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FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Silver and Commissioners Baker, Ortiz, Wilson, and Wood

From: Dave Bainbridge, General Counsel
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Subject: Pre-Notice Discussion of Proposed Amendment to Regulation 18534 Permitting Committee Transfers of Funds to Higher Interest-Bearing Accounts

Date: August 5, 2024

Executive Summary

Currently, the Political Reform Act (“Act”)¹ and its accompanying regulations generally require committees to maintain bank accounts to accept contributions and make expenditures. According to the FDIC, the national average interest rate or annual percentage yield (“APY”) for a checking account that earns interest is 0.08 percent. In other words, if a committee had \$50,000 sitting in an average checking account for one year, the funds would accrue only \$40 in interest.

One current regulation lets candidate-controlled campaign committees temporarily transfer funds from their primary campaign bank account to a higher interest-bearing account, such as certificates of deposit, interest-bearing saving accounts, or money market accounts, then transfer the funds back to the primary account prior to expenditure. This allows the committee to accrue a greater amount of interest. For example, numerous high-yield online savings accounts offer APYs between approximately four and five percent. In other words, if a committee had \$50,000 sitting in an account offering a 4.5 percent APY for one year, the funds would accrue \$2,200 in interest.

While candidate-controlled campaign committees are expressly permitted to make these temporary transfers, no equivalent regulation expressly permits the same for other recipient committees subject to contribution limits, like general purpose committees and political party committees. These committees are subject to somewhat different requirements for maintaining committee bank accounts. Last year, the Legal Division issued an advice letter concluding the transfer of campaign funds to an interest-bearing account by a general purpose committee was permissible, consistent with the regulation applying to candidate-controlled campaign committees, and subject to certain additional requirements.

Staff presents for pre-notice discussion and, at a subsequent Commission meeting, proposes approving amendments to Regulation 18534, which establishes bank account requirements for recipient

¹ The Political Reform Act is set forth in Government Code Sections 81000 through 91014, and all further statutory references are to this code. The Commission’s regulations are contained in Division 6, Title 2 of the California Code of Regulations, and all regulatory references are to this source.

committees that receive contributions in excess of the amount that may be contributed for the purpose of making a contribution to candidates for elective state office. The amendment would essentially codify the Legal Division’s recent advice letter and extend the logic of the regulation that currently permits candidate-controlled campaign committees to make temporary transfers to higher interest-bearing accounts. Based on a review of the regulatory history of Regulation 18534, such an amendment also would be consistent with the Commission’s initial intent in adopting the regulation.

Reason for Proposed Regulatory Action

As noted above, last year, the Legal Division received a request for advice asking whether a general purpose committee subject to contribution limits in Section 85303 could temporarily transfer funds from one of its committee bank accounts into an interest-bearing account before transferring it back to the original account. Although such conduct would be consistent with the conduct allowed of candidate-controlled campaign committees under Regulation 18524, no similar regulatory provision expressly permits the same of other recipient committees.

Amending Regulation 18534 to also expressly permit other recipient committees subject to Section 85303 to transfer funds into higher interest-bearing accounts temporarily would be consistent with the purpose and rationale of Regulation 18524. Additionally, by including certain requirements to prevent improper commingling of funds, such an amendment would not frustrate the Commission’s original purpose in adopting Regulation 18534, nor would it hamper auditing or enforcement efforts. Finally, amending Regulation 18534 to permit these temporary transfers would give committees greater control over their funding and allow them to maximize the value of the contributions they receive, particularly relevant in times of high inflation.

Background

Legal Background

Section 85303 contains the California state contribution limits for recipient committees active in state candidate elections. Under Section 85303(a), a person may not make to any committee, other than a political party committee, and a committee other than a political party committee may not accept, any contribution totaling more than \$9,100 per calendar year for the purpose of making contributions to candidates for elective state office. (Regulation 18545(a)(7).) Political party committees are subject to a similar contributor limit of \$45,500 per calendar year from a single source for funds used to make contributions for the support or defeat of candidates for state office. (Section 85303(b); Regulation 18545(a)(8).) Section 85303(c) provides that a person’s contributions to a committee cannot otherwise be limited, except regarding communications identifying state candidates. Therefore, under Section 85303, a situation may arise where a committee must track and limit contributions made for the purpose of contributing to candidates for elective office but may still accept contributions made for other purposes not subject to those limits.

A committee may comply with the limitations in Section 85303 by following the contribution, deposit, and expenditure requirements set forth in Regulation 18534. Regulation 18534 establishes committee bank account requirements for any committee that receives contributions totaling two thousand dollars (\$2,000) or more in a calendar year and receives contributions subject to the limits of subdivision (a) or (b) of Section 85303. (Regulation 18534(a).)

Regulation 18534 requires committees to set up two separate bank accounts to distinguish limited and unlimited funds. All funds going toward contributions to state candidates must be within the calendar year limit amount for the contributor and deposited into the committee's "all purpose" bank account. All state candidate contributions made by the committee must come from this bank account. (Regulation 18534(b).) If a person contributes more than the amount specified in Section 85303, the excess contribution must be returned or deposited into a committee bank account designated as a "restricted use" account. (Regulation 18534(c).) Funds from a "restricted use" account may not be used to make contributions to candidates for elective state office, or to make contributions to other committees for the purpose of making contributions to candidates for elective state office. (Regulation 18534(d).)

Separate from Regulation 18534, Regulation 18524 pertains to candidates' campaign funds and expressly permits a candidate to transfer funds "from [their] campaign bank account to certificates of deposit, interest-bearing saving accounts, money market accounts, or similar accounts . . . established only for funds for the same elective office for which the campaign bank account was established." (Regulation 18524(b).) Further, Regulation 18524 requires the funds to be redeposited in the candidate's campaign bank account before expenditure. (*Ibid.*)

Procedural Background

In 2002, notable instances of contribution laundering occurred involving political party committees accepting contributions, shifting money between committees, and ultimately contributing money to legislative candidates in excess of the applicable limits on contributions to candidates. In 2006, after approximately a year of consideration, the Commission adopted Regulation 18534 to address concerns about such laundering.

Following an extensive investigation of these events by the Enforcement Division and stipulations by three county central committees, the Enforcement Division identified two primary needs for regulatory action. First, the Enforcement Division recommended requiring committees to keep discrete accounts for contributions received that would be used for making contributions to candidates for elective state office versus those that would be used for all other purposes. In the course of its investigation, the Enforcement Division found that most committees used only one bank account for both candidate support and non-candidate support expenditures. The purpose of this recommendation was to ensure, for both transparency and enforcement purposes, that money was not inadvertently or intentionally used in a manner contrary to the limits of Section 85303. Second, the Enforcement Division recommended that the Commission adopt rules to ensure that once money was accepted by a committee for non-candidate support purposes, the money was not transfigured into candidate-support money under a subsequent transfer to another committee. That way, a contributor could not shield their identity via committees moving money around amongst each other.

Notably, although Regulation 18534 does not expressly provide for the transfer of funds to higher interest-bearing accounts, it appears such transfers were envisioned at the time of adoption. In staff's November 27, 2006 memorandum to the Commission regarding the adoption of Regulation 18534, staff discussed subdivision (d) and the reliance donors have on committee expertise with respect to the use of funds. Staff wrote:

At a minimum, section 85303 *must* govern contributions from donors who expect

the committee to exercise discretion or expertise in using funds coming in to make contributions that will advance the common interest of donor and recipient. Donor reliance on the committee's expertise makes the committee something more than an intermediary.

Section 85303 would not be rendered moot if a committee, in its wisdom, should choose to invest the money in an interest-bearing account, with an eye to increasing the size of the eventual contributions. In most cases, this would be expected behavior. Contributions towards a candidate fundraiser are no different, when the proceeds (“principle and interest”) are used to make contributions to candidates for elective state office. In both cases, the purpose of the contributions is the same; only the means of serving that purpose are different - but the application of the statute is triggered by the purpose of the contributions, not the means whereby the purpose is accomplished.

(Second emphasis added.)

Regulation 18524 was adopted by the Commission in 1989 to clarify that Section 85201’s “single campaign bank account rule” did not prohibit candidates from temporarily transferring funds to interest-bearing account. In a February 2, 1989 adoption memorandum, staff explained, “[t]he purpose of the single campaign bank account is to provide an audit trail for contributions received and expenditures made. Temporary transfer of campaign funds to higher interest accounts would not interfere with the audit trail, so long as campaign expenditures are made only from the campaign bank account.” Regulation 18524 has not been substantively amended since adoption. Throughout the regulatory process leading to Regulation 18534’s adoption, no discussion or reference to Regulation 18524 occurred in any staff memorandum.

Advice Letters

Currently, neither the Act’s statutes nor regulations expressly address whether a recipient committee subject to Section 85303 may temporarily transfer funds from an “all purpose” or “restricted use” bank account to a higher interest-bearing account. However, the Commission’s Legal Division has recently provided advice regarding the issue.

In *Titus* Advice Letter, No. A-23-028, the requester sought advice on whether a general purpose committee could transfer “all purpose” account funds to a separate interest-bearing account, such as a certificate of deposit account, and then transfer the funds back to the “all purpose” account. After discussing Section 85303 and Regulation 18534, Legal Division staff wrote:

[T]his [proposed transfer] is similar to the procedure by which a candidate may transfer funds from a campaign bank account to . . . certificates of deposit, interest-bearing saving accounts, money market accounts, or similar accounts established only for funds for the same elective office for which the campaign bank account was established, and then redeposits the funds into the candidate’s campaign bank account prior to expenditures. (Regulation 18524(b).) A candidate’s campaign funds must be held in one account established at a financial institution located in the state and all campaign expenditures must be made from that account. (Section 85201(a) and (e).) In Regulation 18524, the Commission has recognized a narrow exception to the one bank account rule. (*Bauer* Advice Letter, No. I-91-181.) This type of transfer allows for a higher interest rate on the

funds, so long as there is no comingling with other campaign funds, and the funds are returned to the campaign account prior to expenditures.

The reasoning for allowing the narrow exception in the candidate campaign bank account context is applicable here, so long as the “all purpose” account is otherwise in compliance with the requirements of Section 85303 and Regulation 18534. Therefore, to the extent that [the] PAC establishes such a higher interest interest-bearing account for investment management, places only “all purpose” account funds in the “all purpose” interest-bearing account (appropriately labeled), then returns the funds to the all-purpose account for making contributions or expenditures and does not comeingle “all purpose” and “restricted use” funds, this will not be considered a transfer from another committee account under Regulation 18534.

Proposed Regulation

The proposed amendment to Regulation 18534 would codify the advice provided in *Titus* Advice Letter, No. A-23-028 and apply this narrow exception equitably to all committees with limits. While the *Titus* Advice Letter dealt specifically with the transfer of funds from an “all purpose” bank account, the proposed amendment would apply to the transfer of funds from either an “all purpose” account *or* a “restricted use” account, as long as both the principal and any accrued interest were transferred back to the same account and spent in accordance with the requirements applicable to that account. In other words, as in *Titus*, funds could be transferred from an “all purpose” committee bank account to a higher interest-bearing account. Both the principal amount and any interest earned would need to be transferred back to the “all purpose” committee bank account prior to expenditure. Similarly, funds transferred from a “restricted use” committee bank account to a higher interest-bearing account would have to be transferred back to that “restricted use” account, along with any accrued interest, and spent accordingly. “Restricted use” funds could not be used to accrue interest that would then be: (A) transferred to an “all purpose” committee bank account; or (B) commingled with or used as “all purpose” funds (i.e., to make contributions to candidates for elective state office or to other committees for the purpose of making contributions to candidates for elective state office). In the same vein, the proposed amendments would also prohibit “all purpose” and “restricted use” funds from being commingled while held in a higher interest-bearing account and require any such account to be designated and maintained in the committee’s records as “all purpose” or “restricted use” accounts.

As staff pointed out at the time of adoption of Regulation 18524 in 1989, “[t]emporary transfer of campaign funds to higher interest accounts would not interfere with the audit trail, so long as campaign expenditures are made only from the campaign bank account.” (Regulation 18534 Adoption Memorandum, Feb. 2, 1989.) Similarly, here, temporary transfer of campaign funds to higher interest accounts would not interfere with the audit trail, as “all purpose” expenditures would only come from “all purpose” accounts and “restricted” expenditures would only come from “restricted” accounts.

Additionally, the proposed amendment to Regulation 18534 is consistent with the Commission’s initial intent in adopting the regulation. As noted above, Regulation 18534 was initially adopted in response to concerns regarding contribution laundering and, more broadly, the enforceability of contribution limits given the prevalence of comingling of “all purpose” and “restricted use” funds in single bank accounts. As proposed, the amended Regulation 18534 would maintain the “all purpose” and

“restricted use” account requirements. However, the amended regulation would expressly state that committees may take advantage of higher interest-bearing accounts as long as there is no commingling of “all purpose” and “restricted use” funds. Given the lack of any mention of Regulation 18524 during the regulatory process for Regulation 18534, in addition to a reference in Regulation 18534’s adoption memorandum that seemed to imply an expectation that committees would transfer funds to higher interest-bearing accounts, it appears the Commission was focused on addressing the pressing issue at hand—ensuring the transparency and enforceability of contribution limits under Section 85303—rather than opposed to permitting the transfer of funds to higher interest-bearing accounts.

Conclusion

The proposed amendment to Regulation 18534 would expressly permit a committee subject to Section 85303 to transfer funds out of an “all purpose” or “restricted use” account, into a higher interest-bearing account, and then back into the originating account (along with any accrued interest) prior to expenditure. This amendment is consistent with Regulation 18524, which applies to candidate-controlled campaign committees, and also consistent with a recent Commission advice letter. The proposed amendment would be consistent with the Commission’s original intent in adopting Regulation 18534, which did not address the issue of higher interest-bearing accounts but merely focused on increasing transparency and enforceability regarding contribution limits under Section 85303. Before presentation for the Commission’s approval, staff requests feedback from the Commission and the regulated community regarding the proposed amendment. Staff is also prepared to answer any questions the Commission may have.

Attachment: Proposed Amendment to Regulation 18534