



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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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 **August 15, 2024**, at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3050, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m.** on **August 13, 2024**.

BACKGROUND/OVERVIEW:

In 1974, California voters passed an initiative, Proposition 9, that created the Commission and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. As part of its regulation of campaigns and lobbying, the Act requires candidates, political committees, and lobbyists to prepare periodic statements and reports disclosing their activities. The Act also requires routine mandatory audits and investigations of campaign statements and reports and lobbying firms, lobbyist employers, and lobbyists, and sets forth those who are subject to audits and investigations. (Section 90001.)

In particular, Section 90000 requires the Franchise Tax Board (FTB) to perform audits and investigations of local candidates and their controlled committees selected for audit pursuant to Section 90001(i)(1), which directs the Commission to adopt regulations providing the method of selection. Regulation 18991, which sets forth the method of selection, requires the Commission to select 20 local jurisdictions and, in turn, local candidates and their controlled committees within those jurisdictions to be audited. (Regulation 18991(c).) Because some jurisdictions are already subject to audit by a local agency or the Commission itself, former Regulation 18996 was amended in 2015 to provide the Commission with authority to exclude those jurisdictions from the selection process under Regulation 18991(c) to avoid duplicative audits. (Former Regulation 18996(d).) However, in 2020, after the legislature codified all of the provisions in Regulation 18996,² with the exception of subdivision (d), the Commission repealed the regulation in its entirety.

Because the Commission appears to have inadvertently repealed 18996(d),³ the proposed

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 18110 through 18997 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 The provisions are now located in Section 90002.

³ AB 902, which was enacted in 2019, codified several Commission regulations, including Regulation 18996. In light of AB 902, a 2020 Memorandum to the Commission recommended, among other things, repeal of several regulations, stating “[b]ecause AB 902 codified the provisions of these regulations in their entirety, staff recommends repealing these regulations to avoid redundancy.”

amendment to Regulation 18991 would restore the former provision, which provides the Commission with the authority to exclude jurisdictions that are already subject to audit by a local agency or the Commission itself from the random selection process to avoid duplicative audits.

The Commission shares responsibilities for performing audits under the Act with the FTB. While the FTB conducts a majority of the audits required under the Act (Section 90000), the Act requires the Commission to conduct audits of candidates for Controller and members of the Board of Equalization and of committees supporting these candidates due to potential conflicts of interest for the FTB.⁴ (Section 90006.) In addition, the Act authorizes both the FTB and the Commission to conduct discretionary audits and investigations of any reports or statements required by the Act (Section 90003) and prelection audits (Section 90008).

Because the Commission's Audits and Assistance Division ("Audits Division") has historically performed mandatory audits consistent with the guidelines, standards, scope, and reporting requirements employed by the FTB, the Commission adopted Regulation 18998 in 2019 to codify this long-standing practice. Pursuant to Regulation 18998, the Audits Division is required to apply the same "auditing guidelines, standards, and scope when performing audits pursuant to Section 90006 as the Franchise Tax Board when performing audits pursuant to Section 90001,"⁵ and to and to prepare audit reports consistent with the requirements in Section 90004 and Regulation 18995. (Regulation 18998(a).)

There are currently two regulations pertaining to audits that expressly reference only the FTB, not the Commission. First, Regulation 18993 provides the definition for the term "contain in detail" located in Section 90004(c), which pertains to the findings that must be included in audit reports. Second, Regulation 18994 provides the auditing standards and procedures to be used in audits and investigations pursuant to Sections 90000, et seq. On their face, it is unclear whether these regulatory provisions likewise apply to mandatory audits of the Commission as currently required under Regulation 18998.

REGULATORY ACTION:

Amend 2 Cal. Code Regs. Section 18991 - Audits of Campaign Reports and Statements of Local Candidates and Their Controlled Committees. The proposed amendment aims to restore the authority previously provided under former Regulation 18996(d). This restoration would enable the FPPC to exclude jurisdictions already subject to audits by local agencies or itself from the random selection process outlined in Regulation 18991(c). With the goal to enhance efficiency and avoid unnecessary duplication in audit efforts.

Amend 2 Cal. Code Regs. Section 18993 - Contain in Detail

⁴ This arrangement protects against an appearance that the Controller and the Chair of the BOE, who are members of the FTB, could improperly seek to influence those audits.

⁵ The guidelines, standard and scope are located in Section 90002 and Regulations 18994-95.

Defines the term “contain in detail” as used in Section 90004(c), which pertains to the findings required in audit reports conducted by the FTB. The proposed amendment clarifies that this provision also applies to audits conducted by the Commission.

Amend 2 Cal. Code Regs. Section 18994 - Auditing and Investigations.

Governs the auditing standards and procedures used by the FTB in conducting audits and investigations under Section 90000 and related sections. The proposed amendment clarifies that these standards and procedures also applies to audits conducted by the Commission.

Commission Staff proposes and submits the draft language for prenotice discussion regarding the amendments to Regulations 18991, 18993, and 18994.

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

FISCAL IMPACT STATEMENT:

<u>Fiscal Impact on Local Government.</u>	None.
<u>Fiscal Impact on State Government.</u>	None.
<u>Fiscal Impact on Federal Funding of State Programs.</u>	None.

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 90000, 90001, 90001(i), 90004 and 90007

CONTACT: Any inquiries should be made to Brian Lau, Fair Political Practices Commission, 1102 Q St., Suite 3050, Sacramento, CA 95811; telephone (916) 322-5660. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/the-law/fppc-regulations/proposed-regulations-and-notices.html>.