



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

To: Chair Miadich, Commissioners Baker, Gómez, Wilson, and Wood

From: Dave Bainbridge, General Counsel
Katelyn Baeta-Orick, Commission Counsel

Subject: Proposed Amendments to Regulation 18410 –
Statement of Organization; Bank Account Signer Disclosure

Date: October 10, 2022

Executive Summary

Staff presents for adoption amendments to existing Regulation 18410¹ regarding disclosure of a campaign committee’s bank account information. The proposed amendments would require a committee to disclose names of those authorized to obtain committee bank records on the committee’s Statement of Organization (Form 410). For reasons stated below, staff recommends delaying the effective date of the amendments until January 1, 2023. These amendments were presented for prenotice discussion at the August 2022 Commission meeting.

Reason for Proposed Regulatory Action

The proposed amendments would help facilitate efficiently obtaining necessary bank records for campaign audits and investigations when committee treasurers are unavailable or otherwise unable to provide records.

Background

Audits of Committee Financial Records

The Act requires the Franchise Tax Board (“FTB”) and the Commission to conduct various audits of campaign committees. The Commission’s Audit & Assistance Division (“Audit Division”) conducts audits of various campaign committees, including mandatory audits of candidates for state controller, state Board of Equalization, and the Board of Administration of the Public Employees’ Retirement System. It also performs audits for local jurisdictions that contract with the Commission for enforcement of a local ordinance, as well as discretionary audits of state and local campaign committees.² In recent years, the Audit Division has typically

¹ The Political Reform Act (“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 18104 through 18998 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.

² See Sections 90001, 90003, 90006, 83123.5, and 83123.6.

conducted between 20 to 50 audits per year.³ The FTB is responsible for conducting audits of candidates for all other state offices, as well as local candidate committees, and some primarily formed and general purpose committees⁴ and conducts about 70 audits per year, on average.

The Audit Division and FTB audit staff (collectively referred to herein as “Auditors”) must obtain bank records of a committee to conduct audits. Bank records are typically obtained voluntarily from a committee’s treasurer. However, in some instances Auditors have had difficulty locating a person who has the authority to provide bank records when a treasurer is unavailable (e.g., death, incapacity, or avoidance). Other individuals are often authorized to obtain the committee’s bank records in the treasurer’s absence, such as a principal officer or candidate. However, there is currently no reporting requirement to identify who else can legally obtain committee records. As a result, the Auditors often do not know who else is authorized to obtain the records and must then engage in the generally onerous process that can take over a year to identify an authorized person(s). Auditors rely on the Commission’s Enforcement Division (“Enforcement Division”) staff to prepare and issue administrative subpoenas to the bank to obtain the records when an auditor cannot obtain the records directly from the committee. In addition, sometimes the Enforcement Division is unable to serve the treasurer as required by law and must issue a subpoena to the bank to discover who else can be served in the treasurer’s place for that bank account, making two subpoenas required to accomplish this task. The subpoena process is time consuming and labor intensive and can cause substantial delays in the completion of an audit. Having the names of those persons who have authority to obtain a committee’s bank account records available on the Form 410 will allow the Auditors to complete audits more quickly and efficiently and reduce the instances where Enforcement Division staff have to issue administrative subpoenas to gain this information, thereby minimizing the strain on resources for both the Commission and the FTB.

Disclosure of Bank Account Information

Section 84102(g) requires a committee to include on its Form 410 the name and address of the financial institution where the committee has established an account, as well as the account number. Section 84102(h) provides that the Form 410 include, in addition to information explicitly required by statute, “(o)ther information as shall be required by the rules or regulations of the Commission consistent with the purposes and provisions of [Chapter 4 of the Act].”

The purposes of the campaign disclosures required under Chapter 4 of the Act, including the Form 410, are to provide transparency of a committee’s receipts and expenditures “so that voters may be fully informed and improper practices may be inhibited.” (Section 81002(a).) Further, adequate enforcement mechanisms should be provided to allow for vigorous enforcement of the Act. (Section 81002(f).) Requiring disclosure of additional persons authorized to obtain a committee’s bank records is consistent with the requirements for

³ The number of audits conducted in a typical year varies. For example, between 2014 and 2020, the Audit Division conducted on average 20 audits per election year. However, in 2018 specifically there was a high of about 50 audits, which serves as a preview for 2022 and 2026 because these election years include both statewide as well as local offices.

⁴ See Sections 90000 and 90001.

disclosure of other information about a committee's bank account and will be beneficial for ensuring timely audits. Audits ensure committees accurately report financial information provided to the public. The relevance of this information dissipates as time goes on. Thus, reducing the time spent to complete audits will lead to greater transparency of a committee's receipts and expenditures when that information is most relevant to the public.

Proposed Regulatory Amendments

The proposed amendments to Regulation 18410 will add a provision to subdivision (a)(7) that requires all qualified committees disclose on the Form 410 the names of persons, other than the treasurer who is already required to be disclosed on the Form 410 under subdivision (a)(4), who are authorized to obtain the bank records of the committee from the financial institution where the bank account is maintained. If there are more than two persons other than the treasurer authorized to obtain the bank records, the committee need only list two persons. To avoid issues that may occur with an excessive number of filers amending their filings with the Office of the Secretary of State ("SOS") all at one time, staff also recommends adding language providing that for committees existing prior to January 1, 2023 (before the proposed effective date of the regulation amendments), the Form 410 must be amended by July 1, 2023, or by the time the committee files an amended Form 410, whichever is earlier.

Form 410 Amendments

Upon adoption of the above proposed amendments to Regulation 18410, the Form 410 will need to be updated to indicate where the new disclosure information must be located, such as changing the title of the field where the new information will need to be disclosed and updating the instructions.

Staff recommends delaying the effective date of the proposed regulatory amendments discussed above to January 1, 2023 in order to allow for time to complete the needed Form 410 updates and allow for public comment period for those updates.

Summary of Public Comment & Response Thereto

On August 16, 2022, staff received public comment from the California Political Attorneys Association ("CPAA") expressing concerns about the possibility of fraudulent activity occurring as a result of the names of those authorized to obtain committee bank records being easily available to the public. Staff discussed with SOS the possibility of redacting the field containing the names in SOS's online reporting system. SOS staff indicated they could not modify the current campaign reporting software to redact the field.

While concerns about fraud are legitimate, the proposed amendments would not appear to significantly increase the likelihood of fraud. Current law requires public disclosure of the name of the committee treasurer, so a fraudster may already assume the treasurer is a signer on the committee's bank account. In addition, unredacted copies of the Form 410 are available upon request from the public pursuant to Sections 84602 and 84615 of the Act, which includes an

unredacted bank account number.⁵ Adding up to two additional names of persons who have authorization to obtain a committee’s bank records to the Form 410 would not appear to significantly increase the possibility of fraud.

At the Commission meeting on August 18, 2022, staff received public comment from The Sutton Law Firm about the possibility of creating an exception to the disclosure requirements for professional treasurer firms that serve as a committee’s treasurer since there is less concern with unavailability of such treasurers and because these firms typically have many individuals who have authority to obtain the committee’s bank records. In response, rather than carving out a specific exception for professional treasurer firms, Commission staff proposes limiting the disclosure to the names of two persons, other than the treasurer, who have authority to obtain the bank records. This would limit the burden on reporters while still providing additional information for Auditors. This also follows the guidance provided by Commissioners at the August meeting, which was that the names disclosed be limited to a specific number of persons.

Education/Outreach Efforts

Commission staff will distribute the amended regulation to interested parties via the Newly Adopted, Amended or Repealed Regulations email list, update the “Newly Adopted, Amended or Repealed Regulations” page on the Commission’s website, and make necessary updates to training and educational materials resulting from the regulatory changes, including updating the instructions and formatting of the Form 410. Commission staff will also coordinate with staff at SOS to implement the new requirement.

Conclusion

The proposed amendments to Regulation 18410 will facilitate the Commission’s and the FTB’s ability to obtain necessary records in order to complete mandatory audits in a timely fashion. This will lead to greater transparency overall. Staff seeks adoption of the proposed amendments by the Commission at this time.

Attachments: Proposed amendments to Regulation 18410; and existing Form 410.

⁵ Section 84602 requires SOS to make all data filed available on the Internet without containing the street name or building number of the persons or entity representatives listed on the electronically filed forms, or any bank account number required to be disclosed. Section 84615 includes the same requirement for local agencies. Both sections require that unredacted copies of any statement, report, or other document filed, including the street names, building numbers, and account numbers be made available to any person upon request. In other words, this information would be available on any paper copy requested.