

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the Commission), under the authority vested in it under the Political Reform Act (the Act)¹ by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **May 18, 2023** at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments should be received at the Commission offices no later than **5:00 p.m.** on **May 17, 2023**.

BACKGROUND/OVERVIEW:

The Act limits the amount of contributions that candidates running for a state office and committees that make contributions to state candidates may accept from a single source in a single election.² Under Assembly Bill 571 (Stats. 2019, Ch. 556, Mullin), state campaign contribution limits also apply by default to city and county candidates when the city or county has not enacted laws addressing contribution limits on such candidates.

Existing Regulation 18531 permits a committee to return a contribution, or a portion thereof, that exceeds an applicable contribution limit to the contributor if done within 14 days of receipt as long as the committee does not:

- (1) Deposit or allow deposit of the contribution with actual knowledge that the contribution exceeds the applicable limit.
- (2) Make use of the contribution prior to returning it.

Additionally, existing Regulation 18531 provides a definition for “make use of,” and provides that a non-monetary contribution that is over the applicable limit may also be returned to the contributor to avoid a violation of the contribution limits either in its original form or in a monetary equivalent. Subdivision (f) of existing Regulation 18531 requires that an over-the-limit contribution that is returned be reported in full on committee campaign reports and statements and the return be reported as an expenditure.

New Section 85319.5, recently enacted by Senate Bill 794 (Stats. 2022, Ch. 816, Glazer) codifies and expands upon the above provisions of existing Regulation 18531 by also permitting a committee that receives an over-the-limit contribution—even if it had actual knowledge the contribution exceeded the limit—to avoid violating an applicable contribution limit by attributing the excess amount to a different election if certain criteria are met.

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 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 85301, 85302, 85303, and 85316.

Accordingly, proposed amendments to Regulation 18531 would eliminate language that has now been codified in statute, directly address non-monetary over-the-limit contributions, and directly address provisions in the new law that provide for the Commission to promulgate regulations in the context of the new attribution allowance.

REGULATORY ACTION:

Amend 2 Cal. Code Regs., Section 18531. Return of Excessive Contributions

The Commission may consider repealing the text of existing subdivision (a) of Regulation 18531 because it is duplicative of language now in statute, having been codified by the Legislature in subdivision (a) of Section 85319.5.

The Commission may consider the adoption of a new subdivision (a) of Regulation 18531, addressing language provided in new Section 85319.5(d) that provides that (1) a committee may, in accordance with any regulations adopted by the Commission request that a contributor attribute in writing a contribution to a different election and (2) a committee may, in accordance with any regulations adopted by the Commission, automatically attribute the portion of a contribution that is in excess of the applicable limit between the primary and general elections without permission from the contributor. New subdivision (a) of Regulation 18531 addresses these requirements for monetary contributions attributed per Section 85319.5(a) and (b).

The Commission may consider repealing existing subdivision (b) of Regulation 18531, concerning the definition of “make use of,” since this definition has now been codified as part of Section 85319.5(f).

The Commission may consider the adoption of a new subdivision (b) of Regulation 18531, addressing the return or attribution of over-the-limit non-monetary contributions under Section 85319.5.

The Commission may consider repealing existing subdivision (c) of Regulation 18531 and moving its provisions into a new subdivision (b) that addresses Section 85319.5(a)’s rules for return and attribution of over-the-limit non-monetary contributions. Existing subdivision (d) of Regulation 18531 would then need to be renumbered as (c), while existing subdivision (e) would be renumbered (d), and (f) would be renumbered (e).

The Commission may consider adding language to new subdivision (c) (existing subdivision (d)) of Regulation 18531, clarifying that the regulation shall not be construed to authorize the making or solicitation of any contribution in excess of the contribution limits of Section **85316**, in addition to Sections 85301, 85302, and 85303.

The Commission may consider adding language to new subdivision (d) (existing subdivision (e)) of Regulation 18531, clarifying the timeframe for depositing a contribution that

is earmarked for purposes other than making contributions directly to candidates for elective office into a separate account in order to avoid being deemed in excess of limits.

The Commission may consider adding language to existing subdivision (f) of Regulation 18531 (which would become subdivision (e)), concerning reporting and to further specify how attributed contributions should be reported on campaign reports.

The Commission may consider adding a new subdivision (f) to Regulation 18531 that provides clarification of Section 85319.5(c)'s requirements that by or before the applicable deadline for returning or attributing the contribution, or excess portion thereof, a committee that receives a contribution that exceeds a contribution limit must notify the contributor that their contribution was in excess of the applicable limit and the requirement that if a contribution was attributed between a primary and general election, the committee must also inform the contributor that the contribution was attributed and that the contributor may request a refund.

SCOPE: The Commission may adopt the language noticed herein, or it may choose new language to implement its decisions concerning the issues identified above or any related issues.

FISCAL IMPACT STATEMENT:

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on any local entity or program.

AUTHORITY: Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Act.

REFERENCE: The purpose of this regulation is to implement, interpret, and make specific Government Code Sections 84302, 85301, 85302, 85303, and 85319.5.

CONTACT: Any inquiries should be made to Toren Lewis, Fair Political Practices Commission, 1102 Q St., Suite 3000, Sacramento, CA 95811; telephone (916) 322-5660 or 1-866-ASK-FPPC, or by email at tlewis@fppca.ca.gov. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/the-law/fppc-regulations/proposed-regulations-and-notices.html>.