



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

To: Chair Miadich, Commissioners, Cardenas, Hatch, Hayward, and Wilson

From: Dave Bainbridge General Counsel, Zachary W. Norton, Senior Counsel

Subject: Amendment of Regulation of 18419 - Sponsored Committees

Date: March 9, 2020

Introduction

Sponsored committees are primarily funded or controlled by a person, or small group of persons, and typically pursue a narrow or singular interest. As a result, the Political Reform Act¹ requires that the name of the sponsored committee identify the committee's sponsor(s) to inform the public of who is responsible for the committee's activity. The proposed amendments to Regulation 18419 address ambiguity in the rule for determining when a person qualifies as a sponsor based on the amount contributions made by the person, and make other minor changes to the existing regulation as discussed below.

Background

A recipient committee receives contributions to use for political purposes such as making contributions or independent expenditures to support or oppose candidates and ballot measures, or making contributions. All recipient committees are required to file semi-annual statements for each half of the year, whether or not they have received any contributions or made any expenditures during the six-month period covered by the statement.

In 1977, the regulated community requested that the FPPC address the problem of redundant reporting. An organization, such as a labor union or trade association, that had established a separate bank account from which to receive and make political contributions was required to report the same contributions and expenditures that its connected committee was required to report. The Commission decided to solve this problem by introducing the concept of a "sponsored" committee through regulation. If a sponsored committee engaged in political activity, then only the committee would have to report contributions and expenditures. The sponsoring organization would merely be identified in the committee's name, but would not have reporting obligations beyond the committee's reporting requirements. The Legislature subsequently codified the concept of a sponsored committee through legislation in 1985. The Act's definition of "sponsored committee" is found in Section 82048.7.

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.

Existing Law

The Act defines a “sponsored committee” as a committee, other than a candidate controlled committee, that has one or more sponsors. Any person, except a candidate or other individual, may sponsor a committee. (Section 82048.7.)

Qualification as a “Sponsor”

A person, including an entity or organization, qualifies as a committee sponsor if it:

- Provides 80 percent or more of the contributions received by the committee, either directly or from the entity or organization’s members, officers, employees, or shareholders;
- Collects contributions for the committee through payroll deductions or dues;
- Provides all or nearly all the administrative services for the committee; or
- Sets the policies for soliciting contributions or making expenditures of committee funds.

(Section 82048.7 and Regulation 18419.)

Naming Requirements

Section 84102 sets forth basic information that committee names must contain. It requires that a sponsored committee name include the name of the sponsor. One purpose of these provisions is to provide the public with clear indication of who is responsible for a committee and prevent special interest groups, which sponsor political committees, from obscuring their identity behind the committee name.²

When more than one organization meets the definition of “sponsor,” Section 84102(a) provides that:

Whenever a committee has more than one sponsor, and the sponsors are members of an industry or other identifiable group, a term identifying that industry or group shall be included in the name of the committee.

Current Regulation 18419(b)(1) restates the naming requirements for sponsored committees contained in the statute. The FPPC has interpreted the statute’s multiple sponsor provision as an exception to the general rule that the specific name of a sponsor must be included. The Act does not provide guidance regarding the appropriate “terms” which should be used to describe the industry or group affiliation of multiple sponsors.

² Scully Advice Letter, No. A-88-054.

Proposed Amendments

The proposed amendments to Regulation 18419 seek to clarify when a person qualifies as a committee sponsor under the Act based on the amount of contributions made by the person.

Under Section 82048.7(b)(1), a person who provides 80 percent or more of the contributions received by a committee is a sponsor of the committee. However, neither the statute nor existing regulation specify what time period to use to calculate the 80 percent threshold. This can lead to committees, especially those who have existed for a long period of time, not accurately reflecting a present committee sponsor.

Amended subdivision (a)(2)(A) provides that, for purpose of determining when a committee reaches the 80 percent threshold for qualification as a sponsored committee, that threshold is determined based on all contributions received by a committee in the preceding 24 months. The 24-month timeframe is consistent with the length of election cycles, and captures the most recent activity relevant in determining who qualifies as a committee's sponsor.

Further, under existing law, anytime a committee reaches the 80 percent threshold, it has ten days to amend its statement of organization to identify a sponsor. (Section 84103(a).) Rather than requiring that a committee calculate whether its contributions from a person have reached the 80 percent threshold on a rolling basis, staff recommended either of the following options:

Option 1: a committee must determine at the time of filing each campaign statement whether it has met the 80 percent threshold. This includes semi-annual, pre-election, and quarterly campaign statements.

Option 2: a committee must determine at the end of each calendar quarter, and during the 90-day period preceding an election for which the committee is required to file a pre-election campaign statement per Section 84200.5 whether it has met the 80 percent threshold.

The recommendation of the Law and Policy Committee is to adopt a modified version of one of staff's recommended amendments. While the Law and Policy Committee also recommends clarifying that the 80 percent threshold is based on contributions received in the preceding 24 months, the Law and Policy Committee's recommended option requires a committee to determine whether it has met the 80 percent threshold only at the end of each calendar quarter. This third option is reflected in the attached draft of the proposed regulation.

Other minor and technical changes include deleting obsolete language in subdivisions (a) (3) and (5), and shortened statutory and regulatory references (i.e. "Government Code section" to "Section" and from "2 Cal. Code Regs. Section" to "Regulation.")

Procedural History

The substantive amendments in the current proposal address the lack of specificity in the Act on how a committee determines if a contributor has reached the 80 percent threshold

contained in Section 82048.7(b)(1). Prior drafts of the amended regulation presented to the Commission and the Law and Policy Committee addressed other substantive issues related to identifying and naming sponsors in instances where a committee had multiple sponsors.

Specifically, the previous draft presented to the Commission for pre-notice discussion at the August 15, 2019 Commission meeting and the Law and Policy Committee on September 29, 2019 contained amendments intended to provide clarification on the naming requirements for a committee when it had multiple sponsors by defining what constituted an “industry or other identifiable group.”³

At these meetings and at an Interested Persons meeting held on October 10, 2019, representatives from the regulated community expressed general support for clarifying how the 80 percent threshold is calculated. Members of the regulated community opposed draft amendments concerning the naming of committees with multiple sponsors.

In response to concerns that the proposal would require longer committee names in those instances where a committee’s sponsors were not part of the same industry or other identifiable group, staff presented a significantly revised version of this regulation to the Law and Policy Committee at its February 5, 2020 meeting.⁴ This version sought to limit the length of names for committees with numerous sponsors by (1) limiting the number of persons who are required to be identified as sponsors, and (2) providing a broader definition of “other identifiable groups” than in prior draft amendments. Members of the regulated community expressed further concerns over the proposed amendments concerning the naming of sponsored committees. Members of the regulated community also expressed support for requiring quarterly reviews to determine whether a single contributor qualified as a sponsor by virtue of surpassing the 80 percent threshold.

The Law and Policy Committee expressed approval of the approach offered by staff in that draft of the amended regulation, but concluded the issue of naming multi-sponsor committees would best be addressed through a statutory change. The Law and Policy Committee recommend that the amended regulation be brought back to the Commission for a vote, with the amendments limited to clarifying that the 80 percent threshold would be based on the prior 24-months and calculated on a quarterly basis, and that the Commission should explore a legislative change to address issues related to naming committees with multiple sponsors. Staff agrees that the issues addressed by the previously proposed amendments concerning the determination of sponsor qualification for individuals who provide administrative services or have decision-

³ The draft regulation from the August 15, 2019 Commission meeting is available here: <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/AgendaDocuments/General%20Items/2019/August/10-1%2018419%20Sponsored%20Committee.pdf>

The draft regulation from the September 29, 2019 Law and Policy Committee meeting is available here: <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/AgendaDocuments/lawandpolicy/2019/september/18419%20Sponsored%20Committee.pdf>

⁴ The draft regulation from the February 5, 2020 Law and Policy Committee meeting is available here: <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/AgendaDocuments/lawandpolicy/2020/February/18419%20Sponsored%20Committee%20Regulation.pdf>

making authority, as well as the amendments focusing on names identifying multiple sponsors, warrant further consideration as a part of future legislative changes.

Summary

The proposed amendments seek to clarify how the 80 percent contribution threshold is calculated in determining sponsor qualification consistent with the requirements of the Act. Staff recommends the Commission adopt the amendments to Regulation 18419.

Attachment:

Proposed Regulation 18419