

**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