

Date: November 17, 2008

Code: HR 2008-19

To: CSU Presidents

From: Gail E. Brooks  
Interim Vice Chancellor  
Human Resources



Subject: Conflict of Interest – Fair Political Practices Commission Revised Regulation Concerning Gifts to an Agency

Overview

**Audience:** Conflict of Interest Filing Officer and individual designated by the campus as "Agency Head" or designee for purposes of reporting a gift to the agency to the Fair Political Practices Commission (FPPC)

**Action Item:** Administer the revised FPPC Regulation regarding gift to an agency

**Affected Employee Groups/Units:** Employees who are recipients of gifts to the agency

Summary

The FPPC revised Regulation 18944.2 to set criteria for when a gift to an individual employee that is controlled by the agency and used for official agency business, may be deemed a gift to the agency and not the individual. In such a situation, the amount of the gift is not limited and does not need to be reported on the employee's Form 700. Instead, the agency has detailed reporting requirements including advanced written travel approval and a new Form 801. The effective date is July 1, 2008.

This HR letter should be reviewed in its entirety by the Conflict of Interest Filing Officer and/or campus designee responsible for completing and filing the FPPC Gift to Agency Report (Form 801).

Background and Summary

Most gifts received by CSU employees in a designated position are subject to reporting requirements and limitations by the Political Reform Act. Gifts worth \$50 or more must be listed on the annual Form 700, and total gifts from a single source are limited to a set dollar amount. (The current cap is \$390. This amount is periodically adjusted for changes in the cost of living). Gifts over this set amount received from a single source also disqualify the official from making a decision affecting that donor.

**Distribution:** With Attachments:  
Conflict of Interest Filing Officers  
Without Attachments:  
Chancellor Reed  
Vice Presidents, Academic Affairs  
Vice Presidents, Administration  
Vice Presidents, Information Systems  
Vice Presidents/Deans of Students

AVPs/Deans, Faculty Affairs  
Business Managers  
Human Resources Directors  
General Counsel

A *gift* is defined as: "any payment that confers a *personal benefit* on the recipient to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status." Gov. Code § 92028(a).

The Fair Political Practices Commission has now substantially revised Regulation 18944.2 which defines when a gift that benefits an employee may actually be considered as a gift to a public agency instead, and therefore need not be recorded on the employee's Form 700. Mostly, these are travel gifts including accommodations and food associated with the travel. The Regulation contains a number of strict procedural and reporting requirements to qualify for this treatment:

- The agency head must receive and control the gift and make the determination of which CSU employees will use the gift. The donor may not designate by name, title, class or otherwise who will travel or use the gift;
- The gift must be used for official CSU business;
- The CSU must report the gift within 30 days after its use; and
- If the gift is travel, the travel payment must be pre-approved in writing by the agency head, or campus designee appointed by the President to handle such gifts.

The Regulation requires that such payments be reported on the FPPC Gift to Agency Report (Form 801) and that the completed form be filed with the FPPC and posted conspicuously on the campus website within 30 days after the use of the gift (payment). The effective date of the Regulation is July 1, 2008. A copy of Regulation 18944.2 may be found at: <http://www.fppc.ca.gov/legal/regs/current/18944.2pdf>. A copy is provided as Attachment A.

### Criteria for Designating a Gift as a Gift to an Agency

The following three factors must be present for a gift to be designated as a gift to the agency:

#### **A. The Agency Head Must Determine and Control the Agency's Use of the Payment; Not the Donor.**

The Regulation requires that a single person from the agency control the use of the payment. Each campus must designate an "agency head" to be delegated authority to make determinations by the campus for purposes of this Regulation. The agency head should be an administrator.

The Regulation defines *agency head* as: "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 purpose of this Regulation."

If a payment from a donor will provide a personal benefit to an official, the agency head or his/her designee shall select the individual who will use it. The agency official who determines and controls the agency's use of the payment may not select himself or herself as the individual who will use the payment. The donor may identify a purpose of the payment, but the donor may not designate by name, title, class, or otherwise an official who may use the payment. **If a donor does specify who may use the payment, the payment cannot be characterized as a gift to the agency, but rather, a gift to the individual official. This may result in a reportable gift on Form 700 for the public official.**

If the payment involves travel, the agency head or his/her designee must approve the travel in advance and in writing. **Failure to obtain advanced written approval results in a gift to the individual official.**

**B. The Payment Must be Used for Official Agency Business**

The payment or travel must be used for official agency business.

**C. The Agency Must Report the Gift.**

There are three main procedural reporting requirements in the revised Regulation that must be followed for a gift to be designated as a gift to the agency.

**1. Advanced Written Approval for Travel Payments**

All payments for travel must be preapproved by the agency head or his/her designee in writing. Failure to obtain advance written approval deems the travel payment a gift to the public official and not the agency.

The Chancellor's Office has created a Gift to Agency Travel Request Form (see Attachment B) to use in instances when the gift is travel related. Travel approval forms along with the Form 801 should be forwarded to the campus Conflict of Interest Filing Officer. The travel approval forms should be kept with the corresponding Form 801 in the campus Conflict of Interest files.

**2. Form 801**

The FPPC has created Form 801 which must be completed and filed whenever a payment is deemed a gift to an agency. A copy of Form 801 is attached and can be found at:  
<http://www.fppc.ca.gov/forms/801.pdf>.

The value of the payment or the actual or estimated value of the goods or services provided must be disclosed on the Form 801. If a donor makes a travel payment directly to a third party vendor instead of to the state agency, the agency must follow up and obtain the specific amounts paid for lodging, transportation and meals. If the travel involves a private aircraft, the fair market value may be either the commercial air rate or the charter rate divided by the total number of passengers. If there is no commercial air service between the two locations, the charter rate must be used.

**Form 801 must be signed by the agency head or his/her designee and forwarded to the Conflict of Interest Filing Officer. The Conflict of Interest Filing Officer must file the form with the FPPC within 30 days after use of the gift (payment) by sending it via mail, fax or email to:**

Fair Political Practices Commission  
428 J Street, Suite 620  
Sacramento, CA 95814  
Fax: (916) 322-0886  
E-mail: [Form801@fppc.ca.gov](mailto:Form801@fppc.ca.gov)

The Conflict of Interest Filing Officer must keep a log and copies of the forms under both the name of the agency and the official receiving the payment. The log and forms must be maintained for a period of not less than four years. If the payment involves travel, the travel approval form should also be maintained with the Form 801 in the campus Conflict of Interest files.

### 3. Posting on Campus Website

Additionally, within 30 days after use of the gift or payment, the Conflict of Interest Filing Officer must post a copy of the Form 801 on the campus website. The home page of each campus website must include a link to "Form 801: Gifts to Agency." Each Form 801 must be uploaded on the campus webpage within 30 days after the use of the payment and remain on the webpage for four (4) years.

#### **Instances Where No Gift to CSU May be Deemed**

This Regulation does not apply to payments for travel for CSU employees who manage public investments.

Additionally, gifts of passes or tickets are not governed under this Regulation, but under 2 CCR § 18944.1. This provision details five specific instances when a gift of passes or tickets given to an agency is not considered a gift to the official.

#### **Additional Resources**

The rules and restrictions concerning gifts to individuals and the many exceptions to these rules are discussed in detail in the Conflict of Interest Handbook: [http://www.calstate.edu/gc/Docs/Conflict\\_of\\_Interest\\_Handbook.doc](http://www.calstate.edu/gc/Docs/Conflict_of_Interest_Handbook.doc).

Human Resources Administration will host a teleconference for Conflict of Interest Filing Officers and employees designated as "agency head" for purpose of this Regulation on Thursday, December 4, 2008, from 10:00 a.m. to 11:00 a.m. to discuss this Regulation and answer campus questions. To register campus participants, please email Shawn Burnett at [sburnett@calstate.edu](mailto:sburnett@calstate.edu). Upon receipt of email registration requests, participants will receive the teleconference dial-in telephone number and participant code.

Questions regarding this HR letter should be directed to Pamela Chapin at (562) 951-4411. This document is also available on the Human Resources Administration's Web page at: <http://www.calstate.edu/HRAdm/memos.shtml>.

GB/pc

Attachments

# Gift to Agency Report

# A Public Document

GIFT TO AGENCY REPORT

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

## 2. Donor Name and Address

Individual \_\_\_\_\_  Other \_\_\_\_\_  
Last Name First Name 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](http://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: [Form801@fppc.ca.gov](mailto:Form801@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.



## Gift to Agency – Travel Request

Campus Information			
<b>Campus Name:</b>			
Address:			
City:		State, ZIP:	
Campus Contact:		Title:	
Phone Number:		E-mail:	
<b>Official Using Travel Payment:</b>		Title:	
Department:			

Donor Information			
<b>Donor Name:</b>			
Address:			
City:		State, ZIP:	

Travel Payment Information			
Gift Amount:		Date Received:	
Travel Location:			
Date(s) of Travel:	From:	To:	

**ESTIMATED TRAVEL EXPENSES:**

Transportation Expenses	\$
Lodging Expenses	\$
Meal Expenses	\$
Other Expenses	\$
<b>Total Estimated Expenses:</b>	<b>\$</b>

*Describe purpose of trip, and use of travel gift for official agency business:*

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

\_\_\_\_\_  
Signature of Agency Head or Designee

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date