



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

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

From: Hyla P. Wagner, General Counsel
Brian G. Lau, Senior Commission Counsel

Subject: Regulation 18422.5 - Top Contributor Disclosure by Committees Primarily Formed for State Ballot Measures or Candidates.

Date: September 4, 2015

Summary

Government Code section 84223 of the Political Reform Act¹ requires certain primarily formed state ballot measure committees and candidate independent expenditure committees to provide lists of their top 10 contributors to the Fair Political Practices Commission for online posting. Additionally, section 84223, subdivision (b)(1), expressly permits the Commission to require the expanded disclosure of the top contributors to any contributing recipient committee identified in a required top 10 list. This proposal will implement the expanded disclosure requirement.

Background

Senate Bill 27, a Commission sponsored bill, was passed by the Legislature and signed by the Governor on May 14, 2014, and took effect on July 1, 2014. The legislative history of the bill summarizes its purposes as follows:

“According to the author, ‘Everyone is aware of the now-infamous \$11 million contribution from an Arizona non-profit organization to a committee that was opposing Proposition 30 and supporting Proposition 32 last November. After a court battle with the FPPC, this nonprofit group revealed that it was not the true source of the \$11 million contribution but merely an intermediary. They disclosed that the actual source of the \$11 million was another nonprofit organization who had received it from yet another nonprofit organization

This bill . . . is a simple measure that will accomplish two important goals. First, it will enact a series of tests and presumptions in the law so that campaign funds can no longer be laundered through nonprofit corporations without them

¹ The Political Reform Act (Act) is set forth in Government Code Sections 81000 through 91014, and all further statutory references are to this code. The Commission’s regulations are contained in Division 6, Title 2 of the California Code of Regulations, and all regulatory references are to this source.

disclosing the true source of the money. Second, it will require ballot measure committees that raise one million dollars or more to give the FPPC a current list of the committee's top ten contributors of ten thousand dollars or more. The FPPC and the committee will be required to post the list on their Internet web sites.”
(Senate Floor Analysis of SB 27, May 7, 2014.)

In addition to the Commission, the bill was supported by California Clean Money Campaign, California Common Cause, California Voter Foundation, Communication Workers of America AFL-CIO, CLC Local 9003, Common Cause, Courage Campaign, Fix Our America, and the League of Women Voters of California. (Senate Floor Analysis of SB 27, May 7, 2014.)

In section 84223, the bill enacted top contributor disclosure provisions that apply to state ballot measure committees and candidate independent expenditure committees that have raised \$1,000,000 or more. Under these provisions, the committees are required to provide top 10 contributor lists to the Commission and the Commission is required to post the lists on its website.

Implementing these provisions, the Commission enacted Regulation 18422.5 in July of 2014. This regulation provides a procedure for submitting top 10 contributor lists to the FPPC. Currently, Regulation 18422.5 requires committees to submit their lists on a form provided by the FPPC. Committees must provide lists to the FPPC within 24 hours (or the next business day) during the 16-day period before an election, and within three business days outside this period. As required by section 84223, subdivision (c)(4), the FPPC must post the list within 48 hours during the 16 days before the election and within five business days outside this period. Committees began filing top 10 contributor lists on ballot measures and independent expenditures and the FPPC began posting these lists during the 2014 elections. The FPPC is already posting on measures for the 2016 elections. The lists have become a popular feature of the FPPC's website.

Although not yet implemented, Senate Bill 27 also permits the Commission to require the expanded disclosure of the top contributors to any contributing recipient committee identified in a required top 10 list. As provided in section 84223, subdivision (b)(1):

“If any of the top 10 contributors identified on the list are committees pursuant to subdivision (a) of Section 82013, the Commission may require, by regulation that the list also identify the top 10 contributors to those contributing committees.”²

Discussion and Summary of Proposed Amendments

The proposed amendment to Regulation 18422.5 will implement the expanded disclosure requirements for any state recipient committee identified on a committee's top 10 list. The

² A committee under section 82013, subdivision (a), is any committee that “receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year” and is commonly known as a “recipient committee.”

proposed regulation will require that if a state general purpose committee, such as “Good Government California,” is listed as a top contributor to a primarily formed state ballot measure or candidate independent expenditure committee, that committee’s top two donors will also be listed to inform the public of the nature of that committee. The added disclosure proposed by this regulation gets at the problem of money passing through committees with uninformative, generic names, obscuring the interests funding a state measure or independent expenditures on a state candidate. As drafted, proposed Regulation 18422.5 furthers the purpose for which the Legislature adopted section 84223 as well as the public’s interest in disclosure. Staff also anticipates providing easily accessible links to the information on the Commission’s web site.

Expanded Disclosure: Section 84223(b)(1) grants the Commission the broad authority to require expanded disclosure for any recipient committee contributing to a committee subject to top 10 reporting. However, requiring committees to disclose the top 10 donors to all contributing recipient committees would require committees to attain information that would not be readily available and could be overly burdensome on the committee. For these reasons, proposed Regulation 18422.5 limits expanded disclosure to the top two contributors to state recipient committees and contributor information that is attainable online from the Secretary of State’s Cal-Access System.³ Proposed Regulation 18422.5 also establishes a minimal contribution threshold for expanded disclosure. This threshold requires a committee to disclose the name of a contributor to the state recipient committee only if the contributor had contributed \$50,000 or more to the state recipient committee. Finally, proposed Regulation 18422.5 establishes an exception for any state recipient committee that has independently filed a top 10 contributor list for the same election. In these cases, the committee would not have to identify contributors to the state recipient committee.

Filing Deadline: As stated above, current Regulation 18422.5 requires committees to submit top 10 lists within 24 hours during the 16-day period preceding the election. To help ensure that committees have sufficient time to determine the contributors to any state recipient committee identified in their top 10 lists, we are proposing a small extension of the filing deadline. Proposed language requires committees to submit top 10 lists within two business days during the 16-day period preceding the election.

Effective Date: If adopted, proposed Regulation 18422.5 will not require committees that have already filed a top 10 list to submit amendments to their lists upon the effective date of the regulation. However, if a committee needs to update its top 10 list after the effective date of the regulation, proposed Regulation 18422.5 requires the committee to provide an expanded disclosure list for any state recipient committee in the top 10 list that has made an additional contribution after the effective date.

³ While section 84223, subdivision (b)(1), permits the Commission to require that committees disclose the top 10 contributors to contributing recipient committees, limiting expanded disclosure to the top two contributors of \$50,000 aligns the requirement with advertisement disclosure rules. For example, ballot measure advertisements (section 84503), ballot measure committee names (section 84504), and independent expenditure advertisements (section 84506) must all identify the two highest contributors of \$50,000 or more.

Interested Persons Meeting: An interested persons meeting on this regulation was held on August 25, 2015. At this meeting, staff proposed language that required committees subject to top 10 reporting to disclose the top 10 contributors of \$10,000 or more to any state recipient committees disclosed on the committees' top 10 lists. Interested persons expressed concerns that requiring a committee to report contributors of another committee could be more difficult and time consuming than anticipated, especially in the 16 days prior to an election. There was also concern that a committee could inadvertently fail to comply with the requirements unless there was clear guidance for determining the top contributors to the state recipient committees. Limiting expanded disclosure to the top two contributors of \$50,000, and extending the filing deadline to two business days, were both changes made to simplify reporting and address these concerns. Moreover, language added in response to these concerns also clarifies that a committee has complied with the expanded disclosure requirements so long it makes reasonable attempts to determine top contributors to state recipient committees based upon the contributions reported by the state recipient committees on their electronically filed Campaign Statements (Form 460) and Late Contribution Reports (Form 497).

Recommendation

Staff recommends amending Regulation 18422.5 to implement the expanded disclosure provisions authorized under section 84223, subdivision (b)(1). Staff also recommends conforming amendments to Commission Form T10 and the Form T10 Instructions.

Attachments:

Amended Regulation 18422.5
Amended Commission Form T10
Amended Form T10 Instructions