

July 13, 2015

Joseph N. Zimring, Deputy Attorney General
Office of the Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013

VIA EMAIL (Joseph.Zimring@doj.ca.gov)

Re: Modifications to Proposed Regulations to Title 11

Dear Deputy Attorney General Zimring:

We have reviewed the Department of Justice's Notice of Modifications to Text of Proposed Regulations to Title 11 of the California Code of Regulations ("CCR") and wish to submit the following comments, which we strongly hope the Department will carefully consider. Our concern is not so much with the modifications that were made to the proposed regulations, but with those modifications that were not made.

As we previously stated in our November 10, 2014 letter to the Department (attached again here), as attorneys who provide legal counsel to nonprofits and exempt organizations in the state of California and as other representatives of and stakeholders in the nonprofit sector in this state, we understand the need for and respect the importance of enabling the Attorney General to effectively and efficiently exercise its authority over persons and entities that hold charitable assets and appreciate the importance of providing clarity regarding registrations with the Registry of Charitable Trusts. However, we continue to fear that the proposed regulations will severely and unnecessarily hinder the charitable activities of many California nonprofits, and particularly many small to medium-sized nonprofits. Moreover, we are concerned that the regulations may have the unintended effect of causing national nonprofits to shy away from incorporating in, operating in, or soliciting contributions from residents of California. Unfortunately, the modifications to the proposed regulations did very little, if anything, to address our expressed concerns.

As we outlined in greater detail in our prior letter, our primary concerns are with respect to the proposed additions to Title 11, Division 1, Chapter 15 of the CCR. More specifically, proposed Subsection 999.9.3(b) will essentially require that a nonprofit cease all operations in California upon suspension or revocation of its registration, regardless of the cause of or ease of remedying such suspension or revocation. Our concern is that such a regulation, particularly when read in conjunction with the other proposed regulations broadening the grounds for which registration may or shall be suspended or revoked (including failure to file a complete registration renewal form), will have a crippling effect on California nonprofits and the populations they serve. The addition in proposed Subsection 999.9.1(b) of a notice requirement prior to automatically suspending a

registration is a welcomed modification and may provide some nonprofits with an opportunity to cure the basis for suspension. However, merely providing notice does not address our many concerns with the proposed regulations and will be of no use for nonprofits that have failed to update their address of record with the Attorney General.

Moreover, we are greatly concerned that the provision of this proposed Subsection providing for the personal liability of members of the board of directors or other involved individuals for the distribution or spending of a nonprofit's charitable assets while its registration is suspended or revoked will have a significant chilling effect on volunteer board service, particularly for small nonprofits without paid staff. At best, we anticipate that such a provision will leave California nonprofits scrambling to determine whether they have or can obtain sufficient insurance coverage to account for such potential personal liability. At worst, we fear that it will drive volunteers away from service to the nonprofit sector in this state, deprive California nonprofits of a resource essential to their operations, and lead new nonprofits away from engaging in activities in California.

We find proposed Subsection 999.9.3(c) to be of even greater concern. It provides the Attorney General with the broad and discretionary authority to require a nonprofit whose registration has been suspended or revoked (including for merely failing to file a complete registration renewal form) to distribute its assets to another charitable organization or into a blocked bank account. We think that providing such broad discretion in such wide-ranging circumstances, even if rarely exercised by the Attorney General, sets a dangerous precedent and far exceeds the reasonable scope of appropriate Attorney General oversight.

Finally, as we explained in our earlier letter, we are also worried that the provision in proposed Subsection 999.9.1(d) (Subsection 999.9.1(c) in the earlier proposed regulations) providing for the automatic revocation of a registrant whose registration has been continuously suspended for one year is an extreme measure that has the potential to negatively and dramatically affect numerous California nonprofits. We find the automatic revocation provision particularly troubling when read in conjunction with the other proposed regulations granting the Attorney General wide latitude in suspending the registration of a nonprofit. In general, we find the expansive and unbridled discretion provided to the Attorney General in the proposed regulations to be alarming and a matter of bad policy.

In summary, we were highly disappointed to see that the Department failed to incorporate into the modifications an adequate response to any of the concerns that we previously expressed, or those other concerns that we are aware our colleagues have similarly expressed. We strongly urge the Department to thoughtfully consider these concerns at this stage and to reconsider promulgating the proposed regulations as drafted in light of the significant potential implications for thousands of California nonprofits and the potential impact such regulations may have on the sector at large. Should the Department move forward with the proposed regulations, we would respectfully request that it provide guidance to the sector as to how and when it intends to exercise the wide discretion that it has reserved for itself in the regulations.

We thank you for your attention to and consideration of these comments and would be happy to address any additional questions that you may have at any time.

Sincerely,

Erin Bradrick

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