



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

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

From: Dave Bainbridge, General Counsel
Katelyn Greene, Commission Counsel

Subject: Prenotice of Proposed Amendments to Regulation 18410 –
Statement of Organization; Bank Account Signer Disclosure

Date: August 8, 2022

Executive Summary

Staff presents amendments to existing Regulation 18410¹ for prenotice discussion regarding bank account signers on campaign committee bank accounts. The proposed amendments would require a committee’s authorized bank account signers to be listed on the committee’s Statement of Organization (Form 410). Staff will present the amendments for adoption at a later date. However, for reasons stated below, staff recommends delaying the effective date of the amendments until January 1, 2023.

Reason for Proposed Regulatory Action

The proposed amendments have been requested by the Commission’s Audits & Assistance Division (“Audit Division”) staff in order to facilitate obtaining necessary financial records for campaign audits and investigations.

Background

The Audit Division conducts audits and field investigations of various campaign committees including mandatory audits of candidates for state controller, state Board of Equalization, the Board of Administration of the Public Employees’ Retirement System, and those that contract with the Commission for enforcement of a local ordinance, as well as discretionary audits of state and local campaign committees.² The number of audits conducted in a typical year varies. For example, between 2014 and 2020, the Audit Division conducted on average 20 audits per election year. However, in 2018 specifically there was a high of about 50 audits, which serves as a preview for 2022 and 2026 because these election years include both

¹ 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. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² See Sections 90001, 90003, 90006, 83123.5, and 83123.6.

statewide as well as local offices. The Franchise Tax Board (“FTB”) is responsible for conducting audits of candidates for all other state offices, as well as local candidate committees, and some primarily formed and general purpose committees.³

The Audit Division staff has expressed that when attempting to obtain campaign bank account records from a committee in order to complete an audit, it is sometimes unclear who has the authority to obtain the committee’s financial records when the committee treasurer is unavailable. In addition to the committee treasurer, other individuals are sometimes authorized to obtain the committee’s financial records in the treasurer’s absence, such as a principal officer or candidate. However, it is not always immediately known to Audit Division staff who the other individuals are that have the authority to obtain the records and it is generally an onerous process that can take over a year to find the authorized person(s). For example, if the treasurer is deceased, Audit Division staff may contact the candidate to obtain the committee’s financial records, but the candidate may respond that they do not have authorization to obtain the records. Only after Audit Division staff undergoes a lengthy process of subpoenaing the bank for records do they find out the candidate did in fact have the authorization to obtain the records.

If the committee is required to disclose the names of all authorized signers on the campaign bank account on the Form 410, it will allow Audit Division staff to coordinate with those individuals more efficiently in order to obtain the necessary records, which will in turn reduce the delay in completing certain audits. This disclosure will also allow FTB audit staff to send initial contact letters and follow-ups to the appropriate individuals when attempting to obtain a committee’s bank records, which may also save time and resources. Although FTB staff do not issue subpoenas when they receive no response, they will contact the Commission’s Enforcement Division to issue a subpoena to obtain records for the campaign audits. Thus, this disclosure will also save time and resources for the Commission’s Enforcement Division when issuing these subpoenas and will benefit the Commission’s Enforcement Division when conducting investigations into a committee’s activities.

Section 84101 of the Act requires the filing of a Form 410 for persons who raise \$2,000 or more in contributions in a calendar year in order to form a campaign committee.⁴ Section 84102 and Regulation 18410 set forth what is required to be disclosed on the Form 410 including the name and address of the committee, name and address of the committee’s treasurer and principal officer(s), the name and address of the financial institution where the committee’s bank account is located and the bank account number.

The Commission has broad authority to require information such as of the identity of signers on a committee’s bank account on the Form 410. Section 84102(h) provides that the Form 410 include, in addition to information explicitly required by statute, “(o)ther information as shall be required by the rules or regulations of the Commission consistent with the purposes

³ See Sections 90000 and 90001.

⁴ A committee may file the form prior to qualifying (i.e., prior to receiving \$2,000 or more in contributions) and will mark “not yet qualified” on the Form 410. However, bank account information is not required if the committee has not yet qualified. The Form 410 must be amended to include the bank account information within 10 days of qualifying as a committee pursuant to Section 84101.

and provisions of [Chapter 4 of the Act].” The purposes of the campaign disclosures required under Chapter 4 of the Act, including the Form 410, are to provide transparency of a committee’s receipts and expenditures “so that voters may be fully informed and improper practices may be inhibited.” (Section 81002(a).) Further, adequate enforcement mechanisms should be provided to allow for vigorous enforcement of the Act. (Section 81002(f).) Requiring committees to provide the names of all authorized bank account signers directly on the Form 410 will identify those individuals who are responsible for maintaining and obtaining the committee’s financial records throughout the course of the campaign so that those records can be obtained and it can be ensured that all contributions deposited into the campaign bank account are accounted for and have been properly raised and spent as intended under the Act.

Proposed Regulatory Amendments

The proposed amendments to Regulation 18410 will add a provision to subdivision (a)(7) that requires all qualified committees disclose on the Form 410 the names of all persons that have authority to obtain the financial records of the committee from the financial institution where the bank account is maintained.⁵

Form 410 Amendments

Upon adoption of the above proposed amendments to Regulation 18410, the Form 410 instructions and financial institution name field will need to be updated to indicate where the new disclosure information must be located.

Specifically, needed changes to the existing Form 410 will include:

- Changing the field titled “Name of Financial Institution” to read “Name of Financial Institution and Authorized Signers on Bank Account” on page two.⁶
- Updating the instructions paragraph under “Bank Account Information” to state that the names of all authorized signers on the campaign bank account must be disclosed and how the additional information must be disclosed on the form for when it is filed electronically or on paper.⁷

Staff recommends delaying the effective date of the proposed regulatory amendments discussed above to January 1, 2023 in order to allow for time to complete the needed Form 410

⁵ It is not staff’s intention to require disclosure of all individuals who have the ability to obtain bank account records that are stored in an office or firm. Rather, the disclosure would include those that have authorization to obtain the bank account records directly from the financial institution, either in person or online.

⁶ The reason for this specific change is to limit the need to rearrange the entire form to accommodate the additional information by creating a separate field, and to eliminate the burden not only on Commission staff but also on the Secretary of State and its current filing system.

⁷ For electronic filings, the user has the ability to include a generous number of characters in the field and an attachment will automate for those characters that go above the amount allowed in the field. For those filing via paper, the user must use additional copies of page two if the names of all signers will not fit in the field.

updates and allow for public comment period for those updates. Staff recommends presenting the updated Form 410 for prenotice discussion by October 2022 and having all form updates adopted by the Commission and implemented by January 1, 2023, at the same time the proposed amendments to Regulation 18410 would go into effect.

Conclusion

The proposed amendments to Regulation 18410 will facilitate audit staff's ability to obtain necessary records in order to complete committee audits as required by the Act in a timely fashion. This will lead to greater transparency overall. Staff seeks feedback and input from the public and the Commission at this time and will bring the amendments back to the Commission for adoption at a later meeting.

Attachments: Proposed amendments to Regulation 18410; and existing Form 410.