



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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NOTICE

Fair Political Practices Commission Interested Persons Meeting Thursday, July 8th, 2021

Fair Political Practices Commission staff will hold an Interested Persons meeting on, **Thursday, July 8, 2021, in conjunction with the scheduled Law and Policy Committee meeting commencing at 10:00 A.M** to solicit public input regarding regulatory proposals regarding behested payment reporting. The proposals pertain to the Political Reform Act's (the Act)¹ behested payment provisions, Sections 82004.5, 82041.3, and 84224.

Current law requires that payments made at the behest of an elected officer or Public Utilities Commission member (hereinafter referred to collectively as "official"), when made "principally for charitable, legislative, or governmental purposes" be reported by the official within 30 days of the date a single source makes a behested payment or payments that aggregate or exceed \$5,000 in a calendar year. The official must report the names of the parties involved (payor and payee), the date(s) of the payment(s) and a brief description of the goods or services provided or purchased and a description of the specific purpose or event for which the payments were made. A payment that is principally for personal purposes or a payment that is related to an official's candidacy for elective office are not reportable behested payments under Sections 842204.5(c) and 84224.

The Commission is interested in addressing several issues related to the behested reporting scheme through regulations. Regulatory proposals will be considered for adoption or amendment on or after September 16, 2021, the Commission's scheduled September meeting. Below are several regulatory proposals that the Commission may pursue, for which the Commission is soliciting public comments. In addition to the proposals listed below, the Commission encourages members of the public to provide additional legislative and regulatory ideas to enhance compliance and transparency in reporting behested payment transactions.

Proposed Regulations for Adoption:

- Regulation 18424. Behested Payment Reporting. Additional Information.

The Commission may consider proposed Regulation 18424 in order to more fully disclose the purposes and parties involved in a reported behested payment transaction in two circumstances. First, the proposed language requires the official to provide a brief description in a behested

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.

payment report of any relationship known to the official, between the nonprofit payee organization and the official, or the official's immediate family, to include any of the following roles at the nonprofit organization:

- (1) Any decision-making capacity within the organization, such as a board member or executive officer position.
- (2) Salaried employment at the organization.
- (3) Status as a founding member of the organization.

Second, to the extent the information is known to the official, this proposed language 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. The language defines a "proceeding" to include decisions on a contract, license, permit, or other entitlement and the proceeding is considered "before the official's agency" if the matter is placed on the agency's formal agenda.

- Regulation 18424.1 Behested Payment Reporting. Good Faith Payment Estimates.

To provide a reporting procedure when an official is unable to obtain the necessary payment information from a payee within the 30 days required to file a behested payment report, the Commission may consider proposed Regulation 18424.1 to allow for the use of a good faith estimate of the amount. Under the proposed language, the official must have practiced reasonable efforts to obtain the payment amount prior to the reporting deadline and be unable to obtain this information from the payee. ("Reasonable efforts" is defined to include making a written request to the payee prior to the filing deadline.) The estimate amount must reflect the official's best efforts to ascertain the accurate amount. So that timely and accurate information is reported, the official must also file an amended report with the corrected information within 10 days of receiving the payment information from the payee.

Proposed for Adoption and Repeal:

- Regulation 18424.2. Behested Payment Reporting. Charitable Organization Fundraising Solicitations, to repeal and replace Regulation 18215.3.

In response to requests to clarify the language in Regulation 18215.3, the Commission may consider repealing Regulation 18215.3 and replacing it with proposed Regulation 18242.2. Proposed subdivisions (a) and (b) are nonsubstantive changes to better word the current safe harbor provision in Regulation 18215.3(b), defining a payment made in response to a charitable organization's fundraising request as "made at the behest of" and reportable under Section 84224 where (1) 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 elected officer, PUC member, or agent thereof; and (2) the solicitation "features" the elected officer or PUC member. Subdivision (b) defines when a solicitation "features" the official. Subdivision (c) provides a bright line rule for officials who merely appear in a fundraising solicitation 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 is typically understood to have in terms of an organization's fundraising solicitation.

ADDITIONAL INFORMATION:

- Proposed language for the above regulations is attached for review and can also be found at <http://www.fppc.ca.gov/the-law/fppc-regulations/proposed-regulations-and-notices.html>.
- You may listen to and participate in this interested persons meeting by teleconference by calling; (877) 411-9748 access code 723284.
- **Commission staff invites written comments addressing these topics.** Address comments to Senior Commission Counsel Karen Harrison by email: kharrison@fppc.c.gov or by phone at (916) 322-5660. For questions about this meeting, you may contact Daniel Vo at (916) 322-5660.