

1 Adopt 2 Cal. Code Reg. Section 18944.2 to read:

2 **§ 18944.2. Gifts to an Agency.**

3 (a) Applicability. This regulation sets forth circumstances under which a
4 payment made to a state or local government agency, that is controlled by the agency and
5 used for official agency business, is not considered a reportable or limited gift to an
6 individual public official, although the official receives a personal benefit from the
7 payment.

8 (b) Definitions.

9 (1) “Payment” means a payment as defined in Section 82044 and includes a
10 monetary payment to an agency, a loan, gift, or other transfer, and the payment for, or
11 provision of, goods or services to an agency.

12 (2) “Agency head” means an individual in whom the ultimate legal authority of
13 an agency is vested, or who has been delegated authority to make determinations by the
14 agency for purposes of this regulation.

15 (c) Gift to an Agency. A payment, that is otherwise a gift to a public official, as
16 defined in Section 82028, shall be considered a gift to the public official’s agency and not
17 a gift to the public official if all of the following requirements are met:

18 (1) Agency Controls Use of Payment. The agency head, or his or her designee,
19 determines and controls the agency’s use of the payment. The donor may identify a
20 purpose for the payment, but the donor may not designate by name, title, class, or
21 otherwise, an official who may use the payment. If the payment will provide a personal
22 benefit to an official, the agency head, or his or her designee, shall select the individual

1 who will use it. The agency official who determines and controls the agency's use of the
2 payment may not select himself or herself as the individual who will use the payment.

3 (2) Official Agency Business. The payment must be used for official agency
4 business.

5 (3) Agency Reports the Gift. Within 30 days after use of the payment, the
6 agency reports the payment on a form prescribed by the Commission that includes the
7 following information:

8 (A) A description of the payment, the date received, the intended purpose, and
9 the amount of the payment (or the actual or estimated value of the goods or services
10 provided).

11 (B) The name and address of the donor. If the donor is not an individual, the
12 report shall also describe the business activity, or the nature and interests of the entity. If
13 the donor has raised funds from other persons for the specific purpose of making the
14 payment to the agency, the report shall contain the names of and amounts given by these
15 persons.

16 (C) The agency's use of the payment, and the name, title, and department of the
17 agency official for whom the payment was used. The report shall include the date(s) and
18 place(s) of travel, and a breakdown of the total expenses for transportation, lodging,
19 meals and other related expenses.

20 (D) The form is signed by the agency head, or his or her designee, and
21 maintained by the agency as a public record subject to inspection and copying under
22 Section 81008(a).

1 (E) A state agency shall provide the completed form to the Commission (or in the
2 case of the Commission to the office of the Attorney General), within 30 days after use of
3 the payment, by mail, personal delivery, electronic mail or facsimile. If the state agency
4 maintains a website, the state agency shall also post a copy of the form or the information
5 in the form on its website in a prominent fashion within 30 days after use of the payment.
6 If the state agency does not maintain a website, the Commission shall post a copy of the
7 form or the information in the form on its website.

8 (F) A local agency shall provide the completed form to the filing officer who
9 receives the agency employees' statements of economic interests, within 30 days after
10 use of the payment, by mail, personal delivery, electronic mail or facsimile. The filing
11 officer shall post a copy of the form or the information in the form on its website, or if it
12 does not maintain a website, shall provide a copy of the form to the Commission which
13 shall post the information on its website.

14 (G) The individual in the agency who has official custody of these forms is the
15 filing officer for the forms, keeps a log of the forms under both the name of the agency
16 and official receiving the payment, and maintains the forms for a period of not less than
17 four years.

18 (d) Limitations on Application of this Regulation. The exception provided in
19 subdivision (c) does not apply to the following payments:

20 (1) A payment for travel, including transportation, lodging, and meals, for a state
21 or local elected officer, as defined in Section 82020, or an official specified in Section
22 87200.

1 (2) A payment for travel to the extent that it exceeds the agency's reimbursement
2 rates for travel, meals, and lodging, and other actual and necessary expenses, or if the
3 agency has no standard policy or practice concerning reimbursement rates, the State per
4 diem rates as set forth in applicable sections of the State Administrative Manual and
5 Department of Personnel Administration regulations, or the Internal Revenue Service
6 rates for reimbursement of these expenses as set forth in the U.S. General Service
7 Administration's website under "Per Diem Rates" and Internal Revenue Service
8 Publications 463 and 1542, or their successors.

9 (3) A payment for travel that the agency head, or his or her designee, has not
10 preapproved in writing in advance of the date of the trip.

11 (4) Passes or tickets, as described in Regulation 18944.1, which shall be
12 governed by that regulation.

13 (e) Public Colleges and University Research Projects. Notwithstanding this
14 regulation, a donation to a California public college or university for a specific research
15 project that is received consistent with the requirements of Regulation 18702.4(c) or a
16 meal received in the course of the college's or university's official fundraising activity,
17 which qualifies under federal and state law for a deduction as a charitable contribution for
18 educational purposes, will be deemed a gift to the college or university.

19 (f) Payments from the Federal Government. Notwithstanding this regulation, a
20 grant, reimbursement, funding, or other payment received by a state or local government
21 agency from a federal government agency for education, training, or other inter-agency
22 programs, will not be considered a gift to the public official who receives a personal

1 benefit from the payment.

2 Comments:

3 1. Acceptance of a pass or discount from a transportation company by a public
4 officer, other than a Public Utilities Commissioner, may result in forfeiture of the
5 official's office pursuant to Article XII, Section 7 of the California Constitution.

6 NOTE: Authority cited: Section 83112, Government Code.

7 Reference: Sections 82028, 82030, 82044, 87100, 87103, 87207, 87302 and 89501
8 through 89506, Government Code.

**CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF MEETING, Public Session**

May 19, 2008

Call To Order: Chairman Ross Johnson called the meeting to order at 10:05 a.m., at 428 J Street, Eighth Floor, Sacramento, California. Chairman Johnson, Commissioners Timothy A. Hodson, Gene Huguenin, and Bob Leidigh were present. Commissioner Ray Remy attended the meeting by teleconference.

1. **Public Comment.** This portion of the meeting is reserved for comment on items not on the agenda. Under the Bagley-Keene Open Meeting Act, the Commission cannot act on items raised during public comment, but may respond briefly to statements made or questions posed, request clarification, or refer the item to staff.

There was none.

2. **Approval of the April 10, 2008, Commission meeting minutes.**

Moved by Commissioner Huguenin and seconded by Commissioner Leidigh to approve the minutes as submitted.

AYES: Commissioners Remy, Huguenin, Leidigh, Hodson, and Chairman Johnson.
The motion passed 5-0.

3. **In the Matter of Bing Bush FPPC No. 08/023.** Staff: Political Reform Consultant Jeanette Turvill. Bing Bush, consultant to the Metropolitan Transit System, failed to timely file an annual statement of economic interests in violation of Section 87300 of the Government Code (1 count).

Moved by Commissioner Huguenin and seconded by Commissioner Leidigh to approve a Stipulation, Decision and Order finding a violation of one count and a \$200 monetary penalty.

AYES: Commissioners Remy, Huguenin, Leidigh, Hodson, and Chairman Johnson.
The motion passed 5-0.

4. **In the Matter of Dave Noerr, FPPC No. 08/020.** Staff: Political Reform Consultant Wayne Imberi. Dave Noerr, Taft City Council member, failed to timely file his 2006 annual statement of economic interests in violation of Government Code Section 87203 (1 count).

Moved by Commissioner Huguenin and seconded by Commissioner Leidigh to approve a Stipulation, Decision and Order finding a violation of one count and a \$200 monetary penalty.

AYES: Commissioners Remy, Huguenin, Leidigh, Hodson, and Chairman Johnson.
The motion passed 5-0.

- 5. Adoption of Amendments to Regulations 18421.7 and 18401 - Reporting an Expenditure of Campaign Funds for a Gift, a Meal, or Travel.** Staff: Commission Counsel Brian G. Lau and General Counsel Scott Hallabrin. Staff proposed extending the reporting and recordkeeping requirements of Regulations 18421.7 and 18401 to in-state travel. Additionally, staff proposed revisions addressing the reporting of gifts when a recipient has not been determined prior to the end of the reporting period and increasing the disclosure threshold for recipients of gifts.

Chairman Johnson asked if anyone in the audience had comments. There were none.

Moved by Commissioner Leidigh and seconded by Commissioner Hodson to adopt the amendments to Regulations 18421.7 and 18401 with the correction of Regulation 18421.7 at the end of page 1, line 21 changing the words "subdivision (a)(2)" to "subdivision (a)(1)."

AYES: Commissioners Huguenin, Leidigh, Hodson, and Chairman Johnson.

NOES: Commissioner Remy.

The motion passed 4-1.

- 6. Repeal/Readoption of Regulation 18944.2 – Gifts to an Agency.** Staff: Senior Commission Counsel Hyla P. Wagner and General Counsel Scott Hallabrin. Regulation 18944.2 provides an exception to the gift limits and SEI reporting requirements applicable to officials for certain payments made to public agencies. Staff proposed changes to Regulation 18944.2 to improve the disclosure of gifts to state and local agencies and add restrictions on payments for travel accepted by an agency under the exception. Because the proposal included numerous revisions to the regulation, staff recommended the repeal and readoption of Regulation 18944.2.

Chairman Johnson asked if anyone in the audience had comments. There were none.

Moved by Commissioner Huguenin and seconded by Commissioner Hodson to adopt the regulation with several proposed clarifying amendments and by adding the following at the end of subdivision (d)(1): " , on an individual specified in Section 87200." Staff was directed to make modifications to the Gift to Agency Form and Instructions (CA Form 801) for further review at the June Commission meeting.

AYES: Commissioners Remy, Huguenin, Leidigh, Hodson, and Chairman Johnson.

The motion passed 5-0.

- 7. Adoption of Proposed Amendments to Regulations 18360 and 18361 - Complaint Procedure/Delegation of Executive Director's Authority.** Staff: General Counsel Scott Hallabrin. Staff proposed the adoption of amendments to Regulation 18360, which governs the filing and processing of complaints alleging violations of the Political Reform Act, and Regulation 18361, expanding the Executive Director's delegation authority to duties under Regulation 18360.

Chairman Johnson asked if anyone in the audience had comments. Chuck Bell, with Bell McAndrews & Hiltachk; Lance Olson, with Olson Hagel & Fishburn; and Deborah Caplan, with Olson Hagel & Fishburn, commented on this item.

Chairman Johnson put this item over for continuation after the Commission's executive session. Staff was directed to craft language to Regulation 18360 during the break for review by the Commission when they reconvened to open session.

8. Legislative Report. Staff: Government Affairs Director Whitney Barazoto. As submitted.

Chairman Johnson announced that Ms. Barazoto passed the State Bar exam and congratulated her.

9. Litigation Report. Staff: General Counsel Scott Hallabrin. As submitted.

10. Executive Director's Report. Staff: Executive Director Michael B. Salerno. As submitted.

11. Chairman's Report. Chairman Ross Johnson.

Chairman Johnson reported that as of last Friday, the FPPC website was listing independent expenditures made on behalf of candidates in open legislative races and is updated daily. He thanked the staff, Carla Wardlow, Linda Cassady, Ashley Clarke, Aaron Howell, Trish Mayer, Roman Porter and Susie Swatt, for their hard work.

He also announced the FPPC report on Independent Expenditures would be available Tuesday, May 20, 2008, and thanked the staff, Ashley Clarke, Jennifer Clark, Roman Porter and Susie Swatt, for their contributions in completing the report.

Chairman Johnson recessed open session at 12:20 p.m. He advised the Commission would immediately convene in executive session and after adjournment would reconvene in open session with the continuation of Agenda Item 7.

The Commission reconvened in open session at 1:10 p.m. Chairman Johnson advised no reportable action was taken in executive session, and announced they would continue with the discussion of Agenda Item 7.

Scott Hallabrin, General Counsel, and Kourtney Vaccaro, Acting Chief of Enforcement, presented the recommended changes to Regulation 18360 to the Commission.

Moved by Commissioner Huguenin and seconded by Commissioner Hodson to adopt Regulation 18360 as proposed by staff, with the following amendments: (1) page 1, at the end of line 17, add: "or based on information and belief supported by documentary or other evidence included or described in the complaint;" (2) page 4, line 16, add: "Provide

the subject of the sworn complaint with a copy of the complaint within three business days of receipt” ...; and (3) delete the sentence on page 4, line 18, starting with “If the sworn complaint ...” and insert the same sentence at the end of the same paragraph (subdivision (f)(2)).

AYES: Commissioners Remy, Huguenin, Leidigh, Hodson, and Chairman Johnson.
The motion passed 5-0.

Moved by Commissioner Leidigh and seconded by Commissioner Hodson to adopt Regulation 18361 as proposed by staff with the proviso that when the *Morango* case is decided by the California Supreme Court, staff will prepare a legal memo informing the Commissioners whether it needs to be amended.

AYES: Commissioners Remy, Huguenin, Leidigh, Hodson, and Chairman Johnson.
The motion passed 5-0.

There being no further business, Chairman Johnson adjourned the meeting at 1:20 p.m.

Dated: May 28, 2008

Respectfully submitted,

Beth Manwaring
Commission Assistant

Approved: _____
Ross Johnson
Chairman

Fair Political Practices Commission
MEMORANDUM

To: Chairman Johnson and Commissioners Hodson, Huguenin, Leidigh, and Remy

From: Hyla P. Wagner, Senior Commission Counsel
Scott Hallabrin, General Counsel

Subject: Gifts to an Agency – Repeal and Readoption of Regulation 18944.2

Date: May 8, 2008

Proposed Commission Action: Approve the repeal and readoption of Regulation 18944.2 concerning donations to state and local agencies that result in a possible gift to a public official in the agency.

Proposed Regulation: The Commission is examining Regulation 18944.2 and updating it to improve disclosure of gifts to public agencies and make certain other changes. At the March 13th meeting, the Commission considered the prenotice draft of Regulation 18944.2. This memo discusses the issues raised at the March meeting and changes that have been made to the regulation. (Attachment 1 is the proposed regulation. Language added since the prenotice version is shown in bold.)

Agency Head. The definition of “agency head” has been changed to “an individual in whom the ultimate legal authority of an agency is vested, or who has been delegated authority to make determinations by the agency for purposes of this regulation.” Michael Martello and others representing cities commented that the definition of “agency head” contained in the prenotice version¹ was confusing for boards and for some cities with council/manager form of government. Under the new definition, for the many agencies that are headed by a single individual, such as a Secretary or Director, that individual is the agency head. For boards, commissions, or legislative bodies, the agency head for purposes of this regulation would be an individual who has been delegated the authority to act under the regulation (i.e., the presiding member, the executive director, the general counsel, the chief of staff of the Rules Committee, or the city manager). The definition has enough flexibility to accommodate many different types of agencies (including state executive branch agencies, boards, commissions and city councils) but still specifies a high-level official who can take action required by this gift to agency regulation.

Internet Disclosure of Gifts to Agencies/New Form. The proposed regulation substantially revises and updates the reporting of gifts to agencies. These payments will now be reported on a new one-page form and information about the payments will be posted on the internet. As of this writing, we have received only favorable comments on the increased reporting for gifts to agencies. Some details of the reporting provisions, in paragraph (c)(3) of

¹ The prenotice version stated: “‘Agency head’ means the secretary, director, or single individual who is the official in charge of an agency. For a multi-member body that governs an agency, ‘agency head’ means the presiding member of the body.”

the regulation, have been revised since the March meeting, to coordinate with Technical Assistance's creation of the form. The draft form and instructions are attached here for the Commission and public's information. (Attachment 3.) The form will go through the usual 30-day comment period, and will be presented for the Commission to approve at an upcoming meeting. If adopted, the revised gift to agency regulation will take effect on July 1, 2008, to provide time for approval of the new form.

Prohibition on Agencies Accepting Travel Payments for Elected Officials Under Regulation 18944.2. The regulation proposes three new limitations on third party payments for travel: the prohibition on accepting travel for elected officials under 18944.2, the limitation to agency reimbursement rates, and the preapproval requirement. These limitations operate independently in the regulation and can be considered on their own merits; they are not necessarily a package.

In response to discussion at the March hearing, we examine the rationale for adding the prohibition on gift to agency travel for elected officials and for limiting the prohibition to elected officials. First, travel payments for elected officials seem more like a gift to the elected official as an individual, which one would expect to see reported on their statement of economic interests, than like a typical "gift to an agency." The press and public expect to see gifts to elected officials reported on their Statements of Economic Interests, rather than not publicly reported, and not limited, as previously was the case under the gift to the agency exception. Regulation 18944.2 was meant to apply to gifts to the agency operations and staff generally, not gifts to elected officials.

Second, the possibility of abuse is much greater with private sources paying for travel for elected officials. While there are some legitimate privately sponsored trips for educational or governmental purposes, many privately sponsored trips for elected officials appear to the public to be junkets. If a trip is necessary or offers important first-hand opportunities for elected officials to view a manufacturing plant or port facilities in another country, arguably the government should pay for it as official travel.

Indeed, there is no section of the Act that exempts travel paid for by a private business for an elected official from the normal gift limits and reporting requirements. Arguably, this regulation should not create an exemption where none exists in the statute. In contrast, the Act does provide that travel for a public official paid for by a foreign government or a nonprofit entity in connection with an issue of public policy is reportable on the official's SEI, but not limited. (Section 89506.) The Act also provides that elected officials may use campaign funds for travel related to a political, legislative or governmental purpose. (Section 89513.) Elected officials thus have an alternate source of funding legitimate governmental travel if their agency cannot pay for it.

In addition, it is difficult, if not impossible, for third party payments for elected official's travel to satisfy the "agency control" requirement. Like the existing regulation, the proposed language requires that the agency determine and control the use of the payment; it provides that "donor may identify a purpose for the payment, but the donor may not designate by name, title, class, or otherwise, an official who may use the payment." Under the existing regulation, it has

proved practically impossible, if not fictitious, for donors to provide a gift of travel to the agency, ostensibly “not designating” the individuals who will use the gift; the five city council members usually end up taking the trip.

At the March meeting, some asked why the prohibition was limited to elected officials and whether it should apply more broadly. The rationale for limiting the application of the prohibition to elected officials is that it is the area where the most potential for abuse exists. Private interests are less interested in gaining favor with staff-level government employees than with elected officials. In addition, applying the prohibition to elected officers as defined in Section 82020 is specific and clear. Staff again examined whether the prohibition should apply more broadly, such as to those officials listed in Section 87200 of the Act.² The problem using Section 87200 is the list is somewhat arbitrary as to which agencies it includes and which it does not. For example, at the state level, it includes the Coastal Commission, but not the Integrated Waste Management Board. At the local level, it includes high-ranking city and county officials but not members of boards or commissions running agencies such as water districts, joint powers authorities or school districts.

Agency’s Reimbursement Rates. The anti-lavish provision in paragraph (d)(2) caps a third party payment for an agency’s travel to the amount of the agency’s own reimbursement rates. This provision has been modified from the prenotice version to specifically refer to the state per diem rates.

Preapproval for Travel. At the March meeting, concerns were raised about whether adding a preauthorization requirement for travel accepted under the gift to agency exception would prove a practical impediment to travel. The regulation was redrafted to keep this requirement simple, stating that the agency head or his or her designee needs to preapprove the travel in advance of the trip. It is desirable to have the agency head or designee, such as a department head, reviewing the details and purpose of travel, deciding who to send, and considering whether the payment from the private source is appropriate for the agency to accept. The regulation anticipates that if the agency had approved travel for a particular employee who became unavailable and needed to send a different employee, the agency could do so.

Third Party Paying Airlines and Hotels Directly. At the March 13 meeting, another issue discussed was whether the regulation should permit third parties paying for agency travel to pay airlines and hotels directly, or whether the regulation should require the third party to pay the funds only to the agency and have the agency arrange and pay for the travel. This is a practical, operational question which we have researched further. Starting with the FPPC’s administrative staff, we asked how a small state agency like the Commission could effectively handle a third party payment for agency employee travel to attend training. If a third party paid the airline and hotel directly, the agency would prepare a gift to agency report but would have no

² Section 87200 includes: “elected state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and to candidates for any of these offices at any election.”

other administrative requirements. If the FPPC received funds for travel from the third party directly, either before the trip or as a reimbursement, the agency would have to prepare a budget revision with the Department of Finance and set up a reimbursement account to receive these funds. From the reimbursement account there are several different ways to pay a vendor – through the claims schedule process where the state controller pays the vendor with a revolving fund check and then the agency makes a replenishment claim to the state controller. There is more of an accounting paper trail if the travel payments are reimbursed through the agency, but there is significant added administrative burden.

We spoke with a Department of Personnel Administration travel specialist who stated that third party payments for state agency travel could either be made directly or through the reimbursement process. Under federal gift to agency statutes, many agencies have written policies on accepting third party payments for travel. For example, under the U.S. Department of Justice procedure there are two ways reimbursement may be made. The first is payment in-kind. In this instance, the entity provides the employee with an airline ticket, pays the hotel bill, and no money ever exchanges hands. The procedures memo states that this is the preferred method. The second way is through reimbursement. The employee uses his or her government issued credit card to charge the expenses. Upon return, the employee completes a travel voucher and gets reimbursement through the office. The entity then reimburses the office, not the employee. The money is then deposited back into the office's travel budget. Similarly, the proposed regulation contemplates that a third party could either pay the agency or an airline or hotel directly, but not an agency employee.

Calls to the Technical Assistance Division show numerous instances where it would not be practical or feasible for the travel payment to be made directly to the agency. For example, Technical Assistance recently got a call from a state agency about staff travel to a training conference. A systems corporation is putting on an information technology training conference to which the agency has paid to send their entire IT staff in previous years. Due to the agency's budget problems, the corporation has offered to provide hotel rooms to state agency staff attending the conference, as a gift to the agency. The conference is a large event and the corporation had prepaid a block of rooms at the hotel where the conference is being held to reserve the rooms and get a discount. In this instance, it would not be feasible for the agency to receive a payment from the third party and then pay for the hotel rooms. Other calls where payment to the agency is not feasible have involved a business using some of its frequent flyer miles to provide air travel for a government employee.

Travel arrangements often need to be approved and made expeditiously. The additional steps required for an agency to receive and process a check from an outside party and make the travel arrangements independently are cumbersome and may simply not happen in time. It has been staff's advice for some years under the gift to agency regulation that a third party may pay the hotel or airline for travel directly. Technical Assistance raised this issue for clarity last December to attempt to codify in the regulation the advice it had been providing callers. By expressly referring to the definition of payment and stating that a payment includes "the payment for, or provision of, goods or services to an agency" the regulation would codify this advice, permitting third parties to pay airlines and hotels directly. Staff supports codification of this advice because of the practical considerations discussed. It does not seem necessary to prohibit a

direct payment to an airline or hotel at this time, particularly when the regulation is being amended to enhance reporting of gifts to agency payments, and add other safeguards such as capping travel payments to the agency's own reimbursement rates and requiring preapproval.

College and University Research Provision. This provision in paragraph (e) is substantively unchanged from the original version of Regulation 18944.2. The provision clarifies that a donation to a California public college or university received under the academic decisions provision of Regulation 18702.4(c) will be a gift to the college or university. As to academic decisions, Regulation 18702.4(c) provides that neither disclosure nor disqualification is required in connection with teaching decisions or decisions by a teacher or researcher to personally pursue a course of academic study or research, to apply for funds to finance such a project, and to choose the manner and methodology to conduct the study or research. As discussed at the interested persons meeting, the vast majority of donations, gifts and grants that a college or university receives do not fall under the gift 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.

Payments from the Federal Government. Paragraph (f) was added to clarify that payments received by a state or local agency from the federal government for education, training, or other inter-agency programs, will not be considered a gift to the public official who receives a personal benefit from the payment. Under this provision, if the federal Environmental Protection Agency pays for an employee of Cal EPA to attend a joint training, Cal EPA does not need to process this as a gift to the agency.

League of Cities Issue. The League of California Cities general counsel asked in March whether the changes to the regulation would affect the reporting of local officials' travel to League of Cities meetings. The Statement of Economic Interests instructions contain an example involving a city council member who is a board member of the League of California Cities. The League reimburses its board members for travel, lodging and meals associated with board meetings. If the city council member provides equal or greater consideration for the travel and lodging when he or she participates in the meeting, the reimbursements are reported as income. (See *Benninghoven* Advice Letters, No. I-98-177 and I-93-298.) Under paragraph (c), proposed Regulation 18944.2 only applies to "[a] payment that is otherwise a gift to a public official, as defined in Section 82028...." If the League's reimbursements qualify as income, rather than a gift to local officials, the gift to agency regulation does not apply.

Outreach. Staff is contacting groups that might be affected by changes to this regulation, including the Assn. of California Water Agencies, the California State Assn. of Counties, the California Special Districts Assn., California Redevelopment Assn., and the League of California Cities, and will report on these groups' comments at the May meeting.

Staff Recommendation: Staff recommends that the Commission approve the repeal and readoption of Regulation 18944.2.

Attachments: 1 – Proposed Regulation 18944.2
2 – Repeal Regulation 18944.2
3 – Gift to Agency Form and Instructions (draft)

**GIFTS TO AN AGENCY
FPPC FORM 801—REGULATION 18944.2
QUESTIONS AND ANSWERS**

The Fair Political Practices Commission has substantially revised Regulation 18944.2, which establishes the criteria under which a payment that would otherwise be considered a gift to a public official may be considered a gift to the official's agency instead. A copy of the regulation is available on the FPPC website (www.fppc.ca.gov). The regulation also requires agencies to report these gifts on FPPC Form 801. The following questions and answers may assist you in complying with the regulation:

1. The mayor has been invited to visit the city's sister city in Mexico. Travel and accommodations would be provided by the sister city. May the mayor's city accept the invitation as a gift to the city?

A. No. Agencies may not accept gifts of travel for elected officials and those state and local officials serving in a position listed in Gov. Code Section 87200.¹ The mayor's city may pay for the trip, or the mayor may accept the travel payments from the sister city and disclose them on his or her Statement of Economic Interests (Form 700) as gifts. Gov. Code Section 89506 describes various travel payments from government, educational, or nonprofit groups that are not subject to limits (although in most circumstances they must be reported as gifts).

2. A state employee has been designated by her agency to attend a conference paid by a third party. The cost of the lodging will exceed the standard state reimbursement rate. Will the employee receive a gift if she uses the accommodations?

A. If the agency follows established procedures allowing a higher rate for lodging (as if the agency were paying for the lodging), no gift to the official will result. If the procedures are not followed, the employee will receive a reportable gift in the amount that exceeds the standard state reimbursement rate. For example, if the state rate for lodging is \$84 and the actual value received is \$158, the employee will receive a gift of \$74, which may be reportable on the employee's Form 700 and subject to limits.

3. Is there a required form for ensuring that pre-approval was obtained in advance of a trip?

A. No. The agency may use its existing forms and documentation. Agencies may contact the FPPC for guidance.

4. Is there a regulation or statute that defines "official agency business"?

A. No. The requirement that a gift to an agency be used for "official agency business" is fairly self explanatory. The payment must be used for a legitimate governmental purpose

¹ Officials listed in Gov. Code Section 87200 include elected state officers, judges and commissioners of courts, Public Utilities Commission members, Energy Commission members, Fair Political Practices Commission members, Coastal Commission members, planning commissioners, members of boards of supervisors, district attorneys, county counsels, county treasurers, chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers of cities, members of city councils, and other public officials who manage public investments.

and must assist the agency in carrying out its mission, programs or goals. The payment may not be for an activity unrelated to the official responsibilities of the agency.

5. May a donor who wishes to make a gift to an agency stipulate that the gift is to be used by a particular official?

A. No. The donor may identify a purpose for the payment, but may not designate by name, title, class, or otherwise, an official who may use the payment.

6. If the donor of an agency gift makes payments directly to the vendors instead of to the agency (e.g., the donor reserves a hotel room or air fare on its own credit card), must the agency obtain the specific amounts paid for lodging, transportation, and meals?

A. Yes. The agency must provide a breakdown of the expenses for transportation, lodging, meals and other related expenses on the Form 801.

7. At a meeting between several agency officials and business leaders, coffee and pastries are provided by one of the business representatives. Must the agency complete the Form 801?

A. No. Generally, the receipt of food and beverages is considered a gift to the official who consumes them. If the value of the food and beverages is \$50 or more, the official may be required to report the gift on his or her Form 700. If an agency believes the provision of food or beverages should be considered a gift to the agency and not to an official (for example food provided at a public event sponsored by the agency), the agency should contact the FPPC for advice.

8. A local government agency allows various elected officials from other government agencies to park at its airport for free. May this benefit be donated as a gift to the elected official's agency and must the agency disclose the payments on Form 801?

A. Airport parking is considered a travel payment, which cannot be provided as an agency gift if used by elected officials or those covered under Gov. Code Section 87200. Under Gov. Code Section 89506, however, an official may accept free parking from another government agency while on official business. The value of the parking privileges is reportable on the official's Form 700, though not subject to limit if the requirements of Section 89506 are met. The value of parking privileges used for personal purposes may not exceed \$390 in a calendar year. If the parking privileges are provided as an agency gift for use by public officials who are not elected or covered under Section 87200, the agency receiving the gift must disclose the payments on Form 801.

9. If a local agency does not have a website, when must it send the completed Form 801 to the FPPC?

A. Within 30 days of the use of the payment.

GIFTS TO AN AGENCY—PART 2
FPPC FORM 801—REGULATION 18944.2
QUESTIONS AND ANSWERS

Since posting the June 2008 Questions and Answers sheet about Regulation 18944.2 and the requirement for state and local agencies to disclose gifts on Form 801, the FPPC has received many additional questions, which are discussed below.

But first, some tips:

Many callers have asked about payments that are not covered by Regulation 18944.2. Before attempting to determine whether a particular third party payment or donated item can be accepted as a gift to the agency and whether it must be reported on Form 801, it is important to note the following two key elements:

- 1) The payment (or item) must provide a **personal benefit** to a public official that would otherwise result in a gift to the official; and
- 2) In order for an agency to convert the payment into an agency gift rather than a gift to the official, the payment may only be used for **official agency business**. (There are additional requirements that must be met, as specified in the regulation.)

It may be helpful to review the following questions when analyzing a particular third party payment:

- Will the payment be used for "official agency business"? If the purpose of the payment is solely personal in nature, the agency cannot accept the gift. The official who receives the benefit of the gift may have to report it on a statement of economic interests (Form 700) and it may be subject to the gift limit.¹ Carefully review Regulation 18944.2 to be certain that all of its requirements can be met.
- Is the payment a gift at all? If a third party payment is strictly intended to benefit the agency and will result in no personal benefit to a public official, Regulation 18944.2 does not apply and Form 801 is not required. In addition, even if an official will benefit from a payment, another exception may apply. Review the FPPC's regulations related to gifts, particularly the exceptions to the definition of "gift". (See FPPC Regulations 18940 – 18946.) For example, there are exceptions for certain types of informational materials provided to public officials as well as for in-state travel in connection with making a speech. Gifts can be returned, unused, or reimbursed within 30 days. If a third party payment would not be considered a gift to a public official because it meets an exception to the definition of "gift" in the Political Reform Act or FPPC regulations, it also is not required to be disclosed as an agency gift on Form 801.
- Is the payment covered by a different statute or regulation? There are separate rules for the receipt by an agency of tickets and passes. (Regulation 18944.1.) In addition, Gov. Code Section 89506 allows public officials to receive certain payments for travel that are not subject to the gift limit, although they are reportable on the Form 700. Elected officials who solicit payments from outside sources for legislative, governmental, or charitable purposes may have to disclose them as "behested (or cosponsored) payments" under Gov. Code Section 82015(b)(2)(B)(iii).

¹ Gifts totaling \$50 or more received during a calendar year from a single source are reportable on Form 700. Gifts received from a single reportable source are limited to \$390 in a calendar year through the end of 2008. The gift limit for 2009-2010 will be \$420. Officials specified in Gov. Code Section 87200 must disclose gifts from all sources unless an exception applies. For employees designated in an agency's conflict-of-interest code, disclosure and application of the gift limit are determined by the employee's disclosure category.

Questions and Answers

1. *Vendors in our jurisdiction donate items to the agency (e.g., food, gift baskets, gift cards, vacations) specifically for the personal benefit of the agency's employees in connection with holiday or employee recognition events. How are these items reported?*

A. These payments are solely personal in nature and cannot be converted to agency gifts because they cannot be used for "official agency business." If an official receives such a gift with a value of \$50 or more as an award or as part of an employee raffle, the gift may be reportable on the official's Form 700 and subject to the gift limit. The vendor would be considered the source of the gift and the agency is acting as an intermediary for the gift.

2. *A government agency has a policy that requires each employee who receives a gift from a vendor or other entity in connection with work activities to turn the gift over to the agency's finance department. Employees may later win the gifts in an agency-sponsored raffle, or receive them as part of an employee recognition or holiday event. Are these gifts reported on Form 801?*

A. No. Again, the gifts are personal in nature and cannot be used for "official agency business." If an employee receives a gift from a third party and turns it over to the agency within 30 days, the employee is no longer the recipient of a gift. However, when the agency distributes the items as part of an employee raffle or an award, the employees who receive them may have received gifts from the agency and may be required to disclose the gifts on their Form 700. Consult with the FPPC to determine what rules apply in making this determination.

3. *Businesses in our city often donate goods and services for city-sponsored community events, such as our Fourth of July parade, and during emergencies. Is the city required to report these payments on Form 801?*

A. No. Because public officials are not receiving a personal benefit from these payments, they are not considered gifts that would trigger the Form 801. If elected officials solicit payments for the events, they may be required to disclose them as "behested (or cosponsored) payments."

4. *What if city employees who attend the parade or are required to work during an emergency consume the donated food or beverages?*

A. Generally, these would not be considered gifts to the officials and would not require reporting on a Form 801 or Form 700. However, the answer to questions of this nature will depend on the facts surrounding the event, so requesting advice from the FPPC is recommended.

5. *If an agency accepts a gift and discloses it on Form 801, is the official who benefits from the gift required to disclose it on his or her Form 700?*

A. No. If all of the requirements of Regulation 18944.2 are met and the agency accepts the gift, the agency will complete Form 801 and the official is not required to disclose the payment. If the requirements of Regulation 18944.2 are not met and the official receives a gift, the agency is not required to complete Form 801. The official may be required to disclose the gift on his or her Form 700.

6. *A local government agency arranges tours of its facilities for officials of other government agencies. The tours usually involve travel, lodging, and meals. May an agency accept these payments as an agency gift and disclose them on Form 801?*

A. There are several factors to consider. First, agencies may not accept travel payments for elected officials and officials specified in Gov. Code Section 87200 as an agency gift under Regulation 18944.2. In addition, the donor agency may not designate specific officials who will attend

the tours. However, Gov. Code Section 89506 allows public officials to accept travel payments from other government agencies and certain educational and nonprofit organizations if the travel is related to an issue of public policy. A public official who receives or benefits from these payments may be required to report them on Form 700, but they are not subject to the gift limit. For non-elected and officials not covered under Section 87200, if the requirements of Regulation 18944.2 are met, the agency can accept the travel and lodging and disclose the payments on Form 801. The meals are gifts to the officials who consume them and may not be accepted as an agency gift.

7. *If the requirements of Regulation 18944.2 are met but the official who benefits from the gift is not designated in the agency's conflict-of-interest code to file Form 700, must the agency report the gift on Form 801?*

A. Yes.

8. *If the requirements of Regulation 18944.2 are not met and the agency cannot accept a gift, are officials also prohibited from receiving the gift?*

A. No, but the official who receives the gift may be required to disclose it on his or her Form 700 and it may be subject to the gift limit.

9. *If the official who benefits from an agency gift holds positions with more than one government agency, which agency should complete and post the Form 801.*

A. Form 801 is an **agency** report. The agency that received the gift must complete and post the Form 801. It does not matter where the official works.

10. *The regulation requires that the Form 801 be retained for four years. How long must the agency maintain the Form 801 on its website?*

A. Four years.

Recent Advice Letters

The Commission has also issued the following advice letters since Regulation 18944.2 was amended. Copies of advice letters are available through Westlaw and Lexis-Nexis, or you can request copies from the Commission.

Gault, No. A-08-127
Tanner, No. I-08-130
Smith, No. I-08-132
Hentschke, No. I-08-166

Gift to Agency Report**A Public Document**

GIFT TO AGENCY REPORT

1. Agency Name		Date Stamp	California Form 801 For Official Use Only
Division, Department, or Region (if applicable)			
Street Address			
Area Code/Phone Number	E-mail	<input type="checkbox"/> Amendment (explain in comment section) Date of Original Filing: _____ (month, day, year)	
Agency Contact (name and title)			

2. Donor Name and Address

☐ **Individual** _____
Last Name First Name

☐ **Other** _____
Name

Address _____ City _____ State _____ Zip Code _____

If "Other" is marked, describe the entity's business activity (if business) or its nature and interests.

If applicable, identify the name of each source and the amount(s) solicited or received by the donor for this gift:

_____	\$ _____	_____	\$ _____
Name	Amount	Name	Amount

3. Payment Information

Date and Amount of Payment (other than travel) _____
(month, day, year) \$ _____
(Round to whole dollars)

Travel Payment Information (Round to whole dollars) **Location of Travel** _____

_____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Date(s) of Travel	Transportation Expenses	Lodging Expenses	Meal Expenses	Other Expenses	Total Expenses

Provide a specific description of the nature and use of the payment for official agency business:**Identify the officials for whom the payment was used:**

_____	_____	_____	_____
Last Name	First Name	Title	Department/Division
_____	_____	_____	_____
Last Name	First Name	Title	Department/Division

4. Verification*I have determined that it is in the interests of the agency to accept this gift and use it for the official agency business described above.*

_____	_____	_____	_____
Signature of Agency Head or Designee	Print Name	Title	(month, day, year)

Comment: (Use this space or an attachment for any additional information.)

Gift to Agency Report Instructions

A Public Document

California
Form **801**

This form is for use by all state and local government agencies to disclose payments made to the agency when the payments provide a personal benefit to an official of the agency. Examples may include travel, meals or other benefits. Under certain circumstances, these payments will not result in a gift to the official, but will be considered a gift to the agency. The payments must be used for official agency business and must meet other requirements that are set out in FPPC Regulation 18944.2, which is available on the FPPC website www.fppc.ca.gov.

When to File

This form must be filed within 30 days of the use of the payment. Reports may be faxed, mailed, personally delivered or e-mailed.

Where to File

State Agencies: File this form with the Fair Political Practices Commission ("FPPC"), 428 J Street, Suite 620, Sacramento, CA 95814. Fax: 916-322-0886
E-mail: Form 801@fppc.ca.gov

Local Agencies: File this form with the official that maintains the agency's statements of economic interests (Form 700).

Website Posting: Each agency that maintains a website must also post the form or the information contained on the form on its website within 30 days of the use of the payment. Local agencies that do not maintain a website must forward the form to the FPPC for posting on its website.

Part 1. Agency Identification

List the agency's name and address and the name of an agency contact. Mark the amendment box if changing any information on a previously filed form and include the date of the original filing.

Part 2. Donor Information

Disclose the name and address of the donor. If the donor is not an individual, identify the business activity or nature and interests of the entity.

If the donor received payments from other sources that were used in connection with the activity, disclose the name and payment information for each source.

Part 3. Payment Information

Report the date and amount of each payment. For travel payments, also disclose the location(s), and a breakdown of the expenses. Provide a specific description of the use of the payment and the intended purpose. List each agency official for whom the payment was used.

Example: A business entity paid for an agency employee to travel to attend an informational seminar on solar energy projects in Washington D.C. The description should read: "Travel to attend an EPA co-sponsored solar energy seminar held in Washington, D.C."

Part 4. Verification

The agency head or his or her designee must sign the form.

General Information

Gifts to agencies must meet the following requirements:

- The agency head or designee must determine and control the agency's use of the payment.
- The payment 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 payment may not select himself or herself.

Travel payments must also meet these requirements:

- A payment for travel may not be used by a state or local elected officer or by the state, county, and city officials who hold positions listed in Government Code Section 87200.
- A payment for travel may not exceed the agency's own reimbursement rates for travel, or the State per diem or IRS reimbursement rates if the agency has no policy.
- The agency head or designee must preapprove travel paid for by a third party before travel commences.

Travel payments made by a federal government agency in connection with education, training, or other inter-agency programs are not reportable.

For further information on filing this report or for general information, contact the FPPC.



FAIR POLITICAL PRACTICES COMMISSION

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Gifts and Honoraria

Gifts, honoraria, and loans received by public officials and employees are restricted in several ways:

\$10 Lobbyist Gift Limit: Elected state officials (including members of the legislature), and legislative employees may not accept a gift or gifts totaling more than \$10 in a calendar month from any individual who is registered as a lobbyist under state law. The \$10 limit also applies to gifts received by officials and employees of state agencies if their agency is listed on the registration statement of the lobbyist's employer or firm. (Gov. Code Section 86203.)

\$420 Gift Limit (Effective January 1, 2009 - December 31, 2010): State and local officials and employees are prohibited from receiving a gift or gifts totaling more than \$420 in a calendar year from certain sources. For elected state officials and many others, the prohibition is applicable to gifts from any source, although there are exceptions (for example, gifts from family members). For state and local officials and employees who file statements of economic interests (Form 700) under an agency's conflict of interest code, the gift limit is applicable only to individuals and entities that would have to be disclosed on the Form 700. This gift limit is adjusted every odd-numbered year. (Note: Judges are not subject to the Act's gift prohibitions, but are covered by the Code of Civil Procedure.) (Gov. Code Section 89503.)

Honoraria: An honorarium is a payment received for making a speech, publishing an article, or attending any public or private conference, convention, meeting, social event, meal or similar gathering. State and local elected officers and candidates for those offices and all officials holding positions listed in Government Code Section 87200 are prohibited from receiving honoraria payments. Likewise, an employee designated under a state or local government agency's conflict of interest code is prohibited from receiving honoraria payments from any source of gifts or income the employee is required to report on his or her statement of economic interests. Some limited exceptions apply, such as income earned from a bona fide business or profession. (Section 89502.)

Exceptions for Travel: Certain payments for travel are excluded from the gift limits and honoraria prohibition.

Loan Restrictions: Public officials who are required to file statements of economic interest or who are exempt employees may not receive any personal loan aggregating more than \$250 from an official, employee, or consultant of, or from anyone who contracts with, their governmental agencies. In addition, elected officials may not receive any personal loan aggregating more than \$500 from a single lender unless certain terms of the loan are specified in writing. Under certain circumstances, a personal loan that is not being repaid or is being repaid below certain amounts may become a gift to the official who received it. (Gov. Code Sections 87460-87462.)


All of these issues are discussed in detail in Fact Sheets available on this website in the [Library](#) section.

(revised 2-11-09)

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Limitations and Restrictions on Gifts, Honoraria, Travel and Loans

A Fact Sheet for

- Local Elected Officers and Candidates for Local Elective Offices
- Local Officials Specified in Government Code Section 87200
- Judicial Candidates
- Designated Employees of Local Government Agencies

**California Fair Political
Practices Commission**

Toll-free advice line: 1 (866) ASK-FPPC
Website: www.fppc.ca.gov

January 2009

Introduction

The Political Reform Act¹ (the "Act") imposes limits on gifts, prohibits honoraria payments, and imposes limits and other restrictions on the receipt of travel payments received by:

- Local elected officers and other local officials specified in Government Code Section 87200,² excluding judges;³
- Designated employees of local government agencies (i.e., individuals required to file statements of economic interests under a local agency's conflict of interest code); and
- Candidates⁴ for any of these offices or positions and judicial candidates. (Sections 89502 and 89503.)

The Act also imposes limits and other restrictions on personal loans received by certain local officials.

This fact sheet summarizes the major provisions of the Act concerning gifts, honoraria, travel, and loans. You should not, however, rely on the fact sheet alone to ensure compliance with the Act. If you have any questions, contact the Fair Political Practices Commission at (866) ASK-FPPC or

visit our Website at www.fppc.ca.gov. Commission advice letters from 1986 to present are available on Lexis-Nexis at "CA FAIR" under California Library or on Westlaw at "CA-ETH."

Ethics Training

Most local agency officials are required to complete an ethics training course. Contact your agency for course information. Also see the FPPC Website for a link to local agency ethics training.

¹ Government Code Sections 81000-91014. Commission regulations appear at 2 California Code of Regulations Section 18000, *et seq.*

² Local officials specified in Government Code Section 87200 include: members of boards of supervisors and city councils, mayors, city/county planning commissioners, city/county chief administrative officers, city/county treasurers, district attorneys, county counsels, city managers, city attorneys, court commissioners and public officials who manage public investments.

³ The gift limits and honoraria ban in the Political Reform Act do not apply to a person in his or her capacity as judge. However, candidates for judicial offices are subject to the restrictions contained in the Political Reform Act. (Sections 89502 and 89503.)

⁴ For purposes of the gift limit and honoraria prohibition, you become a "candidate" when you file a statement of organization (Form 410) as a controlled committee for the purpose of seeking elective office, a candidate intention statement (Form 501), or a declaration of candidacy, whichever occurs first. If you are an unsuccessful candidate, you will no longer be subject to the gift limit and honoraria prohibition when you have terminated your campaign filing obligations, or after certification of election results, whichever is earlier. (Sections 89502(b) and 89503(b).)

Gifts

Limitations

If you are a local elected officer, a candidate for local elective office, a local official specified in Government Code Section 87200, or a judicial candidate, you may not accept gifts from any single source totaling more than \$420 in a calendar year. (Section 89503.)⁵

If you are an employee of a local government agency who is designated in the agency's conflict of interest code, you may not accept gifts from any single source totaling more than \$420 in a calendar year if you are required to report receiving income or gifts from that source on your statement of economic interests. (Section 89503(c).)

What is a "Gift"?

A "gift" is any payment or other benefit provided to you that confers a personal benefit for which you do not provide goods or services of equal or greater value. A gift 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. (Section 82028.) (See FPPC Regulation 18946.1 for valuation guidelines.)

Except as discussed below, you have "received" or "accepted" a gift when you know that you have actual possession of the gift or when you take any action exercising direction or control over the gift, including discarding the gift or turning it over to another person. (Regulation 18941.)

Exceptions

The Act and Commission regulations provide exceptions for certain types of gifts. (Section 82028; Regulations 18940-18946.5.) **The following are not subject to any gift limit and are not required to be disclosed on a statement of economic interests (Form 700):**

1. Gifts which you return (unused) to the donor, or for which you reimburse the donor, within 30 days of receipt. (Section 82028(b)(2); Regulation 18943.)
2. Gifts which you donate (unused) to a non-profit, tax-exempt (501(c)(3)) organization or a government agency within 30 days of receipt without claiming a deduction for tax purposes. (Section 82028(b)(2); Regulation 18943.)
3. Gifts from your spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, or first cousin or the spouse of any such person, unless he or she is acting as an agent or intermediary for another person who is the true source of the gift. (Section 82028(b)(3); Regulation 18942(a)(3).)
4. Gifts of hospitality including food, drink, or occasional lodging that you receive in an individual's home when the individual or a member of his or her family is present. (Regulation 18942(a)(7).)
5. Gifts approximately equal in value exchanged between you and another

⁵ The gift limit is adjusted biennially to reflect changes in the Consumer Price Index. For 2009-2010, the gift limit is \$420. (Section 89503; Regulation 18940.2.) Gifts aggregating \$50 or more must be disclosed and gifts aggregating \$420 or more may subject you to disqualification with respect to the source. (Section 87103(e).) Designated employees should consult the "disclosure category" portion of their agency's conflict of interest code to determine if a particular source of income or gifts must be disclosed. Some conflict of interest codes require very limited disclosure of income and gifts. If your agency's conflict of interest code requires you to disclose income and gifts only from specified sources, gifts from sources which are not required to be disclosed are not subject to the \$420 gift limit.

individual on holidays, birthdays, or similar occasions to the extent that the gifts exchanged are not substantially disproportionate in value. (Regulation 18942(a)(8).)

6. Informational material provided to assist you in the performance of your official duties, including books, reports, pamphlets, calendars, periodicals, videotapes, or free or discounted admission to informational conferences or seminars.

"Informational material" may also include scale models, pictorial representations, maps, and other such items, provided that if the item's fair market value is more than \$420, you have the burden of demonstrating that the item is informational. In addition, on-site demonstrations, tours, or inspections designed specifically for public officials are considered informational material, but this exception does not apply to meals or to transportation to the site unless the transportation is not commercially available. (Section 82028(b)(1); Regulations 18942(a)(1) and 18942.1.)

7. A devise or inheritance. (Section 82028(b)(5); Regulation 18942(a)(5).)

8. Campaign contributions, including rebates or discounts received in connection with campaign activities. (Section 82028(b)(4); Regulation 18942(a)(4).) However, campaign contributions must be reported in accordance with the campaign disclosure provisions of the Act and may be subject to other limitations imposed by the Act.

9. Personalized plaques and trophies with an individual value of less than \$250. (Section 82028(b)(6); Regulation 18942(a)(6).)

10. A single ticket or other admission privilege, for your own use, to attend a fundraiser for a campaign committee or candidate, or to a fundraiser for an

organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. The ticket may only be received from the organization or committee holding the fundraiser. The nondeductible value of a ticket to a 501(c)(3) fundraiser may not exceed the gift limit. (Regulation 18946.4.)

11. Free admission, refreshments, and similar non-cash nominal benefits provided to you at an event at which you give a speech, participate in a panel or seminar, or provide a similar service. Transportation within California, and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or similar service, are also not considered gifts. (Regulation 18942(a)(11).)

12. Passes or tickets that provide admission or access to facilities, goods, services, or other benefits (either on a one-time or repeated basis) that you do not use and do not give to another person. (Regulation 18946.1.)

13. Gifts provided directly to members of your family unless: a) you receive a direct benefit from the gift (other than a benefit of nominal value); b) you use the gift (and your use is more than nominal or incidental); or c) you exercise discretion or control over the use or disposition of the gift. Factors used to determine the recipient of a gift include the relationship between the donor and family member, nature of the gift, and the manner in which the gift was offered. (Regulation 18944.) (Note: In most cases, the full amount of a gift made to you and your spouse must be counted for purposes of disclosure and the gift limits. However, see the discussion below regarding wedding gifts.)

14. Gifts provided to your government agency. This may include passes or tickets to facilities, goods or services, travel payments, and other benefits. However, this exception does not apply to elected officials

and officials specified in Government Code Section 87200 (see page 1) with regard to travel payments. In addition, certain other conditions must be met before a gift received by an official through his or her agency would not be considered a gift to the official. An agency must disclose specified payments on its Website. (Regulations 18944.1-18944.2.) Contact the FPPC for detailed information.

15. Generally, payments made by a third party to co-sponsor an event that is principally legislative, governmental, or charitable in nature. Payments made by a single source totaling \$5,000 or more in a calendar year for this type of event must be reported if the payments are made at the behest of (at the request of, or in consultation or coordination with) an elected official. The report must be made to the elected official's agency, and then forwarded to the office that maintains the elected official's campaign disclosure statements. (Section 82015(b)(2)(B)(iii).)

16. Leave credits (e.g., sick leave or vacation credits) received under a bona fide catastrophic or emergency leave program established by your employer and available to all employees in the same job classification or position. Donations of cash are gifts and are subject to limits and disclosure. (Regulation 18942(a)(9).)

17. Food, shelter, or similar assistance received in connection with a disaster relief program. The benefits must be received from a governmental agency or charity (501(c)(3)) and must be available to the general public. (Regulation 18942(a)(10).)

Reportable Gifts Not Subject to Limits

The following exceptions are also applicable to gifts, but you may be required to report these items on a statement of economic interests (Form 700) and they can subject you to disqualification:⁶

1. Certain payments for transportation, lodging, and subsistence are not subject to gift limits but may be reportable. Travel payments are discussed below. See Regulation 18946.6 to determine the value of gifts of air transportation.

2. Wedding gifts are not subject to the gift limit but are reportable. For purposes of valuing wedding gifts, one-half of the value of each gift is attributable to each spouse, unless the gift is intended exclusively for the use and enjoyment of one spouse, in which case the entire value of the gift is attributable to that individual. (Regulation 18946.3.)

3. A prize or award received in a bona fide competition not related to your official status is not subject to the gift limit, but must be reported as income. Therefore, it is reportable if the value of the prize or award is \$500 or more. (Section 87207; Regulation 18946.5.)

⁶ Designated employees should consult the "disclosure category" portion of their agency's conflict of interest code to determine if a particular source of income or gifts must be disclosed.

Honoraria

The Prohibition

If you are a local elected officer, a candidate for local elective office, a local official specified in Government Code Section 87200, or a judicial candidate, you may not accept honoraria payments. (Section 89502.)

If you are an employee of a local government agency who is designated in the agency's conflict of interest code, you may not accept honoraria payments from any source if you are required to report receiving income or gifts from that source on your statement of economic interests. (Section 89502(c).)

What is an "Honorarium"?

An "honorarium" is any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. (Section 89501.)

A "speech given" means a public address, oration, or other form of oral presentation, including participation in a panel, seminar, or debate. (Regulation 18931.1.)

An "article published" means a nonfictional written work: 1) that is produced in connection with any activity other than the practice of a bona fide business, trade, or profession; and 2) that is published in a periodical, journal, newspaper, newsletter, magazine, pamphlet, or similar publication. (Regulation 18931.2.)

"Attendance" means being present during, making an appearance at, or serving as host or master of ceremonies for any public or private conference, convention, meeting, social event, meal, or like gathering. (Regulation 18931.3.)

Exceptions

The Act and Commission regulations provide certain exceptions to the prohibition on honoraria. (Section 89501; Regulations 18930-18933.) **The payments described below are not prohibited and are not required to be disclosed on a statement of economic interests (Form 700):**

1. An honorarium that you return (unused) to the donor or the donor's agent or intermediary within 30 days. (Section 89501(b); Regulation 18933.)

2. An honorarium that is delivered to your government agency within 30 days for donation to the agency's general fund or equivalent account for which you do not claim a deduction for income tax purposes. (Section 89501(b); Regulation 18933.)

3. A payment that is not delivered to you but is made directly to a bona fide charitable, educational, civic, religious, or similar tax-exempt, non-profit organization. However:

- You may not make the donation a condition for your speech, article, or attendance;
- You may not claim the donation as a deduction for income tax purposes;
- You may not be identified to the non-profit organization in connection with the donation; and
- The donation may have no reasonably foreseeable financial effect on you or on any member of your immediate family. (Regulation 18932.5.)

4. A payment received from your spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person. However, a payment which would

be considered an honorarium is prohibited if one of these persons is acting as an agent or intermediary for someone else. (Regulation 18932.4(b).)

5. Items 6, 8, 9, and 11 under "Exceptions to the Definition of 'Gift'" discussed earlier in this fact sheet. (Regulation 18932.4.)

Exceptions That May Be Reportable as Income or Gifts

The following payments are not considered "honoraria" but may be reportable and can subject you to disqualification:⁷

1. Payments received for a comedic, dramatic, musical, or other similar artistic performance, and payments received for the publication of books, plays, or screenplays. (Regulations 18931.1-18931.2.) However, such payments are reportable income.

2. Income earned for your personal services if the services are provided in connection with a bona fide business, trade, or profession – such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting – and the services are customarily provided in connection with the business, trade, or profession.

This exception does not apply if the sole or predominant activity of the business, trade, or profession is making speeches. In addition, you must meet certain criteria to establish that you are practicing a bona fide business, trade, or profession (such as maintenance of business records, licensure, proof of teaching position) before a payment received for personal services that may meet

the definition of honorarium would be considered earned income and not an honorarium. (Section 89501(b); Regulations 18932-18932.3.) Earned income is required to be reported. Contact the FPPC for detailed information.

3. Free admission, food, beverages, and other non-cash nominal benefits provided to you at any public or private conference, convention, meeting, social event, meal, or similar gathering, whether or not you provide any substantive service at the event. (Regulation 18932.4(f).) Although these items are not considered honoraria, they may be reportable gifts and subject to the gift limit.

4. Certain payments for transportation, lodging, and subsistence are not considered honoraria but may be reportable and subject to the gift limit. (Sections 89501(c) and 89506.) Travel payments are discussed below.

⁷ Designated employees should consult the "disclosure category" portion of their agency's conflict of interest code to determine if a particular source of income or gifts must be disclosed.

Travel Payments

The Act and Commission regulations provide exceptions to the gift limit and honoraria prohibition for certain types of travel payments. (Section 89506; Regulations 18950-18950.4.)

The term "travel payment" includes payments, advances, or reimbursements for travel, including actual transportation and related lodging and subsistence. (Section 89506(a).)

Exceptions

The following types of travel payments are not subject to any limit and are not reportable on a statement of economic interests (Form 700):

1. Transportation within California provided to you directly in connection with an event at which you give a speech, participate in a panel or seminar, or provide a similar service. (Regulation 18950.3.)
2. Free admission, refreshments, and similar non-cash nominal benefits provided to you during the entire event (inside or outside California) at which you give a speech, participate in a panel or seminar, or provide a similar service. (Regulation 18950.3.)
3. Necessary lodging and subsistence (inside or outside California), including meals and beverages, provided to you directly in connection with an event at which you give a speech, participate in a panel or seminar, or provide a similar service. However, in most cases, the exclusion for meals and beverages is limited to those provided on the day of the activity. (Regulation 18950.3.)
4. Travel payments provided to you by your government agency or by any state, local, or federal government agency which would be considered income and not a gift (i.e., payments for which you provide equal or greater consideration). (Section 89506(d)(2); Regulation 18950.1(d).)

5. Reimbursements for travel expenses provided to you by a bona fide non-profit, tax-exempt (501(c)(3)) entity for which you provide equal or greater consideration. (Section 82030(b)(2).)

6. Travel payments provided to you directly in connection with campaign activities. However, these payments must be reported in accordance with the campaign disclosure provisions of the Act. (Regulations 18950.1(c); 18950.4.)

7. Any payment for travel that is excluded from the definition of "gift" as described earlier in this fact sheet.

Reportable Payments Not Subject to Limit

The following travel payments are not subject to the gift limit but may be reportable on a statement of economic interests (Form 700):

1. Travel that is reasonably necessary in connection with a bona fide business, trade, or profession, and which satisfies the criteria for federal income tax deductions for business expenses specified in Sections 162 and 274 of the Internal Revenue Code. (Section 89506(d)(3); Regulation 18950.1(e).) For reporting purposes, these travel payments would be considered part of the salary, wages, and other income received from the business entity and would be reported on Schedule A-2 or C of Form 700.
2. Travel within the United States that is reasonably related to a legislative or governmental purpose – or to an issue of state, national, or international public policy – in connection with an event at which you give a speech, participate in a panel or seminar or provide a similar service. Lodging and subsistence expenses in this case are limited to the day immediately preceding, the day of, and the day immediately following the speech,

panel, or other similar service. (Section 89506(a)(1); Regulation 18950.1(a)(2).)

Note that this exception is different than travel payments described earlier. Under the circumstances described in this paragraph, transportation outside California but within the United States is not subject to the gift limit but is reportable and can subject a public official to disqualification. On the other hand, transportation inside California in connection with a speech is not limited, reportable, or disqualifying. (Regulation 18950.3.)

In addition, the lodging and subsistence payments described in this paragraph can be provided both the day before and the day after a speech without being subject to the gift limit. However, lodging and subsistence payments are reportable unless they are received directly in connection with the speech.

3. Travel **not** in connection with giving a speech, participating in a panel, or seminar or providing a similar service but which is reasonably related to a legislative or governmental purpose – or to an issue of state, national, or international public policy – and which is provided by:

- A government, governmental agency, foreign government, or government authority;
- A bona fide public or private educational institution defined in Section 203 of the California Revenue and Taxation Code;
- A non-profit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; or
- A foreign organization that substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

(Section 89506(a)(2); Regulation 18950.1(b).)

Loans

Personal loans received by elected and appointed officials are subject to limits and other restrictions and, in some circumstances, a personal loan that is not being repaid or is being repaid below certain amounts may become a gift to the official who received it.

Limitations on Loans from Agency Officials, Consultants, and Contractors

If you are an elected official or an official specified in Section 87200 (see footnote 2 on page 1), you may not receive a personal loan that exceeds \$250 at any given time from an officer, employee, member, or consultant of your government agency or an agency over which your agency exercises direction and control. (Section 87460(a) and (b).)

In addition, you may not receive a personal loan that exceeds \$250 at any given time from any individual or entity that has a contract with your government agency or an agency over which your agency exercises direction and control. This limitation does not apply to loans received from banks or other financial institutions, and retail or credit card transactions, made in the normal course of business on terms available to members of the public without regard to official status. (Section 87460(c) and (d).)

Loan Terms Applicable Only to Elected Officials

In addition to the limitations above, if you are an elected official, you may not receive a personal loan of \$500 or more unless the loan is made in writing and clearly states the terms of the loan. The loan document must include the names of the parties to the loan agreement, as well as the date, amount, interest rate, and term of the loan. The loan

document must also include the date or dates when payments are due and the amount of the payments. (Section 87461.)

The following loans are not subject to these limits and documentation requirements:

1. Loans received by an elected officer's or candidate's campaign committee.
2. Loans received from your spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person unless he or she is acting as an agent or intermediary for another person not covered by this exemption.
3. Loans made, or offered in writing, prior to January 1, 1998. (Sections 87460 and 87461.)

Loans as Gifts

Under the following circumstances, a personal loan received by **any** public official (elected and other officials specified in Section 87200, as well as any other local government official or employee required to file statements of economic interests) may become a gift and subject to gift reporting and limitations:

1. If the loan has a defined date or dates for repayment and has not been repaid, the loan will become a gift when the statute of limitations for filing an action for default has expired.
2. If the loan has no defined date or dates for repayment, the loan will become a gift if it remains unpaid when one year has elapsed from the later of:
 - The date the loan was made;
 - The date the last payment of \$100 or more was made on the loan; or

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- The date upon which the official has made payments aggregating to less than \$250 during the previous 12 months. (Section 87462.)

The following loans will not become gifts to an official:

1. A loan made to an elected officer's or candidate's campaign committee. This loan would, however, be a campaign contribution. Consult the FPPC campaign manual for local candidates (Manual 2) for more details.
2. A loan described above on which the creditor has taken reasonable action to collect the balance due.
3. A loan described above on which the creditor, based on reasonable business considerations, has not undertaken collection action. (However, except in a criminal action, the creditor has the burden of proving that the decision not to take collection action was based on reasonable business considerations.)
4. A loan made to an official who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.
5. A loan that would not be considered a gift as outlined earlier in this fact sheet (e.g., loans from certain family members). (Section 87462.)

**Fair Political Practices Commission
MEMORANDUM**

To: Chairman Johnson and Commissioners Hodson, Huguenin, Leidigh, and Remy

From: Hyla P. Wagner, Senior Commission Counsel
Scott Hallabrin, General Counsel

Subject: Gifts to an Agency – Repeal and Readoption of Regulation 18944.2

Date: May 8, 2008

Proposed Commission Action: Approve the repeal and readoption of Regulation 18944.2 concerning donations to state and local agencies that result in a possible gift to a public official in the agency.

Proposed Regulation: The Commission is examining Regulation 18944.2 and updating it to improve disclosure of gifts to public agencies and make certain other changes. At the March 13th meeting, the Commission considered the prenotice draft of Regulation 18944.2. This memo discusses the issues raised at the March meeting and changes that have been made to the regulation. (Attachment 1 is the proposed regulation. Language added since the prenotice version is shown in bold.)

Agency Head. The definition of “agency head” has been changed to “an individual in whom the ultimate legal authority of an agency is vested, or who has been delegated authority to make determinations by the agency for purposes of this regulation.” Michael Martello and others representing cities commented that the definition of “agency head” contained in the prenotice version¹ was confusing for boards and for some cities with council/manager form of government. Under the new definition, for the many agencies that are headed by a single individual, such as a Secretary or Director, that individual is the agency head. For boards, commissions, or legislative bodies, the agency head for purposes of this regulation would be an individual who has been delegated the authority to act under the regulation (i.e., the presiding member, the executive director, the general counsel, the chief of staff of the Rules Committee, or the city manager). The definition has enough flexibility to accommodate many different types of agencies (including state executive branch agencies, boards, commissions and city councils) but still specifies a high-level official who can take action required by this gift to agency regulation.

Internet Disclosure of Gifts to Agencies/New Form. The proposed regulation substantially revises and updates the reporting of gifts to agencies. These payments will now be reported on a new one-page form and information about the payments will be posted on the internet. As of this writing, we have received only favorable comments on the increased reporting for gifts to agencies. Some details of the reporting provisions, in paragraph (c)(3) of

¹ The prenotice version stated: “‘Agency head’ means the secretary, director, or single individual who is the official in charge of an agency. For a multi-member body that governs an agency, ‘agency head’ means the presiding member of the body.”

the regulation, have been revised since the March meeting, to coordinate with Technical Assistance's creation of the form. The draft form and instructions are attached here for the Commission and public's information. (Attachment 3.) The form will go through the usual 30-day comment period, and will be presented for the Commission to approve at an upcoming meeting. If adopted, the revised gift to agency regulation will take effect on July 1, 2008, to provide time for approval of the new form.

Prohibition on Agencies Accepting Travel Payments for Elected Officials Under Regulation 18944.2. The regulation proposes three new limitations on third party payments for travel: the prohibition on accepting travel for elected officials under 18944.2, the limitation to agency reimbursement rates, and the preapproval requirement. These limitations operate independently in the regulation and can be considered on their own merits; they are not necessarily a package.

In response to discussion at the March hearing, we examine the rationale for adding the prohibition on gift to agency travel for elected officials and for limiting the prohibition to elected officials. First, travel payments for elected officials seem more like a gift to the elected official as an individual, which one would expect to see reported on their statement of economic interests, than like a typical "gift to an agency." The press and public expect to see gifts to elected officials reported on their Statements of Economic Interests, rather than not publicly reported, and not limited, as previously was the case under the gift to the agency exception. Regulation 18944.2 was meant to apply to gifts to the agency operations and staff generally, not gifts to elected officials.

Second, the possibility of abuse is much greater with private sources paying for travel for elected officials. While there are some legitimate privately sponsored trips for educational or governmental purposes, many privately sponsored trips for elected officials appear to the public to be junkets. If a trip is necessary or offers important first-hand opportunities for elected officials to view a manufacturing plant or port facilities in another country, arguably the government should pay for it as official travel.

Indeed, there is no section of the Act that exempts travel paid for by a private business for an elected official from the normal gift limits and reporting requirements. Arguably, this regulation should not create an exemption where none exists in the statute. In contrast, the Act does provide that travel for a public official paid for by a foreign government or a nonprofit entity in connection with an issue of public policy is reportable on the official's SEI, but not limited. (Section 89506.) The Act also provides that elected officials may use campaign funds for travel related to a political, legislative or governmental purpose. (Section 89513.) Elected officials thus have an alternate source of funding legitimate governmental travel if their agency cannot pay for it.

In addition, it is difficult, if not impossible, for third party payments for elected official's travel to satisfy the "agency control" requirement. Like the existing regulation, the proposed language requires that the agency determine and control the use of the payment; it provides that "donor may identify a purpose for the payment, but the donor may not designate by name, title, class, or otherwise, an official who may use the payment." Under the existing regulation, it has

proved practically impossible, if not fictitious, for donors to provide a gift of travel to the agency, ostensibly “not designating” the individuals who will use the gift; the five city council members usually end up taking the trip.

At the March meeting, some asked why the prohibition was limited to elected officials and whether it should apply more broadly. The rationale for limiting the application of the prohibition to elected officials is that it is the area where the most potential for abuse exists. Private interests are less interested in gaining favor with staff-level government employees than with elected officials. In addition, applying the prohibition to elected officers as defined in Section 82020 is specific and clear. Staff again examined whether the prohibition should apply more broadly, such as to those officials listed in Section 87200 of the Act.² The problem using Section 87200 is the list is somewhat arbitrary as to which agencies it includes and which it does not. For example, at the state level, it includes the Coastal Commission, but not the Integrated Waste Management Board. At the local level, it includes high-ranking city and county officials but not members of boards or commissions running agencies such as water districts, joint powers authorities or school districts.

Agency’s Reimbursement Rates. The anti-lavish provision in paragraph (d)(2) caps a third party payment for an agency’s travel to the amount of the agency’s own reimbursement rates. This provision has been modified from the prenotice version to specifically refer to the state per diem rates.

Preapproval for Travel. At the March meeting, concerns were raised about whether adding a preauthorization requirement for travel accepted under the gift to agency exception would prove a practical impediment to travel. The regulation was redrafted to keep this requirement simple, stating that the agency head or his or her designee needs to preapprove the travel in advance of the trip. It is desirable to have the agency head or designee, such as a department head, reviewing the details and purpose of travel, deciding who to send, and considering whether the payment from the private source is appropriate for the agency to accept. The regulation anticipates that if the agency had approved travel for a particular employee who became unavailable and needed to send a different employee, the agency could do so.

Third Party Paying Airlines and Hotels Directly. At the March 13 meeting, another issue discussed was whether the regulation should permit third parties paying for agency travel to pay airlines and hotels directly, or whether the regulation should require the third party to pay the funds only to the agency and have the agency arrange and pay for the travel. This is a practical, operational question which we have researched further. Starting with the FPPC’s administrative staff, we asked how a small state agency like the Commission could effectively handle a third party payment for agency employee travel to attend training. If a third party paid the airline and hotel directly, the agency would prepare a gift to agency report but would have no

² Section 87200 includes: “elected state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and to candidates for any of these offices at any election.”

other administrative requirements. If the FPPC received funds for travel from the third party directly, either before the trip or as a reimbursement, the agency would have to prepare a budget revision with the Department of Finance and set up a reimbursement account to receive these funds. From the reimbursement account there are several different ways to pay a vendor – through the claims schedule process where the state controller pays the vendor with a revolving fund check and then the agency makes a replenishment claim to the state controller. There is more of an accounting paper trail if the travel payments are reimbursed through the agency, but there is significant added administrative burden.

We spoke with a Department of Personnel Administration travel specialist who stated that third party payments for state agency travel could either be made directly or through the reimbursement process. Under federal gift to agency statutes, many agencies have written policies on accepting third party payments for travel. For example, under the U.S. Department of Justice procedure there are two ways reimbursement may be made. The first is payment in-kind. In this instance, the entity provides the employee with an airline ticket, pays the hotel bill, and no money ever exchanges hands. The procedures memo states that this is the preferred method. The second way is through reimbursement. The employee uses his or her government issued credit card to charge the expenses. Upon return, the employee completes a travel voucher and gets reimbursement through the office. The entity then reimburses the office, not the employee. The money is then deposited back into the office's travel budget. Similarly, the proposed regulation contemplates that a third party could either pay the agency or an airline or hotel directly, but not an agency employee.

Calls to the Technical Assistance Division show numerous instances where it would not be practical or feasible for the travel payment to be made directly to the agency. For example, Technical Assistance recently got a call from a state agency about staff travel to a training conference. A systems corporation is putting on an information technology training conference to which the agency has paid to send their entire IT staff in previous years. Due to the agency's budget problems, the corporation has offered to provide hotel rooms to state agency staff attending the conference, as a gift to the agency. The conference is a large event and the corporation had prepaid a block of rooms at the hotel where the conference is being held to reserve the rooms and get a discount. In this instance, it would not be feasible for the agency to receive a payment from the third party and then pay for the hotel rooms. Other calls where payment to the agency is not feasible have involved a business using some of its frequent flyer miles to provide air travel for a government employee.

Travel arrangements often need to be approved and made expeditiously. The additional steps required for an agency to receive and process a check from an outside party and make the travel arrangements independently are cumbersome and may simply not happen in time. It has been staff's advice for some years under the gift to agency regulation that a third party may pay the hotel or airline for travel directly. Technical Assistance raised this issue for clarity last December to attempt to codify in the regulation the advice it had been providing callers. By expressly referring to the definition of payment and stating that a payment includes "the payment for, or provision of, goods or services to an agency" the regulation would codify this advice, permitting third parties to pay airlines and hotels directly. Staff supports codification of this advice because of the practical considerations discussed. It does not seem necessary to prohibit a

direct payment to an airline or hotel at this time, particularly when the regulation is being amended to enhance reporting of gifts to agency payments, and add other safeguards such as capping travel payments to the agency's own reimbursement rates and requiring preapproval.

College and University Research Provision. This provision in paragraph (e) is substantively unchanged from the original version of Regulation 18944.2. The provision clarifies that a donation to a California public college or university received under the academic decisions provision of Regulation 18702.4(c) will be a gift to the college or university. As to academic decisions, Regulation 18702.4(c) provides that neither disclosure nor disqualification is required in connection with teaching decisions or decisions by a teacher or researcher to personally pursue a course of academic study or research, to apply for funds to finance such a project, and to choose the manner and methodology to conduct the study or research. As discussed at the interested persons meeting, the vast majority of donations, gifts and grants that a college or university receives do not fall under the gift 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.

Payments from the Federal Government. Paragraph (f) was added to clarify that payments received by a state or local agency from the federal government for education, training, or other inter-agency programs, will not be considered a gift to the public official who receives a personal benefit from the payment. Under this provision, if the federal Environmental Protection Agency pays for an employee of Cal EPA to attend a joint training, Cal EPA does not need to process this as a gift to the agency.

League of Cities Issue. The League of California Cities general counsel asked in March whether the changes to the regulation would affect the reporting of local officials' travel to League of Cities meetings. The Statement of Economic Interests instructions contain an example involving a city council member who is a board member of the League of California Cities. The League reimburses its board members for travel, lodging and meals associated with board meetings. If the city council member provides equal or greater consideration for the travel and lodging when he or she participates in the meeting, the reimbursements are reported as income. (See *Benninghoven* Advice Letters, No. I-98-177 and I-93-298.) Under paragraph (c), proposed Regulation 18944.2 only applies to "[a] payment that is otherwise a gift to a public official, as defined in Section 82028...." If the League's reimbursements qualify as income, rather than a gift to local officials, the gift to agency regulation does not apply.

Outreach. Staff is contacting groups that might be affected by changes to this regulation, including the Assn. of California Water Agencies, the California State Assn. of Counties, the California Special Districts Assn., California Redevelopment Assn., and the League of California Cities, and will report on these groups' comments at the May meeting.

Staff Recommendation: Staff recommends that the Commission approve the repeal and readoption of Regulation 18944.2.

Attachments: 1 – Proposed Regulation 18944.2
 2 – Repeal Regulation 18944.2
 3 – Gift to Agency Form and Instructions (draft)