

Appendix to Letter to Elaine Howle of September 14, 2009:
Suggested Changes to Regulations

§ 60804. Appointed to Federal or State Office

“Appointed to” a federal or state office means a person has been appointed to a federal or state office by the Governor or any member of the Legislature or Board of Equalization, or has served in an appointed position at the pleasure of the Governor or a member of the Legislature or Board of Equalization. A person has been appointed to an office regardless of whether the appointment was subsequently confirmed by the Legislature. The State Auditor shall publish and maintain a list on the Bureau’s website of appointed federal and state offices covered by this section.

§ 60805. Appreciation for California’s Diverse Demographics and Geography

(a) “Appreciation for California’s diverse demographics and geography” means all of the following:

(1) An understanding (i) that California’s population consists of individuals sharing certain demographic characteristics, including, but not limited to, race, ethnicity, gender, income level, age, language and level of education, (ii) that these groups of individuals may share social and economic interests, voting preferences, and similar viewpoints on other issues of mutual concern, and (iii) that these groups of individuals may benefit from common representation that may relate to their voting preferences, including race, ethnicity, gender, and level of income.

(2) An understanding (i) that the people of California reside in many different localities with distinct geographic characteristics ~~that may relate to the voting preferences of the residents of those localities,~~ including urban, rural, industrial, agricultural, arid, and temperate; geographies and climates, (ii) that such persons may share social and economic interests, voting preferences, and similar viewpoints on other issues of mutual concern, and (iii) that such persons may benefit from common representation.

(3) A recognition that California benefits by having meaningful access to and participation in the electoral process by registered voters persons of all demographic characteristics and residing in all geographic locations.

(b) An applicant may demonstrate an appreciation for California’s diverse demographics and geography through a description of that appreciation and through occupational, volunteer, academic, or life experiences that show this appreciation, ~~such as:~~ Examples include, but are not limited to:

(1) Working on a project of statewide or local concern affecting Californians of different backgrounds and or from different areas, ~~achieving a result acceptable to these different Californians.~~

(2) Studying the voting behavior of Californians in various areas of the state for the purpose of improving the effectiveness of the electoral process and improving representation.

(3) Traveling throughout the state and meeting with a broad range of individuals in order to build consensus on some issue of statewide concern.

§ 60814. Diversity

“Diversity” means the variety in the racial, ethnic, geographic, ~~economic~~, and gender characteristics of the population of California.

§ 60818. Most Qualified Applicants

“Most qualified applicants” means those applicants who satisfy all of the following requirements:

(a) Are registered voters in the State of California who by the time of their appointment will have been continuously registered in California with the same political party or continuously registered as unaffiliated with a political party, and who will not have changed political party affiliation during the preceding five years. ~~with no political party for at least five years.~~

(b) Have voted in at least two of the past three statewide general elections.

(c) Do not have a conflict of interest.

(d) In the judgment of the panel are more suited to serving on the commission than other applicants based on their relevant analytical skills, ability to be impartial, and appreciation for California’s diverse demographics and geography.

§ 60819. Paid Congressional, Legislative, or Board of Equalization Staff

“Paid congressional, legislative, or Board of Equalization staff” means any person who is employed by, and receiving compensation from the Congress of the United States or the State of California to provide services to a member elected from California, the Legislature, or the State Board of Equalization.

§ 60821. Political Party

“Political party” means a political party that is operating in California by making expenditures to support candidates for elective public office in the state or recognized as qualified by the Secretary of State.

§ 60824. Randomly Draw

“Randomly draw” means to select by the following process for random drawing.

(a) At least ten days prior to any random drawing, the bureau shall provide notice to the public regarding the time and place of the drawing by posting a notice on the bureau's website and by any other means deemed appropriate by the State Auditor.

(b) Immediately Pprior to the drawing, the members of the pool from which the drawing will be made shall be divided into three subpools according to the party affiliation of the members of the pool. One subpool shall consist of members registered with the largest political party in California based on registration, another subpool shall consist of members registered with the second largest political party in California based on registration, and a third subpool shall consist of members not registered with either of the two largest political parties in California based on registration. The names of the members of each subpool shall be recorded on a list in random order, and each member shall be assigned a unique identifying number that also shall be recorded on the list.

(c) On the day of the drawing, the following procedures shall be followed:

(1) The drawing shall be open to the public.

(2) The drawing shall begin with the preparation of the balls that will be used for the drawing. All of the balls used for the drawing shall be of uniform composition, weight, size, shape, and texture. The balls shall be prepared by dividing them into three separate groups that correspond in number with each of the three subpools. The balls for each of the subpools shall be affixed with a label. The label shall have written on it the identifying number assigned to a member of that subpool, so each of the balls will bear the identifying number for a different member of the subpool. The balls for each subpool shall be kept together and segregated for use in three separate subpool drawings.

(3) The balls for each subpool drawing shall be placed in a bingo cage. The cage shall be rotated vigorously to ensure that the balls are thoroughly mixed. The cage will drop a number of balls equal to the number of persons who must be drawn from the subpool, including any persons who are to serve as alternates. The number and name of the persons drawn during each subpool drawing shall be announced and duly recorded.

(4) After each subpool drawing, the bingo cage shall be emptied to allow the bingo cage to be used for the next subpool drawing until all of the subpool drawings are completed.

(d) At the conclusion of the drawing, the names of all those selected during each subpool drawing shall be posted on the bureau's website and otherwise announced to the public as deemed appropriate by the State Auditor.

§ 60826. Relevant Analytical Skills

(a) "Relevant analytical skills" means the learned abilities that a commissioner may need to successfully complete the work of the commission.

(b) Abilities related to performing the following tasks shall be considered relevant

analytical skills: gathering and comprehending information that bears upon redistricting; evaluating the validity and significance of the information gathered by the commission in order to make sound decisions about the proper placement of communities in districts; applying the appropriate legal standards to drawing district boundaries; and working effectively as a member of a group to promote redistricting decisions that are factually and legally defensible and that the commission can agree upon.

(c) The following are examples of relevant analytical skills grouped according to the tasks listed in subdivision (b):

- (1) Gathering and comprehending information that bears upon redistricting:
 - (A) An ability to read and understand ~~dense and technical~~ detailed written materials, including maps and ~~complicated~~ statistical information.
 - (B) An ability to participate effectively in public hearings regarding redistricting by listening carefully and critically to the testimony of witnesses and formulating concise questions that will elicit relevant information.
- (2) Evaluating the validity and significance of the information gathered by the commission in order to make sound decisions about the proper placement of communities in districts:
 - (A) Basic mathematical skills.
 - (B) Familiarity with using computers ~~and working with sophisticated software~~.
 - (C) An ability to assess the credibility of information, distinguish facts from opinions, distinguish relevant facts from irrelevant facts, and assess the relative strength of competing arguments.
 - (D) An ability to resolve complex problems, including those involving competing factual claims ~~particularly those involving factual ambiguities~~.
- (3) Applying the appropriate legal standards to drawing district boundaries:
 - (A) An ability to understand the legal principles that govern redistricting as communicated through written materials and advice provided by the commission's legal counsel.
 - (B) An appreciation for the importance of applying proper legal standards to redistricting decisions.
- (4) Working effectively as a member of a group to promote redistricting decisions that are factually and legally defensible and that the commission can agree upon:
 - (A) Effective communication skills including basic writing skills and strong oral communication skills.
 - (B) An ability to interact effectively with other commissioners to build consensus on proposed decisions through reasoned discussion and negotiation.

(d) An applicant may demonstrate his or her possession of relevant analytical skills through a description of those skills and through occupational, academic, or life experiences such as:

- (1) Compiling information from a variety of sources, including statistical reports, expert opinions, and members of the public to develop an understanding of an issue or problem.
- (2) Assessing the value of information received from various sources to determine how much weight should be given to certain information versus other information when making a decision concerning an issue.
- (3) Receiving expert advice, particularly of a legal nature, and applying that advice to decisions.
- (4) Participating in group decision-making as a member of a commission, board, grand jury, task force, or other collection of individuals whose mission was to produce a report, plan, or other work product addressing some issue or problem.

§ 60828. State Office

“State office” means every office, agency, department, division, bureau, board, and commission within the government of the State of California, and does not include any advisory body or city, county or local district office, agency, department, division, bureau, board, and commission.

§ 60833. Removal of Panel Members

(a) The State Auditor shall have the authority to remove from the panel any member that the State Auditor determines can no longer serve as a member of the panel due to any of the following:

- (1) Resignation from the panel.
- (2) Failing to satisfy any of the requirements for being a Qualified Independent Auditor as described in California Code of Regulations, title 2, section 60823.
- (3) Failing to perform the duties of a panel member as described in California Code of Regulations, title 2, section ~~60833~~60832.

(b) Upon the removal of any member of the panel, the State Auditor shall replace the panel member with an alternate panel member drawn from the same subpool. If the alternate panel member randomly drawn from the same subpool is not available to fill the position, the State Auditor shall conduct another random drawing as necessary to fill the position.

§ 60840. Outreach Program

(a) In conjunction with initiating an application process for selecting the members of the commission, the bureau shall conduct an outreach program to alert the public to the application process and to encourage the submission of applications by a diverse pool of qualified applicants. The bureau’s outreach program shall, at a minimum, include all of the following:

- (1) Posting a calendar on the bureau’s website indicating the key dates and

deadlines for the application process, including, when established, the period during which the bureau will accept applications.

(2) Producing outreach materials regarding the role of the commission, the eligibility and qualifications requirements for serving as a commissioner, and the process for selecting commissioners.

(3) Identifying community partners, ~~and~~ requesting that they assist in recruiting qualified applicants, and supporting them in that effort with advice and materials.

(4) Creating and distributing public service announcements and print advertisements regarding the application process for placement in ~~both~~ regional, local and ethnic media.

(5) Upon posting an electronic application form on the bureau's website, widely publicizing both the availability of the application and the deadline for its submission.

(b) The breadth and scope of the bureau's outreach program is dependent on the funding that is available for the program.

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

All of the following requirements apply to each phase of the application process:

(a) Except for individuals qualifying for a reasonable accommodation under the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.), applicants shall fill out and submit all applications electronically using the bureau's website. The bureau shall neither make available nor accept paper applications, and all application materials, except letters of recommendation, shall be submitted to the bureau electronically.

(b) All deadlines established by the bureau and the panel, including deadlines for the submission of application materials are final. Application materials not timely received or deemed incomplete by the bureau or the panel shall not be considered.

(c) The bureau or the panel may inquire about or seek additional information from an applicant during any phase of the application process.

(d) The bureau or the panel may exclude or remove from an applicant pool any applicant who does any of the following:

(1) Intentionally Submits more than one Phase I or Phase II application.

(2) Submits an incomplete application.

(3) Fails to timely submit supporting materials, including letters of recommendation.

(4) Fails to comply with deadlines established by the bureau or the panel.

(5) Fails to timely respond to inquiries, or to provide additional information as requested by the bureau or the panel.

(e) All applications shall include a certification by the applicant that he or she has provided true and correct information.

(f) All application materials collected and maintained by the bureau are public records. To enhance the transparency of the application process, the bureau shall post application materials on the bureau's website, except that it ~~may decline to post any material, or specific information contained in any material, that bureau staff determines to be either of the following:~~ shall not disclose residence addresses, telephone numbers, email addresses, signatures, birth date information, or the names of applicants' family members, except as provided below.

~~(1) Personal in nature, such as addresses, telephone numbers, or so private in nature that it would be inappropriate for public disclosure.~~

(1) The prohibition on disclosure of residence address shall not include posting or disclosure of an applicant's city, county or zip code.

(2) The prohibition on disclosure of birth date information shall not include posting or disclosure of an applicant's age or year of birth.

(3) Notwithstanding the prohibition of the disclosure of the names of family members, such names shall be posted/published on the website if and only if the applicant is selected for the applicant pool of 120 persons. In no instance shall the names of family members under the age of 18 years old be posted or disclosed.

~~(2) Offensive or harassing in nature due to sexual, profane, racist, or otherwise bigoted content.~~

(g) In addition, the bureau shall protect against the inadvertent disclosure of personal or sensitive information, including, but not limited to, social security information or account numbers.

(h) In addition, the bureau may decline to post or otherwise disclose any material, or specific information contained in any application materials, information that bureau staff determines to be offensive or harassing in nature due to sexual, profane, racist, or otherwise bigoted content.

(i) The application materials are public records subject to the California Public Records Act, (Govt. Code § 6250 et seq.). However, information otherwise prohibited by law from disclosure or that is identified in sections (f)(1) through (f)(3) will be redacted from those records when provided to a member of the public.

(j) All information provided by or about an applicant through an application, public comment, or by any other means may be subject to investigation and verification by the bureau or the panel.

(k) Except as provided in California Code of Regulations, title 2, section 60851, an applicant may not seek reconsideration of any decision by the bureau or the panel.

§ 60844. Phase I Application Review

(a) The bureau shall review each application that is submitted during the Phase I application period and exclude from the initial applicant pool any applicant who has not complied with the application process or is not eligible to serve on the commission due to any of the following:

- (1) Intentionally ~~S~~submitting more than one application.
- (2) Submitting an incomplete or untimely application.
- (3) Not satisfying the eligibility requirements of subdivision (c)(3) of section 2 of Article XXI of the California Constitution.
- (4) Having a conflict of interest.

(b) Applicants not excluded as provided in subdivision (a) shall be placed in the initial applicant pool and invited by the bureau to participate in Phase II of the application process.

(c) Applicants excluded from the initial applicant pool shall be notified by the bureau and advised of the grounds.

§ 60846. Written Public Comments and Responses

(a) Beginning on the date that the names of the successful Phase I applicants are posted on the bureau's website, and continuing throughout the remainder of the application process until the panel selects 60 of the most qualified applicants, the bureau shall provide opportunities for the public to submit written comments regarding the applicants being considered. The bureau shall post a form for submitting written comments on the bureau's website. The public may submit comments electronically or by facsimile, United States mail, or other common carrier.

(b) The panel may only consider written comments that it receives regarding applicants who have been placed in a pool of applicants for the panel's evaluation and have not been removed. To be considered by the panel, a written comment must satisfy all of the following requirements:

- (1) The bureau received the written comment prior to the deadline established by the bureau for receiving written comments concerning the applicants ~~being considered during the current phase of the application process.~~
- (2) The comment contains specific facts related to an applicant's eligibility and qualifications to serve as a member of the commission or is related to the accuracy of any statement made by the applicant as part of the application process.
- (3) The information that is contained in the comment appears sufficiently credible to warrant consideration.
- (4) The name and contact information for the person providing the comment is included in the comment.

(5) The comment contains a certification by the person providing the comment that the information included in the comment is true and correct and based on the author's personal knowledge.

(c) Subject to the provisions of California Code of Regulations, title 2, section 60842, subdivision (f), the bureau shall post on the bureau's website all written comments that may be considered by the panel pursuant to subdivision (b) of this section, including the name of the person providing the comment.

(d) The bureau shall send a copy of any written comments received about an applicant to the applicant, with a notice stating how the applicant may submit a written response and the deadline for submitting the response.

(e) Written comments and responses about an applicant submitted during any phase of the application process shall be included in the applicant's application materials and may be considered by the panel during all subsequent phases of the application process during which the applicant remains in a pool of applicants for the panel's evaluation. Comments and responses received after the deadline for receiving comments during a particular phase of the application process may be considered by the panel during a subsequent phase provided the applicant remains in a pool of applicants for the panel's evaluation.

§ 60847. Phase II Application

(a) In Phase II of the application process, the bureau shall direct the members of the initial applicant pool to submit a supplemental application with supporting materials. The bureau shall post supplemental application forms on the bureau's website for use by the members of the applicant pool. Except for individuals qualifying for a reasonable accommodation under the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.), applicants shall complete the supplemental application forms and supporting materials electronically and submit them using the bureau's website. Notwithstanding this requirement, applicants may submit letters of recommendation by facsimile, United States mail, or other common carrier as an alternative to submitting the letters through the bureau's website.

(b) The supplemental application, with supporting materials, shall consist of, but need not be limited to, all of the following:

(1) Questions designed to elicit information from the applicant describing his or her qualifications to serve on the commission, including essay questions to be answered in 250 words or less.

(2) Questions designed to elicit information about the applicant, including:

(i) Former names, former residences, and criminal history, if any. Criminal history means only convictions and guilty pleas as an adult for felonies before any court.

(ii) Educational and employment history.

(iii) Involvements with, ~~and financial contributions to~~, professional, social, political, and community organizations and causes that demonstrate an applicant's appreciation of California's diverse demographics and geography and possession of analytical skills relevant to service as a commissioner.

(iv) Financial interests.

(3) Questions about an applicant's immediate family members.

(4) A request for three letters of recommendation from individuals or organizations.

(c) The bureau shall remove from the initial applicant pool any applicants who fail to submit a completed supplemental application with supporting materials by the deadline established by the bureau.

(d) The bureau shall transmit a copy of every complete and timely received supplemental application with supporting materials to the panel. Subject to the provisions of California Code of Regulations, title 2, section 60842, subdivision (f), the bureau shall also post the supplemental application with supporting materials on the bureau's website.

(e) After posting the supplemental applications with supporting materials on its website, the bureau shall establish a deadline for the receipt of written public comments during Phase II of the application process.

§ 60848. Phase II Application Review

(a) During Phase II, each member of the panel shall review the application materials submitted regarding each applicant remaining in the applicant pool, for the purpose of determining which applicants shall be removed from the pool to leave no more than 120 of the most qualified applicants who will be invited to participate in Phase III of the application process.

(b) The maximum of 120 most qualified applicants who will be invited to participate in Phase III of the application process shall consist of the following three subpools:

(1) 40 applicants who are registered with the largest political party in California.

(2) 40 applicants who are registered with the second largest political party in California.

(3) 40 applicants who are not registered with either of the two largest political parties in California.

(c) At the panel's request, the State Auditor may assign staff to assist the members of the panel with their review of the application materials. This assistance may include, but need not be limited to, preparing summaries of applicants' qualifications and making recommendations to the panel members regarding the relative qualifications of the applicants.

(d) The panel shall remove from the applicant pool any applicant who the panel

determines has a conflict of interest or does not meet the requirements of subdivision (c)(3) of section 2 of Article XXI of the California Constitution.

(e) In reducing the applicant pool to not more than 120 of the most qualified applicants, the panel shall evaluate the applicants based on their relevant analytical skills, ability to be impartial, and appreciation for California's diverse demographics and geography.

(f) As the application process is intended to produce a commission that is reasonably representative of the State's diversity, as specified in subdivision (c)(1) of section 2 of Article XXI of the California Constitution, the panel shall also consider whether the composition of the pool of applicants to participate in Phase III of the application process is reflective of the State's diversity. The panel shall not use formulas or specific ratios in identifying which applicants will participate in Phase III of the application process.

(g) The panel shall also consider whether the composition of the subpool specified in subdivision (b)(3) of this section is reflective of the State's population of voters who are not registered with either of the two largest political parties in California, including voters registered as decline-to-state and voters registered with parties other than the two largest political parties.

(gh) The bureau shall post on the bureau's website a list of the applicants remaining in the applicant pool who will therefore be invited to participate in Phase III of the application process. The bureau shall also notify the applicants removed from the applicant pool that they have been removed from the pool.

§ 60849. Phase III Interviews

(a) In Phase III of the application process, the panel shall direct the applicants remaining in the applicant pool to participate in public interviews conducted by the panel in Sacramento.

(b) The bureau shall schedule the interviews at the convenience of the panel, providing at least 57 business days notice to the applicants of the date, time, and location of the interviews. The bureau shall reimburse applicants for the reasonable and necessary travel expenses that they incur to attend an interview, including the following:

- (1) Airfare at the commercial carrier coach fare rate, supported by a receipt.
- (2) Other transportation expenses, supported by a receipt.
- (3) Living expenses not to exceed the maximum reimbursement rates for nonrepresented state employees claimed and computed in accordance with the Department of Personnel Administration regulations in effect on the date the expenses are incurred.

(c) During the interviews, questions may only be posed by members of the panel, panel staff, and legal counsel for the panel. The questioning may concern anything that is relevant to an applicant's eligibility and qualifications to serve on the commission.

(d) The panel shall record all of the interviews that it conducts and post the recordings on the bureau's website after the final interview has taken place.

(e) The bureau shall establish a deadline for the receipt of written public comments during Phase III of the application process. The deadline shall be set for a date following the conclusion of all of the interviews.

§ 60850. Phase III Applicant Review

(a) During Phase III, the panel shall review the applicants who participated in interviews by the panel, along with all of the application materials submitted regarding those applicants, for the purpose of determining which applicants shall be removed from the applicant pool to leave 60 of the most qualified applicants who will participate in Phase IV of the application process.

(b) The 60 ~~most qualified~~ applicants who will participate in Phase IV of the application process shall consist of the following three subpools:

- (1) 20 applicants who are registered with the largest political party in California.
- (2) 20 applicants who are registered with the second largest political party in California.
- (3) 20 applicants who are not registered with either of the two largest political parties in California.

(c) The panel shall remove from the applicant pool any applicant who the panel determines has a conflict of interest or does not meet the requirements of subdivision (c)(3) of section 2 of Article XXI of the California Constitution.

(d) In reducing the applicant pool to 60 of the most qualified applicants, the panel shall evaluate the applicants based on their relevant analytical skills, ability to be impartial, and appreciation for California's diverse demographics and geography.

(e) As the application process is intended to produce a commission that is reasonably representative of the State's diversity, as specified in subdivision (c)(1) of section 2 of Article XXI of the California Constitution, the panel shall also consider whether the composition of the pool of applicants to participate in Phase IV of the application process is reflective of the State's diversity. The panel shall not use formulas or specific ratios in identifying which applicants will participate in Phase IV of the application process.

(f) The panel shall also consider whether the composition of the subpool specified in subdivision (b)(3) of this section is reflective of the State's population of voters who are not registered with either of the two largest political parties in California, including voters registered as decline-to-state and voters registered with parties other than the two largest political parties.

(fg) The bureau shall post on the bureau's website a list of the applicants remaining in the applicant pool who will therefore be invited to participate in Phase IV of the application process. The bureau shall also notify the applicants removed from the applicant pool that they have been removed from the pool.

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

(a) During Phase V of the application process, the State Auditor shall randomly draw the names of eight applicants from those remaining after the legislative leaders have exercised their right to strike the names of up to 24 applicants from the pool of 60 of the most qualified applicants identified by the panel. The State Auditor shall randomly draw the names of eight applicants from the remaining pool of applicants as follows: three from the remaining subpool of applicants registered with the largest political party in California based on registration, three from the remaining subpool of applicants registered with the second largest political party in California based on registration, and two from the remaining subpool of applicants who are not registered with either of the two largest political parties in California based on registration. The State Auditor shall conduct the random drawing on or before November 20 of the application year in the manner prescribed by California Code of Regulations, title 2, section 60824.

(b) Notwithstanding subdivision (a) of this section, the State Auditor shall randomly draw the names of these 8 applicants from the names of all the applicants in the pool of 60 most qualified applicants identified by the panel, rather than from a reduced collection of names, if the Secretary of the Senate and the Chief Clerk of the Assembly do not jointly present, by November 15 of the application year, a list containing the names of no fewer than 12 applicants in each of the three subpools that comprise the list.

(c) The eight applicants whose names are drawn by the State Auditor shall become members of the commission.