

## INITIAL STATEMENT OF REASONS

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

#### **I. PROBLEM STATEMENT**

The Supervision of Trustees and Fundraisers for Charitable Purposes Act (“the Act”), Chapter 6 (commencing with Government Code section 12580) of Title 2 of Division 3 of the Government Code), sets forth the Attorney General’s authority over charitable trustees and entities. Sections 310 and 312 of Chapter 4 and Section 999.1 of Chapter 15, of Title 11, Division 1 of the California Code of Regulations are promulgated under the authority of the Act. The Act requires charitable organizations, trustees, professional fundraisers, and fundraising counsel to register and file reports with the Attorney General’s Registry of Charitable Trusts (“Registry”). The Act authorizes the Attorney General to promulgate regulations to implement the registration and filing requirements.

Chapter 4 of Title 11, Division 1 of the California Code of Regulations implements the registration and reporting requirements of the Act. Section 301 requires charitable trustees and organizations subject to the reporting requirements to annually file a copy of the Internal Revenue Service Form 990, including all schedules, with the Registry. Schedule B of Form 990 is a schedule of donors that have contributed \$5,000 or more to the organization. Schedule B donor information is not subject to disclosure by the Internal Revenue Service unless the organization is classified as a private foundation or a political organization as described in Section 527 of the Internal Revenue Code. Similar to the Internal Revenue Service, the Attorney General does not disclose Schedule B donor information and does not post the document on its website or otherwise make it available to the public. Section 312 sets forth how annual registration and renewal fees may be used by the Registry.

The proposed amendments to Sections 310 and 999.1 codify the Attorney General’s practice to exempt donor information from public disclosure. The proposed amendments to Section 312 clarify that registration and renewal fees will be used by the Registry to enforce its registration and reporting provisions, as set forth in Government Code section 12587.1, subdivision (d). These regulations are consistent with existing law. In addition, the proposed amendments correct typographical errors in the Attorney General’s Office address locations listed in Section 999.1, as well as correct one subdivision reference regarding notice requirements.

#### **II. SUMMARY OF BENEFITS**

Existing regulations require organizations that file Form 990 annually with the Internal Revenue Service to file a copy of the Form 990, including all schedules, with the Registry. The amendments codify the existing practice to treat donor information that is exempt from disclosure by the Internal Revenue Service as confidential by the Attorney General’s Office. The amendments clarify that, consistent with Government Code section 12587.1, annual registration and renewal fees and the Registry of Charitable Trusts Fund will be used by the Registry to enforce its registration and reporting provisions. The amendments also correct

typographical errors identified in the Attorney General's Office address locations and correct one subdivision reference.

### **III. PURPOSE**

The Supervision of Trustees and Fundraisers for Charitable Purposes Act ("the Act"), Chapter 6 (commencing with Government Code section 12580) of Title 2 of Division 3 of the Government Code), sets forth the Attorney General's authority over charitable trustees and organizations. Sections 310 and 312 of Chapter 4 and Section 999.1 of Chapter 15, of Title 11, Division 1 of the California Code of Regulations are promulgated under the authority of Act. Chapter 4 of Title 11, Division 1 of the California Code of Regulations implements the registration and reporting requirements of the Act. Section 301 requires charitable trustees and entities subject to the reporting requirements to annually file a copy of the Internal Revenue Service Form 990, including all schedules, with the Registry.

**Section 310:** The amendment clarifies that donor information that is exempt from public inspection pursuant to the Internal Revenue Code will be treated as confidential by the Attorney General subject to certain limited exceptions.

**Section 312:** The amendment clarifies that the Registry's fund and annual registration and renewal fees will be used to enforce its registration and reporting provisions.

**Section 999.1, subdivision (a):** The amendment corrects typographical errors in the addresses of the Attorney General's San Francisco, Los Angeles, and Sacramento office locations. The amendment corrects an existing incorrect subdivision reference regarding notice requirements.

**Section 999.1, subdivision (e):** The amendment clarifies that the Attorney General's public file of nonprofit corporations excludes donor information that the Internal Revenue Code exempts from public inspection. The amendment also requires that for all notices and requests for approval submitted to the Attorney General pursuant to the subdivisions of sections 999.2 through 999.5, the persons or organizations submitting the confidential documents must separately designate and request that such documents not be maintained in the Public File.

### **IV. NECESSITY**

Many of the reports filed with the Attorney General are subject to public inspection. (Gov. Code, § 12590.) The proposed amendments to Sections 310 and 999.1 codify the Attorney General's historical and current practice that specific donor information will be exempt from public disclosure, and are not a change in policy or procedure. The proposed amendments to Section 312 clarify that the Registry's fund and annual registration and renewal fees will be used by the Registry to enforce registration and reporting provisions, and are not a change in policy or procedure. (Gov. Code § 12587.1) These regulations are consistent with existing law. The proposed amendments also correct typographical errors in the addresses listed for the Attorney General's San Francisco, Los Angeles, and Sacramento office locations. In addition, the proposed amendments correct an incorrect subdivision reference regarding notice requirements and provide that for transactions submitted under 999.2 through 999.5, the persons or organizations submitting confidential documents must separately designate and request that such documents not be maintained in the Public File.

The proposed amendments to regulations are discussed in more detail as follows:

1. Section 310 provides a description of the charitable trust records available for public inspection. The proposed amendments:

- Insert subdivisions “(a)” and “(b)” to enhance the readability of the amended regulation. This is a minor edit designed to aid in clarity and understanding. There is no policy or procedural change based on this amendment.
- Insert the language: “herein *infra* and pursuant to” in the second line of subdivision (a) to reference subdivision (b). This is a minor edit designed to aid in clarity and understanding. There is no policy or procedural change based on this amendment.
- Insert the language: “(b) Donor information exempt from public inspection pursuant to Internal Revenue Code section 6104(d)(3)(A) shall be treated as confidential by the Attorney General and shall not be disclosed except as follows: (1) In a court or administrative proceeding brought pursuant to the Attorney General’s charitable trust enforcement responsibilities; (2) In response to a search warrant; or (3) In response to an administrative subpoena of an agency, bureau, or department of this state if the agency, bureau, or department agrees to maintain the confidentiality of the information received consistent with this regulation.” There is no existing statute or regulation that sets forth the Attorney General’s practice to treat specific donor information as confidential. The amendment is consistent with the practice of the Internal Revenue Service in that the Attorney General does not disclose Schedule B donor information and does not post the document on its website or otherwise make it available to the public. This amendment is necessary to codify the Registry’s existing and historical practice to maintain the confidentiality of Schedule B information. There is no policy or procedural change based on this amendment.

2. Section 999.1 provides general provisions and definitions. Subdivision (e) defines a “public file” of a nonprofit corporation. The proposed amendments:

- Insert the language: “A public file excludes donor information exempt from public inspection pursuant to Internal Revenue Code section 6104 (d)(3)(A),” as the second sentence of the second paragraph. There is no statute or regulation that sets forth the existing practice that the Attorney General excludes specific donor information from the Registry’s public file. The amendment is consistent with the practice of the Internal Revenue Service in that the Attorney General does not disclose Schedule B donor information and does not post the document on its website or otherwise make it available to the public. This amendment is necessary to codify the Registry’s existing and historical practice to maintain the confidentiality of Schedule B information. There is no policy or procedural change based on this amendment.

- Insert the language: “separately designates and” in the last line of the last sentence of the third paragraph after the phrase ‘confidential documents’ and before the word ‘requests.’ This change will require that in notices and requests for approval submitted to the Attorney General pursuant to the subdivisions of sections 999.2 through 999.5, the party requesting that certain documents be maintained as confidential will be required to separately designate such documents as confidential. There is no policy or procedural change based on this amendment. This amendment is necessary to facilitate the Registry’s processing of information that is requested to be maintained as confidential.

3. Section 312 states how annual registration and renewal fees may be used by the Registry. The proposed amendments:

- Delete the word “and” on the second line after the comma and before the word “registration.” This is a minor edit designed to aid in clarity and understanding.
- Insert the text “and the Registry of Charitable Trusts Fund established pursuant to Government Code section 12587.1” in the third line after “12599.2,” and before the word “shall”. This edit will reference the statute that is consistent with the proposed amendment. The amendment is necessary to clarify that the Registry’s fund and annual registration and renewal fees will be used by the Registry to enforce registration and reporting provisions, and are not a change in policy or procedure.
- Delete the word “solely” in the third line and delete the word “and” from the fourth line. These are minor edits designed to aid in clarity and understanding. There is no policy or procedural change based on this amendment.
- Insert a comma followed by the word “to” in the fourth line after the phrase “Registry of Charitable Trusts” and before the word “provide.” These are minor edits designed to aid in clarity and understanding. There is no policy or procedural change based on this amendment.
- Delete the period after the word “California” in the sixth line and insert a comma followed by the language and punctuation “and to enforce the registration and reporting provisions.” This change will clarify that the Registry will use annual registration and renewal fees to enforce its registration and reporting provisions. This change is consistent with Government Code section 12587.1, subdivision (d). The amendment is necessary to affirm that the Registry’s fund and annual registration and renewal fees will be used by the Registry to enforce registration and reporting provisions, and are not a change in policy or procedure.

4. Section 999.1, subdivision (a), provides information regarding giving notice to and submitting requests to the Attorney General. The proposed amendments:

- Capitalize the first letter in each of the words “Golden Gate Avenue, Suite 11000” in the first address listed in subdivision (a) that identifies the Attorney General’s

San Francisco, California office location. This is a technical edit. There is no policy or procedural change based on this amendment.

- Capitalize the first letter in each of the words “South Spring Street” in the second address listed in subdivision (a) that identifies the Attorney General’s Los Angeles, California office location. Insert the text “Suite 1702” after the word and punctuation “Street,” in the Attorney General’s Los Angeles, California office address. This is a technical edit. There is no policy or procedural change based on this amendment.
- Capitalize the letter “I” and the letters “P.O. and B” in the third address listed in subdivision (a) that identifies the Attorney General’s Sacramento, California office location. This is a technical edit. There is no policy or procedural change based on this amendment.
- Change the subdivision reference in the last paragraph from 999.2 “(e)” to 999.2 “(f).” This is a technical edit designed to aid in clarity and understanding. There is no policy or procedural change based on this amendment.

## **V. TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS**

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

## **VI. ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The Attorney General does not anticipate that these proposed regulations will have any impact in creating or eliminating jobs within the State of California, creating or eliminating businesses in the State of California or any impact on the expansion of businesses in the State of California. Clarifying and codifying the Attorney General’s existing and historical practice will assist registrants and donors in understanding that specific donor information is treated as confidential and excluded from the Registry’s public file. Clarifying that the Registry will use its fund and annual registration and renewal fees to enforce registration and reporting provisions amends Section 312 in a manner that is consistent with Government Code section 12587.1. Correcting existing typographical errors will assist registrants in submitting the information required to the correct address locations. The proposed regulations do not change the registration and reporting requirements for charitable organizations, trustees, professional fundraisers, or fundraising counsel. There is no relationship between the proposed regulations and the entities’ financial status; therefore no jobs will be created or eliminated as a result of the proposed regulations.

## **VII. REASONABLE ALTERNATIVES TO THE PROPOSED AMENDMENTS TO REGULATIONS THE AGENCY’S REASONS FOR REJECTING THOSE ALTERNATIVES**

The Attorney General believes that there are no reasonable alternatives to the proposed regulations. However, the Attorney General's Office invites and will consider all public comments on alternatives to the regulation.

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

Nonprofit organizations are excluded from the definition of small business under Government Code section 11342.610, subdivision (b)(6). The proposed regulations will not impact any other organizations or small businesses.

**IX. REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE LESS BURDENSOME AND EQUALLY EFFECTIVE IN ACHIEVING THE PURPOSES OF THE REGULATION IN A MANNER THAT ACHIEVES THE PURPOSES OF THE STATUTE OR OTHER LAW BEING IMPLEMENTED**

The Attorney General believes that there are no reasonable alternatives to the proposed regulations. However, the Attorney General's Office invites and will consider all public comments on alternatives to the regulation.

**X. DOES THE PROPOSED REGULATORY ACTION MANDATE THE USE OF SPECIFIC TECHNOLOGIES OR EQUIPMENT, OR PRESCRIBE SPECIFIC ACTIONS OR PROCEDURES?**

No.

**XI. DOES THE PROPOSED REGULATORY ACTION CONTAIN FACTS, EVIDENCE, DOCUMENTS TESTIMONY, ON WHICH THE AGENCY RELIES TO SUPPORT AN INITIAL DETERMINATION THAT THE ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS?**

No.

**XII. REGULATIONS MANDATED BY FEDERAL LAW (11346.2(c))**

The proposed regulatory action does not contain any regulations that are identical to any corresponding federal regulation.

All initial statement of reasons requirements for the proposed regulations have been satisfied.