

## **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, 2022. All of the regulatory changes were approved by the Commission during 2021. 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**

**Contributions – Foreign Governments and Principals:** Prohibits a foreign government or principal from making contributions, expenditures, or independent expenditures in connection with the election of a candidate to state or local office and prohibits a person or a committee from soliciting or accepting those contributions. This bill is operative January 1, 2022. (AB 319 (Valladares) – Chapter 313, Statutes of 2021.)

**Removal of Gendered Language:** Removes gendered language from certain portions of the Government Code and other codes, including from the Political Reform Act. This bill is operative January 1, 2022. (AB 378 (Bauer-Kahan) – Chapter 50, Statutes of 2021.)

**Committee Accounts and Campaign Funds – Personal Use:** Increases penalties for egregious personal use of campaign funds to two times the amount of the unlawful expenditure. This bill is operative January 1, 2022. (AB 1367 (Low) – Chapter 315, Statutes of 2021.)

**Enforcement Jurisdictional Change – Secretary of State:** Transfers the responsibility for collecting the \$150 penalty for failure to pay the annual \$50 committee fee from the FPPC to the Secretary of State. Under existing law, the SOS is responsible for collecting the original \$50 fee, and referrals for nonpayment are sent to the FPPC. This bill is operative January 1, 2022. (AB 1590 (Committee on Elections) – Chapter 317, Statutes of 2021.)

**Limited Liability Company Disclosure – Member Disclosure:** Requires a Limited Liability Company (LLC), if it qualifies as a committee or committee sponsor, to file a statement of members with the Secretary of State. The bill requires the statement of members to include certain information about the LLC, including a list of all persons who have a membership interest in the LLC of at least 10% or who made a cumulative capital contribution of at least \$10,000 to the LLC after it qualified as a committee or sponsor of a committee, or within the 12 months before it qualified. This bill is operative January 1, 2022. (SB 686 (Glazer) – Chapter 321, Statutes of 2021.)

## **Regulatory Changes**

### ***DISCLOSE Act Changes***

#### **Regulation 18421.5 – Reporting an Expenditure for Paid Online Communications:**

Amendments to Regulation 18421.5 further clarify disclosure requirements for reporting paid online communications as well as updating terminology and definitions for those terms. Examples of such changes are the removal of the word “site” and replacing it with the words “website,” “web application” and “digital application.” Amendments also addressed what commentary and content are with regards to anyone’s response to their paid online communications.

#### **Regulation 18421.11 – Reporting Payments in Connection with Amplification of Online Communications:**

Adoption of Regulation 18422.5 provides guidance for committees who need to report payments in connection with amplifying their advertisements or communications online. Amplification is defined as efforts to create or increase appearance of support or opposition for a candidate, committee, or ballot measure. When a committee must report such an expenditure, they will need to include: a detailed description of the number of shares, follows, reposts, comments, likes, dislikes, or similar electronic registration of approval or disapproval. The adoption of this regulation also defines digital application regarding its relevance to this regulation.

**Regulation 18435.5 – Slate Mailer Requirements:** Amendments to Regulation 18435.5 includes clarification with definitions and additional guidance on where disclosures are required to be placed on electronic slate mailers.

**Regulation 18450.4 – Video and Television Advertisement Disclosure:** Amendments to Regulation 18450.4 clarified what disclosure is required for those electronic media advertisements that are disseminated as a video on social media. The disclosure made should reflect the committee’s disclosure requirements set forth in Sections 84504.1 and 84504.5, depending on the type of committee that paid for the advertisement.

**Regulation 18450.6 – Disclosure on Advertisements in Languages Other than English:** Adoption of Regulation 18450.6 states that advertisements, as defined per Section 84501, primarily written or spoken in another language other than English, must provide the disclosure in the same language as was spoken or written. However, when the committee or filer is providing the name of the committee who paid for the advertisement, that name must be exactly what is reflected on the most recently filed Statement of Organization.

**Regulation 18450.7 – Disclosure for Advertisements in Formats Not Specifically Addressed:** Adoption of Regulation 18450.7 states that a written advertisement, as defined in Section 84501, for which a disclosure format requirement has not been specifically addressed in Article 5 of Chapter 4, or any related regulations, must display disclosures required by Sections 84502, 84503 and 84506.5 in a size and color

contrasting the background that is legible to the average viewer.

**Regulation 18450.8 – Disclosure for Advertisements on Listening Applications that are Both Audio and Visual:** Adoption of Regulation 18450.8 states that an electronic media advertisement subject to Section 84504.3, that is on a listening application, that uses both audio and visual at the same time will generally need to include electronic media advertisement disclosure requirements on the visual portion and radio disclosure requirements.

**Regulation 18450.9 – Website Advertisements and Third-Party Social Media Advertisements:** Adoption of Regulation 18450.9 requires certain advertisements paid for by a committee that are in the form of a written post on non-social media websites to display the disclosures at the top or bottom of each individual post when posted on a website that is not the committee's website. Certain social media advertisements paid for by committee to be placed on a social media account that is not the committee's account must include a tag, or otherwise include a link to, the social media profile or social media landing page of the committee that paid for the advertisement.

**Regulation 18450.11 – Spokesperson Disclosure:** Amendments to Regulation 18450.11 provide additional guidance on the paid spokesperson disclosure requirements. The Regulation requires a committee to include the paid spokesperson disclosure on the advertisement and file the report required under Section 84511 if the committee coordinated with a person that paid for the appearance of an individual in an advertisement, but that person does not qualify as a committee.

### ***Conflict of Interest Changes***

**Regulation 18115 – Duties of Filing Officers and Filing Officials – Statements of Economic Interests:** Amendments to Regulation 18115 clarify that the regulation applies to all statements submitted electronically as opposed to only those statements submitted through an electronic filing system certified by the Commission.

**Regulation 18115.2 – Duties of Filing Officers and Filing Officials - Electronically Filed Statements of Economic Interests:** Amendments to Regulation 18115.2 included retitling the regulation to further distinguish that submissions via electronic filing systems are not the only acceptable form of electronic submission, replacing references to “digital signatures” to “secure electronic signatures,” and detailing the retention and forwarding requirements for electronic statements not submitted through electronic filing systems.

**Regulation 18351 – Conflict of Interest Code for 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.

**Regulation 18723.1 – Statements of Economic Interests: Public Officials with Multiple Positions:** Amendments to Regulation 18723.1 now includes subdivision (c)(3), which provides that if a statement of economic interests is to be filed

electronically per Regulation 18757(b), the filer may file the statement for the primary position with a secure electronic signature pursuant to Regulation 18104(b)(2). A filer must file a copy of the expanded statement for each additional position.

**Regulation 18730 – Provisions of Conflict of Interest Code:** Amendments to Regulation 18730 provides guidance regarding the filing of an expanded Statement of Economic Interests. If permitted by the official’s agency’s filing officer, the official may submit the original statement with a secure electronic signature, as defined in Regulation 18104(b)(2), via the official’s agency email address.

**Regulation 18757– Statements of Economic Interests; Filing an Original Statement of Economic Interest in Electronic Format Without a Certified Electronic Filing System:** Adoption of Regulation 18757 provides that not only can filers file statements using Commission approved electronic filing systems, but if their agency allows them, they may file their original statement with a secure electronic signature via email with the agency.

## ***Lobbying Changes***

**Regulation 18610 – Lobbyist Accounting:** Amendments to Regulation 18610 provides that lobbyist accounting must maintain a journal, ledger, or record of any expenses incurred or paid by the lobbyist and all monetary and non-monetary contributions of \$25 or more made or delivered by a lobbyist to a state candidate or elected state officers or made to controlled or primarily formed committees to support such candidates. Additionally, the Regulation clarifies that a written voucher or annotated receipt or invoice must be prepared to support an activity expense in the event a source document cannot be obtained.

**Regulation 18612 – Accounting by Lobbying Firms:** Repeal and Adoption of Regulation 18612 includes changes to what is defined as an adequate record to be held by lobbying firms. Adequate records include the following: credit card and bank statements, receipts, invoices, and written invoices with documented details of the event if such invoices are not available. The addition of the definition of a record was also changed to include journals, ledgers, or other record. Regulation 18612 also clarifies that if a firm is unable to obtain a source document, the firm shall prepare a written dated voucher, or annotated receipt or invoice documenting the information. Lobbying firms must maintain these records for five years.

**Regulation 18615 – Accounting by Lobbyist Employers:** Amendments to Regulation 18615 added the terms “journal” and “ledger” to the requirement of retaining and maintaining records, includes removing “canceled checks or other bank records, and states that images that are legible may be retained instead of the actual check itself. Further examples of documents that must be maintained by a lobbyist employer in support of any expenditure were also added to the regulation.

## ***Behested Payment Changes***

**Regulation 18424 – Behested Payment Reporting; Additional Information:** Adoption of Regulation 18424 requires additional disclosure on a behested payment being reported in accordance with Section 84224. There are two circumstances of which further information must be disclosed: first, where the official, elected officer, PUC member, or a member of their campaign or officeholder staff has a relationship of control over or is employed by a payee nonprofit organization; and secondly, where a payor of a payment is involved in a proceeding before the official’s agency at the time of the payment or within the preceding 12 months.

**Regulation 18424.1 – Behested Payment Reporting; Good Faith Estimate:** Adoption of Regulation 18424.1 provides guidelines and procedures for reporting good faith estimates when an elected official or Public Utilities Commissioner (PUC) is unable to obtain an accurate estimate of the behested payment after making reasonable efforts to obtain that information. Reasonable efforts include sending a written request for the required information prior to the 30 day filing deadline. The Regulation further requires the elected official or PUC member to state that the payment information is an estimated amount or estimated date that reflects the best efforts to obtain the accurate information.

**Regulation 18424.2 – Behested Payment Reporting; Charitable Organization Fundraising Solicitations:** Adoption of Regulation 18424.2 makes it clear that when an elected official acts in concert with a charitable organization in a fundraising solicitation and is featured in the solicitation, they have triggered Section 84224 behested payment reporting. The regulation also distinguishes that appearing in the fundraising solicitation, by itself, does not trigger reporting in accordance with Section 84224.

**Regulation 18424.3 – Behested Payment Reporting; Payments from Donor Advised Funds:** Adoption of Regulation 18424.3 provides guidance for donor advised fund behested payment reporting requirements and clarifications. Clarification of what a “Donor Advised Fund” or “Sponsoring Organization” can be found in 26 USCS § 4966. Reporting in accordance with Section 84224 is required when an organization has written a check from the donor advised fund and directly makes a charitable donation at the official’s behest. When this occurs, the official must disclose: the name of the sponsoring organization, name of the donor advised fund, and the name of the donor. The adopted regulation also defines “donor” in this case as the following: “the person or persons who funded the donor advised fund and retains advisory privileges over the donor advised fund, including the ability to designate an advisor.” The newly adopted regulation also details how officials should report those anonymous donors within a donor advised fund.

## ***Enforcement Changes***

**Regulation 18360.1 – Eligibility Requirements – Streamline and Warning Letters:** Amendments to Regulation 18360.1 now include the ability for the Enforcement Division to refer certain violations to the Diversion Program instead of issuing a penalty or

warning letter. The regulation also includes other clarifications regarding the streamline program and includes qualifying factors for major donor committees and behested payment reporting violations to qualify for the streamline program.

**Regulation 18360.2 – Penalties in Streamline Cases:** Amendments to Regulation 18360.2 clarify and update Enforcement’s Streamline and Warning Letter program to include further penalty guidance and detailed guidance for assessing penalties for tier two streamline cases. Some of the additional changes to this regulation include the penalty guidance for behested payment violations and major donor committee violations as well as authority for the Enforcement Division to exclude violations that deminimus public harm.

**Regulation 18360.3 – Eligibility Requirements and Considerations – Tier Two Streamline Program:** Adoption of Regulation 18360.3 further details the eligibility and considerations for the Enforcement Division’s tier two streamline program. Most who fall under the tier two program would have had a previous violation of the same Government Code within the last five years or who’s actions showed greater public harm.

### ***Assembly Bill 571 Changes***

**Regulation 18404.1 – Termination and Reopening of Committees:** Amendments to Regulation 18404.1 apply the termination requirements and reopening committee rules for state office to elective city and county officeholders and/or candidates subject to AB 571.

**Regulation 18421.4 – Reporting Cumulative Amounts for State, City, and County Elections and State, City, and County Recipient Committees:** Amendments to Regulation 18421.4 apply the reporting of cumulative amounts of contributions for an election received and made by committees subject to the Act’s state contribution limits to those offices subject to AB 571.

**Regulation 18421.8 – Reporting an Expenditure by a Candidate Controlled General Purpose Ballot Measure Committee:** Amendments to Regulation 18421.8 extend the reporting requirements for candidate-controlled general purpose ballot measure committees to those offices subject to AB 571 to report detailed information for expenditures of \$100 or more, including identification of each measure supported or opposed and the amount allocated to each measure.

**Regulation 18521 – Establishment of Separate Controlled Committee for Each Campaign Account:** Amendments to Regulation 18521 apply the rules of the use of a candidate-controlled committee and committee bank account for a future election of the same candidate, referred to as “redesignation” to those offices subject to AB 571. Redesignation is not permitted for candidates for elective state office and those offices subject to AB 571 to help ensure compliance with contribution limits.

**Regulation 18521.5 – Ballot Measure Committees Controlled by Candidates for**



**Elective State, City, and County Office:** Amendments to Regulation 18521.5 extend the rules for ballot measure committees controlled by state level candidates to ballot measure committees controlled by candidates for city and county offices subject to AB 571.

**Regulation 18523.1 – Written Solicitation for Contributions:** Amendments to Regulation 18523.1 apply the rules for language that must be included in a solicitation for contributions by candidates at the state level including identification of the particular committee for which the contribution is solicited and identification of the specific office to city and county offices subject to AB 571.

**Regulation 18530.2 – Transfer of Funds Raised Prior to Proposition 34 and Assembly Bill 571 Limits:** Amendments Regulation 18530.2 apply the rules on the transfer of funds between committees raised prior to the limits imposed on elective state offices to city and county offices subject to AB 571.

**Regulation 18530.8 – Personal Loans:** Amendments to Regulation 18530.8 apply the guidelines for the limit on personal loans that a candidate for elective state office may make to their campaign under Section 85307 to city and county offices subject to AB 571.

**Regulation 18531.2 – Refunding General Election Contributions:** Amendments to Regulation 18531.2 extend the rules regarding the pro rata refund of contributions raised for a general election or a special general election by a candidate for elective state office who is defeated in the primary or special primary election, or who withdraws from the general election or special general election, to now include candidates for elective city and county offices subject to AB 571.

**Regulation 18531.5 – Recall Elections:** Amendments to Regulation 18531.5 apply the rules on elected state officers involved in recalls to elective city and county offices subject to AB 571. Regulation 18531.5 clarifies that contribution limits do not apply to elected state officers that are the target of a recall election, but they do apply to replacement candidates as they are treated as other candidates running for state office.

**Regulation 18531.61 – Treatment of Debts Outstanding After an Election:** No substantive amendments were made for this Regulation. An incorrect citation for subdivision (d) was corrected.

**Regulation 18531.63 – Treatment of Debts Outstanding After a City or County Election for Offices Subject to AB 571-Prior to January 1, 2021:** Adoption of Regulation 18531.63 provides the same guidance as Regulation 18531.6 on the treatment of debts outstanding for elective state office to elective and city and county offices subject to the AB 571 contribution limit that may have accepted contributions prior to January 1, 2021.

**Regulation 18531.64 – Treatment of Debts Outstanding After a City or County Election:** Adoption of Regulation 18531.64 provides the same guidance as Regulation 18531.61 on the treatment of debts outstanding for elective state office to elective city and county offices subject to the AB 571 contribution limit that receive contribution on or after January 1, 2021.

**Regulation 18535 – Restrictions on Contributions Between Candidates:**

Amendments to Regulation 18535 now include elective city and county offices subject to the AB 571 contribution limit. Regulation 18535 clarifies that a candidate for state, city or county office subject to AB 571, or committee controlled by that candidate may not make any contribution to any other candidate for elective state, or city or county office subject to AB 571, in excess of the applicable contribution limit. There are some exceptions to this general rule provided in other sections of the Act.

**Regulation 18536 – Transfer and Attribution of Contributions:** Amendments to Regulation 18536 apply the rules under Section 85306 regarding the attribution of contributions for elective state offices to elective city and county offices subject to the AB 571 contribution limit.

**Regulation 18537.1 – Carry Over of Contributions:** Amendments to Regulation 18537.1 provide further guidance on the rules of Section 85317 when the carry over of campaign contributions without attribution is permitted, and apply these rules to elective city and county offices subject to the AB 571 contribution limit.

**Regulation 18545 – Contribution Limit and Voluntary Expenditure Ceiling Amounts:**

Amendments to Regulation 18545 add a section specifically for the AB 571 contribution limit for elective city and county offices in jurisdictions that do not have a local ordinance addressing contribution limits in place, which will be updated biennially with all of the other contribution limits imposed by the Act.

**Regulation 18951– Surplus Funds:** Amendments to Regulation 18951 clarify that except as provided by Section 85315 regarding elected state officer recall committees, campaign funds raised by (1) a committee, other than a candidate controlled committee; or (2) a candidate controlled ballot measure committee are not considered surplus funds for purposes of the regulation. The amendments now apply the rules in this regulation to elective city and county offices subject to AB 571.

## ***CARS Changes***

**Please note that these regulatory changes go into effect upon the certification of Secretary of State’s CAL-ACCESS Replacement System (CARS)**

**Regulations 18402.1 – Principal Officers:** Amendments to Regulation 18402.1 add the need for a principal officer’s email address to be included in the required information provided on the statement of organization required by Section 84101(a) and any 24-hour report required by Section 84101(b) or (c).

**Regulation 18406 – Short Form for Candidates or Officeholders Who Receive and Spend Less than \$2,000 in a Calendar Year:** Amendments to Regulation 18406 now require candidates, who filed the short form prior to qualifying as a committee as defined in Section 82013, to include the candidate’s street address and email address in the notifications required when amending the short form.

**Regulation 18410 – Statement of Organization:** Amendments to Regulation 18410



requires an email address on the Statement of Organization, and that the treasurer and any assistant treasurers sign the acknowledgement pursuant to Section 84102(d).

**Regulation 18422.5 – Display of Lists of Top Contributors to Committees Primarily Formed for State Ballot Measures or Candidates:** Adoption and repeal of Regulation 18422.5 removes all mentions of the requirements for top contributors to file paper copies with the Secretary of State and replaces it with language regarding the Secretary of State’s CAL-ACCESS system.

**Regulation 18465 – Disclosure of Lobbying Entity Identification Numbers:** Repeal and adoption of Regulation 18465 reflects implementation of the new requirement for electronic or online reports or statements to disclose Lobbying Entity Identification Numbers.

**Regulation 18601 – Withdrawal of Lobbyist Certification or Lobbying Firm Registration:** Amendments to Regulation 18601 require the withdrawal of lobbyist certification to be filed online or electronically with the Secretary of State.

**Regulation 18611 – Lobbyist Reporting:** Regulation 18611 extends reporting requirements for lobbyist contributions over \$100 to committees primarily formed to oppose state candidates and elected state officers.

**Regulation 18613 – Reporting by Lobbying Firms:** Adoption of Regulation 18616 extends reporting requirements for lobbyist employer contributions over \$100 to committees primarily formed to oppose state candidates and elected state officers.

**Regulation 18616 – Reports by Lobbyist Employers and Persons Spending \$5,000 or More to Influence Legislative or Administrative Action:** Adoption of Regulation 18616 extends reporting requirements for lobbyist employer contributions over \$100 to committees primarily formed to oppose state candidates and elected state officers.

**Regulation 18616.4 – Reports by Lobbying Coalitions Which Are Lobbyist Employers; Reports by Member of Lobbying Coalitions:** Amendments to Regulation 18616.4 require that reports by lobbying coalitions include the email address of each member in addition to the name and business address already required, and the email address of the lobbying coalition in addition to name and business address on reports filed by employers/firms that are a part of a lobbying coalition.

### ***Other Changes***

**Regulation 18104 – Electronic Signatures:** Adoption of Regulation 18104 defines original statements under the Act to include statements in electronic format with secure electronic signatures along with paper statements with a handwritten signature. The regulation also provides a definition of the term “secure electronic signature.”

**Regulation 18531.62 – Elected State Officeholder Bank Accounts:** Non-substantive amendments to this regulation were made to replace terms with non-gendered language.