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To: Chair Miadich, Commissioners Baker, Cardenas, Wilson, and Wood

From: Dave Bainbridge, General Counsel
Kevin Cornwall, Commission Counsel

Subject: **Adoption of Regulatory Amendments in Response to SB 1239 and AB 909/CAL-ACCESS Replacement System Update**

Date: May 10, 2021

INTRODUCTION

In anticipation of the implementation of the CAL-ACCESS Replacement System (“CARS”), staff presents several proposed regulatory amendments for adoption, pre-notice discussion having occurred at the Commission’s January 2021 meeting. On June 30, 2021, CARS will be implemented, providing the public and regulated community with a new online system for submitting and viewing campaign finance and lobbying disclosure reports. CARS will implement a new data-driven system replacing the existing forms-driven system. The new version of CAL-ACCESS will provide users with a more efficient, sustainable system that is flexible, easier to use, and allows greater transparency into campaign and lobbying activity. In anticipation of this new system, the California Legislature passed Senate Bill 1239 and Assembly Bill 90, which will amend numerous statutes under the Political Reform Act and, consequently, require several of the FPPC’s regulations be amended as well. In general, the necessary amendments can fairly be characterized as “cleanup” or minor updates to harmonize the regulations with the respective statutes they pertain to.

Since pre-notice discussion in January, the only changes made to the proposed amendments have been updating Regulations 18406, 18611, and 18616 to replace gendered language contained in the current versions of the Regulations.

BACKGROUND

In 1997, SB 49 established the Online Disclosure Act of 1997, which required the Secretary of State, in consultation with the FPPC, to develop and implement a process whereby reports and statements required under the Political Reform Act (the Act) could be filed online and viewed by the public. As a result, the Secretary of State created and deployed a system called the California Automated Lobby Activity and Campaign Contribution and Expenditure Search System, commonly referred to as CAL-ACCESS. CAL-ACCESS is now over 20 years old and components of the system are no longer supported by the Secretary of State’s vendor, causing the system to periodically crash and deny public access. Accordingly, in 2016, SB 1349 was passed, which again requires the Secretary of State, in consultation with the FPPC, to develop a new CAL-ACCESS Replacement System (“CARS”). CARS will establish a new

online filing and disclosure system for statements and reports that provides public disclosure of campaign finance and lobbying information in a user-friendly, easily understandable format.

In 2018, the California Legislature passed SB 1239, which made numerous substantive and technical changes related to the procedures associated with filing campaign and lobbying reports in anticipation of the implementation of CARS. SB 1239 is intended to “generally recast certain provisions governing the processing of campaign reports and statements to provide for the filing, verification, delivery, amendment, retention, and inspection of those documents online or electronically, as prescribed.” (Legislative Counsel’s Digest, SB 1239.) SB 1239 repeals certain monetary thresholds for contributions, expenditures, or loans, at which point certain persons or entities were required to file online/electronically with the Secretary of State. Instead, SB 1239 makes online/electronic filing applicable to all state filers, state candidates, state committees, lobbyists, lobbying firms, and lobbyist employers. The new system will not apply to local filers at this time. The bill also repeals various obsolete or extraneous provisions of the Act and made technical and/or non-substantive changes to certain provisions.

In 2019, the Legislature passed AB 909, intended to prevent campaign treasurers from unknowingly assuming liability for the financial actions of a campaign by requiring potential treasurers to sign a statement attesting to their understanding of the responsibilities, liabilities, and potential penalties for failing to comply with the Political Reform Act.

As passed by the Legislature, SB 1239 and AB 909 do “not become operative until the Secretary of State certifies an online filing and disclosure system pursuant to paragraph (7) of subdivision (b) of Section 84602 of the Government Code”—that is, until the Secretary of State certifies that CARS is available for public use. At the time that we first added these proposed regulatory changes to the January meeting agenda for prenotice discussion, the target “go-live” date for CARS was February 28, 2021. Since then, however, the Secretary of State has updated the target date to June 30, 2021 with certification planned for the same day.

DISCUSSION

As described by SB 1239’s author, Senator Hertzberg, major changes implemented by SB 1239 include:

- 1) Dollar thresholds removed for who files online so all state filers, state candidates, state committees and lobbyists file electronically only. This is the most important change needed for CARS. It allows the SOS's office to eliminate paper filings and the dual paper/electronic system it must maintain now.
- 2) Updating provisions on mailing or faxing reports or statements; viewing public records and record retention updating for electronic filing.
- 3) Campaign and lobbying provisions are updated to eliminate references to paper filing and copies. The committee organization, campaign and lobbying provisions are amended to reflect electronic only filing for state filers and eliminate paper filing and copies for these filers.
- 4) Verification provisions are updated for electronic filing.
- 5) The CAL-ACCESS Replacement System will be designed so a filer need only enter a contribution or independent expenditure transaction once, and the filer can still report the

transaction on both a 24-hour report and on a periodic campaign report. To enable a filer to enter a transaction once, the bill adds some small additional information (such as cumulative amount of contributions) to the transactional reports.

- 6) The bill adds language permitting a local government agency to transition to new system's standardized record format.
- 7) The bill changes the payment date for the committee registration fee from January 15 to April 30.
- 8) For electronic filing, the new system needs e-mail addresses of filers, so these are added to various reports.

[\(SB 1239 Senate Floor Analysis, Aug. 28, 2018.\)](#)

Due to the various changes described above, as well as numerous minor changes, several amendments of FPPC regulations will be required. In general, however, most of the necessary amendments will be minor. For example, as noted above, SB 1239 requires that certain email addresses be included in various reports. Accordingly, where our regulations reference the various other identification requirements for filing reports (e.g., name, street address, phone number), we will have to update the regulations to similarly reference/include email address requirements.

AB 909 amends two statutes—Sections 84102 and 84103—for the purpose of ensuring that campaign treasurers understand their responsibilities, liabilities, and potential penalties under the Political Reform Act. While many committees use professional political treasurers who understand the applicable requirements and are aware of potential liabilities, other committees, particularly at the local level, use volunteer treasurers who are often surprised to find themselves liable when violations occur and penalties are imposed.

Included below is a summary of certain statutes amended by SB 1239 and AB 909. Each section includes the number and title of the statute amended, a brief description of the amendments made, and regulatory amendments recommended by staff. The recommended regulatory amendments are intended to supplement, rather than duplicate or reiterate, the changes and new requirements implemented by SB 1239 and AB 909.

Section 81004—Reports and Statements; Perjury; Verification

Amendments:

- Adds language clarifying that reports and statements must be signed and verified “in compliance with this section and Section 84213, as applicable.”
- Requires electronic filings to include a “secure electronic signature” that conforms to Civil Code Section 1633.11.
- Includes presumption that filings by vendor/service provider authorized by filer to be filed under penalty of perjury.

Recommendations:

- *Repeal Regulation 18465.1 (Verification of Online Filers):* Regulation 18465.1 currently includes the presumption of filing under penalty of perjury by a vendor/service provider. The regulation's other provision, pertaining to the filing deadline for a verification

concerning an independent expenditure, is also no longer necessary, as the verification will now be included on campaign statements (SB 1239 amendment to Section 84213(b)), so a separate form is not necessary. Accordingly, the Commission should repeal Regulation 18465.1.

Section 84102—Statement of Organization; Contents

Amendments:

- Adds requirement that email addresses of committee and principal officers (including treasurer) be included in statement of organization.
- (AB 909) Introduces, in subdivision (d), a treasurer acknowledgment requirement to the filing of a statement of organization.
- (AB 909) Reorganizes statute as a result of new treasurer acknowledgment requirement inserted into subdivision (d). Accordingly, former subdivisions (d)-(g) become subdivisions (e)-(h).

Recommendations:

- *Amend Regulation 18402.1 (Principal Officers)*: to include requirement that committees disclose email addresses of principal officer(s) in statements of organization (given that regulation also duplicates Section 84102's other identification requirements).
- *Amend Regulation 18410 (Statement of Organization)*: to include requirement that the statement include the treasurer's email address, as well as acknowledgments by treasurer and assistant treasurer (given that regulation already duplicates Section 84102's other identification requirements).

Section 84211—Contents of Campaign Statements

Amendments:

- Adds requirement that a campaign statement, where the cumulative amount of contributions (including loans) received from a person is one hundred dollars (\$100) or more and a contribution or loan has been received from that person during the period covered by the campaign statement, include "whether the contribution was made in the form of a monetary contribution, in-kind contribution of goods or services, or a loan."
- Adds requirement to include date of certain reported expenditures in campaign statements.
- Adds requirement to include email address of candidate/committee in campaign statements.

Recommendations:

- *Amend Regulation 18406 (Short Form for Candidates or Officeholders Who Receive and Spend Less Than \$2,000 in a Calendar Year)*: Regulation 18406 provides the details for the campaign statement short form the FPPC is authorized to provide under Section 84206. It should be updated to include a requirement that short form campaign statements include the candidate's email address, as now required with general campaign statements under Section 84211.

Section 84223—Top Ten Contributor Lists

Amendments:

- Adds language stating that “the Secretary of State” (rather than the Commission) shall maintain a top 10 contributor list for committees that raise \$1 million or more and “the list shall be based on the filer’s campaign statements and reports.”
- Removes the Commission’s involvement in top 10 contributor lists (e.g., forwarding the lists to the Secretary of State).
- Removes provision that stated “In listing the top 10 contributors, a committee shall use reasonable efforts to identify and state the actual individuals or corporations that are the true sources of the contributions made to the committee from other persons or committees.”

Recommendations:

- *Repeal and Adopt Regulation 18422.5 (Top Contributor Disclosure by Committees Primarily Formed for State Ballot Measures or Candidates):*
 - Regulation 18422.5 also contains provisions about how the Commission will maintain/post Top 10 lists, which should be amended to reference the Secretary of State’s duty to maintain/post such lists, and specify that those lists will be generated, maintained, and displayed through CARS.

Section 84605—Who Shall File Online

Amendments:

- Adds reference to fact that reports/statements are filed pursuant to Chapter 5, in addition to Chapter 4 (already referenced).
- Removes minimum aggregate contribution thresholds at which point online/electronic reporting was required.
- Adds requirement that “any slate mailer organization that produces one or more slate mailers supporting or opposing candidates or measures voted on in a state election or in more than one county” must file online/electronically with the Secretary of State.
- Removes provision stating, “committees and other persons that are not required to file online or electronically by this section may do so voluntarily.”
- Removes provision stating, “once a person or entity is required to file online or electronically, subject to subdivision (a) or (c), the person or entity shall be required to file all subsequent reports online or electronically.”

Recommendations:

- *Amend Regulation 18465 (Disclosure of Lobbying Entity Identification Numbers):* Given that all lobbyists/firms/employers/coalitions are required to file their lobbying reports electronically (rather than those who exceed a certain threshold), Regulation 18465 (requiring disclosure of lobbying identification number in lobbying report) can be amended to remove subdivision (b), which currently states, “the requirements of this section are not applicable to reports filed on paper.”

Section 86100—Registration (Lobbying)

Amendments:

- Removes provision permitting a registration statement to be filed “physically . . . in paper format.”

Recommendations:

- *Amend Regulation 18601 (Withdrawal of Lobbyist Certification or Lobbying Firm Registration):* to similarly require that a Notice of Withdrawal filed with the Secretary of State be filed online/electronically.

Section 86114—Periodic Reports; Lobbying Firms; Contents

Amendments:

- Adds requirements that periodic reports filed by lobbying firms include email addresses of firm, subcontractors.
- Adds language amending/clarifying requirement that firms must report contributions of \$100+ to committees primarily formed to *oppose* officers/candidates (in addition to contributions of \$100+ to committees primarily formed to *support* officers/candidates, already expressly required to be reported).

Recommendations:

- *Amend Regulation 18613 (Lobbying Firm Reporting):* to similarly provide that \$100+ contributions must also be reported if they are made to committees primarily formed to oppose officers/candidates.

Section 86116—Periodic Reports; Employers and Others; Contents

Amendments:

- Adds requirement that periodic reports filed by lobbyist employers include email addresses of the employer/person filing the report.
- Adds language clarifying requirement that firms must report contributions of \$100 to committees primarily formed to *oppose* officers/candidates, in addition to committees primarily formed to *support* officers/candidates.

Recommendations:

- *Amend Regulation 18611 (Lobbyist Reporting):* to similarly provide that \$100+ contributions must also be reported if they are made to committees primarily formed to oppose officers/candidates. (Note: although Regulation 18611 derives from Section 86113 (pertaining to periodic reports by lobbyists), which has not been amended by SB 1239 or AB 909, Section 86113 requires lobbyists to submit their reports to their lobbyist firms/employers, which are now specifically required under Sections 86114 and 86116 to report contributions to committees to oppose officers/candidates. Accordingly, amendment of Regulation 18611 seems appropriate and necessary.)
- *Amend Regulation 18616 (Reports by Lobbyist Employers and Persons Spending \$5,000 or More to Influence Legislative or Administrative Action):* to similarly provide that

\$100+ contributions must also be reported if they are made to committees primarily formed to oppose officers/candidates.

- *Amend Regulation 18616.4 (Reports by Lobbying Coalitions Which Are Lobbyist Employers; Reports by Members of Lobbying Coalitions)*: to similarly require that reports by lobbying coalitions include the email address of each member (in addition to the name and business address already required) and the email address of the lobbying coalition (in addition to name and business address) on reports filed by employers/firms that are a part of a lobbying coalition.

CONCLUSION

Once CARS is implemented and certified by the Secretary of State, such that the SB 1239 and AB 909 statutory amendments become operative, the necessary regulatory amendments will be minor. As discussed in January, in some cases, the amendments can be characterized as “cleanup” amendments and, in other cases, we would merely be harmonizing the requirements of the Act with the FPPC’s respective regulations. Accordingly, staff recommends adopting the proposed amendments effective upon certification of CARS.

Attached

Packet of Proposed Regulatory Changes