

# Fair Political Practices Commission

## Behested Payment Report (Form 803)

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### Introduction

The Political Reform Act<sup>1</sup> requires an elected state official, elected local official or Public Utilities Commission (PUC) member to disclose certain information about payments made for a charitable, legislative, or governmental purpose when the official is involved in making the request for payment. (Sections 82004.5(c), 82041.3, and 84224.) These types of payments are known as “behested payments” and must be reported by the official whenever a single source (payor) makes payments that add up to \$5,000 in a calendar year, within 30 days of the payment date. *Note: a behested payment that confers a benefit on the official may be subject to the Act’s gift limit and gift reporting requirements as well. (Section 82004.5(c).)*

Once a single source has met the \$5,000 threshold during the calendar year, *all subsequent payments of any amount from that source during the same calendar year* must be reported within 30 days of the payment date. (Section 84224.) [Behested Payment Report - Form 803 \(ca.gov\)](#) provides instructions for reporting payment information.

**Making a Behest for Payment:** Generally, a payment is considered “behested” and subject to reporting when the payment is made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of the official or the official’s agent. (See Sections 82004.5 and 82041.3)

As a result, where an official agrees to be “*featured*” in a **charitable organization’s fundraising solicitation**, the official is making a behest for payments in the solicitation and will have a reporting duty for resulting payments that meet the threshold. (Regulation 18424.2.)

A solicitation “*features*” an official if: the solicitation includes the official’s photograph, signature, or singles out the name or office of the official by manner of display in the solicitation’s layout, or if the solicitation lists the official in a roster or letterhead listing of its governing board, and the board includes a majority of elected officials or PUC members. (Regulation 18424.2(b).)

**Distinguishing General Calls For Public Help:** An official’s general call to the public for help or payments to community groups that does not identify or suggest an intended recipient will not typically result in a behested payment reporting duty for the official. *For example: Mayor Phil posts on social media that citizens should donate money and supplies to emergency relief organizations following a fire affecting several communities in the area. No specific recipient is named or may be determined from this request.*

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<sup>1</sup> 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.

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Determining whether the request for payments is “general” may be dependent on the facts in a given situation and the official may wish to request additional advice.

### Information to Report

A behested payment report must disclose for each behested payment:

- Name and address of the payor (i.e., the person or entity making the payment), and the payee (i.e., the person or entity receiving the payment),
- Payment date and amount,
- Brief description of any goods or services provided or purchased and,
- Payment’s specific purpose or event.

The report must also disclose and provide a brief explanation if:

- The payor has a proceeding before the official’s agency.
- The official, the official's immediate family or the official's campaign or officeholder staff member has a role at a *nonprofit payee organization*.

(See Reporting Relationships, below, and Section 84224(a) and Regulation 18424.)

Note: The Act defines the term “*payment*” very broadly and includes a payment of any kind, or a distribution, transfer, loan, advance, deposit, or other rendering of money, property, services, or anything else of value. (Section 82044.) The amount of goods, services, facilities, or anything of value other than money is reported on Form 803 at its fair market value, with a description. (Sections 82025.5 and 84224(a).)

**Estimated Payment Information:** An official may file a Form 803 with estimated payment amount(s) and date(s), if the official complies with each of the following: (1) practiced reasonable efforts to obtain the payment information from the payee prior to the reporting deadline, (2) states on Form 803 that the estimated information reflects the best efforts of the official and states the reason the official is unable to provide the accurate information and (3) amends the Form 803 with correct information within 10 days of receiving the payment information from the payee. (Regulation 18424.1.) A sample written request for information that may be sent by the official as a reasonable effort to obtain the required information is provided with the instructions to Form 803.

### Reporting Relationships

**Payor Has a Proceeding Before the Official’s Agency:** An official must disclose and provide a brief explanation where a payor is the named party or subject of a proceeding before the official’s agency at the time of the reported payment, or within the prior 12 months.

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- A “proceeding” includes decisions on a contract, license, permit, or other entitlement and matters of nongeneral legislation. It does not include decisions on general legislation.
- A proceeding is “before” the official’s agency if it has been placed on the agency’s formal agenda; or if the official has knowledge that the payor’s matter has been submitted to the agency for a decision, and the official may make, participate in making or otherwise use the official’s position to influence the agency’s decision on the matter.

(Regulation 18424.)

**Role at the Payee Nonprofit Organization:** An official must also disclose and provide a brief explanation where the official, the official’s immediate family member, or member of the official’s campaign or officeholder staff has any of following roles with the payee nonprofit organization:

- Any decision-making capacity within the organization,
- Salaried employment,
- Status as a founding member, or
- A position on an honorary or advisory board.

### Reporting Payments Made From a Donor Advised Fund (“DAF”)

When a payment is made from a donor advised fund (“DAF”), the official must disclose the following as the “name of the payor”:

- Name of the sponsoring organization (and its address).
- Name of the DAF.
- Name of the donor (defined as the person or persons who funded the DAF and retains advisory privileges over the DAF). *Note: If there is more than one donor, the donor(s) who exercised advisory privileges for the particular payment may be provided in lieu of listing all donors.*
- Name of the donor’s advisor if the advisor exercised discretion in the making of the payment.

*Note: The official has a duty to inquire with the sponsoring organization for information about the DAF, donor, and donor’s advisor and report the specific information.*

(Regulation 18424.3.)

Generally, the “single source” for the DAF payment will be the disclosed donor. Where more than one donor is disclosed, the payment amount is equally apportioned to the donors, with each as a “single source” of the apportioned payment.

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### Frequently Asked Questions

- Q. City Councilmember Walls posted a video on social media as he toured the local animal shelter with his dog to inform the public about the shelter's conditions and the need for a new building. In his video he asked for donations to a local charity, "Friends of the Pooches.com" to support the shelter. Has Councilmember Walls made a behest for payments? How can he find out the payment information he must report?**
- A. Yes. To acquire the necessary reporting information, he must reach out to the payee charity. See [Behested Payment Report - Form 803 \(ca.gov\)](#) for a sample request letter.
- Q. Assemblymember Higuera's photo, name and office appears in a Paws & Claws charitable fundraising event invitation, but neither the official nor her staff consented to the use of her photo or otherwise cooperated in the event invitation. Must Assemblymember Higuera file a Form 803 for resulting payments?**
- A. No. Where the solicitation is sent without the official or the official's agent's cooperation or consent, or any other actions (coordination, direction, suggestion, etc.) that satisfy "making a behest," there is no duty to for the official to report the payments on Form 803 related to her appearance in the event invitation.
- Q. ABC Corp. donated \$10,000 to Backpacks and Books, a 501(c)(3) organization, at the request of County Supervisor Gabor. Three months prior to the payment, ABC Corp. had a permit approval matter on the County Board's agenda. What are the official's reporting duties?**
- A. The official will have a Form 803 reporting duty for the \$10,000 payment made by ABC Corp. The report must disclose and briefly describe the permit matter.
- Q. The United Way sends State Treasurer Ava Pella a spreadsheet of payment information following a fundraising campaign. One entry notes "\$10,000 from California Community Foundation, DAF Tall Oaks, Jane Smith, donor." What does the official report as the "name of the payor" on Form 803?**
- A. For payments involving a Donor Advised Fund ("DAF"), the official provides the name and address of the sponsoring organization, "California Community Foundation," checks the box disclosing that the payment is from a DAF, provides the DAF's name, "DAF Tall Oaks," and the donor's name, "Jane Smith, donor." Note: Jane Smith will be the "single source" of the payment, and any subsequent behested payments made by her in the calendar year will be reportable.

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- Q. For the above question, what if the payee only provides the following information, “California Community Foundation, Anonymous Donor Advised Fund, Anonymous Donor?”**
- A. The official must inquire for more information from the sponsoring organization, California Community Foundation. If the sponsoring organization is not authorized to provide the name of the DAF or donor, the official reports “California Community Foundation, anonymous DAF, anonymous donor” as the name of the payor. If the donor’s advisor is known, the official may provide this information as well. The official treats all payments from the particular sponsoring organization, anonymous DAF with anonymous donors as the “single source” for tracking the \$5,000 threshold and subsequent payments in the calendar year, unless the official is able to attribute payments to a specific anonymous DAF.

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This Fact Sheet and FAQs are provided to assist in understanding and complying with the behested payment reporting requirements. Reliance on the Fact Sheet and FAQs alone does not provide immunity from enforcement if a violation has occurred. If you are reporting a behested payment and have questions or are unsure of your reporting duties, please contact 866-ASK-FPPC (1-866-275-3772) for informal advice, or email: [advice@fppc.ca.gov](mailto:advice@fppc.ca.gov) for informal advice or to submit a request for formal written advice.