

Fair Political Practices Commission Memorandum

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

From: Zackery P. Morazzini, General Counsel
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Subject: September 2011 Work Plan Update

Date: September 12, 2011

A. INTRODUCTION

Attached is the September 2011 regulatory work plan for the rest of the calendar year (attachment 1). The calendar reflects four specific regulations slated for revision or adoption in 2011. Each entry reflects the various steps that have already been taken in the regulation process and future anticipated steps. We also have three regulatory clusters (as staff refers to them) planned, each containing a group of related regulations. The three regulatory clusters pertain to gifts, the enforcement process, and campaign issues. Each of the individual regulation projects and the clusters are discussed in greater detail below.

Finally, at the end of the calendar we set out the first three months of next year with sample dates to show the deadlines for regulation projects planned for those months. Staff anticipates presenting the 2012 calendar with specific regulatory proposals at the November Commission meeting.

B. 2011 REGULATION PROJECTS

1. September Items

Regulation 18215.3: Behested Payment Exception. The Commission will consider a regulation to exempt from “behested payment” reporting a common situation where a public official’s name is listed on the letterhead of a fundraising letter for a nonprofit organization, but neither the official nor any person on his or her staff act as an agent to solicit contributions to the nonprofit organization on behalf of the official. This regulation codifies current staff advice.

Regulation 18404.1: Reopening Campaign Bank Accounts for Refunds. The Commission has received several requests for advice concerning receipt of refunds by committees that have already terminated. In most cases, the committees have not been aware that they were entitled to a refund prior to termination and were required to reopen their committee in order to accept the refund. The proposed regulation would allow these terminated

committees to accept certain refunds without having to reopen the terminated committee and transfer them to another committee. The regulation would also provide for reporting of these transactions on statements for both committees involved.

Regulation 18728.6: Reportable Investments. The proposed new regulation would interpret Section 82034 (which defines “investment”) for purposes of the reporting provisions of the Act. Section 82034 provides that the term “investment” does not include an interest in a diversified mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940. The proposed regulation seeks to update and clarify this exemption by adding other modern equivalents to the exception that have the same characteristics as mutual funds. The purpose of the regulation is to permit public officials who hold investments in these funds to treat those investments the same as mutual funds so that they would not need to be reported on statements of economic interests. Types of funds that may be affected by the amendment include exchange traded index funds and investments held in a plan qualified under section 457 of the Internal Revenue Code. The regulation would also define the term “diversified” appearing in Section 82034. The proposed regulation would not include a fund that had a stated policy of concentrating its holdings in a particular industry -- commonly called “sector funds.”

2. October Items

Regulation 18421.31: Text Contributions. Given the growing use of text messaging to make charitable donations, some political committees in California may wish to create similar fundraising programs permitting individuals to text small dollar amounts as contributions. The proposed regulation would provide that a committee may raise funds through low dollar text message contributions under the Act. The regulation would state when text message contributions are considered “received” by the committee for reporting purposes, and discuss their transfer to the campaign bank account. It would highlight the recordkeeping, reporting, and other provisions of the Act with which a text message donation program must comply.

Regulations 18940-18950: Gift Regulations. Over the past several years, the Commission has adopted a number of specific amendments to the Act’s gift regulations in an effort to clarify and improve the rules, without being able to consider the gift rules as a whole. This project examines all the gift rules in light of the authorizing statutes and the purposes sought to be achieved by each regulation.

3. November Items

Enforcement Regulations. Staff is proposing revisions to various enforcement regulations, including but not limited to Regulations 18360 – 18361.10. Particular emphasis will be placed on suggestions concerning the enforcement process and due process issues, which would better enable the public to comply with the Act and the Commission to administer and enforce the Act. Specific changes that may be proposed to clarify the enforcement process include, but are not limited to:

- The current complaint notification process (Regulation 18360);
- The current role of the Executive Director in procedures for initiating complaints and decisions to begin probable cause proceedings. (Regulation 18361.4);
- Procedures for matters involving multiple respondents seeking different avenues for case resolution.
- Procedures to allow discovery for respondents prior to a probable cause hearing.
- The addition of default and reconsideration regulations.
- Major Donor Committee treasurer liability.
- Clarifying treasurer liability vs. candidate liability and possibly allowing treasurers to accept full liability for committee violations.

4. December Items

Campaign Regulations. Interested persons identified several campaign regulations in need of some refinement. They include:

- Regulation 18412 – Multi-purpose organization campaign reporting method.
- Regulation 18247.5 – Primarily Formed and General Purpose Committees, simplification of rule.
- Regulation regarding automatic committee termination for inactive campaign and lobbying committees with proper notice and opportunity to object, designed to end voluminous referrals and enforcement actions for non-filers.
- Regulation 18421.7 – Reporting Expenditures for a Gift, a Meal, or Travel. Simplify required detail for campaign recordkeeping for fundraisers and travel.
- A technical packet containing smaller projects:
 - Codify advice interpreting the term “election cycle” under Sections 85204 and 85309;
 - Confirm FPPC’s present verbal guidance that in-kind contributions or expenditures of salaried personnel are made on their payroll date (Regulation 18423); and

- Change the names used in Regulation 18534 for “all purpose account” and “restricted use account” to “candidate account” and “non-candidate account.”

Attachment: Calendar