

Frequently Asked Questions: Completing Form 803

Reporting Aggregate Payments

An elected officer or PUC member is required to report behested payment(s) within 30 days following the date on which the payment(s) meets or exceeds \$5,000 in the aggregate from a single source in a calendar year. (Section 84224(a).)

Note, that 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. (Section 84224(a).)

Q. An elected state officer requests a local business donate food and decorations for a town hall meeting. The donation is worth \$3,000. Earlier in the year, the same business donated staff time to produce a report on homelessness, with an estimated fair market value of \$2,500. When does the officer file her Form 803 reporting the behested payments by the business now that the single source has reached the \$5,000 reporting threshold? If the local business makes another behested payment the following month for \$25, must the officer file an additional Form 803?

A. The two payments from the local business, combined, trigger the requirement to file Form 803 within 30 days of the behested payment valued at \$3,000 being made. The Form 803 must detail the two payments. Any subsequent behested payments made by the business in the calendar year must also be reported within 30 days of being made on a Form 803. Therefore, the officer must file an additional Form 803 for the \$25 payment. (Section 84224(a).)

Multiple Officers or PUC Members Involved in Making a Behest for Payments

When an elected officer or PUC member makes a behest for payments at the same time as other elected officers or PUC member, each officer must file a behested payment report for qualifying payments. Payments are attributable to, and reportable by, each elected officer or PUC member making a behest for payment to an organization, regardless of the number of elected officers involved.

Q. A Legislative Caucus, a 501(c)(3) organization, plans to mail a fundraising solicitation letter that will be signed by multiple state legislators. If a donor sends \$5,000 to the organization in response to the letter, will each of the legislators have to report a behested payment, or will the contribution be allocated equally between them?

A. Each elected officer must report the full behested payment on a Form 803.

A Fundraising Solicitation from a Charitable Organization that “Features” the Elected officer

A payment is “made at the behest of” an elected officer if 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 elected officer. Where the officer provides express prior consent to be “featured” in the solicitation (through the use of their photograph, signature, singled-out name, or as a part of the listed honorary committee) for the fundraiser, payments in response will meet the definition of a payment made at the behest of the elected officer and are subject to reporting on Form 803. Also, an elected officer or PUC member that appears in a fundraising solicitation in a roster or letterhead listing the governing body of the organization, and the body contains a majority of elected officers or PUC members, the officer or member is “featured” in the solicitation and resulting payments are subject to reporting on Form 803.

Q. An organization displays an elected officer’s name in a fundraising event invitation soliciting donations for a local charity. The elected officer was not aware of the use of his likeness and did not consent or cooperate in the event invitation or any solicitation for donations. The elected officer’s staff also was unaware of the use and did not cooperate or consent. Must the elected officer file a Form 803 for resulting payments?

A. No. “Made at the behest of” requires that the payment be “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 behesting elected officer. Without participation on the part of the elected officer, there is not a payment made at the behest of the elected officer.

Q. An invitation to a charitable fundraiser identifies the elected officer in a list of past donors, each in the same size and font. Does this meet the definition of “making a behest” for payments on the elected officer’s part?

A. No. The elected officer’s name was not set apart or singled-out in the invitation or solicitation. (See Regulation 18215.3(b)(1).)

Q. In a letter from an organization requesting support of a local charity, an elected officer is identified in the organization’s letterhead as a member of its governing body. The governing body is made up of a majority of elected officers (three of the five members are elected officers). Will payments that result from the letter requesting donations be reportable by the elected officer?

A. Yes. The elected officer is “featured” in the solicitation pursuant to Regulation 18215.3(b)(2), because the majority of members are elected officers. Each elected officer will have behested payments that may be reportable on Form 803. (See Regulation 18215.3(b)(2).)

Q. A legislative member is listed as a member of an “honorary committee” on a charity’s fundraising event invitation. The member consented to be listed in this ceremonial role, but does not play any other role in the fundraising. Has the elected officer made a behest for payments?

A. Yes. The member is featured in the solicitation, in that her name is singled-out in this ceremonial role on the fundraising solicitation, and the solicitation is sent with her cooperation, coordination and prior consent, requesting that payments be made to the charity. The member must file Form 803 for any reportable behested payments that result.

Made at the Behest of the Elected Officer or PUC Member

The Form 803 reporting requirement applies to a behested payment that satisfies each of the following:

- (1) The payment is **made at the behest of** an elected officer or member of the Public Utilities Commission.
- (2) The behesting elected officer or member of the Public Utilities Commission 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.
- (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))

“Made at the Behest of an Elected Officer or Member” is defined as a payment 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 officer or member. If a payment is made independent of an officer’s or member’s action it is not a reportable behested payment. (Section 82041.3)

Q. One of the donations to the March of Dimes is a regularly scheduled donation made annually by the payee for the past five years. If the elected officer makes a behest in a letter that is sent to the payee, is this regularly scheduled donation a behested payment reportable by the elected officer?

A. No, to the extent the elected officer can establish that the donor’s payment was not “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 behesting elected officer, the payment does not meet the definition of a reportable behested payment for Form 803. (Section 84224(b), Section 82041.3 and Regulation 18215.3(a).) Absent clear facts, however, it would be prudent for the officer to file a Form 803, due to the officer’s behest to the donor. Where an officer or member has made a behest for payments to an organization, and a third-

party payor received the behest and makes a payment in proximity to the behest, the burden is on the officer or member to establish that the payment is not in response to the behest.

Q. A local elected officer posted a video of his tour of the local animal shelter to inform the public about its conditions and the need for a new shelter. The text of the video is:

“ We need a new animal shelter. Staff want to do more, but can’t. Built in the 60’s, it’s old, run down, and not a good place for animals or the humans who want to adopt. What can we do? “Unleashing the Pawsibilities.org” raises private funds for a new shelter and “Friends of the Pooches.com” works to improve what we have. You can help both. Thank you, Rover and his human Jed.”

Does this constitute a requested, solicited, or suggested payment to a nonprofit that would be subjected to behest reporting requirements? How might the officer determine that payments are made in response to the listed organizations?

A. Yes. The officer may request donor and payment information from the listed nonprofits at the time he makes the behest so that he may timely file his Form 803. The Commission provides a list of required information, and suggested questions to obtain the information from a recipient of the behested payment. The law does not mandate a particular method for the officer or member to obtain the information necessary to file Form 803 in a timely manner.

Reportable Payments on Form 803

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.) Keep in mind that the Form 803 reporting requirement is triggered once the \$5,000 from a single source in the calendar year is met,

Q. An elected officer requests at a council meeting that members of the community donate blood to their local blood bank. Betty Lee donated a pint of blood to the blood bank. Will this result in a reportable behested payment in regards to Betty Lee’s donation?

A. Generally no, unless the blood donation has a fair market value that will meet the \$5,000 in aggregate behested payments from Betty Lee as a single source in the calendar year.

Q. A local elected officer requests at a Rotary Club meeting that the members support domestic violence shelters. Will this result in reportable behested payments?

A. Most likely no, given the general nature of the request. The officer may wish to seek formal advice from the Commission for a particular fact situation, for example if there is only one identifiable recipient of the requested payments in the area.

Declared State of Emergency: Times of Crisis

In times of crisis, such as the COVID-19 pandemic, elected officials are instrumental in raising donations for charitable or government organizations. In doing so, elected officials may be subject to filing Form 803 behested payment reports.

General Calls For Public Help: A elected officer's or PUC member's general call to the public for help or payments to community groups in response to a public emergency that does not identify or suggest an intended recipient is not subject to behested payment reporting. As noted in the Question and Answer above, general calls for donations will not typically rise to the definition of a payment made at the behest of an elected officer or member. However, this may be dependent on the facts in a given situation and the officer or member may wish to request additional advice.

General Calls for Public Help Distinguished from a Behest for Payment

Q. The local mayor of a city with increasing homelessness requests Rotary Club members at a meeting to “step-up” and support homeless shelters. There is only one homeless shelter in the small town. Kirk Sanchez leaves the meeting and immediately donates \$10,000 to the local shelter. Is this a reportable behested payment?

A. Yes. The mayor made a request for payment to support homeless shelters, and there is only one local recipient organization available for this request; and a payment was made in response to the mayor's request.

Best Efforts: In regard to a reportable behested payment, if an official makes best efforts to comply with the Act's behested payment reporting rules but is unable to do so due a declared state of emergency, the Commission will consider this a strong mitigating factor in determining whether an enforcement action against the official is appropriate. Making best efforts includes documented outreach on the part of the officer or member to the recipient or potential recipient of their behest for payments. The Commission provides a linkable “[[request for information](#)]” which officers or members may present to any recipient or potential recipient of their solicitation for payments. It is recommended that these questions be sent *as soon as possible* by the official making the behest or acting in cooperation with a solicitation for payment in order to meet the reporting deadline.

Request for Information from Recipients of Behested Payments: Necessary for Filing Form 803

1. What is the name and address of the entity or person (payor) making the behested payment?
2. What is the name and address of the recipient (payee) of the behested payment?
3. Please provide the following information about the payment:
 - a. Date;
 - b. Amount; and
 - c. Type of Payment;
 - i. monetary donation; or
 - ii. in-kind goods or services with a description of the payment.

4. Please provide a brief description of the payment or event in which the behested payment transpired and the purpose for the behested payment.

Documentation of the officer's or member's efforts in obtaining the information necessary to File Form 803, as well as any follow-up attempts made within 30 days of the date of the behest, will show a "best efforts" attempt to obtain the information. Where it is reasonable during a declared state of emergency, a Form 803 filer may wish to file an estimate of the payments, and later amend the form when the full information is provided by the recipient or the source of the payment.

Payments for a Legislative or Governmental Purpose made by a State, Local or Federal Agency

Where a behested payment is made principally for a legislative or governmental purpose, and the payment is made by a state, local, or federal governmental agency, the reporting requirements do not apply. (Section 84224(b)(4).)

Q. Is an elected officer who writes a letter in support of a charitable organization seeking a governmental grant required to file a behested payment report?

A. No. A behested payment is not reportable if it is made principally for a governmental purpose, and the payment is made by a state, local, or federal governmental agency. (See Webber Advice Letter, No. A-17-206, distinguishing where the grant is for a government agency, but made by a non-governmental entity.)

Is the Payment a "Behested Payment;" is it Income or a Gift?

The Act defines a "behested payment" by distinguishing it from a "contribution" or "a payment where any portion is used for election-related activities. (Section 82004.5(c).) Payments are presumed to be for purposes unrelated to an elected officer's seeking or holding of elective office (not contributions) if the payment is: (1) Made principally for personal purposes, in which case it may be considered a gift under the provisions of Section 82028; (2) Made by a state, local or federal government agency; (3) Made by a 501(c)(3) organization; or (4) Made principally for a charitable purpose; or (5) Made for a legislative or governmental purpose and made by a person other than a state, local or federal agency. (Section 82004.5(c)(1)-(5).)

Some behested payments confer a gift, increase the officer or member's assets or decrease their expenses, as well as perform a charitable, legislative or governmental purpose. The Act's gift provisions, reporting and limitations, as well as the Act's conflict of interest prohibitions are not nullified in these situations.

Q. An elected officer received a meal and free transportation, as part of attending a charity fundraiser to support local causes. The event was sponsored by a local business at the official's behest. Does the officer report the value of the event as a behested payment? How does the officer report the free meal and transportation?

A. The overall cost of putting on the event is reportable as a behested payment on Form 803, with the business as the payee, and the local causes as the payor. The value of the meal and transportation is reported separately as gifts on the officer's Statement of Economic Interest, and are subject to the Act's gift limit.

Q. An officer requests donations be made to a charitable organization and her spouse is a salaried employee in charge of fundraising efforts for the organization. May this result in reportable behested payments that also implicate the Act's conflict of interest provisions in Section 87100 *et seq.*?

A. Yes. The officer may be required to file a Form 803 for reportable behested payments that result from the request. And the officer may have a prohibited conflict of interest in decisions involving the payor or the recipient organization that employs her spouse. The officer should seek formal advice from the Commission in this situation, before participating in a decision implicating any of the parties.