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March 8, 2002

VIA FEDERAL EXPRESS

The Honorable Karen Getman
Chair, Fair Political Practices Commission
428 J Street
Sacramento, CA 95814

The Honorable Sheridan Downey
Commissioner, Fair Political Practices Commission
428 J Street
Sacramento, CA 95814

The Honorable Tom Knox
Commissioner, Fair Political Practices Commission
Knox, Lemmon & Anapolsky
1 Capitol Mall, Suite 700
Sacramento, CA 95814

The Honorable Gordana Swanson
Commissioner, Fair Political Practices Commission
2 Portuguese Bend Road
Rolling Hills, CA 90274

Re: Regulatory Calendar - March Work Plan Revisions

Dear Chairman Getman and Commissioners:

This letter follows up on my comments at the December 7, 2001 meeting during the adoption of Regulations 18539 and 18550 (New Online/Electronic Reports). Again, I urge the Commission to review the burdens imposed on all filers by weekend late report filings balanced against the perceived benefits.

At the December meeting, I commended the Commission for the practical approach used in Regs. 18539 and 18550 that permitted an extension of time for the newly required 90 day late contribution reports that fall on a Saturday, Sunday or holiday to allow them to be filed the next regular business day thereafter. It was pointed out that

this decision was permitted by the Commission's own regulation, Section 18116.[1]

Commissioners at the October meeting had expressed general concern about the filing duties imposed by statutes when the triggering events occur on a Saturday or Sunday, and that prompted my suggestion that traditional late contribution reports, currently excepted out of the next regular business day extension in Regulation 18116, merited regulatory review as invited by a footnote in the staff memo in December.

Representatives of Common Cause and the Secretary of State's office rose to urge caution since both fear devious contributors in the last weekend before an election timing their contributions so that reporting occurs too late to be disclosed to the public and media. For this rare and clever tactic (most campaigns must have the funds in hand significantly before the last weekend to pay cash up front to media outlets, printers and the post office), I concur that the final weekend reporting is important.

Perhaps the final weekend 24 hour reporting could be preserved while excepting out prior weekends. At the state level, in well funded campaigns and ballot measures, there is intense interest by the media. We were told the Secretary of State's office remained open on the Saturday before the statewide primary and general election. However, investigation may reveal this is not the case in local elections during any weekends.

What I hope to stimulate by this letter is a more indepth consideration of the impacts on all treasurers, committees and candidates, especially the hundreds of local campaigns run in even as well as odd years balanced against the goal of real (and not illusory) disclosure for this 16 day late reporting period. The 16 day late contribution period before a Tuesday election encompasses three weekends. See the pro forma calendar at attachment 1.

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[1]Section 18116. Reports and Statements; Filing Dates

"Whenever the Political Reform Act requires that a statement or report be filed prior to or not later than a specified date or during or within a specific period, and the deadline falls on a Saturday, Sunday or official state holiday, the filing deadline for such a statement or report shall be extended to the next regular business day. This extension does not apply to late contribution reports required by Government Code Section 84203, late independent expenditure reports required by Government Code Section 84204, or notice by the contributor of a late in-kind contribution required by Government Code Section 84203.3.

Section 18116 was first adopted by the Commission in 1977. Perhaps the Commission, during a 2002 regulatory review, could critically assess the experience of treasurers, committees, the media, and others over the past 25 years and evaluate whether the goal of disclosure is actually being achieved. Is anyone capturing the prompt reporting rendered over weekends and communicating it to voters?

To tempt you along, I want to share the following facts and observations:

1. The recent primary LCR period began Sunday, February 17. On Monday, February 18 (President's holiday), we had to staff our offices to monitor faxes, email, or voice mail in case a client received or made a contribution requiring a late report. I personally tested the system to see if any filing officer would receive a fax that day and make it available to the media. I called the Secretary of State Political Reform Division as well as the main number and got nothing but an unanswered phone and a voice mail message that they were closed for the holiday. The Los Angeles County Registrar of Voters phone rang without answer. The San Francisco Registrar Recorder phone was answered but the person told me they were closed and if I had a question about late reports, I should call back on Tuesday. I also called San Diego and several small cities where we had local campaigns.

2. The next weekend, on Saturday, February 23, we again staffed our offices and in fact had to file state level late contribution reports. The Los Angeles Country Registrar of Voters fax did not answer with repeated tries throughout the afternoon. Attempts were made to call the Secretary of State to confirm the number and to see if there was another fax number to be used. No one answered at the Secretary of State. Likewise, no one answered in San Francisco; and no one answered at numerous numbers we had at the Los Angeles County Registrar. (Someone ended up trekking to Fed Ex, late Saturday, to send the LA copy of the LCR; on Monday, we were informed that the LA County fax machine had crashed - out of paper, out of toner, and memory filled up - and no one had checked it until Monday).

3. There are numerous tricks of the trade used by experienced personnel to solve the burdens of the weekend LCR requirements. Just a sample: we generally cajole clients to not make or receive contributions after 3:00 on Fridays during late periods. Some campaigns have contributions sent to post office boxes and do not open them until Mondays thus claiming the contributions were not in fact "received." However, fundraisers that are held on Friday nights, or Saturdays require careful monitoring since those contributions are collected on site by agents of the campaign and thus "received".

LCRs would then be due on Saturday or Sunday. Contributions made or received on Sundays can be reported within 24 hours on Mondays but sometimes contributions made or received on Saturday are faxed to us on Sunday so we have to monitor both days.

4. Despite the above, I have spent many late Fridays, Saturdays, and Sundays grinding out late reports when clients fail to recognize the burden, the notice arrives on my desk, and because the peril is so huge, a responsible agent must forgo his or her schedule and file the LCR.

5. In 13 years of practice, I have never known of a local agency that remained open on the weekend before an election to collect LCRs for media inquiries.

6. The California Civil Code is the model for Regulation 18116. It allows other types of government filings to be delayed until the next business day when a due date falls on a weekend or holiday. (Cal. Civ. Code §12a).

7. Once a client's frightened secretary forgot to fax a copy of a late contribution until she remembered late on a Friday night. She drove back to the office and faxed it at 9:00 p.m. Luckily, by monitoring the fax machine at our office on Saturdays in late periods, we avoided a violation and fine.

8. With bounty hunters who compare filings at the Secretary of State of contributions received by campaigns with late filings, it is shooting ducks in a barrel to find violations and collect fines.

9. The Commission has recently shown little mercy for inadvertent clerical errors for missed LCRs (as my personal finances will attest) so the system comes close to strict liability. It can be entrapment for the unwary.

10. Most of our clients are shocked when we tell them there is no Saturday or Sunday exception and the amount of the fine exposure. On several occasions, innocent wrong assumptions were made that a Friday contribution could, of course, be reported on Monday.

11. In 2001 and 2002, our Santa Monica office alone was or will be involved in the following late contribution report periods:

Election	Late Period
65th AD Special	1-21-01 to 2-5-01
24th SD Special	2-18-01 to 3-5-01
65th AD Run Off	3-18-01 to 4-2-01
LA School Board	3-25-01 to 4-9-01
LA City Primary	4-5-01 to 4-09-01
24th SD Run Off	4-15-01 to 4-30-01
March 6 General Law Elections	4-15-01 to 4-30-01
49th AD Primary	4-29-01 to 5-14-01
LA School Board Run Off	5-20-01 to 6-4-01
LA City Run Off	5-31-01 to 6-4-01
LA 4th CD Special	8-26-01 to 9-10-01
LA 4th CD Run Off	10-7-01 to 10-22-01
San Francisco Election	10-17-01 to 11-5-01
San Francisco Run Off	11-25-01 - 12-10-01
LA 2nd CD Special	11-25-01 - 12-10-01
Statewide Primary	2-17-02 to 3-4-02
April 9 Local Elections	3-24-02 to 4-8-02
Statewide General	10-20-02 to 11-4-02

Please see the 2001 calendar at attachment 2 with these dates marked on the weekends.

12. The zero tolerance by Common Cause and the Secretary of State for loopholes for creative donors must be balanced against the hundreds if not thousands of local committees who are burdened by weekend late periods when no one receives the data. Perhaps research could ascertain the number of local committees burdened versus the large state committees of interest to Common Cause.

13. E-filing holds out a chimera for getting instant access, however, this applies only to the richest committees and donors and provides no benefit for local disclosure. Secondly, with the reluctance shown at the last meeting to let go of paper filings, e-filing has now only increased reporting burdens and not relieved them. In addition to faxing and fedexing paper copies of all late contribution reports, and maintaining proof of filings, we now must maintain voluminous paper copies of confirmations of e-filings (one recent SOS confirmation document was 10 pages long).

The bottom line is this type of inquiry is what the PRA asks of the Commission. After 27 years, a fresh look at the reporting models is worthy. I urge you to seek input from all segments of the political community and see what other stories emerge. The Commission has the regulatory authority to modify the due dates of the late reports as you have just done for the 90 day 24 hour reports. See my proposed draft of Regulation 18116 at attachment 3. Other variations on the theme may emerge. If a problem arises, the current system can always be restored.

We would be happy to work with staff, a task force, an interested persons meeting, or other forums or groups to explore the issues discussed above.

Respectfully,

Colleen C. McAndrews

Colleen C. McAndrews

cc: Mark Knouse, Executive Director
Luisa Menchaca, Chief, Legal Division
Carla Wardlaw, Chief, Technical Assistance

CCM:rw

Attachment 1

2002 Pro Forma Calendar for 16 Day Late Period

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
						[illegible]
[illegible]	E-14	E-13	E-12	E-11	[illegible]	[illegible]
E-8	E-7	E-6	E-5	E-4	[illegible]	[illegible]
E-1	Election					

[1]In 2002, E minus 15 was a state holiday for government offices. With the current March statewide primary, Presidents Day will likely always fall in the 16 day LCR period.

Attachment 2

Late Period Weekends in 2001

2001 CALENDAR

January 2001

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

February 2001

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

March 2001

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

April 2001

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

May 2001

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

June 2001

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

July 2001

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

August 2001

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

September 2001

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

October 2001

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

November 2001

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

December 2001

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					