



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich, Commissioners Cardenas, Hatch, and Hayward

From: Dave Bainbridge, General Counsel, Legal Division
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Subject: Proposed Amendments to Regulation 18422 – Multipurpose Organization
Political Activity Transparency and Adoption of Regulation 18422.1 –
Multipurpose Organization Reporting and Recordkeeping

Date: September 9, 2019

Requested Action and Summary of Proposed Action

Staff proposes amendments to Regulation 18422 and adoption of proposed Regulation 18422.1. The proposed amendments to Regulation 18422 would specify what information must be included on a multipurpose organization's statement of organization regarding the description of the organization's mission, most significant activities, and its political activities. The amendments would also clarify what information multipurpose organizations must provide on their campaign statements and reports when making contributions and expenditures using nondonor funds. Proposed new Regulation 18422.1, meanwhile, will clarify the recordkeeping requirements for multipurpose organizations. Together, these changes would provide significant clarity to multipurpose organizations seeking to comply with the Act's campaign disclosure and recordkeeping requirements.

Both of these proposed regulations were presented to the Commission for pre-notice discussion at the July 2019 Commission meeting. Staff has incorporated comments made at the July 2019 meeting by Commissioners and members of the public regarding further description of nondonor funds, references to requirements for federal committees, and technical changes regarding MPO's solicitations to donors and clarification of the types of accounts subject to MPO recordkeeping.

Background

Under Section 84222 of the Political Reform Act (the Act),¹ a multipurpose organization (MPO) is an organization that solicits funds, at least in part, for purposes other than making political expenditures, but nevertheless makes political expenditures in California. Under Section 84222(c)(1-5), an MPO can qualify as a recipient committee in the following five ways:

¹ 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.

- 1) The organization is a federal political committee registered with the Federal Election Commission (FEC), or an out-of-state political committee, that makes contributions or expenditures in California totaling at least \$2,000 in a calendar year;
- 2) The organization makes contributions or expenditures in California totaling more than \$50,000 in 12 months or \$100,000 in four consecutive years;
- 3) The organization solicits and receives payments from donors totaling at least \$2,000 in a calendar year for the purpose of making contributions or expenditures in California;
- 4) The organization accepts payments from donors totaling at least \$2,000 in a calendar year subject to a condition, agreement, or understanding with the donor that all or a portion of the payments may be used for making contributions or expenditures in California;
- 5) The organization has existing funds from a donor, but reaches a subsequent understanding with the donor that all or a portion of the funds may be used to make contributions or expenditures totaling at least \$2,000 in calendar year in California.

Section 84222(c)(5)(A) requires MPOs that make expenditures or contributions with nondonor funds—such as investment income or income earned from providing goods or services—to “briefly describe” the source of nondonor funds used on their campaign statements and reports. Section 84222(c)(5)(B), in turn, defines the types and sources of “nondonor funds.” Despite this requirement, some MPOs have provided vague or inadequate descriptions such as “nondonor funds” on campaign statements rather than listing the source of the funds, or the type of nondonor funds per Section 84222(c)(5)(B). Such limited information makes it difficult to identify and verify the true source of such funds.

Similarly, while current Regulation 18422 sets forth reporting and recordkeeping requirements for such MPOs, the FPPC Enforcement Division and the Franchise Tax Board (“FTB”) have identified a lack of clarity in the MPO recordkeeping requirements as an impediment to completing audits and investigations of MPOs required to file as recipient committees under the Act. Specifically, there have been MPO committees that are the subject of an audit by FTB that have refused to provide adequate documentation to the FTB to support the entity’s campaign reporting. This has made it difficult to verify sources of funding for MPOs and ensure compliance with the Act.

Section 84222(e)(1)(A) requires an MPO that qualifies as a committee to file a statement of organization and describe the MPO’s mission, most significant activities and political activities, on that statement. However, the statute provides little detail as to what should be included in this description.

Discussion and Summary of Proposed Actions

Staff proposes amendments to Regulation 18422 and adoption of Regulation 18422.1. The proposed changes to Regulation 18422 include clarifying what information a multipurpose organization must provide on its campaign reports related to the use of nondonor funds, clarification of what information a Multipurpose Organization must include on its statement of organization regarding the description of the organization's mission, most significant activities, and its political activities, and the deletion of subdivision (f) of Regulation 18422 regarding recordkeeping requirements to replace it with new Regulation 18422.1.

Proposed Changes to Regulation 18422

Regulation 18422 sets forth the registration, reporting, and recordkeeping requirements for MPOs that qualify as committees under Section 84222 of the Act. Subdivision (c) of Regulation 18422 details reporting requirements for MPOs that have qualified as recipient committees in any of the five ways under Section 84222(c)(1-5). However, Regulation 18422 does not specify what information an MPO must include on its campaign reports to “briefly describe” its nondonor funds used for expenditures or contributions, as required by Section 84222(c)(5)(A). Additionally, Regulation 18422 does not describe what information must be included on an MPO's statement of organization regarding the description of the MPO's mission, most significant activities and political activities as required by Section 84222 (e)(1)(A). Staff is proposing the following changes to Regulation 18422 to address these issues:

- Adding paragraph (b)(2) to clarify what information must be included on an MPO's statement of organization regarding the description of the MPOs mission, most significant activities, and political activities. Specifically, the description must include all activities undertaken for the purpose of directly or indirectly supporting or opposing state or local candidates for elective office or for qualifying, supporting or opposing a state or local ballot measure. An organization may comply with this requirement by referencing where the organization's Internal Revenue Service Return of Organization Exempt From Income Tax form may be accessed because that document contains the relevant information.
- Adding paragraph (c)(4), to clarify what information MPOs must provide on their campaign statements and reports when making contributions and expenditures using nondonor funds. Specifically, the amendments would require that MPOs that make contributions or expenditures using nondonor funds must describe the source of those nondonor funds on the organization's campaign report or statement, including both the type of nondonor funds used—as defined in Section 84222(c)(5)(B)—and the source of nondonor funds, such as the name of the entity where an income producing investment is held, or the type of goods sold.

Subdivision (f) of Regulation 18422, meanwhile, sets forth recordkeeping requirements for MPOs, while Regulation 18401 sets forth general recordkeeping requirements for campaign committees under the Act. Subdivision (f) of Regulation 18422 currently reads:

“(f) Recordkeeping. A multipurpose organization must maintain all records necessary to establish its compliance with Section 84222, and must maintain records concerning its mass mailings, notices to contributors of \$5,000 or more, and expenditures for advertisements, as specified in Regulation 18401.”

As currently written, it is unclear exactly what records and source documentation MPOs must maintain under Regulation 18422(f), and how these recordkeeping requirements differ from the requirements for all committees, as set forth in Regulation 18401. Therefore, staff proposes deletion of subdivision (f) and replacing it with proposed Regulation 18422.1 discussed further below.

Proposed Regulation 18422.1 for Adoption

If adopted, Regulation 18422.1 would expand upon existing Regulation 18422(f) to clarify that basic recordkeeping requirements that apply to all committees under Regulation 18401, the existing regulation covering general recordkeeping requirements for committees, similarly apply to MPOs that qualify as committees under Section 84222 and Section 84222.5. In addition, the new regulation would detail specific forms of required recordkeeping documentation unique to MPOs, such as grant agreements and solicitations to donors. Finally, Regulation 18422.1 would require MPOs that use non-donor funds for political activity in California to keep sufficient records to verify that such contributions or expenditures were in fact made using available nondonor funds as defined in Section 84222(c)(5)(B).

Requiring disclosure of MPO donor information to comply with audits and investigations is consistent with Section 81002 of the Act, which provides that the Commission shall accomplish certain purposes, including that receipts and expenditures in election campaigns “be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.” (Section 81002(a).)² These recordkeeping requirements are also consistent with authority provided to the Commission in Section 84104 of the Act which requires committees to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements.

Summary

The proposed amendments to Regulation 18422 and adoption of Regulation 18422.1 would clarify the campaign disclosure and recordkeeping requirements for multipurpose organizations that make contributions or expenditures in California elections. These changes would strengthen the existing reporting requirements under 18422 for MPOs that engage in political activity in California using nondonor funds, while spelling out the recordkeeping requirements of all MPOs with greater specificity.

Attachments:

- **Proposed Amendments to Regulation 18422**
- **Proposed Regulation 18422.1**

² Section 81003 further provides that the Act should be liberally construed to accomplish its purposes.