

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18531.7. Payments for Communications—Section 85312.

(a) Definitions. For purposes of Government Code section 85312 "payments for communications to members" are any payments made by an organization or its sponsored committee for the publication, dissemination or communication to the organization's members, employees, or shareholders, or to the families of the organization's members, employees or shareholders by newsletter, letter, flyer or the like of material, written or spoken, that supports or opposes a candidate or ballot measure. "Payments for communications to members" do not include any payments made by an organization for general public advertising such as broadcasting, billboards, and newspaper advertisements or for communications to persons who are not members, employees, or shareholders, or families of members, employees, or shareholders of the organization.

(1) An "organization," other than a political party, means a sole proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, labor union and any other organization or group of persons acting in concert, including a committee as defined by Government Code section 82013, but excluding a candidate or individual.

(2) "Member" means any person who, pursuant to a specific provision of an organization's articles or bylaws, has the right to vote directly or indirectly for the election of a director or directors or an officer or officers or on a disposition of all or substantially all of the assets of the organization or on a merger or on a dissolution. "Member" also means any person who is designated in the articles or bylaws as a member and, pursuant to a specific provision of

an organization's articles or bylaws, has the right to vote on changes to the articles or bylaws, or pays or has paid membership dues in an amount predetermined by the organization so long as the organization is tax exempt under 26 U.S.C. 501, subdivision (c). Members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

(3) A person is not a "member" of an organization if the person is only on a mailing or contact list of the organization without meeting the definition provided in subdivision (a)(2) of this regulation.

(4) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(5) "Family" means a member's, employee's, or shareholder's spouse, domestic partner as defined by Family Code section 297, dependent children, and parents who reside with the member, employee, or shareholder.

(b) An organization meets the requirements of subdivisions (a)(1) and (a)(2) of this regulation where it is comprised of 25 or fewer individuals and the communication is directed only to those individuals and their families.

(c) Calculation of Payments Subject to Government Code section 85312. "Payments for communications" includes the following:

(1) Any payment made by an organization for costs directly attributable to the communication including but not limited to salaries, production, postage, space or time purchased, agency fees, printing and any additional administrative or overhead costs attributable to the communication.

(2) Any payment for costs directly attributable to a communication from an organization inadvertently delivered to persons other than members, employees, or shareholders or families of members, employees, or shareholders provided those costs do not exceed \$ 100 or 5% of the total cost of the communication to an organization's members, employees, or shareholders or families of members, employees, or shareholders, whichever is higher, notwithstanding subdivision (c)(1) above.

(d) Notwithstanding any provision of this regulation, a payment for a communication to members, employees, shareholders or families of members, employees or shareholders of an organization for the purpose of supporting or opposing a candidate or ballot measure shall be regarded as a contribution or expenditure if it is paid for by a person other than the organization, its sponsored committee, or its members, employees or shareholders, or paid from funds received by the organization or its sponsored committee from a person other than the organization's members, employees or shareholders that are earmarked for the communication.

(e) A payment that is made at the behest of a candidate or committee for communications to members, employees, shareholders, or families of members, employees, or shareholders of an organization for the purpose of supporting or opposing a candidate or a ballot measure is not a contribution to the candidate or committee at whose behest the communication was made.

(f) If the organization is a committee organized under Government Code section 82013, subdivision (a), and therefore already subject to the reporting requirements of Chapter 4 of this title, the payment is reportable in accordance with the requirements of Government Code section 84211, subdivisions (b), (i), (j) and (k)(1), (2), (3), (4), and (6).

(g) Provisions of Government Code section 85312 and this regulation apply to communications supporting or opposing a local candidate or local measure.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 82015, 82025, 85303, 85312 and 85703, Government Code.

HISTORY

1. New section filed 10-31-2002; operative 10-31-2002. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2002, No. 44).