

## TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the “Commission”), under the authority vested in it under the Political Reform Act (the “Act”)<sup>1</sup> by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **January 18, 2018**, at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m.** on **January 16, 2018**.

### BACKGROUND/OVERVIEW:

On October 7, 2017, Governor Brown signed AB 249 (Stats. 2017, Ch. 546) (“AB 249”) into law. The substantive provisions of the bill go into effect on January 1, 2018. AB 249 significantly changed various provisions in the Act. These changes include an overhaul of the Act’s advertising disclosure provisions.

In light of AB 249, staff is proposing amendments to implement the bill including harmonizing existing language and removing redundant language. The first phase of regulatory amendments will be proposed at the Commission’s December meeting followed by a second phase of amendments in January. This notice is for the second phase of regulatory amendments. Regulatory amendments scheduled for discussion in January include the following proposals as well as minor grammatical and technical changes to each of the regulations identified:

#### **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.

AB 249 amends Section 84305 to include a definition of mass electronic mailing as well as sender identification requirements for mass electronic mailings. AB 249 also includes amendments to Section 84501 that reference the intermediary requirements of Section 84302, adding a requirement to disclose the names, and street addresses, in addition to occupation and employer information, of the contributors who earmarked funds, along with the amount of the earmarked contribution, when an earmarked contribution is received by a primarily formed committee from another primarily formed committee.

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<sup>1</sup> 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.

Staff proposes requiring committees to keep original source documentation for electronic mass mailings that must include information about the time and date any such mailings were sent, along with a sample of the electronic mass mailing. This is similar to the recordkeeping requirements for non-electronic mass mailings. Staff also proposes adding recordkeeping requirements for primarily formed committees that receive earmarked contributions from other primarily formed committees. The staff proposal also includes clarification 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. Finally, 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.

### **Regulation 18420.1 – Payments by State or Local Agencies for a Campaign Related Communication.**

Current Regulation 18420.1 clarifies when a payment of public moneys by a governmental agency for a communication that expressly advocates for against a candidate or measure is a contribution under Section 82015 or an independent expenditure under Section 82013. The regulation also contains examples of “mass media advertising” that include only television or radio spots.

Staff proposes amending Regulation 18420.1 to replace a reference to Regulation 18225 with a reference to Section 82025 because AB 249 has moved the provisions found in Regulation 18225 into Section 82025. Staff has noticed repeal of Regulation 18225 for this reason. Additionally, staff proposes modernizing this regulation’s examples of “mass media advertising” to include electronic media.

### **Regulation 18432.5 – Intermediary.**

Existing Section 84302 prohibits any person from making a contribution on behalf of another person, or from acting as an intermediary or agent of another, without providing to the recipient of the contribution the full name, address, occupation and employer of the true source of the contribution as well as his or her own name, address, occupation and employer. The recipient of such a contribution must disclose both the intermediary and the true source of the contribution.

AB 249 amends Section 85704 to incorporate intermediary disclosure requirements of Section 84302 for earmarked contributions.

Staff proposes amendments to Regulation 18432.5 to incorporate this change.

### **Regulation 18440 – Telephone Advocacy.**

Existing Section 84310 prohibits a “candidate, committee, or slate mailer organization” from expending campaign funds to pay for telephone calls that are similar in nature and aggregate 500 or more in number if those calls advocate support of, or opposition to, a candidate, ballot measure, or both, unless the organization that authorized or paid for the call is disclosed to the recipient of the call.

AB 249 amends Section 84310 so that the prohibition applies to a “candidate, candidate controlled committee established for an elective office for the controlling candidate, political party committee, or slate mailer organization” rather than a “candidate, committee, or slate mailer organization.” AB 249 also amends Section 84310 by adding new subdivision (d) to that section, which provides that “[t]his section does not apply to a telephone call that is paid for by an independent expenditure.”

Staff proposes amendments to Regulation 18440 to incorporate the changes to Section 84310 under AB 249, which include specifying the types of committees the regulation now applies to and adding that the regulation does not apply to a telephone call paid for by an independent expenditure.

#### **Regulation 18450.4 – Contents of Disclosure Statements. Advertisement Disclosure.**

Current Regulation 18450.4 clarifies the disclosure requirements in existing Sections 84503, 84504, 84506 and 84506.5 for video, audio, print media and electronic media advertisements.

AB 249 redefines criteria for disclosure statements on radio, telephone, television, video, print, and electronic media advertisements. (See Sections 84501 through 84504.5.) Therefore, most of the provisions of Regulation 18450.4 are no longer applicable or needed. A reference to the use of aggregation rules in Regulation 18215.1 to determine when a contributor has reached the \$50,000 disclosure threshold is one piece of existing regulation 18450.4 that is not covered by AB 249. This provision is being proposed to be moved to Regulation 18450.1, which will be heard before the Commission at its December meeting.

Staff proposes the repeal of Regulation 18450.4.

#### **Regulation 18531.10 – Communications Identifying State Candidates.**

Section 85310 requires any person who makes a payment of \$50,000 or more for a communication disseminated within 45 days of an election that clearly identifies a candidate for elective state office, but does not expressly advocate for the election or defeat of the candidate to file a report with the Secretary of State within 48 hours. Regulation 18531.10 defines terms used in Section 85310 and includes a reference to Regulation 18225, which defines the term “expenditure” under the Act. Regulation 18225 is proposed to be repealed in light of AB 249.

Staff proposes amending Regulation 18531.10 to replace a reference to Regulation 18225 with a reference to Section 82025, which now contains the substance of Regulation 18225.

#### **Regulation 18533 – Contributions from Joint Checking Accounts.**

Section 82015 of the Political Reform Act defines the term “contribution” to mean a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes. Regulation 18533 specifies the person or persons to whom a specific contribution is attributed when the

contribution is made from a joint bank account. AB 249 sets forth specific statutory disclosure requirements when a contribution is earmarked.

Staff proposes amendments to Regulation 18533 to incorporate a reference to AB 249's earmarking provisions as they relate to contributions made from joint checking accounts.

### **Regulation 18901.1 – Campaign Related Mailings Sent at Public Expense.**

Current Section 89001 states that no newsletter or mass mailing shall be sent at public expense. Regulation 18901.1 further defines when this prohibition applies.

Regulation 18901.1 includes a reference to Regulation 18225, which defines the term "expenditure" under the Act. However, Regulation 18225 is proposed to be repealed in light of AB 249. The regulation also contains examples of "mass media advertising" that include only television or radio spots.

Staff proposes amendments to Regulation 18901.1 to replace a reference to Regulation 18225 with a reference to Section 82025, which now contains the substance of Regulation 18225. Staff also proposes deleting a reference to Regulation 18901 and replacing it with a reference to Section 89002 because Senate Bill 45 (Stats. 2017, Ch. 827) signed by the Governor on October 15, 2017 moves relevant provisions of existing Regulation 18901 into Section 89002. Finally, staff proposes modernizing the regulation's examples of "mass media advertising" to include electronic media.

#### **REGULATORY ACTION:**

##### Amend 2 Cal. Code Regs. Section 18401 – Required Recordkeeping

This regulation is being amended to specify required recordkeeping for electronic mass mailings sent by a candidate or committee, and source documentation required when an earmarked contribution is received by a primarily formed committee from another primarily formed committee. This proposal also clarifies that committees may keep records of only the last four digits of credit card numbers for contributions received electronically and requires committees to keep a copy in their records of filed campaign reports and statements.

##### Amend 2 Cal. Code Regs. Section 18420.1 – Payments by State or Local Agencies for a Campaign Related Communication

This regulation is being amended to correct an outdated reference to Regulation 18225 and replace it with a reference to Section 82025. It is also being amended to add electronic media to its listed examples of mass media advertising.

##### Amend 2 Cal. Code Regs. Section 18432.5 - Intermediary

This regulation is being amended to include a reference to Section 84302's disclosure requirements now applicable to earmarked contributions under AB 249.

Amend 2 Cal. Code Regs. Section 18440 – Telephone Advocacy.

This regulation is being amended to incorporate amendments made to Section 84310 regarding the types of committees the section applies to as amended by AB 249 and to clarify that the section no longer applies to telephone calls paid for by independent expenditures.

Repeal 2 Cal. Code Regs. Section 18450.4 - Contents of Disclosure Statements. Advertisement Disclosure

This regulation is being repealed.

Amend 2 Cal. Code Regs. Section 18531.10 – Communications Identifying State Candidates

This regulation is being amended to correct an outdated reference to Regulation 18225 and replace it with a reference to Section 82025.

Amend 2 Cal. Code Regs. Section 18533 – Contributions from Joint Checking Accounts

This regulation is being amended to incorporate reference to Government Code Section 85704(b), defining earmarked contributions.

Amend 2 Cal. Code Regs. Section 18901.1 Campaign Related Mailings Sent at Public Expense

This regulation is being amended to correct outdated references to Regulation 18225 and 18901 by replacing them with references to Section 82025 and Regulation 18901, respectively. The proposal also adds electronic media to its listed examples of mass media advertising.

SCOPE:

The Commission may adopt the language noticed herein, or it may choose new language to implement its decisions concerning the issues identified above or related issues.

FISCAL IMPACT STATEMENT:

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state program or entity.

AUTHORITY: Government Code Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

REFERENCE: The purpose of these regulations is to implement, interpret, and make specific Government Code Sections 82013, 82015, 82031, 82041.5, 84104, 84100-84400, 84501-84504.5, 84506, 84506.5, 85301, 85303, 85700, 85704, and 89001.

CONTACT: Any inquiries should be made to Sukhi K. Brar, Fair Political Practices Commission, 1102 Q St., Suite 3000, Sacramento, CA 95811; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/the-law/fppc-regulations/proposed-regulations-and-notices.html>.