

REGULATION OF CHARITIES BY THE CALIFORNIA ATTORNEY GENERAL



Overview

- ★ AG has primary responsibility for oversight of charitable trusts and solicitations
 - Including charitable corporations, unincorporated associations and charitable trustees and for-profit fundraising professionals

Overview

- ★ Charitable Trusts Section carries out AG mandate
- ★ Composed of
 - ★ Legal and Audit Unit
 - ★ Registry of Charitable Trusts

The Registry's Role

- ☀ Manages registration and annual reporting requirements
 - ☀ Initial registration within 30 days of receiving assets
 - ☀ Annual reporting (usually 990 and RRF-1)
- ☀ Responsible for receipt and review of notices of specific transactions charitable corporations required to submit to AG,* including:

*See Corp. Code sec. 5000 et seq.

The Registry's Role

- Sale or disposition of substantially all assets
- Voluntary dissolution
- Merger
- Conversion to mutual benefit or business corporation
- Self-dealing transactions
- Loans to directors/officers
- Sale/transfer of nonprofit hospital facilities

Transactions Requiring AG Notice or Consent*

☀ Consent:

- ☀ Voluntary dissolution – requires AG waiver of notice
- ☀ Conversion to mutual benefit or business corporation
- ☀ Loans to directors and officers (with exceptions)
- ☀ Sale or transfer of nonprofit health facility

☀ 20-Day Notice Only:

- ☀ Sale or disposition of substantially all assets
- ☀ Merger

See Nonprofit Transactions Guide at www.ag.ca.gov/charities

Enforcement Program

- ✱ Investigations, audits and civil litigation
- ✱ Focus: mismanagement and diversion of charitable assets from intended use
- ✱ Multiple sources of jurisdiction
- ✱ Cases selection: developed from complaints received and review of annual filings

Stages of Enforcement

- ✱ Informal contact
- ✱ Corrective action
- ✱ Administrative subpoena
- ✱ Assurance of voluntary compliance
- ✱ Civil litigation
- ✱ Criminal charges

Attending to Governance

- ★ CA Nonprofit Public Benefit Corporation Law governs board duties and responsibilities
- ★ See also Parts VI and VII of the 2008 990*
- ★ Restricted assets
 - ★ Segregate
 - ★ Content of solicitation

*See Guide to New Form 990 at www.ag.ca.gov/charities

Complying with Regulations of Other Government Agencies

- ★ Local jurisdictions may regulate solicitation [see list on Resources page]
- ★ Multi-state solicitation [information available at www.multistatefiling.org]
- ★ SOS
- ★ FTB
- ★ IRS

The NIA: Amendments to Supervision Act*

- ✦ Effective January 1, 2005
- ✦ Amendments to existing law* re:
 - ✦ Charity registration
 - ✦ Charity governance
 - ✦ Charitable solicitation

* The Supervision of Trustees and Fundraisers for Charitable Purposes Act [Gov. Code sec. 12580-12599.7]

The NIA: Amendments to Supervision Act

☀ Applies to:

- ☀ Charitable organizations, including:
 - Nonprofit corporations
 - Unincorporated associations
 - Charitable trustees
- ☀ Fundraising professionals, including:
 - Commercial fundraisers
 - Fundraising counsel

The NIA: Registration

- ✦ Effective date for initial registration with the Attorney General : within 30 days after initial receipt of property
- ✦ Registration requires a copy of governing instrument
- ✦ Property includes money and any other type of real or personal property

*See Registration Checklist at www.ag.ca.gov/charities

The NIA: Audit requirement

★ Applies to the following entities with \$2 million or more in gross revenue*

- Nonprofit Corporations
- Unincorporated Associations
- Trusts

[Unless exempt from registration and reporting]

* \$2 million threshold exclusive of revenue from governmental grants and contracts for services for which an accounting is required

The NIA: FAQs re Gross Revenue

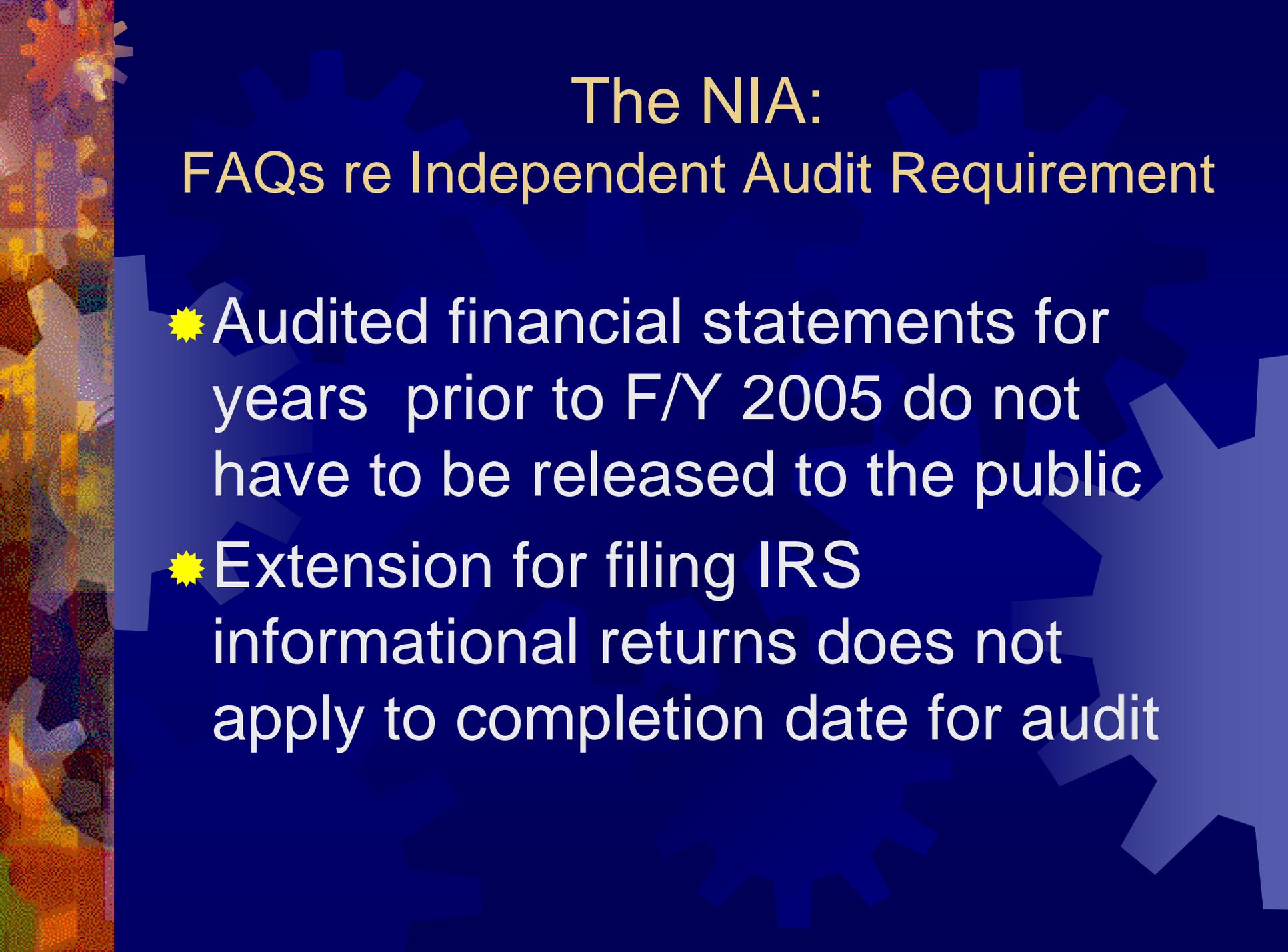
★ Definition

- ★ Follow instructions for Line 12 of IRS Form 990 and Line 12, column (a) of IRS Form 990PF
- ★ Non-cash and one-time contributions, and income from special events are included in definition.

* Additional FAQs available on the AG website

The NIA: Independent Audit Requirement

- ✱ Independent audited financial statements must be made available to the Attorney General and the public
- ✱ Includes all statements and notes but NOT the management letter
- ✱ No later than 9 months after close of fiscal year



The NIA: FAQs re Independent Audit Requirement

- ★ Audited financial statements for years prior to F/Y 2005 do not have to be released to the public
- ★ Extension for filing IRS informational returns does not apply to completion date for audit

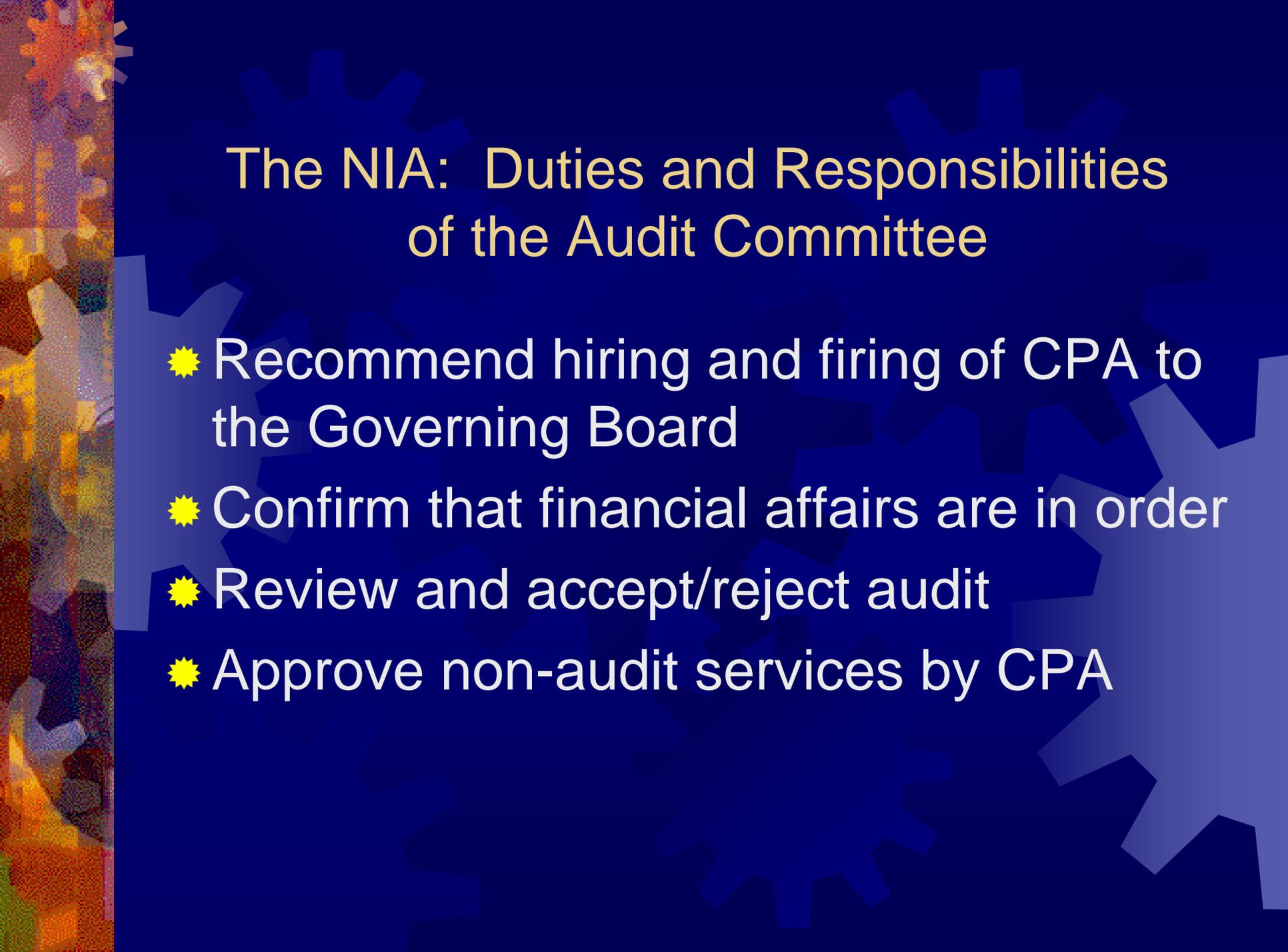
The NIA:

Audit Committee Requirement

★ If required to conduct independent audit

★ Composition

- ★ Appointed by Governing Board
- ★ May be only one person
- ★ Can be non-governing board members
- ★ Cannot include 50% or more of members of Finance Committee
- ★ Whether paid or unpaid, cannot include:
 - ★ Staff members (employees of the charity)
 - ★ President or CEO, Treasurer or CFO



The NIA: Duties and Responsibilities of the Audit Committee

- ✦ Recommend hiring and firing of CPA to the Governing Board
- ✦ Confirm that financial affairs are in order
- ✦ Review and accept/reject audit
- ✦ Approve non-audit services by CPA

The NIA: Requirement for Board Review of Executive Compensation

- ✦ Must be reviewed and approved by the governing board or authorized board committee
- ✦ Compensation review includes benefits
- ✦ Applies to all:
 - ✦ Nonprofit corporations
 - ✦ Unincorporated associations
 - ✦ Trusts

Gov. Code sec 12586(g)

The NIA: Requirement for Board Review of Executive Compensation

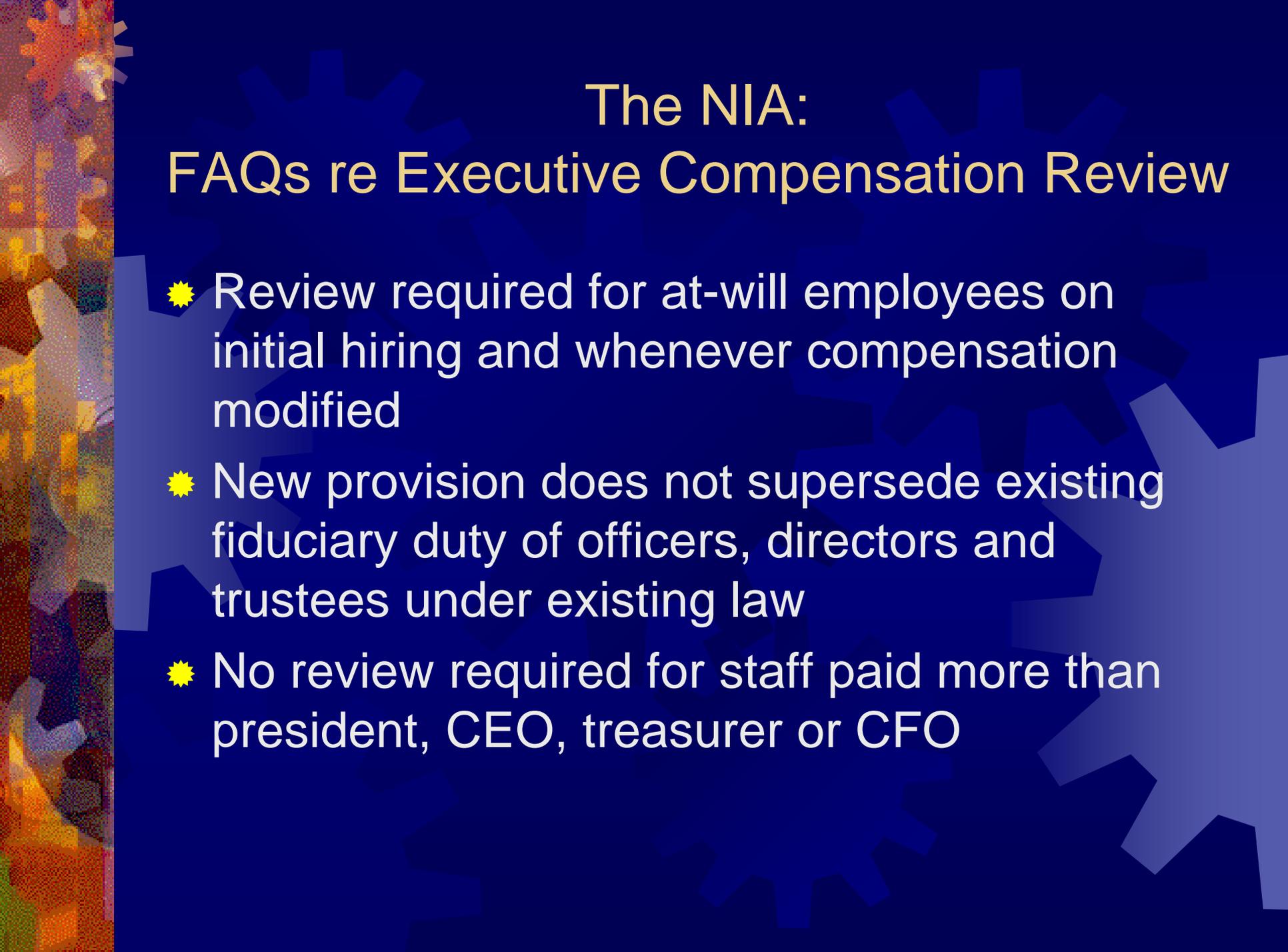
- ☀ Must be reviewed and approved for the following positions:
 - ☀ President or CEO
 - ☀ Treasurer or CFO
 - ☀ Or others with comparable powers and duties

The NIA: Requirement for Board Review of Executive Compensation

★ Review and approval required at 3 points:

- ★ Initial Hiring of the Officer
- ★ Upon Renewal or Extension of the Employment Term
- ★ Modifying the Compensation

*Standard is “just and reasonable” compensation (Corp. Code sec. 5235)



The NIA: FAQs re Executive Compensation Review

- ★ Review required for at-will employees on initial hiring and whenever compensation modified
- ★ New provision does not supersede existing fiduciary duty of officers, directors and trustees under existing law
- ★ No review required for staff paid more than president, CEO, treasurer or CFO

Commercial Fundraisers

★ Definition

- Any individual or entity who does the following for compensation:
 - solicits assets for charitable purposes,
 - receives or controls such solicited assets, or
 - employs any compensated person to do either

Gov.Code sec. 12599

The NIA: Notice of Intent to Solicit for CFRs

☀ Notice to Attorney General

- 10 working days before the start of a solicitation campaign or event
- *Exception* for disaster solicitations – provide notice concurrent with commencement of campaign

Gov. Code sec. 12599(h)

The NIA: Written Contract Requirements for CFR

- ✦ For every solicitation campaign or event
- ✦ Voidable unless the commercial fundraiser is registered with the Attorney General
- ✦ Must be signed by an official authorized by the Charity's Governing Board

The NIA: Required Provisions in CFR Contracts

- ★ The written contract must contain or state:
 - ★ Charitable Purpose
 - ★ Obligations of both parties
 - ★ Fee arrangement
 - ★ Effective, start, and termination dates
 - ★ 5-day deposit of contributions
 - ★ Charity control of content and frequency
 - ★ Maximum amount to secure attendance, sponsorship or endorsement of an event
 - ★ Cancellation rights

Gov. Code sec. 12599(i)

Fundraising Counsel

☀ Definition:

- ☀ A Fundraising Counsel is any individual or entity who for compensation
 - Plans, manages, consults or prepares material for solicitation of assets for charitable purposes
 - Does not solicit assets for charitable purposes
 - Does not receive/control such assets
 - Does not employ persons who solicit assets or receive/control such assets

GC sec. 12599.1

The NIA: Notice of Intent to Solicit for FRCs

- ★ Notice to the Attorney General
 - ★ 10 working days before the start of a solicitation campaign or event
 - ★ Exception for Disaster Solicitations*

*Notice can be made concurrent with commencement of campaign

The NIA: Written Contract Requirements for FRCs

- ✦ For every solicitation campaign or event
- ✦ Voidable unless the fundraising counsel is registered with the Attorney General
- ✦ Must be signed by an official authorized by the Charity's Governing Board

GC sec. 12599.1(e)

The NIA: Required Provisions in FRC Contracts

- ★ The written contract must contain or state:
 - ★ Charitable Purpose
 - ★ Obligations of both parties
 - ★ Fee arrangement
 - ★ Effective, start, and termination dates
 - ★ Cancellation rights
 - ★ Charity control of content and frequency
 - ★ Statement that fundraising counsel will not solicit, receive or control donated funds, assets or property or employ another to do so

Gov. Code sec. 12599.1(f)

The NIA: Contract Cancellation Rights

- ★ Applies to all fundraising professionals
- ★ Contract voidable if CFR or FRC not registered with Attorney General
- ★ Right to cancel for any reason w/in 10 days of execution

Gov. Code sec. 12599.3

The NIA:

Specific Obligations When Fundraising

- ☀ Do not misrepresent purpose of charity or beneficiary
- ☀ Charity exercise control over fundraising activities
 - ☀ Approval of written contracts
 - ☀ Assure no coercion
- ☀ Commercial fundraisers and charities must all be registered with the Attorney General
- ☀ Transfer of funds to account controlled by charity within 5 days of receipt

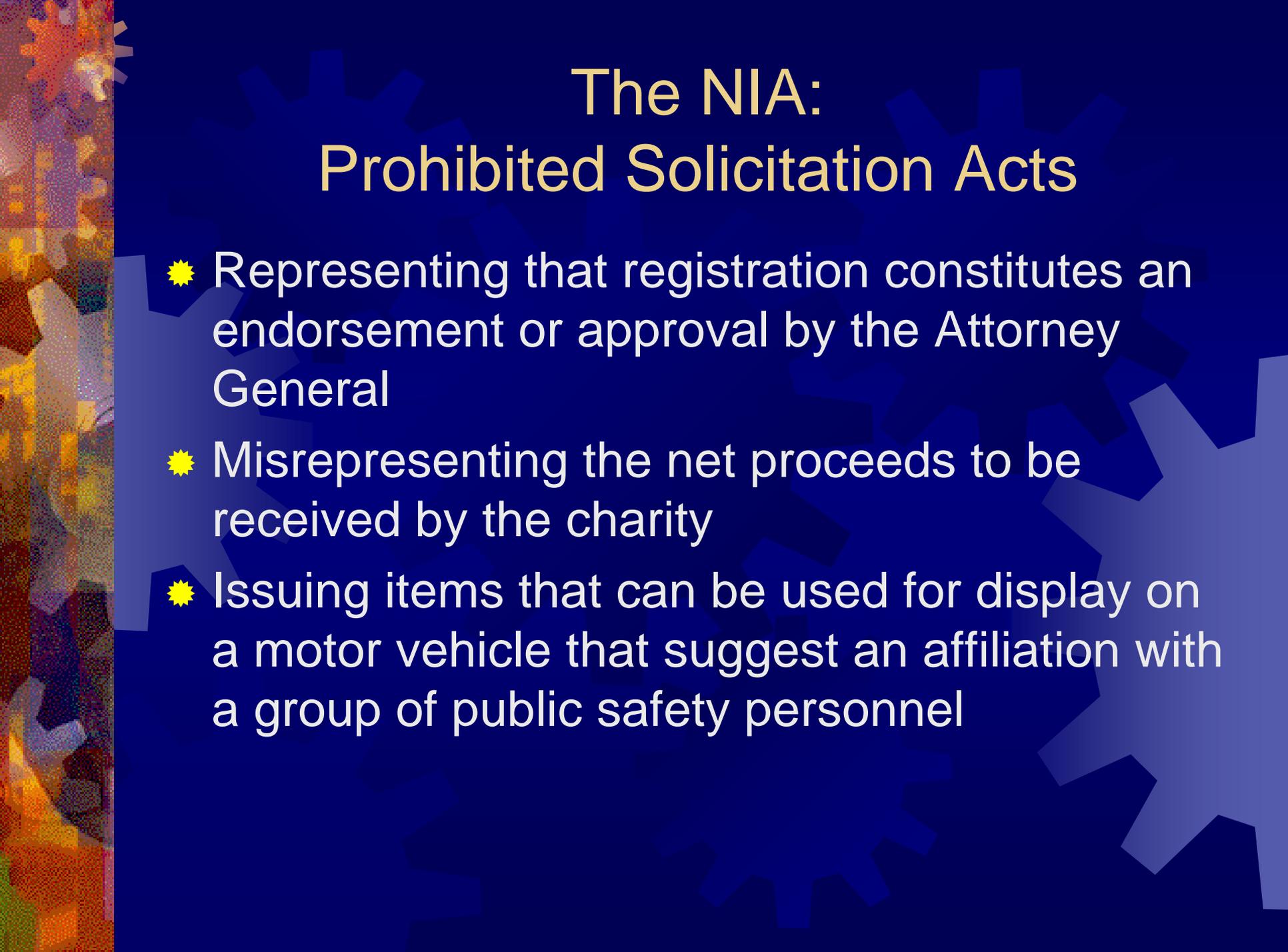
Gov Code sec. 12599.6

The NIA: Prohibited Solicitation Acts

- ✱ Any violation of Govt. Code section 12580-12599.7
- ✱ Unfair or deceptive acts or fraudulent conduct
- ✱ Using any name or symbol that falsely suggests a contribution is for a particular charitable organization
- ✱ Misrepresenting that a contribution is for a charitable organization or will be used for a charitable purpose when it is not true

The NIA: Prohibited Solicitation Acts

- ✦ Representing that a person endorses a charitable solicitation unless that person has agreed to do so in writing
- ✦ Misrepresenting endorsements or characteristics of goods or services
- ✦ Representing that a charity has endorsements or affiliations it does not have

The background features a dark blue field with several large, semi-transparent gears of various shades of blue. On the left side, there is a vertical strip with a colorful, abstract, and textured pattern in shades of orange, yellow, and brown.

The NIA: Prohibited Solicitation Acts

- ✦ Representing that registration constitutes an endorsement or approval by the Attorney General
- ✦ Misrepresenting the net proceeds to be received by the charity
- ✦ Issuing items that can be used for display on a motor vehicle that suggest an affiliation with a group of public safety personnel

The NIA: Prohibited Solicitation Acts

- ✱ Representing that contributions solicited will be given to another charity unless that charity has given prior written consent
- ✱ Representing that event tickets will be donated for use by another person or entity unless:
 - ✱ Written commitments to accept tickets and
 - ✱ Tickets do not exceed those received from the charity or the total capacity of the event site

The NIA: Record-keeping Requirements for CFRs*

- ☀ Keep records for 10 years
- ☀ Document all revenue and expenses
 - ☀ Cash: date and amount
 - ☀ Non-cash: date, amount, name and address of donor
 - ☀ Name and address of each employee or agent involved
 - ☀ Bank account numbers, names, locations

GC sec. 12599.7

*Note: AG has 10 year s/l for charities as well.

Raffle Regulation Overview

- ✦ A raffle is defined as a lottery
- ✦ History
- ✦ Penal Code sec. 320.5
 - ✦ Creates an exception to California law prohibiting gambling

What Is A Raffle?

- ✱ Purchase of a chance to win a prize
- ✱ Paper ticket with identifying number and detachable stub
- ✱ Drawing held to determine winner

Raffles

Limits On Who Can Conduct

- ☀ Must be an “eligible” organization*:
 - ☀ a private nonprofit organization
 - ☀ qualified to do business in CA for at least one year before raffle conducted
 - ☀ Tax exempt under specific Rev. and Tax Code sections

*does not include public schools or other government entities

Raffles

Annual Registration

- ☀ Must be registered with Attorney General **prior to** conducting raffle:
September 1 – August 31
- ☀ Separate from registration under Government Code
- ☀ Must have confirmation letter from Registry **before** raffle conducted
- ☀ Each chapter of statewide organization must register separately

**Exemption:* nonprofit religious organizations, educational institutions, hospitals, BUT must comply with all other provisions of sec. 320.5

Raffles Restrictions

- ★ 90% of gross receipts from ticket sales for each draw must either:
 - Be used by the organization conducting the raffle for its charitable or beneficial purpose
 - Or given to another eligible organization to use for its charitable or beneficial purpose

Raffles

Restrictions

- ✱ Proceeds must be used in California
- ✱ Money from sources other than tickets can be used to pay for costs
- ✱ None of the 90% restricted funds can be used to compensate a person in connection with operation of the raffle
- ✱ Cannot advertise or sell tickets on the internet

Raffles

Restrictions

- ✱ Cannot use gaming machines to conduct raffles
- ✱ Cannot sell tickets or conduct raffle in a satellite wagering facility, at a racetrack or gambling establishment
- ✱ No legal entity or individual may hold financial interest in the raffle except eligible organization conducting, or receiving proceeds from, the raffle

Raffles Reporting

- ✱ Separate report for each raffle held
- ✱ Report(s) filed no later than 8/31
- ✱ Reporting requires precise financial records
 - ✱ Total funds received
 - ✱ Total expenses
 - ✱ Charitable or beneficial purpose for which proceeds used
 - ✱ Name of eligible organization receiving proceeds

Raffles

Exemption from Regulation

A raffle is exempt if:

- ✦ It involves general and indiscriminate distribution of tickets
- ✦ Tickets are offered on same terms and conditions as tickets for which donation given
- ✦ Participants are not required to pay for a chance to win

Penal Code sec. 320.5(m)

Recent Developments

- ✦ Registry automation project
- ✦ CT opt-in listserv
- ✦ New 990
- ✦ Website resources
 - ✦ Registration guide
 - ✦ Guide to submitting transactions
 - ✦ Guide for Charities
 - ✦ Forms and instructions
 - ✦ Laws and regulations
 - ✦ Model contract
 - ✦ Resources re conduct of raffles

ATTORNEY GENERAL

Contacts and Information

- Web resources:
www.ag.ca.gov/charities
- Specific questions:
Belinda.Johns@doj.ca.gov