



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Remke, Commissioners Audero, Casher, Wasserman, and Wynne

From: Hyla P. Wagner, General Counsel
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Subject: Regulation 18996: Scope of Audits and Investigations

Date: December 4, 2015

Overview

The Political Reform Act¹ 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.) The Act also authorizes the Franchise Tax Board (FTB) and the Fair Political Practices Commission (FPPC) to conduct discretionary audits and investigations of any reports or statements required by the Act. (Section 90003.)

Former Section 90002, subdivision (c), set forth the scope regarding the campaign statements and reports for a mandatory audit or investigation conducted pursuant to Section 90001. Prior to the adoption of Regulation 18996 in 1999, a literal interpretation of former Section 90002, subdivision (c), arguably required a mandatory audit and investigation of all statements and reports that a candidate filed during the election cycle, including those that the candidate filed for another election wholly unrelated to the election subject to the audit and investigation. Regulation 18996 was adopted to clarify that a mandatory audit and investigation under Section 90001 would not include statements and reports filed in conjunction with an election for any other office.

AB 800 (Stats. 2014, ch. 9, §4, p. 5), which provided the FPPC expanded authority for discretionary pre-election auditing under Section 90008, inadvertently deleted the limitations as to the scope of audits in Section 90002, subdivision (c). This proposal restores the guidelines regarding the campaign statements and reports covered into Regulation 18996 for continuity and guidance. And in order to avoid redundant audits, the proposal also clarifies that the FPPC may exclude from the selection process any local candidates or their controlled committees that are subject to audit by a local agency or the FPPC.

¹ The Political Reform Act (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.

Problems with Existing Law

1. Need to State Scope of Audits.

Although the FPPC has continued to follow the parameters for audits and investigations in former Section 90002, subdivision (c), the scope of audits and investigations pursuant to Section 90001 have gone uncodified since the passage of AB 800 in 2014. This proposal will reinstate the scope that was inadvertently deleted.

Prior to its deletion, former Section 90002, subdivision (c), provided in pertinent part as follows:

“(c) . . . When the campaign statements or reports of a candidate, controlled committee, or a committee primarily supporting or opposing a candidate are audited and investigated pursuant to Section 90001, the audit and investigation shall cover all campaign statements and reports filed for the primary and general or special or runoff elections and any previous campaign statement or report filed pursuant to Section 84200 or 84200.5 since the last election for that office, but shall exclude any statements or reports which have previously been audited pursuant to Section 90001 or 90003. When the campaign statements or reports of a committee primarily supporting or opposing a measure are audited and investigated, the audit and investigation shall cover all campaign statements and reports from the beginning date of the first campaign statement filed by the committee in connection with the measure. For all other committees, the audit and investigation shall cover all campaign statements filed during the previous two calendar years.”

Existing Regulation 18996 also restates a provision of and makes cross-references to former Section 90002, subdivision (c), but since AB 800 deleted that subdivision from statute, the regulation is now inaccurate and inconsistent with existing law. The proposed changes also correct these citation errors.

2. Avoiding Duplicative Audits.

As for mandatory audits or investigations of local candidates and their controlled committees by the FTB, Section 90001, subdivision (i)(1), requires the Commission to adopt regulations that provide the method of selection. This selection method is in Regulation 18991. Subdivision (c) of the regulation requires the FPPC to select 20 local jurisdictions and, in turn, local candidates and their controlled committees within those jurisdictions to be audited. Currently, the regulation does not explicitly exclude a jurisdiction from selection for auditing even if that jurisdiction is already subject to audit by a local agency or the FPPC. The proposed amendment would expressly state that the FPPC may exclude from the selection process any jurisdiction that is subject to audit by a local agency or the FPPC.

For example, Section 83123.5 authorizes the FPPC to contract with the County of San Bernardino to undertake responsibility for the administration, implementation, and enforcement of the county's local campaign finance reform ordinance. Under its contract with the county, the FPPC is responsible for auditing local candidates and their controlled committees. If the county is selected for audit in the random drawing pursuant to Regulation 18991, the FTB technically also would be required to audit the county candidates and their controlled committees.

This risk of a duplicative audit or investigation is also apparent with regard to those local agencies with their own ethics commissions that may conduct their own mandatory audits and investigations, such as Los Angeles, San Diego, and San Francisco, among others. Staff will list the excluded jurisdictions on the FPPC website on the page where the jurisdictions selected for audit are currently posted.

The Proposed Amendments

The proposed amendments to Regulation 18996 would:

- Recodify the PRA's scope regarding mandatory audits or investigations of campaign statements or reports under Section 90001 previously contained in former Section 90002, subdivision (c);
- Strike the restatement of a provision of and cross references to former Section 90002, subdivision (c); and
- Clarify the FPPC's authority to exclude jurisdictions from selection per Regulation 18991(c) any jurisdiction that is subject to audit by a local agency or the FPPC.

Staff Recommendation

The revised regulation recodifies the scope of mandatory audits or investigations, codifies the FPPC's authority to avoid duplicative audits or investigations, and corrects errors in existing law. Staff recommends the Commission adopt the amendments to Regulation 18996.

Attachments:

- (1) Chapter 10 (Commencing with Section 90000) of the Act
- (2) Proposed Regulation 18996