AGENDA
Interested Persons’ Meeting on Text Message Contributions
September 13, 2011, 10:00 a.m.
428 J Street, 8th Floor Hearing Room
Sacramento, California 95814

Staff of the Fair Political Practices Commission will hold an interested persons’ meeting on Tuesday September 13, 2011 at 10:00 a.m. to solicit public comment on a regulatory proposal on text message contributions. You can review the text of the proposed regulation at http://www.fppc.ca.gov/index.php?id=247#2. The regulation is scheduled to be considered for adoption at the October 13, 2011 meeting of the Commission.

Text Message Contributions. Given the growing use of donations by text messages, some political committees in California may wish to create fundraising programs permitting individuals to text small dollar amounts to them. The Commission wishes to set forth the requirements of the Political Reform Act that committees will need to meet to develop programs of text message contributions.

In issuing this proposed regulation, the Commission emphasizes first, that it is the political committees that have a duty to comply with the Act’s recordkeeping and reporting requirements, not the wireless carriers or vendors. Second, that this regulation is not imposing any new duties or regulatory burden on campaign committees, wireless carriers or vendors, but is merely setting forth the existing requirements of the Act that are relevant to committees if they choose to develop a text message contribution program. Third, the wireless industry association did not seek action from the Commission to permit text message contributions and is not the impetus for this regulation. Rather, Commission staff raised this issue given the widespread use of mobile communications.

Texting a donation. In the current model for nonprofit fundraising, a text donation works as follows. A wireless subscriber sends a text message pledge to make a donation. A third party vendor notifies the individual’s wireless carrier to apply the pledged donation amount to the individual’s next phone bill. The individual receives the wireless phone bill and in a period of two to three weeks pays the bill. The wireless carrier pays the vendor who disperses the donations to the proper organization. In the charitable contribution context, vendors typically deduct between 10 or 50 cents per $10 donation as a charge for their services in processing the donation. Most text message donations are currently at the $5 or $10 level, and wireless carriers typically cap all text message donations at a maximum of $30 per subscriber per program. The wireless carriers’ industry practice has been to keep donations restricted to a maximum amount so that an individual’s phone bill does not get too expensive with costs other than phone services. This reflects one current model for text message charitable contributions. However, the business models may change rapidly in the mobile giving area.

Proposed Regulation. The proposed regulation states that a committee may raise funds through text message contributions under the Act. The regulation applies to a committee fundraising through low-dollar text message contributions.
Contributions received. Regulation 18421.1(c) of the Act defines when contributions are “received.” The regulation states that text message contributions are received on the date that a mobile fundraising vendor, acting as agent of a candidate or committee, obtains possession and control of the contributions.

Transferring contributions to a committee promptly. In addition, Section 84306 of the Act requires that all contributions received by a person acting as an agent of a candidate or committee shall be reported promptly to the candidate or committee’s treasurer or any of his or her designated agents. “Promptly” is defined to mean not later than the closing date of any campaign statement the committee or candidate for whom the contribution is intended is required to file. The proposed regulation provides that contributions made by text message shall be considered to be transferred promptly to a committee’s bank account if they are collected by the wireless carrier and forwarded by the mobile fundraising vendor to the committee following standard business practices for those transactions or within a specified time period.

Contributor information. The most important requirement of the Act affecting text message donations is that full contributor information must be reported for any donor who gives $100 or more. (Section 84211(f).) The current rules provide that for contributions of less than $25, a committee only needs to keep the dates and daily totals of the contributions, but does not need to obtain or keep detailed information on the contributors (contributor name and address). (Regulation 18401(a)(1).) For contributions of $25 or more but less than $100, the committee records must include the full name and street address of the contributor, the cumulative amount received from the contributor, and intermediary information (the full name, street address, occupation and employer of the intermediary or agent and of the true source of the contribution), if the contribution is received through an intermediary or agent, as defined in Regulation 18432.5. (Regulation 18401(a)(2).) For contributions of $100 or more, the committee must keep the contributor’s name and address, occupation and employer information, the cumulative amount received from the contributor, and intermediary information. (Regulation 18401(a)(3).) The regulation will state that a committee raising funds by text message contributions shall maintain the contributor information as required by Regulation 18401(a)(1)-(3).

Contributor and amount of contribution. The regulation also provides that a contribution made by text message will be attributed to the person who is subscribed to the cell phone number that texted in the contribution. It states that the entire amount authorized by the contributor is counted as the amount of the contribution, consistent with Regulation 18421.3(a).

To Participate and Comment: The Chair and Commission staff seek public input on these issues and related matters. You may participate in this interested persons’ meeting in person or by teleconference by calling (888) 751-0624; access code 723284. For questions about participating by phone, you may contact Virginia Latteri-Lopez at (916) 322-5660. The Commission also invites written comments on this topic which should be addressed to John W. Wallace, Assistant General Counsel, at the address set forth above. You may also contact Commission counsel Hyla Wagner at (916) 322-5660 or hwagner@fppc.ca.gov with comments on this regulation.