



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the Commission), under the authority vested in it under the Political Reform Act (the Act)¹ by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulations at a public hearing on or after **September 16, 2021**, at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments should be received at the Commission offices no later than **5:00 p.m.** on **September 15, 2021**.

BACKGROUND/OVERVIEW:

The proposed regulations pertain to the Act's behested payment reporting provisions: Section 82004.5, defining a behested payment, Section 82041.3 defining "made at the behest of" and Section 84224, reporting requirements applicable to an elected officer or Public Utilities Commission member (hereinafter referred to collectively as "official"). The purpose of the behested payment reporting requirements is to capture payments that are not contributions or clear gifts to officials but are payments in which the public would have an interest given the official's role in the exchange.

Generally, under Section 84224 a payment made at the behest of an official and made "principally for charitable, legislative, or governmental purposes" is subject to reporting by the official within 30 days of the date a single source makes a payment or payments that aggregate or exceed \$5,000 in a calendar year. The official must report the names and addresses of the parties involved (payor and payee), the amount and date of the payment(s), a brief description of any goods or services provided or purchased, and a description of the specific purpose or event for which the payments were made. Once the reporting threshold is met, all additional payments made by the single source in the calendar year must also be reported within 30 days after the payment was made. Additionally, within 30 days after receipt of a behested payment report, state agencies must forward a copy of the report to the Commission, and local agencies must send a copy to the local elections official. For transparency and accountability purposes, behested payments reported by state officials are posted on the Commission's website.

The Commission has identified three behested payment reporting issues that may be addressed through regulatory action to facilitate meaningful disclosures in reports, timely compliance, and provide clearer guidance to officials when involved in a charitable fundraising solicitation. Staff is directed to provide regulatory language that balances prompt, informative, and

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

accurate public disclosure of behested payments involving officials with the need to not discourage the important public service that these payments can provide for the Commission's consideration.

REGULATORY ACTION:

Adopt 2 Cal. Code Regs. Section 18424. Behested Payment Reporting. Additional Information.

Adopt proposed Regulation 18424 to require additional disclosure in a behested payment report in two circumstances that raise questions of the payment's purposes and potential for influence: first, where the official has a relationship of control over, or is employed by, a payee nonprofit organization; and second, where the payor of a behested payment is involved in a proceeding before the official's agency at the time the behested payment is made or within the past 12 months.

Subdivision (a) requires in a brief description of the relationship where the official, the official's immediate family member, executive campaign staff or executive officeholder staff, is a founding member, a salaried employee, or an executive board member of the nonprofit organization payee, to the extent this information is known by the official. Subdivision (b) requires a brief description of any proceeding before the official's agency in which the payor is currently involved or was involved within the past 12 months to the extent the information is known to the official.

These are relationships that raise concerns about the self-interest or control of the official and the possibility of undue influence or access for the payee or payor as a result of the payment. The brief descriptions will provide information the public would want to see in the behested payment reports where there is a potential for influence in order to understand and assess the payment transaction, its purposes and the parties involved.

Adopt 2 Cal. Code Regs. Section 18424.1 Behested Payment Reporting. Good Faith Estimate.

Adopt proposed Regulation 18424.1 to provide a reporting procedure when an official is unable to obtain the necessary payment information from a behested payment payee within the 30 days required to file a behested payment report. Regulation 18424.1 allows for the use of a good faith estimate of the payment amount and the payment date. Subdivision (a) and (b) require that the official must have practiced reasonable efforts to obtain the required information from the payee prior to the reporting deadline and the amount must reflect the official's best efforts to ascertain an accurate information. This language is consistent with the statutory language for reports filed under the Act. (Section 81004.) Proposed subdivision (c) requires that the official must also file an amended report within 10 days of receiving the correct information from the payee, so that timely and accurate information is reported. Subdivision (d) requires that in the event the official is unable to obtain the accurate information, within 90 days of the original filing date the official must file an amended report stating their efforts and the circumstances under which the payee is unable to provide the information.

This regulation allows that an official may properly file a behested payment report with good faith estimates of payment amounts and dates, under certain conditions. This regulation facilitates timely reporting and provides a clear process for filing and then amending with accurate data.

Adopt 2 Cal. Code Regs. Section Regulation 18424.2. Behested Payment Reporting. Charitable Organization Fundraising Solicitations;
Repeal and Replace 2 Cal. Code Regs. Section 18215.3.

In response to requests to clarify the language in Regulation 18215.3, staff proposes to repeal Regulation 18215.3 and replace it with proposed Regulation 18242.2, addressing situations where a payment is in response to a charitable organization’s fundraising solicitation, and the official is involved. Proposed Regulation 18424.2 subdivisions (a) and (b) are nonsubstantive changes to better word the current safe harbor provision in Regulation 18215.3(b). The proposed language makes it clear that when an official acts in concert with the charitable organization in a fundraising solicitation and is featured in the solicitation, the official must report all resulting payments in accordance with Section 84224. It also clarifies that being featured in a solicitation, by itself, does not raise behested payment reporting duties for an official.

Proposed subdivision (a) states that a payment made in response to a charitable organization fundraising solicitation is a reportable behested payment when the solicitation is sent under the control or at the direction of, in cooperation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of the official, or agent thereof; and the solicitation “features” the official. Proposed subdivision (b) restates the current definition of “features” in Regulation 18215.3(b)(1) and (2) with nonsubstantive changes.

Subdivision (c) would provide a bright line rule for officials who merely appear in a charitable fundraising solicitation and accompanying event as a guest speaker, and the official’s involvement does not extend beyond the role of guest speaker. This language recognizes the limited role that a guest speaker typically has at an organization’s event.

SCOPE: The Commission may adopt the language noticed herein, or it may choose new language to implement its decisions concerning the issue identified above or any related issue.

FISCAL IMPACT STATEMENT:

<u>Fiscal Impact on Local Government.</u>	None.
<u>Fiscal Impact on State Government.</u>	None.
<u>Fiscal Impact on Federal Funding of State Programs.</u>	None.

AUTHORITY: Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Act.

REFERENCE: The purpose of these regulations is to clarify and implement Sections 82004.5, 82041.3, and 84224.

CONTACT: Any inquiries should be made to L. Karen Harrison, Fair Political Practices Commission, 1102 Q St., Suite 3000, Sacramento, CA 95811; email KHarrison@fppc.ca.gov. telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/the-law/fppc-regulations/proposed-regulations-and-notices.html>.