



# Fair Political Practices Commission Completes Gift Regulations Overhaul

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The Fair Political Practices Commission (FPPC) last week completed a months-long project to overhaul California's regulatory scheme on gifts to public officials. New rules were adopted, while others were simplified, limited, or expanded. Some new language codifies advice issued by FPPC staff in prior advice letters.

The changes amend regulations implementing California's Political Reform Act, which subjects certain California state and local officials to gift limits, reporting requirements, and conflict of interest provisions. Covered officials generally may not accept over \$420 a year in gifts from any one source, and must disclose on annual Statements of Economic Interests gifts that aggregate \$50 or more from a single source. Lobbyists may not give more than \$10 in a calendar month in gifts to an official of an agency which the lobbyist is registered to lobby.

Below is a brief overview of the changes:

**Home Hospitality:** This gift rule exception permits individuals to host a public official in their home, and the cost of lodging, meals, and entertainment is not a reportable gift to the official. This exception was narrowed to apply only in circumstances when the host has a relationship, connection, or association unrelated to the official's position, and the hospitality is provided as part of that non-official relationship.

**Source of Gifts:** In 2010, the FPPC expanded the rule on the source of gifts to include a source that knew, or had reason to know, that a payment made would go to benefit officials, even if the identity of the officials was unknown. For example, a corporate sponsorship of a widely attended event hosted by a non-profit would be a gift by the corporation to officials attending the event if public officials had historically attended the event.

The new rule narrows the circumstances under which such a donor is deemed the source of a gift to when (1) the donor identifies the official as the intended recipient; (2) the intermediary (such as a non-profit) solicits and receives a payment with the understanding that it will be used for the sole or primary purpose of making a gift to an official; or (3) an official or official's agent solicits a payment by the donor to the intermediary.

**Valuation of Air Travel:** Currently, air transportation on non-commercial flights provided to officials is valued as the total cost of the flight divided by the number of officials on board the flight. The new rule creates a more common sense valuation method by dividing the cost of air transportation by the number of passengers on board, regardless of their status as officials.

**Ceremonial Role:** The value of a ticket to an event at which an official performs a "ceremonial role" is not subject to the gift limit or required to be reported. Historically, what constitutes a "ceremonial role" has been determined on a case-by-case basis. The new regulation defines ceremonial role and provides specific examples, such as a ribbon cutting or throwing out the first pitch at a baseball game.

**Valuation of Attendance at Non-Profit and Political Fundraising Events:** Current regulations permit public officials to receive one ticket from a non-profit or political committee to attend a fundraising event benefitting the non-profit or political committee. Tickets provided by a third party source, or in excess of the one ticket limit, are subject to the gift limit and reporting rules. The amended regulation provides that public officials may receive two tickets to 501(c)(3) or political fundraisers (if provided by the 501(c)(3) or political committee) without triggering either the gift limit or reporting. Tickets to 501(c)(3) and political events provided by a third party source, as well as tickets benefitting other types of non-profits, such as 501(c)(4)s, are gifts and are valued according to the official's pro-rata share of food and entertainment or the non-deductible portion of the ticket or admission.

**Gift Exceptions Codified:** Several exceptions to the gift rules that previously existed through advice letters were codified.

*Bona Fide Dating Relationships:* Gifts between people on a date or in a dating relationship are neither reportable nor subject to the gift limit. However, gifts from certain sources to an official in the dating context may cause the official in receipt of such gifts to be disqualified from voting on certain matters.

*Acts of Neighborliness and Acts of Human Compassion:* Subject to certain source restrictions, polite acts carried out in civilized society, such as lending a tool or giving a ride, are not gifts subject to reporting or limits. Similarly, donations to offset unexpected calamities, such as a medical emergency, or to assist with a humanitarian effort, such as an adoption of an orphaned child, are not gifts so long as there is a prior social relationship between the donor and the official or the payment is made without regard to official status under other circumstances in which it would be common to receive community outreach. These exceptions apply provided that the donor is not:

- A lobbyist, lobbying firm, or lobbyist employer who lobbies the official's agency;
- A person involved in an action or decision before the official's agency in which the official will foreseeably participate or has participated within the last twelve months;
- A person who has a contract with the official's agency or a person that engages in the type of business that would seek contracts with or come before the agency for the purpose of receiving a license, permit or other entitlement.

These changes will go into effect on January 1, 2012 and will not apply retroactively.

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