FINAL STATEMENT OF REASONS

PROPOSED ADOPTION OF REGULATIONS PURSUANT TO THE SUPERVISION OF TRUSTEES AND FUNDRAISERS FOR CHARITABLE PURPOSES ACT (GOVERNMENT CODE SECTION 12580, ET SEQ.)

The Attorney General incorporates the Initial Statement of Reasons (ISOR), the Notice of Proposed Rulemaking Action and the Notice of Modifications to Text of Proposed Regulations by reference, with the following changes.

I. UPDATE TO THE INITIAL STATEMENT OF REASONS

Summary of the modifications to the proposed regulations:

1. The Supervision of Trustees and Fundraisers for Charitable Purposes Act (Gov. Code, § 12580 et seq.) codifies the Attorney General's authority over persons and entities that hold charitable assets, and for-profit fundraising professionals, including commercial fundraisers, fundraising counsel and commercial coventurers. The registration functions are carried out by the Attorney General's Registry of Charitable Trusts, headed by the Registrar of Charitable Trusts. The proposed and existing regulations alternately reference the Registry of Charitable Trusts, the Registrar of Charitable Trusts, the Attorney General and the Attorney General's Office. Because all of the functions are performed under the auspices of the Attorney General, including those that have been delegated to the Registry of Charitable Trusts, the references have been changed to the Attorney General. These changes are for consistency and clarity. These changes are not a change of substance or policy.

2. The proposed and existing regulations use different terms to refer to penalties, including fine and civil penalty. The language has been revised to use the term "penalty." These changes are for consistency and clarity. These changes are not a change of substance or policy.

3. In various provisions the proposed and existing regulations listed different types of administrative enforcement actions, such as registration refusal, revocation, suspension, the imposition of civil penalty, or a cease and desist order. Where appropriate, the individual terms have been removed and are now collectively referred to as "administrative action." These changes are for consistency and clarity. These changes are not a change of substance or policy.

4. Section 314(a)(1): The Attorney General has the authority to inspect records of persons and organizations holding assets subject to a charitable trust, as well as records related to fundraising for charitable purposes. (See, e.g., Corporations Code section 5250 and Government Code section 12598.) Section 314, subsection (a)(1), provides that the failure to produce information in response to a request from the Attorney General's Office constitutes grounds for the issuance of a cease and desist order. The word "any" is removed to avoid confusion. All of the requested information must be produced and failure to do so constitutes grounds for the issuance of a cease and desist order.

5. Government Code section 12585 provides that, unless exempt, any person or entity holding assets subject to a charitable trust must register with the Attorney General within

30 days of the initial receipt of charitable assets. The Supervision Act also requires that professional fundraisers must be properly registered prior to being involved in solicitations for charitable purposes. (See, e.g., Government Code sections 12599 - 12599.2.) Section 314, subsection (a)(5), has been added to make clear that the Attorney General may issue a cease and desist order to any person or entity that is operating without being properly registered.

6. The Attorney General may issue cease and desist orders to stop violations pursuant to Government Code section 12591.1, subsection (b). These orders, when final, constitute lawful administrative orders. Section 314, subsection (b), provides that violations of a valid cease and desist order may be punished pursuant to the contempt sanction procedures of Government Code sections 11455.10 - 11455.20.

7. Section 315 was rewritten for purposes of clarity and to address issues raised in the comments. Subsection (a) reflects that the Attorney General may initially assess penalties up to $1,000 for violations.

8. Section 315, subsection (a)(1), reflects that pursuant to Government Code section 12591.1, subdivision (i), violations of Government Code section 12586.1, subdivisions (c), (d), (e) or (f) are treated differently than other violations. The prospective recipient of a penalty will be given 30 days notice and an opportunity to correct the violation before the penalty can be imposed. If the recipient corrects the violation within the 30 days, no penalty will be imposed.

9. Section 315, subsection (a)(2), applies to all other violations for which penalties may be assessed under the Supervision Act and related laws. In response to comments, the subsection now codifies existing law that in connection with a solicitation, each solicitation constitutes a separate violation, regardless of the medium used and whether the solicitation results in a donation.

10. Section 315, subsection (a)(3), clarifies that if the recipient refuses to stop violating the law after receiving 5 days notice of the violation from the Attorney General, an additional penalty of $100 per day, per violation, may be assessed until the recipient stops violating the law.

11. Section 315, subsection (b), clarifies that appeals of penalties will be handled in the same manner as other administrative appeals. Currently, the Department of Justice contracts with the Office of Administrative Hearings to provide administrative law judges to conduct administrative hearings to adjudicate administrative appeals.

12. Section 999.9.1, subsection (a)(2): Government Code section 12586 requires registrants to file periodic written reports with the Attorney General. Section 301 sets forth the reports that must be filed with the Registry annually, including the Form RRF-1, a copy of the informational return filed with the Internal Revenue Service and the renewal fee. For purposes of clarity, this provision has been modified to incorporate the requirements of section 301 expressly, rather than summarizing the section's requirements. This is not a substantive change.

13. Section 999.9.1, subsection (b), has been added in response to comments regarding the impact and implementation of the automatic suspension provisions. Registrants will receive a 30-day notice and opportunity to cure the violation before the automatic suspension is imposed. As a result of the addition of this subsection, the subsequent subsections have been renumbered.

14. Section 999.9.1, subsection (c): In response to comments, the time period to notify the Attorney General of a change in an organization's tax exempt or corporate status has been increased from 5 to 10 days.

15. Sections 999.9.1, subsections (g) and (h), have been added in response to comments raising concerns about ending or staying the automatic suspension and circumstances when the suspension can be stayed without harming the public. These subsections provide that Attorney General may stay or set aside an automatic suspension order. As a condition of doing so, the Attorney General may require the registrant to comply with specific terms and conditions.

16. Section 999.9.2, subsection (a)(3): Government Code section 12586 requires registrants to file periodic written reports with the Attorney General. Section 301 sets forth the reports that must be filed with the Registry annually, including the Form RRF-1, a copy of the informational return filed with the Internal Revenue Service and the renewal fee. For purposes of clarity, this provision has been modified to incorporate the requirements of section 301 expressly, rather than summarizing the section's requirements. This is not a substantive change.

II. LOCAL MANDATE DETERMINATION

The proposed amendments do not impose a mandate on local agencies or school districts.

III. ALTERNATIVES DETERMINATION

No alternatives considered by the Attorney General would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

IV. TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS

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

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

The proposed amendments will not have an adverse impact on small business. Nonprofit organizations are excluded from the definition of a small business under Government Code

section 11342.610, subdivision (b)(6). To the extent that a commercial fundraiser for charitable purposes, fundraising counsel or commercial coventurer may be a small business, the proposed regulations only impact small businesses that are violating existing law. Small businesses that comply with the law will not be impacted. The Attorney General's Office has not identified any alternatives that would lessen any adverse impact on small businesses and none has been proposed.

VI. MANDATES OR PRESCRIPTIVE STANDARDS

The proposed amendments do not mandate the use of specific technologies or equipment.

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

The Supervision Act currently provides that violations may result in an administrative enforcement action against persons and entities that are registered with the Attorney General's Registry of Charitable Trusts or those that are required to be registered but are operating illegally without being registered. Because the conduct that could result in an administrative enforcement action under the proposed amendments already constitutes a violation of the Supervision Act, there is no new adverse economic impact. Further, by clarifying the types of conduct that could result in an administrative enforcement action, as well as clarifying the consequences of administrative enforcement actions, persons and entities subject to the Supervision Act will have greater certainty of the type of conduct that may result in an administrative enforcement action.

VIII. SUMMARY AND RESPONSE TO COMMENTS

The Attorney General's Office accepted public comments through November 10, 2014. A public hearing was not requested or scheduled and no oral comments were received.

On March 25, 2015, pursuant to Government Code Section 11346.8, the Attorney General's Office provided a 15-day notice of proposed modifications to the regulations and accepted public comments from June 25 - July 13, 2015. No substantive changes were made to the regulations in response to these comments.

The Attorney General's Office received comments from the following in response to its initial notice:

1. Lisa Runquist, Attorney at Law
2. Melissa Mikesell
3. Michael Folz Wexler, Wexler Law Group
4. Gene Takagi and Erin Bradrick, NEO Law Group; Barbara Rosen, Evans & Rosen LLP; Peter Manzo, President and CEO, United Ways of California. NEO Law Group reports that its comments were endorsed by:
    a. Alliance for Justice
    b. For Purpose Law Group
    c. Arthur Reiman, Law Firm for Non-Profits

d. Zoe Hunton, Hunton Law
e. Melissa Mikesell, Esq.
f. Bergman & Allerdice
g. Ayako Nagano, Midori Law Group
h. Anne Olin, CEO, Charitable Ventures of Orange County

5. Arthur Reiman, the Law Firm for Non-Profits
6. Debra Dunc

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD FROM SEPTEMBER 26, 2014, THROUGH NOVEMBER 10, 2014:

1. Arthur Reiman comments that "[a]s commercial fundraisers, fundraising counsel and commercial fundraisers are affected by the regs, they do affect small businesses, contrary to the claim on page 5 of the Notice of Proposed Rulemaking."

Response: The comment correctly notes that the Small Business Determination in the Notice of Proposed Action incorrectly stated that the proposed regulations only effect nonprofit entities, but the regulations may impact commercial fundraisers, fundraising counsel and commercial coventurers that may be small businesses. The Attorney General's analysis, however, considered the impact on commercial fundraisers, fundraising counsel and commercial coventurers that may be small businesses. For example, the analysis of Reasonable Alternatives to the Proposed Regulatory Action That Would Lessen Any Adverse Impact On Small Business in the Initial Statement of Reasons, Section IV states:

> *"To the extent that a commercial fundraiser for charitable purposes, fundraising counsel or commercial coventurer may be a small business, the proposed regulations only impact small businesses that are violating the law as it currently exists. Small businesses that comply with the law will not be impacted. The Attorney General's Office has not identified any alternatives that would lessen any adverse impact on small businesses and none has been proposed."*

This clarifies that while the regulations may affect small businesses, there is no adverse effect on small business that are in compliance with existing law.

2. Melissa Mikesell comments that "Many groups I have worked with over the years have been delinquent on their initial registration -- because they were not aware of the obligation to file -- or were late in filing renewals, particularly for smaller charities that are volunteer-run whose address on record may be tied to a volunteer leader's address and not a facility occupied by the charity.

Response: Section 313 is being adopted, in part, to address this issue. Section 313 clarifies that registrants have an obligation to ensure that the Attorney General is notified of the registrant's current address. The Attorney General will use this address to provide the notices required by law. The Attorney General also provides resources to educate people involved with charities about their duties and responsibilities and the laws governing

charities in California. This includes the Attorney General's Guide for Charities that can be downloaded from the Attorney General's website at no cost: oag.ca.gov/charities. The laws and regulations governing charities, along with answers to frequently asked questions about the requirements for charities can also be found on the Attorney General's website at no cost.

3. Melissa Mikesell comments that "I am very concerned that the proposed regulations, if adopted, will mean such charities will need to suspend activities and fundraising if they are delinquent in their registration, and if suspended or revoked, their board members will be subject to personal liability and their assets subject to forced divestiture. Additionally, since you do not have a reinstatement process in place or with procedures that would force the suspended charity to grant all of its assets to another charity, it could harm the fundraising or other activities of charities who made only a minor error. This is especially true when the address on file is not correct and the organizational leaders may have no idea that the charity has been suspended and could not therefore notify the board. I am also concerned that entities could be suspended for merely filing a form not totally complete Form RRF-1 (e.g., missing one field or one attachment)."

Response: The registration and reporting requirements are codified in existing law and the proposed amendments do not change these requirements. (See, e.g., Government Code section 12580, et seq., California Code of Regulations, title 11, section 301, et seq.) Organizations that are delinquent or otherwise not in good standing because they have failed to comply with the registration and reporting requirements cannot legally engage in activities or fundraising under existing law. This is not a change in policy.

The commenter's example of an organization "suspended for merely filing a form not totally complete," is unlikely, as the organization would have to be unwilling or unable to correctly file the form after it was rejected before it would be suspended. Further, the organization could file the corrected form at any time while it was suspended and the suspension would be lifted.

Registrants that dispute the Attorney General's determination of a violation may appeal the action and will receive a hearing before an independent hearing officer. The Attorney General's Office currently contracts with the Office of Administrative Hearings to provide administrative law judges to hear contested matters. (Gov. Code, § 12598, subd. (e)(2).) In an action to suspend or revoke a registration, the Attorney General's Office must prove the alleged violations by a preponderance of evidence. (See, e.g., San Benito Foods v. Veneman (1996) 50 Cal.App.4th 1889, 1892–1895.) The respondent has the opportunity to present and rebut evidence. (Gov. Code, § 11425.10.)

Information regarding the registrant's status, including its address of record and whether its registration is suspended or current, is publicly available on the Attorney General's website (oag.ca.gov/charities). Any member of the organization or the public can check this information at any time and notify the Attorney General's Office if the information is no longer current.

Section 999.9.5. provides a process for reinstatement.

4. Melissa Mikesell comments that "[n]onprofits managed or run by volunteers often are not aware of the fact that there are three required compliance agencies regulating their activities -- the FTB for tax compliance, which requires annual filings; the Secretary of State, which requires annual or bi-annual filings; and the Attorney General, which requires a separate charitable registration form. If you want to implement this type of penalty, it would be better to have a centralized filing requirement that would allow entities to file the required forms all in once place at one time; and then have a single penalty for failure to comply."

   Response: This comment has not been adopted. The Attorney General may not alter, amend or enlarge the statute by regulation and has no authority to impose requirements on other agencies or to alter or amend the laws and regulations governing the activities of other agencies. (See, e.g., Cal. Code Regs., tit.1, § 14(c)(1)(A).) This comment is more appropriately addressed to the state legislature.

5. Arthur Reiman comments that the proposed regulations provide no mechanism for removal from suspension.

   Response: This comment has been adopted, in part. The terms of the suspension will be contained in the order imposing the suspension and will depend on the reason the suspension was imposed. The suspension may be imposed for a specific period of time (e.g., for 60 days) or until certain conditions have been met (e.g., until the registrant files the periodic reports required by law).

   Section 316, subsection (b) provides that a registration suspended for failure to pay a penalty is automatically suspended until the penalty is paid. When the penalty is paid the suspension is lifted.

   A suspension imposed pursuant to Section 999.9.1 shall remain in effect until the violation resulting in the suspension has been corrected. For example, if the suspension is imposed because a registrant's corporate status was suspended by the Secretary of State pursuant to section 999.9.1, subdivision (a)(3), the suspension will remain in effect until the registrant provides documentation to the Attorney General that the Secretary of State has reinstated the registrant's corporate status at which time the suspension will be lifted.

   A registration that has been continuously suspended for one year because it has failed to cure the underlying violation will be automatically revoked pursuant to section 999.9.1, subsection (e).

   Subsections (g) and (h) have been added to Section 999.9.1 to allow the Attorney General to stay or set aside a suspension order when appropriate.

6. Debra Dunc comments that:

"I read the rules and am seriously concerned. As a volunteer at an all volunteer non profit, these rules appear to be intent on putting charities out of business by further handicapping them. This raises a lot of questions.

I do realize that if an entity hasn't filed or renewed for 3 consecutive years, it is likely to be out of business or not inclined to continue. It's really some of the other penalties which are of concern here. Such as $100 penalty per day per violation such as timely filings of annual registrations. There could be a multitude of reasons for missing a deadline and this fine could potentially put the entity out of business. Follow that with automatic suspension of registration for failing to pay the penalties and many lives can and will most likely be affected. Additionally,

- Prohibition applicable to any charity whose registration is delinquent, suspended or revoked against fundraising and engaging in other charitable activities in California.

and you now have a potentially, beneficial to many, business entity, whose hands are now tied. How are they able to raise the funds to pay for registering and/or any fines, etc. This is like tying a cement block to their feet and putting them in the water.

Many of these businesses have the weight/stress of running the charity for good causes and are willing to do so because it's worth it for the greater good. Adding conditions to increase their stress and jeopardize their work makes it a no win situation and this points to a sign that there is a mission toward eliminating charity business structures.

Perhaps this list just needs revising, as I can see the need for some of the new policies."

Response: This comment has been adopted, in part. Subsection (b) has been added to Section 999.9.1 to give the registrant 30 days notice of the impending suspension. If the registrant resolves the issue within the 30 days, the suspension will not take effect. Subsections (g) and (h) have been added to allow the Attorney General to stay or set aside a suspension order when appropriate.

The commenter misstates the application of penalties for failing to file annual registrations. This is covered by Government Code section 12586.1, subdivision (e). Section 315, subsection (a)(1), as modified, states that for "violations of Government Code section 12586.1, subdivisions(c), (d), (e) or (f), the notice must be mailed at least 30 days before the penalty becomes effective. The notice shall advise the recipient how to correct or appeal the violation. If the recipient provides documentation to the Attorney General within 30 days that the violation has been corrected the penalty will not be imposed."

The prohibition on registrants from operating or soliciting without a valid registration in good standing is consistent with existing law and is not a change in policy or procedure. Under general trust principles, a trustee has a duty to preserve trust property and failure to do so constitutes a breach of trust, making the trustee liable for any loss to the trust estate. (See, e.g., Prob. Code, §§ 16006, 16400, 16440.) To the extent that the penalties were incurred as a result of a breach of trust or fiduciary duty, it would likely be

improper to use assets subject to a charitable trust to pay the penalty. This is not a change in policy or procedure.

7. Section 314: Grounds for Issuance of a Cease and Desist Order

   a. Michael Wexler comments: One of the grounds for cease-and-desist orders is filing an incomplete financial report. Form RRF-1 should be updated to make clear when copies of IRS Form 990, 990-EZ, or 990-PF must be attached, in order to help charities avoid inadvertently filing an incomplete Form RRF-1.

Response: The Attorney General's Office agrees with this comment, in part. Changes to the RRF-1 Form require compliance with the Administrative Procedure Act's rulemaking requirements and the Attorney General's Office is not able to revise the form as part of this rulemaking process. The Attorney General's Office is in the process of updating the RRF-1 Form and instructions and expects the revised form and instructions to be available this year.

8. Section 315: Imposition of Penalty

   a. Michael Wexler comments that "act or omission" should be defined or illustrated with pertinent examples. For example, if the act being penalized is an improper charitable solicitation, is each letter a separate act? Or is each contribution received a separate act?

Response: For purposes of responding to this comment, the AG assumes the commenter is referring to Section 315 rather than 314 as stated in the comment. This comment has been adopted, in part.

Subsection (a)(2) has been amended to state "When the violation occurs in connection with a solicitation for charitable purposes, each call, mailing or request constitutes a separate violation regardless of whether it results in a donation."

b. Michael Wexler comments that if "a penalty is imposed upon conduct of a charity, can the penalty be paid from the funds of that charity, or must it be paid by its directors and officers? In the case of the $800 minimum franchise tax after revocation of exemption, your office has taken the position that the $800 must be paid by directors and officers, not from charitable funds. Proposed 11 CCR 999.9.3(b) also indicates that a penalty cannot be paid from charitable funds after a charity has been suspended or revoked by your office. This issue of incidence of the penalty should be covered by the regulation. Moreover, in the case of a non-501(c)(3) organization such as a 501(c)(4) service club, (c)(6) chamber of commerce, or (c)(7) social club that engages in some fundraising to raise money to grant to charities, those organizations would likely have some non-charitable operating funds from which a penalty could be paid.

Response: For purposes of responding to this comment, the AG assumes the commenter is referring to Section 315 rather than 314 as stated in the comment. This comment has not been adopted. Generally, actions resulting in the imposition of penalties

under this provision are the result of negligence, a breach of fiduciary duty or a breach of trust. Under general trust principles, a trustee has a duty to preserve trust property and failure to do so constitutes a breach of trust, making the trustee liable for any loss to the trust estate. (See, e.g., Prob. Code, §§ 16006, 16400, 16440.) To the extent that the penalties were incurred as a result of a breach of trust or fiduciary duty, it would likely be improper to use assets subject to a charitable trust to pay the penalty. Assets held subject to a charitable trust are restricted for charitable purposes. Generally, use of charitable assets to pay avoidable penalties would constitute waste and misuse of charitable assets. Whether or not an organization that has non-charitable assets may use its non-charitable assets to pay a penalty will depend on the particular facts and circumstances of the situation and the Attorney General declines to impose a blanket determination at this time.

Penalties assessed by other government agencies or under other circumstances are outside the scope of this provision.

c. Michael Wexler comments that "[t]he 30-day deadline for payment of the penalty, like the 30-day appeal deadline, should be subject to relief if the charity demonstrates reasonable cause for the delay."

Response: For purposes of responding to this comment, the AG assumes the commenter is referring to Section 315 rather than 314 as stated in the comment. This comment has not been adopted. Section 313 clarifies that registrants have an obligation to ensure that the Attorney General is notified of the registrant's current address. The Attorney General will use this address to provide the notices required by law. Government Code section 12591.1, subdivision (e), and California Code of Regulations title, 11, section 999.6, both require appeals to be made within 30 days or the Attorney General's order becomes final. Section 315, subdivision (d), allows the Attorney General to agree to extend the time to pay penalties under appropriate circumstances. In the absence of such an agreement, 30 days is a reasonable time to comply with the penalty assessment or to appeal. If an organization chooses not to appeal there is no reason to extend the time to comply with the order.

9. Section 316: Suspension of registration in connection with the assessment of penalties.

a. Arthur Reiman comments that "timely" is not defined in section 316(b).

Response: This comment has not been adopted. Section 315, subsection (b), as modified, states "[u]nless a timely appeal has been filed, all penalties must be paid within 30 days of the issuance of the notice setting forth the amount of the penalty, unless the Attorney General has agreed to a later date in writing."

10. Section 999.6: Violations of Government Code section 12580, et seq.

a. Michael Wexler comments that the 30-day deadline for appeal of an administrative action should be subject to relief if the charity demonstrates reasonable cause for the delay.

Response: This comment has not been adopted. Government Code section 12591.1, subdivision (e), provides that "[a]ny request for hearing shall be made within 30 days after the Attorney General has served the person with notice of the action."

b. Arthur Reiman comments "[w]hat is the administrative body that would hear admin actions under § 999.6?

Response: Subsection (d), as modified, states:

> *"All hearings provided for under this regulation shall be conducted by an administrative hearing officer appointed by the Attorney General. The hearing officer shall not have participated in the decision concerning the administrative action that is the subject of the hearing, and is otherwise subject to the disqualification provisions of sections 11425.30 and 11425.40 of the Government Code."*

Currently, the Department of Justice contracts with the Office of Administrative Hearings (www.dgs.ca.gov/oah)to provide administrative law judges to conduct administrative hearings to adjudicate administrative appeals.

11. Section 999.9(a)(3): Grounds for Refusal, Revocation or Suspension for false or misleading statements in a document required to be filed with a government agency.

a. Michael Wexler comments that if a charity is determined upon audit by the IRS or FTB to have made a false or misleading statement or omission in its Form 990 or Form 199, that determination could well serve as grounds for your office to revoke or suspend its registration. The proposed provision is more open-ended, though, and can be read to suggest that your office should be performing its own audit of Federal or California tax returns. To do so could give rise to inconsistent results, and could place new burdens on OAG staff lacking the requisite training. The scope of this provision is potentially overbroad. If for example a charity misclassifies a worker as an independent contractor rather than an employee – a recurring issue in both the non-profit sector and for-profit sector—that would be manifested in incorrect payroll tax filings. Would your office be taking on the role of reviewing worker classification, in parallel to the IRS and EDD. Of course, if your office becomes aware of a questionable item on a tax return, it can already refer that item for consideration by the auditors of the pertinent taxing agency.

Response: This comment has not been adopted. Government Code section 12586 requires registrants to file periodic written reports with the Attorney General. Section 301 sets forth the reports that must be filed with the Registry annually, including the Form RRF-1, a copy of the informational return filed with the Internal Revenue Service and the renewal fee. Under existing law registrants are required to file periodic written reports under penalty of perjury. These documents, including the IRS Form 990s, are public records and are posted on the Attorney General's website. These documents are required to be available

to the public so that members of the public can make an informed decision before donating to a charitable organization.

> *"The Attorney General shall establish and maintain a register of charitable corporations, unincorporated associations, and trustees subject to this article and of the particular trust or other relationship under which they hold property for charitable purposes and, to that end, may conduct whatever investigation is necessary, and shall obtain from public records, court officers, taxing authorities, trustees, and other sources, whatever information, copies of instruments, reports, and records are needed for the establishment and maintenance of the register." (Gov. Code, § 12584.)*

The filing requirements have been in place for decades. Existing law prohibits organizations from making false or misleading statements and also requires nonprofit corporations to maintain accurate records. For example, Corporations Code section 6812 provides:

> *"(a) Every director or officer of any corporation is guilty of a crime if such director or officer knowingly concurs in making or publishing, either generally or privately, to members or other persons (1) any materially false report or statement as to the financial condition of the corporation, or (2) any willfully or fraudulently exaggerated report, account or statement of operations or financial condition, intended to induce and having a tendency to induce, contributions or donations to the corporation by members or other persons.*
>
> *(b) Every director or officer of any corporation is guilty of a crime who refuses to make or direct to be made any book entry or the posting of any notice required by law in the manner required by law.*
>
> *(c) A violation of subdivision (a) or (b) of this section shall be punishable by imprisonment in state prison or by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than one year or both such fine and imprisonment."*

The fact that these documents may also be filed with other government agencies will not lead to inconsistent results. The Attorney General's Office relies on this information for its oversight of organizations holding or soliciting charitable assets.

Informational returns filed with the AG are signed under penalty of perjury and are important documents relied on by the public. The Attorney General's office remains focused on protecting charitable assets and protecting the donating public. The AG evaluates

violations on a case-by-case basis and will determine the appropriate enforcement action, if any, based on its review of the violation.

12. Section 999.9(a)(4): Grounds for Refusal, Revocation or Suspension for failure to comply with the Standards of Conduct for nonprofit corporations in sections 5230 through 5239 and 7230 through 7238 of the Corporations Code.

    a. Lisa Runquist comments that this provision "is problematic for a number of reasons. First of all, it is unclear to me how the Attorney General will determine if the Standards of Conduct are met, as this is often not a black and white type of determination. Secondly, if there has been a violation of a standard of conduct by one or more directors, this does not automatically mean that the organization has done anything that should result in revocation of registration. This appears to give the Attorney General significant leeway in proceeding against a nonprofit that would otherwise be found to be in compliance with the regulations."

Response: This comment has not been adopted. The Attorney General has authority to enforce these standards under existing law. The proposed regulation offers the Attorney General the option to enforce these terms through administrative enforcement mechanisms in addition to the civil enforcement options already available.

The legislature imposed standards of conduct on the directors of public benefit corporations. These provisions are codified in Corporations Code sections 5230 through 5239 for public benefit corporations and Corporations Code sections 7230 through 7238 for mutual benefit corporations. (Added by Stats.1978, c. 567, p. 1750, § 5, operative Jan. 1, 1980. Amended by Stats.1987, c. 923, § 1.2, operative Jan. 1, 1988; Added by Stats.1978, c. 567, p. 1821, § 6, operative Jan. 1, 1980. Amended by Stats.1987, c. 923, § 1.3, operative Jan. 1, 1988.) The Supervision of Trustees and Fundraisers for Charitable Purposes Act codifies that:

> *"The primary responsibility for supervising charitable trusts in California, for ensuring compliance with trusts and articles of incorporation, and for protection of assets held by charitable trusts and public benefit corporations, resides in the Attorney General. The Attorney General has broad powers under common law and California statutory law to carry out these charitable trust enforcement responsibilities." (Gov. Code, § 12598, subd. (a).)*

The Supervision Act further specifies that the Attorney General's "powers includes, but are not limited to, charitable trust enforcement actions under" Division 2 of the Corporations Code, commencing with Section 5000. (Gov. Code, § 12598, subd. (a)(3).) This includes the standards of conduct provisions that are codified in Corporations Code sections 5230 through 5239.

An organization that is in compliance with the laws and regulations will not be subject to an administrative enforcement action. An entity that disputes the Attorney General's determination that it has violated the Standards of Conduct may appeal the action

and will receive a hearing before an independent hearing officer. The Attorney General's Office currently contracts with the Office of Administrative Hearings to provide administrative law judges to hear contested matters. (Gov. Code, § 12598, subd. (e)(2).) In order to prevail the Attorney General must prove the violation by a preponderance of evidence.

13. Section 999.9(a)(5): Grounds for Refusal, Revocation or Suspension for failure to prepare annual financial statements as required by Government Code section 12586, subdivision (e).

    a. Lisa Runquist comments that this provision "will result in the ability of the Attorney General to refuse, revoke or suspend the registration of the majority of nonprofits currently operating. …The problem is that annual financial statements of nonprofits, especially the small ones, are RARELY prepared using generally accepted accounting principles. The vast majority of nonprofits with which I am familiar operate on a cash basis. Their financial statements are also prepared on this basis -- showing income actually received, and expenses actually incurred. However, GAAP requires that an accrual basis be used. Obviously, if a nonprofit is audited, the audited financials will be prepared using GAAP; however, only nonprofits with income in excess of $2 million are required to have an audit. This means that many of the smaller nonprofits are automatically going to be in violation of this law.

    Of course, because the vast majority of the nonprofits are not subjected to close review by the Attorney General, this provision, if enforced, will obviously be enforced selectively, only against those that come to the attention of the AG. This is simply not good law or good practice.

    I would suggest that Section 12586, subdivision (e), of the Government Code AND Section 999.9. (a)(5) of the proposed regulations be modified as appropriate to fix this situation."

    Response: This comment has not been adopted. Government Code section 12586 was duly enacted by the legislature and cannot be modified by the Attorney General. (See Stats.2004, c. 919 (S.B.1262), § 7.) The Attorney General may not alter, amend or enlarge the statute by regulation. (See, e.g., Cal. Code Regs., tit.1, § 14(c)(1)(A).)

    Government Code section 12586, subdivision (e), currently requires that charities entities and trustees that are required to file reports with the Attorney General and that receive or accrue $2 million or more in gross revenue in any fiscal year, must "[p]repare annual financial statements using generally accepted accounting principles that are audited by an independent certified public accountant in conformity with generally accepted auditing standards." Because this provision only applies to organizations with gross revenue of $2 million or more, it does not impact the majority of charities. The regulation clarifies that the Attorney General may enforce this law using the administrative enforcement process. This is not a change of existing law or policy. (See Gov. Code, § 12598, subd. (e)(1).) The availability of an administrative enforcement mechanism will give the Attorney General more flexibility in enforcing this requirement,

resulting in greater compliance with this law. By increasing the Attorney General's ability to enforce this provision it is less likely that this law will be enforced selectively.

14. Section 999.9.1: Automatic Suspension

a. Michael Wexler comments that "it is important to distinguish between three causes of suspension or revocation of tax-exempt status. The most serious cause is where after audit the IRS or FTB has revoked exempt status because of malfeasance in operations. Those situations would warrant immediate automatic suspension by your office. The second cause is the far more common situation where a charity fails to file its tax returns for 3 consecutive years and is automatically revoked by the IRS or FTB. Because that failure is often attributable to mere ignorance about Forms 990-N, and can often be cured by retroactive reinstatement, this second cause should not trigger automatic suspension by your office. At the very least, your office should provide a month's notice before suspension, as a warning shot. Moreover, if retroactive reinstatement is granted by the pertinent taxing agency, that should retroactively forestall or cancel out all OAG consequences attributable to that revocation; that reinstated charity should provide OAG a copy of all returns and statements filed in order to obtain retroactive reinstatement, but OAG should not require any other IRS or FTB returns. The third cause of FTB suspension or revocation is indirect, due to failure to file biennial reports with the Secretary of State (see 999.9.1(a)(3)) or even with your office, via Rev. & Tax. Code section 23703. Your office should use its discretion here to avoid creating a short-circuit of suspensions."

Response: This comment has been adopted in part. Subsection (b) has been added to give the registrant 30 days notice of the impending suspension. If the registrant resolves the issue within the 30 days, the suspension will not take effect. Subsections (g) and (h) have been added to allow the Attorney General to stay or set aside a suspension order when appropriate.

The suspension will remain in effect for one year. If the registrant cures the violation at any time during that year, its registration will be reinstated. The registration of a registrant that is unwilling or unable to cure the violation within one year will be automatically revoked.

b. Michael Wexler comments that "[c]oncerning failure to file a complete Form RRF-1 with attached IRS returns (999.9.1.(a)(2) please consider clarifying and correcting the RRF-1 form and instructions concerning attaching IRS returns. The existing RRF-1 instructions (with a 2005 version date) state that 'Charities with total gross revenue or assets of $25,000 or more must file a copy of the IRS Form 990, 990-EZ, or 990-PF and attachments with the Attorney General's Registry of Charitable Trusts.' The IRS raised its threshold for the 990-N from $25,000 to $50,000 or ordinary gross receipts, effective for tax year 2010. Insofar as you intend to require a copy of the 990-EZ only when actually required to be filed with the IRS, please update your instructions along with Form CT-1 and existing 11 CCR 307. At this point, it would be premature to impose

automatic suspension for failure to comply with RRF-1 instructions that are apparently out-of-date."

Response: The Attorney General's Office agrees with this comment, in part. Changes to the RRF-1 Form require compliance with the Administrative Procedure Act's rulemaking requirements and the Attorney General's Office is not able to revise the form as part of this rulemaking process. The Attorney General's Office is in the process of updating the RRF-1 Form and instructions and expects the revised form and instructions to be available this year.

c. The NEO Law Group comments that providing for automatic revocation of a registration which has been continuously suspended for one year pursuant to proposed § 999.9.1 is also an extreme measure that could have serious ramifications for California nonprofits. For example, small nonprofits without physical office spaces often use the address of a volunteer officer as their registration address. Under proposed regulation § 999.9(a)(3), the Attorney General arguably has the authority to suspend a registration for failure to file a single annual registration renewal form or for failure to include a response to a single question on the Form RRF-1. If there is turnover in the nonprofit's officer, which there frequently is, and if the nonprofit inadvertently fails to update its address with the Attorney General's Registry of Charitable Trusts, it is possible that a nonprofit may never receive actual notice of its suspension of registration and may easily remain suspended for one year. Under this proposed Subsection, a nonprofit may have its registration automatically revoked for something as simple as failing to complete a portion of a single Form RRF-1. Although the Attorney General may not elect to exercise its authority under the proposed § 9999.9(a)(3) in this manner, such a possibility goes will beyond the scope of reasonable consequences for failure to file a complete Form RRF-1.

Response: This comment has been adopted, in part. A new Subsection (b) has been added so that registrants will receive a 30 day notice and opportunity to cure the violation before the automatic suspension is imposed. Subsections (g) and (h) have been added to allow the Attorney General to lift or stay the suspension under certain circumstances.

Section 313 is being adopted, in part, to address the issue of notice. Section 313 clarifies that registrants have an obligation to ensure that the Attorney General is notified of the registrant's current address. The Attorney General will use this address to provide the notices required by law. The notices are also posted on the Attorney General's website and can be viewed at oag.ca.gov/charities. The Attorney General also provides resources to educate people involved with charities about their duties and responsibilities and the laws governing charities in California. This includes the Attorney General's Guide for Charities that can be downloaded from the Attorney General's website at no cost: oag.ca.gov/charities. The laws and regulations governing charities, along with answers to frequently asked questions about the requirements for charities can also be found on the Attorney General's website at no cost.

The registration and reporting requirements are required by the Supervision Act. Organizations that are unwilling or unable to comply with the legal requirements for

holding and soliciting charitable assets should not be operating, holding or soliciting charitable assets. An organization that is suspended due to its violations of law has a full year to cure the violations. If an organization is unwilling or unable to cure the violations within a year, or reach an agreement with the Attorney General's office otherwise resolving the matter, revocation is appropriate.

The alternative would be to allow organizations to indefinitely operate in violation of existing law without providing any information to the Attorney General that would allow the Attorney General to protect charitable assets. Such as a result is inconsistent with the Supervision Act and the Attorney General's responsibility to protect charitable assets.

The commenter provides no alternative that would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome than the proposed adopted regulation, or would be more cost effective and equally effective in implementing the statutory policy.

d. Arthur Reiman comments that "timely" is not defined in section 999.9.1(3).

Response: This comment has not been adopted. For purposes of this response, the Attorney General's Office assumes the commenter was referring to subsection (e) that has been renumbered as subsection (f). Unless a timely appeal has been filed, all penalties must be paid within 30 days of the issuance of the notice setting forth the amount of the penalty, unless the Attorney General has agreed to a later date in writing. (See Section 315, subsection (b).)

15. Section 999.9.1(b): Notification to Attorney General of change in tax exempt or corporate status.

a. Arthur Reiman comments that notification with 5 days of a change in status is not feasible as many organizations do not learn of their revocation until weeks or months after the effective date of revocation or suspension of corporate status.

Response: This comment has been adopted, in part. This provision has been renumbered to subsection (c) and the time period to notify the Attorney General of a change in an organizations tax exempt or corporate status has been increased from 5 to 10 days. The failure of an organization to maintain a current address of record that results in a delay for it to find out that its tax exempt or corporate status has changed does not justify increasing the time to notify the Attorney General. In general, such a change in status is a result of chronic problems with the organization and multiple deficiencies over an extended period of time. Delaying notice to the Attorney General undermines the Attorney General's ability to oversee and protect charitable assets.

16. Section 999.9.3(b): A registrant that is suspended or revoked may not distribute charitable assets. Director liability for violations.

a. The NEO Law Group comments provision "essentially means that a nonprofit will need to cease all operations in California upon suspension or revocation of its registration, regardless of the cause or ease of remedying such suspension or revocation. Such a regulation, particularly when read in conjunction with the other proposed regulations regarding the provisions for automatic suspension and revocation of registrations, will have a crippling effect on California nonprofits and the populations they serve. For example, consider a homeless shelter, hospice center, or nonprofit child care center that is forced to stop providing critical services merely because it failed to timely file a complete registration or renewal form, which under proposed regulation § 999.9(a)(3), may be considered a false or misleading statement sufficient to permit the Attorney General to suspend or revoke the nonprofit's registration. Failure to file a complete Form RRF-1 is not an uncommon occurrence, particularly among small and medium-sized nonprofit managed primarily by volunteers, and the possibility that a nonprofit may be required to cease expending any charitable assets as a result of such failure is unreasonable."

Response: This comment has been adopted, in part. Under existing law organizations that are suspended or revoked have no authority to operate. While the commenter's examples mischaracterize the proposed regulations and their effects, Section 999.9.1 has been modified to add subsections (g) and (h) to allow the Attorney General to stay or set aside a suspension order when appropriate.

b. The NEO Law Group comments that "the personal liability of members of the board of directors or any person directly involved in distributing or expending a nonprofit's charitable assets if any such assets are distributed or expended while the nonprofit's registration is suspended or revoked. The nonprofit sector is dependent upon the involvement of volunteers and particularly volunteer directors. The creation of an additional area for potential exposure to personal liability of directors will serve to chill volunteer board participation to the detriment of California's nonprofits. Moreover, the proposed regulations adding provisions for automatic suspension or revocation of a nonprofit's registration will expose many nonprofits, and especially small to medium-sized nonprofits, to increased risk of suspension or revocation, further increasing the risk of personal liability for directors. In the face of such liability, it is foreseeable that many individuals who otherwise would have been willing to serve as volunteer directors may be unwilling to do so, particularly for small nonprofits without adequate paid staff. For instance, consider the typical nonprofit volunteer board member who likely is unaware of the nonprofit's most current registration status. If the nonprofit's registration is suspended between board meetings, the directors are not informed of the suspension, and the organization continues to operate, a volunteer director may be held personally liable for the nonprofit's expenditures after suspension merely for allowing the organization to continue providing critical services and operating pursuant to its mission."

Response: This comment has been adopted, in part. If there is a legitimate need to expend or distribute charitable assets while an organization is resolving the issues resulting in its suspension, it may do so after obtaining written approval from the Attorney General. (Cal. Code Regs., tit. 11, §999.9.3, subd. (b).) Additionally, Section

999.9.1 has been modified to add subsections (g) and (h) to allow the Attorney General to stay or set aside a suspension order when appropriate.

This provision does not increase or create new director liability. Under current law, directors are fiduciaries and are responsible for ensuring that the organization they direct operates in compliance with the law. "[T]he activities and affairs of a corporation shall be conducted and all corporate powers shall be exercised by and under the direction of the board." (Corp. Code, § 5210.) Corporations Code section 5231, subdivision (a) provides:

> *"A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances."*

The organization's registration status is available on the Attorney General's website at oag.ca.gov/charities. Under existing law directors can be personally liable for breaches of trust, breaches of fiduciary duty and waste of charitable assets. Organizations that operate in compliance with existing law will not be suspended or revoked. A person who agrees to be a director without fulfilling the fiduciary and statutory responsibilities of a director does not provide a benefit to the organization. To the extent that individuals are willing to be nominal directors because they do not understand the duties and responsibilities that are currently required of directors, this regulation will clarify those requirements. By clarifying the director's obligations under the law it is less likely that people will undertake the duties and responsibilities of being a director without understanding those responsibilities. A director that allows an organization to expend funds in violation of a valid order from the Attorney General may be held personally responsible for that violation.

17. Section 999.9.3(c): The Attorney General may direct a suspended or revoked registrant to transfer its charitable assets.

    a. The NEO Law Group comments that "[w]e find this proposed Subsection to be especially worrisome and problematic. Proposed § 999.9.3(c) provides the Attorney General with the authority to require a registrant whose registration has been suspended or revoked to distribute its assets to another charitable organization or into a blocked bank account. While such a directive may be appropriate where the Attorney General has investigated a nonprofit, determined that the nonprofit or its trustees have failed to expend property held in trust for charitable purposes appropriately, and has brought an action against an organization to enforce charitable trust, providing the Attorney General with such broad authority absent these steps far exceeds the reasonable scope of appropriate Attorney General oversight.

    Under the proposed regulations, the Attorney General will be granted the authority to direct a nonprofit that has merely had its registration suspended, including by

inadvertently and unintentionally failing to file a Form RRF-1 or failing to attach a required attachment to the Form RRF-1 for three consecutive years, to distribute all of its charitable assets to another charitable organization. Although such authority may rarely be exercised by the Attorney General, we feel that incorporating it into the regulations is dangerous, excessive and unnecessary.

Response: This comment has not been adopted.
"The primary responsibility for supervising charitable trusts in California, for ensuring compliance with trusts and articles of incorporation, and for protection of assets held by charitable trusts and public benefit corporations, resides in the Attorney General. The Attorney General has broad powers under common law and California statutory law to carry out these charitable trust enforcement responsibilities." (Gov. Code, § 12598, subd. (a).)"

Under certain circumstances it will be necessary to remove charitable assets from a registrant's control in order to protect those assets. The Supervision Act authorizes the Attorney General to revoke a registration, but does not expressly address what happens to the assets that the revoked registrant holds subject to a charitable trust. A person or entity whose registration has been revoked has no authority to hold or expend charitable assets. This regulation provides a process following an administrative enforcement action that will allow for the orderly transfer of assets to an organization so that the assets will continue to be used for their charitable purpose, consistent with the principles of the cy pres doctrine. (See In re Veterans' Industries, Inc. (1970) 8.Cal.App.3d 902, 917-918. ["A charitable corporation is being wound up and dissolved and its assets held upon a charitable trust are to be transferred to another corporation, organization, society, or trust so that the original trust purposes can be carried out if that is possible."].)

As the commenter acknowledges, there are additional circumstances where it may be appropriate to remove or protect charitable assets from a suspended or revoked organization. Currently, even where the Attorney General has investigated a nonprofit, determined that the nonprofit or its trustees have failed to expend property held in trust for charitable purposes appropriately, and has brought an administrative action against an organization to enforce a charitable trust, it lacks express authority to protect the charitable assets by removing the assets from the control of the registrant.

The commenter provides no alternative that would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome than the proposed adopted regulation, or would be more cost effective and equally effective in implementing the statutory policy.

The Attorney General's Office received comments from the following in response to its Notice of Modifications to Text of Proposed Regulations:

1. Louis E. Michelson, Law Offices of Louis E. Michelson
2. Mary K. Stroube, President & CEO, Terra Nova Counseling

3. Robert A. Wexler
4. Michael Folz Wexler, Wexler Law Group
5. Gene Takagi and Erin Bradrick, NEO Law Group; Barbara Rosen, Evans & Rosen LLP; Nancy Berlin, Policy Director, California Association of Nonprofits; Pamela E. Davis, Founder/President/CEO, Nonprofits Insurance Alliance of California (NIAC); NEO Law Group reports that the comments are endorsed by:
   a. United Ways of California
   b. Alliance for Justice
   c. The National Council of Nonprofits
   d. Anne Wallestad, President & CEO, BoardSource

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE SUPPLEMENTAL NOTICE PERIOD OF JUNE 25, 2015, THROUGH JULY 13, 2015, IN RESPONSE TO THE NOTICE OF MODIFICATIONS:

1. Michael Wexler, Wexler Law Group, comments:

   a. I share the goal of promoting more thorough compliance by those nonprofits required to register with the Office of the Attorney General ("OAG"), while giving the OAG additional tools to crack down on the relatively few nonprofits that are genuinely abusive. The June modifications have given the OAG more discretion and flexibility in applying these regulations, which could mitigate the impact upon small, volunteer-run nonprofits. My comments aim to improve the regulations by making them apply more selectively, with more effective notice and reasonable opportunity to address identified omissions or misstatements.

   Before finalizing these regulations, I emphatically encourage the OAG to liaise with the FTB, the Secretary of State's office, and other government agencies, to coordinate about reinstatement procedures and timelines, and to share expertise about identifying those false and misleading statements on government filings that are sufficiently material to warrant administrative action by the OAG. The OAG should work in concert with the pertinent government offices overseeing nonprofit compliance -- not seek to outdo them in zealous enforcement.

   Overall, I encourage the OAG to reach out before and after final adoption of these regulations, to educate those small nonprofits rather than just penalize them. As discussed in my comments, the freeze of charitable assets in section 999.9.3 could actually force some nonprofits to close down, even though technically only "suspended".

   The OAG can coordinate with professional associations of advisors, as well as with associations of nonprofits, community foundations, grantmaker associations, and specialized groups such as state or regional districts of service clubs. Another resource could be university programs that already gather and analyze data about local nonprofits.

   Response: The Attorney General is responsible for implementing the Supervision Act as codified by the legislature:

"The primary responsibility for supervising charitable trusts in California, for ensuring compliance with trusts and articles of incorporation, and for protection of assets held by charitable trusts and public benefit corporations, resides in the Attorney General. The Attorney General has broad powers under common law and California statutory law to carry out these charitable trust enforcement responsibilities." (Gov. Code, § 12598, subd. (a).)"

The Attorney General's Office has and will continue to work cooperatively with other government agencies, including the Franchise Tax Board and Secretary of State. The priority of the Attorney General's Office in the charitable trusts context will continue to be protection of charitable assets and protection of the donating public.

For decades, the Attorney General's Office has worked to educate persons and entities involved in the operation of charities and solicitation for charitable purposes, including providing free educational seminars throughout the state. The Attorney General's Office also provides an extensive amount of educational information and resources on its website, all of which is available at no cost: oag.ca.gov/charities. The Attorney General's Office will continue these educational and outreach efforts.

b. "Several months prior to the regulations becoming final, the OAG could release a preliminary downloadable database of those nonprofits that it considers to be delinquent or improperly unregistered. Accordingly, those nonprofits, with assistance from advisors and from the various associations described above, could get into compliance and rectify any discrepancies."

Response: This information continues to be available. The Attorney General's database is available on the Attorney General's website: oag.ca.gov/charities.

c. "Also, the OAG could announce a well-publicized 'amnesty' offering reduced fines and penalties to qualifying nonprofits that registered and took steps to remedy compliance gaps, before a set deadline.

Such steps would promote compliance by those nonprofits that are serving the public good but have missed a step or two on compliance. That would thereby increase registration revenue to the OAG, and allow the OAG to focus on the genuinely abusive nonprofits."

Response: This comment has not been adopted. Late fees are set by Government Code section 12586.1.

2. Section 313: Address of record:

a. Michael Wexler comments "[t]his new regulation is entirely appropriate to require registrants to maintain their current address of record with the OAG. At this point, though, the existing OAG Registry is incomplete and not necessarily up to date. Moreover, inasmuch as these proposed regulations envisage notices based on filings with, and adverse actions taken by, other government agencies, and to unregistered organizations, it is reasonable to provide effective notice by copying other addresses in

referenced government documents and publicly-available IRS and FTB databases of nonprofit organizations.

Any notice to an unregistered organization, and any notice to an organization that is delinquent in filing the periodic report required by 11 CCR 301, shall be copied to the addresses in the IRS and FTB publicly-available online databases, and if applicable to the agent for service of process listed on the Secretary of State website, as updated within 45 days of the notice date.

Any notice to an organization based on false or misleading statements in its filing with a government organization shall also be copied to the mailing address in that filing.

In addition any notice based on adverse action by a governmental agency shall be copied to the mailing address in that filing.

All notices should refer to the obligation to update the address of record."

Response: This comment has not been adopted. Registrants choose the address where they wish to receive notices from the Attorney General's Office and the Attorney General's Office should be able to rely on the information provided by the registrants. Registrants are required to provide an address in the initial registration filing as well as in the annual renewal report. If the registrant moves and wishes to change its address of record in between filings, it may do so.

The proposed recommendations would frustrate the purpose of the regulation and would impose substantial burdens on the Attorney General's staff. There are more than 100,000 registrants. Requiring the Attorney General's staff to attempt to locate and use multiple addresses from multiple agencies is inefficient and counterproductive. The most efficient and effective mechanism for ensuring that a registrant receives timely notice is for the registrant to provide the Attorney General with the address at which it wishes to receive notices.

3. Section 315. Imposition of Penalty.

   a. Michael Wexler comments that:

   "The notice periods should be 30 days for all violations. A five-day notice by mail provides an inadequate time to respond.

   In response to my comment requesting clarification, the June modifications now makes explicit that each call, mailing, or request is a separate act of improper solicitation regardless of whether it yields a donation. That definition runs the risk of triggering astronomical penalties of $1,000 per 'act', wholly disproportionate to the donation proceeds actually received and the economic harm to donors.

   The 30-day deadline for appealing a penalty should be waivable for reasonable cause."

   Response: This comment has not been adopted. The five-day notice period is established by statute:

"At least five days prior to imposing that penalty, the Attorney General shall provide notice to the person or entity that committed the violation by certified mail to the address of record at the Registry of Charitable Trusts. Penalties shall accrue, commencing on the fifth day after notice is given, at a rate of one hundred dollars ($100) per day for each day until that person or entity corrects that violation. Penalties shall stop accruing as of the date set forth in the written notice provided by the Attorney General that the violation or omission subject to penalties has been corrected or remedied." (Gov. Code, § 12591.1, subd. (c).)

The clarification regarding violations is consistent with existing law and is not a change in policy or procedure. (See, e.g., Bus. & Prof. Code §§ 17206, subd. (b); 17536, subd. (b); People v. Superior Court (Olson) (1979) 96 Cal.App.3d 181, 198 [for purposes of determining civil penalties pursuant to unfair competition law, dissemination of a false or deceptive advertisement through a single edition of a newspaper constitutes a minimum of one violation with as many additional violations as there are persons who read the advertisement or who responded to the advertisement by purchasing the advertised product or service or by making inquiries concerning such product or service.]; People v. Superior Court (Jayhill) (1973) 9 Cal.3d 283, 289 ["the number of violations is to be determined by the number of persons to whom the misrepresentations were made"]; People v. Superior Court (1973) 9 Cal. 3d 283, 289; People v. JTH Tax, Inc. (2013) 212 Cal. App. 4th 1219, 1249-1255.)

The time for appealing a penalty is established by statute: "Any request for hearing shall be made within 30 days after the Attorney General has served the person with notice of the action. That notice shall be deemed effective upon mailing." (Gov. Code, § 12591.1, subd. (e).)

4. Section 316: Suspension of registration

   a. Michael Wexler comments that "subsection (b) is ambiguous in that it does not indicate whether the penalty must be paid from non-charitable funds (either by the officers, or from general operating funds of a non-501(c)(3) organization that holds some charitable funds.)"

   Response: This comment has not been adopted. Generally, use of charitable assets to pay avoidable penalties constitutes waste and misuse of charitable assets. Charitable assets may not be used to pay penalties that were a result of a breach of duty by the officers and/or directors of the charity. Whether or not an organization may use its non-charitable assets to pay a penalty will depend on the particular facts and circumstances of the situation and the Attorney General declines to impose a blanket determination at this time.

5. Section 999.6: Violations of Government Code section 12580 et seq.

   a. Michael Wexler comments that "[t]he 30-day deadline for appealing a penalty should be waivable for reasonable cause."

   Response: This comment has not been adopted. The time for appealing the penalty is established by statute: "Any request for hearing shall be made within 30 days

after the Attorney General has served the person with notice of the action. That notice shall be deemed effective upon mailing." (Gov. Code, § 12591.1, subd. (e).)

6. Section 999.9: Grounds for refusal, revocation or suspension:

   a. Michael Wexler comments that "[b]efore taking action on any of these grounds, the OAG should provide 30 day notice similar to new 999.9.1(b). If for instance the OAG believes there is a false and misleading statement (including a material omission) on an IRS Form 990, they should give the nonprofit a chance to explain and correct that misstatement. Before taking action under 999.9(c), concerning false or misleading statements in a filing with another government agency, the OAG should be required to contact that other government agency to verify whether the problematic filing has been updated, amended, superseded, and whether in light of the expertise of that agency the filing should not be construed as false or misleading.

   Before taking action under 999.9(g), concerning adverse action by another government entity, the OAG should be required to contact that other government agency to verify whether the adverse action has not been resolved, set aside, or rescinded, and whether there are extenuating circumstances.

   Effective Date and Lookback: Will the final regulation apply to statements filed with other government agencies -- and to adverse actions taken by other government agencies -- prior to the final effective date? If so, that retrospectivity should be made explicit, and the lookback period should be limited to three years or less.

   Response: This comment has not been adopted. The time for filing an appeal is established by statute: "Any request for hearing shall be made within 30 days after the Attorney General has served the person with notice of the action. That notice shall be deemed effective upon mailing." (Gov. Code, § 12591.1, subd. (e).)

   The procedures proposed by the commenter are unduly burdensome and do not provide meaningful additional protections. The Attorney General may rely on final decisions or orders issued by other agencies. A person or entity that disputes the allegations by the Attorney General's Office may appeal and request a hearing before an independent administrative hearing officer. (Cal. Code Regs., tit. 11, § subd. (d).) The Attorney General's Office contracts with the Office of Administrative Hearings to provide administrative law judges. In an action to suspend or revoke a registration, the Attorney General's Office must prove the violations by a preponderance of evidence. (See, e.g., San Benito Foods v. Veneman (1996) 50 Cal.App.4th 1889, 1892-1895.) The respondent has the opportunity to present and rebut evidence. (Gov. Code, § 11425.10.)

   Government Code section 12596 establishes a 10-year statute of limitations for actions brought pursuant to the Supervision Act. While the use of administrative actions for enforcement is new, the underlying violations are not. Existing law prohibits making false or misleading statements. Informational returns, periodic written reports and the registration and renewal forms are filed under penalty of perjury. Corporations Code section 6812 provides:

"(a) Every director or officer of any corporation is guilty of a crime if such director or officer knowingly concurs in making or publishing, either generally or privately, to members or other persons (1) any materially false report or statement as to the financial condition of the corporation, or (2) any willfully or fraudulently exaggerated report, account or statement of operations or financial condition, intended to induce and having a tendency to induce, contributions or donations to the corporation by members or other persons.

(b) Every director or officer of any corporation is guilty of a crime who refuses to make or direct to be made any book entry or the posting of any notice required by law in the manner required by law.

(c) A violation of subdivision (a) or (b) of this section shall be punishable by imprisonment in state prison or by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than one year or both such fine and imprisonment."

The Attorney General's Office intends to use the administrative enforcement options to enforce existing laws consistent with the statute of limitations.

7. Section 999.9.1: Automatic Suspension

   a. Section 999.9.1(a)(1): Suspension due to suspension or revocation of tax-exempt status

      (1) Michael Wexler comments that: "Subsection 999.9.1(a)(1) should exclude suspension or revocation of FTB exempt status due to failure to file with the OAG under Rev. & Tax. C. 23703, to avoid a "Catch-22".

      Response: This comment has not been adopted. The Attorney General may suspend or revoke an organization for failing to file the required reports with the Attorney General or for being suspended by the Franchise Tax Board as a result of failing to file the required reports with the Attorney General. In either situation, a suspended registrant may resolve the suspension by filing the missing reports.

   b. Michael Wexler comments that "[c]oncerning Form RRF-1, it is ambiguous concerning organizations with receipts over $25,000 but generally under $50,000. Many of those organizations (excepting notably private foundations) are eligible to file IRS Form 990-N. The instructions to Form RRF-1, still bearing the version date of March 2005, can be read to suggest that those organizations should file IRS Form 990-EZ with the OAG or even with the IRS. Updating Form RRF-1 should be a priority before finalizing these regulations."

Response: This comment has not been adopted. Changes to the RRF-1 Form require compliance with the Administrative Procedure Act's rulemaking requirements and the Attorney General's Office is not able to revise the form as part of this rulemaking process. The Attorney General's Office is in the process of updating the RRF-1 Form and instructions and expects the revised form and instructions to be available this year.

c. Michael Wexler comments that "subsections (b) and (g) could be beneficial, depending upon how the discretion is exercised. Most of the triggers for automatic revocation cannot actually be cured in 30 days, of course. It would be helpful for the OAG to state general guidelines. For instance, if a nonprofit has its exemption automatically revoked by the IRS or FTB simply for failure to file, the OAG should generally stay the automatic suspension to allow the nonprofit a reasonable interval (60 days) to apply for reinstatement, and while the reinstatement applications are pending. If ultimately the pertinent tax agencies see fit to retroactively reinstate the nonprofit to exempt status, there is little if any rationale for the OAG to have penalized and suspended the nonprofit in the interim solely for that cured defect."

Response: This comment has not been adopted. An organization that is suspended due to its failure to file reports required by law will be reinstated when the required reports are filed. In other situations, the decision to set aside a suspension will necessarily be fact specific and will be made on a case-by-case basis. The failure to annually file informational returns and periodic written reports is a violation of existing law. It is likely also a breach of fiduciary duty. It undermines the Attorney General's ability to oversee and protect charitable assets. If an organization's exempt status has been revoked due to its chronic violations over multiple years, there may be no basis to stay the suspension. The suspension may incentivize the registrant to get into compliance with its legal responsibilities and cure its violations. It will also protect members of the public by putting them on notice that the organization may not legally operate until it has cured the violations.

d. Michael Wexler comments that "Subsection (b), by requiring the OAG to send a letter before triggering automatic suspension, does provide a tool to modulate the initial application of this regulation to tens of thousands of small noncompliant charities. I hope that the OAG will not rush the process by sending an initial mass mailing (especially to obsolete addresses -- see my comments on 316)."

e. Michael Wexler comments that "Subsection (g) should be amended to confirm the OAG's discretion to stay automatic revocation that would otherwise have been triggered under subsection (d). For instance, the OAG could exercise its discretion to allow an organization to remain suspended due to prior noncompliance, but not revoked pending completion of efforts to remedy that noncompliance. but Section 999.9.5 does cover reinstatement after revocation."

Response: This comment has not been adopted. The automatic revocation only applies to an organization that has been <u>continuously</u> suspended for one year. An action by the Attorney General to stay or set aside the suspension will stop the time from running for purposes of enforcing the automatic revocation.

f. Robert Wexler comments that "I am not sure that an organization that has tax exempt status revoked should automatically have its AG registration suspended. There are situations where an organization may no longer qualify for tax-exemption because of a technical test under tax law, but still be a perfectly valid public benefit corporation. Consider for example that all the HMOs that were public benefit corporations lost tax exempt status in 1986 when federal tax law changed, but continued to be compliant corporations under Cal law. Also, what if a public benefit corporation voluntarily relinquishes its tax-exempt status because it no longer complies with the federal tax exemption tests, but still qualifies under Cal law. Is that ok because it is not a revocation? What if a (c)(3) fails to file its 990 for three years and has automatic revocation; shouldn't it still be a charitable entity under Cal law?

It seems that federal or state revocation or suspension should be moved to the 'may be suspended' category rather than automatic. Other parts of the law and forms contemplate that there are taxable nonprofit public benefit corporations."

Response: This comment has not been adopted. The situations described by the commenter are not the typical reasons why an organization's exempt status is suspended or revoked. Generally, the loss of tax-exempt status is a result of the organization's chronic failure to file the informational returns required by law or as a result of some other violation of the requirements for maintaining tax-exempt status. An organization's failure to file the reports required by law prevents the Attorney General's Office from effectively overseeing and protecting the assets it holds subject to a charitable trust. Additionally, an organization that has been suspended for failing to file the required reports will be reinstated once the required reports are filed.

HMO's are exempt from the registration and reporting requirements of the Supervision Act. (Gov. Code, § 12583.)

If an organization intends to change its exempt status it may contact the Attorney General's Office in advance and avoid the automatic suspension. Additionally, subsections (g) and (h) have been added to Section 999.9.1 to allow the Attorney General to stay or set aside a suspension order when appropriate.

g. Section 999.9.1(c): Notification to Attorney General of change in tax exempt or corporate status.

(1) Louis Michelson comments that "[t]he modified time period is inadequate and would be very burdensome to most nonprofit organizations. Many nonprofit organizations do not have the personnel to react promptly on matters of legal significance.

Changes in tax exempt status or corporate status are matters of legal significance. These changes become even more legally significant when revocation or suspension can trigger automatic suspension under Sections 999.9.l(a), (1) and (3).

These matters typically require notification of the Board of Directors and the authorization of the Board of Directors to take corrective action. Time may be

required to forward the information of legal significance to the appropriate persons so that it might be reviewed and acted upon by the Board of Directors or the appropriate officer of the organization.

Most nonprofit organizations rely on volunteers, both for delivering program services and for serving as directors of the organization. The governing board of most nonprofit organizations do not meet weekly. In the best of circumstances the Board of Directors meet monthly or every other month, as dictated by the needs of the organization.

Based on the foregoing, a more realistic notice period to notify the Attorney General under subsection (c) would be 90 days. This would afford nonprofit organizations to proceed with deliberation in identifying the corrective action needed and to notify the Attorney General as required by the proposed regulation."

Response: This comment has not been adopted. The notice requirement is straightforward and does not require any action or decision by the board of directors. The board has no discretion to refuse to notify the Attorney General so there is no value in providing additional time to allow the board to consider whether or not it should comply with this requirement. Providing notice to the Attorney General can be accomplished simply by forwarding a copy of the notice received by the registrant or by sending a letter to the Attorney General's Office advising it that there has been a change in the organization's status. While the board of directors will need to meet to address the underlying problems that resulted in the change in status, this does not justify delaying the notice to the Attorney General. The increased time will undermine the Attorney General's ability to oversee and protect charitable assets without any additional benefit.

8. Section 999.9.2: Refusal to renew registration

   a. Michael Wexler comments that "the official comment to the modification to subsection (a)(3) can be read to refer to the pending litigation concerning filing of unredacted IRS Form 990 Schedule B. Although the Ninth Circuit did rule in favor of the OAG, the Supreme Court has not yet issued either a denial of cert or a decision. Before that outcome (which could well be in early 2016), the OAG should not take action against nonprofits that have not yet filed an unredacted Schedule B. If that outcome is in favor of the OAG, I would suggest that the OAG give a reasonable opportunity for nonprofits to comply.

Subsection (b) suggests that the notification requirement concerning adverse actions is prospective only, applicable to adverse actions issued after the effective date of these final regulations. Is that correct? If so, should that same prospective application govern subsection (a)(4), and also section 999.9?

Please see also my comments under section 999.9 concerning verification of adverse actions."

Response: This comment has not been adopted. The commenter's view does not reflect the position of the Attorney General's Office. Existing law requires the annual filing of the periodic written reports. This is not a change in policy or procedure.

The notification requirement in subsection (b) is not prospective only. The Attorney General's Office intends to use the administrative enforcement options to enforce existing laws consistent with the 10-year statute of limitations of the Supervision Act. (Gov. Code, § 12596.)

9. Section 999.9.3(b): Disclosure and Restrictions on Use of Charitable Assets After Suspension or Revocation of Registration.

   a. Mary Stroube comments:

   "As an attorney and as the CEO of a medium-sized non-profit serving about 1000 clients a week, I am stunned by the harshness of the proposed revisions to Section 999.9.3. I understand that your office is seeking some teeth to use in getting non-profits to comply with registration and related procedures. Rather than having a bite, it seems the new rules have the potential to fatally wound some non-profits, including those which have made simple good-faith errors. Even non-profits which have not made errors are going to encounter greater difficulty in obtaining board members once they learn of their potential personal liability.

   The Attorney General has always seemed to be a reasonable person. This change seems anything but reasonable. Can there not be graduated levels of enforcing compliance? These proposed changes seem to me that they should be for the most extreme willful offenders, not for an agency such as mine that would leave 1000 clients without services perhaps because of a document lost in the mail. (We recently had something like that happen. We sent in a fee but it was apparently not received. We show the check issued in sequence with related checks, and we'd have no reason to withhold it. I believe it was for $67 or so. We received a call, tried to figure out the problem, and reissued the check. Would you really close us down and threaten to disperse our assets as Section 999.9.3(b), (c) provide?)

   Please let these modifications go for now until there can be more thought given to them. Listen to organizations representing nonprofits. Enforcement of the rules is entirely reasonable. Enforcement by disabling a nonprofit, dispersing its assets and suing its board is not reasonable."

   Response: This comment has not been adopted. The comment misstates the purpose, effect and consequences of the regulations. The provision only applies to organizations subject to a final order of suspension or revocation. The circumstances described by the commenter did not result in a suspension or revocation of the registration.

   This provision does not increase personal liability of board members. Rather, it makes clear that a director that allows charitable assets to be disbursed in violation of a final order of the Attorney General can be held personally liable. Directors can be held

personally liable for misuse of charitable assets, breaches of charitable trust and breaches of fiduciary duty under existing law.

Under certain circumstances it will be necessary to remove charitable assets from a registrant's control in order to protect those assets. The Supervision Act authorizes the Attorney General to revoke a registration, but does not expressly address what happens to the assets that the registrant holds subject to a charitable trust. A person or entity whose registration has been revoked has no authority to hold or expend charitable assets. This regulation provides a process following an administrative enforcement action that will allow for the orderly transfer of assets to an organization so that the assets will continue to be used for their charitable purpose, consistent with the principles of the cy pres doctrine. (See In re Veterans' Industries, Inc. (1970) 8.Cal.App.3d 902, 917-918. ["A charitable corporation is being wound up and dissolved and its assets held upon a charitable trust are to be transferred to another corporation, organization, society, or trust so that the original trust purposes can be carried out if that is possible."].)

Where the assets need to be protected from misuse but may potentially be returned to the organization at some time, placing the assets in a blocked bank account is an adequate temporary safeguard.

The regulation only applies to registrations that have been suspended or revoked. Organizations that dispute the basis for suspension or revocation are entitled to appeal the action by the Attorney General before an independent administrative law judge. (See, e.g., Cal. Code Regs., tit. 11, § 999.6, subds. (d), (e) and (f).)

The commenter provides no alternative that would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome than the proposed adopted regulation, or would be more cost effective and equally effective in implementing the statutory policy.

b. Michael Wexler comments that "[a]s other practitioners had commented in November 2014, the freeze of charitable assets of a suspended nonprofit under 999.9.3(b) is potentially devastating. If it cannot pay its rent or utilities, or meet its payroll to rank-and-file employees, its charitable activity will be strangled -- regardless of other procedures in these regulations to appeal suspension. Any efforts to remedy the noncompliance that triggered suspension will be futile. This provision's safety valve -- allowing the OAG to provide written approval of distributions and expenditures of charitable assets -- will likely operate too slowly to save many small nonprofits from shutdown.

This regulation should be extensively amended to identify categories of distributions and expenditures that are permissible, such as:

- payment of rent, utilities, and compensation to persons unaffiliated with the directors and officers;

- provision of charitable goods and services directly to such unaffiliated persons; and

- if requested by the charitable grantor organization, return of funds that were granted before the suspension but not yet expended.

To take advantage of these allowed categories, a suspended organization could be required to report frequently to the OAG.

Subsection (c) should not apply to suspended organizations. The cease-and-desist orders would serve to block funds of suspended organizations, in appropriate circumstances.

Response: This comment has not been adopted. Organizations that are subject to a final suspension or revocation order have no authority under existing law to solicit or disburse charitable assets. To give blanket authorization to an organization that is in violation of the law to continue to operate is inconsistent with the Attorney General's responsibility to protect charitable assets and the public. An organization facing an impending suspension or revocation that wishes to make arrangements with the Attorney General pursuant to subsection (b) should do so in a timely manner.

A cease and desist order may not be a sufficient safeguard to protect charitable assets from diversion or misuse. In certain situations the only effective mechanism for protecting charitable assets may be to remove the assets from control of the entity.

10. The NEO Law Group comments:

a. "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… 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."

Response: This comment has not been adopted. Organizations that are subject to a final suspension or revocation order have no authority under existing law to solicit or disburse charitable assets. This is a clarification of existing law and is not a change in policy or procedure.

b. "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."

Response: This comment has not been adopted. The comment misstates the purpose, effect and consequences of the regulations. The regulation only applies to organizations subject to a final order of suspension or revocation.

This provision does not increase personal liability of board members. Rather, it makes clear that a director that allows charitable assets to be disbursed in violation of a final order of the Attorney General can be held personally liable. Directors can be held personally liable for misuse of charitable assets, breaches of charitable trust and breaches of fiduciary duty under existing law.

c. 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.

Response: This comment has not been adopted. Under certain circumstances it will be necessary to remove charitable assets from a registrant's control in order to protect those assets. The Supervision Act authorizes the Attorney General to revoke a registration, but does not expressly address what happens to the assets that the registrant holds subject to a charitable trust. A person or entity whose registration has been revoked has no authority to hold or expend charitable assets. This regulation provides a process following an administrative enforcement action that will allow for the orderly transfer of assets to an organization so that the assets will continue to be used for their charitable purpose, consistent with the principles of the cy pres doctrine. (See In re Veterans' Industries, Inc. (1970) 8.Cal.App.3d 902, 917-918. ["A charitable corporation is being wound up and dissolved and its assets held upon a charitable trust are to be transferred to another corporation, organization, society, or trust so that the original trust purposes can be carried out if that is possible."].)

An organization can only be suspended for failing to file a complete registration renewal form if it is unwilling or unable to file a completed renewal form. Even after the organization is suspended, it can cure the suspension by filing the completed registration renewal form.

Where the assets need to be protected from misuse but may potentially be returned to the organization, placing the assets in a blocked bank account is an appropriate temporary safeguard.

The regulation only applies to registrations that have been suspended or revoked. Organizations that dispute the basis for suspension or revocation are entitled to appeal the action by the Attorney General before an independent administrative law judge. (See, e.g., Cal. Code Regs., tit. 11, § 999.6, subds. (d), (e) and (f).)

The commenter provides no alternative that would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome than the proposed adopted regulation, or would be more cost effective and equally effective in implementing the statutory policy.

d. "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."

Response: This comment has not been adopted. This provision gives an organization an entire year to cure its violations and come into compliance or to reach an agreement with the Attorney General to resolve its violations. An organization that has already been found to be in violation of the law and is unwilling or unable to cure the violations after a year should be revoked.

IX. AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, the Notice of Modifications to Text of Proposed Regulations, the text of the regulations in underline and strikeout were available on the Attorney General's website throughout the rulemaking process. Copies of the final text of the amended regulations can be accessed on the Attorney General's website at: *oag.ca.gov/charities*.

X. AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Copies of the Final Statement of Reasons may be obtained by contacting:

Joseph N. Zimring, Deputy Attorney General
California Department of Justice
Charitable Trusts Section
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
Fax: (213) 897-7605
Email: Joseph.Zimring@doj.ca.gov.