



To: Chair Silver, Commissioners Baker, Ortiz, Wilson, and Wood

From: Cole Smith, Executive Researcher

Subject: Summary of Data and Trends for Donor Advised Fund, Proceeding, and Relationship Disclosure

Date: November 8, 2024

Introduction

In 2021, the Commission adopted via regulation three new disclosure categories to the behested payment reporting requirements: “Donor Advised Fund,” “Proceeding,” and “Relationship” disclosure. The Commission also adopted a protocol for the disclosure of estimated dates and payment amounts for reportable behested payments where the behesting official makes reasonable efforts to obtain that information but is unable to secure it before the reporting deadline (this protocol is referred to as the “Good Faith Estimate” exception).

By adopting these regulations, the Commission aimed to provide clearer insights into the financial interactions between donors, elected officials, and the organizations they support.

Per the Commission’s direction, staff has compiled and analyzed various data points related to the new disclosure categories and exceptions at the state and local levels. This memorandum summarizes the data collected and identifies notable trends in disclosure.

As described in further detail below, findings of note include:

- 1) Greater transparency of relationships between officials, donors, and recipients and potential influence on official action.**
 - Approximately 25% of the state and local submissions examined included information pursuant to one or more of the new disclosure categories.
- 2) Of the three new disclosure categories, public officials were far more likely to disclose a relationship with the recipient of a behested payment than a proceeding impacting the source of a behested payment or a donor advised fund as a source of a payment.**
- 3) Of the state and local submissions that included information pursuant to one or more of the new disclosure categories reviewed, roughly 24% of those filings appear to have at least one error reported, such as utilizing an incorrect field or not filling out all the relevant new fields. This may indicate that additional efforts are needed to educate filers on when the new categories apply.**

Background

The Political Reform Act (the “Act”)¹ requires that elected officials and Members of the Public Utilities Commission (PUC) must disclose any single source of payments “made at the behest of”² that official or member for a charitable, legislative, or governmental purpose when those payments total \$5,000 or more, in the aggregate, in a calendar year. (Section 84224.) Behested payment disclosure must occur on a Behested Payment Report (Form 803).

A Form 803 must include various identifying information for the payor and recipient, including their name and address, and information related to the payment made, including the date it was made, its value, and purpose. (Section 84224.)

Over the course of February 18 through March 31, 2021, CalMatters published a multi-part article³ identifying behested payments allegedly directed by elected officials to organizations that they had financial ties to or from entities with business before their agency. Earlier that year, the Los Angeles Times also reported that elected officials had begun directing payments from so-called Donor Advised Funds (DAF), which could withhold the names of their donors⁴.

At its October 11, 2021, meeting, the Fair Political Practices Commission (the “Commission” or “FPPC”) acted to address the concerns raised by the media and others by adopting Regulations 18424, 18424.1, and 18424.3⁵. These regulations, which went into effect on December 22, 2021, added the following three new categories of disclosure on the Form 803:

1. **“Donor Advised Fund” Disclosure:** Requires that when disclosing a payment made from a Donor Advised Fund, various information related to the fund, including its sponsoring organization, donors, and donor advisor, if any, must be disclosed subject to certain exceptions. (Regulation 18424.3.)

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 18104 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.

² The phrase “made at the behest of” is defined in Section 82041.3 as “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.

³ Rosenhall, Laurel, "The new thing for California politicians? Sweet charity," *CalMatters*, Feb. 8, 2020, available at <https://calmatters.org/projects/california-lawmaker-nonprofits-politics-charity-campaign-finance-foundation-dark-money/>.

⁴ Smith, Dakota and Gutierrez, Melody, “Donors gave millions to Garcetti nonprofit but kept their identities secret, Times analysis finds,” Los Angeles Times, May 13, 2021, available at <https://www.latimes.com/california/story/2021-05-13/how-donors-give-millions-garcetti-backed-nonprofit-keep-identities-secret>

⁵ The Commission also adopted at that meeting Regulation 18424.2, which repealed and replaced Regulation 18215.3.

2. “Proceeding” Disclosure⁶: Requires that a behesting official disclose any “proceeding”⁷ involving the source of the behested payment in the 12 months prior to the payment being made. (Regulation 18424(b).)
3. “Relationship” Disclosure: Requires that a behesting official disclose any “relationship”⁸ they, their immediate family, or staff have with the recipient nonprofit of the behested payment disclosed. (Id. at (a).)

The Commission expect that these new disclosure categories addressed the public’s need for timely, relevant, and accurate information related to behested payments without undermining the charitable, legislative and governmental purposes they serve.

Also adopted by the Commission was a protocol for the disclosure of estimated dates and payment amounts for behested payments where the behesting official makes reasonable efforts to obtain that information but is unable to secure it before the 30-day reporting deadline (“Good Faith Estimate” exception).

On February 17, 2022, the Commission approved a revised version of the Form 803, the form used to report behested payments. The revised Form 803 includes fields to disclose information required under the new disclosure requirements and the Good Faith Estimate exception. To assist officials in complying with these requirements, the Commission added detailed instructions concerning the new disclosure categories and exception to the Form 803 and published a comprehensive fact sheet addressing behesting payment reporting in general. The regulated community has indicated that these resources are helpful in complying with the new requirements.

Summary of Data Disclosed by State and Local Elected Officials⁹

Reports Filed by State Elected Officials (“State Submissions”)

From February 17, 2022, to September 30, 2023, 121 elected state officials – including the Governor, Lieutenant Governor, Secretary of State, Treasurer, a Member of the State Board of Equalization, and Members of the State Assembly and Senate – filed 2,029 Behested Payment Reports (Form 803s). Those officials disclosed behested payments totaling \$62,516,087 during that period.

⁶ The Act does not preclude a public official from participating in a governmental decision that impacts the source or recipient of a payment made at their behest.

⁷ Regulation 18424 provides that a proceeding, for purposes of this reporting requirement, “includes decisions on a contract, license, permit, or other entitlement and matters of nongeneral legislation.”

⁸ Regulation 18424 provides that relationships subject to disclosure include: salaried employment and service as a board member, executive officer, advisory or honorary committee member, or founding member.

⁹ FPPC staff collected the data summarized and analyzed in this memorandum directly from Form 803 filing submitted by state and local elected officials. Several reports noted that the behesting official disclosed the payment “out of an abundance of caution.” Please note that this memorandum does not constitute a determination on behalf of the FPPC as to whether an official complied with the requirements provided in Section 84224 and Regulations 18424, 18424.1, and 18424.3.

Of the 2,029 state submissions reviewed during the period, 527, or about 25.98%, included information disclosed pursuant to a disclosure category adopted by the Commission in December 2021. Of those 527 reports, 476 included “Relationship” disclosure, 33 included “Donor Advised Fund” disclosure, and 18 included “Proceeding” disclosure. The reports disclosed behested payments totaling \$10,964,868.72, with 87.39% directed to ten nonprofit organizations, including five charitable organizations that appear to be associated with legislative caucuses:

- CA Legislative Black Caucus Policy Institute: \$3,426,550.00
- CA Latino Legislative Caucus Foundation: \$1,295,750.00
- Women in CA Leadership: \$1,106,537.18
- The 2023 Governor's Inaugural Fund: \$1,075,000.00
- CA Partners Project: \$983,334.00
- CA Jewish Legislative Caucus Leadership Foundation: \$745,000.00
- The Edible Schoolyard Project: \$350,000.00
- Jobs for the Future: \$250,000.00
- CA Border Issues Project: \$180,000.00
- CA Legislative LGBT Foundation: \$170,000.00

Reports Filed by Local Elected Officials (“Local Submissions”)

For this memorandum, FPPC staff reviewed a sample size of 148 Behested Payment Reports (Form 803) filed by local elected officials in the cities of Fresno, San Diego, Long Beach, and the counties of San Bernardino, Los Angeles, and San Francisco from February 17, 2022, to September 30, 2023. 34 reports filed by seven local elected officials disclosed information pursuant to at least one of the new disclosure categories.

Patterns and Trends

The following identifies patterns and trends for each new disclosure category.

Donor Advised Fund Disclosure

Donor Advised Fund disclosure requires that when disclosing a payment made from a Donor Advised Fund (DAF), a behesting official must disclose: (1) the name and address of the DAF’s sponsoring organization; (2) the name of the DAF; (3) the name of its donor(s); and (4) the name of its donor advisor, if the advisor exercised discretion in making the payment¹⁰.

¹⁰ Behesting officials must disclose the name of a DAF, its donor(s) and donor advisor(s) as “anonymous” in a Form 803 where a sponsoring organization withholds that information pursuant to federal law.

Findings and Observations

33 of the 2,029 state submissions, or about 1.63%, included information disclosed pursuant to the DAF disclosure requirement. The Governor submitted five of the 33 reports, with the remaining submitted by state legislators.

None of the 148 reports filed by local elected officials included information disclosed pursuant to this requirement.

A donor advised fund is a charitable investment account that allows donors to contribute money to a public charity, receive a tax deduction, and then recommend grants to eligible charities over time. Some individuals and entities reporting the use of DAFs include only information in the “DAF Name” field or include the same name as what is included in the “Payor name” field (e.g., American Beverage Association, Anheuser Busch, California Cable & Telecommunications, California Nurses Association Political Action Committee).¹¹

Only eight of the 33 reports filled out all three fields required by the regulation for disclosing a (1) sponsoring organization; (2) a donor advised fund; and (3) donors/advisors to the fund.¹²

State elected officials identified DAFs as the source of behested payments totaling \$1,242,728. Of those, a total of \$539,000 was associated with reports that included information in all three fields.

None of the 148 local submissions identified a DAF as the source of a behested payment.

Proceeding Disclosure

Proceeding disclosure requires that when disclosing a behested payment, the behesting official must disclose and provide a brief description of any proceeding before the official’s agency in the 12 months prior to the payment where the source of the payment is a named party or subject.

Findings and Observations

18 of the 2,029 state submissions, or about 0.89%, included information disclosed pursuant to the Proceeding disclosure requirement. The Governor submitted six of the 18 reports, with the remaining submitted by state legislators.

State elected officials disclosed eight sources¹³ that had proceedings before their respective agencies in the 12 months prior to the disclosed behested payment being made:

- Pacific Gas & Electric (PG&E) - \$293,000
- Swe Wong - \$5,000
- San Manuel Band of Mission Indians - \$250,000

¹¹ A table detailing the information included in the “DAF Name” fields observed to have been utilized is included in Appendix A of this report.

¹² For a more detailed breakdown of the patterns of how these reports were filled out, please refer to Appendix B of this report.

¹³ The state elected officials and the reported sources that had proceedings before their respective agencies in the 12 months prior to the disclosed behested payment being made are included in Appendix C of this report.

- Pechanga Band of Indians - \$250,000
- Santa Ynez Band of Mission Indians - \$25,000
- Agua Caliente Band of Cahuilla Indians - \$50,000
- Federated Indians of Graton Rancheria - \$250,000
- Kaiser Permanente - \$250,000

These behested payments totaled \$1,373,000.

None of the 148 local submissions included information disclosed pursuant to this requirement.

Relationship Disclosure

Relationship disclosure requires that a behesting official must disclose and provide a brief description of any “relationship”¹⁴ they, their immediate family, or staff have with a recipient nonprofit organization.

The Form 803 includes three fields for disclosing information pursuant to Relationship disclosure: “Name and Title”; “Role with the Nonprofit Organization”; and “Brief Description.” All three fields must be filled out when a reportable relationship exists.

Of the 2,029 state submissions examined, 476, or 23%, included information pursuant to the Relationship disclosure requirement. 414 of those 476 – about 78.56% – clearly identify a relationship between the behesting official and a recipient nonprofit organization.

Findings and observations for submissions clearly identifying a relationship

409 reports list the behesting official in either the role of Founder, Chair, Co-Chair, President, CEO, or Organizer.¹⁵

- 114 of these reports disclose that the behesting official and one or more of their staff members have a reportable relationship with the recipient nonprofit.
- 10 reports list only a member of the behesting official’s staff as having a relationship with the recipient nonprofit.
- Three submissions filed by one official list the official’s spouse as the founding member of the recipient organization.
- 42 reports disclose the role of the behesting official in Section 5 of Form 803, entitled “Amendment Description and/or Comments,” and an individual in the fields for Relationship disclosure whose relationship to the behesting official is unclear or nonreportable.
- 12 reports disclose the role of the behesting official in Section 5 of Form 803 and provide no information in the fields for Relationship disclosure.
- One report discloses the behesting official’s role as “Former Founder” in the “Brief Description” field and left the other two fields blank.

¹⁴ Relationships subject to disclosure include: salaried employment and service as a board member, executive officer, advisory or honorary committee member, or founding member.

¹⁵ A table providing additional information, such as the reported payee organizations and the associated reported roles of the behesting officials is included as Appendix D.

- Three reports disclose the official as a regular member of a legislative caucus foundation.

Findings and observations for submissions where a relationship is not clearly identified

- Three reports disclose an individual in the fields for Relationship disclosure, but then explicitly state that there is no relationship between the behesting official and individual listed.
- 33 reports disclose an individual in the fields for Relationship disclosure but fail to specify the individual’s relationship to the behesting official.
- 24 reports disclose the behesting official and Vice Chair in the “Name and Title” and “Role” fields, respectively, for relationship disclosure, but the recipient appears to be an individual, not a nonprofit organization.

Of the 148 local submissions examined, 32, or about 21.6%, included information disclosed in the fields for Relationship disclosure.

Findings and observations

- 29 of the local submissions list the behesting official as having a role within the recipient nonprofit.
 - 18 reports disclose the behesting official as the “Executive Director” of the recipient nonprofit. None of these submissions included information in the “Brief Description” field for Relationship disclosure.
 - Four reports disclose the behesting official as the “Chairman” of the recipient nonprofit.
 - One report lists the behesting official as the “Board Director” of the recipient nonprofit.
 - Six reports disclose the behesting official as a “Participant in the Event”.
- One report discloses an individual who is someone other than the behesting official as the “Chair, Board of Directors.” It is unclear what relationship the behesting official has to the individual.

Good Faith Estimate Exception – State and Local

“Good Faith Estimate” the exception allows behesting officials to disclose an estimated date and payment amount on a Form 803 where that information is not available to the official and they made reasonable efforts to obtain it prior to the reporting deadline. When exercising this exception, the official must: (1) note that the date and/or payment amount provided is an estimate; (2) disclose the basis for the estimate; and file an amended Form 803 disclosing the actual date and/or payment amount filed within 10 days of securing the actual date and/or payment amount.

Findings and observations

Out of the 2,029 state submissions reviewed, 20, or about 3.8%, provided estimated dates or payment amounts pursuant to the “Good Faith Estimate” exception.

Also, only 15 of the 20 reports disclosing estimates filled all the required relevant fields.

- 16 reports had marked checkboxes indicating the filer disclosed an estimate.
- Two reports included an estimated date or payment amount, but the filer did not mark the checkbox.
- 11 reports included only estimated dates.
- Seven reports included only an estimated payment amount.
- One report included an estimated date and payment amount.
- Nine reports provided “Today” as the estimated date with the reason, “[t]o ensure there is not a late filing, I am providing an estimate. Many times, we are not notified when payments are made so we would like to err on the side of caution. *Date of payment based on payor’s commitment.”

None of the 148 local submissions included estimated dates or payment amounts.

Methodology

The data for this report was extracted from approved¹⁶ state Form 803s that were received by the Commission between February 17, 2022, and September 30, 2023. Each Form 803 has one field designated for the payor name and two fields within which a single transaction can be reported. For the purposes of this report, each of these transactions is treated as a separate submission. For example, if a single Form 803 lists Payor A as having made two payments, thereby utilizing the two available fields in the report, each payment is treated as its own submission.

The data was collected from a combination of the Commission’s internal Form 803 logs, printed Form 803 PDFs found in the Form 803 inbox, “Confirmation” PDFs from the Form 803 emails sent messages history, and the Form 803 input data received through the Commission website.

Form 803s from the Commission’s email inbox were printed and filed in physical binders. These physical copies of Form 803 were individually reviewed for input information in the newly created Form 803 fields discussed in the introduction of this report. If input information was found, the associated Form 803 was flagged for further review and to be input into an Excel spreadsheet, which was used for the analysis presented in this report.

¹⁶ Each Form 803 received is reviewed and input, by staff, into a database from which they can be displayed on the agency’s website. These submissions can be searched and viewed using the following link.
<https://www.fppc.ca.gov/transparency/form-700-filed-by-public-officials/behested-payments.html>

The Commission's IT staff also created a raw Excel spreadsheet. This spreadsheet generated aggregated totals information and compared accuracy with the manually created flagged submissions Excel spreadsheet.

To verify the accuracy of the manually inputted data for this report, 25 physical and 25 electronic submissions were randomly selected and compared with the data used.

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Appendix A. Reported Donor Advised Fund Names with Filing Officials and Payments¹⁷

Filing Official and Information Included in DAF Name	Sum of payments:
Newsom, Gavin	\$776,000.00
Bain Capital Relief Fund	\$25,000.00
ECF2 Donor Advised Fund	\$150,000.00
Mendonca Family	\$1,000.00
Waverley Street Foundation Fund	\$350,000.00
Younger Family Fund	\$250,000.00
Gabriel, Jesse	\$325,000.00
The Koret Foundation Donor Advised Fund	\$325,000.00
Bradford, Steven	\$102,928.00
American Beverage Association	\$5,000.00
Anheuser Busch	\$5,000.00
Arc Strategies	\$5,000.00
Cal State University Dominguez Hills	\$5,000.00
California Cable & Telecommunications	\$5,000.00
California Nurses Association Political Action Committee	\$5,000.00
LiUNA	\$5,000.00
Marathon Petroleum Corporation	\$6,900.00
Mervyn M. Dymally Institute	\$5,000.00
SoCal Gas	\$5,000.00
Southern California Edison	\$5,000.00
The Walt Disney Company	\$7,528.00
Torrance Refinery Company	\$5,000.00
Torrance Refining Company	\$5,000.00
Uber Technologies, Inc.	\$5,000.00
US Bank	\$5,000.00
Atkins, Toni	\$25,000.00
Morgan Charitable Foundation	\$25,000.00
Dodd, William	\$8,000.00
Fidelity Charitable Gift Fund	\$8,000.00
Skinner, Nancy	\$5,800.00
Bright Horizons	\$5,800.00
Grand Total	\$1,224,228.00

¹⁷ Payments to the sum of \$18,000 were associated with filings indicating a DAF used, however there was no DAF name included in the relevant field.

Appendix B. Donor Advised Funds Field Utilization Patterns

Included below is a more detailed breakdown of how the three fields related to DAFs were filled.

Official name:	Submissions with DAF Information:	DAF Breakdown:
Senator Steven Bradford	23	<ul style="list-style-type: none"> - One submission had all three fields filled. - 14 submissions contained DAF Name and Donor Advisor information but did not mark the DAF checkbox. - Three submissions included a DAF Name but did not mark the checkbox or contain Donor Advisors' information. - Five submissions contained Donor Advisor information but did not mark the DAF checkbox or contain DAF name information.
Senator Toni Atkins	1	- All three fields contained information.
Senator William Dodd	1	- All three fields contained information.
Assemblymember Jesse Gabriel	2	- In both submissions, all three fields contained information.
Senator Nancy Skinner	1	- The DAF checkbox was marked, and a DAF Name was included, but the Donor Advisor field did not contain information.
Governor Gavin Newsom	5	<ul style="list-style-type: none"> - All three fields contained information in three submissions. - The DAF checkbox was marked, and a DAF Name was included, but the Donor Advisor field did not contain information in two submissions.

Appendix C. Payor is a named party or the subject of a proceeding before my agency

The list of payors, included on Pages 5 and 6 of this report, has been expanded to include the associated filing officials.

- i. Pacific Gas & Electric (PG&E) - \$293,000
 1. Assemblymember Cristina Garcia
 2. Assemblymember Mia Bonta
 3. Assemblymember Robert Rivas
 4. Assemblymember Lori Wilson
 5. Assemblymember Chris Holden
 6. Assemblymember Sabrina Cervantes
 7. Senator Robert Hertzberg
 8. Senator Richard Pan
 9. Senator Anthony Portantino
- ii. Swe Wong - \$5,000
 10. Senator Robert Hertzberg
- iii. San Manuel Band of Mission Indians - \$250,000
 11. Governor Gavin Newsom
- iv. Pechanga Band of Indians - \$250,000
 12. Governor Gavin Newsom
- v. Santa Ynez Band of Mission Indians - \$25,000
 13. Governor Gavin Newsom
- vi. Agua Caliente Band of Cahuilla Indians - \$50,000
 14. Governor Gavin Newsom
- vii. Federated Indians of Graton Rancheria - \$250,000
 15. Governor Gavin Newsom
- viii. Kaiser Permanente - \$250,000
 16. Governor Gavin Newsom

Appendix D. Relationship Disclosures – A Breakdown of Reported Roles with Organizations

The following table lists officials who have reported themselves as holding the below-mentioned roles with a payee organization to which they have reported behested payments.

Official	Organization	Role
Assemblymember Akilah Weber	Equality California	Co-Chair of Honorary Committee
Assemblymember Cristina Garcia	Women in California Leadership	Chair of the Board of Directors (2022)
Assemblymember Jesse Gabriel	California Jewish Legislative Caucus Leadership Foundation	Chair
Assemblymember Lori Wilson	California Legislative Black Caucus Institute	Chair
Assemblymember Luz Rivas	DIY Girls	Founder
	Los Angeles County Delegation	Chair
Assemblymember Matt Haney	Equality California	Co-Chair for SF Equality Awards Event
Assemblymember Mia Bonta	Literacy Lab	Founder and Member of the Board of Directors
Assemblymember Sabrina Cervantes	California Latino Legislative Caucus Foundation	President
Senator Dr. Richard Pan	Asian & Pacific Islander Legislative Caucus Foundation	CEO
	Dr. Richard Pan's 2022 Community Giveaway	Organizer
Senator Maria Elena Durazo	California Latino Legislative Caucus Foundation	President
Senator Nancy Skinner	Women in California Leadership	Chair of the Board of Directors (2023)
Senator Shannon Grove	CityServe	Board of Directors
Senator Steven Bradford	California Legislative Black Caucus Institute	Chair and Vice Chair