

## **Fair Political Practices Commission**

### **Memorandum**

**To:** Chairman Schnur, Commissioners Garrett, Hodson, Montgomery and Rotunda

**From:** Val Joyce, Commission Counsel  
Scott Hallabrin, General Counsel

**Subject:** Adoption of Amendment to Regulation 18404.1 – Termination and Reopening of Committees (Recommendation of the Chairman’s Task Force on the Political Reform Act)

**Date:** January 18, 2011

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**Proposed Commission Action and Staff Recommendation:** Adopt the proposed amendment to Regulation 18404.1, concerning the termination and reopening of committees.

**Reasons for Proposal:** Regulation 18404.1 sets deadlines for termination of a state candidate controlled committee. The deadlines are triggered by the date the candidate is defeated, leaves office or the term of office for which the committee was formed ends, or, for withdrawn candidates, the election from which the candidate withdrew. The deadline for committees that have net debt is 24 months from the triggering event. The deadline can be extended only by approval of the Executive Director. By eliminating the requirement that these committees be terminated, the Commission would make it less cumbersome for a committee with net debt to continue raising funds to pay the debt. In addition, terminating a committee when it still has net debt places a candidate’s personal assets at risk for debts incurred by the terminated committee. The deadline for terminating a state candidate controlled committee that has no net debt is 9 months from the triggering event. Changing the deadline to 24 months will give committees with surplus funds more time to decide how to dispose of their surplus funds.

**Summary of Proposed Action:**

Section 85316(a) permits candidates for elective state office to accept contributions after the date of the election only to the extent that the contributions do not exceed “net debts outstanding” from the election.<sup>1</sup> Section 84214 provides that committees and candidates shall terminate their filing obligations pursuant to regulations adopted by the Commission that insure that a candidate for elective state office or the candidate’s controlled committee will have no activity that must be disclosed under the Act. Regulation 18404.1 sets forth requirements for the termination of these committees and procedures to request an extension of time.

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<sup>1</sup> Regulation 18531.61 defines “net debts outstanding” to include amounts necessary to cover the cost of raising funds to pay net debt outstanding, costs related to complying with post-election requirements of the Act, necessary administrative costs related to winding down the campaign, legal fees and expenses incurred directly in connection with monitoring the count of absentee or provisional ballots and the total amount of unpaid debts, loans and accrued expenditures (less cash on hand and amounts owed to the committee.)

Under Regulation 18404.1, candidate controlled committees organized for elective state office that have net debts outstanding must be terminated no later than 24 months after the earliest of the date the candidate is defeated, leaves office or the term of office for which the committee was formed ends, or, for withdrawn candidates, no later than 24 months after the election from which the candidate withdrew. Committees that have no net debts outstanding must be terminated not later than 9 months after the earliest of the date the candidate is defeated, leaves office or the term of office for which the committee was formed ends, or, for withdrawn candidates, no later than 9 months after the election from which the candidate withdrew.

Subdivision (f) of Regulation 18404.1 provides that a state candidate controlled committee may request an extension of up to six months for termination of the committee and places no limit on the number of times a committee may request an extension.

Requiring termination of committees that have net debts outstanding imposes an unnecessary burden on committees requesting an extension and Commission staff which must consider and act on these requests. The requirement is unnecessary because the Commission almost always grants the requests. To do otherwise, the Commission could be limiting a committee's ability to pay its debts and put the candidate's personal assets at risk for payment of the committee's debts. Rather than require these committees to repeatedly continue requesting an extension of time to raise funds to pay debt, the proposed amendment will permit these committees to remain open until they have paid all their debt. These committees are subject to all of the disclosure requirements imposed on committees under the Act. Hence, the revision would not thwart the disclosure purposes of the Act.

The proposed amendment also changes the deadline for terminating state candidate controlled committees that have no net debts outstanding from 9 months to 24 months from the date the candidate is defeated, leaves office or the term of office for which the committee was formed ends, or, for withdrawn candidates, no later than 24 months after the election from which the candidate withdrew. This change is intended to give committees with surplus funds more time to decide how to dispose of those surplus funds.

The proposed amendment also contains technical changes that eliminate obsolete provisions governing committees organized for elections held prior to 2001 and candidates defeated in elections between January 1, 2001 and February 15, 2002 and eliminates several technical procedures applicable to a committee's request to remain open.

**Attachments:**

- 1 – Regulation 18404.1
- 2 – Section 85316
- 3 - Section 84214
- 4 – Regulation 18531.61

**Attachment 1 – Regulation 18404.1**

1 Amend 2 Cal. Code Regs. Section 18404.1 to read:

2 **§ 18404.1. Termination and Reopening of Committees.**

3 ~~(a) Pre-2001 Committees. Any candidate controlled committee organized for elective~~  
4 ~~state office for an election held prior to January 1, 2001, must be terminated as set forth in 2 Cal.~~  
5 ~~Code Regs. section 18404 no later than December 31, 2002, except candidates who, as of~~  
6 ~~February 15, 2002, hold elective state office pursuant to an election held prior to January 1,~~  
7 ~~2001, may retain one pre-2001 controlled committee, subject to the following:~~

8 ~~(1) Candidate controlled committees that have no debts must be terminated no later than~~  
9 ~~9 months after the earliest of the date the candidate leaves office or his or her current term of~~  
10 ~~office ends.~~

11 ~~(2) Candidate controlled committees that have debts must be terminated no later than 24~~  
12 ~~months after the earliest of the date the candidate leaves office or his or her current term of office~~  
13 ~~ends.~~

14 ~~(a)(b) 2001 and Post-2001 Committees. Candidate controlled committees When a~~  
15 ~~candidate controlled committee organized for elective state office for an election held on or after~~  
16 ~~January 1, 2001, has no "net debts outstanding" as defined in Regulations 18531.6(d) and~~  
17 ~~18531.61(d), the committee must be terminated as set forth in 2 Cal. Code Regs. section~~  
18 ~~Regulation 18404 and as follows:~~

19 ~~(1) Candidate controlled committees with no "net debts outstanding," as defined in 2~~  
20 ~~Cal. Code Regs. sections 18531.6(d) and 18531.61(d), must be terminated no later than 9 24~~  
21 ~~months after the earliest of the date the candidate is defeated, leaves office or the term of office~~  
22 ~~for which the committee was formed ends or, for withdrawn candidates, no later than 9 24~~  
23 ~~months after the election from which the candidate withdrew.~~

1           ~~(2) Candidate controlled committees with “net debts outstanding,” as defined by 2 Cal.~~  
2 ~~Code Regs. sections 18531.6(d) and 18531.61(d), must be terminated no later than 24 months~~  
3 ~~after the earliest of the date the candidate is defeated, leaves office or the term of office for~~  
4 ~~which the committee was formed ends or, for withdrawn candidates, no later than 24 months~~  
5 ~~after the election from which the candidate withdrew.~~

6           ~~(3) Candidates defeated in elections that were held after January 1, 2001, but prior to the~~  
7 ~~effective date of this regulation, February 15, 2002, shall terminate their committees 9 months~~  
8 ~~from the effective date of this regulation if the committee has no net debts outstanding, as~~  
9 ~~defined in 2 Cal. Code Regs. section 18531.6, and 24 months from the effective date of this~~  
10 ~~regulation if the committee has outstanding debts.~~

11           **(b)(e) Campaign Bank Accounts.** On or before termination of the candidate controlled  
12 committee, the campaign bank account associated with that committee must be closed. No  
13 further activity, including receipt of contributions or making of payments, is allowed after the  
14 date of the termination of the committee unless the committee and a campaign bank account are  
15 reopened pursuant to this regulation. Contributions received while a committee is closed after  
16 the termination of the committee must be returned to the contributors. Contributions received by  
17 a committee reopened in accordance with this regulation are subject to the limits applicable to  
18 the election for which the committee was originally formed as well as ~~2 Cal. Code Regs. sections~~  
19 Regulations 18531.6, 18531.61 and 18536.

20           **(c)(d) Local Committees.** Candidates who are elected to an elective state office must  
21 terminate any controlled committees formed for local elections held concurrent with or prior to  
22 their election to state office. Such termination shall be pursuant to ~~2 Cal. Code Regs. section~~  
23 Regulation 18404 and shall be no later than December 31, 2002 for committees formed by

1 candidates who currently hold elective state office pursuant to an election held prior to January 1,  
2 2001, and within 24 months of the candidate's election to state office if he or she is elected on or  
3 after January 1, 2001.

4 ~~(d)~~(e) Creditors' Notice. The committee shall give at least 60 days notice of its  
5 impending termination to all creditors. Such notice shall include the date upon which the  
6 committee expects to file its terminating statement of organization.

7 ~~(e)~~(f) Requests for Extensions. A committee may, for good cause, seek from the  
8 Executive Director an extension of time to comply with the committee termination requirements  
9 of this regulation. ~~A committee may submit a request to the Executive Director of the Fair~~  
10 ~~Political Practices Commission for an extension of up to six months' duration in which to~~  
11 ~~comply with the requirements of this section.~~ Such a request shall be submitted to the Executive  
12 Director no later than 45 days prior to the original due date for the committee's termination, and  
13 shall include evidence of good cause for the request. ~~supporting any of the factors set forth in~~  
14 ~~subdivisions (f)(1) through (f)(3) of this regulation upon which the committee is basing its~~  
15 ~~request for extension.~~ ~~Requests to renew the extension for additional periods of up to six months~~  
16 ~~must be submitted to the Executive Director no later than 45 days prior to the expiration of the~~  
17 ~~prior extension.~~ ~~If the request for extension is received by the Executive Director fewer than 45~~  
18 ~~days prior to the original due date or the expiration of any prior extension, the request for~~  
19 ~~extension is automatically denied.~~ ~~The Executive Director may, for good cause shown, waive~~  
20 ~~this requirement.~~

21 ~~Within 15 days after a request for extension that is timely filed is received by the~~  
22 ~~Executive Director, the committee making the request shall be notified in writing of the decision~~  
23 ~~of the Executive Director.~~ ~~If the request for extension is denied, the notification shall state the~~

1 reason for the denial and shall advise the committee whether the committee may request an  
2 appeal to the Chairman pursuant to 2 Cal. Code Regs. section 18404.1(g). However, an  
3 automatic denial or a late-filed request that is waived by the Executive Director is not subject to  
4 the appeal procedure of 2 Cal. Code Regs. section 18404.1(g), unless such appeal is authorized  
5 in writing by the Executive Director. The Executive Director's authorization of such appeal, if  
6 given, shall specify a date no less than 10 days before the termination deadline by which such an  
7 appeal must be filed. For late-filed requests, the written notification shall issue prior to that time  
8 period.

9 In denying or granting the request for extension, the Executive Director shall consider the  
10 following:

11 (1) Whether the committee:

12 (A) Is continuing to receive contributions toward its outstanding debts;

13 (B) Has, in the previous 6 months, raised significant funds toward its outstanding debts;

14 (C) Demonstrates the ability to discharge its debts, loans and other obligations; and

15 (D) Has filed all required campaign statements; or

16 (2) Whether the candidate or committee is a party to litigation arising out of his or her  
17 candidacy or status as an elected official, or anticipates the filing of such litigation; or

18 (3) Other good cause shown.

19 (g) Appeals of Denials of Requests for Extensions. When the Executive Director  
20 notifies a committee that files a timely request for extension that its request has been denied, the  
21 Executive Director shall establish and state a deadline by which the committee may submit any  
22 appeal of the denial of its request for extension to the Chairman. The deadline shall be no less

1 than 10 days after transmittal of the notification of the denial of the request for extension. Any  
2 such appeal shall:

3 (1) Be submitted to the Commission Offices either in person, by fax, or by overnight  
4 delivery service;

5 (2) Include all evidence submitted with the original request for extension supporting any  
6 of the factors set forth in subdivisions (f)(1) through (f)(3) of this regulation upon which the  
7 committee is basing its request for extension; and

8 (3) Directly address the reasons for the denial of the request stated in the Executive  
9 Director's notification to the committee.

10 The Chairman's decision shall be final, and may not be appealed to the Commission.

11 (f)(h) Local Candidate Controlled Committees. This regulation does not apply to local  
12 candidate controlled committees, except as provided in subdivision (c) (d) of this regulation.

13 (g)(i) Reopening of Terminated Committees. A committee subject to the requirements of  
14 this regulation may submit a request to the Executive Director of the Fair Political Practices  
15 Commission to reopen for any of the following reasons:

16 (1) To receive a refund or similar payment received after termination of the committee;

17 (2) To pay a fine as permitted under ~~Government Code section~~ Section 89513(c);

18 (3) To pay expenses incurred in connection with an audit or investigation of the  
19 committee under this title;

20 (4) To pay litigation expenses as permitted under ~~Government Code sections~~ Sections  
21 89513 and 89514, other than expenses subject to ~~Government Code section~~ Section 85304 and 2  
22 ~~Cal. Code Regs. section~~ Regulation 18530.4; or



1 (5) For any other good cause shown that would further the disclosure requirements or  
2 contribution limits of this title.

3 ~~(h)~~(j) Expenditure of a refund or similar payment under this regulation must be made  
4 consistent with ~~Government Code sections~~ Sections 89510 – 89519, as applicable, including  
5 payment of debts that the committee declared it had no intention or ability to discharge under ~~2~~  
6 ~~Cal. Code Regs. Section~~ Regulation 18404. In addition, the reopening of a committee to receive  
7 payments and make expenditures must be in compliance with ~~Government Code sections~~  
8 Sections 85316 and 85321 and ~~2-Cal. Code Regs. sections~~ Regulations 18531.6 and 18531.61. A  
9 determination by the Executive Director under this regulation does not constitute a determination  
10 regarding the applicability of the statutes and regulations referenced in this subdivision.

11 ~~(i)~~(k) Procedures for Reopening Terminated Committees. In order for the committee's  
12 reopening to be effective, the committee must:

13 (1) Request and receive approval to reopen the committee from the Executive Director of  
14 ~~the Fair Political Practices Commission~~ as specified in this subdivision. The purpose(s) for  
15 requesting the reopening of the committee must be included in the request. Within 15 days after  
16 a request is received by the Executive Director, the requestor shall be notified in writing of the  
17 decision of the Executive Director. In denying or granting the request, the Executive Director  
18 shall consider whether the proposed purpose(s) for reopening the committee are as specified in  
19 subdivision ~~(g)~~(i) of this regulation, and specify the purpose(s) for reopening the committee in  
20 the notification if the request is granted. If the request is denied, the notification shall state the  
21 reason for the denial and advise the requestor of the right to appeal the decision to the Chairman  
22 within 10 days after the date of the transmittal of the denial notification. Any such appeal shall:

1 (A) Be submitted to the ~~Commission Offices~~ office of the Executive Director either in  
2 person, by fax, or by overnight delivery service;

3 (B) Include all material, if any, submitted with the original request to reopen supporting  
4 any of the permissible reasons for reopening as set forth in subdivision (g) ~~(i)~~ of this regulation  
5 upon which the committee is basing its request; and

6 (C) Directly address the reasons for the denial of the request stated in the Executive  
7 Director's notification to the committee.

8 The Chairman's decision shall be final, and may not be appealed to the Commission.

9 (2) File an amendment to Form 410 (Statement of Organization) declaring the  
10 committee's reopening with the Secretary of State along with written authorization from the  
11 Executive Director granting the reopening of the committee;

12 (3) Mark "Amendment" on the Form 410 and list the committee's original identification  
13 number and name;

14 (4) Include the word "Reopened" in parentheses after the committee name on the Form  
15 410; and

16 (5) File a copy of the amended statement of organization with the local filing officer, if  
17 any, with whom the committee is required to file the originals of its campaign reports pursuant to  
18 ~~Government Code section~~ Section 84215.

19 (j)~~(f)~~ Filing Requirements. A reopened committee is subject to all of the committee filing  
20 requirements of this title including those specified in subdivision (i) ~~(k)~~ of this regulation.

21 (k)~~(m)~~ Termination of Reopened Committees. Unless the Executive Director specifies a  
22 date of termination in his or her notification, a reopened committee must terminate pursuant to  
23 the requirements of ~~2 Cal. Code Regs. sections~~ Regulations 18404(b) and (c) within 30 days of

1 the date the specified purpose(s) for which the committee was reopened ceases to exist. The  
2 Executive Director may specify in his or her notification the projected date of completion and the  
3 date of termination for the reopened committee. If the reopened committee ~~required~~ requires  
4 additional time before terminating for a purpose or purposes other than specified in its initial  
5 request for reopening under subdivision ~~(i)(4)~~, or the Executive Director specifies a date of  
6 termination in his or her notification and the reopened committee requires additional time to  
7 complete the original reopening purpose, then the committee must reapply for and receive  
8 approval of the Executive Director under the same procedures and timelines set forth in  
9 subdivision ~~(i)(1)(4)~~, prior to the termination date for the reopened committee.

10 NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84102, 84103,  
11 84214 and 84215, Government Code.

**§ 85316. Post-Election Fundraising.**

(a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

(A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.

(B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.

(C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.

(B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.

(C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit

provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

**§ 84214. Termination.**

Committees and candidates shall terminate their filing obligation pursuant to regulations adopted by the Commission which insure that a committee or candidate will have no activity which must be disclosed pursuant to this chapter subsequent to the termination. Such regulations shall not require the filing of any campaign statements other than those required by this chapter. In no case shall a committee which qualifies solely under subdivision (b) or (c) of Section 82013 be required to file any notice of its termination.

§ 18531.61. Treatment of Debts Outstanding After an Election

(a) Application. Under Section 85316(a) a candidate for elective state office may solicit and accept contributions after an election to pay net debts outstanding, subject to the applicable contribution limit for that election. This regulation applies to contributions accepted under Section 85316(a) on or after January 24, 2004, by a candidate for elective state office. See Regulation 18531.6 for rules regarding the treatment of similar contributions accepted before January 24, 2004.

(b) Definitions. For purposes of Section 85316(a) and this regulation, the following definitions apply:

(1) "The applicable contribution limit for that election" means the contribution limit, if any, as provided in Sections 85301 and 85302 applicable on the date of the election.

(2) "That election" or "the election" means the election for which a candidate for elective state office is raising contributions to pay net debts outstanding.

(3) "Net debts outstanding" includes all of the following:

(A) An amount necessary to cover the cost of raising funds as permitted under Section 85316(a) and this regulation.

(B) Costs related to complying with the post-election requirements of Title 9 (commencing with [Section 81000](#)) of the Government Code and other necessary administrative costs related to winding down the campaign, including office space rental, staff salaries, and office supplies.

(C) Legal fees and expenses incurred directly in connection with monitoring the count of absentee or provisional ballots for the election, or with a ballot recount conducted under Chapter 9 (commencing with [Section 15600](#)) of Division 15 of the [Elections, Code](#) for the election.

(D) The total amount of unpaid debts, loans and accrued expenditures incurred with respect to the election, less the sum of both of the following:

(i) The total cash on hand available to pay those debts and obligations, including: currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value.

(ii) The total amounts owed to the candidate controlled committee in the form of credits, refunds of deposits, returns, or receivables, or a commercially reasonable amount based on the collectibility of those credits, refunds, returns, or receivables.

(c) Raising Funds. A candidate for elective state office may accept contributions after

the date of the election only up to the amount of net debts outstanding from the election. The contributions accepted are subject to the applicable contribution limit for that election. The candidate shall reduce the total amount of net debts outstanding as additional funds are received. The candidate and his or her controlled committee(s) may not accept a contribution under Section 85316(a) that exceeds the total amount of net debts outstanding on the date the contribution is received. A contribution that exceeds the amount of net debts outstanding shall be treated in the same manner as a contribution in excess of the contribution limits.

(d) Paying the Debt. A candidate for elective state office may only use a contribution accepted after the election pursuant to Section 85316(a) for payment of net debts outstanding from the election. The candidate may only use the funds on hand and owed to the committee, described in clauses (b)(3)(D)(i) and (ii), for payment of net debts outstanding from the election. The candidate shall use available funds to pay net debts outstanding as soon as practicable.

(e) Transfer. Pursuant to Section 85306, a candidate may transfer campaign funds from another of his or her controlled committees for the purpose of paying the net debts outstanding of his or her committee for elective state office under Section 85316(a). A transfer of this type made to a committee for an election to a statewide elective office held on or after November 6, 2002, or to any other elective state office held on or after January 1, 2001, is subject to the contribution limits of Sections 85301 and 85302 and attribution requirements of Regulation 18536.