

**California Bureau of State Audits**  
**MEMORANDUM NUMBER 8**

**To:** Elaine M. Howle, State Auditor

**From:** Sharon Reilly, Chief Counsel, Steven Russo, Senior Staff Counsel, Stephanie Ramirez-Ridgeway, Senior Staff Counsel, Janis Burnett, Staff Counsel

**Subject:** Revisions To Proposed Regulations Implementing the Voters First Act

**Date:** September 28, 2009

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**Introduction**

On July 31, 2009, the Bureau of State Audits (the “bureau”) proposed a series of regulations to clarify and implement the Voters FIRST Act (the “Act”),<sup>1</sup> which was approved by the voters at the November 2008 general election. Upon proposing the regulations, a 45-day public comment period commenced, which ended on September 14, 2009; the same day that the bureau conducted a hearing to receive comments from members of the public wishing to present their comments in person. During the 45-day comment period, we received numerous written comments, and at the hearing we received many oral and written comments from members of the public concerning the regulations.

During and after the public comment period, we carefully considered every comment that we received. We then revised our proposed regulations based on those comments and other ideas that have occurred to us since we proposed the regulations last July. We were not able to resolve all of the concerns that were shared with us, and we did not adopt all of the suggestions offered as proposed changes to the regulations. However, we tried to address as many of the concerns as we could, and adopted, in some form or another, all of the suggestions that we considered to be meritorious, consistent with other provisions of the regulations and the Act, consistent with what we view as the intent of the voters in approving the Act, and otherwise consistent with state and federal law.

The purpose of this memorandum is to provide some explanation for the more significant revisions to the regulations that we are proposing. The memorandum also addresses why we did not make certain requested changes that had a degree of popular support among some of the commenters. Although the memorandum does not address every minor revision that we made or address every requested change to the regulations that we decided not to make, we will certainly do this at a later stage of the rulemaking process in our final statement of reasons.

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<sup>1</sup> The Voters FIRST Act is contained in Article XXI of the California Constitution and Government Code, sections 8251 through 8253.6.

## **Proposed Regulation 60800. Ability to be Impartial**

We received several comments about this regulation. Most of the comments expressed concern about whether the regulation would prohibit some individuals from serving on the commission due to their past support for political parties, political candidates, or social or political causes. For example, concerns were raised that the regulation could exclude individuals who were involved in a school board race or who joined a local political club to address certain local environmental issues. Also, concerns were specifically raised about the regulation's requirement that to be impartial a commissioner must be able to "put aside support for or opposition to . . . social or political causes" when making redistricting decisions and whether the phrase "social or political causes" could have the effect of limiting the applicant pool.

We believe it is important to retain the phrase "social or political causes," so we have instead revised the proposed regulation to clarify that participation in such causes does not preclude an applicant from serving on the commission. The phrase is intentionally broad so that it can cover a wide range of social and political causes. For example "social or political causes" could range from mainstream activities such as participation in local party politics to extreme causes, such as the Ku Klux Klan or Neo-Nazi groups. According to the Southern Poverty Law Center, California has 84 different hate groups, the highest in the nation.<sup>2</sup> Participation in more extreme social or political causes, such as hate groups, could indicate that an applicant would not be able to set aside his or her personal beliefs, so this is information the Applicant Review Panel (the "panel") should consider when assessing whether an applicant is suitable to serve on the commission.

In addition, as we indicated in Memorandum Number 4, dated July 31, 2009 ("Memorandum Number 4"), the Act requires each commission member to perform his or her redistricting responsibilities "in a manner that is *impartial* and that reinforces public confidence in the integrity of the redistricting process."<sup>3</sup> To that end, the Act specifies that commissioners must have the "ability to be impartial." That ability comes into play when applying the criteria for establishing single member districts for the Senate, Assembly, and State Board of Equalization through a mapping process.<sup>4</sup> As stated more specifically in Memorandum Number 4, we believe that the voters intended that the commissioners must have the ability to set aside their personal allegiances when applying the criteria for establishing the single member districts.

To address the concerns raised by the comments, we propose to retain the phrase "social and political causes" while providing more context regarding how an applicant who has been active in supporting candidates, political parties, or social or political causes, may demonstrate his or her "ability to be impartial." Thus, we revised the proposed regulation to acknowledge that

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<sup>2</sup> <http://www.splcenter.org/intel/map/hate.jsp#s=CA>

<sup>3</sup> California Constitution, Article XXI, section 2(c)(6), italics added.

<sup>4</sup> California Constitution, Article XXI, section 2(d); see also Memorandum Number 4 at pages 2-8.

“although an applicant may have strong views and may have participated in social or political causes” the applicant must “have the capacity and willingness while serving as a member of the commission to set aside his or her personal views.”<sup>5</sup> The revisions also now specifically reference the objective criteria that commissioners must apply when making redistricting decisions so as to further clarify that commissioners must make redistricting decisions according to that criteria and not according to any personal beliefs about how redistricting should occur. That criteria is set forth in subdivision (d) of section (2) of Article XXI of the California Constitution.

We believe this proposed revision addresses concerns raised by the comments because it clarifies that the regulation is not intended to exclude persons who otherwise qualify to become a commissioner, but have been active in supporting candidates, political parties, or social or political causes. Instead, the proposed regulation merely provides that to be impartial one must be able to set aside his or her allegiances to make decisions with an open mind and that are fair to everyone affected. Thus, this revision to the proposed regulation clarifies that individuals who have allegiances may nonetheless serve on the commission so long as they can demonstrate to the panel that they can perform redistricting responsibilities in a manner that is impartial. Further, by referencing the criteria set forth in subdivision (d) of section 2 of Article XXI of the California Constitution, we clarify that the “ability to be impartial” includes the ability to apply the objective criteria set forth in that subdivision free from political influence or bias.

One commenter raised a concern about one of the specified ways an applicant may demonstrate an ability to be impartial, specifically, “having no personal, family, or financial relationships, commitments, or aspirations that might have a tendency to influence someone making a redistricting decision.” The commenter believes this requirement is vague and overbroad, and instead recommended using a “reasonable person” standard. We agree that the regulation would benefit from clarification of the standard to be applied by the panel in measuring whether an applicant has any relationships that would impair his or her ability to be impartial. We have therefore revised this provision of the regulation to read “having no personal, family, or financial relationships, commitments, or aspirations that a reasonable person would consider likely to improperly influence someone making a redistricting decision.”

Finally, we received several comments requesting that the proposed regulations place more emphasis on the Voting Rights Act of 1965 (the “VRA”),<sup>6</sup> including recognition that ethnic and racial minorities have faced an uphill battle in gaining fair representation. We believe that this is a fair comment given the importance of the VRA to the redistricting process. We have therefore addressed that comment in this regulation as well as other regulations, as explained later in this memorandum.

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<sup>5</sup> Revised proposed regulation 60800, subdivision (a).

<sup>6</sup> Title 42, United States Code section 1971 et seq.

### **Proposed Regulation 60804. Appointment to Federal or State Office.**

Many commenters made suggestions about the definition of appointment to state office, suggesting that it be narrowed in scope from our proposed regulation that included appointments to any state office by the Governor or a member of the Legislature, regardless of whether the appointment is subsequently approved by the Legislature. Interestingly, rather than offering a single alternative, these many commenters put forward a variety of ideas about how to set a narrower scope for what constitutes an appointment to state office, ranging from those appointments that involve the award of a salary or per diem to just those few appointments that are made to fill a vacancy in an elective office. Countering all of those commenters, however, were comments that our proposed regulation was a fair interpretation of the provision of the act that excludes from the commission anyone appointed to a state office and the immediate family members of such an appointee. These comments asserted that our proposed regulation was reasonable and consistent with the will of the voters in approving the Act.

In the end, we concluded that a revision of the regulation to narrow the scope of what constitutes an appointment to state office is unwarranted. While our definition of appointment to state office will exclude certain people from serving as commissioners, these appear to be precisely the people that the Act contemplates being excluded from a citizens commission – those people and their immediate family members who may be beholden to the Legislature or the Governor, either due to, or as evidenced by, an appointment to office. Moreover, any argument that a person would not be beholden just because the person did not receive a salary or did not receive a per diem in conjunction with the appointment is unpersuasive, as it is the appointment itself that suggests the existence of a conflict of interest, regardless of the compensation received.

### **Proposed Regulation 60805. Appreciation for California’s Diverse Demographics and Geography**

We received a variety of comments on this regulation. As those comments are so varied we will address each of them separately.

Some comments suggested adding sexual orientation, disability, language, and level of education to the list of demographic characteristics in subdivision (a)(1) that an applicant for the commission must understand as relating to voting preferences, and changing “level of income” to “economic status.”

In Memorandum Number 5, dated July 31, 2009 (“Memorandum 5”), we reasoned that the characteristics important to the redistricting process are those that may be considered in determining whether the residents of an area constitute a community of interest that needs to be reflected in the area’s redistricting. On that basis, we agree that sexual orientation should be included in subdivision (a)(1) because there are neighborhoods or localities that have a higher concentration of individuals who are gay, lesbian, bisexual, or transgender. Those areas include, for example, San Francisco, and certain neighborhoods in San Diego and Los Angeles. We also agree that “level of income” should be changed to “economic status” because the later phrase is more inclusive, and would include inherited wealth, property ownership, and other resources that in addition to level of income would be indicative of a person’s financial wealth.

We received a couple of comments that could be read to require that applicants have familiarity or prior experience with redistricting. First, one commenter suggested that we revise paragraphs (1) through (3) of subdivision (a) to specify that individuals sharing certain demographic characteristics may “share social and economic interests, voting preferences, and similar viewpoints on other issues of mutual concern” and that those “groups of individuals may benefit from common representation.” The comments also suggested that a change be made to the description of distinct geographic characteristics that are listed in the proposed regulation. We believe that such requested revisions use language that is very specific to the redistricting process, and that many potential applicants would be unfamiliar with these concepts.

Second, other commenters suggested that we revise this proposed regulation to include an understanding that racial and ethnic minority communities have historically faced an uphill battle in gaining fair representation, and an understanding of how the placement of district boundaries affects whether such communities have equal electoral opportunities, and a general awareness of the role of the VRA in ensuring equal electoral opportunities for such communities. As indicated earlier, we agree that the proposed regulations will benefit from revisions related to the VRA. However, we are concerned that some of the proposed changes require a level of familiarity with the VRA that would tend to exclude well qualified applicants who simply lack experience performing redistricting or working with the VRA. For example, many applicants may have a general understanding of the historical limitations on the voting rights of racial and ethnic minorities and that applying the requirements of the VRA is important to remedying those historical limitations. However, it is likely that most potential applicants are unfamiliar with the specifics of the VRA because they are not voting rights experts and have no past experience performing redistricting.

We are concerned that these proposed revisions could be read to require some previous experience with redistricting, as an understanding of these issues is specific to redistricting. Moreover, while most ordinary citizens will not have more than a general understanding of redistricting and the VRA, that does not mean that they should be excluded from serving on the commission. As the voters approved a “Citizens Redistricting Commission” when they approved the Act, we do not believe that the voters intended for applicants to need such specific knowledge in order to be selected to serve.<sup>7</sup> Thus we did not make the requested changes because we think they could have the effect of excluding some otherwise well qualified applicants.

Nonetheless, to address the concerns raised by these comments, we have revised the regulation to specify that applicants should have awareness that voters having certain demographic characteristics, such as race or ethnicity, have had less opportunity to participate in the electoral process than others. Accordingly, we have revised subdivision (a)(3) of the regulation to read:

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<sup>7</sup> see Voter Information Guide for the November 4, 2008 General Election, Proposition 11, Analysis by the Legislative Analyst, at pp. 70-71.

“A recognition that California benefits by having effective participation in the electoral process by registered voters of all demographic characteristics and residing in all geographic locations, including participation by those voters who in the past, as a consequence of sharing certain demographic characteristics, such as race and ethnicity, have had less opportunity than other members of the electorate to participate in the electoral process.”

Other comments suggested that we revise subdivision (b) of the regulation to expressly provide that volunteer experience should be evaluated by the panel in determining whether an applicant has demonstrated an appreciation for California’s diverse demographics and geography. We agree with this suggested change and have made conforming changes to regulations 60800 and 60827 as well, to also direct the panel to examine volunteer experience in evaluating an applicant’s ability to be impartial and relevant analytical skills.

Finally, one commenter suggested that we apply to the selection of the panel members the same selection criteria used to by the panel to identify the 60 applicants who will be finalists for selection to the commission. While from a policy standpoint the comment has merit, the Act requires a random selection of the panel members, and does not address the diversity of the panel. Thus, because we must select the panel randomly, and the Act provides no mechanism for considering the diversity of the panel, we cannot accommodate this suggestion.

**Proposed Regulation 60814. Contributed \$2000 or More to any Congressional, State, or Local Candidate for Elective Public Office in any Year (Replacing Formerly Proposed Regulation 60812)**

We received comments expressing concern about the application of the conflict of interest provision of the Act, found at section 8252, subdivision (a)(2)(A)(iv) of the Government Code, that excludes from the commission any applicant who has contributed \$2,000 or more in any year to a candidate for congressional, state, or local office. These comments specifically focused on the fact that while the Act does not exclude local candidates from serving on the commission, this provision could serve to exclude from the commission any local candidate who significantly self-financed a campaign for local office, and therefore contributed \$2,000 or more to his or her own campaign. They noted that while such an applicant may have self-financed his or her entire campaign, that applicant would be excluded from serving on the commission while his or her colleagues and competitors, who financed their campaigns with contributions from other people, would remain free to serve. They also noted a lack of justification for excluding applicants whose candidacy for local office presumably left them beholden to no one because they self-financed their campaigns while including applicants who, because they did not self-finance their campaigns, received contributions from other individuals and organizations, and may be beholden to them.

We addressed this concern in the regulation by defining “contributed \$2,000 or more to any congressional, state, or local candidate for elective public office in any year” in a manner that is otherwise consistent with federal and state law, but exclude from this definition the payments made by a candidate for a local elective public office to support his or her own candidacy for that office. We then incorporated into the regulation all of the provisions defining “congressional,

state, or local candidate for elective public office” that we included in our former proposed regulation 60812, and for the sake of clarity defined “in any year” as meaning any calendar year.

### **Proposed Regulation 60815. Diversity (Formerly Proposed Regulation 60814)**

We received some comments requesting that we delete “economic status” from the definition of diversity, with the concern that including economic status within the definition could dilute the other categories listed. We received other comments stating the importance of retaining “economic status” in the definition of diversity to satisfy the intent of the voters to establish a true “Citizens Redistricting Commission” that is not limited to the well educated or to individuals with upper incomes. We consulted with our redistricting experts and they informed us that in their experience use of the phrase “economic status” is common in bolstering participation by racial and ethnic minorities in the electoral process. Thus, we have not deleted “economic status” from the definition of diversity.

Other comments suggested we broaden the definition of diversity to include sexual orientation and disability. As explained in Memorandum Number 5, the term diversity can be read very broadly to include a whole host of characteristics. Thus, in crafting this regulation, our focus was on characteristics bearing on redistricting, such as race and ethnicity. In addition, we are reluctant to expand the definition set forth in the Act beyond including economic status because that could dilute consideration of the characteristics specifically set forth in the Act, particularly race and ethnicity, which are of prime importance under the VRA. Thus we have not made any revisions to the proposed regulation.

### **Proposed Regulation 60817. In-law (Formerly Proposed Regulation 60816)**

One commenter suggested that we expand the definition of “in-law” to include grandparents and grandchildren and that we clarify that the term includes sons and daughters in-law. We do not believe the term should be expanded to include grandparents and grandchildren, as that introduces a degree of family relationship that well exceeds what is included in the definition of “immediate family” contained in the Act. However, we agree that we should clarify that the term in-law includes sons and daughters in-law, as this change keeps relatives within the same degree of consanguinity in the definition. We have revised the proposed regulation accordingly. .

### **Proposed Regulation 60819. Most Qualified Applicant (Formerly Proposed Regulation 60818)**

We received a comment that this regulation does not make it clear that a potential applicant who has not been registered with either of California’s two largest political parties during the last five years, but has shifted his or her party registration between one or more of the minor parties or between one or more of the minor parties and “decline to state” is not eligible to serve on the commission. We agree that the proposed regulation would benefit from clarification, and we have revised the regulation accordingly.

### **Proposed Regulation 60825. Randomly Draw (Formerly Proposed Regulation 60824)**

We received a few comments about our process for randomly drawing the names of the eight applicants who will serve on the commission. We note that the panel will be formed using the same method set forth in this regulation. One commenter expressed concern about using labels to number the ping-pong balls that we proposed using for the drawing. In fact, that commenter actually tested the method proposed in the regulation, and concluded that it is problematic. Another commenter expressed concern about our proposal to assign unique numerical identifiers to the applicants outside of public view. That same commenter also expressed concern about the individual drawing the eight commissioners being present when the unique numerical identifiers are assigned to the applicants.

To address those concerns, we revised the proposed regulation to require that the names of each member in the subpool be recorded on a list with their names sequentially numbered so that each member is assigned a unique identifying number. We also revised the proposed regulations to require the bureau to use newly purchased prenumbered bingo balls.<sup>8</sup> In addition, the cage that we will use to randomly draw the eight commissioners will have a drop function that releases one ball at a time. Thus, a human being is not involved in drawing the balls from the cage. We therefore did not make any changes to address the final concern relating to an individual drawing the balls. Finally, to further address concerns about transparency, the revised proposed regulation now requires that the balls being used in the drawing shall be delivered to the drawing in the manufacturer's original packaging for the public to observe.

We believe these revisions address the concerns about the process for randomly drawing the eight commissions, and that they provide greater transparency to the process.

### **Proposed Regulation 60827. Relevant Analytical Skills (Formerly Proposed Regulation 60826)**

We received several comments about this proposed regulation. Those comments generally raised concerns about some language in the proposed regulation having the effect of improperly excluding individuals who have the relevant analytical skills to perform the duties of a commissioner. As the comments are varied, we address each of them below.

We received comments that applying the VRA should be called out specifically as an ability that is required for performing the duties of a commission member. We agree, and have revised the proposed regulation accordingly.

Several comments raised concerns about the regulation's characterization in subdivision (c)(1)(A) that the statistical information a commissioner will need to read and understand is "complex." Similar concerns were raised about the language in subdivision (c)(2)(B) that calls for an applicant to have "[f]amiliarity with using . . . sophisticated software." These commenters complained that this language in the regulation sets the bar for qualifying to serve

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<sup>8</sup> Our research indicates that the bureau can purchase prenumbered balls.

on the commission at a level that is too high. After consulting with a redistricting expert, we agree with the concerns and have revised the regulation accordingly.

Other suggested revisions to the proposed regulation include clarifying that commissioners will need to assess the credibility of the information provided by staff, consultants, and members of the public. We agree that this suggestion adds further clarity to the proposed regulation and have revised the regulation accordingly.

Another comment suggested that the phrase describing the ability to resolve complex problems involving “factual ambiguities” is unclear. We agree and have added additional clarifying language to subdivision(c)(2)(D). Finally we received a comment raising a concern about the provision relating to working effectively as a member of a group to promote redistricting decisions. More specifically, the commenter questioned whether including “strong oral communication skills” could unintentionally discriminate against individuals with certain disabilities or those for whom English is a second language. We agree with that concern and have revised the regulation accordingly.

### **Proposed Regulation 60832. Training of Panel Members**

We received a few comments about the need to provide training to the panel, particularly with respect to the VRA. Although we had already planned to provide training to the panel, in order to ensure that the commenters are aware of the bureau’s plan for providing such training, we have added this proposed regulation expressly requiring the training. We believe that this proposed regulation will enhance the transparency of the process for selecting the members of the commission, as well as ensure that the panel members are provided with the type of training they need to carry out their responsibilities.

### **Proposed Regulation 60833. Duties of Panel Members (Formerly Proposed Regulation 60832)**

We received a few comments suggesting that we need to clearly limit communications between panel members and applicants outside of the specified application process. Likewise, the comments suggested that we need to clearly limit panel members’ discussions of specific applicants and application materials to discussions between panel members and staff and to discussions between the panel members themselves at public hearings. We agree that this proposed regulation regarding the duties of panel members would benefit from adding these restrictions on communications. We also revised the proposed regulation to clarify that the duties listed in the regulation are in addition to the duties set forth in section 8252, subdivision (d) of the Government Code.

### **Proposed Regulation 60842. General Requirements Applicable to Every Phase of the Application Process**

We received some comments raising privacy concerns about posting applications and related materials on the bureau’s website. The comments requested that we specifically state in the regulation what portions of the application materials we will not post on the bureau’s website.

Additionally, the comments requested that we not publicly release residence addresses, birth date information (including age or year of birth), and the names of family members under the age of 18. Finally, the commenters raised concerns that if we do not address their concerns in the regulations, it may impact the number of people who are willing to serve as commissioners.

While the bureau has substantial control over what information it posts on its website, it cannot by regulation establish new rules for what information may or may not be released to the public. Instead, the California Public Records Act (CPRA)<sup>9</sup> dictates what must be released and what is exempt from disclosure. In addition, numerous federal and state laws also address privacy issues, and we must take those laws into account.<sup>10</sup> Given that what we may or are required to release is governed by the CPRA and numerous federal and state laws pertaining to privacy, we believe the most prudent way to address the concerns of the commenters is to clarify in this regulation what the bureau may or may not release is subject to those laws. Adding to the wisdom of this approach is that the protection of private information is an area of the law that is constantly evolving with the latest developments in technology.

Additionally, the statutes the bureau operates under provide bureau officers and employees with broad access to the records of state and local government, as well as public entities. Under these provisions of law, the bureau's officers and employees have "stand in the shoes" authority that provides them with access to the records and information of the entities they audit just as the officers and employees of the entities have access.<sup>11</sup> To protect the confidential information the bureau therefore receives, and consistent with state and federal law, the bureau has developed a very specific policy for handling the most sensitive of records and information. Thus, the bureau is uniquely situated and well-versed in handling and protecting sensitive and confidential information. Accordingly, in the revisions to the proposed regulations, we reference the bureau's policies for protecting confidential information from inadvertent public disclosure.

While we are sensitive to having the names of individuals under 18 on the web, we believe that the CPRA would require our office to disclose those names if we received a request for that information from the public. In addition, we believe that the posting of the names of individuals under 18 is mitigated by the fact that we will not indicate the age of those persons, and in fact, we will not even gather that information. Further, we are not posting residence addresses of applicants and their immediate family members on the Internet. Finally, with the rise of the Internet, it is fairly common to see the names of minors on the Internet with far more detail, for example high school students who play sports are often identified by name, age or class rank, and school, sometimes with a photograph of the minor being included.

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<sup>9</sup> Government Code section 6250 et seq.

<sup>10</sup> For example, the California Constitution (Art. 1, §1; the California Information Practices Act (Cal. Civ. C. §1798, et seq); the Medical Information Confidentiality Act of California (Cal. Civ. C. §56 et seq.; the Health Insurance Portability and Accountability Act of 1996 (45 C.F.R. 160 & 164), and the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g), to name a few.

<sup>11</sup> Government Code section 8545.2; see also Government Code section 8545.1

We believe these revisions to the proposed regulations will provide protection of private information concerning applicants in a manner consistent with state and federal law.

### **Proposed Regulation 60846. Written Public Comments and Responses**

Comments from the President pro Tempore of the Senate and the Speaker of the Assembly expressed concerns about the timely posting of information about applicants on the bureau's website. This is because legislative leaders have a role in the selection of the commissioners, as they may strike up to 24 of the 60 applicants the panel identifies as finalists for selection to the commission. Consequently, they have a keen interest in learning about the applicant pool as the process evolves. While the commenters have requested that we provide specific timelines, we cannot anticipate the volume of applications that we will receive. Thus, rather than providing specific timelines, we have revised the regulation to require that the bureau post, as soon as practicable, materials relating to the applicants. The term "practicable" means, "capable of being put into practice or of being done or accomplished." We believe that this revision to the proposed regulation will provide assurance to the commenters that we will post information about the applicants as soon as practicable, and we have made a similar conforming change to regulation 60849.

### **Proposed Regulation 60847. Phase II Supplemental Application**

We received a few comments requesting that a minimum time period be established for the bureau's acceptance of Phase II supplemental applications. We carefully reviewed everything that needs to be accomplished for the bureau and the panel to meet the deadlines established by the Act and concluded that we could extend the Phase II supplemental application period for a minimum of 30 days. We note that this will not preclude an applicant from planning how he or she will complete the Phase II supplemental application well in advance of the application period, as a draft version of the application is currently available on our website and a final version will be on the bureau's website by December 15, 2009. Thus, applicants will have plenty of time to think through their answers regardless of the length of the actual application period.

### **Proposed Regulation 60848. Phase II Supplemental Application Review**

We received a comment suggesting that we revise subdivision (f) of proposed regulation 60848, which relates to the panel's consideration of diversity during the application process, to specify that "diversity" is "as described in the most recently available demographic information including data from the United States Census Bureau and the California Department of Finance." We understand the need for guidance to the panel on this issue and believe that the most appropriate place for that guidance is during the training we will provide to the panel. As discussed earlier, we have added a proposed regulation that requires training (proposed regulation 60832), and that training will address California's diverse demographics and geography.

## **Proposed Regulation 60852. Phase IV: Applicant Name Striking Process**

Comments from the President pro Tempore of the Senate and the Speaker of the Assembly expressed concern about the shortness of the time period in which the legislative leaders must determine how they will exercise their right to strike names from the list of 60 applicants identified by the panel as finalists for selection to the commission. That time period is 45 days; a relatively short time period when compared to the months the panel will have to review the applications. While we appreciate their concern, there is very little we can do to modify the timelines for this redistricting cycle. In accordance with the Act, we have proposed a very detailed, transparent, and thoughtful application process. In addition, because this is a new process, we have had to create the application process from scratch, by developing regulations, holding public meetings and hearings on the regulations, developing policies and procedures for the panel, issuing requests for proposals for necessary services, developing and implementing an outreach plan, creating a new website and training, and so on. While we wish we could accommodate this request from the commenters, the amount of time between the passage of the Act and the date by which the Citizens Redistricting Commission must be formed leaves too little flexibility in the timelines for what must be accomplished under the Act.

While we may find some flexibility in our timeline if it turns out that we have a fairly limited applicant pool, as we do not know how many applications we will receive, it is unwise to make any commitments through our regulations to transmit the names of the 60 finalists to the legislative leadership prior to the statutory deadline of October 1, 2010.

### **Conclusion**

Working with the valuable comments and suggestions provided to us by members of the public, we believe that we have greatly strengthened the draft regulations we previously proposed for clarifying and implementing the Act by making the many revisions to the regulations discussed in this memorandum. We have greatly appreciated the public's participation in this rulemaking process.