2012's NEW CHANGES TO THE GIFT RULES

On January 1, 2012, the new gift regulations became effective. While most of the regulations were amended solely for clarity and organization, there are several substantive changes included in the revised gift regulations. The following summary provides an explanation of those changes. For further information or for specific questions, please contact the FPPC advice line at 866/ASK-FPPC (866/275-3772).

Return or Donation of Gift within 30 days (Regulation 18941(c)(2)) — Officials who make a charitable donation of a gift provided to them so that they may legally avoid receipt may no longer donate that gift to any charity in which the official, or the official's immediate family, holds a position. Only charitable donations of gifts made to 501(c)(3) organizations that are unconnected to the official or the official's immediate family will qualify for this exception. Gifts donated to organization in which the official or an immediate family member holds a position will be treated as a gift to the official despite the donation.

Gift Exceptions (Regulation 18942) — Several amendments were made to the exceptions to gifts as discussed below:

Subdivision (a)(3), Family Members — The list of family members provided by statute (§ 82028(b)(3)) from whom one does not have to report gifts has been clarified with respect to certain relatives. Grandparents include great-grandparents, aunts, uncles, nieces, and nephews include great/grand aunts, uncles and nieces and nephews. Additionally, former in-laws are included in the exception, but spouses of former in-laws are not unless the spouse is a former in-law.

Subdivision (a)(7) Home Hospitality — The home hospitality exception is no longer an unlimited exception when it comes to who is providing the hospitality. The exception is not applicable unless the individual who provides the hospitality is someone "with whom the official has a relationship, connection, or association unrelated to the official's position." Lobbyists (who are otherwise subject to a ten dollar per month gift limit) and other individuals who do business or are regulated by an agency can no longer get around the gift restrictions by using the home hospitality exception, unless the host *has an independent relationship with the official and the hospitality is in connection with that relationship.* (e.g. a block party at your neighbor's house, a birthday party that your daughter is invited to attend at her classmate's home, a Passover meal at a long time associate's home.) With these restrictions now in place, the home hospitality exception covers more than just the host's primary home. Home hospitality can be extended at a vacation home or even a motor home or boat. Before these changes, an official could go sailing off Catalina on a lobbyist's yacht but couldn't go fishing on a co-worker's boat, now it's the other way around. (See Home Hospitality definition in Regulation 18942.2.)

Subdivision (a)(8)(b) Reciprocal Exchanges — This new provision recognizes the reality that people get together with certain friends on an ongoing basis for meals, rounds of golf, movies, shows, sporting events etc., where they typically take turns paying for the benefit, so that over time the payments equal out. Under the old rule, officials were required to report any benefit that they received, even though they may have paid an equal amount at the last get together. Under that rule, an official would have to report the total value of the benefits he/she received during the reporting period, even though that amount was completely offset by the benefits the official provided in the exchange. The new rule recognizes these types of exchanges and only requires reporting of the amount received in excess of the amount provided. The rule does not apply to any single payment over the gift limit and does not apply to benefits provided by lobbyists.

Subdivision (a)(12) Ceremonial Role — The ceremonial role exception has now been defined (see Regulation 18942.3). The ceremonial role must be conducted at the request of the holder of the event, and the ceremony must be part of the event itself so that the focus of the event is, for a period of time, on the ceremony being performed. Local jurisdictions are allowed a certain amount of discretion to determine what types of actions are allowable under the ceremonial role exception.

Subdivision (a)(13) Bona Fide Competition — This exception has been moved from former Regulation 18946.4 and minor language changes have been made to clarify that the exception applies to raffles. (See gift manual for explanation as to when the exception is applicable to a raffle drawing.) The winning prize must be reported unless it is money received from the California State Lottery.

Subdivision (a)(14) Wedding Attendance — This new exception recognizes that normal benefits received attending a wedding are not the sorts of gifts that are intended to influence an official. People do not generally get married and have a wedding reception as a reason to get around the gift restrictions. Meals and entertainment received at a wedding are only potentially reportable to the extent that they exceed the benefits extended to the other guests attending the wedding.

Subdivision (a)(15) Bereavement Offerings — Another new exception has been added to allow the receipt of items, such as flowers at a funeral, without gift reporting consequences. Again, this exception recognizes that there are some areas of common personal behavior that have no correlation with attempts to influence public officials in the performance of their duties and do not relate to the concerns addressed by the Act. Typical bereavement offerings are not reportable as gifts.

Subdivision (a)(16) Acts of Neighborliness — This exception is a codification of long established Commission opinions allowing the exception. The Commission

has limited this exception to the normal types of acts that would be performed by a kindly neighbor or a Good Samaritan assisting someone in need. It no longer may be applied to air transportation as suggested by the *Stone* Opinion (see *Stone* Opinion, 3 FPPC Ops. 52.)

Subdivision (a)(17)(A) Bona Fide Dating Relationship — This exception is a codification of a 27-year-old rule established through Commission advice letters that provides that benefits received within the context of a bona fide dating relationship are not subject to the Act's reporting requirements. In establishing the bona fide dating relationship exception, the Commission held that these relationships are similar to family or spousal relationships in which personal gifts are frequently exchanged and disclosure of such gifts would not further the purposes of the Act. (See *Shea* Advice Letter, No. A-84-085.) One important restriction has now been added. Public officials now have an economic interest in their dating partner and may not participate in decision affecting the financial interests of that partner. To this extent, the advice letters addressing the bona fide dating relationship are rescinded. (See *Shea* Advice Letter, supra, *Spencer* Advice Letter, No. A-07-005.)

Subdivision (a)(17)(B) Acts of Human Compassion — Another new exception has been added to address compassionate offerings of private assistance to individuals who, through unexpected circumstances, find themselves in need of such contributions in order to manage or cope with their misfortune. Examples of such situations included family medical expenses due to an illness or injury, long-time loss of employment, or loss of housing. Assistance from private individuals to meets such needs are not subject to the Acts requirements so long as such assistance is not provided by someone who lobbies the official's agency or who does business with or is regulated by the official's agency if the official is involved. (See subparagraph (D)(i-iii).)

Subdivision (a)(17)(C) Best Friends Forever — Gifts from long term personal friends where the friendship is not related to the official's position are also not subject to the Act's provisions, so long as the friend is not someone who lobbies the official's agency or who does business with or is regulated by the official's agency if the official is involved. (See subparagraph (D)(i-iii).)

Subdivision (a)(18) Unrelated Gifts — This final exception apples to gifts based on some other personal or business relationship unrelated to the official's position where the gift is not made by a lobbyist and the official's duties are limited in respect to the actions he or she may take such that there is no evidence whatsoever that the official may engage in any type of official activity that may provide a financial benefit to the donor. This language simply mirrors the reporting requirement establishes under the Act's conflict of interest reporting requirements.

Regulation 18942.1 Definition of Informational Material — The definition of informational material has been clarified with respect to when certain transportation is consider informational material. While expenses related to travel to or from an informational event are prohibited by statute, certain "transportation" is allowable if it serves as the means through which the information is conveyed and is essential to the conveyance of the information. Examples of such "transportation" include aerial tours that serve as the best means to inform officials of certain relevant conditions, and rides to remote, limited public access facilities, or rides within a restricted inspection site.

Regulation 18942.2 Definition of Home Hospitality — This definition has been added to clarify what constitutes "home hospitality." As discussed above, the application no longer depends on the host's ownership interest in a property, and lobbyists are no longer able to use the exception unless there is an independent basis for the hospitality and it is related to that purpose.

Regulation 18942.3 Definition of Ceremonial Role — This definition has been added to identify the parameters of the long standing ceremonial role exception for admission to events. The role must be performed at the request of the event holder and must be part of the event itself.

Regulation 18943 Gifts to Family Members — The rule restricting gifts to family members has been renumbered from Regulation 18944. The ambiguities created with respect to determining what constitutes "a commitment, obligation, or expense of the type normally paid by a family for the ordinary care and support of one of its members" have been removed. The regulation has also been strengthened to cover more than just 87200 filers. Additionally, it now creates a rebuttable presumption that a gift made to a family member of an official is a gift to the official if there is no established relationship between the donor and the family member that would suggest a reason for the gift, or if the gift is made by a lobbyist of the official's agency, or by someone who is, or has been within the previous 12 months, involved in an action in which the official will foreseeably participate, or a person who contracts with or engages in a business that regularly seeks contracts with or comes before the agency and the official could foreseeably participate in that decision.

(Note: Previous Regulation 18944.2 was not considered for amendment at this time. It has been renumber to Regulation 18944, but no changes have been made. The proposed amendments to this regulation will be considered at a future Commission meeting in conjunction with the travel regulations and the meaning of "personal benefit.")

Regulation 18944.1 Tickets to Officials of an Agency — This regulation applies to tickets provided by an agency to its own officials. Minor changes have

been made to clarify that the conditional requirements to avoid gift reporting by an official do not apply to college and school district officials attending performances (football games, concerts, plays, etc.) by students in their districts. New language has also been added eliminating reporting requirements for rank and file employees who normally receive such tickets as rewards for job performance or job retention. This provision was added because the previous requirements were applied broadly enough to identify individuals who would not be required to report the gift on a Form 700.

One final important change is the new requirement that the Form 802 reporting of the distribution of the tickets be submitted to the Commission for posting on its website. This will make the information easily available in one location. In the past, these posting have been difficult to find in many cases, which had worked to defeat the whole purpose of the regulation.

Regulation 18944.2 Agency Raffles and Exchange of Presents — This regulation was renumbered from 18944.4. Only minor clarifying changes were made.

Regulation 18945 Source of Gifts — This regulation was reworded without making any substantive changes, other than subdivision (c) now makes it clear that the person hosting the event is the source of the gift when determining the pro rata share of the cost of an event that is widely attended by individuals who are not government officials.

Regulation 18945.1 Aggregation of Gifts — The new language modifies the treatment of gifts from an individual and an entity in which the individual has a greater than 50 percent interest. The new rule creates a rebuttable presumption that the gifts are to be aggregated unless someone else, in fact, directed and controlled the payment.

Regulation 18945.3 Intermediary of a Gift — This regulation has been repealed. The rules for intermediaries are already stated in the Government Code. (See Sections 87210 and 97203.)

Regulation 18945.2 Group Gifts — Renumbered from 18945.4 (Gifts From Multiple Donors) the new language now eliminates the requirement that a group gift over $50 be reported from the "group." The gift need only be reported if one or more individuals contributed $50 or more to the purchase of the gift.

Regulation 18946 Valuation of Gifts — This basic gift valuation rule was simplified without any substantive changes, other than to clarify that the rule only applies to tickets to future events and not to unused tickets that may have a collector's value. Those tickets are valued at the fair market value of the ticket.

Regulation 18946.1Valuation of Tickets — There were no substantive changes to this regulation. The language merely clarifies the valuation procedure.

Regulation 18946.2 Valuation of Invitation-Only Events — The valuation of admission to invitation-only events was modified. The previous rule determined the value by the pro rata share of the cost of the event. The new valuation is determined by the pro rata share of the food, catering services, and entertainment provided at the event. Also included in subdivision (d) is a change to the valuation of a "drop-in" visit at such an event. The nominal value of minimal appetizers and drinks consumed by an official is not reportable. However, lobbyist, lobbyist employers, and lobbying firms must report the expense as the pro rata share of the food, catering services, and entertainment provided at the event.

Regulation 18946.3 Valuation of Wedding Gifts — Wedding gifts are now valued at one-half the gift value for each spouse. There is no longer a need to determine if the gift was more appropriate for one spouse as opposed to the other.

Regulation 18946.4 Valuation of Attendance at Non-Profit and Political Fundraisers — This regulation now is back to providing a valuation method for all tickets provided to non-profit and political fundraisers, rather than just a single ticket. Additionally, a 501(c)(3) or political committee may provide two tickets to an official for his or her attendance, along with a guest, at the event and the tickets will have no value. Additional tickets are valued under the stated valuation method and not at the full face value as previously required.

Regulation 18946.5 Valuation of Air Travel — Flights on charter flights are now valued at the official's pro-rata share of the cost of the flight determined by the rental charge of the flight divided by the number of passengers aboard.