

**California Fair Political Practices Commission**

**MEMORANDUM**

**To:** Chairman Getman, Commissioners Downey, Knox and Swanson

**From:** John W. Wallace, Assistant General Counsel  
Luisa Menchaca, General Counsel

**Re:** Proposition 34 Regulations: Adoption of Proposed Regulation 18537.1 construing § 85317 (Carry Over of Contributions); Adoption of Proposed Regulation 18520, and Amendments to Regulations 18521, 18523, and 18523.1 Interpreting §§ 85200 and 85201 (“One-Bank-Account” Rule)

**Date:** February 28, 2002

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***I. INTRODUCTION***

At the July, August, October and December 2001, Commission meetings, the Commission considered several issues related to the carry over of campaign funds as permitted under § 85317, and the “one-bank-account” rule of Proposition 73. At the December meeting, the Commission directed staff to return to the Commission with additional optional language interpreting the scope of the carry over provided by § 85317. In addition, staff returns with language implementing the “one-bank-account” rule that was not considered at the December meeting. All of these items are being presented for adoption.

Despite the multitude of regulations in the packet before you, the decisions for which we are asking feedback at this stage fall into three basic areas. The first two are carry over decisions and redesignation decisions. Additionally, since these groups of decisions are somewhat inter-linked, we also have listed changes necessary to conform the selected version of the carry over regulation to the selected version of the redesignation regulations. These conforming decisions will need to be made last. To assist the Commission in making these decisions, we have constructed a decision tree at Appendix 3. We have also grouped the decision points as carry over decision points (CA-x), redesignation decisions points (RE-X), and conforming decision points (CONF-x), again in an effort to make the Commission’s consideration of these items easier.

## **II. BACKGROUND**

### **A. Redesignation.**

In June 1988, Proposition 73 was approved by the voters as amendments to the Political Reform Act (the “Act”).<sup>1</sup> Among other things, Proposition 73 enacted § 85201<sup>2</sup>, which required that all contributions or loans made to a candidate, or to the candidate’s controlled committee, be deposited into a single campaign bank account. This section came to be known as the “one-bank-account” rule. The important impacts of this rule are as follows:

- § 85201 provided that all contributions or loans made to a candidate, or to the candidate’s controlled committee, had to be deposited in a single campaign bank account.
- § 85201(e) provided that all campaign expenditures had to be made from the appropriate campaign bank account.
- § 85202(b)<sup>3</sup> provided that contributions deposited into the campaign account must be used only for expenses associated with the election of the candidate to the specific office which the candidate intended to seek, or expenses associated with holding that office.

The Commission further clarified these statutes in December 1988 by adopting regulations 18520, 18521, and 18522.<sup>4</sup> The November 30, 1988 memorandum concerning these regulations stated: “Proposed Regulation 18520 provides that in a statement of intention a candidate must name a particular election for a specific office. This provision furthers the purposes of the Political Reform Act and Proposition 73 by limiting an incumbent’s ability to stockpile contributions and thereby also reducing campaign expenditures by incumbents and challengers.” (Emphasis in original.)

Former regulation 18520 was disapproved by the Office of Administrative Law (OAL) as being inconsistent with the statute. The main issue of dispute was whether the regulation could be applied to candidates who raised funds in connection with elections that predated the adoption of § 85200. The Commission appealed to the Governor’s office and the Governor concurred with OAL. Thus, the regulation was never formally filed with the Secretary of State.<sup>5</sup>

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<sup>1</sup> Government Code §§ 81000 - 91014. Commission regulations appear at Title 2, §§ 18109 - 18997, of the California Code of Regulations.

<sup>2</sup> This section has been amended several times since the adoption of Proposition 73. Pertinent differences between the Proposition 73 language and the current language will be noted.

<sup>3</sup> This section has been renumbered to § 89510.

<sup>4</sup> Regulation 18521 continues to exist in the form adopted in 1988.

<sup>5</sup> While this regulation was never approved by OAL, the Commission also never took formal action to rescind this regulation. The old disapproved 18520 will be considered rescinded by this Commission with the adoption of new regulation 18520. We have attached the old version of the regulation at Appendix 2.

However, the issues addressed in the regulation became the policy of the Commission in providing advice based on the construction of the statutory language.<sup>6</sup>

Numerous other regulations were also enacted in order to effectuate this rule. These include:

- Regulation 18521. Establishment of separate controlled committee for each campaign account.
- Regulation 18523. Nondesignated contributions or loans.
- Regulation 18523.1. Written solicitation for contributions.
- Regulation 18524. Investment and expenditure of candidates' campaign funds.

As conceived, Proposition 73 prohibited a candidate from transferring contributions directly or indirectly among his or her various campaign bank accounts. In essence, this created a closed system whereby the finances of each election were segregated from those of all other elections, to make them more easily monitored and traced by the Commission and the regulated public.

On September 25, 1990, the United States District Court in *Service Employees International Union, AFL-CIO, et al. v. Fair Political Practices Commission* invalidated portions of the Act added by Proposition 73, including the ban on inter and intra-candidate transfers. However, the "one-bank-account" rule survived and continues to prohibit more than one bank account per election.

However, in light of the federal court's invalidation of the intra-candidate transfer ban, staff advised that "redesignation" was permitted. The logic supporting redesignation was simply that since § 85201 and regulation 18521 continued to require a separate campaign bank account for each election to a specific office, and since the ban on intra-candidate transfers was invalidated, redesignation allowed the candidate to avoid the procedural steps of opening a new committee and a new bank account and having to transfer funds from the old committee to the new committee (with attendant committee and bank account number changes). Rather, the candidate could leave the funds where they were and simply "redesignate" the existing committee and bank account for the new election. This way, by simply amending the campaign bank account statement and the statement of organization, the candidate could avoid having to physically move the funds, and could proceed with his or her campaign for the next election for the same office.

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<sup>6</sup> The old regulation 18520 consisted of four subdivisions. The first subdivision dealt with application of § 85200 to pre-Proposition 73 committees (pre-1989), an issue that is now moot. Subdivision (b) defined the "statement of intention" to be a candidate. Subdivision (c) allowed statements of intention to be filed for multiple offices concurrently. The last subdivision set a duration or life span for the statement of intention that ended with the termination of the committee pursuant to § 84214. All of these are current advice without regulatory language.

## B. Carry Over

If the “one-bank-account” rule in the context of “per election” contribution limits creates a closed system with respect to fundraising and expenditure of funds, new § 85317 creates a gap in this system. Effective January 1, 2001, Proposition 34 amended the Political Reform Act to add two statutes which specifically permit candidates to move campaign funds among their own committees. Section 85306, as amended by Senate Bill 34, provides:

“(a) A candidate may transfer campaign funds from one controlled committee to a controlled committee for elective state office of the same candidate. Contributions transferred shall be attributed to specific contributors using a ‘last in, first out’ or ‘first in, first out’ accounting method, and these attributed contributions when aggregated with all other contributions from the same contributor may not exceed the limits set forth in Section 85301 or 85302.

“(b) Notwithstanding subdivision (a), a candidate for elective state office, other than a candidate for statewide elective office, who possesses campaign funds on January 1, 2001, may use those funds to seek elective office without attributing the funds to specific contributors.

“(c) Notwithstanding subdivision (a), a candidate for statewide elective office who possesses campaign funds on November 6, 2002, may use those funds to seek elective office without attributing the funds to specific contributors.”

Section 85317, as amended by Senate Bill 34, provides:

“Notwithstanding subdivision (a) of Section 85306, a candidate for elective state office may carry over contributions raised in connection with one election for elective state office to pay campaign expenditures incurred in connection with a subsequent election for the same elective state office.”

The Commission is confronted with defining the scope of § 85317, as well as harmonizing § 85317 with the limiting language of § 85306 and the overall contribution limit scheme of Proposition 34.

### ***III. SPECIFIC REGULATORY CHANGES***

#### **A. Carry Over**

Defining the scope of the “carry over” provision in § 85317 continues to be difficult. Section 85317 permits contributions to be carried over without limit and without attribution of contributions to specific contributors. This rule differs dramatically from the general transfer provision in Proposition 34 that allows transfer of campaign funds among a candidate’s own committees, but these transfers are only permitted with attribution. Attribution ensures that no contributor may exceed the applicable contribution limit. Thus, the issue raised by § 85317 is under what circumstances should carry over of funds be allowed without attribution to specific contributors.

At prior Commission meetings, two versions of interpretative regulation 18537.1 were considered. Under the first option, funds raised in a primary election could be carried over to the general election since these were elections to the “same office” as contemplated by the Act. The second version presented a more expansive construction of the statute. It allowed the “carry over” of contributions, without attribution, from any committee established for an election to state elective office to a committee established for the subsequent election to the same office. The Commission agreed with neither approach.

In an effort to gain consensus on this matter, staff explored variations on the two options initially proposed. Thus, staff has returned with a new version, **Option C**. Staff had two goals in mind in developing **Option C**. First, staff continues to believe that the ultimate goal is to effectuate the intent of the voters. Second, staff attempted to more faithfully apply the literal language of the statute itself. **Option C** appears to accomplish both these goals. However, both **Options A** and **B** also return for the Commission’s consideration. The options work as follows:

#### **DECISION POINT CA-1**

**Option A:** **Option A** recognizes that § 85317 allows the “carry over” of contributions to a “subsequent election for the same elective state office.” Under this option, funds raised in a primary election may be carried over to the general election for the same office, and funds raised in a special primary election may be carried over to a special general election for the same office. Note that SB 34 amended § 85318 to expressly allow separate committees and bank accounts for both the primary and the general election for the same term of office. Additionally, Proposition 34 provides separate contribution and expenditure limits for primary and general elections. (See also § 85314, expressly providing that a special primary elections and special general elections are separate elections; and § 82022, which provides: “ ‘Election’ means any primary, general, special or recall election held in this state. The primary and general or special elections are separate elections for purposes of this title.”)

**Option A** takes the narrow view that “subsequent” election refers to the general election, after the primary. This approach recognizes that the specified elections are elections to the “same elective office” consistent with the proposed interpretation of the “one-bank-account” rule in regulation 18520. Thus, funds raised in a primary election may be carried forward to the associated general election because they are both elections for the same elective state office. Similarly, funds raised in a special primary election may be carried over to a special general election for the same office for the same reason. In addition, a new subdivision (b) has been added to clarify the purpose for the definitions set forth in subdivision (a).

**Differences from the Noticed Version:** In the first sentence of subdivision (b), the term “transfer” was changed to “movement.” This is a change without substantive effect. It was intended merely to avoid creating confusion between the concepts of “transfer” as allowed under § 85306, and “carry over” as permitted under § 85317.

**Option B:** **Option B** reflects a broader reading of the statute, which would allow carry over in any case where a candidate is running for a subsequent term to the same elective state office. While this construction is supported by the statutory language, it appears inconsistent with the overall intent of the proposition to limit campaign contributions on a per election basis. “Proposition 34 brings strict contribution limits to every state office.” (Ballot Pamp., Gen. Elec. (November 2000) argument in favor of Prop. 34 at p. 16.)

In addition, § 85317 is an exception to the general rules permitting transfers with attribution. Therefore, it should be construed narrowly (*Julius Goldman’s Egg City v. Air Pollution Control District of Ventura County* (1981) 116 Cal.App.3d 746).

**Differences from the Noticed Version:** In the first sentence of subdivision (a), the term “transfers” was changed to “movement” for the same reason noted above in **Option A**. Similarly, a new sentence was added to the end of subdivision (b) to deal with circumstances where funds are “carried over” by virtue of redesignation of a campaign committee (decision point CONF-1). This language is only necessary if redesignation is permitted for candidates for state elective office.

Additionally, in subdivision (b), the reference to “re-election of that candidate to the same elective state office” has been changed to “next election of that candidate to the same elective state office.” This would allow challengers to “carry over” leftover funds, and thereby reduce incumbent advantage.

Finally, new subdivision (c) deals specifically with the carry over of campaign funds where a candidate withdraws from an election prior to an election being held. The Commission has an option to require that such funds not be “carried over,” but be transferred with attribution pursuant to § 85306, or to allow “carry over,” but only after the election occurs. (Decision Point CA-1.)

**New Option C:** **Option C** is a new version, never before considered by the Commission. Similar to **Option B** above, it would allow carry over in any case where the candidate runs for the next election to the same elective state office. However, unlike **Option B**, this option contains several limitations.

- (b)(1) The funds to be “carried over” are held in a campaign bank account/campaign committee established for an election to elective state office occurring on or after January 1, 2001, or for candidates for statewide elective office, for an election occurring on or after November 6, 2002. This is consistent with the Commission’s treatment of other Proposition 34 requirements, such as § 85316’s net debt limit. (See, August 27, 2001, Memorandum to the Commission regarding Treatment of Outstanding Debt (§ 85316) -- Adoption of Proposed Regulation 18531.6.)
- (b)(2) The campaign bank account/campaign committee that is holding the funds to be “carried over” was established for an election that has already been held. This requirement is consistent with the apparent purpose for the “carry over” provision, to deal with leftover funds after an election, and the federal rules on which the “carry over” provision was based.<sup>7</sup> (See, December 4, 2001, Letter from The Honorable John L. Burton, President Pro Tempore of the California State Senate.)
- (b)(3) The campaign bank account/campaign committee that is holding the funds to be “carried over” does not have “net debt outstanding.” A committee cannot “carry over” funds if the committee has net debt outstanding.
- (b)(4) The funds to be “carried over” are not considered “surplus campaign funds” as defined in Government Code § 89519. Pursuant to § 89519, funds become surplus “[u]pon leaving any elected office, or at the end of the postelection reporting period following the defeat of a candidate for elective office, whichever occurs last...”<sup>8</sup>

Finally, subdivision (d) deals specifically with the carry over of campaign funds where a candidate withdraws from an election prior to an election being held [**DECISION POINT CONF-1**]. This provision is discussed in **Option B**, above.

**Differences from the Noticed Version:** **Option C** is a new option that was not noticed. However, since it was a variation of (and middle-ground between) the two noticed options, staff

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<sup>7</sup> See, Appendix 4 for excerpts from Federal Election Commission’s Campaign Guide for Congressional Candidates and Committees. At the December Commission Meeting, staff was asked for a discussion of the effect of federal law on the Commission’s interpretation of state campaign law. State law is not preempted by federal law unless the state law actually conflicts with the federal law such that compliance with both would not be possible. The question before the Commission in this memorandum is purely a question of the scope of state law. While the Commission may wish to look to the federal law for guidance, it is not bound to do so.

<sup>8</sup> Campaign funds may be used only to: (1) pay outstanding campaign debts or elected officer’s expenses; (2) repay contributions; (3) donate to charity (with certain limitations); (4) contribute to a political party committee (with certain limitations); (5) contribute to candidates for federal office or out-of-state candidates, or any ballot measure; (6) pay for professional services reasonably required by the committee to assist in the performance of its administrative functions (attorney’s fees, etc.); (7) pay for an electronic security system (with certain limitations).

believes it is within the scope of the original notice.

**Staff Recommendation:** Staff continues to recommend **Option A**, which is a more narrow interpretation of the terms used in the statute and is most consistent with the overall contribution limit scheme of Proposition 34. Staff prefers this option because it best reflects the apparent intent of the voters without impacting the closed system created by the per election limits of Proposition 34. While Proposition 34 expressly contemplates that candidates may move funds among their own committees, the method most consistent with the purposes of Proposition 34 is by means of transfer and attribution. Section 85317, being an exception to that preferred rule, should be construed narrowly.

However, if the Commission believes this approach to be too narrow, staff believes that **Option C** is a viable alternative and is sufficiently narrow to prevent wholesale repudiation of the per election scheme of Proposition 34. If Option C is selected staff recommends that candidates that withdraw from an election not be permitted to carry over funds without attribution. Rather, the rule for these candidates should be that they must transfer with attribution. The rationale for the carry over rule is that the funds raised for an election (win or lose) have not been expended. These funds then may be used for a future election. In the case where a candidate withdraws from an election, no funds (or little) may have been expended on the first instance and the carry over without attribution may distort the contribution limits of the next election. It also invites abuse by candidates that may establish a committee solely to raise funds for a subsequent election. The candidate can then withdraw from the election, carry over all the funds and solicit contributions from all the same contributors. Transfer with attribution avoids this potential abuse.

## **B. Redesignation**

As noted above, the Commission has allowed the redesignation of committees by candidates for state and local elected office. However, this “redesignation” rule has never been codified. Proposed changes to two regulations would allow the Commission to codify the rule or repudiate it.

- **Regulation 18520 (decision point RE-1):** New regulation 18520 codifies the requirement of § 85200 of Proposition 73 that candidates must file a statement of intent to be a candidate for each specific term of office for which they intend to run. The new regulation expressly states that “specific office” means each specific term of office. Consequently, an assembly member elected to a two-year term would be required to file a new statement of intent for his re-election to another two-year term in the Assembly. This is the existing rule. The same rule and this regulation apply to local elected officers. As noted previously, adoption of the new rule revokes the old version of the regulation that was never enacted into law.



**Differences from the Noticed Version:** Other than minor nonsubstantive changes made by the Commission at the December 2001, Commission meeting, this regulation is the same as the noticed version.

- **Regulation 18521:** Regulation 18521 implements the one bank account rule. Two new subdivisions have been added to this regulation as bracketed options. Subdivision (b) would allow redesignation of campaign bank accounts by state elected officers (**decision point RE-2**). Subdivision (c) provides a similar rule for local elected officers (**decision point RE-3**). Inclusion of these two sections as decision points allows the Commission to either retain or repudiate the redesignation rule.

In addition, should the Commission decide to allow redesignation, within each subdivision are provisos which the Commission may consider and modify. With respect to subdivision (b), the requirements for redesignation will take different forms depending on which version of the “carry over” regulation is selected. The two versions are the same in substance since in either case the basic requirements are the same, either by express listing of the requirements or a cross-reference to the “carry over” requirements within a shorter list. (**Decision point CONF-2**.) The factors are:

- (1) The bank account/committee to be redesignated was established (or has already been redesignated) for an election to elective state office occurring on or after January 1, 2001 (or for candidates for statewide elective office, for an election occurring on or after November 6, 2002). This requirement is imported from the “carry over” regulation. As noted above, this is consistent with the Commission’s treatment of other Proposition 34 requirements, such as § 85316’s net debt limit. (**Decision point RE-2a**.)
- (2) The campaign bank account/campaign committee to be redesignated does not have “net debt outstanding.” See “carry over” discussion above. (**Decision point RE-2b**.)
- (3) Any funds in the campaign bank account are not considered “surplus campaign funds” as defined in § 89519. (**Decision point RE-2c**.)
- (4) and (5) are simply filing requirements that are consistent with current advice. (**Decision point RE-2d and 2e**.)

Subdivision (c) is a codification of current advice and would apply to all other elected officers (local). The current requirements for redesignation are: (1) the future election is for the same elective office; (2) the funds in the campaign bank account/committee are not “surplus campaign funds” as defined in § 89519; (3) the candidate files a new statement, signed under penalty of perjury, of intention to be a candidate for the specific future election; and (4) the candidate amends the Statement of Organization for the committee to reflect the redesignation for the future election. (**Decision points RE-3a - 3d**.)

If the Commission decides to repudiate the redesignation rule, subdivisions (b) and (c) will simply be deleted.

**Differences from the Noticed Version:** Several minor nonsubstantive changes were made by the Commission at the December 2001 Commission meeting. Original subdivision (b) has been deleted as redundant of the express language of § 85318. It provided: “Candidates for elective state office may establish separate campaign committees and bank accounts for the primary and general elections or special primary and special general elections, but are not required to do so.” New subdivisions (b) and (c) are discussed above.

**Staff Recommendation:** From an enforcement perspective, staff favors a literal application of the “one-bank account” rule. While it can be argued that separate accounts/committees are too rigid a structure and will require the making of additional transactions between accounts, it will encourage treasurers to account for each transaction at the time it occurs and will create a clear audit trail. If one bank account/committee is permitted for multiple purposes, compliance with the various provisions of Proposition 34 (contribution limitations, expenditure ceilings, post election fundraising, etc.) becomes a matter of bookkeeping entries, which for the most part, will not be disclosed on any public campaign statement. Separate accounts/committees, on the other hand, will require the maintenance of a separate account for each purpose, a clear audit trail of funds between accounts and public disclosure of the activity in each account. Each contribution will be deposited into the proper account and expenditures for that same purpose will be made from that account. The public will be able to determine how much was raised for each type of account, how much was spent and how much is on hand.

Staff recommends that candidates be required to open new bank accounts and controlled committees for election to each term of office. Proposition 34 is organized entirely around a “per election” scheme. Therefore, requiring a separate account and controlled committee per election will harmonize with the overall scheme of Proposition 34 and the other regulations being drafted to implement Proposition 34.

### **C. Other Redesignation/“One Bank Account” Amendments.**

- **Regulation 18523, decision point RE-4):** Regulation 18523 has been amended and reformatted into three separate subdivisions for ease of use. In subdivision (a), language has been inserted to clarify that when allocating contributions or loans received by a candidate which are not designated for a particular controlled committee, the candidate may allocate the contribution to any of his or her controlled committees, but only to the extent allowed under applicable law (including the contribution limits in §§ 85301 and 85302, as well as regulation 18531). Subdivision (b) has been amended to clarify the existing language.

**Differences from the Noticed Version:** Several minor nonsubstantive changes were made, including the addition of a clarifying introductory phrase in subdivision (a) and the addition of a cross reference to regulation 18531 to the last line of subdivision (a). Both of these changes were made to clarify the scope of this regulation in relation to other contribution receipt and return rules.

- **Regulation 18523.1:** Regulation 18523.1 sets out the disclosure requirements applicable to written solicitations for contributions. The existing language of the regulation has been retained as subdivision (a). A new subdivision (b) has been added specifically listing the requirements applicable to candidates for elective state office. These requirements include identification of the particular controlled committee for which the contribution is solicited, the specific office, the specific term of office, as well as disclosure as to whether the contribution is being solicited for a primary or general election, or a special or special runoff election, and the applicable contribution limits.

There are two **decision points** for the Commission's consideration:

**Decision point RE-5** addresses an issue raised at the October Commission meeting where concern was expressed that the requirement that candidates state in their solicitation for contributions that contributors designate their contributions for a specific committee could be construed as a rule prohibiting the use of nondesignated contributions. The opinion was expressed that candidates should be able to designate contributions themselves, so long as the applicable contribution limits were not violated.

**Decision point RE-5a**, as noted above, requires disclosure of whether the candidate is raising funds for a primary or general election, or both.

**Differences from the Noticed Version:** Minor changes have been made to the structure of the regulation to better delineate the separate requirements applicable to candidates for state elected offices and local offices.

**Staff Recommendation:** Staff recommends adoption of the clarifying changes to regulation 18523. With respect to regulation 18523.1, staff also recommends adoption of the changes. However, Staff recommends against the inclusion of the language at **Decision point RE-5** (both in subdivision (a) and (b)(2)). The requirement, while existing law, has no impact on whether a candidate may accept the contribution or whether the contributor may make it. Pursuant to regulation 18523, a candidate may accept undesignated contributions and allocate them to any committee consistent with the limits applicable to the committee. Consequently, the requirement becomes a technical violation that serves no significant purpose under the Act and staff agrees that it should be eliminated.

Staff recommends that the requirement at **decision point RE-5a** be retained. Such information on the solicitation is useful for both the contributor and the candidate in complying with the Act. Since, in many cases, candidates will use the same committee for both the primary and general election (§ 85318), the contribution will need to be identified on the candidate's campaign reports as a contribution for the primary or general election.

Attachments

Appendix 1: Draft regulations -- Carry Over

Appendix 2: Draft regulations -- Redesignation and Disapproved 18520

Appendix 3: Decision Tree

Appendix 4: Excerpts from Federal Elections Commission Campaign Guide for  
Congressional Candidates and Committees

1 Adopt 2 Cal. Code Regs. Section 18537.1:

2 **18537.1. Carry Over of Contributions.** [DECISION POINT CA-1; OPTION A]

3 (a) For purposes of Government Code section 85317, “subsequent election for  
4 the same elective state office” refers to:

5 (1) The “general election” as defined in Elections Code section 324, which is  
6 subsequent to and connected to the “primary election,” as defined in Elections Code  
7 section 341.

8 (2) The special general election, which is subsequent to and connected to the  
9 special primary election.

10 (b) For purposes of Government Code section 85317, “carry over” refers to the  
11 movement of funds between a candidate’s primary or special primary election committee  
12 to the candidate’s general or special general election committee without attribution as  
13 required by Government Code section 85306(a).

14 NOTE: Authority cited: Section 83112, Government Code.

15 Reference: Sections 85200, 85201, 85306 and 85317, Government Code.

1 Adopt 2 Cal. Code Regs. Section 18537.1:

2 **18537.1. Carry Over of Contributions.** [DECISION POINT CA-1; OPTION B]

3 (a) For purposes of Government Code section 85317, “carry over” refers to the  
4 movement of funds between a candidate’s own controlled committees without attribution  
5 as provided by Government Code section 85306(a).

6 (b) Contributions raised by a candidate in connection with any election to  
7 elective state office may be carried over and deposited into a campaign bank account  
8 established for the next election of that candidate to the same elective state office and  
9 may be used for campaign expenditures incurred in connection with that subsequent  
10 election. [DECISION POINT CONF-1] [The term “carry over” also includes campaign  
11 funds held in a candidate’s controlled committee that is redesignated for a subsequent  
12 election to the same elective state office pursuant to 2 Cal. Code Regs. section 18521.]

13 [DECISION POINT CA-2] (c) A candidate that withdraws from an election  
14 prior to an election being held [may] [may not] “carry over” campaign funds. [Campaign  
15 funds may be transfered with attribution pursuant to Government Code section 85306].

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17 NOTE: Authority cited: Section 83112, Government Code.

18 Reference: Sections 84214, 85200, 85201, 85306 and 85317, Government Code.

1 Adopt 2 Cal. Code Regs. Section 18537.1:

2 **18537.1. Carry Over of Contributions.** [DECISION POINT CA-1; OPTION C]

3 (a) For purposes of Government Code section 85317 and this regulation, “carry  
4 over” refers to the movement of campaign funds to the candidate’s controlled committee  
5 established for a subsequent election to the same elective state office without attribution  
6 as required by Government Code section 85306(a). [DECISION POINT CONF-1]  
7 [The term “carry over” also includes campaign funds held in a candidate’s controlled  
8 committee that is redesignated for a subsequent election to the same elective state office  
9 pursuant to 2 Cal. Code Regs. section 18521.]

10 (b) Campaign funds are available to be “carried over” pursuant to Government  
11 Code section 85317 and this regulation only if all of the following apply:

12 (1) The funds to be “carried over” are held in a campaign bank account/campaign  
13 committee established (or redesignated) for an election to elective state office occurring  
14 on or after January 1, 2001, or for candidates for statewide elective office, for an election  
15 occurring on or after November 6, 2002;

16 (2) The campaign bank account/campaign committee that is holding the funds to  
17 be “carried over” was established for an election that has already been held;

18 (3) The campaign bank account/campaign committee that is holding the funds to  
19 be “carried over” does not have “net debt outstanding” as defined in 2 Cal. Code Regs.  
20 section 18531.6(d). A committee cannot “carry over” funds if the committee has net debt  
21 outstanding at the time of carry over; and

22 (4) The funds to be “carried over” are not considered “surplus campaign funds”  
23 as defined in Government Code section 89519.

1           (c) “Subsequent election for the same elective state office” means the election to  
2 the next term of office immediately following the election/term of office for which the  
3 funds were raised.

4           **[DECISION POINT CA-2]** (d) A candidate who withdraws from an election  
5 prior to an election being held may [not “carry over” campaign funds, but may transfer  
6 with attribution pursuant to Government Code section 85306][“carry over” campaign  
7 funds in compliance with subdivision (b) above. The candidate must wait until after the  
8 election occurs].

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10 NOTE: Authority cited: Section 83112, Government Code.  
11 Reference: Sections 84214, 85200, 85201, 85306, 85316 and 85317, Government Code.