

# California Fair Political Practices Commission

## MEMORANDUM

**To:** Chair Ravel, Commissioners Eskovitz, Garrett, Montgomery and Rotunda

**From:** Sukhi K Brar, Commission Counsel  
Zackery P. Morazzini, General Counsel

**Re:** Proposed Amendments to Regulation 18404.1 – Termination and Reopening of Committees

**Date:** September 12, 2011

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### *I. Introduction*

These proposed amendments to Regulation 18404.1 would allow state and local candidate controlled committees that have terminated to accept all refunds from governmental entities and accept unexpected refunds from any other entities totaling \$10,000 or less and transfer them to other committees as if the refunds had been received prior to termination. A committee receiving a refund would no longer be required to reopen, nor would the refund have to be deposited in the terminated committee's bank account. However, transferred refunds would need to be reported. If the refund is transferred to a new committee, it would be reported as if it had been received before termination and attributed accordingly, if attribution applies under Section 85306.

### *II. Background and Current Law*

Regulation 18404.1 currently sets forth the requirements for candidate controlled committees to terminate, as provided by Section 84214. Section 84214 provides that "committees and candidates shall terminate their filing obligations pursuant to regulations adopted by the Commission which ensure that a committee or candidate will have no activity which must be disclosed pursuant to this chapter subsequent to the termination." In many cases, committees terminate shortly after the election in order to avoid continuing filing obligations and bank fees.

However, the Commission frequently receives advice requests from candidate controlled committees that have terminated, seeking information about accepting refunds after termination. On many occasions the Legal Division has advised committees that they may accept refunds without reopening for purposes of administrative efficiency. On occasion the Legal Division has also advised committees to seek permission from the Executive Director to reopen for purposes of accepting a refund as required by Regulation 18404.1. (*Statham* Advice Letter No. I-94-389, *Warren* Advice Letter No. A-11-060; *Hill* Advice Letter No. A-11-090.)

Most refunds that committees seek to receive after termination are from governmental entities or vendors used by the committees. These refunds have generally been for less than \$10,000. Many of the refunds are then transferred to other committees.

Requiring a candidate controlled committee to send a specific request to reopen to the Commission, and requiring the reopening of a terminated committee and its bank account for the sole purpose of receiving a refund to transfer to an active committee, has proven to be administratively cumbersome and unnecessary in many cases both for committees and for the Commission. However, staff also recognizes that when a refund is from an entity other than the government, the purposes of the Act are best served with oversight by the Commission when those refunds represent large sums.

At an Interested Persons Meeting, representatives of the regulated community requested that the Commission also consider developing a process for allowing terminated committees to receive funds from checks that remained uncashed after termination. However, unlike unexpected refunds, tracking the cashing of checks is a basic responsibility of committees. Committees should be aware of uncashed checks prior to termination if proper accounting practices are followed. Committees will still have the option of requesting to reopen in order to accept such funds. The current draft amendments do not address this issue.

### ***III. Regulatory Changes***

These amendments seek to allow state and local candidate controlled committees that have terminated to accept refunds from governmental entities, and unexpected refunds from other entities, totaling \$10,000 or less and transfer the funds to other committees as if the refunds had been received prior to termination. A reopening of the terminated committee or its bank account would no longer be required. The refund would be reported as a miscellaneous increase to cash on the terminated committee's campaign statement. In response to public comments received at the July 14, 2011 Interested Persons' Meeting, a clarification has been made that refunds received under this regulation will not have to be deposited in the terminated committee's bank account. Also, in response to further comments at the Interested Persons' Meeting, staff has clarified that if the refund is transferred to another committee, it must be placed in that committee's bank account and be reported as a miscellaneous increase to cash, or if attribution would have been required under Section 85306, it must be reported as a contribution and attributed accordingly. For purposes of determining contribution limits, Section 85306 specifies the contributor to whom a contribution must be attributed upon the transfer of the contribution between committees.

### ***IV. Costs for Compliance***

This regulation is not likely to increase costs for compliance for regulated entities and may actually decrease costs.