



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich, Commissioners Baker, Wilson, and Wood

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

Subject: Prenotice Discussion of Proposed Amendments to: Regulations 18960, Direct Personal Benefit; 18225.7, Made at the Behest; Independent versus Coordinated Expenditures; and 18728.5, Reporting of Commission Income and Incentive Compensation

Date: June 6, 2022

Summary of Proposed Action

Recent legislation and regulatory changes require minor updates to existing regulations. Specifically, staff proposes amendments to Regulation 18960, definition of a “direct personal benefit,” under the Political Reform Act.¹ Section 89521’s recent amendments define an “egregious personal benefit” using the term “direct personal benefit.” The proposed changes to the regulation expand the definition’s stated purpose in Regulation 18960 to include Section 89521, amongst other amendments described below.

Also, staff proposes clean-up amendments to Regulation 18225.7, Made at the Behest; Independent versus Coordinated Expenditures, to remove a citation to repealed Regulation 18215.3; and to Regulation 18728.5, Reporting of Commission Income and Incentive Compensation, to correct the regulation specified for the definition of “commission” and “incentive” income.

Current Law

The Act’s Campaign Fund Personal Use Provisions & “Direct Personal Benefit”

There are two sections of the Act that include the phrase “direct personal benefit.” These occur in the statutory provisions addressing the appropriate use of campaign funds, known as the “personal use” provisions. Under these provisions, campaign funds are held in trust for expenses associated with the election of the candidate or for expenses associated with holding office, and expenditures which confer a “substantial personal benefit” on a candidate must be directly

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 18109 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.

related to a political, legislative, or governmental purpose. (Chapter 9.5, Ethics, Article 4, Sections 89510-89522.) Section 89511(b)(3) defines the term, “substantial personal benefit” referencing a “direct personal benefit,” and states as follows:

For purposes of this chapter, “substantial personal benefit” means an expenditure of campaign funds which results in a direct personal benefit with a value of more than two hundred dollars (\$200) to a candidate, elected officer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee.

(Emphasis added)

Regulation 18960, in turn, defines “direct personal benefit” as follows:

(a) For purposes of Government Code section 89511(b)(3), an expenditure of campaign funds results in a direct personal benefit when, within six months of the expenditure and without the assistance of any intervening influence or interruption, the candidate or elected officer or member of the candidate’s or elected officer’s immediate family:

(1) Realizes an increase in income or assets, or a decrease in expenses or liabilities, of more than \$200 from the expenditure; or

(2) Actually makes personal use of an asset obtained as a result of the expenditure.

(b) An expenditure of campaign funds does not result in a prohibited direct personal benefit if otherwise specifically permitted under any other provisions of Article 4 (commencing with Section 89510) of Chapter 9.5 of Title 9 of the Government Code, or interpretative regulations thereto.

Section 89521 also includes the phrase “direct personal benefit.” Section 89521 defines and establishes penalties for an expenditure of campaign funds that violates the campaign fund “personal use” provisions and results in an “egregious personal benefit.” (Stats. 2021, Ch. 315.) Section 89521(b) defines an egregious personal benefit as a “direct personal benefit” with a total value of \$10,000 or more to a candidate, elected officer, or any individual or individuals with authority to approve the expenditure of a committee’s campaign funds.

Since the Commission adopted Regulation 18960 before the Legislature enacted Section 89521, the definition of “direct personal benefit” in the regulation currently only references Section 89511(b)(3).

Proposed Amendments to Regulation 18960

Staff proposes making the direct personal benefit definition in Regulation 18960(a) applicable both to recently adopted Section 89521(b) and Section 89511(b)(3). Staff has identified some additional items to be addressed. First, the \$200 threshold defining a “direct personal benefit” is redundant with the statutory language defining a “substantial personal benefit” in Section 89511(b)(3). Also, this threshold is potentially confusing in light of recently adopted Section 89521(b) which established enhanced penalties for unlawful personal use of campaign funds in the amount of \$10,000 or more. Staff therefore proposes that the threshold amount be removed.

Second, subdivision (a) of Regulation 18960 does not include in its list of persons to whom the regulation applies, “any individual or individuals with authority to approve the expenditure of campaign funds held by a committee,” although such persons are identified in Section 89511(b)(3) and Section 89521(b). Staff proposes language to include these individuals in the definition.

Finally, because the term “[a]ctually” is unnecessary in subdivision (a)(2), staff proposes removing it.

Proposed Amendments to Regulation 18225.7

Regulation 18225.7 provides a guide to the four contexts in which the Act uses the term “made at the behest” and specifically addresses its use in the context of independent and coordinated expenditures. Regulation 18225.7(a)(2) states, with italics added for emphasis:

(2) The definition of “made at the behest” in subdivision (b) and Section 82041.3 applies to all uses of that term in the Act. The provisions in subdivisions (c)-(g) apply for coordinated expenditures. *Refer to Regulation 18215.3 for rules on reporting payments elected officers and Public Utilities Commissioners solicit for charitable, legislative or governmental purposes.*

Regulation 18215.3 was repealed in 2021 by the Commission. Staff proposes removing the reference sentence. Regulation 18225.7(a) notes that Section 84224 governs the behested payment reporting requirements in this area.

Proposed Amendments to Regulation 18728.5

Regulation 18728.5, Reporting of Commission Income and Incentive Compensation, incorrectly cites Regulation 18703.3 for the definition of “commission income” and “incentive income” in its subdivision (a). Staff proposes correcting the citations to Regulation 18700.1.

Attachment:

Proposed Amendments to Regulations 18960, 18225.7, and 18728.5.