

Recent Changes to the Political Reform Act

Below are summaries of the legislative and regulatory changes recently made to the Political Reform Act (Act). All of the legislative provisions take effect Jan 1, 2021 except for AB 909 and some provisions of SB 84 and SB 1239, which take effect when the Secretary of State's new CAL-ACCESS system goes live. All of the regulatory changes listed were approved by the Commission during 2020. To view the full text of the bills, visit: <http://leginfo.legislature.ca.gov/>. To view the full text of the FPPC regulations, visit: <http://www.fppc.ca.gov/the-law/fppc-regulations.html>.

Legislative Changes

Local Campaign Filings – Online Posting: Requires a local government agency to post on its internet website, within 72 hours of the applicable filing deadline, a copy of campaign statements and reports filed with that agency in paper format. This bill further requires that the statements and reports be made available for four years from the date of the election associated with the filing. This bill is operative January 1, 2021. (AB 2151 (Gallagher) – Chapter 214, Statutes of 2020.)

Local Contribution Limit: Establishes a contribution limit for city and county elections, equal to the state legislative limit, to be regulated and enforced by the FPPC. Jurisdictions with existing limits or that adopt their own limits are not subject to the state legislative limit. The Commission will not enforce a contribution limit adopted by local jurisdictions. Does not apply to special districts. This bill is operative January 1, 2021. (AB 571 (Mullin) – Chapter 556, Statutes of 2019.)

Treasurer Acknowledgement Signature: Requires an acknowledgement of duties and liabilities by a treasurer and assistant treasurer recognized on a Statement of Organization filed under the Act (Forms 400 and 410). This bill is operative upon the certification of the Secretary of State's new Cal-Access System. (AB 909 (Gallagher) – Chapter 313, Statutes of 2019.)

Comprehensive Changes for Cal-Access Implementation: Provides for the Secretary of State to create a modernized campaign and lobbying report filing system. Makes changes to various provisions relating to campaign and lobbying filings to be implemented into the new system. This bill is operative upon the certification of the Secretary of State's new Cal-Access System. (SB 1239 (Hertzberg) – Chapter 662, Statutes of 2018.)

Cal-Access Replacement System Implementation Delay: Extends the launch date of the Secretary of State's new Cal-Access filing and disclosure system to February 2021. (SB 84 (Senate Budget and Fiscal Review Committee) – Chapter 30, Statutes of 2019.)

Regulatory Changes

Campaign Changes

Regulations 18250 and 18421.2 – Street Address: Regulation 18421.2 was repealed and Regulation 18250 was adopted in its place to have a consistent definition of “street address” that applies throughout the entirety of the Act.

Regulation 18351 – Conflict of Interest Code of the Fair Political Practices

Commission: Regulation 18351, which contains the Commission’s Conflict of Interest Code, was amended to reflect changes to designated positions within the agency, including adding newly designated positions, removing positions that have been abolished, and updating disclosure classifications where duties have changed. The proposed code is now pending approval from the Commission’s code reviewing body.

Regulation 18402.2 – Limited Liability Companies: New Regulation 18402.2 requires a limited liability company (LLC) that qualifies as an independent expenditure committee or major donor committee to identify a responsible officer on each statement or report filed. The regulation also defines what activity qualifies an individual as a “responsible officer.”

Regulation 18419 – Sponsored Committees: Amendments to Regulation 18419 clarify the rule for determining when a person qualifies as a sponsor of a committee based on the amount of contributions made during a specified time period. The regulation now also specifies the times when this determination must be made.

Regulation 18421.10 – Reporting Contributions from Limited Liability Companies:

New Regulation 18421.10 requires a committee that receives a contribution from a limited liability company to include the name of the limited liability company, as well as the name of a responsible officer, the name of an individual with primary responsibility for approving contributions or the name of a principal officer as specified, as part of the contributor’s “name” on the receiving committee’s campaign statements and reports.

Regulation 18422.5 – Top Ten Lists: Amendments to Regulation 18422.5 were made to incorporate a statutory change now requiring an updated top 10 contributor list to be filed once a contributor makes additional contributions of \$5,000 or more in the aggregate to a committee.

Regulations 18426.1, 18427, 18428, 18438.5, 18450.1, 18450.3, 18530.4, 18530.45, and 18531.62– Amendments of Various Regulations Due to Statutory Changes:

Non-substantive amendments to these regulations were made to add and correct cross references affected by passage of AB 902 (2019).

Regulation 18427.1 – Notification to Contributors: Regulation 18427.1 was amended to remove a portion of the regulation regarding the requirement to provide to notification to committee contributors about possible qualification as a major donor committee because the provision was moved into statute by AB 902 (2019).

Regulation 18431 – Reporting of Expenditures by Agents or Independent Contractors: Amendments to Regulation 18431 codify recently issued formal written advice to clarify that while a sub-vendor payment to a firm or business entity that is paid to provide canvassing, door-to-door solicitation, or signature gathering is a reportable campaign expense, the name of an individual canvasser, door-to-door solicitor, or signature gatherer is not required to be reported.

Regulation 18531 – Returning of Excessive Contributions: Amendments to Regulation 18531 were made to allow for the return of an excessive contribution, or portion thereof that exceeds the applicable limit, within 14 days of receiving the contributions without violating contribution limits, so long as the committee does not deposit or allow deposit of the contribution with actual knowledge that the contribution exceeds the limits or make use of the contribution prior to returning it.

Regulation 18545 – Campaign and Voluntary Expenditure Ceiling Amounts: Amendments to Regulation 18545 were made for the cost of living adjustments to campaign contribution limits and voluntary expenditure ceiling amounts for the period of January 1, 2021 through December 31, 2022.

Repeal of Regulations: The following regulations were repealed because they were codified into statute by AB 902 (2019):

Regulation 18116 - Reports and Statements; Filing Dates

Regulation 18117 - Duties of Filing Officers and Filing Officials - Effect of Non-Compliance on Filing and Disclosure Obligations

Regulation 18215.1 - Contributions; When Aggregated

Regulation 18229 - Inclusion of Registered Domestic Partners

Regulation 18996 - Scope of Audits and Investigations

Conflict of Interest Changes

Regulation 18115 – Duties of Filing Officers and Filing Officials – Statements of Economic Interests: Repeal and adoption of Regulation 18115 sets forth filing officer and filing official duties applicable to both Statements of Economic Interests filed in paper format and those filed electronically. New changes require filing officers to compile and maintain current lists of all statements required to be filed and those actually filed. Requires filing officials to compile and maintain current lists of all statements required to be forwarded to the filing officer and those actually forwarded.

New changes also require filing officials for agencies for which the Commission is the filing officer to update filer information within the Commission's electronic filing system, as well as the agency's approved electronic filing system, if any. The annual roster of the names and positions of every person whose statements are required to be forwarded to the filing officer are now required to be submitted by the filing official to the filing officer by December 15th, rather than the former deadline of February 1.

Regulation 18115.1 – Duties of Filing Officers and Filing Officials - Paper Format Statements of Economic Interests: Adoption of Regulation 18115.1 sets forth filing officer and filing official duties regarding review of Statements of Economic Interests filed in paper format.

Regulation 18115.2 – Duties of Filing Officers and Filing Officials - Electronically Filed Statements of Economic Interests: Adoption of Regulation 18115.2 sets forth filing officer and filing official duties regarding review of Statements of Economic Interests filed in electronic format. The regulation also specifies that a statement filed electronically through the Commission's electronic filing system, or an approved electronic filing system, is an original statement.

Regulation 18700 – Basic Rule and Guide to Conflict of Interest Regulations: Amendments to Regulation 18700 were made to remove obsolete cross references due to the enactment of AB 902 (2019), and reflect the adjustment of the gift limit from \$500 to \$520 for the period of January 1, 2021 through December 31, 2022.

Regulation 18703 – Public Generally: Amendments to Regulation 18703 address how the "public generally exception" applies and expands the exception in instances where the only relevant interest is an official's primary residence. The amendments further clarify the application of the special circumstances exception provided by the regulation.

Regulation 18707 – Disqualification Requirements: Repeal and adoption of Regulation 18707 provides guidance on the recusal process that must be followed by a public official at public hearings as well as when involved with other decisions affecting the official's financial interest.

Regulation 18720 – Annual Statement of Economic Interests; 2020 Emergency Filing Date Extension: Adoption of Regulation 18720 extended the deadline for Statements of Economic Interests due April 1, 2020 by 60 days, to June 1, 2020.

Regulation 18723.1 – Statements of Economic Interests: Public Officials with Multiple Positions: New Regulation 18723.1 defines "Expanded Statement of Economic Interests" and other terms for purposes of the regulation's provisions, and requires an expanded statement to disclose all reportable interests for all jurisdictions and list all positions for which it is filed. The regulation specifies that an official may only file an expanded assuming office statement for positions the official assumes on the same day, or an expanded leaving office statement for positions the official leaves on

the same day. The Regulation also specifies that the filing of expanded statements is not required, an official may continue to file a separate statement for each position. A statewide elected officer that holds multiple positions is not required to list additional positions on the statement and is not required to file a copy of the statement for additional positions as their statements are filed with the Commission, provide full disclosure, and are available for the public to access on the Commission's website.

Regulation 18729 – Leasehold Interest - Value, Disclosure: Amendments to Regulation 18729 remove a portion of the regulation relating to disclosure of leasehold interests that was codified into statute by AB 902 (2019).

Regulation 18730 – Provisions of Conflict of Interest Codes: Amendments to Regulation 18730 remove the footnote regarding the filing of an expanded Statement of Economic Interests (as this is now governed solely by newly adopted Regulation 18723.1), and reflect the adjustment of the gift limit from \$500 to \$520 for the period of January 1, 2021 through December 31, 2022.

Regulation 18732.5 – Statements of Economic Interests from Filers of Abolished Agencies: Amendments to Regulation 18732.5 update cross references and make other non-substantive technical changes.

Regulation 18735 – Change of Position or Disclosure Category Within Same Agency: Amendments to Regulation 18735 update the procedure for an official who transfers from a designated position in an agency to a specified executive position within the same agency, and now requires the official to file both a leaving office statement and an assuming office statement. Amendments also require a designated employee of the Legislature who leaves a specified designated position within the Legislature to become a member of the Legislature to file a leaving office statement and an assuming office statement. Additionally, a member of the Legislature who leaves office and becomes a designated employee of the Legislature must file a leaving office statement and an assuming office statement.

Regulation 18754 - Statements of Economic Interests (Members of Newly Created Boards or Commissions); When and Where to File: Amendments to Regulation 18754 address filings and timeline for Statements of Economic Interests required to be filed by members of newly created boards or commissions of new and existing agencies.

Gift Changes

Regulation 18940.2 – Gift Limit Amount: Amendments to Regulation 18940.2 reflect the adjustment of the gift limit from \$500 to \$520 for the period of January 1, 2021 through December 31, 2022.

Regulation 18941 – Receipt, Promise, Acceptance and Return of Gift: Amendments to Regulation 18941 eliminate the language codified into statute by AB 902 (2019), which defines when a public official “receives” or “accepts” a gift.

Regulation 18943 – Gift to Official Through Family Member: Amendments to Regulation 18943 correct obsolete cross references due to the enactment of AB 902 (2019).

Enforcement Changes

Regulation 18360 – Complaints Filed with the Commission: Repeal and adoption of Regulation 18360 reflects implementation of the new Enforcement Electronic Complaint System (“ECS”) and other technical changes that clarify and improve existing provisions.

Regulation 18361.1 – Administrative Subpoenas: Amendments to Regulation 18361.1 require the subject of an administrative subpoena issued by the Commission to provide all records in their possession that are responsive to the subpoena. For records withheld due to an objection, a description of each record must be provided and must include the date of the record, identity of author(s), identity of recipient(s), specific grounds for the objection, and the current location of the record.

Regulation 18361.4 – Probable Cause Proceedings: Amendments to Regulation 18361.4 rearrange the regulatory provisions to correspond with the sequence of events that occur in a probable cause proceeding, rephrase the existing probable cause standard, clarify and simplify filing deadlines, service requirements and scheduling procedures, and eliminate regulatory procedures and requirements that make the process less efficient.

Regulation 18361.5 – Administrative Hearings: Amendments to Regulation 18361.5 clarify the regulatory provisions implementing the Commission’s authority to hold hearings once it determines there is probable cause to believe a violation of the Act has occurred.

Regulation 18361.9 – Procedure for Commission’s Consideration of Proposed Decision by an Administrative Law Judge; Reconsideration: Amendments to Regulation 18361.9 clarify the provisions concerning briefing procedures by the parties prior to the Commission’s consideration of an administrative law judge’s decision.

Regulation 18361.11 – Default Proceedings: Amendments to Regulation 18361.11 change the method by which default orders are served on respondents from certified mail to personal service.

Regulation 18404.2 – Administrative Termination: Amendments to Regulation 18404.2 authorize the Chief of Enforcement to administratively terminate a recipient committee based on two additional grounds: (1) the committee filed a Statement of Organization in error; and (2) the Chief of the Enforcement Division obtains evidence showing the individual responsible for the committee is deceased or incapacitated.

Other Changes

Regulation 18310.1 – Public Participation at Meetings: Adoption of Regulation 18310.1 provides guidance for public participation at Commission hearings, including: allotted time to each speaker; rules of organization and order of the Commission taking public comment; audio, video, and text-based comments made by the public; and the requirement for attorneys and lobbyists appearing on behalf of clients to disclose representation at the beginning of their comments.

Regulation 18616.4 – Reports by Lobbying Coalitions: Amendment to Regulation 18616.4 removes a portion of the regulation relating to lobbying coalitions codified into statute by AB 902 (2019).

Regulation 18992 – Terms Used in Section 90001: Amendments to Regulation 18992 correct obsolete cross references due to the enactment of AB 902 (2019).

Regulation 18998 – Commission Audits and Investigations: Amendments to Regulation 18998 correct obsolete cross references due to the enactment of AB 902 (2019).