

# **INITIAL STATEMENT OF REASONS: ADOPTION OF AMENDED REGULATIONS RELATING TO THE INITIAL APPLICATION FOR THE REGISTRATION OF CHARITIES**

## **I. General Purpose of Regulations**

As required by Section 11346.2 of the Government Code, the California Attorney General (“Attorney General”) sets forth below the reasons for the proposed amendments to section 300 of Title 11 of the California Code of Regulations. The proposed amended regulations are made pursuant to the authority of Government Code section 12587, which specifically authorizes the DOJ to adopt regulations implementing the article regarding supervision of charitable organizations. The proposed amendment includes requirements that certain information must be submitted when applying for initial registration, as authorized under 12587 of the Government Code.

Under the Supervision of Trustees and Fundraisers for Charitable Purposes Act (hereafter “the Act”) (Gov. Code, §§ 12580-12599.5), the Attorney General oversees all charities and commercial fundraisers for charitable purposes doing business in California. These charities and fundraisers must register and file annual financial reports with the Registry of Charitable Trusts (hereafter referred to as “Registry”), which is part of the Attorney General’s Charitable Trusts Section. This registration and reporting requirement is a critical element in the Attorney General’s efforts, through enforcement actions brought by attorneys in the Charitable Trusts Section, to protect the public both against improper diversion of charitable assets and against misleading and fraudulent charitable solicitations.

In order to protect the public, the Attorney General needs complete information from a charity before initially registering the entity. Without this information, it is not possible for the Attorney General to make a reasoned determination whether or not the applicant should be

granted registration. The information is also critical to compliance efforts. We are instituting an automated database for Registry records. If, at the time of initial registration, we do not receive the information outlined in our proposed Section 300, we cannot populate the database with the basic information necessary to monitor compliance with reporting laws. In addition, the information provided at initial registration assists the Attorney General in development and prosecution of enforcement actions, should they be necessary.

Accordingly, the Attorney General has determined that the initial registration requirements of Section 300 should be amended.

Section 300, subsection (a)

The Attorney General has added subsection (a) to the text of Section 300, for the purpose of detailing the required information in separate subsection (b). In addition, the Attorney General has added the requirement that the application for registration form must be filed at initial registration. This subsection is being amended to provide the Attorney General with additional information to use in determining whether or not to grant registration, and to provide the Attorney General with information that will assist with monitoring compliance with the laws regarding charities, and acting to enforce the laws within the Attorney General's jurisdiction with which charities must comply.

Section 300, subsection (b)

Subsection (b) of Section 300 is being added to require the submission of specific information at the time of application for initial registration. This information is necessary in order for the Attorney General to make a determination about whether or not to grant registration, and in order to monitor compliance with the laws within the Attorney General's jurisdiction with which charities must comply.

Section 300, subsection (b), subdivision (1)

Subdivision (1) requires that the applicant provide the name of the organization. This information is necessary in order to identify the applicant and to determine whether the organization should be allowed to register.

Section 300, subsection (b), subdivision (2)

Subdivision (2) requires that the applicant provide the mailing address of the organization. This information is necessary so that the Attorney General's Registry can communicate with the organization.

Section 300, subsection (b), subdivision (3)

Subdivision (3) requires that the applicant provide the federal employer identification number that it received from the Internal Revenue Service. This information is necessary to identify the organization, and to determine its tax exempt status.

Section 300, subsection (b), subdivision (4)

Subdivision (4) requires that the applicant provide the federal employer identification group exemption number that it received from the Internal Revenue Service. This information is necessary for the Attorney General to identify the organization, and to determine its tax exempt status.

Section 300, subsection (b), subdivision (5)

Subdivision (5) requires that the applicant provide the corporate or organization number received from the Secretary of State. This information is necessary to determine whether the organization is in compliance with the laws requiring filing with the Secretary of State and to allow the Registry to cross-check Secretary of State records, which will be linked to its new automated Registry database. This information will also facilitate electronic transmission from Secretary of

State to the Registry database of updated information regarding an entity.

Section 300, subsection (b), subdivision (6)

Subdivision (6) requires that the applicant provide the names and addresses of all trustees or directors and officers. This information is necessary so that the Attorney General can determine, for purposes of compliance, who is responsible for the activities of the entity.

Section 300, subsection (b), subdivision (7)

Subdivision (7) requires that the applicant submit a statement fully describing the primary activity of the organization. This information is necessary to ensure that the organization is operating in accordance with its charitable purpose and in compliance with California law.

Section 300, subsection (b), subdivision (8)

Subdivision (8) requires that an applicant based outside of California must provide information regarding the extent of its activities in California, and how its activities within California relate to total activities. In addition, the applicant must list all funds, property and other assets held or expected to be held in California, and must state whether it is monitored in its home state, and if so, by whom. The purpose of this information is to determine the jurisdiction of the Attorney General over the entity, to determine whether the entity is subject to the Act's audit requirement, and to determine whether any other state charity regulator is monitoring the organization.

Section 300, subsection (b), subdivision (9)

Subdivision (9) requires that the applicant provide the date on which assets were first received. This information is necessary to determine compliance with the Act, which requires a charitable entity to register with the Attorney General within thirty days of receiving assets.

Section 300, subsection (b), subdivision (10)

Subdivision (10) requires that the applicant state the annual accounting period that it has adopted. This information is necessary so that the Registry can determine when annual renewal of registration must be submitted by the organization. In the new automated database, it will also facilitate automatic generation of reminder letters.

Section 300, subsection (b), subdivision (11)

Subdivision (11) requires that the applicant submit certain documentation to the Registry.

Corporations must provide copies of the articles of incorporation, all amendments, and bylaws.

Foreign corporations must provide the date that the corporation qualified to do business in California through the California Secretary of State's office. This information is necessary to determine the validity of corporate status, as well as the entity's charitable purpose.

Associations must provide a copy of the instrument creating the organization; for example, bylaws, constitution, or articles of association. This information is necessary to determine the charitable purpose for which the entity was formed, and whether the organization is operating in accordance with its charitable purpose.

Trusts must provide a copy of the trust instrument or will and decree of final distribution. This information is necessary to determine the terms of the trust and whether the Attorney General needs to intervene to protect a charitable interest.

Trustees for charitable purposes must provide a summary describing their operations and charitable purpose. This information is necessary to determine the charitable purpose, and whether the trustee is complying with the charitable purpose of the trust.

Section 300, subsection (b), subdivision (12)

Subdivision (12) requires that the organization submit a copy of its bylaws. This information is necessary to determine whether the organization is in compliance with the laws enforced by the

Attorney General, with which charities must comply.

Section 300, subsection (b), subdivision (13)

Subdivision (13) requires that the organization disclose whether it has applied for or been granted IRS tax exempt status. This information is necessary because tax exempt status affects, among other things, whether a donor can be told that his/her donation is tax-deductible.

The organization is also required to provide the date of the application or the date of the determination letter, and a copy of its application (IRS Form 1023). This information is necessary in order to determine when the entity was entitled to represent itself as tax-exempt.

The information contained in the 1023 may also be useful for investigative purposes if it is different than what is reflected in founding documents, solicitation materials, and information submitted to the California Attorney General.

The organization is also required to specify under which subdivision of IRC 501(c) it was granted tax exempt status. This information is necessary as the classification impacts the operation of the organization, and whether it needs to register with the Attorney General.

The organization is also required to state whether contributions to the organization are tax-deductible. This information is necessary so that the Attorney General can verify that donors are being given the correct information, and if necessary, alert the organization that it must have tax exempt status in order for donations to be tax-deductible.

The organization must attach a copy of the federal exemption determination letter. This information is necessary to determine the validity of the organization's tax exempt status, and when it went into effect.

Section 300, subsection (b), subdivision (14)

Subdivision (14) requires that the organization provide information regarding its use of commercial fundraisers, paid solicitors, fundraising counsel, or commercial coventurers. This information is necessary in order to determine whether the organization and its fundraiser are in compliance with the Act, which requires registration prior to commencement of solicitation activities.

Section 300, subsection (b), subdivision (15)

Subdivision (15) requires the signature of the person who prepared the form. This information is necessary so that the Attorney General can identify the person who prepared the application form or is taking responsibility for its contents. It may also be useful for investigative purposes, if a question arises about the authenticity of the signature.

Section 300, subsection (b), subdivision (16)

Subdivision (16) requires the date that the form was signed. This information is necessary so that the Attorney General can determine when the organization submitted its application form.

Section 300, subsection (b), subdivision (17)

Subdivision (17) requires the title of the person who signed the application form. This information is necessary so that the Attorney General can determine who signed the application form, and that person's role within the organization.

Section 300, subsection (b), subdivision (18)

Subdivision (18) requires the address of the organization. This information is necessary because an organization may have a different address than its mailing address, and the Attorney General needs to know where the organization is located for purposes of compliance checks.

Section 300, subsection (b), subdivision (19)

Subdivision (19) requires the organization's telephone number. This information is necessary in case the Registry staff needs to contact the entity by telephone.

Section 300, subsection (b), subdivision (20)

Subdivision (20) requires the organization's email address. This information is necessary for communication in case the telephone service of the organization is disrupted. It will also facilitate email transmission of notices and information regarding changes in Registry procedures which heretofore could only be sent by U.S. mail, a process that is prohibitive since the Registry has over 93,000 registrants.

Section 300, subsection (b), subdivision (21)

Subdivision (21) requires the organization's fax number. This information is necessary so that Registry staff can send documents to the organization.

Section 300, subsection (b), subdivision (22)

Subdivision (22) requires the website of the organization. This information is necessary for investigative purposes so that the Attorney General can determine if any misrepresentations are being made to the public.

## **II. Technical Studies Relied Upon**

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

## **III. Alternatives to the Proposed Regulations**

Adoption of the proposed modified regulations is necessary to facilitate the Attorney General's mandated supervision of charitable organizations. There is no alternative available to accomplish these objectives.

## **IV. Economic Impact on Business**

The proposed amendments to the regulations will have no economic impact on business, as they merely request additional information already in the possession of the applicant charities.