

**STATE OF CALIFORNIA
BUREAU OF STATE AUDITS
555 CAPITOL MALL, SUITE 300
SACRAMENTO, CA 95814**

**TITLE 2, DIVISION 10: CALIFORNIA CODE OF REGULATIONS
ADOPT SECTIONS 60800-60837 and 60840-60855
REGARDING THE VOTERS FIRST ACT**

FINAL STATEMENT OF REASONS

The Bureau of State Audits (the “bureau”) has determined, pursuant to Government Code section 11346.9, subdivision (d), that the requirement found in Government Code section 11346.9, subdivision (b) can be satisfied by reference to an agency statement made pursuant to sections 11346.2 through 11346.5, inclusive. Therefore, the bureau hereby incorporates by reference the Informative Digest/Policy Statement Overview found in the bureau’s Notice of Proposed Rulemaking as published in the California Regulatory Notice Register, No. 31-Z., July 31, 2009, p. 1189.

**FINAL STATEMENT OF REASONS AND SUMMARY AND RESPONSE TO
COMMENTS RECEIVED DURING RULEMAKING – GOVERNMENT CODE
SECTION 11346.9**

Section 60800. Ability to Be Impartial

This section defines the term “ability to be impartial” as used in the Voters FIRST Act (the “Act”). Government Code section 8252, subdivision (d),¹ requires the Applicant Review Panel (“the panel”) to select 60 of the most qualified applicants based on relevant analytical skills, the ability to be impartial, and an appreciation for California’s diverse demographics and geography. However, the Act does not define these terms, and therefore the criterion for selection is unclear. This regulation specifies the criteria that the panel will use to assess an applicant’s ability to be impartial, as more fully discussed in the Memorandum submitted to the State Auditor on July 31, 2009, regarding Identifying the Most Qualified Applicants, and included in the final rulemaking file as Memorandum Number 4.

In response to public comments received by the bureau, amendments were made to this regulation after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009.

Revisions to the regulation clarify 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. Added text acknowledges that “although an applicant may have strong views and may have participated in social or political causes” the

¹ All statutory references are to the Government Code.

applicant must have “the capacity and willingness while serving as a member of the Citizens Redistricting Commission (the “commission”) to set aside his or her personal views.”

An addition to the regulation sets forth 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.

A provision of the regulation that states an applicant may demonstrate an ability to be impartial by having no personal, family, or financial relationships, commitments, or aspirations that would influence someone making a redistricting decision was modified to provide a standard for the panel to use in determining whether they would influence an applicant’s ability to be impartial. The modification declares the standard to be whether a reasonable person would consider the relationship, commitment, or aspiration likely to improperly influence someone making a redistricting decision.

An amendment to the regulation also expressly adds volunteer experience as a kind of life experience that an applicant may use to demonstrate an appreciation for California’s diverse demographics and geography.

A further description of the amendments that were made to the regulation after it was originally noticed to the public, but prior to the 15-day public comment period, is contained in the Memorandum submitted to the State Auditor on September 28, 2009, regarding Revisions to Proposed Regulations Implementing the Voters FIRST Act, and included in the final rulemaking file as Memorandum Number 8.

Finally, for clarity and consistency we made a technical, nonsubstantive change to conform with a change made to Section 60805.

Comments Received During the 45-Day Public Comment Period

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.

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 agreed that the regulation would benefit from clarification of the standard the panel will apply 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.”

A single commenter proposed that the regulation be revised to specify that an ability to be impartial includes the ability and willingness to set aside biases against certain economic interests. We rejected this proposal because it is already covered by the regulation specifying an ability to set aside biases for or against any individuals or groups. This commenter also suggested removing the first “or” from 60800(b)(1). We accepted this technical change.

Another commenter proposed that the regulation specify that an applicant may demonstrate an ability to be impartial through experience working as a volunteer. While we believed that this was already covered by the part of the regulation that stated an applicant might demonstrate an ability to be impartial through life experiences, we accepted this proposal to add further clarity to the regulation.

Other commenters suggested that we delete this regulation in its entirety and instead rely on judicial disqualification rules. Having reviewed judicial disqualifications rules early in the drafting process, we do not agree that they would assist the panel to the degree that the regulation will assist the panel in making the determination of whether an applicant has the ability to be impartial. Therefore we did not accept the suggestion.

Finally, we received several comments requesting that the regulations place more emphasis on the Voting Rights Act of 1965 (the “VRA”),² 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.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60801. Applicant

This section defines “applicant” as the term is used in the Act. The Act does not specifically define the term. This regulation provides clarity to prospective applicants and the general public regarding the meaning of this term as it is used in the Act and in the regulations.

This regulation is being adopted as originally proposed for the reasons stated above.

² 42 U.S.C. §1971 et seq.

Comments Received During the 45-Day and 15-Day Public Comment Period

The bureau did not receive any public comments regarding this regulation.

Section 60802. Application Materials

This section defines “application materials” as the term is used in the bureau’s regulations.

Amendments were made to this regulation after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. Although the bureau did not receive any public comments regarding this regulation, we made technical, nonsubstantive, changes to the text to conform the text to preferred drafting style and, for clarity and consistency, to conform to a technical, nonsubstantive change to regulation 60805

Comments Received During the 45-Day and 15-Day Public Comment Period

The bureau did not receive any public comments regarding this regulation.

Section 60803. Application Year

This section defines “application year” as the term is used in the bureau’s regulations. The regulation is being adopted as originally proposed.

Comments Received During the 45-Day and 15-Day Public Comment Period

The bureau did not receive any public comments regarding this regulation.

Section 60804. Appointed to Federal or State Office

This section defines “appointed to” a federal or state office as the term is used in section 8252, subdivision (a)(2)(A). As explained in the Memorandum submitted to the State Auditor on July 31, 2009, regarding Conflicts of Interest, and included in the final rulemaking file as Memorandum Number 2, this term suffers from ambiguity and needs some interpretation for the bureau to apply it. The clarification gives meaning to the statute that best supports the purposes of the Act.

In response to public comments received by the bureau, amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. To add clarity to the regulation, language was added to make it clear that appointments by members of the State Board of Equalization are included in disqualifying appointments to federal or state office.

A further description of the amendments that were made to the regulation is contained in the Memorandum submitted to the State Auditor on September 28, 2009, regarding Revisions to

Proposed Regulations Implementing the Voters FIRST Act, and included in the final rulemaking file as Memorandum Number 8.

Comments Received During the 45-Day Public Comment Period

Many commenters made suggestions about the definition of appointment to state office, suggesting that it be narrowed in scope from our 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. The commenters, wanting a narrower definition, proposed that the definition exclude appointees who do not receive a salary with the appointment, or do not receive either salary or per diem with the appointment, or serve in only an advisory capacity, or who are members of committees, commissions, or boards of advisory groups that have no regulatory authority. Countering all of those commenters, however, were comments that our 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 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.

In contrast to those commenters who proposed narrowing the definition of appointment to federal or state office, we received comments from one person proposing that we expand the definition to include all employees of the State of California, and all federal office holders. We rejected this proposal because such persons do not have a sufficient connection to the officials affected by redistricting to indicate an inability to be impartial.

We received comments that the definition of appointment to state office should expressly include appointments made by a member of the State Board of Equalization, as the members of the commission are tasked with drawing new boundaries for State Board of Equalization districts. We accepted this proposal and revised the regulation accordingly.

One commenter suggested that we revise the regulation to make it clear that volunteers, interns, and non-profit or academic Fellows who have worked with a federal or state office are not included within the definition. We believe that this change is unnecessary as the regulation already makes it clear that it applies to persons who are “appointed” to the federal or state office.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60805. Appreciation for California's Diverse Demographics and Geography

This section defines “appreciation for California’s diverse demographics and geography” as the term is used in the Act. Section 8252(d) requires the panel to select 60 of the most qualified applicants based on relevant analytical skills, the ability to be impartial, and an appreciation for California’s diverse demographics and geography. As explained in greater detail in the Memorandum submitted to the State Auditor on July 31, 2009, regarding Identifying the Most Qualified Applicants, and included in the final rulemaking file as Memorandum Number 4, the Act does not define these terms and, therefore, the criteria for selection is unclear. This regulation specifies the criteria that the panel will use to assess an applicant’s appreciation for California’s diverse demographics and geography.

In response to public comments received by the bureau, amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009.

An amendment to the regulation adds sexual orientation to the list of demographic characteristics that may relate to or reflect a person’s voting preferences. It substitutes the term “economic status” for “level of income” as another demographic characteristic that may relate to or reflect a person’s voting preferences. It also adds coastal and inland to the list of geographic characteristics that may relate to or reflect a person’s voting preferences.

Another amendment amplifies that an applicant for the commission should recognize that California benefits from participation in the electoral process by Californians of all demographic backgrounds and geographic areas. It does this by specifying that an applicant should recognize that California benefits from participation by those persons who in the past have had less opportunity for participation due to certain demographic characteristics such as race and ethnicity.

Consistent with an amendment made to sections 60800 and 60827 of the bureau’s regulations, this section was also amended to add volunteer experience as a kind of life experience that an applicant may use to demonstrate his or her appreciation for California’s diverse demographics and geography.

Revisions were also made to two of the three examples provided in the regulation as the kind of occupational, academic, volunteer, or other life experiences an applicant may describe to demonstrate an appreciation for California’s diverse demographics and geography. The examples were revised to be more generic in their description of the kind of experiences that might demonstrate such an appreciation, so as not to suggest that some particular kind of experience is required.

A further description of the amendments that were made to the regulation after it was originally noticed to the public, but prior to the 15-day public comment period, is contained in the Memorandum submitted to the State Auditor on September 28, 2009, regarding Revisions to Proposed Regulations Implementing the Voters FIRST Act, and included in the final rulemaking file as Memorandum Number 8.

Finally, technical, nonsubstantive amendments were made to this section.

Comments Received During the 45-Day Public Comment Period

Multiple commenters 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 the Memorandum submitted to the State Auditor on July 31, 2009, regarding Diversity, and included in the final rulemaking file as Memorandum Number 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 believe that transgender individuals are already covered by the use of “gender” in the regulation, as we understand the meaning of that term. 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.

Other commenters suggested that we add coastal and inland to the list of localities with distinct geographic characteristics that may relate to voting preferences. We accepted that suggestion and revised the regulation accordingly. Another commenter suggested that we add “an understanding of how natural terrain and man-made features affect the goals of having district contiguity, compactness, and integrity of communities of interest.” We rejected this suggestion because we believe it could have the effect of limiting the applicant pool as one would need to understand the VRA and other redistricting principles to have that understanding.

We received a couple of comments that could be read as suggesting that the regulation require applicants to have familiarity or prior experience with redistricting. First, one commenter suggested that we revise subdivision (a)(1) to (3) to specify that an applicant should understand 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 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 regulation to include: an understanding that racial and ethnic minority communities have historically faced an uphill battle in gaining fair representation; 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 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.³ 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:

“A recognition that California benefits by having effective participation in the electoral process by persons of all demographic characteristics and residing in all geographic locations, including, but not limited to, participation by those persons 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

³ See Voter Information Guide for the November 4, 2008 General Election, Proposition 11, Analysis by the Legislative Analyst, at pp. 70-71.

agree with this suggestion 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.

We received comments from one person suggesting that in subdivision (a)(1) we replace the phrase "sharing" with "composed with a variety of" and in subdivision (a)(2) replace the phrase "distinct" with "a wide variety of." We rejected these suggestions as lacking sufficient substance. The same commenter opined that the examples provided in the regulation of how an applicant may demonstrate an appreciation for California's diverse demographics and geography were too elitist and favored academics. Another commenter expressed concerns that otherwise highly qualified citizens may have never worked on a statewide project, studied voting behavior, or done statewide consensus buildings. We agreed that the examples of how one may demonstrate an appreciation of California's diverse demographics and geography may be too narrow, and therefore revised two of them to be more generic.

Another person suggested that, in subdivision (b), we delete paragraph (2) and modify paragraph (3) to reference "life experiences," because he believes that no ordinary citizen will have studied voting behavior or participated in statewide recruiting. The specific examples suggested for deletion are just that: possible ways an individual might show appreciation for the state's diversity. By the express language of the regulation, the list is not intended to be all-inclusive, as it is not possible to list all the ways in which a person may demonstrate his or her appreciation. Accordingly, we declined to make the suggested change.

Finally, one commenter suggested that we apply to the selection of the panel members the same selection criteria used 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.

Comments Received During the 15-Day Public Comment Period

We received a comment from a person who renewed his prior suggestion that paragraphs (2) and (3) of subdivision (b) be revised. As discussed above, we previously received, considered, and declined to adopt this suggestion.

We received comments that, on its face, the express language of Section 60805(a)(1), (a)(2), and (a)(3) in the bureau's proposed revisions to regulation 60805, which defines "Appreciation for California's Diverse Demographics and Geography," limits the types of qualifying work, volunteer, academic, or life experiences that an applicant may use to demonstrate an appreciation for diversity. This commenter acknowledged that in discussions with the bureau we indicated that the regulation does not place limits on the types of work, academic, volunteer, or life experiences that an applicant could use to demonstrate an appreciation of California's demographic and geographic diversity and that appreciation for diversity need not be limited to voting preferences. Nonetheless, the commenter expressed concerns that the regulation will still

exclude large numbers of persons from the applicant pool and will impair the ability of the panel to identify and appoint a diverse and qualified commission.

The commenters reason that the regulation does not “provide sufficient guidance for applicants who might not understand how their work, academic, or volunteer experiences relate to voting preferences,” and that the regulation precludes certain individuals, such as a social worker for a nonprofit organization, a school teacher, and a public defender from qualifying for the commission. To remedy this perceived limitation in the regulation, the commenters suggest adding the phrase “or social or economic interests,” after “voting preferences” because they believe that phrase would considerably expand the types of relevant work, life, academic, or life experiences that an applicant may use to demonstrate an appreciation for California’s diverse demographics and geography.

We disagree with the commenters’ interpretation of this regulation. Regulation 60805 does not limit the types of qualifying work, volunteer, academic, or life experiences that an applicant may use to demonstrate an appreciation for diversity. To the contrary, the regulations, by the use of the word “including” are clear in that the regulation sets forth examples of the kinds of diversity and demographics and geography that an applicant should have an understanding of. In other words, the characteristics listed are meant to be illustrative and not limiting. Thus, we believe that the regulation does not exclude “social or economic” interests and does not exclude large numbers of individuals because that phrase is absent from the regulation. We did, however, make some technical clarifying changes that better reflect our intent, and are likely to address the commenters’ concerns. We changed “voting preferences” in regulation 60805(a)(1) and (2) to preferences relating to political representation. Because political preferences encompass voting preferences, we view this as a technical, nonsubstantive change that better reflects our intent. In regulation 60805(a)(3) we changed “voters” to “persons” and also view this as a technical, nonsubstantive change that better conveys our intent. Finally, while we believe that the use of “including” immediately prior to a list of characteristics, qualifications, or other things makes it clear that the list is illustrative,⁴ there seems to be some concern by these commenters that “including” could have the effect of being exhaustive rather than illustrative. We did not intend that the use of the term "including" serve as a limitation. When we reviewed the regulations containing the term "including," we also noticed that we were not necessarily consistent in the use of the term in the regulations. Thus, for clarity and consistency in the regulations, we have made a technical, nonsubstantive change to the regulation and have changed “including” to “including, but not limited to,” to better convey our intent.

The commenters also asked for two technical, non-substantive changes that we declined to make.

Section 60806. Bona Fide Relationship

This section defines “bona fide relationship” as the term is used in section 8252(a). The Act does not specify the characteristics of a relationship that will make it a “bona fide relationship” and thus suffers from ambiguity. To provide clarity regarding the meaning of this term, as more fully described in the Memorandum submitted to the State Auditor on July 31, 2009, regarding

⁴ See *Cruz v. Superior Court* (2004) 121 Cal. App. 4th 646, 652.

Conflicts of Interest, and included in the final rulemaking file as Memorandum Number 2, the regulation defines a bona fide relationship as a relationship with one's spouse, registered domestic partner, parent, child, sibling, or in-law that is so substantial in nature as to include recent cohabitation, shared real or personal property ownership of \$1,000 or more, or the provision of a financial benefit of \$1,000 or more by one member of the relationship to the other.

The regulation is being adopted as originally proposed for the reasons stated above.

Comments Received During the 45-Day Public Comment Period

One person commented that the definition of bona fide relationship should be broader to include familial relationships such as aunts and uncles, grandparents, first cousins, first cousins in-law, and so on. We rejected this proposal because it appeared to exceed the scope of the authorizing statute (section 8252, subdivision (a)(2)(B)), which did not include such remote family relationships. Moreover, as a broader definition would serve to further restrict the pool of individuals eligible to serve on the commission, keeping the definition narrower appeared prudent in order to avoid unnecessarily excluding applicants from eligibility.

The same commenter suggested that while the term bona fide relationship should include a broader array of familial relationships, the regulation could also provide that a person must have frequent social contacts with a family member for the relationship to be bona fide. While we appreciate including this standard sounds good in theory, we rejected it because "frequent social contacts" is such an imprecise term that neither applicants nor the bureau would be able to readily determine under such a standard which relationships are bona fide and which are not. This is why the regulation includes more objective criteria for determining whether a family relationship is bona fide – cohabitation, joint property ownership, and financial support.

Lastly, the commenter suggested that we expressly refer to step relationships such as step-parent and step-child, and adoptive relationships such as adoptive son or daughter in the regulation's listing of the familial relationships that may be bona fide relationships. We rejected this suggestion because in the absence of any contrary indication, step and adoptive relationships are necessarily included in the meaning of the terms used.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60807. Bureau

This section defines "bureau" as the term is used in the bureau's regulations. The Bureau of State Audits is a state agency, headed by the State Auditor that is responsible for carrying out the duties of the State Auditor at his or her direction. This regulation provides clarity to prospective applicants and the general public regarding the meaning of this term.

The regulation is being adopted as originally proposed for the reasons stated above.

Comments Received During the 45-Day and 15-Day Public Comment Period

The bureau did not receive any public comments regarding this regulation.

Section 60808. Bureau's Website

This section defines "bureau's website" as the term is used in the bureau's regulations. The regulation provides clarity to prospective applicants and the general public regarding the meaning of this term.

The regulation is being adopted as originally proposed for the reasons stated above.

Comments Received During the 45-Day and 15-Day Public Comment Period

The bureau did not receive any public comments regarding this regulation.

Section 60809. Campaign Committee

This section defines "campaign committee" as the term is used in section 8252, subdivision (a)(2)(A). The Act does not specifically define this term, and thus requires some interpretation and clarification, as more fully discussed in the Memorandum submitted to the State Auditor on July 31, 2009, regarding Conflicts of Interest, and included in the final rulemaking file as Memorandum Number 2. The regulation provides a definition of campaign committee that is consistent with the definition for "authorized committee" under federal law and "controlled committee" under state law.

For clarity and consistency, we made a technical, nonsubstantive change to this regulation to conform it with a change made to Section 60805.

Comments Received During the 45-Day and 15-Day Public Comment Period

The bureau did not receive any public comments regarding this regulation.

New Section 60810. Candidate

This section was not included in the proposed regulations that were originally noticed to the public. It was added by the bureau prior to the 15-day public comment period. The purpose of the regulation is to define "candidate" as the term is used in section 8252, subdivision (a)(2)(A). The Act does not specifically define this term, and thus it requires some interpretation and clarification. In particular, it was not clear whether the term refers to candidates for elective and appointive office or just candidates for elective office. The regulation provides a definition that clarifies the term only refers to candidates for elective office as defined by federal and California state law.

Comments Received During the 45-Day Public Comment Period

We received a comment that the term “candidate” as used in section 8252 of the Act is ambiguous because it could refer to persons who apply to the Governor for an appointment to office. We therefore drafted this regulation to resolve the ambiguity.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60810 Renumbered as Section 60811. Commissioner

This regulation defines “commissioner” as the term is used in the bureau’s regulations. The regulation provides clarity to prospective applicants and the general public regarding the meaning of this term.

Amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. This section was renumbered as 60811 after the bureau proposed a new regulation bearing the number 60810. No further changes were made.

Comments Received During the 45-Day and 15-Day Public Comment Period

The bureau did not receive any public comments regarding this regulation.

Section 60811 Renumbered as Section 60812. Conflict of Interest

This section defines “conflict of interest” as the term is used in the bureau’s regulations. As explained more fully in the Memorandum submitted to the State Auditor on July 31, 2009, regarding Conflicts of Interest, and included in the final rulemaking file as Memorandum Number 2, the regulation provides clarity to prospective applicants and the general public regarding the meaning of this term.

Amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. This section was renumbered as 60812 after the bureau assigned the number 60811 to another regulation. No further changes were made.

Comments Received During the 45-Day and 15-Day Public Comment Period

The bureau did not receive any public comments regarding this regulation.

Section 60812. Congressional, State, or Local Candidate For Elective Public

This section was originally noticed to the public but was deleted prior to the 15-day public comment period. However, a majority of the wording contained in adopted section 60814 was included in proposed regulation 60812. Additional information is provided below under the heading “New Section 60814. Contributed \$2,000 or More To Any Congressional, State, or Local Candidate For Elective Public Office in Any Year.”

Comments Received During the 45-Day and 15-Day Public Comment Period

The bureau did not receive any public comments regarding this regulation.

Section 60813. Consultant

This section defines “consultant” as the term is used in section 8252, subdivision (a)(2)(A). The Act does not specifically define the term consultant. Thus, as more fully discussed in the Memorandum submitted to the State Auditor on July 31, 2009, regarding Conflicts of Interest, and included in the final rulemaking file as Memorandum Number 2, the term suffers from ambiguity and requires further interpretation to be applied. This regulation defines “consultant” as those persons who provide consulting services to a political party, campaign committee, the Governor, a member of the Legislature, or a member of Congress elected from California.

The regulation is being adopted as originally proposed for the reasons stated above.

Comments Received During the 45-Day Public Comment Period

We received one comment on this regulation, suggesting that a person employed by a consulting firm must also be included. We rejected that suggestion because nothing in the Act indicates that the voters intended to include employees of consultants, who are not otherwise providing consulting services to a political party, campaign committee, the Governor, a member of the Legislature, or a member of Congress elected from California.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

New Section 60814. Contributed \$2,000 or More To Any Congressional, State, or Local Candidate For Elective Public Office in Any Year

This section was not included in the proposed regulations that were originally noticed to the public. The bureau added it prior to the 15-day public comment period. However, a majority of the wording contained in the regulation was included in proposed regulation 60812, which was originally noticed to the public but was deleted prior to the 15-day public comment period. The purpose of the regulation is to define “contributed \$2,000 or more to any congressional, state, or

local candidate for elective public office in any year” as the term is used in section 8252, subdivision (a)(2)(A).

As more fully explained in the Memorandum submitted to the State Auditor on July 31, 2009, regarding Conflicts of Interest, and included in the final rulemaking file as Memorandum Number 2, the words “congressional, state, or local candidate for elective public office” as used in section 8252, subdivision (a)(2)(A) suffer some ambiguities and require further interpretation to be applied. Thus, the regulation, in the same manner as the originally noticed regulation 60812, defines a congressional candidate for elective public office as a candidate for the office of Senator or Representative in the Congress of the United States elected from California. It defines a state candidate for elective public office, in accordance with the definition for “elective state office” set forth in section 82024. It defines a local candidate for elective public office as a candidate for a regional, county, municipal, district, or judicial office in California that is filled by an election.

This regulation, in addition to providing the definitions offered in the originally noticed regulation 60812, also defines “contributed \$2,000 or more” in a manner that is consistent with the relevant provisions of federal and state law, except that it excludes from the definition any payments made by a candidate for a local elective office to support his or her own candidacy. The regulation also defines “in any year” as a calendar year.

A further description of the regulation is contained in the Memorandum submitted to the State Auditor on September 28, 2009, regarding Revisions to Proposed Regulations Implementing the Voters FIRST Act, and included in the final rulemaking file as Memorandum Number 8.

Comments Received During the 45-Day Public Comment Period

The bureau received comments that while the Act does not exclude candidates for local elective office from serving on the commission, certain candidates would be excluded unfairly because they contributed \$2,000 or more to support their own candidacy. We recognized the validity of this comment, and therefore drafted the regulation to prevent such an exclusion by defining “contributed \$2,000 or more” as not including contributions by a candidate for local elective office in support of his or her own campaign.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60814 Renumbered as Section 60815. Diversity

This section defines “diversity” as the term is used in section 8252, subdivision (g) and in Article XXI, section (2), subdivision (c)(1) of the California Constitution. As more fully explained in the Memorandum submitted to the State Auditor on July 31, 2009, regarding Diversity, and included in the final rulemaking file as Memorandum Number 5, the Act contemplates a commission that is reasonably representative of the state’s diversity, but does not provide

specific guidance to the panel about how that should be accomplished. This regulation clarifies the criteria that the panel will use in creating applicant pools that reflect California's diversity.

Amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. This section was renumbered as 60815 after the bureau proposed a new regulation bearing the number 60814. No further changes were made, although there is a further discussion of the decision not to make changes to the regulation in the Memorandum submitted to the State Auditor on September 28, 2009, regarding Revisions to Proposed Regulations Implementing the Voters FIRST Act, and included in the final rulemaking file as Memorandum Number 8.

Comments Received During the 45-Day Public Comment Period

We received a comment proposing that the definition of diversity be broadened to include sexual orientation and gender identity. We rejected this proposal because these are not categories of diversity recognized under the VRA, and including the categories may dilute the importance of including in the composition of the commission applicants belonging to categories of diversity recognized in the VRA. Moreover, as many applicants may be reluctant to publicly disclose their sexual orientation, neither the panel nor the commission will be in a position to know the sexual orientation of the applicants wishing to keep the information private.

We also 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 the 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" from the definition of diversity.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60815 Renumbered as Section 60816. Federal Office

This regulation defines "federal office" as the term is used in section 8252, subdivision (a)(2)(A). The Act does not specifically define the term federal office. Thus, as explained more fully in the Memorandum submitted to the State Auditor on July 31, 2009, regarding Conflicts of Interest, and included in the final rulemaking file as Memorandum Number 2, the term suffers from ambiguity and requires some interpretation to be applied. This regulation clarifies that an individual holds a federal office if he or she is appointed to, elected to, or a candidate for the office of Senator or Representative in the Congress of the United States elected from California.

Amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. This section was renumbered as 60816 after the bureau assigned the number 60815 to another regulation. No further changes were made.

Comments Received During the 45-Day Public Comment Period

One commenter suggested that conflicts should be expanded to conflict out any applicant who actively participates in a Presidential campaign as a volunteer, consultant, or staff. We declined to make this change as nothing in the language of the Act suggested that the voters intended to make active participation in a Presidential campaign an impermissible conflict. Thus such a change would go beyond the scope of the bureau's rulemaking authority.

Comments Received 15-Day Public Comment Period

The bureau did not receive any public comments regarding this regulation.

Section 60816 Renumbered as Section 60817. In-law

This section defines "in-law" as the term is used in section 8252, subdivision (a)(2)(B). The Act does not specifically define the term in-law. Thus, as explained more fully in the Memorandum submitted to the State Auditor on July 31, 2009, regarding Conflicts of Interest, and included in the final rulemaking file as Memorandum Number 2, the term suffers from ambiguity and requires some interpretation to be applied. This regulation defines "in-law" as "the father, mother, or sibling of a person's spouse or registered domestic partner," thereby clarifying that a conflict of interest may arise from the activities of those individuals.

In response to public comments received by the bureau, amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. The definition of in-law was expanded to include a person's son in-law and daughter in-law. The regulation was also renumbered as 60817 after the bureau assigned the number 60816 to another regulation.

A further description of the amendments that were made to the regulation after it was originally noticed to the public, but prior to the 15-day public comment period, is contained in the Memorandum submitted to the State Auditor on September 28, 2009, regarding Revisions to Proposed Regulations Implementing the Voters FIRST Act, and included in the final rulemaking file as Memorandum Number 8.

Comments Received During the 45-Day Public Comment Period

One commenter pointed out that while father in-law and mother in-law had been included in the definition of in-law, son in-law and daughter in-law had been excluded. We recognized this to be an oversight, as parents in-law and children in-law share the same degree of consanguinity. So we revised the regulation to correct the oversight.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60817 Renumbered as Section 60818. Legislative Leader

This section defines “legislative leader” as the term is used in section 8252, subdivision (e) and the bureau’s regulations. The regulation provides clarity to prospective applicants and the general public regarding the meaning of this term.

Amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. This section was renumbered as 60818 after the bureau assigned the number 60817 to another regulation. No further changes were made.

Comments Received During the 45-Day and 15-Day Public Comment Period

The bureau did not receive any public comments regarding this regulation.

Section 60818 Renumbered as Section 60819. Most Qualified Applicants

This section defines “most qualified applicants” as the term is used in section 8252, subdivision (d). As explained more fully in the Memorandum submitted to the State Auditor on July 31, 2009, regarding Identifying the Most Qualified Applicants, and included in the final rulemaking file as Memorandum Number 4, this regulation provides clarity regarding the criteria that the panel will use in creating a list of 60 of the most qualified applicants whose names the panel must transmit to the Legislature.

In response to public comments received by the bureau, amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. The amendments were made to eliminate any ambiguity that may have existed regarding the eligibility requirements for service on the commission. Specifically, the reference to being a registered voter was modified to provide that it means being a lawfully registered voter in California. The reference to being continuously registered for five years with the same political party or no political party was modified to more clearly state that it means being continuously registered with the same political party or unaffiliated with a political party for five years, and the five year period is the five years immediately preceding the date that the first eight members of the commission are selected. Further, the reference to having voted in two of the last three statewide general elections was modified to more clearly state that this means having voted in at least two of the last three statewide general elections held immediately prior to the date that a person applies to serve on the commission.

Finally, the section was renumbered as 60819 after the bureau assigned the number 60818 to another regulation.

A further description of the amendments that were made to the regulation after it was originally noticed to the public, but prior to the 15-day public comment period, is contained in the Memorandum submitted to the State Auditor on September 28, 2009, regarding Revisions to Proposed Regulations Implementing the Voters FIRST Act, and included in the final rulemaking file as Memorandum Number 8.

Comments Received During the 45-Day Public Comment Period

We received comments that the wording of the eligibility requirements set forth in the section was somewhat ambiguous. We therefore revised the regulation to address these concerns about ambiguity.

Another commenter suggested that the regulation be amended to require an applicant to have voted continuously for the past 5 years in all elections. This suggestion is inconsistent with the plain language of the Act, which requires applicants to have voted in two out of the last three general elections, thus we rejected it.

Another commenter suggested that we list the specific recent elections that are considered “Statewide General Elections.” Because this will change each election cycle, we are not including this in the regulation. We will, however, provide that information in the application through a link to the Secretary of State’s webpage.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60819 Renumbered as Section 60820. Paid Congressional, Legislative, or Board of Equalization Staff

This section defines “paid congressional, legislative, or Board of Equalization staff” as the term is used in section 8252, subdivision (a)(2). As explained more fully in the Memorandum submitted to the State Auditor on July 31, 2009, regarding Conflicts of Interest, and included in the final rulemaking file as Memorandum Number 2, this term suffers from ambiguity and requires some interpretation for the bureau to apply it. The regulation defines that term as a person who is employed by the Congress of the United States to provide services to a member elected from California, by the Legislature, or by the State Board of Equalization.

In response to public comments received by the bureau, amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. Specifically, nonsubstantive changes were made to the wording and formatting of the regulation to rectify what some commenters considered to be awkward phrasing. In addition, the section was renumbered as 60820 after the bureau assigned the number 60819 to another regulation.

Comments Received During the 45-Day Public Comment Period

We received comments that the wording of the section was awkward, so we revised the regulation to improve the wording. We also received a suggestion that this regulation be revised to exclude the staff of the President of the United States. As this regulation is intended to define a specific phrase in the Act (“paid congressional, legislative, or Board of Equalization staff”) we rejected the suggestion.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60820 Renumbered as Section 60821. Paid Consultant

This regulation defines “paid consultant” as the term is used in section 8252. The Act does not specifically define the term paid consultant. Thus, as explained more fully in the Memorandum submitted to the State Auditor on July 31, 2009, regarding Conflicts of Interest, and included in the final rulemaking file as Memorandum Number 2, this term suffers from ambiguity and requires some interpretation to be applied. This regulation provides clarity to prospective applicants and the general public regarding the meaning of this term as it is used in the Act and in the regulations.

Amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. The section was renumbered as 60821 after the bureau assigned the number 60820 to another regulation. No further changes were made.

Comments Received During the 45-Day and 15-Day Public Comment Period

The bureau did not receive any public comments regarding this regulation.

Section 60821 Renumbered as Section 60822. Political Party

This section defines “political party” as the term is used in section 8252. The Act does not specifically define the term political party. Thus, as explained more fully in the Memorandum submitted to the State Auditor on July 31, 2009, regarding Conflicts of Interest, and included in the final rulemaking file as Memorandum Number 2, this term suffers from ambiguity and requires some interpretation to be applied. The regulation defines political party as one that is a political party operating in California by making expenditures to support candidates for elective public office in the state.

In response to a public comment received by the bureau, amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. The definition of political party was expanded to include any party that is recognized by the Secretary of State as a qualified political

party as defined in section 5100 of the Elections Code. The section was also renumbered as 60822 after the bureau assigned the number 60821 to another regulation.

Comments Received During the 45-Day Public Comment Period

We received a comment that the definition of political party was too narrow because it failed to take into account that there is at least one political party in California that regularly appears on election ballots yet does not make expenditures to support candidates. The comment proposed that the definition be expanded to also include any party that is recognized by the Secretary of State as a qualified political party. We accepted this proposal and revised the regulation accordingly.

Another commenter suggested that the definition should include a situation where the “party central committee” is a single person. We rejected this suggestion as unnecessary.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60822 Renumbered as Section 60823. Political Party Central Committee

This section defines “political party central committee” as the term is used in section 8252. The Act does not specifically define the term political party central committee. Thus, as explained more fully in the Memorandum submitted to the State Auditor on July 31, 2009, regarding Conflicts of Interest, and included in the final rulemaking file as Memorandum Number 2, this term suffers from ambiguity and requires some interpretation to be applied. This regulation limits the disqualification that arises from serving as a member of a political party central committee to circumstances of serving as a member of a political party central committee operating in California.

Amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. This section was renumbered as 60823 after the bureau assigned the number 60822 to another regulation. No further changes were made.

Comments Received During the 45-Day and 15-Day Public Comment Period

The bureau did not receive any public comments regarding this regulation.

Section 60823. Renumbered as Section 60824. Qualified Independent Auditor

This section defines “qualified independent auditor” as the term is used in section 8252, subdivision (b). The Act does not specify what makes an auditor “independent.” Thus, as more fully explained in the Memorandum submitted to the State Auditor on July 31, 2009, regarding the Applicant Review Panel, and included in the final rulemaking file as Memorandum

Number 3, this term suffers from ambiguity and requires further interpretation to be applied. The regulation provides clarity to prospective applicants and the general public regarding the meaning of this term.

The bureau made amendments to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009 for the reasons stated below.

Amendments were made to the section to specify that performing investigative audits of private entities, local governmental entities, and state departments shall count toward the required ten years of experience practicing the skills of an independent auditor that is required in order to be eligible to serve on the panel. These amendments were warranted, as there appeared to be no justification for distinguishing investigative auditing experience of this kind from other independent auditing experience.

The section was also amended to delete the requirement that a person must be willing to serve on the panel in order to be considered a qualified independent auditor. The requirement was deleted to be more consistent with section 8252, subdivision (b), which appears to contemplate that qualified independent auditors who are unwilling to serve are still subject to being selected for service although they may decline the opportunity.

Finally, the section was renumbered as 60824 after the bureau assigned the number 60823 to another regulation.

Comments Received During the 45-Day and 15-Day Public Comment Period

The bureau did not receive any public comments regarding this regulation.

Section 60824 Renumbered as Regulation 60825. Randomly Draw

This section defines “randomly draw” as the term is used in section 8252. The Act does not set forth the process for conducting a random drawing. Thus, as more fully explained in the Memorandum submitted to the State Auditor on July 31, 2009, regarding the Applicant Review Panel, and included in the final rulemaking file as Memorandum Number 3, this term suffers from ambiguity and requires further interpretation to be applied. This regulation prescribes the method by which panel members and the applicants are randomly drawn, and thus provides clarity regarding that process.

In response to public comments received by the bureau, amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. The section was amended to enhance public confidence in the objective fairness of the process that will be used by the bureau to conduct the random drawings required by the Act. Specifically, the regulation was revised to provide that prenumbered bingo balls shall be used for the drawings, rather than labeled ping pong balls as was specified in the original text. Moreover, the bingo balls shall be newly

purchased balls delivered to the place of the drawing in their original packaging for public view. Further the bingo cage being used for the drawing will drop the balls mechanically.

In addition, the section was renumbered as 60825 after the bureau assigned the number 60824 to another regulation.

A further description of the amendments that were made to the regulation after it was originally noticed to the public, but prior to the 15-day public comment period, is contained in the Memorandum submitted to the State Auditor on September 28, 2009, regarding Revisions to Proposed Regulations Implementing the Voters FIRST Act, and included in the final rulemaking file as Memorandum Number 8.

Comments Received During the 45-Day Public Comment Period

We received a comment that using labeled ping pong balls for the drawing, as provided in the originally proposed text of the section, would be problematic because the labels may detach. We agreed with this concern and revised the regulation to provide for the use of prenumbered bingo balls.

We also received comments regarding the manner in which the members of a pool are ordered on a list and assigned to the balls that are used in the drawing. The concern behind the comments was that bureau personnel might have an opportunity to manipulate the drawing in some fashion by assigning particular pool members to particular balls. For the sake of eliminating any possible accusations against bureau staff regarding the conduct of the drawings required by the Act, we have addressed the comments with a revision to the regulation that calls for the bureau to use new bingo balls for each drawing with the balls being removed from their original factory packaging in public view. As bureau staff therefore has no opportunity to manipulate the balls in any way, the assignment of pool members to particular balls should be of no consequence. Finally that same commenter suggested that the description of randomly draw could be further improved by adding the word “immediately” at the beginning of 60825(b) to clarify that there will not be a significant gap in time between the assigning of numbers to final applicants and the selection of those applicants. We rejected this suggestion because the other changes we made addressed the commenters’ concerns.

We also received a comment expressing concern about the person drawing the balls being able to see the numbers on the balls being drawn and therefore being able to select identifiable members of the pool. We have addressed this concern with the bingo cage being used for the drawing having a mechanical drop feature such that no human being performs the actual drawing.

In addition, we received a comment that the notice given by the bureau of the time and place of the random drawings be changed from ten days to fifteen. We rejected this suggestion, as ten days notice is consistent with the notice requirements of the Bagley-Keene Open Meeting Act.

Finally, we received a comment that to ensure even distribution the bingo cage should be rotated vigorously a minimum of five times. We rejected this suggestion because the regulation already

calls for the balls to be rotated vigorously, and thus it is unnecessary to specify how many times the cage is rotated.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60825 Renumbered as Section 60826. Registered Federal, State or Local Lobbyist

This section defines “registered federal, state or local lobbyist” as the term is used in section 8252(a)(2)(A). As more fully explained in the Memorandum submitted to the State Auditor on July 31, 2009, regarding Conflicts of Interest, and included in the final rulemaking file as Memorandum Number 2, this term suffers from ambiguity and requires further interpretation to be applied. The regulation provides clarity to prospective applicants and the general public regarding the meaning of this term.

Amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. The section was renumbered as 60826 after the bureau assigned the number 60825 to another regulation. No further changes were made.

Comments Received During the 45-Day and 15-Day Public Comment Period

The bureau did not receive any public comments regarding this regulation.

Section 60826 Renumbered as Regulation 60827. Relevant Analytical Skills

This section defines “relevant analytical skills” as used in the Act. Section 8252, subdivision (d) requires the panel to select 60 of the most qualified applicants based on relevant analytical skills, the ability to be impartial and an appreciation for California’s diverse demographics and geography. However, as explained more fully in the Memorandum submitted to the State Auditor on July 31, 2009, regarding Identifying the Most Qualified Applicants, and included in the final rulemaking file as Memorandum Number 4, the Act does not define this term and thus the criteria for selection is unclear. This regulation specifies the criteria that the panel will use to assess an applicant’s relevant analytical skills.

In response to public comments received by the bureau, amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009.

One of the amendments was an express statement that a relevant analytical skill for someone being selected to serve on the commission is an ability to apply the legal standards imposed by the United States Constitution and the VRA.

Three amendments were aimed at eliminating words that may have suggested that an applicant should have greater analytical skills than was intended in the original text. So an ability to read and understand “complicated statistical information” was changed to “statistical information. Familiarity with “sophisticated software programs” was changed to “software programs such as spreadsheet programs, mapping programs, or word processing programs.” The requirement that an applicant have strong oral communication skills was deleted.

Two amendments were made to clarify relevant analytical skills described in the original text. An ability to assess the credibility of information was revised to specify that the information in question is the information provided by staff and consultants, as well as members of the public. An ability to resolve complex problems, particularly those involving factual ambiguities, was revised to add the explanation that a circumstance of factual ambiguities may arise when all of the relevant facts are not apparent or when there are conflicting claims about the facts.

Consistent with an amendment made to sections 60800 and 60805 of the bureau’s regulations, this section was also amended to add volunteer experience as a kind of life experience that an applicant may use to demonstrate his or her possession of relevant analytical skills.

Finally, a couple of technical changes were made. The section was renumbered as 60827 after the bureau assigned the number 60826 to another regulation. We also made a technical, clarifying change to conform with a change made to regulation 60805.

A further description of the amendments that were made to the regulation after it was originally noticed to the public, but prior to the 15-day public comment period, is contained in the Memorandum submitted to the State Auditor on September 28, 2009, regarding Revisions to Proposed Regulations Implementing the Voters FIRST Act, and included in the final rulemaking file as Memorandum Number 8.

Comments Received During the 45-Day Public Comment Period

We received a comment that the criteria for selecting the members of the commission should be more closely tied to the VRA. In response to this comment, we amended this section to state that a relevant analytical skill is an ability to apply the legal standards contained in the Voting Rights Act to the drawing of district lines.

We also received comments that certain of the descriptions of relevant analytical skills implied a greater level of technical expertise than is required for service on the commission than is reasonable or necessary. As the comments are varied, we address each of the separately.

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 understands is “complicated.” 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 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 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 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.

Finally, we received a comment suggesting that the regulation should expressly state that an applicant for the commission may use experience acquired as a volunteer to demonstrate his or her possession of relevant analytical skills. We agreed with the suggestion and revised the regulation accordingly.

Comments Received During the 15-Day Public Comment Period

We received a comment requesting clarification of the term “mapping” as used in regulation section 60827(c)(2)(B), expressing concerns that some applicants may think this means they need to have familiarity with redistricting software. As the commenter acknowledges, we had already determined a need to make a technical, clarifying change to this subparagraph as the revision to the original proposed regulation was intended to clarify that applicants did not need to have previous experience with redistricting software to serve on the commission. Instead, because redistricting software is such an integral part of what the commission will be doing, our intent is to convey that familiarity with mapping software of programs such as “MapQuest” or “Google” or “Rand-McNally” would be beneficial experience for an applicant to have.

We received one comment from a person who renewed his prior suggestion that applicants have an ability to understand the influence of natural terrain and man-made features on district boundaries. As discussed above (section 60805), we previously received, considered, and declined to adopt this suggestion.

Section 60827 Renumbered as Section 60828. Staff

This section defines “staff” as the term is used in section 8252, subdivision (a)(2). The Act does not specifically define the term. As explained more fully in the Memorandum submitted to the State Auditor on July 31, 2009, regarding Conflicts of Interest, and included in the final rulemaking file as Memorandum Number 2, this term suffers from ambiguity and requires further interpretation to be applied. This regulation provides clarity to prospective applicants and the general public regarding the meaning of this term.

Amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. This section was renumbered as 60828 after the bureau assigned the number 60827 to another regulation. No further changes were made.

Comments Received During the 45-Day and 15-Day Public Comment Period

The bureau did not receive any public comments regarding this regulation.

Section 60828 Renumbered as Section 60829. State Office

This section defines "state office" as the term is used in section 8252(a)(2)(A). The Act does not specifically define that term. As explained more fully in the Memorandum submitted to the State Auditor on July 31, 2009, regarding Conflicts of Interest, and included in the final rulemaking file as Memorandum Number 2, this term suffers from ambiguity and requires further interpretation to be applied. The regulation provides clarity to prospective applicants and the general public regarding the meaning of this term.

Amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. This section was renumbered as 60829 after the bureau assigned the number 60828 to another regulation. No further changes were made.

Comments Received During the 45-Day Public Comment Period

The bureau received comments on the definition of "state office," however as explained earlier in regulation 60804, we rejected the suggested changes. The comments also asked that we clarify in this regulation that city, county or local districts are not included within the definition. We disagree that the regulation needs clarification as it refers to entities that are "within the government of the State of California" and therefore excludes city, county, or local districts from the definition.

Comments Received During the 15-Day Public Comment Period

We received a comment expressing concern that the bureau's proposed definition of "State Office" in proposed regulation 60829 threatens to exclude a good number of individuals who would be qualified candidates from the commission and who would contribute to the diversity of the applicant pool. The commenters go on to list a variety of diverse advisory appointments that would be excluded from serving on the commission in view of the bureau's reading of the Act. We should note that while the commenters' concerns have merit from a policy standpoint, the bureau is bound by the intention of the voters in approving the Act. As explained above, the plain language of the Act requires the bureau to conflict out individuals who have the benefit of a legislative or gubernatorial appointment from service on the commission. Nothing in the Act, the intent language of the Act, the Legislative Analyst's analysis of the Act, nor the proponent and opponents' arguments relating to the Act give any indicia that the voters intended anything other than to disqualify individuals having legislative and gubernatorial appointments within the

past ten years from service on the commission. Thus, for the bureau to interpret “appointment” to mean anything other than “appointment” is inconsistent with the plain meaning of the Act and would exceed the bureau’s statutory authority to adopt regulations.

Section 60830 Selection of Panel Members and Alternate Panel Members

This section specifies the process for selecting panel members and alternate panel members. The Act does not set forth the process for randomly drawing panel members and the applicants who will serve as the first eight members of the commission. Thus, as more fully explained in the Memorandum to the State Auditor dated July 31, 2009, relating to the Applicant Review Panel, and included in the Final Rulemaking File as Memorandum Number 3, this process suffers from ambiguity and requires further interpretation to be applied. Regulation 60825 sets forth a general process for conducting a random drawing. This regulation provides additional specifics regarding random drawing as it relates to the selection of panel members. It also provides for the selection of alternate members of the panel.

Amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. The regulation was amended to make conforming changes to cross-references to regulations we renumbered and to make minor technical changes.

Comments Received During the 45-Day Public Comment Period

We received a comment that the formation of the panel should have the same level and principles of diversity as required for commissioners. While the comment has merit, the Act does not provide a mechanism for doing so and in-fact limits the selection of the panel to a random drawing from a preexisting pool of individuals.

We also received a comment that at least one alternate should be selected from each subpool. The regulations already provide for this, thus a change is not necessary. The commenter also requested that alternate panel members be present at panel meetings and that no past panel decisions be invalidated by the seating of an alternate. Unfortunately, the bureau does not have the internal resources to accommodate this suggestion. However, if an alternate must serve, that alternate will have all the information necessary to perform his or her duties. Further, regulation 60834(c), as adopted, states that once an alternate is placed on the panel, the alternate will continue for the duration and will not have the ability to impact decisions that were made prior to the alternate joining the panel.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60831 Information About Prospective and Selected Panel Members

This section specifies that certain information about prospective and selected panel members will be available prior to a random drawing. As more fully explained in the Memorandum to the State Auditor dated July 31, 2009, relating to the Applicant Review Panel, and included in the Final Rulemaking File as Memorandum Number 3, the Act requires an open redistricting process that invites public participation. Providing the public information regarding the panel will give greater transparency to the process for selecting commissioners.

The regulation is being adopted as originally proposed for the reasons state above.

Comments Received During the 45-Day Public Comment Period

We received a comment that we should revise proposed section 60831, subdivision (a) to also require that applications or materials used to determine whether an auditor is qualified to serve on the panel be made public and available for public comment at least 10 days before the pool from which the panel members will be randomly selected is formed. We do not think this change is necessary. The Act and the regulations set forth very specific criteria that a “qualified independent auditor” must meet. Further, we believe the records identifying individuals, as a “qualified independent auditor” are public records subject to disclosure under the California Public Records Act (the “CPRA”).⁵ Finally, nothing in the regulation prohibits the bureau from posting that information on our website should the State Auditor determine that posting it provides necessary transparency.

That commenter also suggested that we add a new paragraph to regulation 60831 to provide the reasons for disqualification of an auditor from the pool for the panel. We did not make this change because we believe that information is part of the individual’s personnel records and thus we cannot disclose the information.

Finally, the commenter suggested that we change the timeframe in which information about qualified independent auditors is posted on our website to 20 days. We are sensitive to the fact the qualified independent auditors are not applying for positions on the panel, but instead have been placed into the pool of potential panel members by the Act. Thus, in fairness to the qualified independent auditors, we think that 10 days provides the public with sufficient time to review the information, while balancing the privacy interests of the qualified independent auditors.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

⁵ Gov. C. § 6250 et seq.

New Section 60832 Training of Panel Members

This section was not included in the proposed regulations that were originally noticed to the public. It was added by the bureau prior to the 15-day public comment period. The purpose of this regulation is to address training of panel members. It requires the bureau to provide training to the panel members prior to the panel performing its duties. That training will include the following subjects: (a) requirements for conducting a public meeting, including the requirements imposed by the Bagley-Keene Opening Meeting Act (commencing with section 11120 of the Government Code); (b) the duties of the panel as described in the Act and the regulations implementing its provisions; (c) California's diverse demographics and geography; (d) the responsibilities of the Commission as set forth in the Act, the United States Constitution and the VRA; and (e) the process for performing redistricting, including the use of computer software to draw district lines.

A further description of the amendments that were made to the regulation after it was originally noticed to the public, but prior to the 15-day public comment period is contained in the Memorandum submitted to the State Auditor on September 28, 2009, regarding Revisions to Proposed Regulations Implementing the Voters FIRST Act, and included in the final rulemaking file as Memorandum Number 8.

Finally, for clarity and consistency we made a technical, nonsubstantive change to conform to a change made to Section 60805.

Comments Received During the 45-Day Public Comment Period

As we note in our discussion of Section 60832 renumbered as Section 60833, we received a few comments about the need to provide training to the panel, particularly with respect to the VRA. These comments are more fully discussed in that section.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60832 renumbered as Section 60833 Duties of Panel Members.

This section specifies the duties of panel members. The Act provides only a limited amount of detail on the duties of the panel. As more fully explained in the Memorandum to the State Auditor dated July 31, 2009, relating to the Applicant Review Panel, and included in the Final Rulemaking File as Memorandum Number 3, to further the transparency goals of the Act and to assist with the administration of the panel, this regulation establishes specific duties of the panel.

In response to public comments received by the bureau, amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. Those amendments clarify when and

with whom panel members may communicate. This section was renumbered as 60833 after the bureau proposed a new regulation bearing the number 60832.

Finally, for clarity and consistency we made a technical, nonsubstantive change to conform with a change made to Section 60805.

A further description of the amendments that were made to the regulation after it was originally noticed to the public, but prior to the 15-day public comment period is contained in the Memorandum submitted to the State Auditor on September 28, 2009, regarding Revisions to Proposed Regulations Implementing the Voters FIRST Act, and included in the final rulemaking file as Memorandum Number 8.

Comments Received During the 45-Day Public Comment Period

We received a few comments suggesting that the regulations need to clearly limit communications between panel members and applicants outside of the specified application process. Likewise, the comments suggested that the regulations should 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 regulation regarding the duties of panel members would benefit from adding these restrictions on communications. We also revised the 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.

As noted in our discussion of new Section 60832, we received comments that the regulations should address training for panel members. Although we had already planned to provide training to the panel, to ensure that the commenters are aware of the bureau's plan for providing such training, we have added this regulation expressly requiring the training. We believe that this 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.

Another commenter suggested that we should add a new regulation that addresses and emphasizes timely execution of the panel's duties. While we appreciate the need for the panel to perform its duties in a timely fashion, we do not believe this requires another regulation as the act clearly states the panel must comply with all applicable statutes and regulations, including the deadlines are contained therein. Further, we will continue to update the timeline on our website so that the public is informed as to the progress of the panel.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60833 renumbered as 60834 Removal of Panel Members

This section specifies the grounds and process for the removal of a panel member. The Act does not set forth the grounds and process for the removal of a panel member. Thus as more fully explained in the Memorandum to the State Auditor dated July 31, 2009, relating to the Applicant Review Panel, and included in the Final Rulemaking File as Memorandum Number 3, this creates an ambiguity in the process that requires further interpretation. This regulation will minimize the potential for disruption of the panel's work by specifying a process for the removal of a panel member.

Amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. This section was renumbered as 60834 after the bureau assigned the number 60833 to another regulation. The regulation was also amended to correct the cross reference to another regulation that we renumbered and to make minor technical changes. In addition, this regulation was amended to make it clear that the State Auditor may remove a panel member for a "failure or inability to satisfy any of the requirements for being a Qualified Independent Auditor as described in title 2, California Code of Regulations, section 60824" or a "failure or inability to perform the duties of a panel member as described in title 2, California Code of Regulations, section 60833, The regulation was also amended to clarify that the replacement of a panel member with an alternate panel member will not affect the validity of any decision previously made by the panel.

Comments Received During the 45-Day Public Comment Period

We received a few comments identifying an incorrect cross-reference in this regulation. We have corrected the cross-reference.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60834 renumbered as Section 60835 Panel Administration

This section provides clarity regarding panel administration. The Act does not address staffing for the panel and thus, as explained more fully in the Memorandum to the State Auditor dated July 31, 2009, relating to the Applicant Review Panel, and included in the Final Rulemaking File as Memorandum Number 3, creates an ambiguity in the process that requires further interpretation. This regulation clarifies that the bureau will provide administrative and legal support to the panel.

Amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. The bureau renumbered this section as 60835 after the bureau assigned the number 60834

to another regulation. Additionally, for clarity and consistency we made a technical, nonsubstantive change to conform to a change made to Section 60805.

As noted in our discussion of new regulation Section 60832, we received comments that the regulations should address training for panel members. 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 new regulation expressly requiring the training. As we noted above, we believe that regulation 60832 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.

Comments Received During the 45-Day Public Comment Period

We received a few comments that the panel should receive training. However rather than addressing training in this regulation, we added new Section 60832 to address these comments, as explained more fully above.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60835 renumbered as Section 60836 Panel Meetings

This section provides specifics regarding panel meetings. The Act does not provide any specific requirements for panel meetings and thus, as explained more fully in the Memorandum to the State Auditor dated July 31, 2009, relating to the Applicant Review Panel, and included in the Final Rulemaking File as Memorandum Number 3, creates an ambiguity in the process that requires further interpretation. The regulation provides guidance to applicants and the general public on the location and procedures that the panel will follow during panel meetings

Amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. The bureau renumbered this section as 60836 after the bureau assigned the number 60835 to another regulation. We also made a minor technical change. No further changes were made.

Comments Received During the 45-Day Public Comment Period

We received a few comments that suggested we add a sentence relating to communication by panel members and staff about applicants outside of public hearings. We addressed this suggestion in a revision to Section 60832 renumbered as Section 60833.

We also received a comment that the regulation should be revised to require a quorum of three. As this could restrict the ability of the panel to conduct administrative business, we rejected this suggestion. We note, however, that under regulation 60837, decisions to reconsider or remove applicants from the pool require a unanimous vote.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60836 renumbered as Section 60837 Panel Voting

This section provides specifics regarding panel voting. The Act does not address voting procedures for the panel. Thus, as explained more fully in the Memorandum to the State Auditor dated July 31, 2009, relating to the Applicant Review Panel, and included in the Final Rulemaking File as Memorandum Number 3, the lack of specificity creates an ambiguity in the process that requires further interpretation. This regulation provides that any decision or reconsideration of a decision regarding the removal of an applicant from an applicant pool must be by a unanimous vote of the three panel members. Other decisions of the panel may be made by majority vote.

Amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. The bureau renumbered the section as 60837 after the bureau assigned the number 60836 to another regulation. No further changes were made.

Comments Received During the 45-Day and 15-Day Public Comment Period

The bureau did not receive any public comments regarding this regulation.

Section 60840. Outreach Program

This section provides specifics regarding the outreach program the bureau will undertake prior to and during the application period. As explained more fully in the Memorandum to the State Auditor dated July 31, 2009, relating to the Application Process, and included in the final rulemaking file as Memorandum Number 7, while the Act contemplates outreach to the public, it does not provide specifics about what that outreach should entail. This regulation requires the bureau, subject to the appropriation of funds, to undertake an outreach program that will reach qualified applicants of diverse backgrounds.

Amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. To add clarity to the regulation, we added language to clarify that the bureau's outreach program would include public service announcements and print advertisements about the application process for placement in local, regional and ethnic media. Finally, for clarity and consistency we made a technical, nonsubstantive change to conform to a change made to Section 60805.

Comments Received During the 45-Day Public Comment Period

We received several comments regarding this regulation. Some comments, which did not appear to be specifically directed at the regulation, requested that we post the application timelines on our website, provide additional information regarding the status of our budget request, discuss whether we had received an appropriation sufficient to accomplish our outreach plan, fully fund outreach to minority groups, or provide a more detailed discussion of the planned outreach. Because these comments were not related to the regulation itself, we did not make specific changes to the regulation in response to the comments.

We also received comments relating to the regulation's use of the term "community partners." One commenter suggested that we delete any reference to community partners; another requested that we provide a broader explanation of the term; and yet another suggested that the regulation require the bureau to provide community partners with advice and materials. Because the organizations interested in assisting the bureau with outreach may change over time, we declined to define or list the organizations that might serve as community partners. Additionally, because we believe that the success of the outreach plan requires the participation of community organizations that will encourage a diverse pool of every day citizens to apply, we did not delete the reference to community partners. We did not revise the regulation to require the bureau to provide advice and materials to private organizations because it is not necessary to do so. The bureau intends to make any materials we develop available to the public and under the CPRA such materials would be subject to public disclosure. In fact we have already reached out to numerous and diverse groups across the state and are in the process of developing materials that private organizations may use.

Another comment requested that the bureau ensure that adequate resources are available to applicants as they fill out the form. We do not believe a revision to the regulation is necessary. We do, however, plan on having a hotline where applicants can have their questions answered, and to populate our website with information that will assist applicants in filling out the applications.

One comment requested that we strengthen and clarify our planned outreach program. Because of the uncertainties regarding funding and the potential for changing technology, we declined to specify in more detail the outreach measures the bureau will undertake. Lastly, as discussed above, we received a comment suggesting that the regulation include specific reference to outreach efforts to local media, and we modified the regulation to incorporate this suggestion.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60841. Overview of the Application Process

This section provides an overview of the different phases of the application and selection process. As explained more fully in the Memorandum to the State Auditor dated July 31, 2009,

relating to the Application Process, and included in the final rulemaking file as Memorandum Number 7, while the Act requires the bureau to initiate an application process that will lead to the selection of the members of the commission, it provides the bureau and the public with little guidance on how to conduct the application process. This regulation assists the public in obtaining a general understanding of the application and selection process that the bureau proposes to fill this void. The regulations provide additional details about the process in the sections that follow.

In response to public comments received by the bureau, amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. To clarify the regulation, we made a minor grammatical change to the text and corrected a typographical error.

Comments Received During the 45-Day Public Comment Period

Several comments called our attention to the typographical error in the text, which we corrected. Additionally, one person suggested that we restate that the rules of removal require that no more than eight names be removed from each subpool and that the regulation require the Legislature to notify those applicants whose names are removed from the applicant pool and inform them of the reasons for their removal. We declined to make either change. First, we drafted the regulations with the philosophy that those matters plainly stated within the language of the Act need not be restated in regulation. Second, we do not have the legal authority to require by regulation that the Legislature notify applicants regarding their removal from the applicant pool.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60842. General Requirements Applicable to Every Phase of the Application Process

This section specifies general requirements for all phases of the application process. As explained more fully in the Memorandum to the State Auditor dated July 31, 2009, relating to the Application Process, and included in the final rulemaking file as Memorandum Number 7, while the Act requires the bureau to initiate an application process that will lead to the selection of the members of the commission, it provides the bureau and the public with little guidance on how to conduct the application process. This regulation provides clarity for the bureau, the panel, and the public on the requirements that will apply to each phase of the application process.

In response to public comments received by the bureau, amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. To clarify the regulation, we made two minor, nonsubstantive stylistic changes to the text. Additionally, we clarified the circumstances under which the bureau would release information about applicants and specified that the bureau would post applicant materials on the bureau's website as soon as practicable.

We also clarified some of the information we will ask applicants to submit on the Phase I initial application. We rejected other requested revisions to this section, as described more fully below and in the Memorandum submitted to the State Auditor on September 28, 2009, regarding Revisions to Proposed Regulations Implementing the Voters FIRST Act, and included in the final rulemaking file as Memorandum Number 8. Finally, for clarity and consistency we made a technical, nonsubstantive change to conform to a change made to Section 60805.

Comments Received During the 45-Day Public Comment Period

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 suggested 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, CPRA dictates what must be released and what is exempt from disclosure. In addition, numerous federal and state laws address privacy issues, and we must take those laws into account.⁶ 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.⁷ 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 regulations, we reference the bureau's policies for protecting confidential information from inadvertent public disclosure.

⁶ For example, the California Constitution (Art. 1, §1); the Information Practices Act (Civil Code §1798 et seq.); the Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 201 et seq.; see also 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.

⁷ Gov. C. § 8545.2; see also Gov. C. § 8545.1.

While we are sensitive to having the names of individuals under age 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.

Several commenters suggested that the bureau specify how quickly it will post applicant materials to its website and what materials will not be posted. Because the bureau can control neither the volume nor the format and content of applicant materials it may receive on a given day, we were unable to specify a precise period of time by which materials must be posted. Nevertheless, because the bureau recognizes that transparency is essential to the selection process, we revised the regulation to require the bureau to post materials as soon as is practicable. The term “practicable” means, “capable of being put into practice or of being done or accomplished.” We believe that this revision to the regulation will provide assurance to the commenters that we will post information about the applicants as soon as practicable.

One commenter requested that our regulations address several technical issues related to the application process, such as sending confirming emails to the applicants after they submit applications, time stamping applications, returning incomplete applications with feedback regarding the reason for incomplete status, and rejecting and storing late submissions. We declined to revise the regulation to incorporate specific technical requirements because technology is ever changing and we would like to preserve our technological flexibility. Additionally, this commenter made comments about the application form itself, such as suggesting that we include on the form a list of the elections an applicant must have voted in and clarifying the specific information that we will seek on the application. Because the application is not part of the regulations, and because we believe that the regulation as drafted provides us the flexibility to incorporate the suggested changes into the application if necessary, we did not make the suggested changes.

We also received comments suggesting that the regulation specify whether materials postmarked by the bureau’s deadline would be accepted. We declined to revise the regulation because it already requires that materials be “received by” the bureau by the established deadlines. We also received a request that applicants be put on stern notice that inclusion of offensive or harassing content will be cause for exclusion from the applicant pool. Because of considerations under the First Amendment to the United States Constitution, we declined to make this revision.

One commenter requested that we revise the regulation to exclude individuals who “intentionally” submit more than one application. Because the bureau would be unable to prove an applicant’s intent, we declined to make the suggested change. Another commenter suggested that the bureau specify when and under what circumstances the bureau would investigate an applicant. Because the bureau and the panel must have the flexibility to verify all applicant information at any time during the selection process, we were unable to make this suggested

change. Finally, one comment suggested that the bureau provide to Legislature any and all investigative materials relating to applicants. Although we did not make a responsive change to this particular regulation, we addressed the comment in our revisions to Section 60852.

One commenter suggested that if the State Auditor creates additional phases of the application process during which the applicant pool is reduced, that the regulation should require that the panel follow the criteria set forth in Phase I and Phase II. We did not make this change because it is not necessary. The regulations require the criteria set forth in those phases to be applied to all applications considered. Thus, any decision of the panel about how to process applications would be purely ministerial. That commenter also suggested that the timeline for the Phase I and Phase II application periods should be posted on the Bureau's website at the beginning of the application period and that the bureau should do its best to stick to the timelines. We do not believe a revision is necessary based on this comment. We will, however, as we have done to date, timely post on our website all information applicants need to fill out the applications, including deadlines. Further, the bureau is committed to adhering to the timelines we establish, particularly because, as we have stated before, the deadlines contained in the Act leave us little flexibility.

Finally, one commenter raised concerns about the ability of certain individuals, particularly elderly persons, to fill out an on-line application. At the same time, the commenter recognized that such an individual could ask for assistance. We did not amend the regulation to address the concern because the regulation already recognizes that an individual may ask for a reasonable accommodation under the Americans with Disabilities Act of 1990 (commencing with section 12101 of title 42 of the United States Constitution.) and because familiarity with using computers is a relevant analytical skill.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60843. Phase I Initial Application

This section provides the specific requirements for Phase I of the Application process. As explained more fully in the Memorandum to the State Auditor dated July 31, 2009, relating to the Application Process, and included in the final rulemaking file as Memorandum Number 7, because the Act does not set forth a detailed application process, the regulations create one. Also, as explained more fully in that memorandum, the Phase I application elicits from the applicant specific information that the bureau will use to verify that the applicant meets the minimum qualifications for service. Further, as more fully explained in the Memorandum to the State Auditor dated July 31, 2009, relating to Electronic Submission of Applications, and included in the final rulemaking file as Memorandum Number 6, the regulation requires that except as otherwise required by the Americans with Disabilities Act of 1990⁸, applicants must submit applications electronically.

⁸ 42 U.S.C. §12101 et seq.

In response to public comments received by the bureau, amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. We made three minor, nonsubstantive changes to the text, including a modification of the title of this regulation. We also further specified the information that applicants must provide during the Phase I Initial Application period.

Comments Received During the 45-Day Public Comment Period

We received a number of comments directed at this regulation. Commenters suggested that we ask for an applicant's residential and mailing addresses, age and birth date, household income, Social Security Number, county of residence, and that we define the terms "economic status," "certify," and "certification." Because we do not have a need to collect applicants' Social Security Numbers, we do not intend to solicit them, and therefore did not modify the regulation to include them. We deleted the term "economic status" from the regulation, replacing it with the term "household income" because we believe doing so clarifies the information that applicants must provide. We believe that the application form, a draft of which has been posted on our website, makes clear what the terms "certify" and "certification" mean, and therefore declined to define them. We also specified in the regulation that applicants will be required to submit their mailing and residential addresses, ages and birth dates.

Some commenters suggested lengthening the initial application period and others requested that we specify the timeline for the initial application period. The regulation provides for a 60-day Phase I initial application period. Given the strict deadlines contained in the Act and the potential applicant pool of 17 million, we are unable to extend the period beyond 60 days. Additionally, we did not revise the regulation to include more specific dates. The specific dates for all application periods are currently posted on our website, and it is not necessary to include more specificity in the regulation.

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. The comments requested several revisions to this section that would provide the Legislature with more time 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 established 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, providing for staff 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 timeline for what must be accomplished under the Act. Additionally, though 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. Accordingly, we were unable to adopt this suggested change. We note, however, that because the bureau's application process is so transparent, the legislative leaders will be able to view applications and interviews on the bureau's website as the process moves along.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60844. Phase I Initial Application Review

This section provides specifics regarding the review of Phase I applications. As explained more fully in the Memorandum to the State Auditor dated July 31, 2009, relating to the Application Process, and included in the final rulemaking file as Memorandum Number 7, while the Act imposes certain minimum requirements an applicant must meet to serve, it contains no method for screening applicants. Also, as explained more fully in that memorandum, this regulation sets forth the Phase I screening process.

Amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. We made a minor, nonsubstantive change to the title of this regulation to clarify the scope of its application.

Comments Received During the 45-Day Public Comment Period

The sole comment we received regarding this regulation suggested that we insert the word "intentionally" in paragraph (1) of subdivision (a). Because we cannot prove an applicant's intent in submitting more than one application, we declined to make the recommended change.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60845. Publication of Names of Applicants in Initial Applicant Pool

This section provides for the publication of names of applicants in the applicant pool at completion of Phase 1 as required by section 8252, subdivision (c). As explained more fully in the Memorandum to the State Auditor dated July 31, 2009, relating to the Application Process, and included in the final rulemaking file as Memorandum Number 7, the Act does not provide

guidance on how the State Auditor should publicize those names. This regulation sets forth the method by which the State Auditor will publish the names.

The regulation is being adopted as originally proposed for the reasons stated above.

Comments Received During the 45-Day Public Comment Period

The sole comment received relating to this regulation suggested that the bureau post the names contained in the initial applicant pool immediately upon its completion. Because this is not technically possible due to the fact that the potentially thousands of names must be listed, verified, placed in a format that is appropriate for posting and uploaded onto the bureau's website, we declined to insert the word "immediately" into the regulation. The bureau, cognizant of the public's great interest and the need for transparency in the selection process, intends to post the list of names as soon as practicable.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60846. Written Public Comments and Responses

This section specifies the process for submitting written public comments and applicant responses to public comments. As explained more fully in the Memorandum to the State Auditor dated July 31, 2009, relating to the Application Process, and included in the final rulemaking file as Memorandum Number 7, while the Act requires the State Auditor to publicize the names of the applicants, it does not specify how the bureau should receive public comments on the applicants. As more fully explained in the memorandum, this regulation informs participants about how they may submit written comments about applicants and it also provides a mechanism by which applicants may respond to those written comments.

In response to public comments received by the bureau, amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. We made two minor, nonsubstantive, changes to the text to conform the text to preferred drafting style. We also further specified that the bureau shall post all written comments to the bureau's website as soon as is practicable, as explained in the Memorandum to the State Auditor dated September 28, 2009, relating to Revisions to Proposed Regulations Implementing the Voters FIRST Act, and included in the final rulemaking file as Memorandum Number 8. Finally, for clarity and consistency we made a technical, nonsubstantive change to conform to a change made to Section 60805.

Comments Received During the 45-Day Public Comment Period

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, as defined in regulation 60818, 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 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.

One person suggested that the public comment period for each phase should last at least 30 days. As drafted, this regulation provides for numerous comment periods extending from the date that the names of the successful Phase I applicants are posted until the panel selects the 60 most qualified applicants. For that reason, we do not believe it is necessary to include in the regulation more specific time periods for public comment.

Another commenter suggested that the regulation is confusing and inconsistent because it is unclear whether late comments will be considered. Upon reviewing the regulation, we disagreed that the regulation contains a timing conflict. The regulation provides that comments submitted during one phase will not be considered during that phase if the bureau does not receive them by the deadline for commenting on that phase. We included this language for practical purposes: a comment not received during Phase I cannot be considered during Phase I. However, subdivision (e) of this section provides that, if a late comment is received and therefore not considered during a particular phase and, if the applicant about whom the comment was submitted is advanced to additional phases of the application process, the comment will be considered during any subsequent phase. Accordingly, the comment submitted too late in the process to be considered during Phase I will be considered during Phase II, providing that the applicant about whom the comment was made remains in the Phase II applicant pool. Under this language, a person who submits a public comment need not submit an identical comment later if the first comment was not timely received by the bureau.

One person suggested that the panel will not be capable of determining which comments are valid and which are part of a campaign for or against a particular applicant. We disagree. The Act requires the qualified independent auditors on the panel to exercise their best judgment regarding all selection matters. Further, as employees of the independent, nonpartisan State Auditor, these auditors are well versed in separating advocacy from fact. Thus, we believe that the auditors are competent to discern truth from fiction and made no change to the regulation in response to this comment.

Another commenter requested several technical considerations for the public comments on application process, such as verification of the identity of the person providing the public comment and disclosure of the full name, residential and mailing addresses, telephone number, email address, and relationship to the applicant of the person making the public comment. Additionally, this person suggested other matters that should be contained on the public comment form provided by the bureau. Because the form is not part of the regulations, nor will

its usage be mandatory, we deemed these comments irrelevant⁹ to the regulations. Nevertheless, we will consider these suggestions as we develop the public comment form, and we believe that the regulation as currently drafted provides us the flexibility necessary to incorporate many of these suggestions into it.

We also received comments suggesting that the regulation specify whether materials postmarked by the bureau's deadline would be accepted. We declined to revise the regulation because regulation 60842 already requires that materials be "received" by the bureau by the established deadlines. Lastly, we received a request to revise the regulation to state that comments containing offensive or harassing content will be rejected. Because of considerations under the First Amendment to the United States Constitution, we declined to make this revision.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60847. Phase II Supplemental Application

This section describes the Phase II application and submission process. As explained more fully in the Memorandum to the State Auditor dated July 31, 2009, relating to the Application Process, and included in the final rulemaking file as Memorandum Number 7, the Act provides little guidance on the application submission process. As explained more fully in that memorandum, this regulation explains the Phase II application process, which will solicit additional information from applicants who the bureau has determined during Phase I are eligible to serve as a commissioner.

In response to public comments received by the bureau, amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. We made several minor, nonsubstantive, changes to conform the text to preferred drafting style. We also modified the title for the purpose of clarifying the scope of the regulation. Additionally, we specified that the supplemental application period shall extend a minimum of 30 days, included, with more specificity, all of the subjects contained in, and materials that must accompany, the Phase II supplemental application, and increased the maximum number of words that may be contained in each essay answer. These amendments are also addressed in the Memorandum to the State Auditor dated September 28, 2009, relating to Revisions to the Regulations Implementing the Voters FIRST Act, and included in the final rulemaking file as Memorandum Number 8.

⁹ The term "irrelevant" is contained in section 11346.9(a)(3) of the Government Code and is defined as any comment "not specifically directed at the agency's proposed action or to the procedures followed by the agency in proposes or adopting the action." We have used the term in this Final Statement of Reasons for legal reasons only, and by doing so, do not mean to imply that the comments we deemed legally "irrelevant" will not be considered in the future or lack value. The bureau is firmly committed to, and relies upon, the public's input as we craft California's first Citizen's Redistricting Commission.

Comments Received During the 45-Day Public Comment Period

We received a few comments requesting that we establish a minimum time period 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 to a minimum of 30 days, and therefore revised this regulation accordingly. 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.

In reviewing this regulation, we developed a concern that in stating that applicants would be required to disclose their financial interests we did not sufficiently describe what this disclosure would entail and how it would be accomplished. We have therefore revised the regulation to specify that applicants submitting a supplemental application will be advised that they must complete a Statement of Economic Interests (FPPC Form 700) upon the panel making a determination that they are likely to be selected for an interview. We then made a conforming change to regulation 60847(b)(5) that provides for the panel to direct applicants to submit a Statement of Economic Interests upon the panel determining, based on a review of the applicants' supplemental applications, that they are likely to be selected for an interview.

One commenter asked whether the supplemental application will have customized questions for each applicant or whether there will be a standard list of questions all applicants will answer. We believe that the regulation makes it clear that all applicants will complete the same application. This commenter also asked whether letters of recommendation should be limited to those individuals residing in California. We do not believe there is any authority or practical reason to impose such a restriction. Further, an individual could very well have gained valuable and relevant experience in another state. Another person suggested we eliminate the requirement that applicants submit letters of recommendation. We believe that such letters provide valuable information to the panel and declined to eliminate letters of recommendation.

Several commenters suggested either limiting, expanding, or eliminating the scope of the inquiry into applicants' criminal histories. After careful consideration, we elected to limit the inquiry to felony convictions. One person made several comments relating to the application form, such as suggesting that the form be predominantly replaced by resumes submitted in PDF. Those comments are not relevant to the regulations because the form is not part of the regulations, and as indicated earlier, we will consider them separately.

One comment, which we incorporated into the regulation, suggested that including the words "shall consist of, but need not be limited to," was unfair to applicants because it did not provide them with a clear understanding of the information they will be required to provide. We deleted the words "but need not be limited to" from the regulation. We also incorporated the suggestion that we specify the timelines for the Phase II application period.

Several comments indicated that we should limit the inquiry on the Phase II application to only those questions “directly relevant” to whether an applicant is qualified to serve on the commission by, for instance, eliminating questions about community involvements and financial contributions. We believe that the topics contained in the regulations will reveal information that is directly relevant to whether an applicant is qualified, and will provide to the panel information that is necessary for the panel to determine which 60 of the potentially thousands of applicants are truly “60 of the most qualified,” as the Act requires. For instance, we believe that disclosure of an applicant’s financial contributions and political, social, professional, and community associations reveals those causes that are truly important to an applicant and, particularly for decline to state voters, provide the most accurate indicia of partisan activity.

We received comments about the application form, such as a suggestion that the form be revised to provide applicants a space to indicate their sexual identity or to provide other information the applicant believes the panel should know about the applicant. Because the application form is not part of the regulations, we deemed those comments irrelevant to the regulations, but, as indicated above will consider them as we finalize the application form. We also received a comment suggesting that the panelist not be permitted to see the names of the applicants during deliberations. While we recognize the value of this suggestion, it is practically impossible. The names of the applicants will be publicly available and comments about the applicants will include their names. Because the public will rely on the applicant names as a means to readily identify the applicants, the panel must be able to use applicant names so that the public may follow along with deliberations.

We agreed with the suggestion that we expand to 500 the number of words that applicants may use to respond to the Phase II essay questions and revised the regulation accordingly.

Comments Received During the 15-Day Public Comment Period

We received a comment requesting that the bureau reconsider the way the regulations would authorize the panel to use the Statement of Economic Interests (FPPC Form 700). The commenter argued that many of the questions on the Form 700 will not provide the panel with useful information. The commenter also raised the concern that requiring applicants to fill out a Form 700 would discourage some people from filing an application. Finally, the commenter suggested using an alternative approach, including using limited portions of the Form 700. We disagree with this comment. While we recognize that state law only requires that the commissioners complete a Form 700, we believe that completing the Form 700 will provide the panel with valuable information that could go to their ability to be impartial, their household incomes, and potential conflicts of interest relating to financial involvement with, for example, a redistricting software company. To cite another example, the commenter notes that there is nothing in the Act that disqualifies an applicant from serving on the commission if he or she receives a gift from a state office holder. While that is true, the panel could consider whether such gifts or gifts impact the ability of the applicant to be impartial as it may appear that the individual is beholden to a state office holder. This is all information that should be available to the panel prior to the selection of commission members. Further, we do not believe asking for this information at this juncture (if the applicant proceeds to the interview phase.) will discourage applicants. We note that individuals proceeding to this phase will potentially be

performing a critical and high profile function for the citizens of California. Other applications for appointment require similar detail, for example, individuals applying for a gubernatorial appointment must submit similar information about their financial holdings.

Section 60848. Phase II Supplemental Application Review

This section describes the Phase II application review process. As explained more fully in the Memorandum to the State Auditor dated July 31, 2009, relating to the Application Process, and included in the final rulemaking file as Memorandum 7, the Act provides little guidance on how the application process should be conducted. As explained more fully in that memorandum, this regulation provides the public and the panel with guidance on how the applications will be reviewed during Phase II. Also, as explained more fully in the Memorandum to the State Auditor dated July 31, 2009, relating to Electronic Applications, and included in the final rulemaking file as Memorandum Number 6, the regulations require that the applicants submit applications electronically.

In response to public comments received by the bureau, amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. We made minor, nonsubstantive changes to the regulation, including modifying the title in to clarify the scope of its application and, in subdivision (f), we replaced the word “intended” with the word “designed” to render the language of the regulation consistent with the language of the Act. We also specified that each member of the panel shall review the application materials submitted regarding each applicant remaining in the pool. Finally, we added a new subdivision (g) because we recognized that the regulations did not specify when applicants would be asked to complete and submit a Statement of Economic Interests (Form 700). Some of these amendments are discussed in the Memorandum to the State Auditor dated September 28, 2009 relating to the Revisions to Proposed Regulations Implementing the Voters FIRST Act, and included in the final rulemaking file as Memorandum Number 8.

Comments Received During the 45-Day Public Comment Period

We received a comment suggesting that we revise subdivision (f) of 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 regulation that requires training (regulation 60832), and that training will address California’s diverse demographics and geography. Consequently, we did not revise this particular regulation to incorporate this suggestion.

One comment suggested that we inform applicants whose names are removed from the Phase II pool of the reasons they were removed. While we intend to provide removed applicants with notice and a general explanation as to the reason they were removed from the applicant pool, we do not believe it is necessary to include the form and content of the notice in the regulations.

We also received comments that the application period should be extended and that bureau staff recommendations and summaries be made public before hearings to deliberate the qualifications of the applicants. As we have addressed above, because of the strict deadlines imposed by the Act, we are unable to extend the application period to the extent that some commenters have suggested. Nevertheless, we have made some adjustments to the deadlines for the application phases, but not in this regulation specifically. As for the suggestion that bureau staff recommendations and summaries be made public, we believe that, because the panel is governed by the Bagley-Keene Opening Meeting Act¹⁰, which is specifically incorporated into our regulations, it is unnecessary to restate the Bagley-Keene requirements in the regulations. Moreover, in certain circumstances, staff recommendations and summaries may constitute attorney-client communications or other privileged information not required to be disclosed under any statute. That said, the bureau is committed to making the process as transparent as possible.

One commenter suggested that the regulation require guaranteed representation of decline to state voters in the non-major party pool. While we recognize that certain, uncodified, general intent language in the Act references the inclusion of “independent” voters in the redistricting process, it is not clear from that intent language whether the voting public intended “independent” to mean individuals who are not affiliated with any major party, individuals who are not connected to the Legislature, the Governor or the Board of Equalization, or decline to state voters. Moreover, pursuant to the rules of statutory construction, specific language in a statute controls over general language. The plain language of California Constitution, Article XXI, section 2(c)(2) requires the commission to consist of 14 members: five registered with the largest political party in this state; five registered with the second largest political party in this state, and “four who are not registered with either of the two largest political parties.” This specific language is echoed in Government Code section 8252, subdivision (d). Thus, based on the clear, unambiguous, plain language of the Act, nothing in the law requires that a certain percentage of decline to state voters be included in the non-major party pool.

Another commenter suggested that we “immediately” post on our website the names of the Phase II applicants who will be invited to participate in Phase III interviews. As discussed above, for technical reasons, it is not possible for the bureau to immediately post materials on its website. Instead, the bureau has committed to posting materials as soon as is practicable.

Another comment raised concerns about including “economic diversity” in the definition of diversity and the impact it would have on the panel’s decision making when apply the criteria set forth in this regulation. Those concerns are addressed in our discussion of regulation 60815, above.

As discussed above, we incorporated into the regulation the suggestion that each panel member review each application. Lastly, one comment suggested that panel members be prohibited from engaging in any ex parte communications regarding the selection process. We agree, but did not make that change to this regulation. Instead, we revised section 60832, renumbered as section 60833, to incorporate this suggestion.

¹⁰Gov. C. §11120, et seq.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60849. Phase III Interviews.

This section provides a description of Phase III of the application process, which consists of applicant interviews. As explained more fully in the Memorandum to the State Auditor dated July 31, 2009, relating to the Application Process, and included in the final rulemaking file as Memorandum 7, the Act provides little guidance on how the application process should be conducted. As explained more fully in that memorandum, this regulation provides the public and the panel with guidance on how the applicants will be interviewed during Phase III.

In response to public comments received by the bureau, amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. We made minor, nonsubstantive changes to this regulation to clarify the bureau's responsibilities regarding assisting applicants with travel arrangements and expenditures related to interviews. We also made substantive changes to the reimbursement provisions by requiring the bureau to make air travel arrangements, provide travel advances in certain circumstances, provide applicants at least seven calendar days' notice prior to scheduling interviews, and to post recording of interviews on the bureau's website as soon as practicable. The amendments are also addressed in the Memorandum to the State Auditor dated September 28, 2009, relating to Revisions to Regulations Implementing the Voters FIRST Act, and included in the final rulemaking file as Memorandum Number 8.

Comments Received During the 45-Day Public Comment Period

We received many comments regarding when the bureau should post interview recordings. Some individuals requested that we wait to post the recording until all interviews were completed, while others requested that we post immediately. Because for technical reasons it is not possible to immediately post recordings, and because the interviews will take place during open meetings, providing those who can personally attend an unfair advantage over those who must depend on the recordings to keep abreast of the process, we did not adopt either suggestion.

One person suggested that the public comment period for interviews should not commence until every recording has been posted on the website, as opposed to the date when all interviews have been completed. Given that we intend to post the recordings as quickly as we can and that only a few days will likely lapse between completing the last interview and posting the remaining interviews on the website, we see no reason to revise the regulation pursuant to this suggestion. Others suggested that the regulation contain a deadline by which interviews should begin and end. Because we cannot anticipate the volume of applications we will receive, we must retain flexibility regarding when we commence and complete interviews.

We also received comments suggesting that the notice period before the bureau schedules an interview should be extended from 5 days to various periods up to and including at least 15 days. Given the tight deadlines imposed by the Act, and the fact that the panel has only limited time to complete the selection process, we considered the suggestions and extended the notice period to a minimum of 7 calendar days.

Finally, a comment raised concerns about including “economic diversity” in the definition of diversity and the impact it would have on the panel’s decision making when applying the criteria set forth in this regulation. Those concerns are addressed in our discussion of Section 60815, above.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60850. Phase III Applicant Review

This section summarizes the qualifications and characteristics that the panel will rely upon in selecting 60 of the most qualified applicants. As explained more fully in the Memorandum to the State Auditor dated July 31, 2009, relating to the Application Process, and included in the final rulemaking file as Memorandum Number 7, the Act provides little guidance on how the application process should be conducted. As explained more fully in that memorandum, this regulation provides the public and the panel with guidance on how the panel will select the most qualified applicants whose names the panel will transmit to legislative leaders, as defined in regulation 60818.

Amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. We made two minor, nonsubstantive changes to render the language of the regulation consistent with the language of the Act. In subsection (b) “most qualified” was removed since the Act states that the 60 selected at this point must be “among the most qualified applicants.” In subsection (e), the word “intended” was replaced with the word “designed” as designed is the term used in the Act.

Comments Received During the 45-Day Public Comment Period

One person suggested that we inform applicants whose names are removed from the Phase II pool of the reasons they were removed. While we intend to provide removed applicants with notice and a general explanation as to the reason they were removed from the panel, as discussed earlier, we do not believe it is necessary to include the form and content of the notice in the regulations. Another commenter suggested that the use of the phrase “most qualified” was not entirely consistent with the language of the Act. We agreed and revised the regulation accordingly.

Another commenter suggested that the regulation require guaranteed representation of decline to state voters in the non-major party pool. While we recognize that certain, uncodified, general intent language in the act references the inclusion of “independent” voters in the redistricting process, it is not clear from that intent language whether the voting public intended “independent” to mean individuals who are not affiliated with any major party, individuals who are not connected to the Legislature, the Governor or the Board of Equalization, or decline to state voters, or all of these things. Moreover, pursuant to the rules of statutory construction, specific language in a statute controls over general language. The plain language of California Constitution, Article XXI, section 2(c)(2) requires the commission to consist of 14 members: five registered with the largest political party in this state; five registered with the second largest political party in this state, and “four who are not registered with either of the two largest political parties.” This specific requirement is echoed in California Government Code section 8252(d). Accordingly, based on the clear, unambiguous, plain language of the Act, the law does not require that a certain number of decline to state voters be included in the non-major party pool of twenty that is sent to the legislative leaders, as defined in regulation 60818, for strikes. If anything, the plain language would prohibit the bureau from adopting such a regulation.

We received a comment suggesting that we revise regulation 60850(e), 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, as discussed above, 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 regulation that requires training (regulation 60832), and that training will address California’s diverse demographics and geography. Consequently, we did not revise this particular regulation to incorporate this suggestion.

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. The comments requested revisions to this section that would provide the Legislature with more time 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 established 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, providing for staff 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 timeline for what must be accomplished under the Act. Additionally, it is possible that we may find some flexibility in our timeline if it turns out that we have a fairly

limited applicant pool. Nonetheless, as we do not know how many applications we will receive, it is unwise to make any commitments through our regulations that limit the time the panel has to select the 60 most qualified applicants.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60851. Reconsideration

This section specifies the limited circumstances in which an applicant may seek reconsideration of a bureau or panel decision. As explained in greater detail in the Memorandum to the State Auditor dated July 31, 2009, relating to the Application Process, and included in the final rulemaking file as Memorandum Number 7, just as the Act provides few details and instructions regarding the applicant selection process, it also does not specify whether applicants may seek reconsideration of decisions relating thereto. As explained in greater detail in the memorandum, this regulation sets forth the limited circumstance in which reconsideration may occur.

Amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. Specifically, we made technical, nonsubstantive changes to this regulation for the purpose of conforming the text to preferred drafting style.

Comments Received During the 45-Day and 15-Day Public Comment Period

The bureau did not receive any public comments regarding this regulation.

Section 60852. Phase IV: Applicant Name Striking Process

This section provides specifics on the process for transmitting the names of the 60 most qualified applicants to the legislative leaders, as defined in regulation 60818. As explained more fully in the Memorandum to the State Auditor dated July 31, 2009, relating to the Application Process, and included in the final rulemaking file as Memorandum Number 7, the Act does not set forth how the panel will transmit the names of 60 of the most qualified applicants to legislative leaders nor what the State Auditor should do if the list returned by the legislative leaders after exercising strikes does not contain 12 names from each subpool. This regulation requires the panel to transmit the names via hand-carried letter and provides guidance to the State Auditor. The regulation also clarifies that, if an applicant's name is struck by the legislative leaders, the applicant may not appeal or seek reconsideration of that decision from the bureau or panel.

In response to public comments received by the bureau, amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. Specifically, we made technical, nonsubstantive changes to conform the text to preferred drafting style. Additionally, we revised the regulation to require the bureau to provide the Legislature with, among other things, any

factual materials gathered by the bureau or the panel concerning the 60 applicants whose names are submitted to legislative leaders for striking.

Comments Received During the 45-Day Public Comment Period

One comment requested that regulation state the Legislature will receive copies of any investigative materials related to applicants. We revised the regulation to clarify that the bureau will provide legislative leadership with “any factual materials gathered by the bureau or the panel concerning the 60 names provided to the Legislature.”

Another comment suggested that the regulation be revised to require the Legislature to notify those applicants whose names are removed from the applicant pool and inform them of the reasons for their removal. Because we do not have the legal authority to require by regulation that the Legislature notify applicants regarding their removal from the applicant pool, we did not make the suggested change. Another commenter suggested that we restate the language in the Act setting out the name striking process because the regulation might be confusing. We reviewed the regulation and did not find it confusing. Moreover, we drafted the regulations using the philosophy that those matters plainly stated within the language of the Act need not be restated in regulation. Accordingly, we did not make the suggested change.

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. The comments requested several revisions to this section that would provide the Legislature with more time 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 established 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, providing for staff 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 timeline for what must be accomplished under the Act. Additionally, it is possible that we may find some flexibility in our timeline if it turns out that we have a fairly limited applicant pool. Nonetheless 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. Accordingly, we were unable to adopt this suggested change.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60853. Phase V: Random Drawing of First Eight Commissioners

This section provides specifics on the random drawing of the first eight commissioners. As explained more fully in the Memoranda to the State Auditor dated July 31, 2009 relating to the Applicant Review Panel and the Application Process, and included in the final rulemaking file as Memoranda Numbers 3 and 7, respectively, the Act does not set forth the method by which State Auditor must randomly draw the names of the first eight commissioners, nor does it address what the State Auditor should do if the Legislature does not return a list of 36 names to the State Auditor by November 15 of the application year. This regulation addresses those ambiguities.

Amendments were made to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. Specifically, we made technical, nonsubstantive changes to this regulation to conform the text to preferred drafting style.

Comments Received During the 45-Day Public Comment Period

One person suggested that we restate the final drawing process as stated in the Act. As indicated above, we drafted the regulations with the philosophy that those matters plainly stated within the language of the Act need not be restated in regulation. Therefore, we did not make this suggested change.

Another commenter asked that we revise the regulation to create a second random drawing in the event that the first random drawing does not produce a sufficiently diverse first eight commissioners. We declined to make the suggested revisions for two reasons. First, nothing in the language of the Act supports or suggests that, if the first random drawing is unsatisfactory to any particular group, it should be repeated. Second, we believe that the plain language of the Act requires the first eight commissioners to specifically select the remaining commissioners to ensure that the commission reflects the state's diversity, although it prohibits the use of quotas for that purpose. We believe that this language is intended to remedy any apparent lack of diversity that may result after the random drawing the Act requires.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

Section 60854. Transmission of Remaining Application Materials to Commission

This section provides some detail regarding the transmission by the bureau of applicant materials to the commission. As explained more fully in the Memorandum to the State Auditor dated July

31, 2009, relating to the Application Process, and included in the final rulemaking file as Memorandum Number 7, section 8252, subdivision (g) requires the first eight commissioners to select the final six commissioners and to fill vacancies. We recognized that the commissioners could not fulfill those duties without copies of the application materials of the remaining applicants. This regulation provides a mechanism and deadline by which the panel will transmit those materials to the first eight commissioners.

The bureau made amendments to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. Specifically, we revised the requirement that the bureau transmit application materials of the remaining applicants to the commission to delete the requirement that the bureau also provide the materials to the Secretary of State. The regulation as originally proposed included transmission to the Secretary of State as section 8253, subdivision (a)(5) requires the Secretary of State to provide support functions to the 14-member commission until the commission's staff and office are fully functional. However, we believe the adopted text is more consistent with the Act, as it does not require the Secretary of State to provide support until the 14-member commission is formed. We revised the title accordingly.

Comments Received During the 45-Day and 15-Day Public Comment Period

The bureau did not receive any public comments regarding this regulation.

Section 60855. Commission Vacancies

This section provides specifics regarding the State Auditor's role in filling commission vacancies. As explained more fully in the Memorandum to the State Auditor dated July 31, 2009, relating to the Application Process, and included in the final rulemaking file as Memorandum 7, section 8252.5 requires the commission to fill vacancies within 30 days after a vacancy occurs, from the pool of applicants of the same voter registration category as the vacating member that was remaining as of November 20 in the year in which the pool was established. As explained more fully in that memorandum, this regulation would provide specific guidance to the bureau and the commission as to how those vacancies would be filled.

The bureau made amendments to this section after the proposed regulation was noticed to the public on July 31, 2009, but prior to the 15-day public comment period that began on September 28, 2009. Specifically, we made technical, nonsubstantive changes to this regulation to conform the text to preferred drafting style.

Comments Received During the 45-Day Public Comment Period

We received numerous comments regarding how the commission will decide whether to fill a vacancy: whether the decision should be unanimous, whether the commission would elect to fill vacancies after maps have been published, whether the commission members should all be fluent in a single language, and how the commission should undertake the business of working as a state body. We deemed these comments irrelevant to the regulations, as the regulations do not address the operation or function of the commission itself.

We also received a comment asking whether the panel would be dissolved after the random drawing. Because dissolution of the panel is not part of the regulations, we also deemed this question irrelevant. Lastly, one person asked whether Phases I through V would apply if the bureau was required to create an entire new subpool. Subdivisions (a) and (b) of the regulation provide that in creating a new subpool the panel shall attempt to do so in a prescribed manner. Accordingly, we did not make revisions to the regulation in response to this comment.

One person suggested that, because subdivision (c) consists of a definition, it should be set out in a separate regulation. We disagree, as general drafting style provides that, when a definition appears only in a single regulation, it may be set forth within that regulation, and should not be defined in a separate regulation.

Comments Received During the 15-Day Public Comment Period

The bureau did not receive any comments regarding this regulation during the 15-day public comment period.

General Comments Received During the 45-Day Public Comment Period

In addition to the comments discussed above, we also received a wide variety of irrelevant comments and questions relating to our Memoranda, individuals' eligibility to serve on the commission, the application forms, technical questions such as whether we would send a confirming email after an applicant has submitted an application, requests that we explain our current funding for outreach, suggestions that the panel delay fact-checking as long as possible so as to minimize the panel's work, questions and suggestions regarding how the commission should function or reach consensus, statements that certain individuals, such as murderers, should not be permitted to serve on the commission, statements that the commission should be comprised of particular types of individuals, such as average citizens who speak a common language or those with particular skill-sets, suggestions that applications should be fact-checked as much as possible to verify accuracy and honesty, suggestions that if the bureau adds additional phases to the application process, they comply with the regulations, suggestions that the bureau publish on its website a list of federal appointed offices and comments that the entire process is ultimately subject to manipulation by the consultants the commission hires. Finally, we received a question about whether the application process is a process of elimination rather than a process of selection. While we recognize the wisdom and merit of many of these comments, we deemed them irrelevant because they did not relate to the regulations.

We encourage the public to remain involved and continue to participate in the formation and function of the commission even though we were unable to address their specific concerns at this juncture.

General Comments Received During 15-Day Public Comment Period

We received comments during the 15-day public comment period that we deemed irrelevant to the regulations because they were directed at the process in general, as opposed to the regulations. One commenter was concerned that there may be insufficient applications from

which the panel could create three complete subpools. We believe that broad outreach efforts are essential to obtaining a sufficient number of applicants for a successful process. Our minimum outreach efforts are set forth in section 60840. This same commenter believes that all commissioners must take an oath of office and has directed his comments to the Secretary of State. Because the regulations do not relate to the commission, the comment is irrelevant. We also received comments from a person who was generally dissatisfied with the revisions to the regulations. We deemed remarks about his general dissatisfaction irrelevant, but have addressed his specific comments above. Finally we received two comments after the October 13, 2009 deadline for public comments and we do not address them because they were received after the deadline.

Local Mandate Determination

The regulations do not impose any mandate on local agencies or school districts.

Alternatives Determination

The bureau has determined that no alternative would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the regulations.

Economic Impact on Small Business

No commenter proposed an alternative to lessen any adverse economic impact on small businesses.