



STATE OF CALIFORNIA  
**FAIR POLITICAL PRACTICES COMMISSION**  
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**To:** Chair Silver, Commissioners Baker, Ortiz, Wilson, and Wood

**From:** Dave Bainbridge, General Counsel  
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**Subject:** Proposed Regulation 18450.10 – Advertisements by a Paid Third-Party Influencer; and Proposed Amendments to Regulation 18450.9 – Website Advertisements and Social Media Advertisements

**Date:** April 15, 2024

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### **Executive Summary**

Senate Bill 678 (“SB 678”), effective January 1, 2024, added Section 84513 to the Act<sup>1</sup> and requires specific disclosures for third-party campaign advertisements posted online. In response to SB 678, staff presents new Regulation 18450.10 and amendments to existing Regulation 18450.9 for pre-notice discussion to clarify how the new law applies. These regulations will be proposed for adoption at the June Commission meeting.

### **Reason for Proposed Regulatory Action**

Due to newly enacted Section 84513 and recent amendments to existing Section 84504.3, which addresses electronic media advertisement disclosures, clarification is needed as to which types of campaign advertisements new Section 84513 applies and which are covered under existing Section 84504.3. Staff proposes new Regulation 18450.10 to make clear when Section 84513 applies. Additionally, because of the newly enacted Section 84513 and the recent amendments to Section 84504.3, staff proposes amendments to Regulation 18450.9 to repeal subdivision (b) since it is now redundant.

### **Background**

Section 84513, added by SB 678, provides that if a committee pays a person to post content on an internet website, web application, or digital application to support or oppose a candidate for elective office or a ballot measure, the person shall include a disclaimer with that content stating that the committee paid the person in connection with the post. Section 84513 states that its requirements do not apply to electronic media advertisements falling under Section

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<sup>1</sup> 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. Unless otherwise indicated, all regulatory references are to Title 2, Division 6 of the California Code of Regulations.

84504.3 or ballot measure advertisements falling under Section 84511(c) requiring a spokesperson disclosure.<sup>2</sup>

The primary purpose of new Section 84513 is to require disclosures on campaign advertisements paid for by a committee to be posted by a third person, such as social media “influencers,” instead of the committee posting content itself or paying a traditional vendor to do so. This was the intent conveyed in the SB 678 Senate Floor Bill Analyses, which states:

Disclaimers are not required if the committee pays a third-party person, such as a social media “influencer,” to post content that supports or opposes a candidate or ballot measure. The absence of any disclosure can be misleading to voters who are viewing the content, as the content could appear to be the person’s natural speech, as opposed to a paid message.<sup>3</sup>

In addition to disclaimer requirements on advertisements, Section 84513 has other requirements for advertisements. Section 84513 requires a committee to notify the person paid to post the content to include the required disclaimer. The Commission is limited to only injunctive relief against the posting third-party for failing to include the disclosure on a Section 84513 advertisement and specifically prohibits the Commission from seeking administrative, civil, or criminal penalties against the third-party poster. Further, the provisions of Section 84513 state that its disclosure requirements do not apply where the electronic media disclosures of Section 84504.3 apply or to content posted on the committee’s own website, profile, or landing page by a person compensated by the committee to post such content.

Lastly, Section 84513(a) further provides that the disclaimer requirement does not apply to “[c]ontent posted by a compensated employee of a committee on the employee’s own social media page or account where the only expense or cost of the communication is compensated staff time.” This exception mirrors an exception in existing Section 84504.3(h), which covers electronic media advertisement disclosures for advertisements done by the committee itself.

### Statutory Provisions

Section 84501 defines an advertisement as “any general or public communication that is authorized and paid for by a committee for the purpose of supporting or opposing a candidate or candidates for elective office or a ballot measure or ballot measures.”

Section 84504.3 applies to various electronic media advertisements paid for by a committee, including those on internet websites, those that are audio only, video advertisements,

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<sup>2</sup> Section 84511 requires a spokesperson disclosure when an expenditure of \$5,000 or more is made to an individual for the individual’s appearance in an advertisement that supports or opposes the qualification, passage, or defeat of a ballot measure. It also requires the disclosure when an expenditure in any amount is made to an individual for the same as described above but that states or suggests that the individual is a member of an occupation that requires licensure, certification, or other specialized, documented training as a prerequisite to engaging in that occupation.

<sup>3</sup> Senate Rules Committee, Office of Senate Floor Analyses, *SB 678 Senate Floor Analyses*, Jul. 05, 2023, [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=202320240SB678](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB678).

those in the form of a graphic or image, and those on social media. For example, Section 84504.3(b) states in relevant part:

“(b) An electronic media advertisement that is a graphic, image, animated graphic, or animated image that the online platform hosting the advertisement allows to link to an internet website paid for by a committee shall comply with...the following:

- (1) Unless the disclosure area described in paragraph (2) includes the full disclosure text required by Sections 84502, 84503, and 84506.5, the advertisement shall contain a hyperlink to an internet website containing the disclosures required by Sections 84502, 84503, and 84506.5 in a contrasting color and in no less than 11-point font.”

In addition, Section 84504.3(g) states in relevant part:

“(g) An advertisement in the form of a post, comment, or similar communication made via a form of electronic media that allows users to engage in discourse and post content, or any other type of social media, *is not required to include the disclosure provided in subdivision (b)* if both of the following apply:

- (1) The advertisement was posted *directly by the social media page or account of the committee* that paid for the advertisement...
- (2) (A) The disclosures required by Sections 84502, 84503, and 84506.5 are included on the cover or header photo of the committee’s profile, landing page, or similar location for the committee’s page or account from which the post, comment, or similar communication was made...”

By implication, this language indicates that a committee *must include the disclosure provided in subdivision (b)* if it pays for an advertisement that was *not* posted directly to the committee’s social media page or account. However, subdivision (b) does not explicitly list social media posts as a category of advertisement subject to its disclaimer requirement.

To help address this potential gap in disclosure, new Section 84513(a), added by SB 678, states in relevant part:

“(a)(1) If a committee *pays a person to post* content on an internet website, web application, or digital application for the purpose of supporting or opposing a candidate for elective office or a ballot measure, the person shall concurrently include a disclaimer with that content stating that the committee paid the person in connection with the posting.

...

- (3) This subdivision does not apply to the following:

(A) *Content requiring a disclosure pursuant to Section 84504.3 or subdivision (c) of Section 84511.*”

Because Section 84504.3 applies to electronic media advertisements that are paid for by a committee, yet Section 84513 also applies to electronic advertisements paid for by a committee in certain formats, clarification is needed as to when the disclaimer in Section 84513 is required.

For these reasons, staff proposes two regulatory updates to clarify the advertisement disclosure requirements for content posted on an internet website, web application, or digital application and to effectuate the intent that new Section 84513 covers influencer-type advertisements.

### **Proposed Regulatory Amendments**

#### **Adopt Regulation 18450.10 – Advertisements by a Paid Third-Party Influencer**

To clarify Section 84513, staff proposes new Regulation 18450.10, which states that the electronic media advertisement disclosures under Section 84504.3 do not apply to advertisements paid for by a committee where the committee pays a third party “influencer” to post content on an “internet website, web application, digital application.” As stated in the draft Regulation 18450.10 language, a third-party is considered an “influencer” for purposes of Section 84513 if the person whom the committee paid posts content supporting or opposing a candidate for elective office or a ballot measure where it appears as if they are the speaker delivering their own opinion rather than that of the candidate or committee, including on a social media page or account that is not the candidate or committee’s own page or account.

Further, Staff also proposes adding a line that states that Section 84513 does not apply to Section 84511 ballot measure advertisements that require a spokesperson disclosure.

Lastly, staff suggests providing a subdivision that states a “website, web application, or digital application” includes content posted on the internet platforms, such as social media accounts and blogs, to prevent confusion on whether these platforms are covered by Section 84513.

#### **Amend Regulation 18450.9 – Website Advertisements and Social Media Advertisements**

Staff recommends amending Regulation 18450.9 by repealing subdivision (b) because it is now unnecessary.

Regulation 18450.9(b) provides the following:

“[a]n advertisement subject to Section 84504.3(g) that is made via a form of electronic media that allows users to engage in discourse and post content for which a committee pays a third party to post from a social media account that is [not] the committee’s account must include a tag, or otherwise include a link to, the social media profile or social media landing page of the committee that paid for the advertisement.”

With recent updates to Section 84504.3, effective January 1, 2023, disclosures are now required directly on committee-paid advertisements or the committee’s page posting the advertisements. Previously, the statute required disclosure only on the committee’s landing page

and not on any other pages where the advertisements were posted, without requiring a link back to the committee's landing page. Regulation 18450.9(b) was enacted to cure that discrepancy and require a link to missing disclosures.

However, Regulation 18450.9(b) is no longer necessary because such disclosures are now required where the advertisements appear via Section 84504.3, and new Section 84513 also covers disclaimers on third-party advertisements. Keeping existing Regulation 18450.9(b) is now only an additional/duplicative requirement, and the problem it solved no longer exists.

### **Conclusion**

Proposed Regulation 18450.10 will clarify the application of the advertisement disclosure requirements contained in new Section 84513, and the amendments to Regulation 18450.9 will remove language that is no longer necessary. Staff will seek the Commission's adoption of the proposed amendments at the June Commission meeting.

Attachments: Proposed new Regulation 18450.10 and amendments to Regulation 18450.9.