



FAIR POLITICAL PRACTICES COMMISSION

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To: Chair Remke, Commissioners Casher, Eskovitz, Wasserman, and Wynne

From: Hyla P. Wagner, General Counsel
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Subject: Multipurpose Organization Political Activity Transparency

Date: September 4, 2015

Summary

The amendment to this regulation clarifies that so-called “dark money,” originating from nonprofit or other organizations whose donors are not disclosed, is not permitted in California elections. The amendment clarifies that if a multipurpose organization contributes to a federal PAC for expenditures on a California ballot measure or state candidate, the sources of funds to the organization must be disclosed in California as required under the Act. (Section 84222.) In addition, the new rules on disclosure of contributors to multipurpose organizations in Section 84222 supersede the Act’s prior rules; accordingly, old Regulation 18413 is proposed for repeal.

Proposed Amendments to Regulation 18422

In 2014, the Legislature passed SB 27, which imposes political activity transparency requirements on multipurpose organizations. Section 84222 requires nonprofit groups and other multipurpose organizations (including federal and out-of-state political action committees (PACs)) that make expenditures supporting or opposing candidates or measures in California, to disclose the donors of the funds used for political purposes.

In some cases, when a nonprofit organization or a federal PAC is reporting its donors as Section 84222 requires, it will list a large contribution from another multipurpose organization. To identify the donors of the funds moving through these multipurpose organizations, Section 84222, subdivision (e)(5) and (6) require that the multipurpose organization reporting the contribution notify the large donor that it may qualify as a committee and be required to file its own reports disclosing donors.

Regulation 18422, interpreting Section 84222, explains that a multipurpose organization that is disclosing its most recent contributors using a last in, first out (LIFO) accounting method must send a “major donor notice” to contributors who meet the thresholds in Section 84105 and Regulation 18427.1. Similarly, a multipurpose organization must send an expedited “nonprofit filer notice” if it identifies a donor that gave more than \$50,000. The notices state that the donor could be required to file campaign statements.

Regulation 18422 develops a method for determining which donors receive the notices based on LIFO accounting. Federal PACs, however, are exempt from using the LIFO method because they already itemize their contributions and expenditures on their federal reports. This simplified reporting method that Section 84222 allows eliminates duplicative and burdensome reporting. The exception is limited, however, and only explicitly exempts the reporting requirements in Section 84211(d), (f), and (k) (itemized contributors and expenditures at the \$100 threshold) and allows the federal PAC to report the total in a lump sum if the PAC refers to its federal name and registration number.

Staff has received inquiries regarding whether federal PACs are subject to the major donor notices and multi-layer reporting provisions in Regulation 18422. The amended regulation clarifies that the major donor notices and multi-layer reporting apply equally to federal PACs and out-of-state committees. To determine which donors would receive the notices, the federal PACs would refer to their federal reports and determine to whom to send the notices by referring to the most recent donors identified on that report prior to the date of the expenditure.

Additionally, Section 84222 and Regulation 18422 supersede Regulation 18413, which was previously enacted to provide reporting requirements for certain eligible 501(c)(3) organizations making occasional independent expenditures. For this reason, staff proposes that the Commission repeals this regulation.

Conclusion and Recommendation

Staff proposes that the Commission adopt amended Regulation 18422 to clarify reporting and notice requirements for federal PACs. Additionally, because Regulation 18413 is now duplicative, staff proposes that the Commission repeal that regulation.

Attachments:

Amended Regulation 18422
Repealed Regulation 18413