



California Political Attorneys Association
c/o BELL, McANDREWS & HILTACHK, LLP
455 Capitol Mall, Suite 600
Sacramento, CA 95814
Telephone: (916) 442-7757
atitus@bmhlaw.com

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VIA EMAIL

Chair Miadich
Commissioners Cardenas, Hatch, Hayward, and Wilson
c/o Dave Bainbridge, General Counsel
Fair Political Practices Commission

Re: June 18, 2020 Commission Meeting—Comments Regarding Proposed FPPC Regulations 18402.2 and 18421.10

Dear Commissioners:

As submitted in other comment letters and testimony at the meetings, there are a number of concerns with the Proposed LLC Regulations, including that they are poorly-timed, unjustified, unduly burdensome, and key aspects are beyond the scope of the FPPC's authority. We therefore respectfully request that the commissioners postpone this rulemaking until the public can more meaningfully participate in the process and ultimately reconsider enacting these rules or amend them to more closely tailor them to the issues they are meant to address.

However, should the Commission act on Thursday, we offer the following amendments.

1. Change the Placement of Responsible Officer Name.

Proposed regulation 18421.10 provides, "the "name" of the contributor reported in a committee's statements and reports filed under Chapter 4 or 5 of the Act shall include the name of the limited liability company and the full legal name of the limited liability company's responsible officer, as defined in Regulation 18402.2."

Disclosing the name of the responsible officer as part of the contributor "name" will interfere with the public's ability to search for contributions using the Secretary of State's Cal-Access search function (and the future CARS system). Proposed regulation 18421.10(b) states that "[i]f more than one individual shares in the primary responsibility for approving a contribution, at least one such individual must be identified." Therefore, an LLC's responsible officer can change over time or with different contributions. If

different responsible officer names are included as part of the LLC contributor's "name" as disclosed by different recipient committees or across reports of the same committee over time, then the contributions will not aggregate in the Secretary of State's contribution database. In addition, recipient committees might not even know to aggregate the contributions on their reports and may list the LLC name and responsible officer name in different ways or with slight variations in format (e.g., a dash or including the words "responsible officer"). This will further impact the functionality of the Secretary of State's database and the ability of the public to search it. Ultimately, this could make contributions by LLCs *less* transparent.

More critically, including the responsible officer's name as part of the LLC contributor's name will create the appearance that the individual is the contributor, which is false and could further confuse the public. This could sow even further confusion with situations where the name of an individual must be included in the "name of filer" under Regulation 18428. How would the public be able to discern why the individual's name is being disclosed?

Therefore, we recommend that recipient committees disclose the name of the responsible officer of the LLC as a public note/memo or in the occupation/employer field, but not as part of the "name" of the contributor.

2. Exempt Recipient Committees from Reporting a Responsible Officer for (1) LLCs that File Major Donor Reports, and (2) LLCs that are Affiliated with an Individual or a Parent Company/non-LLC Entity.

Recipient committees should not be required to report a responsible officer for LLCs that have reached major donor status in the current or prior calendar year as these LLCs will already disclose their responsible officer on their major donor reports.

Recipient committees can determine if an LLC contributor is a major donor by reviewing publicly available filings through a state or local campaign finance database, such as Cal-Access, the T-10 filings, or if the contributions to their committee reaches major donor reporting status.

As noted above, in the case of affiliated entities that are providing a "name of filer" to the committee pursuant to Regulation 18428, there is either an individual already identified as part of the filer name or another legal entity that does not raise the same concerns as an LLC (e.g., a corporation). Attempting to incorporate the name of the responsible officer of the LLC into an affiliated entity filer name will create confusion as to who the contribution is affiliated with and whether the responsible officer is responsible for the contribution decisions of all of the affiliated entities.

3. Require LLCs to Provide the Name of their Responsible Officer When Contributing.

Proposed LLC Regulation 18421.10 appears to require a committee that *receives* a contribution from an LLC to report the responsible officer's name *as part of the name of the contributing LLC*. The proposed regulations thus would threaten to punish recipient committees for not disclosing the name of the responsible officer of an LLC donor or require them to refund LLC contributions—but the proposed regulations do not require an LLC to provide a recipient committee with the name of its responsible officer.

The proposed regulation should have a similar requirement as to that found in Regulation 18428(b)(2);

Whenever any person identified in this subdivision makes a contribution that is subject to aggregation to a committee that is required to report the contribution on its own campaign statements, the person making the contribution shall notify the recipient committee of the "name of filer" under which the contribution is being reported on that person's statement.

TIMING CONCERNS

If these regulations become effective on the brink or in the middle of the 24 hour reporting window before the November elections, committees will have to file extensive amendments to their 24 hour reports if and when the LLCs identify their responsible officers, or when they refund contributions because the information could not be obtained.

Most LLC donors will have no idea about these new requirements, pushing the burden of educating them onto the recipient committees. Committees often rely on volunteer or low-cost treasurers who would have to spend time (and money) chasing the required information while the clock is ticking on reporting deadlines. While trying to chase the new information required for LLC contributions, recipient committees will be forced to segregate or otherwise separately account for the LLC contributions for 60 days from the date of contribution, just in case the information cannot be obtained from the donor and the contributions must be refunded. Imposing these rules would thus require special tracking measures and administrative burdens, hindering the ability of committees to fundraise and posing compliance challenges with new rules enacted in the heat of an election season.

Thus, we respectfully request any new rules become effective January 1, 2021. Should the FPPC be determined to make these regulations effective immediately prior to or during the 24-hour reporting period, then we request that for the remainder of the current calendar year, recipient committees only be required to report the responsible

officer on a 24 hour report (Form 496 or Form 497) if the information is provided to them by the LLC at the time of the filing, but not require that committees amend these 24-hour reports to add the responsible officer at a later time. Instead, for this year, recipient committees can report the responsible officer on their Form 460 campaign statements.

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Thank you for your consideration.

Respectfully submitted,



Ashlee Titus
CPAA Secretary



Elli Abdoli
CPAA Enforcement
Committee Chair



Emily Andrews
CPAA Regulatory
Committee Chair