudulent conduct that creates a likelihood of confusion or misunderstanding. (Gov. Code, § 12599.6, subd. (f)(2).) Section 317 clarifies these statutory requirements by requiring certain information to be contained or disclosed in solicitations on charitable fundraising platforms. This section is necessary to promote compliance from charitable fundraising platforms and platform charities, to protect the public and charities from fraudulent, deceptive, or unfair solicitations, to safeguard from fraud or misuse donations that are for the benefit of charities and the people of California who receive assistance from them, and to promote transparency that will increase the public's confidence in online charitable giving.

Subdivision (a) requires charitable fundraising platforms or platform charities, for solicitation types A or B, to allow donors or persons engaging in peer-to-peer charitable fundraising (collectively "platform users") the option to provide their name and contact information to a recipient charitable organization. This is not required when a recipient charitable organization has not provided prior written consent for using its name or information in a solicitation, or when donated funds are sent to persons engaging in peer-to-peer charitable fundraising. This provision is necessary for recipient charitable organizations to obtain platform user information, as contemplated by Government Code section 12599.10 and section 321, subdivision (a)(6) and (7), which requires the charitable fundraising platform or platform charity to provide platform user information, if the user chose to share their information, with consenting recipient charitable organizations. Recipient charitable organizations need this information to manage and control their fundraising for the benefit of the people of California who receive assistance from them. This information also gives the organizations an opportunity to acknowledge the donations and any fundraising efforts. Acknowledgment is important to some platform users, as it confirms the donations they made or fundraised were sent to their selected recipient charitable organizations, and that their gifts or efforts were valued. Acknowledgement also promotes transparency and platform user confidence in online giving. Subdivision (a) is also consistent with the California Consumer Privacy Act. For example, charitable fundraising platforms subject to the California Consumer Privacy Act do not sell personal information when platform users direct charitable fundraising platforms to share their personal information with another party, and charitable fundraising platforms can enter into agreements with such parties to protect the personal information for the purposes shared (e.g., Civ. Code, §§ 1798.100, 1798.140(ad)). Indeed, section 318, subdivision (a)(7), allows charitable fundraising platforms or platforms charities to specify any terms regarding the sharing or use of platform user information in an agreement with a consenting recipient charitable organization.

Subdivision (b) requires charitable fundraising platforms or platform charities, for solicitation types A or B that allow platform users to restrict or designate a preference on how donations or

recommended donations may be used by a recipient charitable organization, to conspicuously disclose that the donated funds may be used by a recipient charitable organization on an unrestricted basis, regardless of the designations or restrictions made. This disclosure is not required when a recipient charitable organization has provided prior written consent to use its name in a solicitation, and has either previously approved the solicitation that contains the designations or restrictions, or previously agreed with a charitable fundraising platform or platform charity to comply with designations or restrictions made by donors or persons engaging in peer-to-peer charitable fundraising. A conspicuous disclosure is necessary to protect the public from fraudulent, deceptive, or unfair solicitations. Otherwise, donors may incorrectly believe the donations will be used for the designated or restricted purpose.

Subdivision (c) requires charitable fundraising platforms or platform charities, for solicitation type B that allow donated funds to be sent to persons engaging in peer-to-peer charitable fundraising, to conspicuously disclose the requirements of section 323 of these regulations.¹ This disclosure is necessary because persons engaging in peer-to-peer charitable fundraising may not be familiar with the laws and regulations governing such activities. Donations are at a high risk of diversion and misuse when they pass through multiple fundraising entities, including when they are deposited into the personal bank accounts of fundraisers. The disclosure promotes compliance with the laws, which protect the public from fraudulent, deceptive, or unfair solicitations, and safeguard from fraud or misuse donations that are made for the benefit of charities and the people of California who receive assistance from them.

Subdivision (d) requires charitable fundraising platforms or platform charities to disclose the most pertinent reasons under which a charitable organization may be deemed ineligible to be sent donated funds. Such reasons may not be limited to good standing issues because charitable fundraising platforms or platform charities may establish requirements on topics like money laundering, terrorist activity, hate speech, and compliance with certain policies or terms that must be met in order to be sent donated funds. This disclosure is not required when a charitable fundraising platform or platform charity has no policy or standard under which a charitable organization's receipt of the funds is precluded (e.g., for a solicitation covering a short time period for one charitable organization that was always in good standing and there were no other eligibility requirements established by a charitable fundraising platform or platform charity that would preclude the organization from being sent donated funds).

Subdivision (d)(1) provides that for solicitation types A to C, charitable fundraising platforms or platform charities shall comply with this requirement in accordance with Government Code section 12599.9, subdivision (e)(2), which also addresses this topic. Including this statutory requirement in the regulations is necessary for clarity so that the disclosure requirements for all solicitation types are in one place.

Subdivision (d)(2) addresses solicitation type D and acts of solicitation described by Government Code section 12599.9, subdivision (a)(1), that are not solicitation types A to E. A conspicuous

¹ Section 323 prohibits persons engaging in peer-to-peer charitable fundraising from diverting or misusing the donated funds and requires them to send funds to the recipient charitable organization referenced in solicitations no later than 10 business days after receipt. Persons engaged in peer-to-peer charitable fundraising that fail to send donated funds to the recipient charitable organization no later than 10 days after receipt are required to register as trustees.

disclosure shall state the charitable organization referenced in a solicitation may be deemed ineligible to be sent donated funds with an explanation identifying the most pertinent reasons. The explanation may also be provided through a conspicuous hyperlink. Subdivision (d)(2) is consistent with Government Code section 12599.9, subdivision (e)(2), which makes it easier to comply with the regulation and statute, particularly when a solicitation involves both solicitation types C and D. Subdivision (d)(2) also ensures a disclosure on this topic is provided because Government Code section 12599.9, subdivision (e), does not expressly apply to solicitation type D and acts of solicitation described by Government Code section 12599.9, subdivision (a)(1), that are not solicitation types A to E. Subdivision (d)(2) is necessary to protect the public from fraudulent, deceptive, or unfair solicitations.

Subdivision (d)(3) addresses solicitation type E. The requirements vary depending on whether donations are solicited by and made to a charitable organization, or whether donations are made to the charitable fundraising platform or platform charity and the charitable fundraising platform also engages in solicitation types A or B. This distinction is necessary to account for solicitations that are covered by more than one solicitation type, based on public comment feedback.²

Subdivision (d)(3)(A) addresses donations solicited by and made to a charitable organization through the charitable fundraising platform. When applicable, a charitable fundraising platform shall conspicuously disclose to the charitable organization that it may be deemed ineligible to be sent donated funds with an explanation identifying the most pertinent reasons, and shall request the charitable organization to provide this conspicuous disclosure to platform users when soliciting donations through the charitable fundraising platform. This is necessary so that the charitable organization can manage and control its fundraising for the benefit of the people of California who receive assistance from them, including learning the reasons for ineligibility and managing its operations in a way so that ineligibility is avoided.

Subdivision (d)(3)(B) addresses donations to a charitable fundraising platform or a platform charity when the charitable fundraising platform also engages in solicitation types A or B. When this occurs, Government Code section 12599.9, subdivision (e)(2), applies and is necessary for the same reasons for solicitation types A or B.

Subdivision (e) requires charitable fundraising platforms or platform charities, for solicitation types C or D, to provide disclosures on the length of time it takes to send donated funds to a recipient charitable organization, subject to any minimum threshold amounts as permitted by the new statute. (Gov. Code, § 12599.10, subd. (a)(4)(A)(ii).)

Subdivision (e)(1) provides that for solicitation type C, charitable fundraising platforms or platform charities shall comply with this requirement in accordance with Government Code section 12599.9, subdivision (e)(3), which also addresses this topic. Including this statutory requirement in the regulations is necessary for clarity so that the disclosure requirements for all applicable solicitation types are in one place.

Subdivision (e)(2) addresses solicitation type D. A conspicuous disclosure shall state the maximum length of time it takes to send donated funds to a recipient charitable organization with

² All references to public comments are those from prior rulemaking on charitable fundraising platforms and platform charities published May 27, 2022 (Office of Administrative Law (OAL) File No. 2023-0421-01S).

an explanation as to the length of time, including the minimum threshold amount to be met before donated funds are sent, if any. The explanation may also be provided through a conspicuous hyperlink. Subdivision (e)(2) is consistent with Government Code section 12599.9, subdivision (e)(3), which makes it easier to comply with the regulation and statute, particularly when a solicitation involves both solicitation types C and D. Subdivision (e)(2) also ensures a disclosure on this topic is provided because Government Code section 12599.9, subdivision (e), does not expressly apply to solicitation type D. Subdivision (e)(2) is necessary to protect the public from fraudulent, deceptive, or unfair solicitations.

Subdivision (f) allows the information on fees or other amounts to be disclosed as required by Government Code section 12599.9, subdivision (e)(4), to be provided through a conspicuous hyperlink. This is necessary to protect the public and charities from fraudulent, deceptive, or unfair solicitations.

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

The new statute requires a charitable fundraising platform or a platform charity to obtain written consent from a recipient charitable organization before performing, permitting, or enabling solicitations that reference the organization's name. (Gov. Code, § 12599.9, subd. (f)(1).) Consent is not required, however, for solicitation types A, B, or C when specified criteria are met. (Gov. Code, § 12599.9, subd. (f)(2).) This section establishes requirements for written consent agreements, as required by the new statute (Gov. Code, § 12599.10, subd. (a)(3)), and clarifies the requirement in the new statute for verifying removal requests from non-consenting recipient charitable organizations. This is necessary to promote compliance from charitable fundraising platforms and platform charities, and to protect the public and recipient charitable organizations from fraudulent, deceptive, or unfair solicitations, and to safeguard from fraud or misuse donations that are made for the benefit of charities and the people of California who receive assistance from them.

Subdivision (a) establishes the requirements for consent agreements between a recipient charitable organization and a charitable fundraising platform or platform charity, including any partnering platform expressly identified in consent agreements to use its name in a solicitation on or through a charitable fundraising platform. The requirements are necessary to protect recipient charitable organizations from fraudulent, deceptive, or unfair solicitations because they are required to control fundraising conducted for their benefit. (Gov. Code, §§ 12599.6, subd. (b), 12599.10, subd. (a)(3).)

Subdivision (a)(1) requires consent agreements to comply with Government Code section 12599.9, subdivisions (f)(1) and (h), and sections 320 and 321 of these regulations. This is necessary for clarity and to ensure consent agreements comply with all applicable statutory and regulatory requirements. For instance, Government Code section, subdivision (f)(1), specifies that consent agreements shall be signed by an authorized representative of the recipient charitable organization, and the statute would be violated if a consent agreement permitted an unauthorized signature. Meanwhile, Government Code section 12599.9, subdivision (h), requires donated funds to be sent promptly to the recipient charitable organization with an accounting of any fees imposed for processing the funds in accordance with sections 320 and 321 of these regulations that implement this statute. Thus, a consent agreement shall specify a timeframe for sending donations that is prompt consistent with section 320, and fee and platform user

information terms in a consent agreement (discussed below) shall be consistent section 321's accounting requirements.

Subdivision (a)(2) allows consent agreements, including agreement amendments and renewals, to be entered into electronically. Consent agreements may also refer to or incorporate certain terms available on a platform provided by a charitable fundraising platform or platform charity, as specified in subdivision (a)(2), (3), (4), (5), and (8) (e.g., identification of charitable fundraising platforms for which a recipient charitable organization does or does not give consent, fee information and the time period for sending donating funds, which can both vary by charitable fundraising platform). This is permitted as long as recipient charitable organizations are informed or sent written notice when changes are made to the platform and are not charged for platform access, and the platform clearly explains the changes. This is necessary to provide a more efficient way to update consent agreements, based on public comment feedback.

Subdivisions (a)(3) to (9) require certain terms to be included in consent agreements. Subdivision (a)(3) requires all charitable fundraising platforms for which a recipient charitable organization does or does not give consent to be identified in the agreement. Subdivisions (a)(4) and (5) require disclosure of fee information for each charitable fundraising platform or platform charity, and the time period for sending donating funds. Subdivision (a)(6) allows recipient charitable organizations to approve information about them before the information is used in a solicitation. However, prior approval is not required given the dynamic and ad-hoc nature of peer-to-peer charitable fundraising, and it could unreasonably delay the fundraising. Prior approval is also not required for information previously provided by recipient charitable organizations because they already implicitly approved the information when they provided it. Subdivision (a)(7) requires the agreement to allow a recipient charitable organization to acknowledge platform user donors and fundraisers and include other terms regarding the use of platform user information, if the platform users chose to share their information. Subdivision (a)(8) allows a recipient charitable organization to be able to specify whether it agrees in advance to comply with the designations or restrictions made by donors or persons engaging in peer-to-peer charitable fundraising. Subdivision (a)(9) allows the charitable fundraising platform to send a tax donation receipt on behalf of a recipient charitable organization.

These requirements are necessary to protect recipient charitable organizations from fraudulent, deceptive, or unfair solicitations because they are required to control their fundraising conducted for their benefit, as discussed above. A recipient charitable organization cannot adequately control its fundraising, and oversee or monitor fundraising conducted for its benefit, if it does not know which charitable fundraising platforms a consent agreement applies to, if material terms involving fees and the time frame for sending donations are not specified, and if it cannot reasonably approve solicitations or acknowledge those who supported the organization. For example, a recipient charitable organization may seek to focus its fundraising on charitable fundraising platforms that generate more revenue, it may only want to associate itself with certain charitable fundraising platforms, it may not agree with the business practices or information reflected on some charitable fundraising platforms (which could undermine the organization's brand), or it may be unclear how fundraising may occur should consent be provided. Similarly, it is unfair and unreasonable to require a recipient charitable organization to provide consent for all charitable fundraising platforms identified in an agreement, especially

when the agreement lists a large number of entities. For subdivision (a)(6), this includes promoting efficiencies in the review and approval of solicitations, based on public comment feedback. Further, subdivision (a)(7) is consistent with the California Consumer Privacy Act for the same reasons as section 317, subdivision (a), of these regulations. Subdivisions (a)(8) and (9) are also necessary to safeguard from fraud or misuse donations that are made for the benefit of charities and the people of California who receive assistance from them.

The new statute requires solicitation removal requests from non-consenting recipient charitable organizations to be promptly verified and honored, when applicable. (Gov. Code § 12599.9, subd. (f)(2)(C).) Subdivision (b) clarifies how to verify the requests. This is necessary to promote compliance from charitable fundraising platforms and platform charities, and to protect non-consenting recipient charitable organizations from fraudulent, deceptive, or unfair solicitations. Subdivision (b) also defines “promptly” as no later than three business days after the written request for removal is made. Quantifying the timeframe provides objective criteria for what this means. Three business days is a reasonable timeframe to verify a recipient charitable organization’s removal request, and is consistent with the three business day reference in Government Code section 12599.9, subdivision (f)(2)(C).

§ 319. Tax Donation Receipts from Charitable Fundraising Platforms and Platform Charities.

The new statute requires charitable fundraising platforms or platform charities, for solicitation types A or B, to promptly send tax donation receipts to donors, but does not specify what promptly means. (Gov. Code, § 12599.9, subd. (g).) This section requires the receipts to be sent to donors no later than five business days of donations being made. This is necessary to promote compliance by registrants, to protect the public from fraudulent, deceptive, or unfair solicitations, to safeguard from fraud or misuse donations that are for the benefit of charities and the people of California who receive assistance from them, and to promote transparency that will increase the public’s confidence in online charitable giving. Quantifying the timeframe for promptly sending tax donation receipts provides objective criteria for what this means, and five business days is a reasonable timeframe to provide the receipts.

The donation receipts provide valuable information to donors, including to whom donations were made and whether donations were charitable and tax deductible. These topics can be confusing for donors when they use charitable fundraising platforms to make donations instead of donating to a charitable organization on its website. Also, the sooner the receipt is provided, the more likely a donor can associate the receipt with a donation (which may be more challenging to recall as more time passes, or when multiple donations are made over time). Donors also expect tax donation receipts to be sent simultaneously when online donations are made, similar to how consumers expect receipts to be immediately sent after making online purchases. When tax donation receipts are not sent within five business days, this indicates to donors that something may have gone wrong, including possible fraud. Thus, when receipts are sent within this timeframe, donor confidence in giving through charitable fundraising platforms is improved. The Department also understands this timeframe is consistent with certain registrants’ existing business practices. Tax donation receipts may be sent electronically, which is also consistent with existing business practices and makes it easier to comply with the regulation.

Section 319 also requires charitable fundraising platforms to obtain authorization from the recipient charitable organization to send a tax donation receipt on behalf of the recipient charitable organization when donations or recommended donations are made to a recipient charitable organization, rather than to a platform charity or charitable fundraising platform that is tax-exempt. This is necessary to promote compliance from charitable fundraising platforms, to protect the public from fraudulent, deceptive, or unfair solicitations, to safeguard from fraud or misuse donations that are for the benefit of charities and the people of California who receive assistance from them, and to promote transparency and the public's confidence in online charitable giving.

§ 320. Lengths of Time for Sending Donations by Charitable Fundraising Platforms and Platform Charities; Selection of Alternate Charitable Organizations.

Section 320 establishes the time period for the prompt distribution of donations or grants of recommended donations ("donations") to a charitable organization, based on solicitations performed, permitted, or enabled on charitable fundraising platforms. This includes establishing procedures for sending donations to an alternate charitable organization ("alternate") and for contacting donors who use a charitable fundraising platform to recommend an alternate. This section is necessary to promote compliance from charitable fundraising platforms and platform charities, to protect the public from fraudulent, deceptive, or unfair solicitations, to safeguard from fraud or misuse donations that are for the benefit of charities and the people of California who receive assistance from them, and to promote transparency and the public's confidence in online charitable giving.

Subdivisions (a)(1) to (2) establish, for solicitation types A or B, the maximum length of time for charitable fundraising platforms or platform charities to send donations to recipient charitable organizations. The maximum lengths vary from 30 to 45 days after the end of the month in which the donations or recommended donations are made, depending on whether the organization provided prior written consent for the solicitations. Donations for consenting organizations can be sent faster than for non-consenting organizations because there are fewer issues involved in determining whether they are eligible to be sent donations or for donations to be processed (e.g., the organization has already been vetted or screened for eligibility on topics like money laundering, terrorist activity, hate speech, and compliance with various policies or terms established by the charitable fundraising platform or platform charity; the contact information and method of payment for sending donations has already been established; and the need for verification information to prevent fraud is less likely). Also, charitable fundraising platforms and platform charities typically conduct their bookkeeping operations on a monthly basis, so it is reasonable for donated funds to be sent 30 or 45 days after the end of the month the donations were made. This also provides a more flexible timeframe for aggregating and efficiently sending donations in batches to recipient charitable organizations, and provides more time than previously noticed to avoid disproportionate financial institution fees when the funds are transmitted, based on public comment feedback. Aggregating and sending donations in batches to recipient charitable organizations is also consistent with the business practices of certain charitable fundraising platforms and platform charities. However, the ability to do this should not unreasonably delay the sending of donations so that they are no longer sent promptly. The maximum lengths of time are feasible and reasonable to implement, and are generally consistent with the time frames followed by certain charitable fundraising platforms or platform charities. Moreover, the July 15 deadline for annual reports to be filed on Form PL-4 (per section

315, subdivision (e)) took into consideration the maximum length of time for the donations to be sent. For example, donations made at the end of a reporting year and sent prior to July 15 in the next year, including those sent to an alternate, could be accounted for in Form PL-4 filings.

Subdivision (a)(3) establishes, for solicitation types A or B, the procedures for determining and sending donations to an alternate when a charitable fundraising platform or platform charity determines a recipient charitable organization is not eligible to be sent the donated funds. The determination shall occur within the time period for when donated funds must be sent. Donors must be notified in writing no later than 30 days after the determination of ineligibility, and requested to recommend an alternate. Written notification may be sent electronically. Donors shall then have 30 days from the date of written notification to recommend an alternate. If an alternate is timely recommended and deemed eligible by the charitable fundraising platform or platform charity, the donated funds shall be sent to the alternate no later than 30 days after the last date donors could timely recommend an alternate. If an alternate is timely recommended and deemed not eligible, or if an alternate is not timely recommended, the charitable fundraising platform or platform charity shall select the alternate, and send the donated funds to the alternate no later than 30 days after the last date donors could timely recommend an alternate. Having the same deadline for sending donating funds, regardless of whether an alternate was timely recommended or not, makes it easier to comply with the regulation.

These procedures are reasonable and fair because the statute requires donations to be sent promptly, and the applicable maximum length of time for sending donations to the recipient charitable organization would have been reached already had it not been deemed ineligible. These procedures are also consistent with California law that honors donor intent (e.g., Bus. & Prof. Code, § 17510.8) and the current business practices of certain charitable fundraising platforms or platform charities. If not already implemented, the procedures will impose only a minimal burden because the number of ineligible recipient charitable organizations should be few compared to the number of eligible recipient charitable organizations (also, e.g., consenting organizations will have already been previously vetted and screened). The procedures also provide a reasonable amount of time to identify and contact donors, to obtain alternate recommendations or select alternates, and to send donations. This process also fosters the ability for charitable fundraising platforms and platform charities to ascertain and honor donor intent, even though charitable fundraising platforms or platform charities are not required to send donations to recommended alternates. When a recipient charitable organization is deemed ineligible, it is improper to delay the sending of donations to allow more time for the organization to address the ineligibility because this delays the donations from being used for a charitable purpose, and some of the reasons for ineligibility may not be fixable. Promptly sending donations to an alternate allows the funds to be used by the alternate for the benefit of the people of California who receive assistance from it.

Subdivision (b) establishes, for solicitation types C or D, the maximum length of time for charitable fundraising platforms or platform charities to send donations to charitable organizations. Donations must be promptly sent no less than on a quarterly basis, subject to a minimum amount no greater than \$10, and donations must be sent after four consecutive quarters if the minimum amount is not reached by then. These procedures are a statement of the law contained in Government Code section 12599.10, subdivision (a)(4)(A)(ii). Including this statutory requirement in the regulation is necessary for clarity so that all procedures are in one

place. The subdivision also clarifies what quarterly basis means, which is defined as no later than 30 days after the end of a 90-day period that constitutes a quarter.

Subdivision (b)(3) establishes, for solicitation types C or D, the procedures for determining and sending donations to an alternate when a charitable fundraising platform or platform charity determines a recipient charitable organization is not eligible to be sent the donated funds. The determination shall occur within the time period for when donated funds must be sent. The charitable fundraising platform or platform charity shall select an alternate and send the donated funds to the alternate no later than 30 days after the determination of eligibility. The alternate selection process differs from that in subdivision (a) because the platform users that caused donations to be made do not need to be involved in recommending an alternate, especially if they did not select the recipient charitable organization referenced in solicitations.

Subdivision (c) establishes, for solicitation type E, the maximum length of time for charitable fundraising platforms to send donations to charitable organizations, or to an alternate when they are deemed not eligible. The requirements vary depending on whether donations are solicited by and made to a charitable organization, or whether donations are made to the charitable fundraising platform or platform charity and the charitable fundraising platform also engages in solicitation type A or B. This distinction is necessary to account for acts of solicitation that are covered by more than one solicitation type, based on public comment feedback.

For solicitation type E, when donations are solicited by and made to a charitable organization through the charitable fundraising platform, subdivision (c)(1) requires donations to be sent no later than five business days after the donation is made, unless the organization is not eligible to be sent the funds. Five business days provides a reasonable amount of time for a charitable fundraising platform to process and send donations made to charitable organizations. Five business days is also consistent with the maximum length of time for sending solicited donations by a commercial fundraiser for charitable purposes (Gov. Code, § 12599, subd. (i)(7)), and many charitable fundraising platforms, including those engaging in solicitation type E, met the definition of a commercial fundraiser prior to the new statute's enactment. The maximum length of time is generally consistent with the current business practices of certain charitable fundraising platforms. Subdivision (c)(1) also requires the charitable fundraising platform to determine whether a charitable organization is eligible to be sent donations on a monthly basis or more frequently. If a charitable organization is not eligible to be sent donations, the charitable fundraising platform shall select an alternate charitable organization, and send the donations to the alternate no later than 30 days after the determination of eligibility. This alternate process makes it easier to comply with the statute's prompt distribution requirement, which is not necessarily feasible given the five business day time period.

Subdivision (c)(2) addresses, for solicitation type E, when donations made through the charitable fundraising platform are made to it or a platform charity and the charitable fundraising platform also engages in solicitation types A or B. When this occurs, the charitable fundraising platform must comply with section 320, subdivision (a). This is necessary for the same reasons stated for subdivision (a).

Subdivision (d) requires charitable fundraising platforms or platform charities that perform, permit, or otherwise enable acts of solicitation described by Government Code section 12599.9, subdivision (a)(1), that are not solicitation types A to E, to promptly send donated funds in compliance with section 320, subdivision (a)(1) and (3). This change was made to account for

acts of solicitation that are not covered by solicitation types A to E, based on public comment feedback. If not accounted for, then it would be unclear what maximum length of time should apply to such acts of solicitation. This is necessary for the same reasons stated for subdivision (a).

§ 321. Information for Charitable Organizations Regarding Donations Sent by Charitable Fundraising Platforms and Platform Charities.

This section specifies what information is to be provided by a charitable fundraising platform or platform charity to a charitable organization once donated funds are sent, including an accounting of fees for processing the funds as required by the statute. (Gov. Code, § 12599.9, subd. (h).) This section is necessary to promote compliance from charitable fundraising platforms and platform charities, to safeguard from fraud or misuse donations that are for the benefit of charities and the people of California who receive assistance from them, to protect the public and charities from deceptive or unfair solicitations, and to promote transparency and the public's confidence in online charitable giving.

Subdivision (a) specifies the minimum amount of information a charitable fundraising platform or platform charity must provide to recipient charitable organizations about donated funds for solicitation types A or B or any similar activity. This donation information may be provided through a secure platform that authenticates the recipient charitable organization, as long as the recipient charitable organization is made aware of the platform and not charged for platform access. This electronic option of transmitting the information is necessary to make it easier to comply with the regulation, based on public comment feedback.

These accounting requirements for donations are necessary so that recipient charitable organizations can manage and control their fundraising for the benefit of the people of California who receive assistance from them. The accountings will help confirm donations were not misspent and that fees imposed were proper and in compliance with consent agreements, when applicable. Providing information on when donations were made and sent helps recipient charitable organizations gauge whether donations were sent within the maximum lengths of time required. Recipient charitable organizations can further evaluate which charitable fundraising platforms provide the most revenue, and thus devote more resources to those charitable fundraising platforms. They can also choose to acknowledge donors and platform users, as allowed by consent agreements and section 318 of the regulations. Being acknowledged is important to some donors and platform users, as it confirms the donations were sent to their selected recipient charitable organizations, and that their gifts or efforts were valued. The privacy interests of donors and platform users is protected because their information is not shared unless they choose to share, and their information is not required to be shared with organizations that did not provide prior consent. Consent agreements can further address concerns how a recipient charitable organization's information may be used, as long as the agreements comply with section 318 of the regulations and other applicable laws. Providing the information on how donations may be used also enables the organizations to learn what the designations or restrictions are so they can be honored (which is important when they agree to do so in advance), or choose to do so when not obligated. Certain donation level information, such as the date when donations were made and the amount of each donation before and after fees were imposed, only needs to be provided when requested by recipient charitable organizations. This makes it easier

to comply with the regulation, yet still allows recipient charitable organizations to learn the information.

Subdivision (b) specifies the minimum amount of information a charitable fundraising platform or platform charity must provide to a recipient charitable organization about donated funds sent for solicitation types C or D or any similar activity. This donation information may be provided through a secure platform that authenticates the recipient charitable organization, as long as the recipient charitable organization is made aware of the platform and not charged for platform access. This electronic option of transmitting the information is necessary to make it easier to comply with the regulation, based on public comment feedback. These accounting requirements for donations are necessary so that recipient charitable organizations can manage and control their fundraising for the benefit of the people of California who receive assistance from them. The accountings will help confirm donations were not misspent and that fees imposed were proper and in compliance with consent agreements, when applicable. Recipient charitable organizations can further evaluate which charitable fundraising platforms provide the most revenue, and thus devote more resources to those charitable fundraising platforms.

Subdivision (c) specifies the minimum amount of information a charitable fundraising platform must provide to a recipient charitable organization about donated funds sent for solicitation type E. The requirements vary depending on whether donations are solicited by and made to a charitable organization, or whether donations are made to the charitable fundraising platform or platform charity and the charitable fundraising platform also engages in solicitation types A or B. This distinction is necessary to account for acts of solicitation that are covered by more than one paragraph in Government Code section 12599.9, subdivision (a)(1), based on public comment feedback.

Subdivision (c)(1) addresses when donations are solicited by and made to a charitable organization through the charitable fundraising platform. These accounting requirements for donations are necessary so that charitable organizations can manage and control their fundraising for the benefit of the people of California who receive assistance from them. The accountings will help confirm donations were not misspent and that fees imposed were proper. Charitable organizations can further evaluate which charitable fundraising platforms provide the most revenue, and thus devote more resources to those charitable fundraising platforms.

Subdivision (c)(2) addresses when donations through the charitable fundraising platform are made to it or a platform charity and the charitable fundraising platform also engages in solicitation types A or B. When this occurs, the charitable fundraising platform must comply with section 321, subdivision (a). This is necessary for the same reasons stated for subdivision (a).

§ 322. Information for Donors or Persons Regarding Donations Sent by Charitable Fundraising Platforms and Platform Charities.

Section 322 requires charitable fundraising platforms and platform charities to provide certain information to donors and platform users. This section is necessary to promote compliance from charitable fundraising platforms and platform charities, to safeguard from fraud or misuse donations that are for the benefit of charities and the people of California who receive assistance from them, to protect the public and charities from fraudulent, deceptive, or unfair solicitations, and to promote transparency and the public's confidence in online charitable giving.

Subdivision (a) requires a charitable fundraising platform or platform charity, for solicitation types A or B, to provide donors the ability to learn whether their donations or recommended donations were sent to a recipient charitable organization or alternate charitable organization. Such information shall be made available to donors no later than 15 business days after the donated funds were sent. The information may be provided through written notification, which may occur electronically including through a platform, as long as donors are not charged for platform access. When a donor makes a donation through a charitable fundraising platform to benefit a recipient charitable organization, typically the donation is not sent instantly to the organization, and it is possible the donation is not sent at all (e.g., when an organization is deemed ineligible). Given this, a donor may want to find out to whom their donation was sent if not the recipient charitable organization, which promotes accountability, trust, and transparency. This may be especially true for donors who made high dollar or multiple donations, or have a strong connection or identification with the recipient charitable organization or its mission. Fifteen business days provides a reasonable amount of time to make this information available to donors, should they want to learn whether the donations were sent, and there is flexibility as to how this may be done (e.g., electronic notification, providing the information on the platform of a charitable fundraising platform or platform charity). This flexibility is necessary to make it easier to comply with the regulation, based on public comment feedback.

Subdivision (b) requires a charitable fundraising platform or platform charity, for solicitation types C or D, to provide platform users an ability to learn that the total amount of donated funds sent to a recipient charitable organization or alternate charitable organization included funds based on the platform user's activity. This does not require informing platform users how much of the donated funds sent is attributed to their activity, which makes it easier to comply with the regulation. The 15-business-day time period and the different ways to inform platform users are the same for donors in subdivision (a). This requirement is necessary for the same reasons stated for subdivision (a). A platform user may have purchased an item or performed other activity with the belief that a resulting donation would be sent to a recipient charitable organization referenced in a solicitation or selected by the platform user. The resulting donation to the charitable organization may have been a material reason for making the purchase or performing the activity. Thus, a platform user may want to know which charitable organization was sent the donation that included funds based on their activity, which promotes accountability, trust, and transparency. This may be especially true for platform users who made high dollar purchases, performed time-consuming activity, or have a strong connection or identification with the recipient charitable organization or its mission.

§ 323. Handling of Donations by Persons Engaging in Peer-to-Peer Charitable Fundraising.

This section establishes requirements for a person who engages in peer-to-peer charitable fundraising on a charitable fundraising platform that is sent donated funds ("peer-to-peer fundraiser"). Once charitable donations are sent (as opposed to contributions for a personal cause), the peer-to-peer fundraiser is prohibited from diverting or otherwise misusing the donations and must send the donated funds to the recipient charitable organization referenced in the solicitation no later than 10 business days after receipt. This regulation is necessary to protect the public from fraudulent, deceptive, or unfair solicitations and to safeguard from fraud or misuse donations that are for the benefit of charities and the people of California who receive assistance from them.

The acceptance of charitable contributions by a person soliciting on behalf of a charity establishes a charitable trust and a duty on the part of the person soliciting on behalf of the charity to use those charitable contributions for the declared charitable purposes for which they are sought. (Bus. & Prof, § 17510.8.) When donations are deposited into personal bank accounts of the peer-to-peer fundraiser, the fundraiser is a charitable trustee, and has a fiduciary duty to ensure the donations are spent for the charitable purpose given. Yet, donations deposited into personal bank accounts, especially when commingled with other personal funds, are at high risk of being diverted or otherwise misspent. Ten business days provides enough time to send donations to a recipient charitable organization. This timeframe is similar to the timeframe for sending solicited donations by a commercial fundraiser for charitable purposes (Gov. Code, § 12599, subd. (i)(7)), which is a similar type of charitable trustee that solicits donations, yet provides more time to make it easier to comply with the regulation, based on public comment feedback.

A trustee holding charitable assets has 30 days from the initial receipt of assets to register with the Attorney General’s Registry of Charitable Trusts. (Gov. Code, § 12585, subd. (a).) If the peer-to-peer fundraiser transfers the donated funds to the recipient charitable organization within ten days, there is no benefit to requiring the peer-to-peer fundraiser to register as a trustee because the person no longer holds charitable assets. However, if the peer-to-peer fundraiser fails to transfer the donated funds to the recipient charitable organization within ten days, the person, as a “trustee” within the meaning of Government Code section 12582, is subject to the registration and reporting requirements of the Supervision of Trustees and Fundraisers for Charitable Purposes Act. Without the requirement to register, it will be difficult for the Attorney General to protect the donated funds, ensure that the donated funds are, in fact, transferred to the recipient charitable organization, and hold the persons who failed to do so accountable for their violations of law.

Article 2. Notices and Requests to the Attorney General

A new Article 2 is drafted to create better organization within Chapter 4.

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

Subdivision (a) is amended to require notices or requests to be filed with the Department via electronic submission instead of regular mail. This subdivision explains that notices or requests are deemed filed during normal business hours. A notice that does not contain all of the required information is incomplete and not deemed filed. These procedures are necessary to explain how a registrant can file a notice or request with the Department. Requiring notices or requests to be submitted electronically is easier for the registrant, allows for better tracking, and ensures submissions are routed to the appropriate persons within the Department.

Subdivision (b) explains that the Department will acknowledge receipt of the notice or request via email. Acknowledging receipt via email instead of by stamping a hard copy “Received” is less time-consuming for the Department and also saves paper.

Subdivision (c) requires every notice or request to include all material facts. This is necessary so that the Department will receive the information necessary to properly evaluate the notice and perform its role to oversee charities and charitable trustees to ensure that funds received are properly managed and devoted to charitable programs.

Subdivision (e) replaces “nonprofit corporation” with “charitable organization or trustee.” This is necessary to accurately describe the public files maintained by the Attorney General’s Registry of Charitable Trusts. This subdivision is further amended to explain that confidential or trade secret information from charitable fundraising platforms or platform charities is exempt from public inspection. This is necessary so that the regulation is consistent with the new statute, which requires regulations on the handling of confidential or trade secret information provided by charitable fundraising platforms or platform charities. (Gov. Code, § 12599.10, subd. (a)(2)(B).)

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., removal of superfluous language, ensuring consistent capitalization of terms) are being made throughout section 328. Authority and reference citations are amended. The section is renumbered from existing section 999.1. The title of section 328 is amended to align with proposed changes to the section.

§ 328.1 Notice of Transactions Involving All or Substantially All Assets of a Charitable Corporation or Trust, or Assets in Charitable Trust Held by a Nonprofit Mutual Benefit Corporation.

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., ensuring consistent capitalization of terms) are being made in subdivision (b). The reference to section 999.1 is amended to 328 because the section was renumbered.

§ 329. Public Benefit Corporations.

Subdivision (e) lists the statutes that involve a public benefit corporation giving notice to the Attorney General. Corporations Code section 5813.5, subdivision (b) (conversion) was added because it was inadvertently omitted from the existing section.

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., ensuring consistent citation formats) are being made throughout section 329. Authority and reference citations are amended. The section is renumbered from existing section 999.2.

§ 330. Mutual Benefit Corporations.

Subdivision (e) lists the statutes that involve a mutual benefit corporation giving notice to the Attorney General. Citations to statutes were corrected.

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., ensuring consistent citation formats) are being made throughout section 330. Authority and reference citations are amended. Authority and reference citations are amended. The section is renumbered from existing section 999.3.

§ 331. Religious Corporations.

This section lists the statutes that involve a religious corporation giving notice to the Attorney General. Omitted statutes were added.

Changes without regulatory effect. Authority and reference citations are amended. The section is renumbered from existing section 999.9.4.

Article 3. Administrative Enforcement of the Supervision of Trustees and Fundraisers for Charitable Purposes Act

A new Article 3 is drafted to create better organization within Chapter 4.

§ 336. Violations of the Supervision of Trustees and Fundraisers for Charitable Purposes Act.

Subdivision (a) explains when the Attorney General may take administrative action. Violating any provision of Chapter 4 of the regulations is added as additional grounds for which the Attorney General may take administrative action. This is necessary so that the regulation is consistent with the statute, which authorizes cease and desist orders or penalties for any Act or regulatory violations. (Gov. Code, § 12591.1, subs. (b) & (c).) This is further necessary for the Department to ensure that funds received are properly managed and devoted to charitable programs, and to protect the public from fraud and deceptive or unfair solicitations. Charitable fundraising platform and platform charities are added to the list of organizations subject to enforcement by the Attorney General. This is necessary so that the regulation is consistent with the new statute. (Gov. Code, §§ 12581, 12599.9, subd. (b).)

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., ensuring consistent capitalization of terms) are being made throughout section 336. Authority and reference citations are amended. The section is renumbered from existing section 999.6. The title of section 336 is amended to align with proposed changes to the section.

§ 337. Grounds for Issuance of Cease and Desist Order.

Subdivision (a) provides the grounds upon which a cease and desist order may be issued. Violating any provision of the Act or Chapter 4 of the regulations is added as additional grounds for which a cease and desist order may be issued. This is necessary so that the regulation is consistent with the statute, which authorizes cease and desist orders for any Act or regulatory violations. (Gov. Code, § 12591.1, subd. (b).) This is further necessary for the Department to ensure that funds received are properly managed and devoted to charitable programs, and to protect the public from fraud and deceptive or unfair solicitations.

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., ensuring consistent reference to the Act) are being made throughout section 337. Authority and reference citations are amended. The section is renumbered from existing section 314.

§ 338. Imposition of Penalty.

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., ensuring consistent citation formats) are being made throughout section 338. Authority and reference citations are amended. The section is renumbered from existing section 315.

§ 339. Grounds for Refusal, Revocation or Suspension.

Subdivision (b) provides the grounds for which a registration may be refused, suspended or revoked. Violating Government Code section 12599.9 is added as additional grounds for which a registration may be refused, suspended, or revoked. This is necessary to ensure compliance with the new statute.

Subdivision (d) provides that failure to comply with the standards of conduct for nonprofit corporations is grounds for which a registration may be refused, suspended, or revoked. Reference to Corporations Code sections 5230 through 5239 is amended to sections 5230 to 5260. This is necessary to ensure compliance with all applicable laws governing nonprofit corporations.

Subdivision (g) replaces “charity” with a list of the types of organizations and persons that are subject to regulation. This is necessary for clarity because there are many types of organizations that are subject to the Act.

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., ensuring consistent capitalization of terms) are being made throughout section 339. Authority and reference citations are amended. The section is renumbered from existing section 999.9.

§ 340. Refusal to Renew Registration.

Subdivision (a)(4) replaces “charity” with a list of the types of organizations and persons that are subject to regulation. This is necessary because other states have different categories and definitions of charities. The amendment inserts an inclusive list so that it is clear that the Attorney General may refuse to renew the registration of any person or entity that performs the functions of such registrants, regardless of their title.

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., ensuring consistent citation formats) are being made throughout section 340. Authority and reference citations are amended. The section is renumbered from existing section 999.9.2.

§ 341. Automatic Suspension.

Subdivision (a)(2) adds failure to pay the required fee as a ground for automatic suspension. This is necessary to ensure payment of the required fees. Collected fees are used to operate and maintain the Department’s Registry of Charitable Trusts, to provide public access to reports filed with the Registry of Charitable Trusts, and to enforce the registration and reporting provisions.

Subdivision (a)(7) explains that failure of a charitable fundraising platform to renew its annual registration, including payment of the required fee, is grounds for automatic suspension. This is necessary to ensure compliance with the new statute. (Gov. Code, §§ 12581, 12599.9, subd. (b).)

Subdivision (a)(8) explains that failure of a charitable fundraising platform or platform charity to file a completed annual report is grounds for automatic suspension. This is necessary to ensure compliance with the new statute. (Gov. Code, §§ 12581, 12599.9, subd. (b).)

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., ensuring consistent citation formats) are being made throughout section 341. Authority and reference citations are amended. The section is renumbered from existing section 999.9.1.

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

Changes without regulatory effect. Authority and reference citations are amended. The section is renumbered from existing section 999.7.

§ 343. Final Attorney General Decisions.

Changes without regulatory effect. Authority and reference citations are amended. The section is renumbered from existing section 999.8.

§ 344. Suspension of Registration.

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., ensuring consistent citation formats) are being made throughout section 344. Authority and reference citations are amended. The section is renumbered from existing section 316.

§ 345. Disclosure and Restrictions on Use of Charitable Assets After Suspension or Revocation of Registration.

Changes without regulatory effect. Authority and reference citations are amended. The section is renumbered from existing section 999.9.3.

§ 346. Reinstatement.

Changes without regulatory effect. Non-substantive grammatical corrections (e.g., ensuring consistent capitalization of terms) are being made throughout section 346. Authority and reference citations are amended. The section is renumbered from existing section 999.9.5.

Chapter 15. Attorney General Review of Changes of Control Involving Health Care Facilities

The title of Chapter 15 is amended from “Attorney General Regulations Regarding Administrative Enforcement of the Supervision of Trustees and Fundraisers for Charitable Purposes Act” to “Attorney General Review of Changes of Control Involving Health Care Facilities.” With the exception of section 999.5, all Chapter 15 regulations are being renumbered and moved to Chapter 4 so that all regulations pertaining to the Act will be in Chapter 4.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department concludes:

- (1) It is unlikely that the proposal would create or eliminate jobs within the state because the regulations create procedures for existing charitable fundraising platforms and platform charities to comply with new mandates imposed by statute.
- (2) It is unlikely that the proposal would create new businesses or eliminate existing businesses within the state because the regulations create procedures for existing charitable fundraising platforms and platform charities to comply with new mandates imposed by statute.
- (3) It is unlikely that the proposal would result in the expansion of businesses currently doing business within the state because the regulations create procedures for existing charitable fundraising platforms and platform charities to comply with new mandates imposed by statute.

The Department also concludes that:

- (1) The proposal would benefit the health and welfare of the people of California by ensuring charitable assets donated by California residents are used for the intended purpose and for the benefit of California charitable beneficiaries.

(2) The proposal would not benefit worker safety because it does not regulate worker safety standards.

(3) The proposal would not directly benefit the state's environment because it does not change any applicable environmental standards. But these regulations will prevent the misuse of donations made through charitable fundraising platforms and platform charities to charities supporting environmental causes.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR SIMILAR DOCUMENTS RELIED UPON

1. Written public comments submitted in the Department's prior rulemaking (OAL File No. Z-2022-0517-01) by:

James Wood; Alice Kessler for Greenberg Traurig, LLP; Stefanie Goldfine for Network for Good, Inc.; Paul Petruccelli for B1G1 Giving, Inc.; Leann Kravitz for Fidelity Investments; Karen Wu for Perlman & Perlman, LLP; Martin Radosevich for Candid; Alicia Kinsey for PayPal, Inc. and PayPal Charitable Giving Fund; Dylan Hoffman for TechNet; Jean Tom for Davis Wright Tremaine LLP; Amarah Sedreddine for Sedreddine & Whoriskey, LLP (counsel for Charity Navigator); Assemblymember Jacqui Irwin; Edward Chansky for Greenberg Traurig, LLP; Robert Spiegel for California Manufacturers & Technology Association (CMTA); Kayla Ruben for Davis Wright Tremaine LLP; Edward Chansky for Go Fund Me, GoFundMe.org, and Classy.org; Jaime Minor for Salesforce; Gene Takagi for NEO Law Group

2. Written summary of meeting with PayPal, Inc., PayPal Charitable Giving Fund
3. Final Judgment filed March 1, 2022, in *FTC v. Cardiff*, C.D. Cal. Case No. 5:18-cv-02104-DMG-PLA [Dkt. 706]
4. FTC .com Disclosures (available at <https://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.pdf>)
5. FTC notice re: Negative Option Rule
6. Final Judgement filed January 4, 2019, in *FTC v. Roca Labs, Inc.*, M.D. Fla. Case No. 8:15-cv-02231-MSS-CPT [Dkt. 253]
7. FTC notice re: Guides Concerning the Use of Endorsements and Testimonials in Advertising, published July 26, 2022
8. FTC notice re: Motor Vehicle Dealers Trade Regulation Rule, published July 13, 2022
9. Decision and Order issued April 11, 2013, in *In the Matter of Designerware, LLC*, FTC Case No. C-4390

EVIDENCE SUPPORTING DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made an initial determination that the proposed action would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulations create procedures for existing charitable fundraising platforms and platform charities to comply with new mandates imposed by statute. The forms created by the Department are the easiest way for businesses to provide the required information to the Department. The \$625 registration fee for charitable fundraising platforms is similar to the \$500 annual registration fee charged to other fundraising professionals (commercial fundraiser, fundraising counsel, commercial coventurer). There has been no resulting adverse economic impact. The additional \$125 is due to the need to allocate increased resources for overseeing charitable fundraising platforms, as opposed to other fundraising professionals. For example, the forms for charitable fundraising platforms and platform charities require additional time to review and analyze, as compared to other fundraising professional forms. The forms are also filed differently through an online filing service, which incurs different costs.

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

The Department finds that no reasonable alternatives were presented to, or considered by, the Department that would lessen any adverse impact on small business. Charitable entities are exempt from the definition of “small business” pursuant to Government Code section 11342.610, subdivision (b). However, some charitable fundraising platforms may meet the definition of “small business.”

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

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION AND THE AGENCY’S REASON FOR REJECTING THOSE ALTERNATIVES

The Department finds that no alternatives were presented to, or considered by, the Department that would be more effective in carrying out the purpose of these proposed regulations or would be as effective and less burdensome to affected private persons than these proposed regulations.

The Attorney General considered other alternatives when drafting the regulations. In considering the alternatives, the Attorney General sought to balance the benefits to the public and charitable organizations, the burden to charitable fundraising platforms and platform charities, and the purposes of the Act. The alternatives considered and rejected are below.

Section 314

Section 314 defines terms used in AB 488 and the regulations. This includes the term “conspicuous” because Government Code section 12599.9, subdivision (e), and section 317 require certain solicitation information on charitable fundraising platforms to be displayed conspicuously. After modifying the “conspicuous” definition in response to public comments, the Attorney General received a public comment requesting further modification. The alternative was not more effective in carrying out the purpose and intent of AB 488 because it would not increase a person’s ability to find and review the material information required to be disclosed.

Section 315

Section 315 requires the Attorney General to provide notice to amend a Form PL-4 filing when the Attorney General finds fee information is not confidential or trade secret, and if this does not

occur in 45 days, the information will be made available for public inspection. Some public comments requested that the regulations provide for an administrative appeal if the registrant disagrees with the Attorney General's determination that the information is not confidential. In drafting these regulations, the need to protect confidential information was considered. The comment's proposed change would not be more effective in carrying out the purpose and intent of the Act, which is to provide government oversight and public transparency over charitable fundraising (Gov. Code, §§ 12587, 12598). Any judicial review available to the registrant is not affected by the regulation, and administrative review of the Attorney General's determination is neither required nor necessary.

Section 315 allows a registrant charitable fundraising platform's Form PL-4 to be filed by its partner if certain requirements are met. If the registrant charitable fundraising platform retained more than one partner, only one partner may submit Form PL-4 on its behalf. Some public comments requested that more than one partner be allowed to file Form PL-4. This may cause multiple filings of a Form PL-4 for a charitable fundraising platform, which is not more effective in carrying out the purpose and intent of AB 488. The Department, the public, and the courts should be able to review one filing to understand a charitable fundraising platform's Form PL-4 submission. One filing eliminates the possibility of duplicative and inconsistent information being submitted, and streamlines the filing of amended filings. When multiple partners are used by a charitable fundraising platform, the charitable fundraising platform can file Form PL-4, or its partners can coordinate the information for one authorized partner to file Form PL-4.

Section 317

Section 317 contains requirements for solicitation information on charitable fundraising platforms, including requiring applicable charitable fundraising platforms or platform charities to provide donors an option to provide their name and contact information to recipient charitable organizations. The Attorney General received some public comments to delete the requirement. The Attorney General declined to delete the requirement because recipient charitable organizations need this information to manage and control their fundraising for the benefit of the people of California who receive assistance from them.

Section 317 requires a charitable fundraising platform or platform charity to make disclosures to persons who engage in peer-to-peer charitable fundraising (fundraisers) and are sent donations for a recipient charitable organization. The Attorney General received a public comment requesting that the disclosure not be required when the charitable fundraising platform retains a platform charity that can receive donations in addition to fundraisers. The alternative is not more effective in carrying out the purpose and intent of the Act. The disclosure is necessary when donations are sent to fundraisers so they can understand their responsibilities in holding and sending donations to a recipient charitable organization, regardless of whether there is a platform charity that can receive donations.

Section 318

Section 318 specifies the requirements for consent agreements between a recipient charitable organization and a charitable fundraising platform or platform charity. The Attorney General received public comments that the fee information referenced in consent agreements should be streamlined, and that recipient charitable organizations should provide consent through an annual notification, including consent for undetermined charitable fundraising platforms when

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

Government Code section 12599.9, subdivision (f)(2)(C), requires solicitation removal requests from non-consenting recipient charitable organizations to be promptly verified and honored, when applicable. Section 318 defines “promptly” as no later than three business days after written request for removal is made. A public comment requested the deadline be increased to five business days, but this is not more effective in carrying out the purpose and intent of AB 488. Three business days is reasonable and consistent with another three business day timeframe reference in the statute.

Section 320

Government Code section 12599.9, subdivision (h), requires donations to be sent “promptly.” However, “promptly” is not defined. Section 320 implements the statute by requiring donations to be sent within certain time periods depending on the context. The Attorney General received several public comments requesting the deletion or modification of section 320. In response, the Attorney General simplified the regulation by reducing the number of time periods for certain acts of solicitations in section 320 from nine to two to promote compliance. More than one time period is necessary to accommodate different solicitation types, as explained in the Specific Purpose and Necessity section for this regulation above. The Attorney General declined to delete section 320 and leave the term “promptly” undefined to provide clear guidelines and make the statute easier to enforce. Although the Attorney General also extended certain time periods, the Attorney General did not extend them further as requested because this would result in unreasonable delays in sending donations. In addition, some comments requested more time as needed and determined by charitable fundraising platforms or platform charities, but this would also mean the donations would be unreasonably delayed.

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

Section 321

Section 321 establishes what information must be provided by a charitable fundraising platform or platform charity to a charitable organization when donated funds are sent. This implements Government Code section 12599.9, subdivision (h), which requires donations to be sent with an accounting of fees and in accordance with regulations. The Attorney General received public comments requesting the deletion of section 321, that the donation information for certain solicitation types be streamlined, and that the information should not be provided with the funds. In response, the Attorney General reduced the burden on charitable fundraising platforms and platform charities by requiring less information, and allowing them to provide access to the information via a platform. However, the Attorney General declined to delete section 321 because the requirement is necessary to provide transparency and accountability on the accounting and other donation information, which charitable organizations need to manage and control their fundraising for the benefit of the people of California who receive assistance from them. After receiving public comments requesting that either more or less information be required, the Attorney General declined to further modify section 321 because the alternatives would not be more effective, and in certain cases would not be less burdensome, in carrying out the purpose and intent of AB 488.

Section 322

This section requires a charitable fundraising platform or platform charity to provide certain information to donors and platform users regarding donated funds sent to a recipient charitable organization or alternate charitable organization. Section 322 sets a 15-business-day deadline to provide this information. The Attorney General received public comments requesting the deletion or modification of section 322. In response, the Attorney General reduced the burden on charitable fundraising platforms and platform charities by allowing them to provide access to the information via a platform instead of directly notifying each donor. However, the Attorney General declined to delete section 322 because the requirement is necessary to provide transparency and accountability on whether the donations were actually sent, and to whom. The Attorney General also did not extend the deadline because the alternative was not more cost effective to affected private persons and equally effective in implementing the statutory policy.

Section 323

This section establishes requirements for persons who engage in peer-to-peer charitable fundraising, and are sent donations from charitable fundraising platforms. Such persons shall send the funds to the recipient charitable organization referenced in solicitations no later than ten business days after receipt. The Attorney General received a public comment requesting to extend the deadline to once every 30 days. The Attorney General did not extend the deadline because the alternative was not more effective in carrying out the purpose and intent of the Act. Ten business days provides a reasonable amount of time for the reasons stated in the Specific Purpose and Necessity section for this regulation above.

Performance Standard as Alternative:

The proposed regulations do not mandate the use of specific technologies or equipment. The proposed regulations prescribe specific actions or procedures. The Department's Registry of Charitable Trusts oversees registered charities and fundraising professionals to ensure that

funds received are properly managed and devoted to charitable programs. Charities and fundraising professionals are required to register and file periodic reports with the Attorney General. The proposed procedures and forms are the least burdensome way to ensure that charities and fundraising professionals provide all required information to the Department. The proposed procedures and forms also ensure that basic financial information will become available to the donating public promoting transparency and allowing for prospective donors to research and assess the performance of charitable fundraising platforms, platform charities, and charities.