

California State Auditor

B U R E A U O F S T A T E A U D I T S

Fair Political Practices Commission:

**Although It Follows the Law,
Improvements Are Needed in
Enforcement and Technical
Assistance**



May 1998
98105

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May 28, 1998

98105

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the Fair Political Practices Commission (commission). This report concludes that the commission's regulations and advice reasonably interpret the Political Reform Act of 1974 (act). However, the commission's decision process for investigating complaints is flawed. Because of this flaw, the commission may inconsistently enforce similar violations of the act.

Further, the commission could improve customer service by obtaining more information on customer needs. Also, the commission's strategic plan lacks meaningful goals, objectives, and performance measures to determine if it is successfully meeting its mission. Finally, we noted that the act's dollar limits for disclosures of and restrictions on activities of public officials, some set as early as 1974, are low and may restrict normal and reasonable activities of public officials.

Respectfully submitted,

KURT R. SJOBERG
State Auditor

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Summary



Audit Highlights . . .

The Fair Political Practices Commission reasonably interprets the Political Reform Act. However, its enforcement activities and customer service need improvement. Our review disclosed that the commission:

- ✓ *Uses staff availability as a factor for deciding to investigate complaints, which results in inconsistent enforcement actions and may give the appearance of bias.*
- ✓ *Investigates few FTB audits, even though these audits contain substantiated violations of the act.*
- ✓ *Needs to better manage its enforcement activities by prioritizing cases and increasing its monitoring of staff.*
- ✓ *Lacks information on the service needs of its customers which hinders its ability to fulfill those needs.*

We also observed that the dollar limits in the act, designed to restrict activities of public officials and trigger disclosures, are unreasonably low, have not kept pace with inflation, and can be manipulated to benefit unscrupulous third parties.

Results in Brief

Our review found several problems with the State's Fair Political Practices Commission (commission), particularly in its enforcement division.

While the commission reasonably interprets the Political Reform Act of 1974 (act)—a disclosure law for elected and appointed officials and lobbyists—the commission's enforcement division does not open and close cases strictly on the merit of the complaints.

We did not find any indications of bias in how cases are addressed. Nevertheless, the commission has left itself open to such charges because similar cases are often handled inconsistently; some are prosecuted while others go unaddressed.

The commission could improve customer service by learning more about the needs of individuals it regulates and by simplifying its forms and instructions. The commission's strategic plan also has few goals and performance measures allowing it to evaluate its effectiveness in enforcing the act.

Specifically, the commission's enforcement division often lets staff availability dictate whether it investigates certain complaints. When staff are not available (the enforcement division says it is often short of staff but has not documented this problem) the enforcement division will close or not assign some valid complaints and does not prosecute some violations equally. The enforcement division also has no way of prioritizing complaints based on severity and importance and it is not sufficiently documenting reasons for opening or not opening investigations of complaints and the actions taken during investigations.

We also noted that the enforcement division often delays referring complaints for investigation and delays conducting the investigations. These delays can result in loss of evidence and make enforcement impossible because a four-year statute of limitations has expired.

Further, we found that the commission did not follow up on approximately 600 instances when public officials failed to properly disclose 1997 financial interests. As a result, it cannot be determined if the public officials who filed these forms have conflicts of interest between their personal financial interests and their government positions.

The Franchise Tax Board (FTB) is responsible for auditing most political campaigns and lobbyists and refers substantiated act violations to the commission. But because of inaction by the enforcement division, which believes many violations found in the audits fail to rise to the level of prosecution, the FTB's efforts are not as cost-beneficial as they could be: The enforcement division only investigated 87 of 712 audits referred to it over a five-year period. The enforcement division closed an additional 259 audits while taking no action at all. If the division would have taken the initiative to better direct FTB's efforts, some of the \$1.1 million spent on the 259 audits that were ultimately closed could have been avoided.

We also determined that another branch of the commission, the technical assistance division, is not monitoring the work of the vast majority of the state filing officers responsible for collecting disclosure statements.

However, we did find that through its regulations and advice letters, the commission's legal division's interpretations of the act are generally consistent with the law's intent (though the legal division lacks management tools to help it operate more efficiently). Furthermore, a substantial portion of the commission's recent regulations are the result of changes in the law.

Finally, the act itself has unrealistic limits. We found that the act's current dollar limits for disclosures and restrictions of public officials—some set as early as 1974—are low and may create unfair situations restricting normal and reasonable activities of public officials. These low dollar limits may also have another undesirable effect in that they allow unscrupulous third parties, for as little as \$300, to manipulate conflict-of-interest laws to their benefit. As a result, opposing public officials can be disqualified from voting on matters that would benefit these third parties.

Recommendations

To help ensure the consistency of its enforcement activities, the Fair Political Practices Commission (commission) should decide whether to investigate complaints based only on merit and prioritize the complaints that it investigates. If the commission learns that it has insufficient staff to investigate complaints, it should use this information to request additional staff for the enforcement division.

To ensure that audits of campaigns, candidates, and lobbyists are cost-beneficial, the commission should work with the Franchise Tax Board to decide which violations and dollar levels warrant enforcement action. The commission should then vigorously pursue enforcement actions.

To improve the efficiency and consistency of its operations, the commission should develop general guidelines for investigative and enforcement actions. It should also develop a process to track the statute of limitations on the complaints it assigns for investigations.

The commission should obtain more customer feedback to ensure that its efforts to educate and assist customers are effective. By involving more users to review new and amended forms, the commission could obtain better insights on how to simplify its forms and instruction manuals.

To measure the effectiveness of its enforcement activities, education and outreach efforts, and legal analysis, the commission needs to develop meaningful goals, objectives, and performance measures.

The commission should propose legislation to establish higher, more reasonable dollar disclosure and restriction limits. In determining these limits, the commission should consider inflation and other factors that will result in more reasonable dollar limits.

Agency Comments

In its response, the commission generally concurs with our findings and recommendations, and believes that our audit was beneficial. However, it believes that the decision whether to investigate complaints must be based on staff availability, otherwise the commission may prevent private citizens from bringing their own civil suits against violators of the act. The commission also believes that it may not be able to implement some of our recommendations without increased funding.

Introduction

Background

The Fair Political Practices Commission (commission) was established by the Political Reform Act of 1974 (act). It consists of five members appointed by state-elected officials. The governor appoints the chairman and one other member, while the attorney general, the secretary of state, and the state controller each appoint an additional member to the commission. The commission is unique in its independence from the legislative and executive branches of state government.

The commission is responsible for enforcing the act and its amendments. However, three other state departments also perform duties under the act. The act requires the Franchise Tax Board (FTB) to audit campaign disclosures of political committees, lobbyists, and state and local candidates. Some of these audits are selected randomly and others are based on whether contributions or expenditures exceed certain dollar amounts. Because the commission has primary responsibility for administering the act, it selects the random sample of these audits. The FTB then performs the audits and, since it has no enforcement responsibility under the act, refers any violations it finds to the commission for enforcement. In addition, the FTB sends violations of state and local campaigns to the attorney general and local district attorneys. The secretary of state maintains a central file of disclosures for statewide political candidates, committees, and lobbyists, while the attorney general prosecutes criminal violations of the act.

The Act's Intent

The act's intent is to ensure full and truthful disclosure of campaign finances, as well as assets and income of public officials who may be affected by their official actions or cause a conflict of interest, to remove laws and practices that unfairly favor incumbents, to regulate activities of lobbyists and to require disclosure of their finances, and to ensure that the state ballot pamphlet contains useful and adequate information for voters.

To meet its responsibilities under the act, the commission adopts and amends regulations. It also develops required forms, prepares manuals and instructions, provides written and verbal advice, aids agencies and public officials with record keeping and reporting, and maintains a central file of economic interest statements for certain state and local officials. The commission also investigates possible violations of the act, imposes sanctions against violators, and assists state and local agencies in developing conflict-of-interest codes.

The commission's staff is organized into four divisions: enforcement, legal, technical assistance, and administration. The enforcement division investigates and prosecutes violations of the act. The legal division interprets the act by developing regulations and giving advice on specific sections of the act. It also represents the commission in litigation. The technical assistance division trains and assists those governed by the act and maintains the central file of economic interest statements for public officials required to file with the commission. Finally, the commission's budget, business services, data processing, and personnel functions are directed by the administration division.

For fiscal year 1997-98, the commission's budget is approximately \$6.1 million and it has 81 budgeted positions. Its budget is allocated from the State's General Fund. When the commission was established in 1975, it had an annual budget of \$1.1 million. Since then, its expenditures have increased at an average annual rate of 8.5 percent per year mostly because of program changes from new legislation and ballot measures. For example, Proposition 73, passed by the voters in 1988, increased funding by approximately \$1.4 million to implement new provisions to the act. In contrast, expenditures of most other state agencies grew at an average annual rate of 9.6 percent since fiscal year 1975-76.

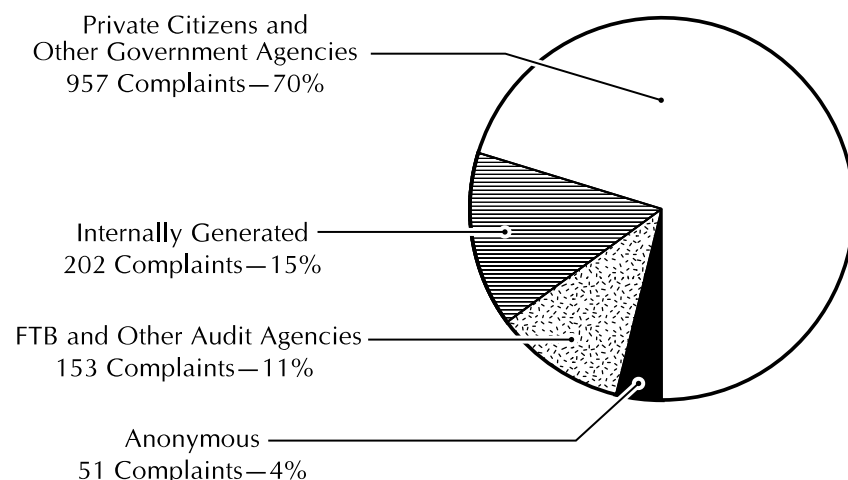
In 1996, voters passed an amendment to the act, the California Political Reform Act of 1996 (known as Proposition 208), which became effective January 1, 1997. Proposition 208 limited campaign contributions and established voluntary spending limits for all candidates. However, several organizations challenged its constitutionality and filed suit against the commission. In January 1998, a federal district court ruled that certain parts of Proposition 208 were unconstitutional and issued a preliminary injunction barring the commission from enforcing the proposition. The commission is appealing the ruling, but cannot enforce Proposition 208 before the matter is resolved.

Overview of the Commission's Investigative and Enforcement Process

As previously mentioned, the commission's enforcement division (division) investigates and prosecutes alleged violations of the act. The division has 30 investigators, attorneys, and support staff. Examples of violations include concealing campaign contributions by making them through third parties (known as "money laundering"), failing to report contributions, or voting on a matter to obtain a personal benefit. The division regards money laundering as the most serious violation, followed by conflicts of interest, and problems with campaign statement filings.

The division receives complaints of alleged violations from private citizens, anonymous parties, government agencies, and other audit agencies, including the FTB. The division's staff also generate internal complaints that initiate investigations to look for patterns of campaign money laundering. In addition, staff may begin an investigation after noting potential violations through reading newspaper articles. For example, staff initiated one investigation after reading that a local official did not disclose his wife's extensive business holdings. The figure below shows the sources and number of complaints received during 1996 and 1997.

Figure 1
Sources of Complaints for 1996 and 1997



After receiving a complaint, division staff initially evaluate the complaint to determine how to proceed. The division then takes one of four actions: performs preliminary work to determine if an investigation is warranted, opens an

investigation, sends a letter of warning or request for compliance, or takes no action. If the division decides to investigate a complaint, an investigator and attorney are assigned to the case. Instead of investigating the complaint, the division may send a warning letter to the violator or request that the violator amend his or her filings to comply with the law. Otherwise, the complaint is closed and no further action is taken.

The division usually resolves an investigation in one of two ways. If the investigator does not find sufficient evidence of a violation or if the violation is substantiated but not considered significant, the division will close the investigation without taking an enforcement action against the violator. When the investigation is substantiated with significant findings, the division will begin enforcement action against the violator. The division sometimes issues warning letters to violators, but for more serious offenses, it generally takes an administrative action. With an administrative action, the division may levy fines of up to \$2,000 per violation. Most investigations involve more than one violation; therefore, the total fines levied are usually greater than \$2,000. The division can also take a civil action against a violator, but rarely does because it involves a large commitment of staff time.

Scope and Methodology

The Joint Legislative Audit Committee asked that we review the economy and efficiency of the Fair Political Practices Commission's (commission) operations, its use of regulations, and its expenditures. To understand the commission's responsibilities, we reviewed state laws and regulations relevant to its activities. In addition, we interviewed commission staff and reviewed its manuals and procedures. We also assessed the commission's strategic plan and whether the commission had developed reasonable goals, performance measures, and benchmarks to measure how well it is achieving its mission.

To determine the efficiency and effectiveness of its enforcement efforts, we analyzed the commission's process for investigating alleged violations of the act. Specifically, we studied closed cases to determine if the commission investigates alleged violations promptly. Further, we evaluated if the decisions to close cases were appropriate. We also examined enforcement actions to determine if the commission consistently and equitably applied the law.

We also evaluated the methods that the commission uses to inform and educate those regulated by the act. Accordingly,

we reviewed the effectiveness of the commission's seminars, manuals, instructions, and advice provided to ensure compliance with the act.

In addition, we assessed the commission's duties as filing officer for the statements of economic interests that it receives. Therefore, we examined how the commission handles statements that it determines are not filed on time or are incomplete, and we reviewed how it monitors local filing officers.

To determine if commission regulations are consistent with the law, we examined a sample of regulations and assessed its process to develop and implement regulations. We also reviewed the advice-letter process and tested a sample of recent advice letters to determine if the commission reasonably applied the act and regulations to factual situations. Finally, we assessed the dollar limits on disclosures and restrictions contained in the act for reasonableness.

To analyze the appropriateness of the commission's expenditures, we obtained accounting reports for fiscal years 1992-93 through 1996-97 and compared expenditures among fiscal years. Our analysis is contained in the appendix of this report.

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Chapter 1

The Fair Political Practices Commission Needs to Improve Its Enforcement Activities

Chapter Summary

Weaknesses in the enforcement efforts of the Fair Political Practices Commission (commission) may lead to inconsistencies in prosecutions and make the commission vulnerable to charges of bias. Specifically, rather than deciding whether to investigate only on the merits of complaints, the enforcement division (division) uses staff availability as one of the main factors when deciding to investigate complaints. This flaw may result in valid complaints not being investigated and precludes the creation of any backlogs. Another consequence is that cases involving similar violations may have different outcomes. Further, the division investigates only a small portion of the political campaign audits conducted and referred to it by the Franchise Tax Board (FTB) because the division believes that most of these audits do not warrant prosecution. However, the division has not established guidelines to ensure that the FTB's efforts are efficient and focused on important issues even though it is responsible to do so under the Political Reform Act of 1974 (act). In spite of these weaknesses, we found no indications that the commission showed any bias.


The division also needs to better manage and direct its workload. It currently does not use a system to prioritize and rank cases by severity and importance. Without such a system, it is difficult for the division to ensure that it promptly investigates severe violations and properly manages staff assignments. Another concern is that lengthy delays occur both before division staff review complaints and during investigations. These delays may result in lost evidence or, in some instances, make enforcement impossible because the cases are too old. Even though there may be some valid reasons causing delays, division staff do not cite them in case files as reasons for delays in conducting investigations.

Although the division chief lists insufficient staffing as the cause for most of the problems we identified, the division does not adequately track or monitor its workload to substantiate this


claim. Finally, the division has not developed performance measures to determine the effectiveness of its enforcement efforts.

***Division Management Investigates
Based on Availability of Staff Rather
Than on the Merit of Complaints***

Our review revealed that the decision process for investigating complaints is flawed and may cause inconsistencies in enforcement efforts. Specifically, the division uses staff availability as one of the main factors in selecting complaints to investigate rather than basing the decision on the merits of the complaints. As a result, complaints with merit may not be investigated and the division may fail to take appropriate action against improper activities.




*Complaints with merit
may not be investigated
which could result in the
failure to take appropriate
action against improper
activities.*




In our review of 53 cases opened in calendar years 1996 and 1997, we noted that for 11 cases the division chose not to investigate the violations, stating that insufficient staffing was one of the reasons. Instead of investigating these 11 cases, the division issued warning letters to 5, obtained amended forms or required reports from 3 others, and closed the remaining 3 cases with no enforcement action.

Four of the five cases handled with warning letters involved violations reported and substantiated by FTB audits. For example, the FTB found that a candidate violated the act's record-keeping and reporting requirements. In the warning letter to the candidate, the division stated that because of its sizable caseload and limited resources, it could not investigate every violation of the act and that the audit findings did not warrant an enforcement action. The letter further stated that the division would retain the FTB audit report and consider taking action against the candidate based on future conduct. In other words, even though the candidate committed substantiated violations of the act, the division did not prosecute because it believed staff were unavailable to continue the case. As discussed more fully on page 15, we reviewed the division's enforcement actions on 712 audits referred by the FTB between 1993 and 1997 and found that it investigated 87, issued warning letters or requests for information for 366, and took no action on the remaining 259 audits.

The remaining seven cases we reviewed that the division did not investigate originated from private citizens and government agencies. While we agree with the decision to close three of those cases and request amended information for a fourth, we




For one complaint, the division only contacted the official to discuss the alleged violation rather than fully investigating the case.




question the division's decision not to investigate the three remaining cases. Two of the cases involved possible conflicts of interest between an individual's government position and sources of outside income, and the third was related to substantiated violations of the act reported in an audit conducted by a local ethics commission. For example, one of the conflict-of-interest complaints alleged that a state official was taking gifts, valued at \$10,000 a year, from a foundation. The state agency employing the official awarded contracts to this foundation and the official had the power to approve these contracts. Rather than fully investigating to see if the official had influenced these contracts, the division only contacted the official to discuss the alleged gift violation. In response to the division's query, the official stated that he had reported these items as income on his income tax return but had not included them on his filings for the act. The division asked him to amend his last statement of economic interests to disclose this income and then closed the case without taking an enforcement action.

Because the facts seemed to have warranted further inquiry regarding whether the official had a conflict of interest between his position and his income from the foundation whose contracts he may have signed or approved, we asked the division why it had not investigated this possible violation. The act states that a conflict of interest occurs when public officials use or attempt to use their official position to influence a governmental decision in which they know they have a financial interest. The division chief explained that the division did not pursue this issue because there was no evidence presented that the official made any governmental decisions creating a conflict of interest. Additionally, the chief stated that the division's limited staff resources did not allow it to conduct investigations of this type.

Nevertheless, a public official in a position to manipulate contracts to benefit his or her financial interests has a potential conflict of interest that may result in public harm. The division chief stated that the number of cases the division investigated partly depends on available staff resources. Some cases are therefore not pursued because the division lacks staffing. He believes that while the division promptly assigns all the cases it opens, cases are not immediately worked on because of the existing staff caseload. Although this helps explain investigation delays, the division chief's comments miss the point. When staff availability is a consideration in opening cases for investigation or closing them with no further action, the division risks failing to investigate cases with merit.



Available staffing is unrelated to whether a complaint warrants an investigation.



Further, available staffing is unrelated to whether a complaint warrants an investigation. By using available staff time as a factor for opening cases, rather than only considering the merit of the complaint, the division introduces an irrelevant factor into the decision process. The division should decide whether to investigate a complaint based on its merit, irrespective of staff availability at the time the complaint is received. Moreover, by limiting the number of cases assigned to available staff, the division precludes creating any case backlog and may actually hinder the staff efficiency. Additionally, using available staff as a decision factor may automatically introduce inconsistencies not only in the types of violations pursued and the levels of severity investigated, but may also create situations where individuals committing similar violations are treated differently by the division.

***The Division's Current Methods
May Not Always Ensure Consistency
in the Application of the Law***

One aspect of the division's mission is to impartially investigate and prosecute alleged violations of the act. While our review of its practices and procedures disclosed no evidence of partiality, we identified apparent inconsistencies in how the division handles complaints and enforcement actions in similar situations. The division therefore may be vulnerable to charges it is inconsistent and arbitrary in its enforcement of the act.


In order to determine if the division is consistently enforcing the act, we reviewed 53 enforcement cases opened in 1996 and 1997. Eighteen of these cases were investigated while the remaining 35 cases resulted in warning letters, requests for compliance through amended forms, or no action taken. During our review, we identified apparent inconsistencies in the division's selection of cases to investigate and, as a result, the division may not treat cases of similar type and severity equally.

For example, we reviewed two conflict-of-interest cases where both individuals had a financial interest in the outcome of a government decision. We found that the division took different actions in these cases even though the violations appeared similar. In one case, the division decided not to investigate the complaint; in the other case, the division investigated and prosecuted the violator.

The case that the division did not investigate involved a district manager that an employee of a federal agency alleged rigged a contracting bid for repairs by limiting the bid pool in favor of her husband's company. Federal and state agencies approved

the repair work for the district but instructed the manager to obtain three bids and then contract with the lowest bidder. According to the allegation, the manager presented three bids to the district's board: the low bid of \$16,000 from her husband's firm and two higher bids from other companies. The board accepted the lowest bid from the manager's husband. Although the manager did not vote on the bid decision, the federal employee was suspicious of the manager because her husband's firm did not have the appropriate license to do the work, nor could the employee find licensing information for the other bidders. Moreover, the two other bids were last-minute submissions faxed from the same machine, leading the employee to believe these two contractors were fictitious. Because the federal agency was concerned about both the manager's conflict of interest and her alleged bid-rigging, the agency refused to pay the district for the repair work. In response to the complaint, the division informed the federal employee that there was no evidence to indicate that the manager made or participated in making a governmental decision as defined in the act and that it would take no action.

In the second case, the division investigated a complaint regarding a state official who made two phone calls to other agency officials to persuade them to maintain a contract with a training company that paid her husband consulting fees of \$6,000 per month. Even though the official did not review or sign any contracts for the state agency, the division deemed that she had influenced a decision in which she had a financial interest and fined her \$3,500 for two violations.

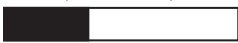
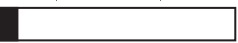
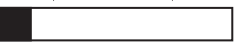
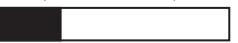

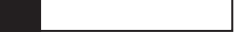
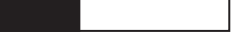



Although the division chief believes that each case is different, without investigation the division cannot be certain that a violation did not occur.

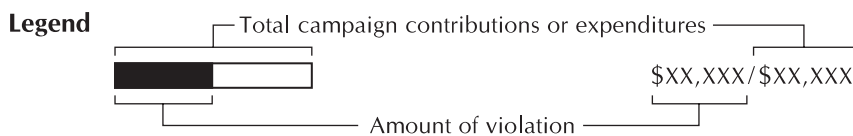
Although an investigation might have substantiated the complaint in the first case regarding the district manager, the division explained that it did not have the staffing to investigate every complaint received. Because there was no evidence presented of an overt attempt by the manager to influence the board's vote, the division decided not to use its resources on that complaint. The division chief contended that as long as the district manager did not participate in any decision to accept the contract and with no indication that she attempted to influence the board's decision, there was not sufficient information in the complaint to prove a violation. Further, the division chief believes that each case is different; thus, cases cannot be compared. However, without further investigating the first complaint, the division could not be certain that a violation did not occur.

We also noted some apparent inconsistencies in the way that the division prosecuted violations forwarded by the FTB. The following figure shows the results from four FTB audits, the division's enforcement actions, and its reasons for different enforcement actions.

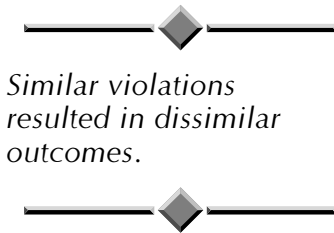
Figure 2

Comparison of Similar Campaign Violations With Different Enforcement Outcomes

Violation	Candidate 1—LOST	Candidate 2—WON	Candidate 3—WON	Candidate 4—LOST
Failed to file late contribution reports	\$13,000/\$36,000 	\$2,000/\$29,700 	\$29,000/\$203,500 	\$35,700 ^a /\$128,500 
Failed to report subvendor information for expenditure	\$15,300/\$36,100 	—	\$42,400/\$238,700 	\$33,600/\$92,500 
Failed to report accrued expenses before election	\$19,400/\$36,100 	—	—	—
Failed to obtain occupation & employer information for contributions	—	24% of occupations and 62% of employers were not disclosed	—	—
Accepted cash contributions in excess of the \$100 limit	—	\$1,300/\$29,700 	—	—
OUTCOME	\$3,500 Fine	\$3,500 Fine	Warning Letter	Warning Letter and request for amended filing forms
WHY? The division's reasons for its actions	The high percentages of the omissions and the more serious nature of the violations resulted in significant public harm such that enforcement action was warranted.	The high percentages of the omissions and the more serious nature of the violations resulted in significant harm. No action would have been taken if the late contribution was the only violation.	Public harm was minimal because of minor proportion of errors and the lack of experience and sophistication of the candidate. Therefore, only a warning letter was warranted.	No enforcement action was warranted because the violations likely did not result in significant public harm, and the candidate and the committee do not have a history of violating the act.



^aCandidate 4 could not substantiate when he received approximately \$28,000 of this amount.



*Similar violations
resulted in dissimilar
outcomes.*


Although the violations in Figure 2 are similar, they resulted in different enforcement actions. For example, all candidates failed to file late contribution reports, and candidates 1, 3, and 4 did not report subvendor information. A subvendor is similar to a subcontractor. For instance, people frequently hire a contractor, who in turn hires subcontractors to do part of the work. Likewise, candidates often hire vendors who in turn hire subvendors. According to the act, candidates are to report campaign expenditures made to vendors and subvendors. Candidates 1 and 4 have significant percentages of violations of late reporting of contributions (36 percent and 28 percent) and errors in reporting subvendor information (42 percent and 36 percent); however, the division fined candidate 1, but only sent a warning letter to candidate 4. Likewise, candidate 3 had similar violations, for dollar amounts generally greater than either candidate 1 or 4, yet he too received only a warning letter. On the other hand, candidate 2 had violations for lower dollar amounts and much smaller percentages than candidate 1, but received the same fine. Thus, it appears that the division does not always prosecute similar violations with the same enforcement action.

The division chief believes that consistency in investigating alleged violations is ensured by the division’s policy of prosecutorial discretion, the commission’s monthly review of closed cases and enforcement actions, staff review of past enforcement actions, and staff experience. The division describes prosecutorial discretion as defying precise definition or application but which addresses two questions: “Could this case be successfully prosecuted?” and “Should the case be prosecuted?” In determining the answers to these questions, the division considers issues such as the seriousness of the violation, staff availability, the public harm which could, or did, occur, the intention behind the conduct, and the likelihood that the division will obtain evidence to prove the complaint. However, although prosecutorial discretion plays an important role in determining the merit of a case, the division does not document this decision and, therefore, cannot defend why one case is prosecuted while another is not.


***The Division Does Not
Prioritize Investigations
Based on Importance or Severity***

Although the division claims it assesses the merit of all allegations using “prosecutorial discretion,” it does not open all cases meeting its criteria. Further, if the division were to pursue all cases with merit, it lacks a system to rank and

prioritize those cases warranting investigation. Moreover, other than informal periodic feedback from staff, management lacks the information to manage its investigative workload and to match staff skills and expertise to cases.



Because cases are not ranked, management cannot ensure significant issues are given highest priority.



At meetings held every two to four months, investigative staff discuss the status of assigned cases and their respective workload with management. Our review of staff workload from February 1997 to April 1998 determined that the number of active cases the managers controlled ranged from a low of 130 cases in August 1997 to a high of 208 cases in November 1997. During this period, investigators carried an average workload of 10 to 16 cases each. Because no rankings or priority are assigned to the cases, management cannot ensure that those with the most significant issues are processed first, and that progress on the remaining cases is monitored. Additionally, management cannot appropriately match case workload and staff expertise when assigning cases.

Over 20 years ago, we issued an audit of the commission recommending increasing its enforcement activities by pursuing those cases with the most significant violations and sending warning letters in response to minor violations. In a 1983 audit follow-up, we reported that the division had developed a scoring sheet, which assigned a numerical value to the nature and severity of violations. We stated at that time that this procedure would ensure that the commission pursued significant violations and took action in response to minor violations. Although the division used the scoring sheets for a short time in 1984 or 1985, it stopped because it believed that the range of values assigned to each violation did not provide a reasonable basis for making decisions. While the scoring sheet developed may not have been the proper tool, the division did not revise the scoring sheet or replace it with a more appropriate process.

Other Enforcement Agencies Prioritize Caseloads


Other enforcement agencies use systems to prioritize and manage their caseloads. For example, the Federal Election Commission (FEC) instituted a case priority system in 1993 for its enforcement division, believing it would always lack sufficient resources to pursue all the enforcement matters it received. Its system uses formal criteria to help management decide the order of cases to investigate, such as the presence of knowing and willful intent, the apparent impact the alleged violation had on the electoral process, the amount of money involved, the time that the violation occurred, and whether a

particular legal area needs special attention. Using these criteria, the FEC ranks its cases into three tiers. It immediately assigns the higher-ranking cases to staff. Lower-ranking cases are held until staff become available, and those that do not warrant further consideration are dismissed.

Additionally, the FEC assigns a mix of higher- and lower-ranking cases to its staff to ensure that it continues to pursue a wide range of cases at all times. Another state agency with enforcement responsibility, the California Department of Insurance, also assigns a mix of cases to its staff to ensure that both high- and low-priority cases are worked. This agency also believes that assigning a mix of cases helps it maintain a regulatory presence in all facets of the insurance industry.

An added benefit of ranking cases is better management of staff time. The division can match the level of cases to the abilities of the available staff and balance their workload. Additionally, management can assign work to ensure that employees have various levels of assignments and can determine whether an employee is carrying too many cases of one particular ranking, thus causing delays in pursuing cases with other rankings. In such instances, the division could reassign cases to minimize delays and maximize staff productivity.

The Division Investigates Few Franchise Tax Board Audits

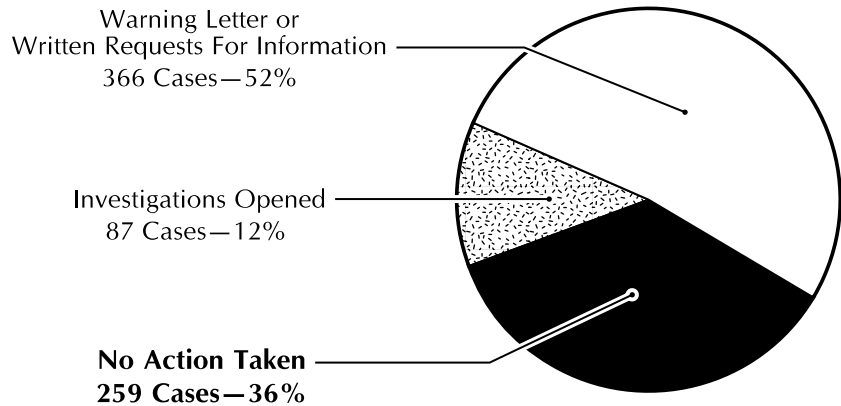

The commission does not take steps to ensure that FTB audits costing millions are cost-effective and provide maximum public benefit.

Even though FTB audits contain proven violations of the act, the division pursues few of these audits because it believes many of the violations fail to rise to the level of prosecution. When the FTB completes an audit, it makes the results available to the public. It also forwards audits with substantiated violations of the act to the division for enforcement. The division does one of the following when it receives an FTB audit:

- Opens an investigation.
- Sends a letter of warning to the violator.
- Sends a letter requesting that the violator amend his or her campaign reports.
- Dismisses the violations as minor and takes no action.

Between 1993 and 1997, the FTB conducted 1,446 audits, of which 712 contained violations of the act. As illustrated in Figure 3, the division investigated just 87, or 12 percent of the 712 audits with violations. Moreover, the division took no action on 259, or 36 percent, of these audits. As a result, of approximately \$3 million spent by the FTB for these efforts during this five-year period, the State spent approximately \$1.1 million on 259 audits that the division dismissed as not meriting prosecution, although the FTB had substantiated violations of the act. We recognize that the act requires FTB to perform these audits and incur some costs in doing so. However, because the division has not used its authority to develop clear audit guidelines and standards, these audits are not conducted in the most cost-effective and efficient manner. If the division would have taken the initiative to better direct the FTB in its efforts, some of the \$1.1 million spent on audits that were ultimately closed by the division could have been avoided.

Figure 3
The Division Took No Action on 36 Percent of FTB Audits Referred Between 1993 and 1997





The division chief said the FTB reports many violations that he believes warrant no investigation or enforcement action. Although division staff informally meet with FTB staff to discuss violations that warrant prosecution, the division allows the FTB to set its own criteria as to what constitutes a material violation. However, the act makes the commission primarily responsible for adopting auditing guidelines and standards to govern the audits that FTB conducts. The act further directs the commission to develop these guidelines to ensure that the audits are conducted with maximum efficiency in a cost-effective manner. In other words, the commission is

responsible for ensuring that the FTB's efforts are directed toward conducting audits that provide the most benefit at the lowest cost. It is inappropriate for the commission to allow the FTB to continue to perform work in a manner that is not cost-effective and that does not provide the maximum public benefit. Because all FTB audits are public documents and available for inspection by interested parties, the division chief contends that any resulting publicity serves as a deterrent for future violations. However, we believe the opposite is true: because FTB audits do become public, if the division does not investigate and prosecute these violations, the audits could demonstrate that violators are not prosecuted. As a result, the audits would no longer serve the purpose of deterring future violations.

Furthermore, because all FTB audits referred to the division contain substantiated violations, much of the evidence necessary to investigate and prosecute cases is readily available and should require less work for the division compared to similar cases the division must fully develop. Therefore, FTB audits represent an opportunity for the division to enforce the law using less staff time and thereby maximize state resources.

Delays Often Occur in the Investigation of Alleged Violations

During our audit, we noted delays in the work performed on cases both before and during investigations where it appeared that the division staff performed no work on assigned cases. Specifically, we observed significant delays between the time the division first received a complaint and the time it began work, as well as interruptions once an investigation began. Despite the division's goal of 90 days to decide whether to investigate a complaint, records show that it currently takes an average of 207 days to make this decision. Additionally, the division does not promptly assign case numbers and record complaints in its automated system, thus hindering its ability to track case progress. As a result of the delays, the division may risk losing key evidence, may not take prompt action on violations with high priority, and may not meet the objectives of its mission statement.




Despite a 90-day goal, it currently takes an average of 207 days to decide to investigate a complaint.


In our review of 53 cases, we found that in 36, or 68 percent of our sample, the average elapsed time between the division's receipt of a complaint and the time it began any investigative work was 124 days, with delays of 200 days or more before work started on 7 cases. In some instances, these delays appear excessive because the division's only action was to write a letter to the complainant closing the case or to make a few

phone calls and request that the violator amend filing statements. For example, one case we reviewed involved an allegation that a political committee failed to disclose all expenditures connected with a political pamphlet. The division reviewed the committee's expenditure form, wrote a letter to the complainant explaining why the division would not investigate the alleged violation, and wrote a letter to the violator requesting an amendment to the expenditure form. Despite these minimal actions, 123 days passed between the time the division received the complaint and the date of the response letter to the complainant.

Delays During the Life of Investigations

We further noted delays once a decision was made to investigate complaints. For example, in one case, an investigator began to review the audit files over four months after the FTB reported violations in a December 1995 audit. Nearly another seven months passed before the investigator held his first interview and five more months passed before the investigator sent a letter to the violator at the end of June 1997 notifying him that the division was going to impose an administrative fine. In all, the division took almost 18 months to take an enforcement action for violations that an FTB audit had already substantiated. In other cases, we noticed gaps in investigations of between 4 and 6 months when it appeared no work was performed.


The division chief cites several reasons for delays, but case logs did not support his contentions.


The division chief explained that time lapses often result from difficulties in obtaining documentation, deliberate delays caused by violators and their attorneys, travel to out-of-town jurisdictions, and waiting for an administrative hearing date. He additionally cited the lack of staff as another reason cases are delayed. However, the case logs we reviewed did not cite any of these as causes for the gaps we noted in the investigative work.

Delays in investigating complaints create the potential for loss of key evidence. The longer the division waits to investigate cases, the greater the chance it will have difficulty in locating witnesses or substantiating evidence. Moreover, the division believes that its prosecutions offer a measure of deterrence. Therefore, if the division delays in punishing violators, the deterrence becomes less effective, resulting in the risk of greater public harm.

Furthermore, because its staff do not promptly assign case numbers and record the complaints in the computerized system when received, the division does not immediately know what kind of violations are contained in the complaints. Therefore, it also may risk delaying action on high-priority violations, which it should address immediately. Additionally, the division may risk misplacing unrecorded complaints, and thus, never address the improper action reported.

***Delays in Investigating Cases
Can Result in Exceeding
the Statute of Limitations***



Excessive delays can also make enforcement actions impossible because the statute of limitations may expire, precluding any further action by the division. The act specifies a statute of limitations of four years after the alleged violation occurred. However, the division lacks a central system to track the statute of limitations for its cases. Instead, the division relies on staff to monitor their assigned cases and claims to have few problems meeting the statute of limitations deadlines. However, in 2 of the 53 cases we reviewed, the division was negatively affected by the statute of limitations.

—◆—
*One violator used the
statute of limitations to
negotiate a \$3,000
reduction in his fine.*
—◆—

For instance, the statute of limitations nearly expired in one case before the division was forced to ask the respondent if he would waive the statute's deadline. The respondent then used this request as a bargaining tool in negotiating a settlement, offering to waive the statute's deadline in exchange for reducing the fine by \$3,000. This proposal was accepted; however, the outcome of this case may have been different if there were no delays. The division received this complaint more than a year and a half before the statute of limitations was due to expire; but we noted there were several gaps of time where staff performed no work on the case.

In another case, the division decided to take no action on the complaint, even though it felt that a violation had occurred, because the statute of limitations had passed. However, the division did not review this complaint until after the statute expired, even though it received the complaint almost 10 months earlier.

The Division Lacks Performance Measures to Evaluate Its Effectiveness


No goals have been set for investigations, even though it is one of the commission's key activities.



The division has not developed a process to critically evaluate the effectiveness and success of its enforcement activities. Although the commission recently completed a strategic plan, none of the plan's goals, objectives, or performance measures addressed how the division would meet its enforcement mission. Goals are necessary to establish the direction the division will take in enforcing the act. For example, a reasonable goal would directly support the division's mission to promptly and impartially investigate and prosecute alleged violations of the act. An example of an objective would be to ensure that the division promptly makes decisions on whether to investigate complaints, with a performance measure of 90 days to do so. Because the division has not established this process, it cannot objectively determine if its efforts to reach its mission are effective or successful.

As we discussed previously in this chapter, the division lacks critical management information that would be useful in establishing meaningful performance measures to assess its efforts. For example, the manner in which the division decides whether to investigate complaints artificially limits the number of cases, thus eliminating the possibility of backlogs. By closing some valid complaints because of insufficient staffing, the division is not developing a true measure of its enforcement workload and cannot fully meet its mission. It is also unable to justify the need for additional staff because its workload will always be equal to its current staffing level. Another weakness is the lack of a system to prioritize and rank open complaints before assigning them to staff. Without such a system, the division lacks information on the number of critical complaints that it is currently investigating and the mix of cases currently assigned. Finally, as we discuss on page 21, the division needs to improve its monitoring of staff time spent on enforcement activities. The division will need to address these weaknesses while developing meaningful performance measures.


Division Staff Do Not Always Document Decisions and Actions Taken on Investigations

The division does not adequately document in its investigative case files decisions made and investigative actions performed to ensure impartiality, consistency, and continuity. The division uses an opening memorandum stating the reasons for investigating cases, a case-chronology log to document the

actions division staff perform, and a case-closure memorandum stating the reason for the closure and approval by division management. However, many of the 18 investigative cases we reviewed did not contain any opening memoranda or case-chronology logs.



Seventeen of the 18 investigations we reviewed contained incomplete case chronologies or none at all.




Because investigated complaints involve the most work and commitment of resources, we considered documenting the actions taken for these cases to be particularly important. However, 6 of the 18 investigative cases we reviewed contained no case chronology, and 11 had only partial chronology logs documenting the actions of either the investigator or the attorney, but not both. Case-chronology logs are essential to record the work performed and to ensure continuity, especially if there are time gaps when the investigators perform no work. When employees switch assignments or resign, the logs also help to avoid duplication of tasks and ensure continuity of effort. Additionally, recording activity can ensure that the same level of effort is being expended on cases with similar violations, thereby providing a means for division management to monitor and document that each case was consistently and impartially handled.

Moreover, 12 of the 18 cases we reviewed had no opening memoranda indicating the rationale for the investigation. Several appeared to arise from money-laundering investigations of other cases. However, without a stated reason supporting an investigation, the division may be vulnerable to charges of harassment and partiality. This is especially true when investigative cases are initiated internally by division staff. For example, one money-laundering case opened by division staff involved numerous bank records and interviews with employees of five different companies. However, the division closed the case, citing insufficient evidence. The file documentation did include a lengthy request for a subpoena that outlined the reasons for investigating campaign donations by the employees of a number of firms. Nevertheless, without an opening memorandum stating the reasons for the investigation and without substantiation of any violations, outsiders could accuse the division of harassment.


The Division Cannot Support Its Claim of Insufficient Staff

The division chief cites insufficient staffing as a cause for many of the weaknesses discussed in this chapter. Although we agree that staff availability can limit an agency's performance, we found that the division does not adequately track or monitor its workload and, therefore, we could not substantiate this claim.

The division limits the number of cases it investigates to when staff are available, which precludes creating any backlog of cases. The division also investigates only 12 percent of the FTB audits it receives, reasoning that if more staff were available, more FTB audits would be pursued. Because the division does not formally document or track insufficient staffing as a reason for closing complaints or not investigating FTB audits, we could not determine the significance staffing had on the division's investigative activities. Without tracking this type of information, the division would have difficulty justifying the need for more staff to handle its caseload.



Workload and staffing needs are not tracked, making it difficult to justify increases.



Moreover, we found that division staff work little overtime. In fact, staff do not always record their time in the division's timekeeping system. To monitor enforcement efforts, division management requires staff to complete weekly time sheets showing what activities they performed. We reviewed time sheets for six staff over the months of September through December 1997 and observed that they often did not fully charge their time. Despite considering holidays, sick leave, and alternate work schedules, staff sometimes charged as few as 24 hours to division activities and leave during a week. On occasion, staff did charge 40 or more hours during a week, but this was the exception rather than the rule. Because of these observations, we question the value of the division's timekeeping system as a means for supplying information on its enforcement efforts and workload. Further, it is difficult for the division to demonstrate the need for additional staff since its timekeeping system does not contain complete data.

Recommendations

To help ensure consistency of its enforcement activities, the Fair Political Practices Commission (commission) should take the following steps:

- Promptly enter all complaints, including violations substantiated by the Franchise Tax Board (FTB), into its automated system.
- Develop guidelines to assess the merit and severity of the complaints received.
- Premise case openings and investigations on the merits of the complaints.

- Ensure case files document reasons for decisions made on each complaint, whether it was opened for investigation, received a warning letter, or was closed.
- Prioritize cases prior to assigning them for investigation based on their severity and merit.
- Assign a mix of high- and low-priority cases to investigators to maximize productivity and balance workloads.

To ensure that FTB conducts its audits in the most cost-effective and efficient manner, the commission needs to work with FTB to develop audit guidelines specifying the types and materiality levels of violations warranting prosecution. Further, once the FTB refers audits with substantiated violations, the division should vigorously pursue enforcement actions.

To monitor that once assigned, investigative cases are promptly resolved, the commission should ensure that:

- Investigators and attorneys record their activities on each case using a chronology log, including reasons for delays in investigations.
- Individual caseload is monitored and adjusted when necessary.
- A centralized log is kept showing the date a complaint was received and the date that the statute of limitations will expire for each case referred for investigation.
- All staff time is recorded in the weekly time sheets and reviewed by management.

To evaluate the effectiveness of its enforcement activities, the commission should develop goals and objectives supporting the enforcement division's mission to promptly and impartially investigate alleged violations of the Political Reform Act of 1974. Additionally, it should identify measures gauging the division's success in meeting its objectives. For example, a performance measure of 90 days from receipt of a complaint to decide whether or not to investigate.

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Chapter 2

The Fair Political Practices Commission Needs to Better Educate and Assist Its Customers

Chapter Summary



Although the technical assistance division (division) provides outreach to educate and assist the community regulated by the Political Reform Act of 1974 (act), it lacks the necessary tools to determine if its efforts are correctly focused and successful. For example, from 1993 to 1997, the division assisted its customers by conducting 460 workshops and seminars, and by answering nearly 50,000 calls each year through its technical assistance line. However, we found that the division does not collect enough information from these customers to help it identify common problems and areas of confusion. Although the Fair Political Practices Commission (commission) recently surveyed its customers, it needs more information because it did not ask enough specific questions. Finally, unlike other regulators like the Franchise Tax Board (FTB), the division does not obtain enough input about its forms from those required to file them.

We also found that the commission does not always enforce the act's filing requirements. Specifically, some of the forms its customers were required to file in 1997 either contained errors or omissions, or were not filed at all. When the division's Statement of Economic Interests (SEI) unit's requests for the corrected or missing information were ignored, the SEI unit closed these cases. The cases were closed rather than referred to enforcement because both the technical assistance and enforcement divisions believe that their limited resources are better used elsewhere.

The division oversees certain filing officers who are required to collect forms from filers and forward them to the commission. But the majority of the State's filing officers are not required to forward the forms filed with them, and the commission does not monitor their activities under the act. The commission recognizes that it should provide oversight of these filing officers, but believes it lacks the funding to do so.

Duties of the Technical Assistance Division

Since its passage in 1974, the act has become increasingly far-reaching and complex. It requires individuals in public positions and organizations throughout the State to disclose financial information about their investments, income, ownership interests in real estate, and gifts. The act also requires candidates, elected officials, committees, lobbyists, and proponents of state ballot measures to file statements reporting on contributions and expenditures. In addition, the number of new or amended regulations issued by the commission during the last four years has been substantial, and the forms used by filers to disclose economic and other information are numerous and often complex.


The commission is responsible for educating and assisting those regulated by the act.


The California Government Code, Section 83113, directs the commission to develop forms for reports, statements, and other documents required by the act, prepare and publish manuals and instructions setting forth methods of bookkeeping and preservation of records, and assist agencies and public officials in administering the provisions of the act. Accordingly, the mission of the division is to advise, assist, and educate the community regulated by the act.



Similar to the Federal Election Commission, which is responsible for administering and enforcing the Federal Election Commission Act, the division provides a variety of services designed to help campaign committees and others understand the act and voluntarily comply with its provisions. To assist campaign committees, the division offers instructional workshops and seminars for candidates and campaign treasurers. In addition, the division provides similar services to educate and assist lobbyists, and to help thousands of state and local officials and designated employees understand and comply with conflict-of-interest rules and reporting requirements.

Over the five-year period between 1993 and 1997, the division gave assistance by answering an average of almost 50,000 telephone calls each year on its help line. Although the division does not have any statistical data to identify the origin of the calls it receives, upon our request, it supplied estimates based on staff input. However, we are unable to substantiate these estimates. Specifically, staff estimate that 50 percent of the calls are from customers who file their forms with local entities and who may not attend seminars and workshops, and approximately 20 percent come from city and county clerks. In addition, calls from legislators and lobbyists asking detailed questions in the areas of gifts, travel, and conflicts of interest represent approximately 10 percent of the calls received.

Further, 15 percent are from city attorneys, and the remaining 5 percent of the calls are from the San Francisco and Los Angeles Ethics commissions, which have their own conflict-of-interest, campaign, and lobbying laws, but which ask questions primarily about the commission's interpretation of various state laws to help them interpret local laws.

During the same five-year period, the division provided additional help and information by hosting or participating in 460 workshops and seminars throughout the State, with 78 occurring in 1997 alone. These workshops and seminars covered such topics as conflict of interest, campaign reporting, lobbying ethics and disclosure, and filing officers/officials duties. Filing officers are officials of state and local entities responsible for ensuring that public officials and designated employees submit properly completed statements of economic interests. The division also provides limited information through its Internet Web site, and it publishes annual newsletters, handbooks, and bimonthly bulletins summarizing its enforcement actions, advice letters, and commission meetings, in addition to legislation updates, workshop and seminar schedules, and other information for filing officers and officials.


A primary function of the commission is to serve as the filing officer for the SEIs of certain public officials, including statewide elected officers, members of the State Legislature, Public Utilities Commission, State Board of Equalization, judges, district attorneys, and city managers, in addition to others. Under the act, as the filing officer, the commission is aided by approximately 1,000 other filing officers statewide. These filing officers receive and forward to the commission any forms and statements required to be filed by the act.


*In 1997, approximately
14,600 state and local
officials filed their SEIs
with the commission.*



The SEI is the form used by public officials and others to disclose information about their financial interests. In 1997, approximately 14,600 state and local officials filed their SEIs with the commission. In addition to these filers, there are thousands of other people at local agencies, districts, commissions, and other organizations who file their forms with their respective entities, but who rely on the division for information and help.

***The Division Cannot Determine
if Its Efforts to Educate and Assist
Its Customers Are Successful***

While the division makes efforts to inform its customers about the act, it does not have any means of determining if these efforts are beneficial. This is because the division lacks



The division lacks the means to better understand its customers' needs and fulfill them.



the tools needed to measure its effectiveness in fulfilling its mission to serve customers through its outreach efforts. Good management practices include a variety of methods to assess how well an entity performs in reaching its stated organizational goals, objectives, and mission. These methods include identifying who your customers are, assessing each customer group's needs, targeting efforts to address the needs identified, and measuring the success of efforts to fulfill those needs. However, most of the measures identified by the division in its strategic plan to gauge performance are ineffective for that purpose. Specifically, the measures in the strategic plan do not help the division determine if it is improving the service it provides to customers. As a result, the division does not know if the money or effort spent on outreach efforts designed to assist and educate its customers are correctly focused.

The Division Lacks Information on the Needs of the Regulated Community

The division does not know if its efforts are effective in reducing the difficulty its customers have with its forms and instructions because it does not have quantifiable information that it can use to identify areas that are most confusing and difficult for its customers.


The division's efforts to educate and assist those who are required to file forms are primarily done on an individual basis through its technical-assistance line. Specifically, the division estimates that 50 percent of the calls are from customers who file forms with local entities. Because these filers typically do not attend seminars and workshops, the division also assists them by providing detailed instructions that accompany its forms.

Although division staff attempt to identify areas where customers have difficulty and are most confused, the division does not have a process to quantify information about these calls. Instead, staff may make informal notes when answering questions about disclosure requirements and helping to complete SEI forms. However, they do not record the general nature of each call, nor do they attempt to quantify or classify the types of calls they receive. As a result, while informal notes may be useful for future reference about the nature of the question a particular caller asked, division managers cannot use these notes to identify the types of customers who called, to assess common areas of concern, or to track the results of outreach efforts. Consequently, division managers lack the information needed to focus the division's outreach efforts and improve its services.

According to its chief, the division continually works to reduce the confusion and difficulty for its customers over its forms and instructions by discussing problem areas in meetings held at least once per month. Here staff share their recollections and informal notes about the telephone calls received during the last month and the common errors identified during their desk review of SEIs. They then use the information to develop methods to eliminate the confusion, such as simplifying a form, revising a manual, or refocusing a seminar or workshop. For example, the chief stated that during their review of SEIs for 1997, the staff found that many filers made the same error on the cover page of the SEI form. As a result, the SEI form for 1998 was revised and successfully eliminated the error. While these meetings provide one tool for input, because the division receives on average over 4,100 calls a month and reviews an average of over 1,400 SEI forms a month, the division needs a more systematic way to gather, quantify, and assess this information.

Without a system to accurately identify if it is reaching the right customer groups, is providing targeted outreach, or if its efforts are yielding measurable benefits, the division cannot ensure that its efforts are efficient or effective because it does not know how much of its workload is spent answering common questions from callers and following up on errors that filers commonly make on their SEI forms. Further, the division cannot determine if its efforts to reduce such confusion are successful.

Ways the Division Could Be More Efficient



The division could improve its customer service and measure its worth by periodically surveying callers.

The division could better reduce or eliminate the confusion filers have by periodically surveying callers and recording their comments using a detailed form. For example, if the division collected and summarized specific information over a 30-day period about what forms callers file, educational seminars they have attended, what schedules they use, and difficulties they have with the instructions, it could better focus its efforts to simplify its forms and instructions. The division could further measure the success of its improvements by tracking whether calls and errors on forms decline once such changes have been made.


The Commission Needs to Develop More Focused Surveys

The commission recently surveyed some of its customers to get a general indication on the quality of its services. However, to more effectively identify the needs of its customers and opportunities to improve its services, the commission needs to develop more focused surveys.

The commission surveyed its customers in March 1997 as part of its efforts to develop a strategic plan. Specifically, the commission surveyed 1,400 of its regular customers, including local filing officers, city attorneys and county counsels, district attorneys, all legislators and some of their staff, various political activist groups, certain state agencies, and others who were on the commission's mailing list for its bulletin. According to the commission's analysis of the 327 responses it received, more than 70 percent of the respondents graded the commission's service as good or excellent. However, the survey asked customers to express their satisfaction with the commission's service-delivery efforts in general and did not specify types of services or assistance for comment. As a result, while the commission received a general impression on its overall performance, it did not obtain all the data necessary to accurately assess the quality of each of the services it provides and to fine-tune its efforts.



The commission's recent customer survey was too general and provided little feedback on specific services.



In addition, because the survey went to only the division's regular customers, it may have missed concerns and issues of customers who have less contact with the commission. Furthermore, the survey was not designed to categorize the results by type of customer. Consequently, the commission could not identify the types of services or groups of customers most needing attention or the areas where to focus its service efforts.

The commission plans to continue to conduct similar surveys on an annual basis as part of its revision of its strategic plan. However, by asking more specific questions and surveying a sample of all of its customer groups, the commission should be able to obtain more useful management information to more efficiently and effectively educate and assist its customers. For example, by accurately tracking common problems or questions, the commission can amend its forms or clarify directions in subsequent issuances. Further, other input from desk reviews, surveys, and phone calls can assist in developing training classes to ensure these efforts provide the information most needed to its customers. Finally, by asking customers who call for help for detailed suggestions on how it could better

assist them, the division may be able to use such information to reduce the number of errors filers make on forms and questions its customers commonly ask.

***The Evaluation Form the Division
Uses for its Seminars and Workshops
Provides Little Useful Information***

Although the division holds training seminars for approximately 1,000 local filing officers responsible for forwarding SEIs collected by the commission, it does not know how effective these sessions are because its evaluation forms are too general. For example, the evaluation form for a filing officer workshop asks eight yes or no questions, such as, “Was the written material easy to follow?” and “Did the workshop cover enough of the basic information to assist you in your duties?” Likewise, although the SEI seminar for filing officers and officials at multicounty agencies covers detailed subject areas, such as who is required to file, filing deadlines, public access to statements, form review procedures, and records maintenance, the division does not ask more specific questions to measure the effectiveness of its workshops. For instance, by asking the filing officers to grade a workshop on a scale, and asking for specific suggestions for improvement, the division could use this information to improve its presentations. Furthermore, because the workshops are tailored for specific audiences, without properly classifying and segregating questions and results, management cannot identify the specific areas needing attention or that are most successful.

***The Commission’s Forms
and Instruction Manuals
Need to Be More User-Friendly***

—◆—
*Because they are vague
and complex, the forms
may confuse filers.*
—◆—



The commission issues various forms and instruction manuals to assist public officials and organizations in complying with the act’s requirements for disclosures, including campaigns, lobbying, and conflict of interest. However, the forms and instruction manuals are often vague and complex and may confuse the users. For example, the forms contain technical terms that are not always defined, which may result in inaccurate or incomplete filings by those regulated by the act.

Forms Are Lengthy and Ambiguous

As of February 1998, the commission had developed 36 different forms with separate instructions. To determine the user-friendliness of the forms and manuals, we reviewed one form and its accompanying instructions, the 1997-98 Statement of Economic Interests (form 700), a public document disclosing personal assets, loans, gifts, and income of public officials.

The form 700 is lengthy and sometimes ambiguous. It contains nine pages of general information and instructions, seven different schedules and a summary schedule, with a separate instruction page for each schedule, and a six-page appendix defining certain terms. The filer must thoroughly read the nine introductory pages of general instructions and the instruction page for each schedule to sufficiently understand the law and complete the schedules. Moreover, it contains inadequately defined technical terms. For example, one of the instructional sheets states that “diversified mutual funds registered with the Securities Exchange Commission” do not require disclosure; however, the instructions do not explain what diversified mutual funds are. The same page further notes that the appendix provides more information on “interests held in a blind trust.” Unfortunately, the appendix does not define what a blind trust is. These lengthy and sometimes unclear instructions can result in frustration, mistakes, and incomplete filings.

The commission recently attempted to simplify the reporting of economic interests. Prior to 1997, the commission used two forms for two categories of filers, form 721 and form 730. The commission combined these two forms into the form 700. It also reduced the number of schedules required for disclosure of similar interests. Likewise, the commission continues to make changes to the forms, instructions, and manuals based on new laws and questions it receives from filers. It currently uses an external review group comprised mostly of attorneys, lobbyists, political consultants, city and county representatives, and others having specific scopes of interest to review and comment on changes it makes to the forms and instruction manuals. However, the group may not represent the actual users of the forms and may actually complicate, rather than simplify reporting. This is because one of the purposes of the groups’ review is to ensure the legal accuracy and completeness of the forms and instructions and not necessarily to simplify the information for the general public. Further, unlike other regulators such as the FTB, the division does not solicit input from actual users of the forms. For example, through its tax forms, the FTB asks its users for comments or suggestions for


Unlike other regulatory agencies, the commission does not solicit input from its forms’ users.



improving tax forms and instructions. The FTB believes that users' comments and suggestions have resulted in several improvements to its products and services. By not soliciting such input, the commission may not have a good representation of less specialized users to review proposed changes to the forms and instructions, and manuals. If the commission's external review group included more actual users of the form, it would likely obtain helpful information for filers.

The majority of filers generally have only limited financial interests to disclose, such as certain equity loans, car loans, spousal income, retirement accounts, and possibly a student loan. The commission could simplify the form for these filers by incorporating a flowchart with a series of yes or no questions so they could quickly identify which schedules and forms they must complete to comply with the act. Also, although some of the commission's instruction manuals contain a list of commonly asked questions, the form 700 does not. Thus, the commission could further assist filers by compiling this information from filer inquiries and including it with the form 700.


***The Commission Does Not Pursue
Some of Those Who Do Not Comply
With Filing Requirements***

◆
*If a filer does not send in
requested missing or
incomplete information,
the commission simply
closes the case.*

The commission failed to effectively enforce the law when it took no action against individuals failing to respond to the division's letters regarding problems in their 1997 SEI filings. As a result, the commission is not adequately ensuring that California citizens can determine if all public officials are performing their duties free from bias caused by their own financial interests or the financial interests of individuals who have supported them. The SEI unit of the division is responsible for receiving and reviewing SEIs and amendments filed each year. In addition, the SEI unit sends letters to filers whose forms are not properly completed, or are not filed at all. However, after sending requests for missing or corrected information, the SEI unit closes the files when it does not receive a response. In 1997, the SEI unit reviewed approximately 17,200 forms. Of these, the division closed approximately 600 files from public officials and designated employees required to file with the commission, but whose SEI contained an error, was incomplete, or was not filed at all. Although some of the problems with the closed files were later resolved, we were unable to determine how many because the SEI unit's system does not record this information.



Eleven of the 25 statements of economic interests we reviewed were closed even though they contained errors or omissions.




We reviewed 25 of the approximately 600 SEI files that were closed in 1997 and we found 11 filers with SEIs containing errors or omissions. For 7 of these, the information was insufficient to determine the filers' financial interests. For example, one individual's SEI did not disclose the source of the spouse's income, an important piece of information in determining if a conflict of interest exists. For instance, a conflict of interest would exist if the spouse's source of income is consulting, and the SEI filer is involved in a decision to select a consultant to provide services for his or her office. By omitting the source of the spouse's income, an interested person would be unable to determine if a conflict of interest existed. In another example, a filer did not indicate the approximate value of stock and stock options held in two companies; therefore, it is not clear how much the filer could financially benefit if involved in a decision to award a large contract to the companies.

During our review of the 25 SEI files, we also found 12 closed cases lacking a leaving-office statement, which is required for filers who leave their positions after filing their last SEI. The California Government Code, Section 87204, requires every person required to file an SEI to file this statement within 30 days after leaving their position. The statement discloses the filer's financial interests since the previous SEI filing. However, we found that four city officials, four State Assembly staff, three State Senate staff, and one county official did not file a leaving-office SEI. When a person does not file a leaving-office statement, the SEI unit sends a reminder of the filer's responsibility under the law. If the filer does not respond, the SEI unit closes the file without pursuing the matter further or referring the case to the enforcement division.

According to the chief of the commission's enforcement division, the division does not consider it a priority to follow up on SEIs with errors or omissions. Also, neither the technical assistance nor the enforcement divisions pursue those who do not file leaving-office statements because of limited resources. As a result, the division does not refer, nor does the enforcement division pursue these cases. Nevertheless, by closing cases that do not contain sufficient information about filers' economic interests, or cases when filers do not comply with the law, the commission is not ensuring that users of SEI information have sufficient information about the financial interests of all public officials during their entire terms.

Many Filing Officers Receive No Oversight of Their Activities

The division provides no oversight for the majority of the State's filing officers. Although the law requires about 1,000 SEI filing officers to forward the forms of certain filers they collect to the commission and these filing officers are subject to its oversight, there is a much larger number of filing officers who retain all of the forms they collect and whose activities are not monitored at all. Those officers who forward SEI forms to the commission are mainly the clerks of cities and counties, the courts, state agencies, and local entities that are located in more than one county, such as a school district. The division trains and assists these filing officers, and is also responsible for reviewing the conflict-of-interest codes of entities with multicounty jurisdiction and all state agencies, except for the courts. The division also conducts some monitoring of these filing officers, usually when it encounters problems with the officers' fulfilling reporting obligations, or if they are new to the position. Specifically, the division conducted eight site visits during 1997 to review filing officers' policies and record keeping.


The vast majority of the State's public officials submit their economic interest statements to filing officers that are not monitored by the commission.

However, the majority of filing officers operating throughout the State do not report to the commission, and the division does not oversee them. While the commission does not know their number, these filing officers represent the vast majority of public officials and designated employees who must disclose their economic interests. Without adequate oversight, the risk exists that these filing officers may not properly review SEIs or may not require public officials and employees to submit them. Although the act does not expressly state that the commission is responsible for all filing officers, the commission has primary responsibility for the effective administration and implementation of the act. The commission recognizes that it should provide oversight for these filing officers, but believes it lacks the funding to do so.

Recommendations

To better serve its customers, the Fair Political Practices Commission (commission) should take the following steps:

- Develop more meaningful performance measures and benchmarks to evaluate the effectiveness of its education and outreach efforts, and use the information gathered to assign staff in the most efficient and effective manner.

- Develop a systematic method to identify the types of customers served by the technical-assistance line, the customers' specific needs, and ways to measure the effectiveness of its efforts in meeting those needs.
- Continue to perform customer surveys, but design these surveys to elicit more useful feedback from customers on the effectiveness of its efforts.
- Redesign its evaluations for educational seminars and workshops to elicit more focused feedback on the usefulness of these seminars.

To simplify reporting and possibly improve compliance with the Political Reform Act of 1974, the commission should:

- Add more actual users and filers to its external review group to review the forms, instructions, and manuals, and use their suggestions to identify areas for improvement.
- Take steps such as including flowcharts, defining all technical terms, and providing answers to frequently asked questions in the instructions to make the form 700, Statement of Economic Interests, and its other forms, instructions, and manuals easier for filers to understand and complete.

In addition, the commission should take further steps such as assessing fines to enforce the act's requirements for those who are required to file forms and disregard the commission's letters requesting compliance or additional information.

Finally, the commission should study the education and training needs of filing officers, particularly those who do not report directly to it, and reorganize its efforts to meet those needs. If necessary, it should request additional funding to meet those needs.

Chapter 3

The Fair Political Practices Commission's Legal Division Reasonably Interprets the Law but Is Unable to Measure Its Effectiveness

Chapter Summary

In general, the Fair Political Practices Commission's (commission) legal division (division) reasonably interprets the law by establishing regulations consistent with the Political Reform Act of 1974 (act) and by issuing written advice that applies the act and regulations to specific situations. The division, however, lacks management tools that could help it work more efficiently and effectively. For example, the division does not track its staff time by function and has set only one quantitative performance measure. Without adequate management tools, the division cannot set benchmarks for accomplishing its tasks or measure the effectiveness of new strategies in improving service quality.

In reviewing the act, we also found that the dollar limits for financial disclosures and for determining conflicts of interest are very low. These limits, set as early as 1974, have rarely changed although inflation has tripled. While the purpose of dollar limits is to inhibit improper practices by public officials, they currently appear to place unreasonable burdens on them.


Background

The division's main purpose is to explain the act for its customers, the regulated community. According to the division's general counsel, its 10 staff attorneys spend approximately 55 percent of their time explaining the act by establishing regulations and issuing written advice letters. The division uses these two methods in distinctly different situations. Regulations are used to set new standards that apply across the regulated community; advice letters are intended to apply the act and regulations to specific situations. For this reason, establishing regulations is more rigorous and time-consuming and includes public notice, opportunity for public input and discussion, and formal adoption by the commission. In contrast, the advice letter process does not include these steps. Rather, staff review the facts of specific

situations and then apply the act and regulations. Advice letters offer legal immunity to those requesting advice and are made available to the public; however, their application is limited because they are specific to a particular situation.

While the division's staff spend most of their time explaining the act, they also have other important duties. These duties include representing the commission in court, analyzing potential legislation, reviewing requests for information under the Public Records Act, appearing at enforcement proceedings, and responding to inquiries from the press. The most time-consuming of these functions is the division's court-related work. The division's general counsel estimates that recently the division's staff have spent more than 15 percent of their time preparing for or appearing in court. Staff spent most of this time defending Proposition 208, a recent amendment to the act that is facing legal challenges and is further described in the Introduction. In addition, the division represents the commission in enforcement proceedings in civil court, and files legal briefs for other political reform cases. Meanwhile, the general counsel estimates that 5 percent to 10 percent of staff time is spent analyzing legislative bills. In April 1998, the division had identified 25 legislative bills affecting the commission or the act. All remaining functions make up approximately 20 percent to 25 percent of the division's workload.

Regulations Incorporate Public Input and Comply With Legal Criteria


The commission's legal requirements for establishing regulations are less than those followed by other state agencies.

The commission's regulations appear to meet legal criteria and they incorporate public comments even though they are subject to minimal oversight. When the commission was established in 1974, it was subject to the Administrative Procedures Act (APA) then in effect. The APA sets procedures used by state agencies when they establish regulations. As the result of a 1992 appellate court decision, however, the commission is not subject to any subsequent changes in the APA. Over the last two decades, several criteria have been added to the APA to protect against over-regulation. Consequently, the legal requirements faced by the commission when it establishes regulations are less stringent than those faced by other state agencies. For instance, the Office of Administrative Law (OAL) reviews the regulations established by almost all state agencies and assesses the consistency of the regulations with the law. The commission's regulations face no such review.

In addition, while the OAL reviews how state agencies incorporate or reject public comments, it does not do so for the commission. Moreover, under the current APA, the time frame for establishing regulations is 45 days, which must be extended 45 days when substantive changes are made. However, the commission has a 30-day time frame for establishing its regulations with no required extension for revisions. Nevertheless, the commission has established alternative procedures that include holding an extra public hearing when it believes a regulation warrants more extensive public input.


Since January 1994, the commission has adopted 31 new regulations, amended 101 regulations, and repealed 18 regulations. As shown in Table 1, of this total, 76 percent relate to substantive changes brought about by new gift and honoraria statutes in 1995 and Proposition 208 in 1997, and to minor technical changes. We found that the commission opted to hold extra public hearings for 71 percent of the regulations established, amended, and repealed.

Table 1


***Regulations Approved by the
Fair Political Practices Commission
January 1994 Through April 1998***

	New	Amended	Repealed	Total	Percent
Proposition 208	13	4	1	18	12%
Gift/Honoraria	4	26	1	31	21
Technical Cleanup	2	49	14	65	43
Other	12	22	2	36	24
Total	31	101	18	150	100%

Our test of two regulations adopted since January 1994 revealed that the regulations met legal requirements, including consistency with the law. In addition, the division allowed for adequate public input. In the first case, the commission held an extra hearing for a package of amendments related to gifts and honoraria regulations. In the second case, the commission held two extra hearings for emergency regulations related to Proposition 208. In both instances, the division used extensive mailing lists to notify its customers of the proposed amendments and new regulations and made significant changes where the public offered its input.



The commission's regulations are consistent with the act.



We also reviewed 24 of the commission's 178 current regulations. In our judgment, 22 of the regulations are generally consistent with their related code sections. It appears that the other two regulations are not consistent with the code sections; however, they reasonably interpret the act's intent. One regulation prohibits certain mass mailings paid for with public funds. Although the law on which the regulation is based is only 12 words long, the regulation is more than 1,600 words long. It appears that the detail included in the regulation is necessary in order to properly restrict the law to the intent of the voters when they passed the law. In fact, when challenged, an appellate court found that the regulation kept the law from being overly broad and helped prevent the statute from being struck down as unconstitutional. The other regulation exempts public officials from disclosing the value of lodging, food, and in-state transportation when giving speeches. The exception applies to lodging and food received on the day of a speech and possibly the day before or after if necessary due to travel. The benefits must be provided directly in connection with the speech. In the division's opinion, the value of a speech is roughly equivalent to the value of the travel benefits received. The division reasoned that any net benefit to an official would be minimal; the value of disclosure is therefore insignificant. We agree with this determination.

Advice Letters Apply the Act and Regulations to Factual Situations

The division properly applies the act and regulations when issuing advice letters, which it generates in response to written requests from those covered by the act. According to statute, the commission must answer these requests within 21 days, although it may extend this limit for good cause. In its answer, the division states whether a particular course of action is in keeping with the act and regulations. Because advice letters concern specific situations, their scope is usually limited. However, in some instances, the division's advice significantly interprets the law. When this occurs, the division places the advice letter on the commission's agenda for discussion and/or proposes a regulation to codify the interpretation.



Between January 1993 and December 1997, the division received an average of 450 requests for advice a year. In 1997, the total exceeded 600 advice letters because of Proposition 208. Since the injunction of Proposition 208 in January 1998, the number of requests has returned to normal levels. Approximately 44 percent of requests concern the act's conflict-of-interest provisions, while 31 percent relate to campaign disclosures.

We tested 12 advice letters and found that for 11, the division had properly applied the act and regulations to factual situations. For the remaining advice letter, we found that the division gave advice that significantly interpreted a portion of Proposition 208. However, the division's response stated this fact and warned the requester to follow the status of the issue until the commission issued regulations on the subject. The commission adopted the interpretation two months later through regulation. We believe that the division's approach in this last case was reasonable.

We also tested the response time for 16 advice letters and found that the division met the legal 21-day turn-around requirement for all but 5 letters. The division had good cause to extend the limit in these 5 cases because of complex facts that required extra analysis.

The Division Lacks Adequate Tools for Managing Its Resources

The division does not track staff time by function and has set few quantifiable goals. Although the vast majority of the division's expenses are for salaries and benefits, it does not record the use of staff time by function. The division's general counsel stated that such timekeeping would be burdensome, given the large number of jobs staff work on at any given time. Although we understand this point, we believe that a simplified timekeeping system, focused on the division's functions, would be useful. For example, a system that records time spent on regulations, advice letters, and litigation, without requiring details on individual jobs within each function, could be used to accurately determine current work requirements, to set performance benchmarks, and to gauge the success of efforts to improve efficiency.


The division does not track time its staff spends on various activities.


Furthermore, the division has few quantifiable goals related to efficiency or effectiveness. In its strategic plan, the commission includes a number of objectives for the division. These include using new technologies to disseminate advice letters, improving response time for public records and advice requests, and improving internal communications. Nevertheless, these objectives include only one goal that measures improved efficiency or effectiveness—a turn-around goal of 10 days for public records requests. All other measures in the plan only relate to the time frame for meeting objectives. For example, for the objective of placing advice letters on the Internet, the division has only established the fiscal year when the project will start. Better performance goals might include a reduction in the time spent on particular functions or an improvement in

the level of customer satisfaction. Without such performance measures, it is difficult for the division to know whether it has become more efficient or effective over time.

***Low Dollar Limits in the Act
Can Create Unreasonable
Requirements for Public Officials***

The act's current dollar limits for disclosures of and restrictions on activities of public officials are unreasonably low and can result in unfair requirements. The act allows public officials to accept a limited amount of gifts, income, and contributions, and requires them to disclose publicly the amounts they receive. For example, the act prohibits public officials from participating in government decisions if they receive \$250 or more in income from clients who may be the subject of those decisions.


The dollar limits in the act, set as early as 1974, have rarely changed even though the inflation in California has more than tripled the value of a dollar since then. For example, the \$250 limit placed on receiving income enacted in 1974, using average inflation, is equal to \$830 in 1996 dollars. Table 2 further illustrates inflation-adjusted dollar limits for selected requirements of the act.

***Table 2
Examples of Monetary Thresholds for Fines, Gifts, Income,
and Political Contributions Adjusted for Inflation***


California Government Code Section	Description of the Code Section	Effective Dates of Existing Limits	Existing Dollar Limits	Inflation-Adjusted Values as of 1996 ^a
83116(c)	Monetary penalty per violation of the Political Reform Act	1974	\$2,000	\$6,630
84206(a)	Maximum contribution limit allowed if using short form for filing reports of campaign finances	1987	1,000	1,350
84308(b) & (c)	Maximum limit allowed for any agency officers accepting contributions while a proceeding involving a license, permit, or other entitlement for use is pending before the agency	1982	250	400
86203	Prohibits a lobbyist from making gifts over the limit to one individual per month	1974	10	30
87103(c)	Prohibits public officials from participating in government decisions if income received from clients who are subjects of the decisions is over the limit	1974	250	830
87207(a)(1)	Requires disclosures for gifts received over the limit	1982	50	80

^aWe calculated inflation adjustments using inflation factors through 1996 because 1997 information was not available.

Although the purpose of dollar limits is to restrain improper practices by public officials, the current dollar limits may create unfair situations that inhibit normal and reasonable activities. During our review, we noted several instances where low dollar limits resulted in unreasonable restrictions. For example, in 1996, a city council member requested advice from the commission to determine if he had a conflict of interest in an upcoming government decision. Specifically, the council member owned an automobile dealership that did some repairs for a corporation, in the normal course of business, for approximately \$300. A few months later, this corporation proposed to purchase land owned by the city. However, because the corporation paid the council member's automobile dealership more than the allowable limit of \$250, the council member had a conflict of interest. Hence, the commission informed the council member that he could not participate in this decision. The council member could have participated in the decision if the limit was based on the inflation-adjusted value of \$830, almost three times what the council member's business received from the corporation. Given the small dollar value of the transaction, it is also very unlikely that the council member was influenced by the corporation.



Low dollar limits can have an undesirable effect if they are manipulated to disqualify a public official from voting.



In addition, low dollar limits can have another undesirable effect because third parties could manipulate the act's conflict-of-interest laws to their benefit by disqualifying a public official from voting on important matters. For instance, in the automobile dealership example, the city council member also alleged that the corporation intentionally had the repair work done to force him to abstain from voting on the land purchase decision, which he opposed. The council member asked the commission to investigate the matter, but because the act does not forbid this type of behavior, the commission could do nothing. This case demonstrates that for as little as \$300, an unscrupulous party can favorably affect the outcome of a decision.

Moreover, even when adjusted for inflation, some of the dollar limits still appear unreasonably low. For instance, the California Government Code, Section 84206(a), allows candidates or officeholders to use a short form for disclosing contributions if the total amount is under \$1,000. Adjusting for inflation, this amount increases to \$1,350 in 1996 dollars. However, this amount still seems unreasonably low. A higher, more reasonable limit would simplify reporting for smaller, local campaigns. Further, the current law allows public officials to receive gifts up to \$290; however, it requires disclosure of all gifts greater than \$50. Although inflation

increases the threshold for disclosure to \$80, a higher limit seems more reasonable and would ensure that public officials report gifts of material amounts only.

Attempts to Raise Dollar Limits

In recent years, there have been several attempts to adjust these dollar limits. In 1990, the Legislature added California Government Code, Section 89504(d), allowing the commission to adjust the dollar limit of gifts for inflation every other year. Using this provision, the commission has increased this limit from \$250 to \$290. Also, in 1997, Proposition 208 added California Government Code, Section 83124, allowing the commission to adjust the campaign contribution and expenditure limits for inflation every other year. Further, in 1995, a Senate bill proposed to double most of the limits set in the act; however, the bill did not pass.

Recommendations

To measure the efficiency and effectiveness of the legal division, the Fair Political Practices Commission (commission) should take the following actions:

- Track the amount of time staff spend on various functions.
- Develop performance benchmarks for various functions.
- Develop measurable goals for service performance.

The commission should propose legislation to establish the dollar limits for disclosures and restrictions at higher, more reasonable levels. In determining these limits, the commission should consider inflation along with other factors that will result in more equitable dollar limits. The commission should also propose legislation forbidding a third party from creating an artificial conflict of interest for the purpose of preventing a public official from participating in a government decision.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

A handwritten signature in black ink, reading "Kurt R. Sjoberg". The signature is written in a cursive style with a large, prominent initial "K".

KURT R. SJOBERG
State Auditor

Date: May 28, 1998

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John Baier, CPA
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Appendix

Expenditure Trends of the Fair Political Practices Commission

The table below illustrates expenditures of the Fair Political Practices Commission (commission) over the past five fiscal years. The commission records expenditures by funding source rather than by division. We therefore categorized these expenditures by division to show the effort spent on the commission's main activities. Approximately 82 percent of expenditures are for salaries and personnel benefits, with the remainder for operating expenses. To calculate total expenditures by division, we allocated personnel benefits and operating expenses based on the percentage of each division's salaries and wages. The operating expenses are for normal activities such as rent, postage, and other like items. We observed no unusual or inappropriate expenditures.

Included in the expenditures for the administration division are expenditures for administrative staff, the commission's executive director, the chairman of the commission, and the chairman's executive assistant. Also included are stipends for the other four commissioners of the commission.

Table 3

Expenditures of the Fair Political Practices Commission Fiscal Years 1992-93 Through 1996-97 (In Thousands)

Division	1992-93		1993-94		1994-95		1995-96		1996-97	
Enforcement	\$1,391	35%	\$1,546	38%	\$1,801	41%	\$1,831	41%	\$1,915	38%
Technical assistance	732	19	894	22	1,001	23	1,065	24	1,247	25
Legal	750	19	714	18	860	19	837	19	1,031	21
Administration	1,046	27	880	22	762	17	685	16	830	17
Total Expenditures	\$3,919^a		\$4,034		\$4,424		\$4,418		\$5,023	
Increase (Decrease) in Expenditures From Prior Fiscal Year	--	--	\$ 115	3%	\$ 390	10%	\$ (6)	0%	\$ 605	14%

^aDoes not include tort payments of approximately \$323,000.

The \$605,000 increase between fiscal years 1995-96 and 1996-97 was largely due to Proposition 208, which increased the annual budget by \$500,000. The \$390,000 increase between fiscal years 1993-94 and 1994-95 was due to statewide increases in salaries of state employees. Beginning in July 1992, state employees received a 5 percent decrease in salary due to the State's fiscal crisis. In January 1994, the salaries of state employees were reinstated to previous salary levels, thus increasing salary costs by 5 percent compared to the previous year's salaries. In addition, state employees received a 5 percent cost-of-living adjustment effective January 1, 1994, and a 3 percent cost-of-living adjustment effective January 1, 1995. As a result, the salaries for the full fiscal year 1994-95 were higher than fiscal year 1993-94, which resulted in an overall increase in costs.

Agency's response to the report provided as text only:

FAIR POLITICAL PRACTICES COMMISSION
P.O. Box 807
428 J Street
Sacramento, CA 95812-0807
(916) 322-5660 · Fax (916) 322-0886

May 22, 1998

Mr. Kurt R. Sjoberg
California State Auditor
Bureau of State Audits
660 J Street, Suite 300
Sacramento, CA 95814

Re: Performance Audit of the Fair Political Practices Commission

Dear Mr. Sjoberg:

We appreciate the opportunity to respond to the report of your performance audit of the Fair Political Practices Commission (FPPC). Our initial belief that the audit would be beneficial to our operations has been realized, and we appreciate the professionalism with which your staff performed its assignment under difficult time constraints.

The broad themes of your report are significant and reassuring:

- That the FPPC reasonably interprets the Political Reform Act (PRA) as amended, through its regulations and advice,
- That FPPC expenditures have lagged behind the general rate of growth of other state agencies,
- That FPPC enforcement activities show no evidence of partiality,
- That greater effort and resources need to be applied to improving communication with persons affected by the PRA, and
- That internal control and accountability systems need to be improved to enhance management capabilities.

Although some differences remain regarding the functional objectives of the audits performed by the Franchise Tax Board (FTB) pursuant to the PRA, you have appropriately called our attention to the need to review and update the auditing guidelines and standards governing FTB audits.

Regarding the question of using resource availability as a consideration in determining whether to pursue certain alleged violations of the PRA, we believe that suppressing the resource availability factor would be contrary to the intent and philosophy of the PRA. The provision of private actions to enforce the PRA - the "private attorney general" concept - is not only a check against FPPC lassitude, but also a recognition that government may not always have adequate resources to pursue violations of the law. Our enforcement staff, using professional judgment and prosecutorial discretion, chooses those cases that it believes will result in the greatest beneficial effect in carrying out the purposes of the law. Since the political world is dynamic and fluid - despite some continuing verities - such judgments do not lend themselves to formulaic treatment. We agree that a better record of this calculus needs to be maintained, but consideration of enforcement resources must continue to be a part of the professional judgment applied.

①*

Our long term goal is to achieve a level of understanding and compliance among those affected by the PRA that will result in minimal enforcement activity. We share your concern that we have insufficient data to adequately gauge the needs of our customers, and we will continue our efforts to upgrade our data processing, communications, and management systems.

We must also be realistic, however. Although the FPPC enjoys a substantial continuing appropriation, it is insufficient to fund even a minimal education and enforcement program under the original PRA. Adding initiatives and legislated duties without sufficient funding has the effect of detracting from overall effectiveness of the organization to carry out the purposes of the PRA. We will continue to balance our activities carefully as budgeted resources are made available. But significant expansions of activities, such as is implied by your recommendation for closer monitoring of 7000+ filing officers, will require substantial additional resources.

②

Again, we appreciate the courtesy and professionalism of your staff.

Very truly yours,

James M. Hall
Chairman

Robert Tribe
Executive Director

Comments

California State Auditor's Comments on the Response From the Fair Political Practices Commission

To provide clarity and perspective, we are commenting on the Fair Political Practices Commission's (commission) response to our audit report. The numbers correspond to the numbers we have placed in the response.

- ① The concept the commission refers to is the "private attorney general" concept. This concept is the right of a person to file a civil action against another person who violates the Political Reform Act of 1974. Before filing such an action, Section 91007 of the California Government Code first allows the commission an opportunity to file a civil suit. However, the commission's concern is not relevant. As we state on page 4 of the report, the commission rarely files civil suits (only five civil suit judgments since 1993) and therefore does not impede private citizens from pursuing civil remedies. Furthermore, we do not recommend that the commission "suppress the resource availability factor" in managing its enforcement activities. On the contrary, as we discuss on pages 8 to 10, staff availability should play no part in decisions to investigate; only the merits of the complaint should be considered. Staff availability only becomes relevant once the decision to investigate is made.
- ② As we state on pages 21, 29, and 41 of our report, the commission does not track or monitor its workload or accurately track the time its staff spend on the commission's activities. Therefore, we were unable to substantiate the commission's claims of insufficient resources.

cc: Members of the Legislature
Office of the Lieutenant Governor
Attorney General
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps