

UNIVERSITY OF CALIFORNIA

POLICY AND GUIDELINES REGARDING
ACCEPTANCE OF GIFTS AND GRATUITIES
BY EMPLOYEES UNDER CALIFORNIA'S
POLITICAL REFORM ACT

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UNIVERSITY OF CALIFORNIA POLICY AND GUIDELINES REGARDING
ACCEPTANCE OF GIFTS AND GRATUITIES BY EMPLOYEES
UNDER CALIFORNIA'S POLITICAL REFORM ACT

I. POLICY

It is the policy of the University of California that its officers and employees shall comply with the provisions of state and federal law governing the acceptance of gifts and gratuities.

In addition to compliance with the requirements of law, University officers and employees must avoid the appearance of favoritism in all of their dealings on behalf of the University. All University officers and employees are expected to act with integrity and good judgment and to recognize that the acceptance of personal gifts from those doing business or seeking to do business with the University, even when lawful, may give rise to legitimate concerns about favoritism depending on the circumstances. If a University officer or employee has any question regarding the propriety of a gift, disclosure of the gift or proposed gift should be made to a supervisor or other appropriate University official for a determination of the proper course of action.

The following Guidelines shall be followed to implement the requirements of California's Political Reform Act and shall be updated from time to time as necessary.

II. GUIDELINES

A. Background on the Political Reform Act.

The Political Reform Act of 1974 ("Act") and its accompanying regulations set forth complex and comprehensive rules designed to assure that public officials "perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Gov. Code, § 81001, subd. (b).) The rules apply to public officials at all levels of government in California, from the Governor on down to city and special district officials. The Act creates the Fair Political Practices Commission ("FPPC") to interpret and enforce its provisions.¹

Gifts can trigger disqualification requirements on the part of every University official or employee if he or she receives gifts which aggregate to \$320 or more from a single source during a 12-month period. (Gov. Code, § 87100.)

In addition, the Act requires each agency to adopt a conflict of interest code which identifies those positions "which involve the making or participation in making of decisions which may foreseeably have a material effect on any financial interest" and to require that each person holding such an identified position file a statement of economic interests reporting financial interests of the sort likely to be affected by his or her duties. Persons holding such positions are called "designated officials." Their statements disclosing financial interests from sources of gifts in

¹ The Act is found in the California Government Code at section 81000, et seq. The implementing regulations regarding conflict of interest are found at California Code of Regulations, title 2, section 18700 et seq. A violation can result in agency discipline or a civil fine. Knowing or willful violations can be prosecuted as a misdemeanor. (Gov. Code, § 91000 et seq.)

their disclosure categories (“reportable sources”) are due upon assuming office, annually on April 1, and upon leaving office. (Gov. Code, § 87302.) Gifts aggregating \$50 or more during a reporting period (usually a calendar year) from a reportable source must be disclosed.

Finally, the Act was amended effective 1991 by the Ethics in Government Act, which outright prohibits acceptance of “honoraria” and gifts which total more than \$250 in a calendar year from any reportable source. The \$250 figure is subject to a Consumer Price Index escalator, making the figure \$320 as of 2001. (Gov. Code, § 89500 et seq.) The Ethics in Government Act does not apply to members of the Board of Regents, but does apply to all other designated officials within the University.

These guidelines offer guidance on some of the most common questions regarding gifts. The conflict of interest coordinators at the Office of the President, the campuses, and the Laboratories, and attorneys at the Office of General Counsel will attempt to assist you in answering additional questions with respect to compliance with the Political Reform Act. You should be aware, however, that the law, regulations, and interpretive opinions of the FPPC are extremely complex, and only the FPPC can offer a definitive immunity-providing interpretation of the Act.

B. Reporting of Gifts on the Form 700 Statement of Economic Interests.

Gifts from any source specified by your disclosure category² must be reported on your statement of economic interests if such gifts total more than \$50 during the reporting period. It is important to remember that the \$50 reporting threshold is cumulative. The geographical location of the source does not alter this rule.

Example: You are a Category 1 filer required to report all gifts from any source and you received six gifts of \$10 from a single source during the last calendar year. You are required to report each of the gifts on your annual statement of economic interests.

C. Disqualification as a Result of Receiving Gifts.

1. *When is disqualification required as a result of receiving gifts?*

Whenever you receive gifts from a single source which total \$320 or more in any 12-month period, you may not “make, participate in making, or in any way attempt to use [your] official position to influence” a University decision in relation to the source which will have a “material financial effect” on you, on a member of your immediate family, or on the source of any gifts. You are disqualified for a period of 12 months following any point in time your gifts reach the \$320 limit. (Gov. Code, §§ 87100, 87103, subd. (e).)

² The disclosure category for each designated official is found in the University's conflict of interest code.

2. *When does an official “make” a University decision which requires disqualification?*

You “make” a decision when, acting within the authority of your office, you vote on a matter, appoint a person, obligate or commit the University to any course of action, or enter into any contract on behalf of the University. It is important to recognize that you also make a decision if you determine not to act, unless the determination not to act is your disqualification. (Cal. Code Regs., tit. 2, § 18702.1.) Thus, you cannot proceed to make a decision even if you exclude from consideration a source of gifts you have received.

3. *When does an official “participate” in the making of a University decision requiring disqualification?*

You participate in the making of a University decision when, acting within the authority of your position, you negotiate, without significant intervening substantive review regarding the decision; or when you advise or make recommendations to the decision maker, either directly or without significant intervening substantive review, by conducting research or making any investigation which requires the exercise of judgment on your part and the purpose of which is to influence the decision; or when you prepare or present any report, analysis or opinion which requires the exercise of judgment on your part and the purpose of which is to influence the decision. (Cal. Code Regs., tit. 2, § 18702.2.)

4. *When does an official attempt to use his or her official position to influence a University decision?*

You are attempting to use your official position to influence a University decision if, for the purpose of influencing the decision, you contact, appear before, or otherwise attempt to influence any officer, employee, or consultant of the University. You may communicate with the general public or the press without violating this provision. (Cal. Code Regs., tit. 2, § 18702.3.)

5. *What is a “material financial effect” on a source of gifts?*

In general, it is prudent to assume that the effect will be material if a University decision will have any financial impact on a source of gifts (whether positive or negative). The definition of “material financial effect” is the subject of complex regulations. (Cal. Code Regs., tit. 2, §§ 18705 - 18705.5.)

6. *Procedure for disqualification.*

If you determine that your financial interests require you to disqualify yourself from making or participating in the making of a University decision, you must refrain from participating in any way in the decision, and you must not use your official position to influence any other person with respect to the matter. The determination not to act may be accompanied by disclosure of the disqualifying interest, but disclosure is not required. (Cal Code Regs., tit, 2, § 18730(b)(10).)

D. What is a Gift? General Rule.

The Political Reform Act defines a gift as any payment for which the recipient does not provide equal or greater consideration in return. (Gov. Code, § 82028, subd. (a).) The term “payment” is very broadly defined. It includes any “payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.” (Gov. Code, § 82044.)

Thus, anything of value received by an official for which the official has not provided adequate consideration in return is deemed a gift, unless an exception applies. The exceptions are discussed below. Examples are used to illustrate their application.

E. What is a Gift? Specific Provisions of the Act and Regulations.

1. *Wedding gifts are “gifts.”*

Wedding gifts are treated as gifts for purposes of reporting and disqualification, unless they are from specified family members or are exchanged with the donor and not substantially disproportionate in value. (See § F.7, infra.) However, wedding gifts are excluded from the prohibition on receiving gifts found in the Ethics in Government Act. (See Gov. Code, § 89503, subd. (e)(2).)

2. *Wedding gifts are generally treated as given equally to each newlywed.*

If an official is getting married, wedding gifts are treated as being intended jointly for the two newlyweds, regardless of to whom given, unless they are uniquely suited for use by only one of them (a tie for him, a scarf for her). Thus, a wedding gift with a value of \$85 would not require disclosure because the official’s portion would only have a value of \$42.50. A gift with a value of \$140 would be reportable as a \$70 gift on Schedule E of the official’s annual statement of economic interest. If the gift is from certain relatives, it is excluded entirely. (See § F.7, infra.) In addition, wedding gifts are not subject to the \$320 gift limitation. (Gov. Code, § 89503, subd. (e)(2).)

3. *Tickets to sporting, entertainment, or other non-fundraising events are gifts to an official unless treated as gifts to the University under FPPC regulations.*

These items are gifts to the official if given to and then used or given away by the official. When the tickets or other items are given to the University and dispensed by a responsible University official, they are viewed as gifts to the University, not to the official. (See § F.18, infra.) California Code of Regulations, title 2, section 18946.1 provides as follows regarding their value:

- a) A pass or ticket which provides one-time admission or access to facilities, goods, services, or other incidental tangible or intangible benefits (including a pass to motion picture theaters, amusement parks, parking facilities, country clubs, and similar places and events, and also including a ticket for theater, opera, sporting, or similar event, but not including travel or lodging) shall be valued at the face value of the pass or ticket, provided that the face value is a price that was, or otherwise would have been, offered to the general public. A pass or ticket has no value unless it is ultimately used or unless the official transfers the pass or ticket to another person.
- b) A pass or ticket which provides repeated admission or access to facilities, goods, services, or other incidental tangible or intangible benefits (including a pass to motion picture theaters, amusement parks, parking facilities, country clubs, and similar places and events, and also including a season ticket for theater, opera, sporting, or similar season events, but not including travel or lodging) shall be viewed as follows:

“For purposes of disclosure and the gift limits, the value shall be the fair market value of the actual use of the pass or ticket by the recipient official, including guests who may accompany the official and who are admitted with the pass or ticket, plus the fair market value of any possible use by any person or persons to whom the official transfers the privilege of use of the pass or ticket.”

4. *Testimonial dinners and events are gifts.*

When an official is invited to attend a testimonial dinner or event, either as a guest or as the honoree, the value of the gift is the pro rata cost for food, beverage, entertainment, etc. If the official is the honoree, any gift given in honor is a gift to the official, unless otherwise subject to an exclusion under these rules (such as a personalized plaque or trophy with a value of less than \$250. See § F.9, *infra*). Special rules apply to political or charitable fundraising events. (See § F.17, *infra*.)

5. *Meals are gifts.*

In general, business meals are treated as gifts. Meals provided by non-business friends and acquaintances are also gifts, except for exchanges on special occasions. (See § F.14, *infra*.) Meals received in the course of an official fundraising activity are not gifts. (See §§ F.18 and F.19, *infra*.)

Example: An official is invited to represent the campus at a dinner reception for a visiting dignitary. Other local dignitaries are similarly invited. The official engages in conversation with the other dignitaries at the reception and over dinner. However, no speech is given. The value of the food and beverage consumed by the official is a gift to the official. One method for determining this value is to determine the pro-rata cost per attendee. However, if alcoholic beverages were served and the official chose not to drink, the value

would be reduced accordingly. Similarly, if the official had a conflicting engagement and could only stay for the reception and had to beg off from dinner, the value of the dinner would not be a gift to the official, only the value of what was consumed at the reception. (FPPC Advice Letter No. 91-347; FPPC Advice Letter No. 92-580.)

Example: An old college classmate comes to town. He or she invites the official out to dinner. The classmate treats. The value of the official's dinner, including food, beverage, and the proportionate share of tax and tip comes to \$48.13. Assuming that the classmate makes no other gifts to the official during the reporting period, the dinner is not required to be reported.

Example: Assume the same situation, but the classmate also sends a gift of oranges worth \$11.42, including delivery charges. These occur during the same reporting period. In that case, if the classmate is a source of income covered by the official's disclosure category, then these two gifts are required to be disclosed on the official's next Form 700 filing.

Example: The official has a business meeting with a non-University individual. The meeting continues through the lunch-hour and they go to lunch where the business discussions continue. The other individual picks up the tab. The official has received a gift. The value is the cost of the official's lunch, plus the proportionate share of the tax and tip. Assuming the value is less than \$50 and no other gifts are received from the same source during the reporting period, no reporting is required. However, if multiple lunches occur and the cumulative value equals or exceeds \$50 from the same source during the reporting period, then all the lunches would become reportable, even though no single lunch was anywhere near \$50 in value.

Example: The official is in a business meeting. Lunch is ordered out and brought in as the meeting continues. The lunch is paid for by another participant in the meeting. The value of the lunch is a gift to the official, whether the donor is a University individual using his/her own funds or a non-University individual. The same rules regarding aggregation per source to determine if the threshold for reporting is met would apply.

Example: The official is in a business meeting at the University with both University and non-University individuals. The group continues the meeting through lunch at the faculty club and the University picks up the tab. There is no gift to the official since the meal was paid for by the official's employer as part of his/her compensation.

Government Code section 82030, subdivision (b)(2) provides for an exclusion where an official receives payment for travel

or per diem expenses from a bona fide non-profit entity exempt from taxation under section 501 (c)(3) of the Internal Revenue Code and has provided adequate consideration in return. Therefore, if the business meeting were the board of directors' meeting of a charitable or academic or educational organization, the working lunch would not be considered a gift.

Example: "Reciprocity" regarding meals and other forms of entertainment has been held by the FPPC to not equate to a "pay-down" of a gift and, therefore, cannot be relied upon to negate the receipt and reportability of the gift. Therefore, if an official is taken to dinner by a friend or business associate, the official cannot negate the value of the gift by agreeing to take the donor to dinner "the next time." (See § F.6, infra; FPPC Bulletin, Vol. 13, No. 6, p. 1.)

F. What is and is not a Gift? Specific Exceptions Under the Act and Regulations.

1. *A discount or rebate in the normal course of business is not a gift.*

A discount or rebate is generally a gift, since full consideration has not been provided. However, where the discount or rebate is provided in the normal course of business and without regard to the official's status, then the discount or rebate is not considered a gift. (Gov. Code, § 82028, subd. (a).)

Example: A local department store offers television sets at \$50, which normally sell for \$150. They are to be available for purchase by the first 100 customers on the day of the sale. If an official is one of the first 100 customers to purchase a television set at \$50, the \$100 discount is not a gift to that official because it was made in the normal course of the department store's business on terms available to the general public and the official obtained the rebate by being among the first 100 customers. Thus the discount was made without regard to the official's status as a public official.

Example: However, if a chancellor were seeking a loan from a local bank and the banker said the bank would provide a better than normal interest rate because the chancellor was the chancellor, then that reduction in the interest rate would constitute a gift.

2. *Informational materials are not gifts.*

Informational materials such as books, reports, pamphlets, calendars, or periodicals are not gifts. However, no payment for travel or reimbursement for any expenses shall be deemed "informational material." (Gov. Code, § 82028, subd. (b)(1).)

The FPPC has adopted a regulation which defines further the term “informational material.” California Code of Regulations, title 2, section 18942.1 reads as follows:

“Informational Material” means any item which serves primarily to convey information and which is provided to an official for the purpose of assisting him or her in the performance of his or her official duties. Informational material may include:

- a) Books, reports, pamphlets, calendars, periodicals, videotapes, or free admission to informational conferences or seminars.
- b) Scale models, pictorial representations, maps, and other such items, provided that where the item has a fair market value in excess of \$320, the burden shall be on the official to demonstrate that the item is informational material.
- c) On-site demonstrations, tours, or inspections designed specifically for public officials. No payment for transportation to an inspection, tour, or demonstration site, nor reimbursement for any expenses in connection therewith, shall be deemed “informational material” except insofar as such transportation is not commercially obtainable.

Example: If an official is invited to an informational conference or seminar and is provided free admission to attend (not to speak or participate in a panel), the free admission would not be a gift so long as the conference or seminar is provided to the official for the purpose of assisting him or her in the performance of his or her official duties. Thus, a conference on new technologies in the field in which an educator teaches and conducts research would fall within this exclusion. However, the exclusion applies only to free admission. If the conference includes a meal, coffee and donuts, etc., those would be considered gifts to the official under these circumstances. Similarly, providing transportation to the conference for the official would constitute a gift to the official.³

Example: An official is given an informational tour of a new facility in order to see how it functions. The tour itself is “informational material.” Therefore, it does not constitute a gift to the official. However, food, beverage, and transportation to and from the site would be considered gifts to the official. On the other hand, the regulation and FPPC advice provide that in the situation when the official cannot get to the site via normal methods (commercial transportation or private car) then transportation to and from the site becomes part of the informational tour. For instance,

³ CAVEAT: The Act contains complex rules regarding meals, lodging, and transportation in connection with speeches or similar services. These are sometimes excluded from the definitions of gifts or income for disqualification purposes (see § E. 11, *infra*) and from the gift and honoraria prohibitions (see §§ G. 2-6, *infra*).

a tour of one of the Channel Islands, under private ownership by The Nature Conservancy, may only be conducted if the official travels on a boat or plane which has permission to use the private dock or air strip. Thus, the boat or airplane trip to and from the island is not deemed to be a gift, but is part of the “informational tour.” However, transportation from the official’s home to the mainland boat dock or airstrip would be treated as a gift.

3. *Gifts returned to the donor or donated to the University or another charity are not “gifts.”*

Gifts which are not used and within 30 days of receipt by the official are either (i) returned to the donor, or (ii) delivered to a charitable organization or a governmental entity without being claimed as a charitable contribution by the official for tax purposes are not gifts. (Gov. Code, § 82028, subd. (b)(2); Reg. 18943.)

Example: Officials of the University sometimes are sent gifts of flowers, plants, fruit baskets or other items. The items must be placed in public areas for the benefit and enjoyment of staff and public alike, in order to assure they are not viewed as benefiting the official. Similarly, other types of gifts may be received from visiting foreign, dignitaries or representatives of foreign universities etc. Where these items are timely donated to the University and are neither personally used by the official nor claimed as a personal income tax deduction, they are not gifts to the official.

4. *University policy documenting donation of gifts to the University.*

In order to assure that donated items will not be deemed a gift to the official to whom they are directed, University policy requires the official to document that items are turned over to the University within 30 days of receipt, and are unused personally by the official.

Example: If an official receives a gift either at home or while on a trip, then the gift must not be used personally by the official and must be delivered to the University or other charitable or government organization within 30 days of receipt. A written record should document this fact. The official may not claim the donation as a personal income tax deduction.

5. *Pay-down of gifts reduces value.*

An official who receives a gift may also reduce the value of the gift by “paying-down” the value. This may be done by making a payment of money to the donor of the gift within 30 days of receipt of the gift. If the official pays equal value, then since equal consideration has been provided to the donor, there is no gift. If something less than equal value is paid, the value of the gift is reduced by the amount paid and, therefore, becomes the difference between the total value of the gift less the partial repayment.

6. *Reciprocity does not apply.*

The FPPC concludes that “reciprocity” does not apply. (See FPPC Bulletin, Vol. 13, No. 6, p. 1.) It is not sufficient that the official say that he/she will get lunch or dinner the next time. However, under certain circumstances involving exchanges of gifts on special occasions, there can be an “offset” as to gifts. This limited exclusion is discussed at paragraph F.14.

7. *Gifts from certain relatives are not “gifts” under the Act. (Gov. Code, 82028, subd. (b)(3).)*

Gifts from family members and certain close relatives are not treated as gifts to an official, so long as the family member or relative is not acting as an intermediary for a gift from a third party who does not fall within the exclusion. The persons who may make gifts under Government Code section 82028(b)(3) are:

[A]n individual's 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, provided that a gift from any such person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered by this paragraph.

8. *A devise or inheritance is not a gift. (Gov. Code, 82028, subd. (b)(5).)*
9. *Personalized plaques and trophies valued at less than \$250 are not gifts. (Gov. Code, § 82028, subd. (b)(6).)*

Where an official gets something which is personalized, such as an honorary degree or plaque honoring the official for some service or distinction, there is no gift so long as the value of the plaque or trophy is less than \$250.

10. *Reimbursement for travel or per diem expenses provided to an official by a bona fide non-profit entity exempt from taxation under section 501 (c)(3) of the Internal Revenue Code.*

Such payments are not treated as gifts so long as the official has provided adequate consideration in return. (Gov. Code, § 82030, subd. (b)(2).) This would include such services as acting as a speaker, master of ceremonies, serving on a board of directors, etc.

11. *Travel expenses in conjunction with a speech are sometimes not a gift.*

Under some circumstances transportation, lodging, and meals in connection with a speaking event are excluded from the definition of gift

or income for reporting or disqualification purposes. The rules divide the travel expenses into two basic categories: (1) lodging and subsistence (i.e., meals and beverages, etc.); and (2) actual transportation costs⁴ (Reg. 18950.3).

- a) Lodging and subsistence which are directly in connection with a speaking event and necessary to the official's presence for the speech or panel discussion or similar service, are entirely exempt from being reportable as either a gift or as income on the official's statement of economic interests. This is true regardless of where the speaking event is held. It can be in California, outside of California, or in a foreign country.
- b) Actual transportation costs which are incurred to travel to and from the site of the speaking event for an event within the State of California are also entirely exempt. However, for travel to a site outside of California, the travel costs are considered to be a gift unless another exclusion applies. The most likely exclusion for University officials would be that the source of the travel payment is an academic, educational, or charitable organization, providing such entities are bona fide non-profit entities exempt from taxation under section 501 (c)(3) of the Internal Revenue Code. In that case, so long as the speech or other participation by the official provides adequate consideration to the sponsoring organization, the travel is not reportable as a gift or income, even if it is outside of California.

12. *Examples concerning treatment of travel expenses in connection with a speech.*

Example: A University official is invited to speak at a symposium being sponsored by the Association of Realtors. The speech will be on a topic of state or national public policy and will occur in Palm Springs on a Tuesday morning from 9:00 a.m. to 10:00 a.m. The earliest flight into Palm Springs from the official's location arrives at 10:20 a.m. Thus, it is necessary for the official to travel the night before and receive lodging and dinner that night and breakfast the next morning. A luncheon is scheduled for noon on Tuesday, to which the official is also invited. No speech will be given by the official at the luncheon. There is a return flight out of Palm Springs that afternoon leaving at 4:30 p.m. The official takes that flight home. What things would be reportable?

None of the payments would be reportable. The travel is in California. The lodging and meals are necessary to the official being there for the speaking event at 9:00 a.m. They are also directly in connection with the official's speaking at the event. The luncheon is also exempted

⁴ The rules are somewhat different in connection with gift limits under the Ethics in Government Act. (See § G, *infra*,; Gov. Code, § 89506.)

because it is a meal at the event on the same day the official speaks. Thus, even if the official could have caught a 1:00 p.m. flight home, staying for the meal would not cause the luncheon to be considered a gift.

However, if the official stayed over Tuesday night before flying home on Wednesday, the second night's lodging and the second morning's breakfast would be considered gifts. Because they occur on the day of and the day after his speech, which was on a subject of State policy, these payments would not be subject to the \$320 per year gift limit, but would be reportable on Schedule F of the official's statement of economic interests. The meal on Tuesday evening would not be reportable since it was on the same day the official spoke, so long as the meal was at the event. However, if someone took the official out to dinner at a restaurant separately, that would be a reportable gift if its value equaled or exceeded \$50 either alone or when combined with other gifts from that source during the calendar year. This would be reportable on Schedule F if the dinner was provided by the sponsor or on Schedule E if provided by someone else.

Example: Assume the same facts, but instead the event will be held out of state. Under these facts, the lodging and meals would be treated the same as the in-state speech but the travel would be a gift. However, if instead of a business group the sponsor were a charity or educational institution, the travel costs would also not be a gift so long as the official provided adequate consideration (the speech) in return.

13. *Home hospitality is not a gift.*

Hospitality (including food, beverages, or occasional lodging) is not a gift if provided to an official by a host in his or her home when the host or a member of the host's family is present. This has been interpreted to include a second home or a vacation home which is owned or leased by the host. It has been determined not to include a condominium or hotel suite simply rented on a short term basis by the host.

14. *Gifts exchanged on special occasions are not "gifts."*

Gifts, such as meals or presents, exchanged between an official and another person (who is not a lobbyist) on holidays, birthdays, or similar occasions are not gifts to the official provided that the presents exchanged are not substantially disproportionate in value. Thus, where individuals exchange holiday gifts each year of approximately equal value, the gift received by a University official is not disclosable and does not give rise to disqualification requirements. In addition, such gifts are not subject to the \$320 limitation. (Gov. Code, § 89503(e)(2).)

15. *Gifts to members of a University official's family are generally not gifts to the official.*

Gifts which are designated by the donor to a member of an official's immediate family (spouse and dependent children) are generally not treated as gifts to the official. Thus, if an invitation to a dinner comes addressed to Mr. & Mrs., or Dr. & Ms., or Ms. & Mr., etc., it is the intention of the donor to make a gift of one dinner to the official and the other dinner to the official's spouse. The gift to the official's spouse is not reportable by the official and does not count toward either the \$50 reporting threshold or the \$320 gift limit. Similarly, a holiday gift to the official's minor child does not count toward the official's threshold or limits from the same donor.

However, under certain circumstances a gift, ostensibly made to the family member, will be treated as a gift to the official. One such instance is if two tickets addressed to Mr. & Ms. are provided to an event. However, the spouse of the official does not want to go and so the official uses both tickets and takes a child or a friend. Under those circumstances both tickets are treated as a gift to the official.

Similarly, if the official is simply provided with two tickets to the event, with no designation of the spouse or a child as the recipient of the second ticket, both tickets are treated as gifts to the official if they are used by the official or given by the official to anyone else to use.

Lastly, if a gift to a spouse or dependent child is the type of gift which the official will also use, such as an automobile or a color television set for the home, then those gifts are treated as gifts to the official no matter how they are designated.

16. *Prizes and awards from bona fide competitions are not gifts, but are treated as income.*

A prize or award received by an official shall be reported as a gift, unless the prize or award is received in a bona fide competition not related to the official's status as a University official. A prize or award which is not reported as a gift shall be reported as income if the source is a reportable source and the value equals or exceeds \$500.

17. *Tickets to tax-exempt charitable or political fundraising events are not gifts.*

The rules for charitable or political fundraising events differ from sporting or entertainment events discussed above. If an official receives a ticket to a fundraising event for a charitable organization which is tax exempt under Internal Revenue Code section 501(c)(3)--most educational institutions or their fundraising arms are exempt--the ticket is not reportable and does not count as a gift, regardless of who donated the ticket to the official.

If the ticket is to a non-profit organization's fundraiser, but the non-profit is not a tax-exempt 501(c)(3) organization, then the ticket is a gift with a value equal to the face value of the ticket less the amount of the donation to the organization. Where this is not disclosed on the face of the ticket,

the value of the gift is the fair market value of any food, beverage, or other tangible benefits provided to each attendee.

If the ticket is to a political fund-raiser, the ticket is not reportable and does not count as a gift, regardless of who donated the ticket to the official because such a ticket is deemed by the FPPC to have no value.

18. *Gifts given to the University which are used by a University official are sometimes not gifts.*

Certain gifts which are provided to an official's agency and then given by the agency to the official are not "gifts" to the official. Generally, these include such matters as gifts of travel, or of tickets for admission to theatrical or sporting events. The FPPC has adopted Regulation 18944.2 which provides that such matters will be deemed a gift to a public agency and not a gift to the public official if all of the following requirements are met:

- a) The agency receives and controls the payments.
- b) The payment is used for official agency business.
- c) The agency, in its sole discretion, determines the specific official or officials who shall use the payment. However, the donor may identify a specific purpose for the agency's use of the payment, so long as the donor does not designate the specific official or officials who may use the payments.
- d) The agency memorializes the payment in a written public record which embodies the requirements of subdivisions (a)(1) to (a)(3) of this regulation set forth above and which:
 - (1) Identifies the donor and the official, officials, or class of officials receiving or using the payment;
 - (2) Describes the official agency use and the nature and amount of the payment; and
 - (3) Is filed with the agency official who maintains the records of the agency's statements of economic interests where the agency has a specific office for the maintenance of such statements, or where no specific office exists for the maintenance of such statements, at a designated office of the agency, and the filing is done within 30 days of the receipt of the payment of the agency.

An exclusion under this regulation exists for officials who are invited specifically to attend an event in order to perform a ceremonial function at the event. Thus, the ticket to an event is not a gift if the official is required to throw out the first ball, conduct a coin toss, present a trophy, etc.

19. *Meals are sometimes not gifts.*

Meals received in the course of an official fundraising activity, which qualify under federal and state law for a deduction as a charitable contribution for educational purposes, are gifts to the University, not the official. Such gifts are not reportable or subject to the gift limitation. (Reg. 18944.2.)

20. *Valuation and reporting of gifts from multiple donors.*

A gift with a value of \$50 or more, but which is from a group of donors, is reportable. However, the individual donors need not be disclosed so long as no one donor contributed \$50 or more to the cost of the gift. It is sufficient to describe in general terms those who gave the gift. If any individual contributed \$50 or more, then the name of that donor must be disclosed.

G. Ethics in Government Act Prohibition on Acceptance of Gifts and Honoraria by Designated Officials. **(Not Applicable to Regents)**

1. *Prohibition on receiving gifts.*

In addition to the reporting and disqualification requirements discussed above, the Ethics in Government Act of 1990 prohibits a designated official from accepting gifts worth more than \$250 in a calendar year from any source which the official would be required to report on his or her statement of economic interests. The \$250 figure is subject to a Consumer Price Index escalator, making the figure \$320 as of 2001. The prohibition on gifts does not apply to members of the Board of Regents. (Gov. Code, § 89503 (2)(d).)

2. *Exceptions to prohibition on receiving gifts.*

The following gifts are excluded from the prohibition on gifts:

- a) All gifts otherwise not “gifts,” as discussed in section F, above.
- b) Gifts of travel and related meals and lodging reasonably related to a legislative or governmental purpose, or to an issue of State, national or international public policy if: (i) the travel, etc. is provided by a domestic or foreign governmental agency, a bona fide educational institution, a non-profit charitable or religious organization exempt from taxation, or a similar foreign entity which would substantially satisfy U.S. requirements for tax exempt status; or (ii) if the travel, etc., is funded by any other type of entity, the travel is in connection with a speech, and the payment for lodging and meals is limited to the day immediately before, the day of and the day following the speech, and the travel is in the United States.

- c) Travel and related meals and lodging provided by the University are exempt, of course.
- d) Travel and related meals and lodging are exempt if they are reasonably necessary in connection with the practice of a bona fide business, trade or profession, and payment for them would satisfy the criteria for deduction as a business expense for Federal income tax purposes. This exception is not available if the sole or predominant activity of the business, trade or profession is making speeches.

The FPPC has issued a lengthy and complex regulation governing what constitutes a bona fide business, trade or profession. In general, a business is presumed to be bona fide only if records are kept consistent with the operation of a business. (See Reg. § 18932.1)

A profession is generally presumed to be bona fide only if it is licensed; however, employment as a researcher or member of a university faculty does not require licensure in order to be considered a bona fide profession. (Reg. § 18932.1, subd. (c)(2).)

3. *Are gifts of travel exempt from the prohibitions still subject to reporting and disqualification requirements?*

Yes, unless otherwise excluded under the Act. (Gov. Code, § 89506.) Please note, however, that reimbursement for expenses or per diem from a government agency at which you are employed or travel expenses and per diem from a bona fide educational, academic, or charitable organization, providing entities are bona fide non-profit entities exempt from taxation under section 501 (c)(3) of the Internal Revenue Code, where you provide adequate consideration in return, do not create a financial interest and therefore are not reportable and do not give rise to disqualification. (Gov. Code, § 82030, subd. (b)(2).)

4. *Prohibition on acceptance of “honoraria.”*

The Ethics in Government Act also bans acceptance of “honoraria” in any amount by designated employees. These provisions, like the gift prohibitions, do not apply to members of the Board of Regents.

5. *Definition of “honorarium.”*

“Honorarium” means 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.

“Honorarium” does not include earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or profession, unless the sole or predominant activity of the business, trade, or profession is making speeches. (Gov. Code, § 89501, subd. (b)(1).)

6. *Exceptions to the prohibition on receiving honoraria.*

The following payments are excluded from the prohibition on acceptance of honoraria.

a) Payments which would be excluded from the definition of a gift, as discussed above in section F are also not honoraria. For example, such things as a personalized plaque or trophy with a value less than \$250 would not be an honorarium. Travel payments are treated the same as gifts of travel. (See §§ F.10-F.12, above.)

b) Payment for admission to an event or the cost of a meal are not considered honoraria.

Payment for an official's admission to an event or his or her meal or beverage are not considered "honoraria" where the official does not speak at the event and otherwise receives no money for attending or appearing at the event. Such meals or beverages may, however, be considered gifts, as discussed above.

c) *Payments for services in connection with a faculty appointment are not considered honoraria because being a member of the faculty is a bona fide profession.*

The Ethics Act permits payment for a speech, article, or attendance at a gathering if it is in connection with a bona fide profession. FPPC regulations presume a teacher, researcher, or member of a university faculty to be a bona fide professional. Thus, any such payment received in connection with the teaching, research, or public service functions of a university faculty member is not covered by the prohibition on honoraria. This may mean that an administrator who has a faculty appointment may receive a payment under certain circumstances, whereas a colleague without a faculty appointment could not. The administrator with a faculty appointment may still be subject to reporting and disqualification requirements.

d) There is no ban on providing services in connection with a bona fide business of a university official. The FPPC has issued a lengthy and complex regulation governing what constitutes a bona fide business. In general, a business is presumed to be bona fide only if records are kept consistent with the operation of a business. (See Cal. Code of Regs., tit. 2 § 18932.1.)

7. *Return of gifts or honoraria negates acceptance.*

Any gift or honorarium received by an official may be returned to its source within thirty days and the acceptance is negated. Or it may also be donated to a charity organization, or a State, local or Federal government agency without claiming any deduction for tax purposes. (Reg. §§ 18932.5 and 18933.)

Honoraria may be donated directly to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, providing it is not delivered to the official. An official may ask that the honorarium be donated directly to one of these organizations, but may not make the donation a condition for his or her speech, article, or attendance, nor may the official claim the donation as a deduction for tax purposes. (Reg. § 18932.5.)

Honoraria received by an official may be returned, unused, to its source within thirty days and the acceptance is negated. The official may also deliver the honorarium to the Controller for donation to the General Fund, without claiming any deduction for tax purposes. (Reg. § 18933.)

8. *Examples of application of gift and honoraria prohibitions under the Ethics in Government Act.*

Example: A University official is asked by another university to observe the conducting of a scientific experiment. All travel expenses will be paid for by the other university. Because the other university is a bona fide public or private educational institution which is or would be exempt from taxation under section 501 (c)(3), the travel would be exempt from the \$320 gift limit, so long as disclosed on the official's annual statement of economic interests (Form 700, Schedule F). However, if the official was also being asked to provide personal services, such as participation in a dialogue regarding the subject of the experiment, the official would be providing "adequate consideration" in return. Therefore, because the other university is a bona fide academic or educational institution, the reimbursement for travel and per diem would be excluded entirely from being reported.

Example: Suppose under the example above, the University paid for the University official's travel. There would be no "gift" at all. Travel paid for by the official's own employing government agency is not considered a gift. (Gov. Code § 82030, subd. (b)(2).)

Example: A University official is asked to deliver the commencement address at another university in another state. The official's travel is paid for by the other university. No honorarium is offered. There would be no reportable gift. Since the travel is a reimbursement by a bona fide educational or academic institution for which adequate consideration is provided in the form of the commencement address, the travel reimbursement is again entirely exempt from being considered a reportable gift (or income for that matter).

Note: University faculty members may receive honoraria for speeches which fall within the public service obligations of a faculty member. (See Reg. §§ 18932 and 18932.1, subd. (c)(2).) Honoraria paid to persons employed as faculty members or researchers are exempt from the honoraria prohibitions because they are earned income for personal

services provided in connection with the practice of a bona fide profession. (Gov. Code, § 89501, subd. (b)(1).)

Example: A University administrator (not a faculty member) is asked to speak at the annual shareholders' meeting of a private, for-profit corporation held in another state. The topic is "New Horizons on the Pacific Rim." This is a topic of "international public policy." The private corporation offers to pay for all travel expenses for the day before, the day of and the day after the speech. The out-of-state air fare is reportable income. Some of the lodging and meals may also be reportable, while others may be exempted under rules which were discussed above. However, so long as those items which are reportable are, in fact, disclosed, then they are not subject to the \$320 per calendar year limit.

Example: A University official has an outside consulting practice in the official's field of expertise, for which the official keeps business records. In the course of that practice the official is asked to visit a manufacturing plant and evaluate its procedures. The outside consulting contract provides for all travel to be paid for by the client. The client pays for this travel. The travel would not be subject to the gift or honorarium limits, since it was "reasonably necessary in connection with a bona fide business, trade or profession." However, the income from the client, including the travel reimbursement, would be disclosable as income on Schedule C of the official's Form 700, and would require disqualification for a one-year period if the payment exceeded \$250.