

## Revised Gifts to an Agency Regulation Background

The Political Reform Act (Act) places restrictions and reporting requirements on the receipt of gifts by public officials. All University employees are public officials for purposes of the Act.

Definition of Gift: The Act defines a “gift” as: “[A]ny payment that confers a personal benefit on the recipient to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.” (Govt. Code § 82028(a).)

The Fair Political Practices Commission (Commission), the agency that oversees the implementation of the Act, has provided no comprehensive guidance on what types of gifts do, or do not, confer a personal benefit. It has advised that gifts of travel, including accommodations, food<sup>1</sup> and lodging, confer a personal benefit. The Commission has stated that “the vast majority of donations, gifts and grants that a college or university receives do not fall under the gifts to agency regulation, because there is no personal benefit to a particular official involved. Examples of these donations include alumni contributions, funds to endow a chair, and general unrestricted research funds, and donations to fund an onsite conference or lecture series.” (Staff Memorandum to Commission, Gifts to an Agency – Repeal and Readoption of Regulation 18944.2, May 8, 2008.)

Gift Limits: The Act prohibits designated officials –those individuals who hold positions designated in the University’s Conflict of Interest Code – from receiving gifts totaling more than \$390 in a calendar year from a single source if the official is required by the University’s Code to report the source on his or her Statement of Economic Interests, Form 700. (Gov. Code § 89503.)

Gift Reporting Requirements: The Act requires designated officials to report gifts received from a single source within a calendar year that total \$50 or more. (Gov. Code §§ 87207(a)(1) and 87302(b).)

Disqualification Rules: The Act prohibits all University employees from participating in any way in a University decision involving the donor of gifts to the employee totaling \$390 or more, if it is reasonably foreseeable that the decision will have a material financial effect on the donor.

Gifts to an Agency: In circumstances where a gift used by an employee benefits the employee’s agency, the gift may be a gift to the agency and not to the employee who used the gift, and the employee has no reporting obligations, if certain requirements are met. The Commission has

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<sup>1</sup> Payments for food are a unique subgroup of gifts because of the obvious benefit to the recipient. Consequently, the Commission has advised that payments for food will be considered gifts to a governmental agency under Regulation 18944.2 only in the limited circumstances when such payments are made in connection with a payment for travel expenses that meet the criteria set forth in Regulation 18944.2. (Girard Advice Letter, No. A-98-170.)

determined that a gift is a gift to an agency, and not to an employee, when the following criteria are satisfied:

- The agency head or designee must determine and control the agency's use of the gift.
- The gift must be used for official agency business.
- The donor may identify a purpose for the gift but may not designate by name, title, class or otherwise, an official who may use the payment.
- The agency official who determines who will use the gift may not select himself or herself as the user of the gift.
- The agency must report the gift to the Commission and post the information on its website.

[\(California Code of Regulations, Title 2, § 18944.2.\)](#)

Reporting of Gifts to an Agency: [California Form 801](#) is to be used to report gifts made to the University when the gift provides a personal benefit to a University employee. Many, if not all, such gifts will be gifts of travel, including transportation, accommodations and food. The Form 801 states that a gift for travel may not be used by an official who holds a position listed in Government Code Section 87200. This prohibition applies to Members of the Board of Regents, the President, the Chief Investment Officer, Vice President – Investments, and the Associate Chief Investment Officer.