

**Fair Political Practices Commission
Memorandum**

To: Chair Ravel and Commissioners Eskovitz, Garrett, Montgomery and Rotunda
From: Roman Porter, Executive Director
Subject: Recommendations on Regulatory Review and Revision
Date: March 30, 2011

Proposal

After speaking with a number of individuals including FPPC staff, elected officials, political attorneys and treasurers, local government attorneys and the public, Chair Ravel has expressed her concern that a review of the Commission’s regulations with an eye toward the possible elimination or amendment of extraneous, outdated or inconsistent rules is needed. The underlying policy goal is to make the regulations of the FPPC easier to understand, thus enabling compliance by the individuals we regulate. This will reduce or eliminate unintended violations of the law, thereby increasing the public’s trust in their elected and appointed government officials. This memorandum presents staff’s recommended approach and seeks input and direction from the Commission.

Background

The People of California adopted Proposition 9 in 1974, which created the Fair Political Practices Commission and the Political Reform Act (the “Act”)¹. To meet its responsibilities of interpreting the Act, the Commission adopts and amends regulations, issues staff advice letters and in rare circumstances issues opinions of the Commission. Under the Act the Commission primarily regulates four general subject areas:

- Campaign finance and disclosure (Sections 84100 – 85802, 89510 - 89518)
- State lobbying (Sections 86100 – 86300)
- Personal financial disclosure by public officials (Sections 87200 – 87350, 87500 – 87500.1)
- Conflicts of interest and undue influence of public officials (Sections 87100 – 87105, 87400 – 87462, 89500 – 89506)

In the nearly 37 years since its adoption, the Act was amended numerous times through statute by the Legislature and by the People through ballot initiative. As more statutes were added, the number of regulations has grown. Since 1974 over 1,000 combined statutory and regulatory amendments have occurred.

	Adopted	Amended	Repealed
Statutes	253	580	87
Regulations	355	589	62

Problem

With increasing frequency, the Commission receives complaints that specific regulations or, in some cases, entire topic areas, are confusing or just unnecessarily complicated. This is partially a problem with the Act itself, which requires compliance with a host of very detailed rules in several subject areas where no comprehensive revision has occurred. However, attempts to clarify or interpret these statutes through

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

layers of regulations and advice letters ultimately results in even more detail and complexity than found within the statute. Over the years, this density has become a source of frustration to the public and regulated community. Rather than providing assistance in understanding the law, these layers have created a complex and at times burdensome regulatory scheme. This complexity is compounded each year and often causes even the most well intentioned public official to violate the law and lends to the erosion of the public's trust and confidence in government officials.

It is readily apparent to anyone who spends time looking through our rules that many are in need of revision not only to attain simplification, clarity and internal consistency, but also because many have proven unworkable for both Commission staff and the regulated public. For example, the Commission made several significant, but incongruent, changes to its rules governing the acceptance and reporting of gifts to public officials and these extensive changes resulted in several internal inconsistencies leading to confusion among officials, their advisors and governmental entities.

In addition to newly amended regulations, both staff and those regulated by the Commission have experienced frustrations with the workability of several longstanding Commission rules. For instance, the Commission has extensive regulations meant to determine when a public official has a conflict of interest, which precludes them from making certain governmental decisions. These regulations were significantly revamped in the late 1990s and early 2000s in an effort to make them more easily understood by officials, but the intervening decade has revealed several subsequent issues in need of revision.

These are merely examples of areas staff believes the Commission should address. Other regulations are also in need of similar review and possible revision.

Recommended Commission Action

1. Immediate Concerns: Staff recommends the Commission identify specific regulations or subject areas that deserve immediate attention, such as the aforementioned areas of gifts and conflicts of interests.
2. IP Meetings: Staff recommends the Commission undertake a series of Interested Persons (IP) meetings to allow staff and stakeholders to collectively identify areas in need of regulatory revision. While this effort will undoubtedly bring to light provisions of the Act ripe for statutory change, these discussions should focus on issues where the Commission has the authority to address them independently. At the conclusion of these IP meetings staff will report back to the Commission with specific regulations and areas in need of revision and will seek direction on establishing priorities.

In order to ensure regulatory revisions are internally consistent, staff efforts should be categorized by subject area and all regulatory proposals within that particular grouping should be reviewed and considered by the Commission at one time.