



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Remke, Commissioners Audero, Cardenas, Hatch, and Hayward

From: Jack Woodside, General Counsel
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Subject: Proposed Amendments to Regulations Affected by AB 249

Date: March 12, 2018

I. Requested Action

Adopt the proposed amendments to Regulation 18401 to incorporate changes made to the Act¹ by AB 249 along with grammatical and other minor amendments as described below.

II. Background

On October 7, 2017, Governor Brown signed AB 249 (the Disclose Act) into law. The substantive provisions of the bill went into effect on January 1, 2018. The Disclose Act significantly changes various campaign reporting and disclosure provisions in the Act. In light of AB 249, staff has been working to implement the bill through a series of necessary regulatory amendments many of which were adopted by the Commission at its December and January meetings. Proposed amendments to Regulation 18401 were presented to the Commission at its January meeting, however, the Commission preferred to move the adoption to a future meeting to provide staff with time to seek further public comment related to the use of a reasonable accounting method and provide more information regarding recordkeeping requirements. An interested persons meeting was held by staff on February 13, 2018.

III. Summary of Proposed Regulatory Action: Regulation 18401 – Required Recordkeeping

Existing Section 84104 requires each candidate, treasurer, principal officer, and elected officer to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that they were properly filed and to otherwise comply with the Act. Regulation 18401 further clarifies these recordkeeping requirements.

Under AB 249, new Sections 84501 and 85704 require that committees, who receive earmarked funds and then contribute those funds to other committees, disclose the names and

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

addresses of contributors as well as the amount of an earmarked contribution to the committee receiving those funds. Such information is also required to be noted and disclosed on the committee's campaign reports. (Section 85704 (e).)

In response to comments received from AB 249's sponsor, California Clean Money Campaign, staff proposes recordkeeping requirements for earmarked contributions, including retention of documentation that shows which funds received by a committee have been earmarked and documentation showing when such funds have been contributed by one committee to another. This recordkeeping requirement is consistent with authority provided to the Commission in Section 84104 cited above. This is also consistent with Section 81002 of the Act, which provides that the Commission shall accomplish certain purposes, including that receipts and expenditures in election campaigns "be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited." (Section 81002(a).)² Additionally, pursuant to Section 83112 the Commission may adopt, amend and rescind rules and regulations to carry out the purposes and provisions of the Act. Staff's proposal is also consistent with Section 1 of AB 249, which provides the intent behind the bill:

"(a) For voters to make an informed choice in the political marketplace, political advertisements should not intentionally deceive voters about the identity of who or what interest is trying to persuade them how to vote.

"(b) Disclosing who or what interest paid for a political advertisement will help voters be able to better evaluate the arguments to which they are being subjected during political campaigns and therefore make more informed voting decision."

Therefore, requiring records to be kept that concern AB 249's new earmarking provisions is legally supported both by existing provisions in the Act (as noted above), and new provisions added by AB 249 itself, which contemplate disclosure of earmarked funds on reports already required by the Act. (See new Section 85704). Retention of such records is imperative to ensuring compliance with the Act, including the new provisions added to the Act by AB 249.

Reasonable Accounting Method

Under AB 249, Sections 84501(c)(3)(A) and 85704(d) provide that a committee making contributions to other committees must use a "reasonable accounting method" to determine which contributors must be disclosed when it has received earmarked contributions that exceed the amount contributed or when it has also received contributions that were not earmarked. Staff proposes language to clarify that a "reasonable accounting method" requires that earmarked funds be counted first and to require documentation showing the method used to make the determination of which contributors are disclosed by a committee.

² Section 81003 further provides that the Act should be liberally construed to accomplish its purposes.

Staff also proposes providing an example of a “reasonable accounting method” to be used for purposes of Sections 84501(c)(3)(A) and 85704(d). The example provided is the last-in-first-out accounting method (“LIFO”). LIFO is a long-accepted campaign accounting method that is allowed by many other states and the Federal government. LIFO is also used in an existing provision within the Act with regard to multipurpose organization accounting methods. At the January Commission meeting, there was concern raised by some Commissioners over use of this example and whether it was a requirement. The staff proposal has now added language to the regulation that makes clear that the use of LIFO is merely an example, not a requirement. Since the January Commission meeting, staff has received comments from the regulated community that LIFO is an acceptable example as long as it is not the only option allowed. AB 249’s sponsor, California Clean Money Campaign, stated that it used LIFO as an example when moving the bill through the legislature and is in agreement with staff that the use of LIFO as an example in the regulation is preferable.

Electronic Mass Mailings

AB 249 amends Section 84305 to include a definition of mass electronic mailing as well as sender identification requirements for mass electronic mailings. For purposes of electronic mass mailings, staff proposes requiring committees to keep original source documentation for the mailings, including information about the time and date any such mailings were sent, along with a sample of the mailing. This is similar to the current recordkeeping requirements for non-electronic mass mailings already found in Regulation 18401.

Other Proposed Amendments.

In addition to changes necessitated by AB 249, staff is proposing two additional regulatory amendments.

First, proposed language will clarify that retention of the last four digits of a credit card number, rather than the full number, is sufficient when keeping records of contributions received via electronic transactions. In 2016, staff issued the *Piercy Advice Letter*, No. A-16-174, which advises that it is permissible to retain only the last four digits of the credit card number because industry standards and laws that protect against credit card fraud restrict the disclosure, use, and storage of full credit card numbers. At the interested persons meeting staff received comments that for transactions where a credit card number is not available that a transaction number be required to be kept instead. Staff has included a provision to address this concern in this proposed regulation for transactions where a credit card was not used as a form of payment.

Second, staff proposes adding a provision to this regulation requiring committees to keep a copy of campaign statements and reports filed as part of their records.

Attachment:

Amendments to Regulation 18401