



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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**To:** Chair Miadich and Commissioner Baker

**From:** Dave Bainbridge, General Counsel  
Karen Harrison, Senior Commission Counsel

**Subject:** Law and Policy Committee Discussion, Reporting Behested Payments: Adoption of Proposed Regulations 18424, 18424.1, 18424.2 (repealing and replacing Regulation 18215.3) and 18424.3

**Date:** October 8, 2021

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### **Proposed Action**

Staff presents proposed Regulations 18424, 18424.1, 18424.2 (repealing and replacing Regulation 18215.3) and 18424.3 to the Law and Policy Committee for discussion prior to submitting these proposals to the Commission for adoption at the October 21, 2021 meeting. These regulations relate to the Political Reform Act (“Act”), Section 84224, behested payment reporting requirements.<sup>1</sup>

### **Summary**

Following a review of behested payment reporting issues, the Commission identified four areas to be addressed through regulatory action with the direction that the regulatory language balance timely, informative, and accurate public disclosure of behested payments with the need to not discourage the important charitable and governmental purposes that these payments support. The proposed regulations and the issues addressed are summarized as follows:

- Proposed Regulation 18424 requires additional disclosure in a behested payment report in two circumstances that raise questions as to 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.
- Proposed Regulation 18424.1 provides a “good faith estimate” behested payment reporting procedure when an official makes reasonable efforts and is unable to

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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 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.

obtain the necessary payment information from a behested payment payee within the 30 days filing date. It also requires the official to amend the report with accurate data within 10 days of receiving the information from the payee.

- Proposed Regulation 18424.2 clarifies existing regulatory language to state that when an official acts in concert with a 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 clarifies that being featured in a solicitation, by itself, does not raise behested payment reporting duties for an official. This proposal would repeal and replace Regulation 18215.3.
- Proposed Regulation 18424.3 requires that when a behested payment is made from a donor advised fund, the behested payment report “name of the payor” must include the name of sponsoring organization, the donor advised fund, and the donor, to the extent the information is known to the official. The regulation places a duty on the official to inquire with the sponsoring organization as to the parties’ identities. The regulation defines the “single source” for purposes of Section 84224 reporting thresholds where there are multiple donors or anonymous donors, and the terms “sponsoring organization,” “donor advised fund,” “donor” and “donor’s advisor.”

An interested persons meeting for proposed Regulations 18424, 18424.1 and 18424.2 was held at the July 8, 2021, Law and Policy Committee. No substantive comments were made by the public, although the representative for the California Political Attorneys Association stated the organization reviewed the regulations and intended to provide comments at a later date. The three proposed regulations were discussed at the Commission meeting on July 15, 2021. Staff was provided with direction, and the Commission requested further regulatory language addressing behested payments from a donor advised fund. Staff presented proposed Regulation 18424.3 for discussion at the Commission’s August 24, 2021, meeting. The four proposed regulations are presented for the Law and Policy Committee’s consideration and discussion, with changes and noted options responsive to the Commission’s direction and further staff review.

## Behested Payment Reporting

### *Background: Law and Purpose*

The Act regulates four categories of payments that involve elected officials: contributions,<sup>2</sup> income,<sup>3</sup> gifts,<sup>4</sup> and behested payments. These categories determine how a payment is reported under the Act and what, if any, limits apply. A “behested payment” is distinguished from a “contribution.”<sup>5</sup>

Applicable to an elected officer and Public Utilities Commission member (referred to collectively herein as “official”), a behested payment is defined as a payment “made at the behest of” the official where it is clear from the surrounding circumstances that the payment is made for purposes unrelated to the official seeking or holding elective office. (Section 82004.5(c).)

Behested payments that are presumed to fall in this “unrelated to seeking or holding office” category include payments made principally for personal purposes and payments made principally for charitable, legislative, or governmental purposes. (Section 82004.5(c)(1), (4) and (5).) It is this latter type of payment, payments made principally for charitable, legislative, or governmental purposes, that is subject to reporting under Section 84224.

In defining when a payment is “made at the behest of” an official, the Legislature has included a broad range of actions. A payment is “made at the behest of” an official when it 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. (Section 82041.3.)

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<sup>2</sup> A “contribution” includes “a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, except to the extent that full and adequate consideration is received or it is clear from the surrounding circumstances that the payment is not made for political purposes.” (Section 82015(a).) A payment is made for political purposes if it is made “[f]or the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure,” or if the payment is received by or made at the behest of a candidate, a controlled committee, an official committee of a political party, or an organization formed primarily for political purposes. (Regulation 18215(a).)

<sup>3</sup> Income, is a payment received, including things such as salary, wages (including a community property interest in a spouse’s wages), and gifts. (Section 82030.)

<sup>4</sup> Gift is a subset of “income.” (Section 82030.) A “gift” is “any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received.” (Section 82028(a).) Gifts to a public official are reportable if more than \$50 in twelve months is received from a single source. (Section 87207(a)(1).) Gifts to officials are limited to \$520 from a single source in a calendar year, and \$10 in a calendar month from a lobbyist or lobbying firm. (Section 89503(a), Regulation 18940.2, and Section 86203.)

<sup>5</sup> A behested payment is excluded from the definition of a contribution, but only as to the behesting committee or official. (Section 82015(c)(4).)

### *Behested Payment Reporting Requirements*

Section 84224 requires the official to report payments made at their behest and made principally for charitable, legislative, or governmental purposes when a single source makes payments that meet or exceed \$5,000 in a calendar year.

Specifically, 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 **pavor**; address of **pavor**; 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.) The statute does not define key terms, however, including "payor."

Section 84224(a) also requires that any additional payments made by that same single source must be reported within 30 days after the payment was made. Within 30 days after receipt of any such 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.

In addition to requiring an official to properly characterize and disclose the parties to, and the purpose of, the payment transaction, Section 84224 necessarily requires an official to work with an organization receiving the behested payments to report the required information. An official must also track behested payments from a single source over a calendar year to know when reporting requirements are triggered. And an official must be aware when their actions meet the definition of having made a behest for payment.

### *Commission Authority: Effectuate the Purpose of the Behested Payment Reporting Statutes*

Under Section 83112, the Commission has the authority to adopt, amend and rescind rules and regulations to carry out the purposes and provisions of the Act, to the extent the regulations are not in conflict with the underlying statute, and reasonably necessary to effectuate its purpose. Generally, the purposes of the Act's reporting requirements are to inform the public, avoid improper influences, disclose financial interests, avoid conflicts of interest, and inhibit improper practices from occurring. (See Section 81002.)

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.<sup>6</sup> As discussed above, the Act requires an official's behested payment report to make known to the public: the parties' names; the payment amount; and the circumstances, use and timing involved in a significant behested payment. (See Section 84224.) The public trust is served by the reporting when accurate and timely reports are filed, and the public can understand the parties involved in the payment as well as understand and assess the "purposes" of a significant payment to ensure the payment is properly reported as a behested payment as well as assess a potential for influence that may result from the payment.

### **Issues and Proposed Regulations**

#### *Proposed Regulation 18424. Behested Payment Reporting. Additional Information.*

To promote transparency, proposed Regulation 18424 addresses the need for disclosure in a behested payment report in two instances: 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 12 months prior to the payment. The Act does not prohibit an official from having either type of relationship in a behested payment transaction, but these are relationships that raise concerns about the payment transaction, self-interest of the official and the possibility of undue influence or access for the payee or payor as a result of the payment. As such, these are relationships with a potential for influence or self-dealing that the public would want to have disclosed in the behested payment reports so that the public may better understand and assess the payment transaction, its "purposes" and the parties involved.

#### *Official's Relationship to the Nonprofit Organization Payee: Control or Employment*

Proposed Regulation 18424, subdivision (a) requires an official to disclose, to the extent known to the official, a brief description of certain relationships noted below between the nonprofit organization payee and the official in a behested payment report. The Commission discussed at the July 2021 meeting whether the disclosure should also include instances where an official's campaign or officeholder staff has a relationship to the nonprofit organization payee. The Commission additionally raised whether the disclosed roles should include positions on an honorary or advisory board of the organization. Staff proposes the following language, with noted options, for consideration:

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<sup>6</sup> See for example, *Duran* Advice Letter No. A-16-203; In the Matter of Tony Rackauckas, FPPC Case No. 16/612, p. 4, and *Jay* Advice Letter No. A-10-088, p. 6; the latter of which states: "The purpose of the 'behested payment' provision ... is to capture reporting for payments that are not direct contributions to elected officials, but that the public would want to see in periodic reports. That is, the purpose is to provide disclosure when there is a potential for influence over a public official."

(a) A brief description of any relationship of the nonprofit organization payee to the elected officer, PUC member, or a member of their immediate family<sup>7</sup> [**Option:** or member of their executive campaign or executive officeholder staff]. The brief description shall include the following information about any individual listed above:

- (1) Any decision-making capacity within the organization, such as a board member or executive officer position.
- (2) Executive salaried employment at the organization.
- (3) Founding member in forming the organization.
- [**Option:** (4) A position on an honorary or advisory board of the organization.]

The relationships designated for disclosure are limited to those within an official's sphere of influence (immediate family and executive staff) and to roles involving positions of potential influence within the organization. The benefit of the brief description is a disclosure of the relationships involved within the behested payment report to better inform the public and support the public's trust. The disclosure will also inhibit improper practices from occurring. Because the brief description is limited to information already known to the official, the additional requirement placed on the official would not be so burdensome as to discourage or inhibit the practice of making behests in service of the public good.

#### *Official's Relationship to the Payor: Pending Proceedings Before the Official's Agency*

Proposed 18424, subdivision (b) requires an official to provide a brief description, to the extent known to the official, of any proceeding before the official's agency currently or within the 12 months prior to the reported payment in which the payor is the named party or subject of the decision. A "proceeding" for purposes of subdivision (b) includes decisions on a contract, license, permit, or other entitlement. This language is intended to not include decisions on general legislation.

At the July 2021, Law and Policy Committee meeting, staff was requested to more clearly state in the regulation that a "proceeding" does not apply to legislation, consistent with language in the conflict of interest statutes.<sup>8</sup> Staff proposes the following language to address this in subdivision (b)(1):

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<sup>7</sup> Note: Immediate family means the spouse and dependent children. (Section 82029.)

<sup>8</sup> Section 87102.6. defines "nongeneral legislation" as follows, in pertinent part:  
(a) "Nongeneral legislation" means legislation as to which both of the following apply:  
(1) It is reasonably foreseeable that the legislation will have direct and significant financial impact on one or more identifiable persons, or one or more identifiable pieces of real property.  
(2) It is not reasonably foreseeable that the legislation will have a similar impact on the public generally or on a significant segment of the public. (Note, "public generally" is defined to includes an industry, trade or profession, and a "recognized subgroup or specialty" of the industry, trade, or profession constitutes a "significant segment." (Section 87102.6 (b)(2), (3).))

(1) A “proceeding” for purposes of subdivision (b) includes decisions on a contract, license, permit, or other entitlement and matters of nongeneral legislation. A “proceeding” does not include decisions on general legislation.

There was discussion at the July Law and Policy meeting as well as the July 2021, Commission meeting as to whether a “proceeding” could encompass future proceedings, or proceedings not yet agendized at the time of reporting but known to the official. To capture matters involving a payor that are either formally agendized or that the official knows have been submitted to the agency, staff proposes the following language in subdivision (b)(2):

(2) A proceeding is considered “before the elected officer’s or PUC member’s agency” if it has been placed on the agency’s formal agenda or if the official has knowledge that the matter has been submitted to the agency for decision.

This brief disclosure is limited to proceedings involving a payor known by the official to be before the official’s agency and relevant to the time period of the reported behested payment(s).

*Proposed Regulation 18424.1. Behested Payment Reporting. Good Faith Payment Estimates.*

Proposed Regulation 18424.1 seeks to address situations where the official has a behested payment reporting duty, but a payee has not complied promptly with an official’s request for payment information. At the May 2021 Law and Policy Committee meeting, the Commission inquired as to current practices, and commented that officials should be able to “file with what they have” with appropriate verifications and be given a directive to timely amend with accurate information. Staff was instructed to provide guardrails for filing estimated payment amounts, with the understanding that officials should not be required to contact payors for payment amount information.

Under the general provisions of the Act, an official may file the behested payment report with the verification that states the official “has used all reasonable diligence in its preparation,” and that to the best of the official’s knowledge it is “true and complete.” (Section 81004.) A behested payment report, like other reports under the Act, may be amended by the official at any time and amending an incorrect or incomplete report may be considered evidence of the official’s good faith. (Section 81004.5.) Currently, it is an acceptable practice for an official to note in a behested payment report that the information is incomplete, is provided to comply with the 30 day filing requirement, state the reasons, and for the official to then follow with an amended report. Form 803, the behested payment report, currently provides space for an explanation of any amendments to an earlier report.

Proposed Regulation 18424.1 sets out a specific process for an official to file a good faith estimate of a payment amount to satisfy the requirements of Section 84224. Following the July 2021, Commission meeting, staff working with filed behested payment reports noted that exact dates are often an issue when an official does not have exact payment amounts, and requested the Commission consider allowing an “estimated payment amount” and “estimated date.”

Proposed subdivision (a) requires that the official must have practiced reasonable efforts to obtain the payment amount or date prior to the reporting deadline and that the official is unable to obtain this information from the payee. “Reasonable efforts” is defined to include, but is not limited to, making a written request to the payee prior to the filing deadline. Subdivision (b) requires that the official state that the payment is an estimate amount, date, or both and reflects the official’s best efforts to ascertain the accurate information. This language is consistent with Section 81004 and with the provisions for good faith estimates in reporting accrued expenses in Regulation 18421.6(b) and non-monetary contributions in 24-Hour contribution reports in Regulation 18425(c)(2). In response to discussion noted below, staff proposes that the official also state the reason the payee is unable to provide the information. Subdivision (c) requires the official to file an amended report with the corrected information within 10 days of receiving the information from the payee, so that timely and accurate information is reported once it is received.

As noted above, discussion occurred at the July Law and Policy Committee meeting as well as the July Commission meeting as to when an official’s duty would end in seeking the accurate information and if the official may need a “trigger” date to encourage them to make additional efforts. Staff considered alternative language and concluded that setting additional request for information requirements does not appear to enhance the currently proposed three duties for an official in filing estimated payment information: to make reasonable efforts to obtain the information from the payee prior to the 30 day filing period, make a statement that the estimated information reflects the official’s best efforts, and file an amended report within 10 days of receiving the information. However, staff notes that the public may be served by the official stating the reason the payee is unable to provide the information. This may clarify whether the payee is delayed in providing the information, in which case the public can assume the report will be amended in due time, or whether the payee has no ability to provide the information. To that end, staff proposes the following language in subdivision (b):

(b) The elected official or PUC member states the payment is an estimated amount or estimated date that reflects the best efforts of the elected officer or PUC member to ascertain the accurate information and states the reason the payee is unable to provide the information.

The proposed regulation informs the public and would encourage reporting where the official is facing a difficulty in obtaining accurate information, despite making reasonable efforts, and is able to provide a good faith estimate. It also requires a timely amendment with the accurate information once received by the official.

*Proposed Regulation 18424.2. Behested Payment Reporting. Charitable Organization Fundraising Solicitations, to Replace and Repeal Regulation 18215.3.*

Interpreting the definition and application of “made at the behest of” for reporting purposes, current Regulation 18215.3, subdivision (a) states Section 82041.3’s definition of



“made at the behest of”<sup>9</sup> the official, with additional language expressly extending these actions to an official’s agent. Specifically addressing charitable organization fundraising solicitations, subdivision (b) provides safe harbor language stating that a payment is *not* made at the behest of an official and *not* subject to behested payment reporting if made in response to the solicitation, *unless* the solicitation “features” the official. Under this safe harbor language, an official does not have behested payment reporting duties if the payment is in response to the solicitation and the official is not featured in it. There are several items to note regarding the safe harbor language’s implications:

- If the official is featured in a solicitation, the safe harbor simply does not apply.
- If the payment is in response to actions by the official *outside the solicitation*, the safe harbor does not apply.
- If the official *is featured* in the solicitation, the official has behested payment reporting duties if the official’s actions meet the definition of “made at the behest of.”

Regulation 18215.3(b) sets forth two circumstances in which the solicitation “features” the official: (1) where the solicitation includes the official’s name, photograph, signature, or office in a singled-out manner in the layout of the document; or (2) where the official appears in a letterhead or roster of the organization’s governing body and the body contains a majority of officials.

The May 2021 Law and Policy Committee discussion noted that guidance in this area could be improved. Staff was directed to draw bright lines where possible, and not create traps for the unwary in revising Regulation 18215.3. Staff was further directed to consider presumptions that may apply in these circumstances. Discussion noted that while a guest speaker typically has a minor role in a fundraising event, other roles are not so easily distinguished, such as a Master of Ceremonies or an honoree, or group of past honorees, listed in a solicitation.

Staff proposes to repeal Regulation 18215.3 and replace it with proposed Regulation 18424.2. Proposed subdivision (a) states that a payment *made in response to a charitable organization fundraising solicitation* is a reportable behested payment when:

- (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 official, or agent thereof; and
- (2) 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.

Proposed Regulation 18424.2(a) and (b) makes it clear that when an official acts in concert with the charitable organization in a fundraising solicitation and is featured in the

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<sup>9</sup> I.e., “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.

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.<sup>10</sup>

Proposed subdivision (c) provides an exception for officials who consent to appear in a fundraising solicitation as a “guest speaker,” *and their involvement does not extend beyond this role*.<sup>11</sup> This language recognizes that a solicitation that features an official in a guest speaker role is typically understood to be a request for fundraising solely from the organization, with the speaker as an invited guest. In contrast, an official featured in a solicitation in the role of “Master of Ceremonies” for a fundraising event would be perceived as acting in concert with the organization. A Master of Ceremonies is the face and voice of the organization at a fundraising event, and the official featured as such in a solicitation would have behested payment reporting duties. An official featured in a solicitation as an honoree under proposed Regulation 18424.2 would have behested payment reporting duties, to the extent the solicitation is sent under the control, direction, cooperation, etc., of the official as set forth in subdivision (a)(1).

### *Proposed Regulation 18424.3. Behested Payment Reporting. Donor Advised Funds.*

A donor advised fund (“DAF”) is a charitable giving mechanism that presents certain challenges in identifying the “payor” and tracking the “single source” of a behested payment under Section 84224. A DAF is a separately identified fund maintained and operated by a section 501(c)(3) organization called a “sponsoring organization.” Each DAF 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 <https://www.irs.gov/charities-non-profits/charitable-organizations/donor-advised-funds>. See also, 26 USCS § 4966, defining “donor advised fund” and “sponsoring organization.”)

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, or the donor’s appointed adviser. 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 or the name of the donor. A donor may name the DAF in a manner that does not disclose the donor’s identity. As a result, merely reporting the name of the sponsoring organization as the “payor” in a behested payment report does not provide a full disclosure of the parties involved in making the payment or reflect the “single source” of the payment. It may also lead to confusion where a donor utilizing a DAF may publicly take credit for a payment, but the behested payment report only discloses the sponsoring

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<sup>10</sup> If a payment is “made at the behest” of an official separate from a fundraising solicitation, it would be subject to the behested payment reporting requirements in Section 84224 without regard to proposed Regulation 18424.2.

<sup>11</sup> A guest speaker who otherwise “makes a behest” for payment to the organization, for example by suggesting that donations be made, will not meet this exception.

organization as the “payor.” Note also that a sponsoring organization may make behested payments of its own volition with funds unrelated to a DAF.

The Commission requested staff 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. Staff presented draft language for discussion at the August 2021, Commission meeting. The Commission requested that staff further define a “single source” for purposes of Section 84224 when a DAF payment involves multiple donors. The Commission also requested staff to determine if there is a means to track an anonymous DAF payment for reporting purposes under current law, given the donor’s right to maintain anonymity in the transaction. Staff ascertained that there is not a means to track anonymous DAF payments from a sponsoring organization particular to a DAF or donor. The Commission also noted that the disclosure should provide relevant parties to the transaction and not include, for example, deceased donors or donors without authority over the DAF.

To adequately disclose the parties involved in making a payment involving a DAF, proposed Regulation 18424.3, subdivision (a) states that the official must report the name of the payor, to the extent this information is known to the official, as follows:

- (1) The name of the sponsoring organization,
- (2) The name of the donor advised fund, and
- (3) The name of the donor.

In order to capture donors relevant to the payment transaction, “donor” is defined for purposes of this regulation as, “the person or persons who funded the donor advised fund and retains advisory privileges over the donor advised fund, including the ability to designate an advisor.” (Proposed Regulation 18424.3(d)(1).)

To address more complicated “donor” situations and obtain disclosures of the relevant parties involved in the payment, subdivision (a)(3) states that where there are multiple donors, the name of the donor, or donors, who exercised advisory privileges over the DAF for this payment may be provided in lieu of naming each donor to the fund. Where a donor’s advisor has exercised discretion in the making of the payment, the official must provide the name of donor’s advisor in addition to the donor. This requires disclosure of the donor’s advisor when the advisor is not merely in a functionary role.

To address anonymous DAF and donor payments, subdivision (a)(2) and (a)(3) requires the official to report these as “anonymous donor advised fund” and “anonymous donor.” For a reporting example, an official would report the following for a payment from an anonymous DAF and an anonymous donor:

Name of the payor:  
California Community Foundation,  
Anonymous Donor Advised Fund,  
Anonymous donor.

This reporting distinguishes anonymous DAF payments from the particular sponsoring organization from general payments by the sponsoring organization. It will also provide useful data as to the occurrence of anonymous DAF behested payments.

Subdivision (b) 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.

For purposes of identifying the “single source” of a DAF payment needed to determine the \$5,000 threshold triggering a behested payment report, and any subsequent reporting requirements, subdivision (c)(1) and (2) addresses situations involving an individual donor, multiple donors, and anonymous donors, as follows:

(1) Where an individual donor is identified under subdivision (a)(3), the donor is the “single source” of the payment.

(2) Where multiple donors are identified under subdivision (a)(3), each donor is a “single source” for an equal portion of the payment.

(3) Where a sponsoring organization withholds the name of the donor, the donor advised fund identified under subdivision (a)(2) is the “single source” of the payment.

Addressing anonymous DAF situations, subdivision (c)(3) further provides that where the official can attribute payment to a specific anonymous DAF, that DAF is the “single source.” In all other circumstances, all behested payments from an anonymous DAF of the same sponsoring organization are treated as coming from the same “single source,” i.e., an anonymous DAF held by the sponsoring organization.

Proposed subdivision (d) defines the terms “donor” (see discussion above), “donor advised fund,” “donor’s advisor,” and “sponsoring organization” for purposes of this regulation. The “donor’s advisor” is defined as the person designated by the donor who exercised advisory privileges over the donor advised fund for this payment. The regulation references the Internal Revenue Service’s definition of “sponsoring organization” and “donor advised fund” in section 4966(d) of Title 26 of the United States Code.

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 involving a DAF by

officials with the need to not discourage the important public service that these payments can provide, and the anonymity afforded such donors.

### **Summary**

Proposed Regulations 18424, 18424.1, 18424.2 and 18424.3 incorporate directions from the Commission, as well as additional staff proposals based on further review. These regulations support the Act's purpose of providing relevant, timely data in a behested payment report so that the public may be informed of these transactions. The regulations also provide guidance to officials so that they may comply with their reporting duties.

### **Attachments:**

For adoption:

Proposed Regulations 18424, Behested Payment Reporting. Additional Information,  
18424.1 Behested Payment Reporting. Good Faith Payment Amounts, and  
18424.2. Behested Payment Reporting. Charitable Organization Fundraising Solicitations.  
18424.3. Behested Payment Reporting. Donor Advised Funds.

For repeal:

Regulation 18215.3. "Behested Payments" Reporting.