

April 4, 2012

VIA PDF EMAIL ONLY

TO: Chair and Commissioners  
Fair Political Practices Commission

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RE: Multi-Purpose Organizations: Agenda No. 13 for April 5, 2012  
Commission Meeting

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Thank you for the opportunity to share our comments and recommendations as you consider the adoption of Regulation 18412 and the amendments to Regulations 18413 and 18215.

**Purposed Regulations are Clearer Than Earlier Drafts**

Overall, it is our opinion these regulations are clearer than those proposed three months ago and are well explained and illustrated in the staff's memo of March 26, 2012.

However, there are some considerations and recommendations that we bring to the attention of the Commission and staff, as listed below:

**Prioritization of Reportable Donations to Multi-Purpose Organizations ("M-PO")**

We are pleased that the discussions at the December 2011 meeting appear to have been useful dialog as the staff now recommends prioritization for reporting "known contributors" before "reason to know contributors" and for not considering other donors to be "contributors."

**LIFO Accounting Method Problematic**

Selecting the LIFO accounting method for "reason to know" donors is a Hobson's choice. Sometimes it will render absurd results.

For example, if a donation to a national M-PO from the last of many "reason to know" contributors is larger than the M-PO's then made California expenditures, this "reason to know donor" would logically expect that it would be only one of many pro-rata share donors, especially if that donor knows it was solicited in an identical manner to other members of the M-PO.

Or if this "reason to know" donor is attributed to be the funder of 80% of the M-PO's California contributions, that donor becomes a sponsor of the M-PO's Form 460 committee (again defying logic as that donor would expect it would be in the same class as other similar donors), and to make matters worse, if a contribution from the M-PO to a California ballot measure committee is \$50,000 or more, then the unlucky donor may be disclosed by the ballot measure committee on its ads.

Any single method will not always produce the "right results" in the minds of some observers, but it seems as though LIFO may frequently provide the most misleading information in many situations as to the sources of an organization's funds.

On balance, we believe it best to allow organizations to react to different facts and circumstances by using a reasonable accounting method. This approach would be consistent with the FPPC's approach to federal committees contributing in California. (See FPPC *Advice Letter to Priolo*, A 77-185 (6/2/77)).

### **Clarifying “Definitions” are in the Wrong Regulation**

Regulation 18215 is where one finds the definition “contribution.” But to understand 18215(b)(1), one needs the four “definitions” that are to be found in 18412, a disclosure regulation.

As the currently proposed, 18215(b)(1) does not provide cross references between it and 18412. Shouldn't the following “definitions” in 18412 either (1) be moved to 18215 or (2) be referenced in 18215?

Clarifying Definition	Current Location in 18412
To whom “first-bite” rules apply	(a) (lines 4 through 10 on page 1)
“Knows” the use of the payment	(b) (lines 14 through 17 on page 1)
“Reason to know” the use of the payment	(c)(1) (lines 3 through 6 on page 2)
Which general treasury funds are exempted from “first-bite” rule	(c)(1) (lines 19 and 20 on page 1) (e)(3) (lines 1 through 3 on page 3)

### **Consider Other Amendments 18215**

1. Consider deleting, or editing, (b)(1) lines 21-23 on page 1. Or refer to the rules in 18412(b) and (c).

2. Consider editing (b)(1) on lines 1 through 5 on page 2 to state the “presumption” directly, possibly by deleting “, unless” and adding “not” after “has” on line 3.

3. Consider editing the “heading” to delete the word “active” since two \$1,000 contributions/expenditures over 4+ years is not very “active;” consider substituting “that contribute and/or expend.”

4. Consider adding a new "(c)(19) on page 6 to re-state 18412(c)(1), lines 3 through 8 on page 2 (that apply to M-POs) to apply to contributors, such as:

"(c)(19) A donation to a multi-purpose organization defined in Regulation 18412(a) where the evidence clearly establishes the donor did not intend that its payment would be used to fund a contribution or independent expenditure."

### **Consider Amending Proposed 18412**

1. We support the staff's decision that "organizational income" need not be in a segregated funds account to qualify for being reported "as a committee pursuant to Section 82013(b) or (c)". (Section (c)(1) on lines 19 and 20 and Section (c)(3) on line 1 on page 3).

We agree with the staff's' decision because there is no relevance of where this revenue is kept if in fact it is "organizational income?" A multi-purpose organization has or has not such income, and if it has, those funds are available to fund California contributions, notwithstanding how the organization sets up its books. The real question is what amount of non-donor income it has, and can it prove it if questioned.

2. Consider deleting the sentence in (c)(1) on lines 6 through 8 on page 2. Not only is it unclear but since 18412 is very clear what FPPC formula and processes apply to M-POs, obviously, any purposeful non-compliance is already covered by the enforcement provisions of the PRA.

3. Consider adding language (possibly as "(c)(4)") that gives guidance to M-POs on how to register as a "recipient committee," to navigate them through the complications of "primarily formed" or "general purpose" committees. By their nature, M-PO contributions to California campaigns will almost never be their "primary purpose."

It would be very odd indeed if a MP-O which gives \$20,000 to a ballot measure committee becomes a primarily formed committee simply because it was its only California contribution while a California general purpose committee can give, for example, \$500,000 to a ballot measure committee and still remain a general purpose committee, even if it is a sponsor of the committee and actively involved in the campaign.

Additionally, being required to consider oneself a “primarily formed committee” imposes additional reporting and other burdens on the M-PO which are not justified by the organization’s activity, and it is simply misleading to the public.

Consider asking the staff to address this appropriately; we suggest a simple addition to this Regulation as (c)(4), as follows:

“(c)(4) Multi-purpose organizations are not required to register as primarily formed committees unless they are the “principal campaign committee,” as that term is used in Regulation 18247.5.”

### **Educating M-POs on Website**

The current FPPC Fact Sheet on M-POs puts in one place the current FPPC’s rules, and it provides three examples. The staff’s March 26, 2012 memo provides useful clarifying explanations and a new calculation example.

Consider updating the current July 2006 memo as soon as possible once the Commission adopts 18412 and amends 18413 and 18215.

Thank you for considering these suggestions and recommendations.