

**California Bureau of State Audits**  
**MEMORANDUM**

To: Elaine Howle, State Auditor

From: Steven Russo, Chief of Investigations  
Sharon Reilly, Chief Counsel

Subject: Proposed regulations 60804.1, 60815.1, 60820.1, 60856, 60857, 60858, 60859, 60860, 60861, 60862, and 60863 and proposed amendments to existing regulations 60841, 60846, 60853 and 60855

Date: April 16, 2010

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**INTRODUCTION**

The Voters FIRST Act, approved by the voters in the November 4, 2008 general election as Proposition 11 (the “Act”),<sup>1</sup> requires the State Auditor to initiate an application process for selecting the members of the Citizens Redistricting Commission (the “commission”). The commission, composed of 14 members, is responsible for redrawing district lines for the Senate, Assembly, and State Board of Equalization based on the most recent census information. To serve as a member of the commission, an applicant must be a registered California voter who has voted in at least two of the last three statewide general elections prior to submitting an application and has been registered continuously with the same political party, or no political party, for at least five years immediately prior to appointment. Additionally, an applicant cannot have a conflict of interest, as defined by the Act. The Act also makes those who are selected to serve as members of the commission ineligible to hold elective public office at the federal, state, county, or city level for 10 years, and ineligible to hold appointive federal, state, or local public office, serve as paid staff for the Legislature or any individual legislator, or register as a lobbyist for five years from the date of appointment to the commission.

The Act requires the State Auditor to select the Applicant Review Panel (the “panel”) that will review the applications of persons wishing to serve on the commission. On November 16, 2009, the State Auditor selected this panel by randomly drawing the names of three auditors from a pool of qualified independent auditors who are licensed by the State Board of Accountancy and have ten or more years of experience working as an independent auditor. Under the Act, the panel evaluates all of the applications submitted by eligible applicants, and based on that evaluation, identifies a pool of 60 of the most qualified applicants. This pool of 60 applicants must consist of three subpools of 20 applicants each, with one subpool comprised of applicants registered with the state’s largest political party, another subpool comprised of applicants

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<sup>1</sup> The Voters FIRST Act is contained in article XXI of the California Constitution and sections 8251 through 8253.6 of the Government Code. Unless otherwise indicated, all statutory references are to the Government Code.

registered with the state's second largest political party, and a third subpool comprised of applicants not registered with either of the state's two largest political parties. The State Auditor sends a list of the names of the 60 most qualified applicants to specified leaders in the Legislature who may strike not more than eight applicants from each of the three subpools. The legislative leaders are then required to return the remaining names to the State Auditor, who randomly draws, from the names of applicants not stricken in each of the subpools, three applicants registered with the largest political party, three applicants registered with the second largest political party, and two applicants not registered with either of the two largest political parties. These applicants drawn by the State Auditor become the first eight members of the commission. For the current redistricting cycle, the first eight commissioners must be selected by November 20, 2010. During the final phase of the selection process, those first eight members of the commission select the final six members of the commission from the applicants remaining in the three subpools.

The State Auditor adopted regulations on October 20, 2009 that relate to the following subject areas of the Act: the creation and operation of the panel; a comprehensive outreach program designed to increase awareness of the opportunity to serve on the commission; several phases of the application process; the method for screening applicants to determine whether they meet the eligibility requirements to serve on the commission; the process for evaluating applicants to identify the pool of 60 of the most qualified applicants; the procedure for transmitting a list of the names of the 60 finalists to the Legislature; and the process for randomly drawing the first eight members of the commission (Cal. Code Regs., tit. 2, § 60800 et seq.). While conducting that rulemaking, it became apparent that additional regulations would be needed to provide guidance regarding the final phase of the application process and to clarify provisions of the Act that make commission members ineligible to hold certain public offices or to engage in certain activities for specified periods following their appointment to the commission. The State Auditor therefore decided to commence a second rulemaking process which began with the release of a Call for Public Comment on January 15, 2010. The State Auditor has the authority, under section 8546, subdivision (g), to adopt regulations as necessary in order to carry out the duties assigned to her and to the Bureau of State Audits (the "Bureau") under the law.

Based on our review of the public comments that we received in response to the Call for Public Comment, as well as what we have learned from implementing the application process up to this point, we are proposing the adoption of 11 new regulations and the amendment of four existing regulations to further guide the application process established by the State Auditor pursuant to the Act. A discussion of each of the regulations that we are proposing to either create or amend may be found in the Proposed Regulations section of this memorandum.

## **BACKGROUND**

### **Final Phase of the Application Process – Phase VI Selection of the Final Six Members of the Commission**

The responsibilities of the first eight members of the commission, who will be selected by random drawing, are described in section 8525, subdivision (g) ("subdivision (g)"). Specifically, the first eight members of the commission must, by December 31, 2010, select the final six

members of the commission in a manner that ensures the formation of a 14-member commission that reflects the state's diversity while also being based on the applicants' relevant analytical skills and ability to be impartial. However, the Act provides no further guidance regarding how this selection should be performed. The Act also provides little guidance regarding how the applicants, once all 14 of them have been selected, will make the transition to becoming a fully functional commission.

For example, the Act does not address the need for the first eight commissioners to have administrative and legal support. Section 8253, subdivision (a) authorizes the commission to hire commission staff, legal counsel, and consultants as needed, and it also requires the Secretary of State to provide support functions to the commission until its staff and office are fully functional. However, assistance from the Secretary of State is not mandated until the full 14-member commission is formed. Thus, there is an apparent "gap" in the initiative in that it does not expressly require any state entity to provide support to the first eight commissioners as they select the final six commissioners. As the first eight commissioners will have no more than six weeks to select the final six commissioners, such support will be essential to the selection of the full commission by the December 31, 2010 deadline. Although not an exhaustive list, other examples of procedural items that are not specifically addressed in the Act include training for the first eight commissioners, the manner in which the meetings of the first eight commissioners shall be conducted as they go about the business of selecting the final six commissioners, and the procedures the first eight commissioners must follow in selecting the final six commissioners in order to ensure that the selection is consistent with the requirements of subdivision (g).

The State Auditor has the authority to adopt regulations governing the operation of this phase of the application process, even though it involves the participation of the first eight members of the commission, precisely because it is a part of the application process. Under article 2, section 2, subdivision (c)(5) of the California Constitution, the commission members cannot assemble a quorum that would allow them to exist as an independent state body with less than nine members. Accordingly, the first eight members of the commission are performing their limited duties of selecting the final six members of the commission under the auspices of the State Auditor who is charged with initiating and overseeing the application process as provided by section 8252, subdivision (a)(1). This gives her the authority to establish rules governing how the first eight members of the commission shall perform the selection, so long as those rules are consistent with the Act.

Accordingly, we are proposing new regulations necessary for the implementation of subdivision (g) that are intended to ensure the first eight members of the commission are prepared to carry out the final phase of the application process. We also are proposing minor amendments to several existing regulations in order to ensure that this final sixth phase of the application process meshes smoothly with the other phases of the application process.

#### **Restrictions on Applicants Selected To Serve on the Commission**

Just as the Act, through its conflict of interest provisions, makes certain individuals ineligible to serve as members of the commission due to past activities such as holding particular public offices, being employed by the Legislature, and working as a registered lobbyist, the Act also

prohibits persons appointed to serve as members of the commission from holding certain public offices, being employed by the Legislature, and working as a registered lobbyist for specified periods of time after the appointment. The Act provides, in article XXI, section 2, subdivision (c)(6) (“subdivision (c)(6)”) that an applicant selected to serve as a member of the commission shall be prohibited, for a period of ten years beginning from the date of appointment, to hold elective public office at the federal, state, county, or city level in California. This subdivision also provides that an applicant selected to serve as a member of the commission shall be prohibited, for a period of five years beginning from the date of appointment, to hold appointive federal, state, or local public office, to serve as paid staff for the Legislature or any individual legislator, or to register as a federal, state, or local lobbyist in California. Significantly, while the post-appointment prohibitions of subdivision (c)(6) are similar in many respects to certain of the conflict of interest prohibitions that pertain to applicants, they are also different in many respects both in scope and specific wording from the conflict of interest prohibitions. For instance, while the conflict of interest provisions only make a person ineligible to serve as a member of the commission due to being elected or appointed to certain federal and state offices, subdivision (c)(6) places a restriction on the ability of a commission member to hold certain unspecified local offices. Further, while subdivision (c)(6) uses the terms “elective public office at the federal, state, county, or city level,” and “appointive federal, state, or local office,” these are not terms found in the conflict of interest provisions of the Act, and these terms are not otherwise defined in the Act, creating considerable ambiguity regarding which offices an applicant may not hold and what activities an applicant may not engage in if selected to serve on the commission.

Having such ambiguity in the prohibitions the Act imposes on applicants selected to serve as members of the commission disrupts the application process in two very significant ways. First, it prevents applicants from making an informed decision prior to their selection about whether they really want to serve on the commission, because they do not know whether they will have to give up a current office or prospective opportunity as a consequence of being appointed to the commission. Second, it puts the panel in the difficult position of not knowing whether to include an otherwise well-qualified applicant among the 60 most qualified applicants because that applicant holds a public office that he or she is unwilling to give up, and it is unsettled whether the applicant can serve on the commission while continuing to hold the current office. Additionally, the commission itself, once established, could find itself embroiled in controversy over whether certain commissioners are properly seated due to holding an office or engaging in an activity that may or may not be prohibited by subdivision (c)(6).

The State Auditor has the authority to adopt regulations interpreting the post-appointment prohibitions contained in subdivision (c)(6) because resolving the above-stated ambiguity regarding the restrictions that will apply to an applicant selected to serve on the commission is essential to establishing an effective application process, as neither the panel nor the applicants themselves will know who is truly able and willing to serve as a member of the commission. It is therefore implicit in her authority under section 8252, subdivision (a)(1) to initiate and oversee the application process for selecting the members of the commission.

In giving meaning to the words and phrases used in the office holding restrictions, we applied rules of statutory interpretation. The general principles that govern interpretation of a statute enacted by the Legislature apply also to an initiative measure approved by the voters. ([Robert L.](#)

*v. Superior Court* (2003) 30 Cal.4th 894, 900.) Thus, the primary task here is to determine the intent of the electorate (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1037) so as to effectuate that intent (*Nolan v. City of Anaheim* (2004) 33 Cal.4<sup>th</sup> 335, 340). We look first to the words of the initiative measure, as they generally provide the most reliable indicator of the voters' intent. (*Bernard v. Foley* (2006) 39 Cal.4th 794, 804.) If the provision's words are ambiguous and open to more than one meaning, we consult the legislative history, which in the case of the Act, is the ballot pamphlet. (*Board of Supervisors v. Lonergan* (1980) 27 Ca.3d 855, 866.) In cases of ambiguity we also may consult any contemporaneous constructions of the constitutional provision made by the Legislature or by administrative agencies. (*Ibid.*)

As the terms “elective public office at the federal, state, county or city level” and “appointive federal, state, or local public office” are ambiguous and subject to more than one possible meaning, we first looked to the Act itself for further clarification. The Findings and Purpose section (“statement of intent”) contained in the Act states that the “Independent Citizens Redistricting Commission will draw districts based on strict, nonpartisan rules designed to ensure fair representation.” Further, the statement of intent states that, “[t]he reform takes redistricting out of the partisan battles of the Legislature and guarantees redistricting will be debated in the open with public meetings...” Moreover, the stated purpose of the Act is to “make the redistricting process open so it cannot be controlled by the party in power. It will give us an equal number of Democrats and Republicans on the commission, and will ensure full participation of independent voters—whose voices are completely shut out of the current process.” The Act also states that the selection process for service on the commission is “designed to produce a Citizens Redistricting Commission that is independent from legislative influence and reasonably representative of this State’s diversity.”

Although the statement of intent provided some guidance, it did not resolve the ambiguities and, therefore, we turned to the ballot pamphlet (Ballot Pamp., Gen. Elec. (November 4, 2008)) for specific intent provisions that impose restrictions on office holding or the intended meaning of the terms used in those provisions, and found that the ballot pamphlet offers no further guidance. However, the ballot pamphlet argument that was prepared in support of the Act indicates that those who serve on the commission should be free from partisan political influence which is simply consistent with the language found in the statement of intent.

In light of the fact that the apparent purpose of subdivision (c)(6) is to help free commissioners from partisan political influences, we tried to craft the regulations interpreting the subdivision with three concepts in mind. First, a commission member should not be allowed to benefit from his or her redistricting work by being elected to a state office that represents a district whose boundaries were drawn by the commission member. Second, a commission member should not be in a position where he or she can be punished for his or her redistricting work through the denial of political support for an elective office or removal from a desirable appointive position. Third, a commission member should not be in a position where he or she can be rewarded for his or her redistricting work through the granting of political support for elective office or appointment to a desirable appointive position. Furthermore, keeping in mind that “the right to hold public office, whether by election or appointment, is one of the valuable rights of citizenship.” (*Carter v. Commission on Qualifications of Judicial Appointments* (1939) 14 Cal.2d

179, 182, *citing People v. Dorsey* (1867) 32 Cal. 296.) we tried to craft the regulations so that they do not unnecessarily restrict the ability of commissioners to hold public office any more than necessary to ensure that commission members are free from partisan political influence.

Additionally we also tried to draft the proposed regulations so that the prohibition against holding certain elective public offices harmonizes with the prohibition against holding certain appointive public offices. In particular, we wanted to ensure that for those offices that may be filled either by election or appointment, holding the office is either permitted or prohibited by the Act, regardless of how the office is filled. Further, various offices that are fundamentally similar in nature should all be classified the same insofar as whether they may be held by a commissioner. Not achieving this kind of consistency in the application of the law would be extremely problematic. We strived to achieve such consistency through the definitions we attached to the terms “elective public office at the federal, state, county, or city level” and “appointive federal, state, or local public office.”

## **PROPOSED REGULATIONS**

### **Regulations Guiding Phase VI of the Application Process**

#### **Proposed Amendments to Current Regulation 60841. Overview of the Application Process**

Existing regulation 60841 briefly summarizes each phase of the application process for selecting the members of the commission, but stops short of describing the last phase. One of the proposed amendments to this regulation deletes from the description of Phase V of the application process a reference to the selection of the final six commission members of the commission. Another proposed amendment adds a description of Phase VI of the application process as the part of the application process in which the first eight members of the commission select the final six members of the commission.

#### **Proposed Amendments to Current Regulation 60846. Written Public Comments and Responses**

Existing regulation 60846 sets forth the process by which members of the public may submit written comments about the applicants being considered for selection to the commission and the process by which applicants may respond in writing to the comments that have been made about them. The proposed amendments to this regulation clarify that as the public will be entitled to submit written comments throughout the application process about applicants being considered for selection to the commission, this comment process also extends to Phase VI of the application process.

#### **Proposed Amendments to Current Regulation 60853. Phase V-Random Drawing of First Eight Commissioners**

Existing regulation 60853 specifies the procedures that shall be followed during Phase V of the application process when the State Auditor randomly draws the names of the applicants who will become the first eight members of the commission. However, this regulation fails to provide adequately for the transition to Phase VI of the application process, in that it does not specify anything about notification of the selected applicants or how information about the selected applicants will be disseminated to the public. The proposed amendments fill that void by specifying the bureau shall notify applicants of their selection to the commission and shall post certain information about the selected applicants on the bureau's website.

### **Proposed Amendments to Current Regulation 60855. Commission Vacancies**

Current regulation 60855 sets forth the process that shall be followed in order to fill any vacancies that may occur on the commission after the members have been selected. Although we have no intention of revising this process during the current rulemaking, the bureau's regulations concerning the application process would flow in a more logical succession if regulation 60855, and those immediately following it, were devoted to providing guidance regarding Phase VI of the application process and the restrictions that apply to the activities of commission members after they are appointed. We therefore are proposing to move the substance of existing regulation 60855 into a new regulation 60863 that will appear after the new regulations we are proposing in this rulemaking project. Regulation 60855 will then be devoted to specifying the training that the bureau will provide to the first eight members of the commission.

In order for the first eight members of the commission to be adequately prepared for the important task of selecting the final six members of the commission, it is apparent they will need training regarding the duties the law imposes on them when making the selection of the final six members and training regarding the qualities they need to look for in a commissioner. Modeled after existing regulation 60832, which specifies the training that must be provided to the panel, this proposed regulation specifies that the first eight members of the commission shall receive training that at a minimum covers five key topics: the requirements for conducting a public meeting; the duties the first eight commissioners have under the Act and its implementing regulations when performing the selection; California's diverse demographics and geography; the legal responsibilities of the commission under the Act, the United States Constitution, and the Voting Rights Act of 1965; and the process for performing redistricting. Providing such training to the first eight members of the commission is essential to ensuring they will have a sufficient understanding of the selection criteria to carry out their responsibilities.

### **Proposed Regulation 60856. Administrative Support for the First Eight Commissioners**

Although the Act is silent as to what administrative, technical, clerical, and legal support will be provided to the first eight members of the commission when they undertake selection of the final six members of the commission, it is obvious they will need such support to accomplish that duty. This proposed regulation therefore provides that the bureau will provide such support, pursuant to the State Auditor's authority to initiate and oversee the application process, in order to ensure that the first eight members of the commission can fulfill their responsibilities. This support shall include: collecting and managing application materials; gathering additional

information at the direction of the first eight commissioners; arranging public meetings; making travel arrangements; providing technical and administrative support for meetings; communicating with the public on behalf of the commission members; and providing legal counsel. The proposed regulation also provides that the bureau shall keep and retain the records generated during this final phase of the application process for at least 12 years, consistent with its record retention for the other phases of the application process.

### **Proposed Regulation 60857. Payments to First Eight Members of the Commission**

Section 8253.5 provides that commission members are entitled to receive specified compensation for each day they are engaged in commission business and reimbursement for expenses incurred in connection with the duties they perform pursuant to the Act. The proposed regulation clarifies that when the first eight members of the commission are engaged in training for selecting the final six members of the commission, they are engaged in commission business for which they are entitled to receive the specified compensation. Similarly, the regulation clarifies that expenses incurred by the first eight members of the commission in training for selecting the final six members of the commission are expenses incurred in connection with the duties they perform under the Act, so they are entitled to receive reimbursement for those expenses.

### **Proposed Regulation 60858. Phase VI Meetings of the First Eight Members of the Commission**

Proposed regulation 60858 presents certain procedural requirements for the meetings that the first eight members of the commission shall hold in order to select the final six members of the commission. Generally modeled after existing regulation 60836, which specifies the manner in which the panel shall conduct its meetings, this proposed regulation discusses: the scope of the first eight commissioners' authority at meetings; where the meetings will be held; the number of members required for a quorum of the first eight commission members; the open meeting requirements for the meetings; the selection of a temporary chair and vice chair, the rules or order, as well as the recording and broadcast of the meetings.

To highlight provisions of the proposed regulation that have particular significance, subdivision (a) of the regulation expressly declares that the authority of the first eight commissioners is limited to selecting the final six commissioners, so action on all other commission matters must be deferred until the full commission is established. Subdivision (b) specifies that the first eight commissioners shall meet in Sacramento. This is necessary because under the Act the first eight commissioners have so little time allotted to them for selecting the final six commissioners, they will need to take advantage of the efficiency created by holding meetings in Sacramento where the bureau's staff and resources are available. Subdivision (d) provides that the meetings of the first eight commissioners shall be subject to the Bagley-Keene Open Meeting Act, and are not subject to the longer notice requirement for meetings of the full 14-member commission as stated in section 8253, subdivision (a)(1), also because of the need for the members to progress quickly within the limited time they have for the selection. Subdivision (e) establishes a procedure for the first eight commission members to select a temporary chair and vice chair that is very similar to the procedure prescribed by section 8253, subdivision (a)(4) for the selection of a permanent chair and vice chair once the full commission is formed. We thought it prudent for the two

processes to be similar, as the process prescribed in section 8253, subdivision (a)(4) appears designed to ensure a balance of power between the commissioners having different party affiliations. Finally, subdivision (h) provides that meetings of the first eight commissioners shall be video recorded and broadcast over the internet in a manner similar to the practice employed for the meetings of the panel.

**Proposed Regulation 60859. Communications Between the First Eight Members of the Commission and Members of the State Board of Equalization, Legislature and Congress**

Section 8253, subdivision (a) prohibits members of the full 14-member commission and their staff from communicating with anyone outside of an open meeting regarding redistricting matters. Section 8252, subdivision (d) prohibits members of the panel from communicating with members of the State Board of Equalization, the Legislature, and Congress regarding their evaluation of applicants. Consistent with these restrictions on communications, the proposed regulation clarifies that the first eight members of the commission shall not communicate with members of the State Board of Equalization, the Legislature, and Congress about the selection of the final six members of the commission or their role as members of the commission. Further any testimony or public comment the first eight commissioners receive from these officeholders about an applicant shall be in writing and disclosed to the public or presented at a public meeting.

**Proposed Regulation 60860. Phase VI Selection of the Final Six Members of the Commission**

Section 8252, subdivision (g) specifies procedures that the first eight members of the commission shall employ to select the final six members of the commission. Although the Act is unequivocal in requiring that the first eight members of the commission shall select the final six members in a manner that ensures the commission reflects California's diversity, as well as on the basis of relevant analytical skills and ability to be impartial, it provides no guidance regarding how this objective shall be accomplished. This proposed regulation fills this void by setting forth procedures for selecting the final six commissioners.

Subdivision (a) of the proposed regulation provides that prior to engaging in deliberations about who to select as the final six members of the commission, the first eight members shall review the application materials for each of the applicants in the pool of applicants eligible for selection to the commission. It also provides that at any point during this phase of the application process, the first eight members may obtain additional information about the applicants by asking the applicants to submit written responses to questions or conducting interviews of the applicants at a public meeting. The subdivision further provides that applicants shall be reimbursed for their travel expenses, just as they were reimbursed for their expenses when being interviewed by the panel, if the first eight members of the commission wish to have the applicants participate in additional interviews.

Subdivisions (b) through (g) of the proposed regulation then specify that as the final six members of the commission shall be selected to ensure the commission reflects California's diversity, the first eight members of the commission shall consider and vote on the selection of applicants, not

as individuals, but as part of a slate of six applicants that must be approved as a slate. By using this method for considering and voting on applicants, the first eight commissioners are thus in a position to determine, not just whether they favor a particular applicant, but whether they believe selecting a particular applicant along with the other applicants they favor will provide the level of diversity to the commission that the Act mandates. These subdivisions provide many details regarding how the selection process will operate through the use of slates, including: any of the first eight commissioners may propose a slate; a commissioner may only have one slate up for consideration at a particular time; every slate must consist of two Democrats, two Republicans, and two applicants not affiliated with either of those two parties, and the slates shall, without using formulas or specific ratios, be designed to reflect California's diversity while being composed of persons having the required relevant analytical skills and ability to be impartial necessary to perform redistricting. Subdivision (g) of the proposed regulation declares that, as provided in section 8252, subdivision (g), the first eight commissioners can only approve a slate with the affirmative vote of at least five commissioners consisting of two Democrats, two Republicans, and one commissioner not affiliated with either of those two parties.

The proposed regulation concludes by providing that once the first eight members of the commission select the final six members of the commission, the bureau shall notify the applicants of their selection and post specified information about the selected applicants on the bureau's website.

### **Proposed Regulation 60861. Assisting the Commission To Become Functional**

Proposed regulation 60861, as the last of the proposed regulations dealing with Phase VI of the application process, simply provides that even after all of the 14 members of the commission have been selected, the State Auditor and her staff will not simply abandon the newly formed commission. Although section 8253, subdivision (a)(5) directs the Secretary of State to "provide support functions to the commission until its staff and office are fully functional," this regulation provides reassurance that the bureau will cooperate with the commission and the Secretary of State in order to facilitate the commission becoming fully functional.

### **Regulations Interpreting the Post-Appointment Restrictions on the Activities of Commission Members**

#### **Proposed Regulation 60804.1. Appointive Federal, State, or Local Public Office**

In providing clarity to the post-appointment restrictions on the activities of applicants appointed to the commission, the central task was to create definitions for the terms used in the restrictions that would further the underlying purpose for the restrictions, avoid being overbroad, and harmonize well with each other and other provisions of the Act to make the restrictions consistent with each other and the overall thrust of the Act. To do that, we defined the term "appointive federal, state, or local public office" which a commissioner is prohibited from holding for a period of five years beginning from the date of appointment with an eye toward each of those principles.

To promote consistency with the conflict of interest provisions applicable to applicants for the commission, we defined appointive federal or state public office in conformity with how we defined “appointed to federal or state office” in existing regulation 60804. Accordingly, we defined appointive federal or state office as any federal or state office filled by appointment of the Governor, any member or members of the Legislature, or any member or members of the State Board of Equalization. This definition seemed fitting for the post-appointment restriction as it essentially prohibits a commissioner from serving in an appointive position controlled by the officials most significantly affected by redistricting decisions.

We then defined state or local public office to ensure consistency with the restriction on holding elective public office in proposed regulation 60815.1, and to ensure the restriction achieves the purpose for which it was created. To ensure consistency with proposed regulation 60815.1, we simply defined appointive local public office as having the same meaning as public office at the county or city level in California.

To ensure that the definition furthers the purpose for which the restriction was crafted, we kept in mind that the restriction is intended to prevent a commissioner from being subject to partisan political influence by the prospect of having a desirable appointment either provided as a reward or taken away as a punishment, by a politically motivated official, as a consequence of the work a commissioner performs on redistricting. Accordingly, under this proposed definition, the restriction only applies if the office is a county or city level office that is filled by a person holding elective public office at the county or city level and is a desirable position to hold either because it entails the power of governmental decision making, includes compensation greater than \$5,000 per year or a per diem greater than \$100 per day, or both.

### **Proposed Regulation 60815.1. Elective Public Office at the Federal, State, County, or City Level in This State**

Consistent with the approach we took in crafting regulation 60814.1, we defined “elective public office at the federal, state, county, or city level in order to promote consistency and further the purpose for which the restriction on a commissioner holding elective public office is imposed by the Act. To promote consistency with the conflict of interest provisions applicable to applicants for the commission, we defined elective public office at the federal level and elective public office at the state level in conformity with how we defined what constitutes being a congressional candidate for elective public office and what constitutes being a state candidate for elective public office in existing regulation 60814, subdivisions (b) and (c). Accordingly, we defined elective public office at the federal level as meaning the office of Senator or Representative in the Congress of the United States that may be filled by an election in California, and we defined elective public office at the state level as meaning elective state office as defined in section 82024. In addition to having the virtue of consistency with similar definitions pertaining to the Act, these definitions further the purpose of the restriction by preventing a commissioner from holding a federal office representing a district whose boundaries may have been influenced by the commissioner in drawing state district boundaries or holding a state office whose boundaries were established with the involvement of the commissioner.

When we drafted the proposed definition for elective public office at the county or city level we were guided by our intent to create a definition of public office at the county or city level that, for the sake of consistency, would apply to both elective office and appointive office. We also wanted to ensure that we furthered the purpose of the restriction by the scope which we applied to these terms. As the Act uses the term “county or city level” to describe the offices that a commissioner is prohibited from holding, it was apparent that the intent of the restriction was not just to restrict the holding of certain county or city offices, but other offices that are similar enough to county and city offices that they may be considered to exist at the same level.

Accordingly, we defined a county level office as an office of county government or any special district, school district, joint powers authority, or other political subdivision of the state that includes at least one entire county. Similarly, we defined a city level office as an office of city government or any special district, school district, joint powers authority, or other political subdivision of the state that includes at least one entire city but is not so large that it includes a county. By defining county and city level public offices in this manner we included within the restriction significant offices that would make a commissioner subject to influence yet without including minor offices such as neighborhood council positions or district positions with jurisdiction over an area smaller than a city that would not be expected to make a commissioner subject to influence.

#### **Proposed Regulation 60820.1. Paid Staff for the Legislature or Any Individual Legislator**

Another post-appointment restriction in the Act prohibits a commissioner, for a period of five years from the date of appointment, to serve as paid staff to the Legislature or to any individual Legislator. This proposed regulation clarifies the terms used in this provision by defining paid staff to the Legislature as a person employed by and receiving compensation from the Legislature and also by clarifying that paid staff for an individual Legislator is a person employed by and receiving compensation from a member of the Legislature, or a business entity in which a member of the Legislature holds a controlling interest, without regard for whether the duties of employment are related to seeking or holding legislative office.

#### **Proposed Regulation 60862. Restrictions on Applicants Selected To Serve on the Commission**

This regulation clarifies the time period that the post-appointment restrictions on the activities of commissioners will extend, particularly for applicants appointed to the commission after the initial selection of the commissioners in order to fill a vacancy. The regulation provides that the restrictions cannot extend beyond the life of the redistricting commission to which the applicant was appointed. So once the first member of the succeeding commission is appointed to perform redistricting, then the restrictions end. This should encourage applicants to fill vacancies as it eliminates the prospect of an appointee being subject to restrictions well beyond the time they will serve any purpose.

### **CONCLUSION**

As the Act provides few specifics regarding the final phase of the application process, we are proposing regulations and amendments to existing regulations discussed in this memorandum to

establish a comprehensive selection process that meets the goals of the Act and is consistent with the intent of the voters. Further, the proposed regulations regarding the post-appointment restrictions on the activities of commission members will provide clarity to applicants, members of the panel, and the general public.