



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

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

Subject: Adoption 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: September 15, 2022

Executive Summary

To address recent legislation affecting the Political Reform Act¹ and to clean-up current regulatory language, staff proposes three changes to Regulation 18960(a):

- Extending the “direct personal benefit” definition in Regulation 18960(a) to include recently adopted Section 89521(b).
- Specifically stating that the regulation also applies to “any individual or individuals with authority to approve the expenditure of campaign funds held by a committee” consistent with statutory language.
- Deleting the unnecessary term, “[a]ctually.”

Additionally, staff proposes amendments to:

- Regulation 18225.7, removing a citation to repealed Regulation 18215.3.
- Regulation 18728.5, to correct two outdated references.

Reason for Proposed Regulatory Action

The amendment to the definition of “direct personal benefit” is necessitated by a recent amendment to the Act, which must be harmonized with the existing provisions. This amendment, as well as the remaining regulatory changes proposed, are clarifying and clean-up in nature.

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.

Background & Proposed Amendments

Regulation 18960

Background

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. (Chapter 9.5, Ethics, Article 4, Sections 89510-89522.) 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 related to a political, legislative, or governmental purpose. (Sections 89510, 89512.)

Section 89511(b)(3) defines the term, “substantial personal benefit” referencing a “direct personal benefit,” and states as follows, with italics added for emphasis:

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.

Section 89521 also includes the phrase “direct personal benefit.” As recently amended in 2021, 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*” (emphasis added) 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.

Adopted prior to the 2021 legislation, Regulation 18960 provides the definition of a “direct personal benefit,” specifying it is applicable only to Section 89511(b)(3). The regulation states:

(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.

Proposed Amendments

Addressing the new legislation, staff proposes language making the “direct personal benefit” definition in Regulation 18960(a) applicable to recently adopted Section 89521(b) as well as Section 89511(b)(3).

Additionally, staff has identified some additional items to be addressed. First, staff proposes that the \$200 threshold defining a “direct personal benefit” be removed. The 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, and the threshold is redundant with the statutory language defining a “substantial personal benefit” in Section 89511(b)(3) as a benefit of the same amount, \$200 or more.

Second, staff proposes language to 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,” as such persons are identified in Section 89511(b)(3) and Section 89521(b) and it appears this language was inadvertently omitted in Regulation 18960(a).

Finally, because the term “[a]ctually” in the sentence “[a]ctually makes personal use of an asset obtained as a result of the expenditure” is unnecessary, staff proposes removing it in subdivision (a)(2).

Regulation 18225.7

Background

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 at the time three new regulations were adopted to interpret and administer the reporting requirements set forth in Section 84224.

Proposed Amendment

Staff proposes removing the reference sentence. Regulation 18225.7(a)(1)(iii) already notes that Section 84224 governs the behested payment reporting requirements in this area.

Regulation 18728.5

Background

Regulation 18728.5, Reporting of Commission Income and Incentive Compensation, incorrectly cites Regulation 18703.3(c)(1) for the definition of “commission income” and 18703.3(d) for the definition of “incentive income” in its subdivision (a).

Proposed Amendment

Staff proposes correcting the citations to Regulation 18700.1(c)(1) and (d), where the definitions of commission income and incentive compensation, respectively, are located.

Summary of Public Comment & Responses

The proposed amendments to Regulations 18960, 18225.7 and 18728.5 were presented to the Commission for prenotice discussion at the July 21, 2022, meeting. No comments have been received from the public to date.

Education/Outreach Efforts

Commission staff will distribute the regulation to interested parties by means of the “Newly Adopted, Amended or Repealed Regulations” email list, update the “Newly Adopted, Amended or Repealed Regulations” page on the website. Staff’s review of the training and educational materials indicates no further changes will be needed as a result of these regulatory proposals.

Conclusion

Staff recommends the adoption of the proposed regulatory amendments. The changes are necessary to reflect the 2021 legislative change, for clarity, and to correct cross references.

Attachments: Proposed Amendments to Regulations 18960, 18225.7, and 18728.5.