



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 **October 21, 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 **October 20, 2021**.

BACKGROUND/OVERVIEW:

The proposed regulation pertains to the Act's Section 84224 behested payment reporting requirements applicable to an elected officer or Public Utilities Commission member (hereinafter referred to collectively as "official") when a payment involves a donor advised fund. 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.

Section 84224 imposes reporting requirements on behesting officials for payments that satisfy each of the following requirements: (1) The payment is made at the behest of the official; (2) The behesting official does not provide full and adequate consideration in exchange for the payment; (3) The payment is made principally for a legislative, governmental, or charitable purpose; and (4) If made principally for a legislative or governmental purpose, the payment is made by a person other than a state, local, or federal governmental agency. (Section 84224(b).)

A behested payment that meets the above description must be reported and filed with the official's agency within 30 days following the date on which the payment or payments equal or exceed \$5,000 in the aggregate from the same source in the same calendar year in which they are made. (See Section 84224(a).) The report must include: "name of **payor**; address of **payor**; amount of the payment or payments; date or dates the payment or payments were made; the name and address of the payee; a brief description of the goods or services provided or purchased, if any; and a description of the specific purpose or event for which the payment or payments were made." (Emphasis added.) Once the reporting threshold is met, all additional payments made by the single source in the calendar year must be reported within 30 days after the payment was made. The statute does not define key terms, however, including "payor" or "single source."

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 18998 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.

Donor Advised Funds

A donor advised fund (“DAF”) is a charitable giving mechanism, where separately identified funds are maintained and operated by a section 501(c)(3) organization called a sponsoring organization. Each account is composed of contributions made by individual donors. Once the donor makes the contribution, the sponsoring organization has legal control over it. However, the donor, or the donor’s representative retains advisory privileges with respect to the distribution of funds and the investment of the assets in the account. (See “Donor-Advised Funds | Internal Revenue Service” (irs.gov). See also, 26 USCS § 4966, defining “donor advised fund” and “sponsoring organization.”)

Under this structure, when an official reports a behested payment that comes from a DAF the sponsoring organization has written the check for payment from the donor’s DAF at the request of the donor. A donor may select to have a particular DAF payment be anonymous or may name the DAF in a manner that does not disclose the donor’s name. The sponsoring organization sends notice to the payee charitable organization that the payment is made from a DAF and, at the discretion of the donor, may or may not disclose the name of the DAF and name of the donor. Because the payment is made at the discretion of the donor, merely reporting the sponsoring organization as the “name of the payor” would not disclose the donor’s role in directing the payment.

REGULATORY ACTION:

The Commission will consider regulatory action addressing the reporting of a DAF behested payment. At the request of the Commission, staff has prepared draft regulatory language defining a “payor” and a “single source” in the context of a DAF behested payment so that meaningful disclosure is provided to the public, and to provide additional guidance to reporting officials. The Commission will consider proposed Regulation 18424.3 and may consider any related amendments to address the reporting of a DAF behested payment.

Adopt 2 Cal. Code Regs. Section 18424.3 Behested Payment Reporting. Donor Advised Fund.

The Commission will consider the adoption of proposed Regulation 18424.3 to address reporting a behested payment from a DAF. As proposed, Regulation 18424.3:

- Requires the official to report the name of the sponsoring organization, the name of the donor advised fund, and the name of the donor, to the extent this information is known to the official. Where there is more than one donor, the name of the donor, or donors, who exercised advisory privileges over the DAF for this payment is provided.
- Places the duty on the official to identify and report the above information with as much specificity as the official knows or can determine by inquiring with the sponsoring organization. If the official learns the identity of the donor or DAF with greater specificity after the report filing date, the official has a duty to amend the behested payment report with the information within 10 days of the official receiving the additional information.
- Clarifies how to identify the “single source” of a DAF payment, to determine the \$5,000 threshold triggering a behested payment report, and any subsequent reporting requirements

including instances in which there are multiple donors, or the sponsoring organization withholds the identity of the donor or DAF.

- Defines the terms “sponsoring organization,” “donor advised fund,” and “donor.”

The proposed language provides for the meaningful disclosure of the parties involved in a behested payment transaction, while limiting the reporting requirements to payor information the official either knows or can determine by inquiring with the sponsoring organization. The proposed language places a duty on the official to promptly amend the report within 10 days of learning the specific identity of the donor or the donor advised fund. The language balances prompt, informative, and accurate public disclosure of behested payments by officials with the need to not discourage the important public service that these payments can provide, and the anonymity afforded such donors.

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 Section 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>.