

1 Amend 2 Cal. Code Regs. Section 18225.7 to read:

2 § 18225.7. **Made at the Behest; Independent versus Coordinated Expenditures.**

3 (a) Application.

4 (1) The term “made at the behest” is used in four contexts in the Act: (i) for
5 “contributions” and “expenditures” defined in Sections 82015 and 82025; (ii) for “independent
6 expenditures” defined in Sections 82031 and 85500, to differentiate between expenditures that
7 are made in coordination with a candidate or committee versus those that are made by a person
8 independent of the candidate or committee; (iii) for “behested payments” reports filed by an
9 elected officer or a Public Utilities Commissioner who solicits funds for charitable, legislative or
10 governmental purposes as specified in Section 84224; and (iv) for communications identifying a
11 state candidate as specified in Section 85310.

12 (2) The definition of “made at the behest” in subdivision (b) and Section 82041.3 applies
13 to all uses of that term in the Act. The provisions in subdivisions (c)-(g) apply for coordinated
14 expenditures. ~~Refer to Regulation 18215.3 for rules on reporting payments elected officers and~~
15 ~~Public Utilities Commissioners solicit for charitable, legislative or governmental purposes.~~

16 (b) Made at the Behest. “Made at the behest” of a candidate or committee means made
17 under the control or at the direction of, in cooperation, consultation, coordination, or concert
18 with, at the request or suggestion of, or with the express, prior consent of the candidate or
19 committee. Throughout this regulation, the terms “candidate” and “committee” include their
20 agents, when the agent is acting within the scope of his or her authority.

21 (c) Independent vs Coordinated Expenditures. For purposes of Sections 82031, 85500
22 and 85310, an expenditure is made at the behest of a candidate or committee, and is not

1 considered independent, if the expenditure funds a communication that is made under any of the
2 following circumstances:

3 (1) General Coordination. The expenditure is made at the request, suggestion, or direction
4 of, or in cooperation, arrangement, consultation, concert or coordination with, the candidate or
5 committee on whose behalf, or for whose benefit the expenditure is made. To be considered
6 coordinated, such prearrangement must occur prior to the making of a communication.

7 (2) Involvement in Communication. The expenditure funds a communication that is
8 created, produced or disseminated either:

9 (A) After the candidate or committee has made or participated in making any decision
10 regarding the content, timing, location, mode, intended audience, volume of distribution, or
11 frequency of placing the communication; or

12 (B) After discussion between a creator, producer, or distributor of a communication, or
13 the person paying for that communication, and the candidate or committee, regarding the
14 content, timing, location, mode, intended audience, volume of distribution or frequency of
15 placing that communication.

16 (d) Expenditures Presumed to be Coordinated/Made at the Behest. For purposes of
17 subdivision (c) of this regulation, there is a rebuttable presumption that an expenditure funding a
18 communication is made at the behest of a candidate or committee and not independent of the
19 candidate or committee on whose behalf, or for whose benefit, the expenditure is made, under
20 any of the following circumstances:

21 (1) Campaign Needs. The expenditure is based on information about the candidate's or
22 committee's campaign needs or plans that the candidate or committee provided to the expending

1 person directly or indirectly, such as information concerning campaign messaging, planned
2 expenditures or polling data.

3 (2) Agent. The expenditure is made by or through any agent of the candidate or
4 committee in the course of the agent’s involvement in the current campaign. For purposes of this
5 regulation, the “current campaign” means (i) for a candidate, the period beginning 12 months
6 prior to the date of the primary or special election in which the candidate is on the ballot for an
7 elective office and ending on the date of the general or special runoff election for that office; or
8 (ii) for a measure, 12 months prior to the date of the election in which the measure is on the
9 ballot.

10 (3) Common Consultants. The person making the expenditure for a communication
11 relating to a clearly identified candidate or ballot measure retains the services of a person who
12 provides either the candidate or the committee supporting or opposing the ballot measure with
13 professional services related to campaign or fundraising strategy for the current campaign.

14 (4) Republication. The communication relating to a clearly identified candidate or ballot
15 measure replicates, reproduces, republishes or disseminates, in whole or in substantial part, a
16 communication, including video footage, designed, produced, paid for or distributed by the
17 candidate or committee.

18 (5) Fundraising. The committee making the expenditure is primarily formed to support
19 the candidate or oppose their opponent and in the course of the current campaign, the candidate
20 who benefits from the expenditure solicits funds for or appears as a speaker at a fundraiser for
21 the committee making the expenditure, thereby participating in the committee's fundraising
22 strategy.

1 (6) Former Staff. The person making the expenditure is established, run, or staffed in a
2 leadership role, by an individual who previously worked in a senior position or advisory capacity
3 on the candidate's or officeholder's staff within the current campaign in which the expenditure is
4 made.

5 (7) Candidate's Family. The person making the expenditure is established, run, staffed in
6 a leadership role, or principally funded by an individual who is an immediate family member of
7 the candidate.

8 (e) Expenditures Not Considered Coordinated/Made at the Behest. An expenditure is not
9 considered to be coordinated or made at the behest of a candidate or committee based solely on
10 any of the following circumstances:

11 (1) Interview. A person interviews a candidate on issues affecting the person making the
12 expenditure.

13 (2) Photograph or Press Release. The person making the expenditure has obtained a
14 photograph, biography, position paper or press release from the candidate or the candidate's
15 agents.

16 (3) Prior Contribution. The person making the expenditure has made a contribution to the
17 candidate or committee.

18 (4) General Request for Support. The person making the expenditure is responding to a
19 general, non-specific request for support by a candidate or committee, provided that there is no
20 discussion with the candidate or committee prior to the expenditure relating to details of the
21 expenditure.

22 (5) Meeting with Members or Employees. The person making the expenditures has
23 invited the candidate or committee to make an appearance before the person's members,

1 employees, shareholders, or the families thereof, provided that there is no discussion with the
2 candidate or committee prior to the expenditure relating to details of the expenditure.

3 (6) Informed after the Fact. A person informs a candidate or committee that the person
4 has made an expenditure, provided that there is no other exchange of information, not otherwise
5 available to the public, relating to details of the expenditure.

6 (7) Expenditure Benefits Another Candidate or Committee. An expenditure is made at the
7 request or suggestion of the candidate or committee for the benefit of another candidate or
8 committee.

9 (8) Hyperlink. The communication includes a hyperlink to the Internet website or other
10 social media page of a candidate or measure committee.

11 (f) Certain Committee Communications. Notwithstanding any other provision of this
12 regulation, if two or more committees exchange information between or among themselves,
13 subsequent expenditures by each committee are not, merely by reason of that exchange,
14 considered to be coordinated with or “made at the behest” of the other committee(s), where the
15 committees are (i) all general purpose committees, (ii) all committees primarily formed to
16 support or oppose the same candidate or candidates, or (iii) all committees primarily formed to
17 support or oppose the same measure or measures.

18 (g) Coordinated Expenditures are Treated as Contributions. An expenditure that is made
19 at the behest of or in coordination with a candidate or committee, is considered a contribution to
20 the candidate or committee, unless it is otherwise exempted from the definition of “contribution”
21 by any provision of the Act or its regulations.

22 Note: Authority cited: Section 83112, Government Code. Reference: Sections 82041.3, 82015,
23 82025, 82031, 84224, 85310 and 85500, Government Code.