Fair Political Practices Commission

Memorandum

To: Chair Ravel, Commissioners Eskovitz, Garrett, Montgomery, and Rotunda

From: William J. Lenkeit, Senior Commission Counsel
Zackery P. Morazzini, General Counsel

Subject: Adoption of Proposed Amendments to the Gift and Travel Regulations

Date: October 31, 2011

Proposed Commission Action and Staff Recommendation: Approve for adoption, the repeal, readoption, renumbering, and amendment of the Political Reform Act's (hereinafter "the Act")[1] gift and travel regulations as discussed below.

Background and Reasons for Proposed Amendments to Gift Regulations. Over the last four years, there have been a number of amendments to the gift regulations, including Regulation 18944.2 regarding the so called gifts to agencies; Regulation 18944.1 regarding tickets to agencies: Regulation18943 (gifts to family members); Regulation 18944.4 (agency raffles); Regulation 18945 (source of gift); Regulation 18946.4 (admission to political and nonprofit fundraisers); Regulation 18946.6 (air travel) and Regulation 18950.3 (payments in connection with speeches).

In the process of making these changes, Commission staff became acutely aware of the need to revise and update the entire gift section of the Commission regulations. Over the years the piecemeal process of change gave rise to certain inconsistencies between regulations. It became obvious that there was no clear overall plan to assure that the regulations meshed with each other, and some basic definitional problems needed to be solved for simple clarity and application of the gift rules.

For example, in some cases it was unclear who was being regulated. Frequently, the word "public official" was used. But the statutory definition of "public official" does not include judges and candidates, even though the rules were intended to apply equally to them. Sometimes the word "filer" was used, but the conflict of interest/disqualification rules apply equally to non filers. Sometimes the word "official" was used, but this word is not defined, so it was impossible to determine to whom it applied. Did it mean the same as "public official" or something different? The proposed

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[1] The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

regulations are now consistent in the singular use of the word "official," which is defined to include all those to whom the rules apply.

Additionally, a specific amendment to the Act's definition of "gift" seemed to be overlooked in applying many of the Act's gift regulations. In 1997, the statutory definition was changed to add the personal benefit language: a gift is any "payment that confers a *personal benefit* on the recipient to the extent that consideration of equal or greater value is not received ..." (Section 82028.) Many of the regulations predated this change, and have never been updated to make them consistent with the actual definition of "gift." For whatever reason, the amendment has been largely ignored, and has created significant interpretation problems and inconsistencies in the gift regulations.[2]

Also, the very use of the word gift was inconsistent, sometimes being used twice in the same sentence with a different meaning in each case. Does the word "gift," as used, mean what is defined under the Act or is the word being used in its more general sense to indicate "something bestowed voluntarily and without compensation" as provided under the dictionary meaning?

Secondly, recent changes in a few regulations have created some problems, which needed correction. Foremost among these is Regulation 18946.4, which establishes an exception from the standard valuation method for attendance at non-profit fundraising events. Because of a misapplication of an exception within the regulation, a second ticket provided to a non-profit fundraising event was valued at face value. This essentially abrogated the whole purpose of the regulation. Additional adjustments have been made to recently amended Regulations 18944 (now 18943) 18944.2 (now 18944), 18944.1, 18945, and 18946.6. Some of the earlier changes resulted in confusion, and the wording in many of the regulations became complicated and difficult to understand.

Finally, once the hood was opened to address the basic problems discussed above, a decision was made to take the next step and rebuild the whole engine, with a focus on addressing other long term concerns as well, such as incorporating exceptions developed in Commission opinions and staff advice letters.

The regulations dealing with gifts have never completely addressed the multitude of issues arising from the manner in which the Act defines gifts. For that reason, the Commission and Commission staff have, over the years, had to develop certain exceptions to the definition of gift, not found in the Act. These include the "Acts of Neighborliness exception" and the "Bona-Fide Dating relationship exception," which will now be addressed in the regulations. To these concepts, an "Acts of Human Compassion exception" has also been added, as well as exceptions for gifts based on long term friendships, and other gifts that have a basis founded in a gift giving relationship without any connection whatsoever to the official's decision making-responsibilities.

Additionally, after digging into this project, staff became aware of another issue. Aside from not considering the personal benefit provisions, one of the two requirements for a payment to be considered a gift, there has been a pronounced tendency to overlook

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[2] The use of the term "Gifts to an Agency" under Regulation 18944.2 is a perfect example of this. While an agency may receive personnel benefits, it cannot receive a personal benefit.

the second requirement — lack of consideration for the payment, especially, if not near exclusively, with respect to travel payments "in connection with speeches under Section 89506. This section has been applied in such a way that all travel payments seem to be treated as gifts. Staff does not believe that the section supports that interpretation. Because consideration is provided for travel payment by the speech, some part of that payment, if not all of it, is income. Staff believes that only the portion of the payment above what would be considered normal is a gift.

The proposed amendments continue the progress made by the Commission over the last few years toward achieving the Act's purpose. These proposed amendments now take the further step of consolidating all the rules applicable to gifts, closing certain loopholes, correcting ambiguities, uncertainties, and other errors, and making the rules more consistent and understandable in order to implement the overall purposes of the Act. The objective of this project is to fix what's broke without breaking what's fixed. The discussion below provides the conceptual framework for our analysis and the proposals made to accomplish the goal of synchronizing the Act's purposes in regulating gifts within real world everyday situations.

Discussion. Gifts go back to the beginning of time. A typical definition of gift goes something like this: "a gift is the transfer of something without the expectation of receiving something in return. Although gift-giving might involve an expectation of reciprocity, a gift is meant to be free."[3]

Gifts do not fall out of the sky or grow on trees. Gifts are given for a reason, and there are many reasons someone may make a gift: as an expression of love, or gratitude; for mutual aid, charity, or to offset misfortune; to share the wealth, be hospitable, or to be popular; as part of a tradition or, to curry favor with someone or influence the actions of another. The Act's rules restricting gifts should only be focused on those gifts related to the last two reasons and then only if they are related to a political purpose. Only these gifts involve "the things which are Caesar's" and that may be rendered unto him.

There are many occasions on which gifts are traditionally provided: birthdays, religious holidays or ceremonies, engagements, graduations, wedding showers and baby showers, a house warming, Valentine's Day, Mother's Day, Father Day, almost anything Hallmark has a card for and more. There are also many circumstances in everyday life where a gift is made, although it does not come wrapped in ribbons and bows: the friend who invites you over for dinner; the coworker who gives you a ride to pick up your car after work, or the neighbor who loans you his jackhammer for the weekend, all have made gifts to you under the definition provided in the Act. The vast majority of these gifts should not fall under the Act's regulation. Only certain types of gifts from certain

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[3] Wikipedia at http://en.wikipedia.org/wiki/Gift. According to some dictionaries, the very use of the word gift is now "irredeemably tainted by its association with the language of advertising and publicity." Apparently, the phrase "free gift," which generally refers to a benefit provided to someone that is neither free, nor a gift, has corrupted the meaning of the word gift. (See *The American Heritage College Dictionary, Third Edition.*) As yet, however, the word "free" does not appear to have been similarly infected.

types of people need to be regulated; those that have a corrupting influence on the public's business. The challenge is finding where, and how, to draw the line.

The challenge begins with the Act's broad definition of gift, expressed in Section 82028 as follows:

> "A gift means, except as provided in subdivision (b), 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."

This broad definition encompasses almost anything needed, or worth having, that you do not pay or exchange something of equal value for.[4] The definition is not without limitations. As indicated, exceptions are provided in subdivision (b).

> "(b) The term 'gift' does not include:
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> (1) Informational material such as books, reports, pamphlets, calendars, or periodicals. No payment for travel or reimbursement for any expenses shall be deemed "informational material."
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> (2) Gifts which are not used and which, within 30 days after receipt, are either returned to the donor or delivered to a nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code without being claimed as a charitable contribution for tax purposes.
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> (3) Gifts from an 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.
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> (4) Campaign contributions required to be reported under Chapter 4 of this title.
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> (5) Any devise or inheritance.
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> (6) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars ($250)."

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[4] Gift is a subcategory of income. If consideration is provided, it is income. If not, it may be a gift. The definition of income under the Act is also broad enough to cover far more than what would be reported on an income tax return. It includes, for example, any payment received when an official sells certain items, such as an automobile. (See Sections 82028 and 82030.)

While these exceptions address some of the most common types of gifts that should not be subject to regulation (such as those from certain family members), they do not nearly address them all (such as those from certain other family members). Compounding the problem are two others factors. First, while income is only reportable if received from a person doing business in the official's jurisdiction, gifts are reportable from anyone in the World. Second, Section 87200 and agency conflict of interest codes, many of which adopt overly broad disclosure provisions, require certain officials to report a gift received from any source.

Section 82030's definition of income provides, "'Income,' *other than a gift*, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title." (Emphasis added.) It is this language that makes gifts, and gifts only, reportable from anyone, anywhere.

Section 87207 provides for disclosure of income, which includes identification of each source of income aggregating $500 or more in value, or $50 or more if "the income was a gift." (Section 87207(a)(1).)

Section 87200 specifies that officials holding certain offices (and Section 87201 includes candidates for those offices), are subject to the disclosure provisions of Article 2. These officials, hereinafter referred to as statutory filers, must disclose pursuant to the provisions of Section 87203, which states:

> "Every person who holds an office specified in Section 87200 shall, each year at a time specified by Commission regulations, file a statement disclosing his investments, his interests in real property and his *income* during the period since the previous statement filed under this section or Section 87202. ..."

For statutory filers, this means they must disclose any gift, not otherwise excepted, of $50 or more and are prohibited from receiving any gift of more than $420, no matter what the circumstances. Because of this language, and by way of example only, a member of the California Coastal Commission would be prohibited from accepting the use of his or her college roommate's vacation condominium in Aspen to go skiing for a week, even though the roommate lives in New Jersey, has a substantial, long term relationship with the official, and has nothing to do with any governmental decisions related to the use of "land and water in the California coastal zone" that the Coastal Commission engages in.

In addition to statutory filers, the Act provides for the adoption of agency conflict of interest codes to address all other governmental officials who are involved in governmental decision–making. While statutory filers must disclose all gifts no matter how limited their authority may be, those who disclose pursuant to an agency conflict of interest code (hereinafter code filers) are supposed to have their financial disclosure requirements tailored to their job duties. Not only is this explicitly required by the Act, it

is constitutional requirement in order to protect individual privacy rights, which would apply to statutory filers as well.[5] Unfortunately, it is a requirement that is overlooked in far too many circumstances, and many officials are, at least by the terms of their code, required to disclose items received from others when there is absolutely no connection between the gift and any action the official could possibility take.

These overly broad agency conflict of interest codes further compound the problem. Statutory filers and full disclosure code filers must be continually aware of the actions that could trigger their reporting requirements. Even what are seemingly insignificant actions with no relationship to the official's position may start the gift meter running.

This regulatory project is an effort to address these challenges. The proposed amendments have been developed by Commission staff with the assistance of input from the California Political Attorney's Association, City Attorney representatives from the League of California Cities, representatives from the Los Angeles and San Diego Ethics Commission, Common Cause, the Assembly Ethics Committee, various attorneys from other state agencies, and a number of other helpful participants who have provided valuable input. There have been two interested persons meetings and two working group meetings, and numerous telephone and e-mail discussions that went into the development of these regulations. Not all issues have been resolved, but great progress has been made.

The Gift and Travel Regulations

"[It] is near impossible to apply simple rules to human relationships!"
—S.J. Jolly
10/13/11[6]

Summary of Proposed Amendments. As stated above, the genesis of this process was a goal to simplify the language to make the gift provisions more understandable, develop overall consistency among the regulations, and remove the duplicative and unnecessary portions. Many, if not most, of the proposed amendments submitted herein are limited to that purpose. Other suggested amendments are more substantive and either add new provisions or make changes, some of which are significant, to the current regulations. The following summary addresses each individual

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[5] Section 87302 states that each conflict of interest code must enumerate the positions within the agency that " involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest" and the interest "shall be made reportable by the Conflict of Interest Code if the business entity in which the investment or business position is held, the interest in real property, or the income or source of income may foreseeably be affected materially by any decision made or participated in by the designated employee by virtue of his or her position." For case law that addresses the need to tailor disclosure to the duties of the office, see *City of Carmel by the Sea v. Young*, (1970) 2 Cal.3rd 359; 466 P.2d 225; 85 Cal.Rptr. 1; 1970 Cal. LEXIS 271; 37 A.L.R. 3d, in which the California Supreme Court stated ,"[t]he regulations prohibiting conflict of interest and requiring the disclosure of financial holdings are limited to only those transactions or holdings which have some relationship, direct or indirect, to the official duties of the public officer or employee."

[6] Comment to *Sacramento Bee sacbee.com* online editorial "FPPC is right to aim high and let small stuff go;" Wednesday, October 19, 2011, http://www.sacbee.com/2011/10/13/3977370/fppc-is-right-to-aim-high-and.html

proposed regulatory change and provides a discussion and analysis of the substantive changes being offered.

§ 18940 (Guide to Gift Rules) – Currently, this regulation is, or at least was at some point in time, intended to serve as an index to the gift regulations. It is extremely outdated and does not provide reliable assistance. Public input suggested that this regulation did not serve a useful purpose and that it would be more helpful to begin the gift rules by providing an overview of what, exactly, is being addressed. The new regulation now lays out the basic gift rules and their purpose while providing a roadmap to the relevant areas concerning exceptions, valuation, and reporting requirements for all persons who are required to report gifts under the Act.

§ 18940.1 (Definitions) – This section now provides certain relevant definitions needed to understand the gift regulation provisions. It clarifies when a gift is reportable and adopts the label "official" to identify all those who are affected by the Act's gift provisions. These definitions are all intended to help clarify the provision. While the new definition for "personal benefit" also falls into that category, it is one of the more controversial of the new provisions primarily due to differing opinions as to what is included, and what is not. Some see it as a necessary means to address the language of the statute; others see it as a opening for abuse. Accordingly, a full discussion of this provision is in order.

Personal Benefit

As stated above, in 1997 the Legislature amended the Act to add the personal benefit language to the definition of gift. Almost 15 years have passed and the Commission has not fully addressed the issue of what constitutes a personal benefit. The general application that has been used for quite sometime now is that a personal benefit includes any benefit you get, right down to the air that you breathe as it circulates through someone else's air conditioner. This interpretation essentially ignores the application of the language. To be sure, air, food, and water all provide a personal benefit in that they are essential to staying alive, the ultimate personal benefit. But, such a broad construction deprives the statutory language of any meaning or purpose.

A more reasonable construction is that, for purposes of the Act's regulation of gifts, the language was intended to separate business and pleasure, to create a distinction between someone's personal activities and the work you do as part of your official government duties. At a minimum, this interpretation would eliminate from the definition of gift payments an official receives in the course of performing his or her official duties that are no different from what the official's agency would provide or from what other participants would be provided under the same circumstances.

Once we establish that personal benefit is not meant to apply to anything that an agency would otherwise pay for we came to realize that, other than salary, only travel

payments remain. Because salary cannot be paid by another source,[7] that leaves travel payments only. But, if we treat all travel payments as gifts, as has been the prevailing view, by definition a travel payment would provide a personal benefit. The personal benefit language then vanishes with respect to this application, because there is no place for it to be applied.

Staff contends that Section 89506 should not be read so broadly as to require that travel payments be treated a gifts, that it merely provides a different rule for certain travel payments that could be considered gifts, such as flights on private jets and stays at lavish resorts with extravagant meals. Staff believes that most travel payments made in connection with the performance of ones duties are income, as that term is used in the Act, and not gifts, because the official is performing some sort of service in exchange for transportation to the premises where those services are to be performed. For example, if an official is asked to provide training on a particular aspect of his or her job to a third party, and the third party pays for the reasonable travel expenses the official incurs in making the trip to wherever the training is held, has not the official provided consideration for the travel expenses?

The primary purpose in defining personal benefit is to distinguish certain payments that should not be considered as gifts. Travel payments from third parties reasonably related to the performance of ones official duties are not gifts, but income, and the personal benefit language, along with consideration, becomes important in determining where the income ends and the gift begins when the travel payment and subsistence extends beyond what is normal or required.

Finally, it must be pointed out, that the application of the personal benefit requirement is not intended as an exception to a gift, but as part of the definition itself. By definition, all gifts are included as income. Some gifts are income because they are gifts. If they fall out of the analysis because a gift exception exists, they fall out altogether and are not treated as income either. Some income is income because it is not a gift. If it does not meet the definition of gift — a payment that provides a personal benefit with no consideration exchanged, it then falls on the income side of the analysis and may be treated as such.

To avoid unnecessary conflict of interest issues, staff has added language that any payment that is received as part of a contractual obligation with the agency or as a regulatory requirement or as a payment made to the agency under Regulation 18944 is not reported as income to the official.

§ 18940.2 (Gift Limit) – This regulation provides the current gift limit, which is subject to change every two years. The mathematical information regarding the method of calculation was unnecessary and has been removed, and only the relevant information remains.

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[7] See Government Code Sections 8920, subdivision (b)(4) and 19990, subdivision (d).

§ 18941 (Receipt/Return of Gift) – This section now combines sections 18941 (Receipt, Promise, and Acceptance) and 18943 (Return, Donation, and Reimbursement) into one regulation, because both concepts — when you get a gift and how to get rid of it, deal with whether or not a gift has been received for purposes of the Act. Excess wording has been removed and a new provision has also been added addressing reciprocal gifts. Because this introduces a change to the current operation of the gift rules, we discuss it further.

§ 18941.1 (Payments for Food) – Staff proposes that this section be repealed. This regulation could serve as the poster child for the need for revisions. It is duplicative and contains almost as many references to other regulations as it does words, and still doesn't cover everything applicable. It adds nothing. Any payment made to covered officials for food is already a gift unless it meets an exception. There is no special rule for candidates and elected officials.

§ 18942 (Exceptions) – This regulation lists the exceptions for gifts. The first six paragraphs ((a)(1-6)) are taken directly from the exceptions in Section 82028(b). The remaining existing exceptions were added by the Commission. These include, by subsection, (7) home hospitality, (8) gift exchanges, (9) leave credits, (10) disaster relief provisions, (11) free admission when giving a speech, (12) travel and subsistence as part of campaign activities, (13) entrance to an event while performing a ceremonial role, and prizes received in a bona fide competition. Additional new exceptions have been added under (a)(15-19).

Of the six statutory exceptions, the only amendment proposed is to the definition of family gift. Amendments are also offered to existing regulations for the home hospitality exception and the ceremonial role exception, by way of adding definitions, and to the gift exchange exception. Finally, several new provisions would create new exceptions. Some of these amendments seek to codify Commission opinions and staff advice letters. Others are suggestions that are proposed for the first time. Each of the substantive changes is discussed, individually, below.

Gifts from Family Members

18942(a)(3) – The statutory exception for family members is significant. It covers all of the direct or immediate family members. But its coverage, in many respects, seems random. The list looks like it could be the winning entry in a contest to name the most family members you can in ten seconds. After hitting all the obvious ones, it seems to lose any rhyme or reason after that. Why is it permissible for an official to receive a gift from his cousin's wife, but not from his wife's cousin? Why are gifts from second cousins not excluded from the definition, but gifts from the husband of a sister-in-law or a first cousin are? Additionally, what does grandparent or aunt and uncle mean? Does it include great grandparents or great aunts and uncles?

Staff believes that government should tread lightly when regulating gifts from relatives. The proposed amendment applies broad category definitions to the terms used

in the statute, defining grandparent to include great grandparents, aunt and uncle to include grand/great aunts and uncles, niece and nephew to include great nieces and nephews, first cousin to include first cousins once removed, and in-laws to include former in-laws. These amendments are necessary to reflect the reason for the exception in the first place – that family relatives make gifts because of their family relationship and not in an effort to influence an official. Staff has been faced with a number of circumstances where this exception has been extended through advice letters to cover everyday real-life situations where it made no sense to call a payment a gift. These include an ex-mother-in-law paying travel expenses to her former daughter-in-law to bring the grandchildren back for a visit at Christmas, a former husband paying expenses for his ex-wife to take their daughter on a visit to a college campus she was considering attending, and a grand aunt who made a pre-testamentary distribution from her estate to her great nephew.

Home Hospitality

18942(a)(7) – Paragraph (a)(7) provides an exception for "hospitality (including food, beverage, and occasional lodging) provided to an official by an individual in the individual's home." What constitutes "home hospitality" has been a continuing challenge for Commission staff, mostly in deciding what "occasional lodging" is and what is considered an "individual's home." For this reason, a new regulation is proposed under Regulation 18942.2 (discussed below) that defines what is covered by home hospitality.

Other than adding the reference to the definition of home hospitality, there is a minor proposed change to this exception. Under clause (a)(7)(A)(i) of Regulation 18942.2, the words "provided by the host" are added, so that if another guest brings a bottle of wine or an apple pie for dessert, the exception is not lost.

18942(a)(8) – Subdivision (a)(8) provides an exception for gifts exchanged between individuals on holidays, birthday, and special occasions. Included in the exchange are benefits received in attending an event, such as the dinner provided at a wedding reception. A new provision has been added to the paragraph to include reciprocal arrangements within the gifts exchanged exception.

Reciprocal Arrangements

This language addresses the common everyday situation where friends get together regularly for lunches, rounds of golf, or movies, etc. and one person picks up the tab one time and the other the next, for an ongoing, continual period of time. Current advice is that, for example, if Fred and Barney get together every Wednesday for lunch and alternate paying each time over the course of the year, at the end of the year each will have received a gift of 26 lunches from the other. Staff believes that not only is this rule unreasonably meddlesome and often ignored, but when complied with it has the potential to produce misleading information. If one person in the exchange is an official with full disclosure and the other is not, it will look to the world as if the official is receiving a free lunch every other week. This new language eliminates these problems.

Moreover, to restrict the potential for abuse and the appearance of impropriety, keeping in mind the special $10 limit on lobbyist gifts, staff has included an option to exclude lobbyists. Finally, this language is intended to do nothing more than address situations were relatively minor ongoing exchanges add up to larger amounts due to the frequency of the meetings that may then have to be reported or could even reach the gift limit. Because of this, big ticket items are not included; any payment of $420 or more is excluded from the reciprocal exchange provision.

18942(a)(9-12) – Only minor clarifying amendments have been made to these exceptions. Former subparagraph 11 has been eliminated because it is encompassed in the personal benefit rule.

18942(a)(13) – This exception has been moved from 18946.5, which would be eliminated.

18942(a)(14) – This paragraph contains a proposed new exception. Under current rules, if a lobbyist gets married and invites legislative members or staffers, those guests will not be able to accept a meal provided at the wedding if it is over $10. Staff believes that guests are invited to weddings for reasons other than to be influenced and that a catered dinner and some wedding cake provided to all guests at any wedding should not be regulated by the Act.

18942(a)(15) – The same is true for funerals. Several years ago, a prominent former state senator died. His wife was a current member of the legislature. A lobbyist, who had served in the legislature with the decedent, asked if he could send flowers to the funeral. Staff advised that he could not unless the flowers were under the $10 lobbyist gift limit, because the Act provided no exception. Staff believes that typical gifts made as expressions of solemnity over the death of a loved one, by their very nature, are not intended to influence a governmental official.

18942(a)(16) – This paragraph introduces three new concepts as proposed regulatory exceptions to the definition of gift. The first, Acts of Neighborliness, was developed in the Commission's Opinion in *In re Cory* (1975) 75 Ops. 094-B. The second, Bona Fide Dating is a proposed codification from numerous staff advice letters. The third, Acts of Human Compassion, is a new concept being proposed for the first time as a result of several recent advice requests that suggest a need for this type of exception. They are addressed individually as follows.

Acts of Neighborliness

18942(a)(16)(A) — One need not be a neighbor, e.g. someone living next door or down the street, to provide an act of neighborliness. Neighborly, is defined as "having or exhibiting the qualities of a friendly neighbor."[8] The origin of this exception was the Commission's third Cory Opinion, *supra*, in which former State Controller Ken Cory

[8] The American Heritage College dictionary, Third Edition.

asked if assistance provided by his neighbor in repairing Mr. Cory's fence was considered a gift under the Act. The Commission concluded that it was not.

> "In any tolerable society, people lend assistance to their acquaintances and even to strangers in ways which have theoretical economic value but do not, in any real sense, represent economic transactions. It is absurd to suppose that the repairing of a fence by a neighbor, the offering of a ride, the fixing of a flat tire or hundreds of similar friendly acts are 'gifts' which must be reported under the Act." (*Cory, supra*, p.3.)

This concept was developed further a few years later in *In re Stone*, (1977) 77-Ops. 003, in which the San Jose City attorney asked if free air transportation in a private plane provided to the city attorney by a friend to facilitate a court appearance or a private plane flight provided to a city councilman by a private corporation for the councilmember to appear before the legislature in Sacramento were gifts under the Act.

Relying on the *Cory* Opinion, the Commission stated that public officials may be offered free air transportation in a private plane and, under certain circumstances, it would be a "mischaracterization of both the intent and effect of the event to label it as a gift if nothing more than a gesture of friendship or neighborliness is involved." (*Stone, supra*, p. 2.) The Commission concluded that such circumstances applied to the flight provided to the city attorney but not to the city councilman.

The Commission then listed certain factors "relevant to determining whether a service provided to a public official is a nonreportable act of neighborliness or a gift." (*supra*, p.3.) The first factor examines whether the transaction was "the type of situation where one would expect the donor of the service to deduct the cost of the flight on his income tax return as a business expense" (*supra*), which would be indicative that the service was business related and not based on an existing friendship. The second factor

> "is whether the donor has, or in the foreseeable future may have, business before the official who receives the service. While the absence of this factor does not necessarily mean that no gift has been made, the presence of this factor will in most cases provide strong, if not conclusive evidence that a gift has been made. *It may be that the donor has no intent of attempting to influence the official, but the need to avoid even the appearance of possible impropriety is reason alone to require that a service provided to an official under these circumstances be disclosed.*" (*supra*, emphasis added.)

It is this second factor that forms the basis for the restrictions listed in clauses (a)(17)(A)(i-iii) limiting the application of the acts of neighborliness exception.[9] Persons listed under those clauses are (i) lobbyists, lobbying firms, and lobbyist employers who lobby the agency; (ii) those contracting with or seeking some form of entitlement from

[9] The same restrictions apply to the Bona Fide Dating exception and the Acts of Human Compassion. Those who do not qualify for the Bona Fide Dating Exception would not be subject to disclosure or the gift limits but would have to disqualify for conflict of interest purposes.

the agency, and (iii) those involved in a regulatory or licensing procedure before an agency that regulates their profession, business, or practice. All of these "have business before the official who receives the service" for purposes of interpreting this exception. And as the Commission in *Stone* stated, though it may be that these donors have no intent of attempting to influence the official, the need to avoid the appearance of possible impropriety is reason alone to require that a service provided to an official under these circumstances be disclosed.

The final factor listed in the *Stone* Opinion, "whether or not the service is normally the subject of an economic transaction" (*supra*) has been added as a threshold factor in determining an act of neighborliness.

The proposed amendment to add the "acts of neighborliness" exception would codify Commission opinions that have been relied upon for the last 35 years, and the suggested language closely follows that outlined in the opinions cited. Staff believes that it is as important today as it was 35 years ago to "avoid even the appearance of possible impropriety," and that not all exceptions are created equal. While those excluded from providing services under this exception may not have ulterior motives in mind, the public interest is best served by not having to address that question. Those who may seek to influence should be left out of the equation.

Bona Fide Date or Dating Relationship

18942(a)(16)(B) — This exception was developed by way of staff advice letters out of an absolute necessity to deal with the chaos that would result if it were not there. By way of illustration, many officials are required to disclose all gifts they receive with a cumulative value of $50. Boyfriends and girlfriends; fiancés and fiancées, and certainly "dates" are not among those indentified "family members" that are exempted under the Act. Therefore, without the exception, the Act would be violated by any of these officials who accepted an engagement ring, or failed to report on their Statement of Economic Interest a detailed description of what they received on dates during each previous calendar year.

As the exception currently operates, through the advice letter procedure, an official must write in and make a request that the exception be applied to his or her particular circumstances. This requires a somewhat detailed description of the circumstances, and it typically goes something like this.

> "My boyfriend and I have been dating each other exclusively for the past two years. We give each other gifts on our birthdays and holidays and spend much of our free time together. Last Thanksgiving, I had dinner with his parents and family, and on Christmas he had dinner with mine. Last year, he took me to Hawaii for a one-week vacation. Do I have to report this as a gift and reimburse him for the costs he paid in excess of the gift limit?"

There has got to be a better way to deal with situations like this. A government employee should not have to go through a process like this to avoid being subject to violations of the Act, and the law should not restrict anyone's dating activities. The only

factor keeping this issue from reaching out-of-control proportions is that, for the most part, people either follow a "don't ask don't tell policy," or are not even aware that the issue exists.

The Bona Fide Dating exception, in its current form, is an underground exception that, although it has been around for quite sometime, many people are not aware of it. When staff held its first Interested Persons meeting as part of the public outreach effort made at the beginning stages of this project, it was surprising how many people who work in areas covered by the Act were not familiar with the exception. Therefore, it is likely that some filers are being told they need to report this information.

Several years ago, staff began work toward codifying the exception, but the approach was not well considered. The proposal made was to define a bona fide dating relationship by considering the length of the relationship — offering the Commission potential options such as one month, three months, six months of dating before the relationship would be considered "bona fide." The bizarre manner in which the issue was addressed resulted in elimination of the project and created a firm belief among staff that "bona fide dating relationship was impossible to define" and that it was better to just leave it alone — that "some things are best left underground." The mere mention of attempting to codify the bona fide dating relationship was scoffed at.

With this attempt to completely overhaul the gift regulations, including codifying all the underground exceptions and suggesting appropriate new ones this issue could no longer be simply ignored. However, in codifying the exception, staff no longer feels compelled to define "bona fide dating relationship." First of all, a "relationship" is not necessary, nor is the term particularly helpful in the analysis of the issue presented, as it implies something over a continuing period of time. Dates, however, begin (and many times end) with a first date, which would be reportable by certain filers if the amount reaches the $50 threshold (not a difficult threshold to meet on a date.)

Secondly, staff does not believe that it is within its particular realm of expertise to tell someone whether they are in a "bona fide dating relationship."[10] Most people should know when they are out on a date. This exception is for those who do.

Finally, because staff believes that it is not the role of government to tell people who they can and who they cannot date, the restrictions under clauses (i-iii) that would otherwise exclude certain individuals from coming under the exception would only apply to disqualification under the conflict of interest rules. In other words, if a contractor were dating a city councilmember the gifts received by the city councilmember as part of that relationship would not be subject to disclosure or limits, but the councilmember would be prohibited from participating in any decisions affecting the contractor once the gift limit was reached.[11]

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[10] Our preferred response is, "If you have to ask, you're not in one."

[11] Staff believes most officials would abstain under these circumstances based on common sense alone. However, common sense alone is not a prerequisite for holding public office.

Acts of Human Compassion

18942(a)(16)(C) — This proposed subparagraph would create a new exception. The impetus for the exception was two requests for advice received earlier this year. In the first, an employee of a state agency, who was designated with full disclosure under her agency's conflict of interest code, asked for advice concerning the impact of the Act's gift provisions on her. Her son was seriously injured in an accident, and she could not afford the special medical care to attend to his needs. The official, with the assistance of a nonprofit organization, established a fund in which people throughout her community could donate money to help her pay for her son's medical costs. Under these circumstances, it was clear that the donations were made as genuine acts of humanitarianism. However, because of the disclosure requirement applied through an overly broad conflict of interest code, the official was prohibited from accepting any contributions from any single donor in excess of $420, even when there is no reason to believe that the donor had business before the official or was attempting to influence the official in her official capacity, or even had the ability to do so if she wished.

In another situation that exemplified the same problem, a public official sought advice regarding the official's attempt to adopt an orphaned child from Ethiopia. To assist with the adoption, the official had received donations from family and friends, as well as members and friends of members of his church. Again, the donations were made under circumstances clearly indicating that most if not all of the contributions were made as genuine acts of humanitarianism, yet the official would have been prohibited from receiving donations from any one donor in excess of $420 had the Act's gift limit applied.

The proposed amendments establish an express exception for these types of humanitarian donations. Under the proposal, acts of humanitarianism would be considered reportable "gifts" to the official, and subject to limits, only if the donor has business before a given official as specified under clauses (i-iii), the same rules that apply with respect to acts of neighborliness and, in a limited fashion, to the bona fide dating exception.

Again staff believes it is essential in creating these exceptions to be cautious of the opportunities for abuse, and that it is important to avoid even the appearance of possible impropriety. This concern is even more in play with respect to this exception because, unlike the neighborliness exception, this exception allows for donations of unlimited money.

While the Act should not place public officials at a disadvantage if faced with catastrophic needs, its main purpose should remain to protect public integrity by closely guarding against opportunities for impropriety by those who seek to influence governmental actions. This proposal is consistent with the spirit of the Act in limiting gifts made with the intention of influencing officials in their official capacities while at the same time promoting public policy in allowing officials to accept gestures of humanitarianism, not uncommonly found in every day life.

Best Friends Forever

18942(a)(16)(D) — This proposed new subparagraph would apply to long time friendships, and was added at the suggestion, and submitted by, one of the attorneys contributing to this project. Its purpose, in light of the bona fide dating exception, was to recognize that gifts received in meaningful friendships have at least as much reason to be excluded from the concerns of the Act as those received on a first date. The example given was an official who one week goes to a baseball game on a first date and does not have to report it, and then goes again the next week because a friend had an extra ticket, and it would have to be reported. Because the intimate personal nature of gifts exchanged in dating relationships raise privacy issues that are not apparent here, the restrictions under clauses (i-iii) are not limited, and these gifts, if received from persons identified therein, would be reportable and subject to limits.

Restrictions

18942(a)(16)(E) — The restrictions for the exceptions provided under subparagraphs (a)(16)(A-D) are provided in subparagraph (a)(16)(E), clauses (i) through (iii). These restrictions, as discussed above, are to limit the application of the exceptions to those who do not, as stated in *Stone*, supra, "have business before the agency." These clauses are intended to identify what type of business is required in order to restrict the application of the exceptions.

The first restriction only applies to those lobbyists, lobbying firms, and lobbyist employers *who are registered to, or employ lobbyist who are registered to, lobby the official's agency*. The second restriction covers those who engage in business that comes before the agency to seek a contract or some other form of entitlement and the official participates in governmental decisions related to those actions. The third restriction applies to those who are the subject of any licensing proceeding or enforcement action by an agency and the official participates in any governmental decisions related to the proceeding or action.

Again, each of these are common sense situations where an official, even absent a regulation, should consider declining or reimbursing the gift to avoid the appearance of impropriety. The regulation just codifies that common sense limitation grounded in the overall objectives of the Act.

18942(a)(17) — This proposed new paragraph is a catch all for gifts that should not be subject to the Act's disclosure and limitation provisions and was added on near the end of the project. After developing the proposed codification for all previously addressed exceptions provided in Commission opinions, staff advice letters, (both previous and pending and even developing a new exception to compensate for the disparate treatment between friends and dates), we received another advice request. This request started out as a usual bona fide dating exception, but it ended with a twist. After establishing all the usual criteria for a bona fide dating relationship, it asked if a down payment provided by the boyfriend's parents on a house for the couple, in which each

parent was providing an equal amount equally divided between the couple, was a gift to the official. The official is an attorney with a local agency and has full disclosure. The parents do not live in her district, and there is no governmental action that she would be capable of taking that would financially affect the parents in any way. Nothing in the Act provides that she should have been required to disclose this gift.

However, there is no exception for parents of a bona fide dating couple, and drafting such an exception seemed to border on the absurd. Additionally, we began to believe that with the persistent problems caused by over broad disclosure categories in conflict of interest codes, that as soon at the ink was dry on fixing this problem, something else would come up. We decided to attack the problem head on.

Section 87302 enumerates what the Act requires in a conflict of interest code. It states, in pertinent part, that the code specify all agency positions that "involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest" and that those interests "shall be made reportable by the Conflict of Interest Code if the ... income or source of income [which included gifts] may foreseeably be affected materially by any decision made or participated in by the designated employee by virtue of his or her position." In other words, by law, an official is only required to disclose the person from whom he or she receives a gift if that person may be foreseeably affected materially by the official as a result of his or her official actions.

Unfortunately, this principal is not universally applied in the real world, and many agency conflict of interest codes create broad sweeping disclosure requirements in which officials designated in those categories are required to disclose all gifts over the reporting limit from any source, anywhere. This behavior is the root of the problem in many of the situations that Commission staff is forced to address in attempting to provide a solution when conflict of interest code disclosure categories encompass more than what is required or necessary, as illustrated in the examples discussed above.

This general gift exemption provided in paragraph 18942(a)(18) takes out items that the law does not require be disclosed before they are put in by an overly broad conflict of interest code. It, in effect, defines gifts as only those gifts that the law requires to be disclosed.

18942(a)(18) — Finally, in case there was any question, the Act will not interfere with a person who tries to assist someone in danger or peril.

§ 18942.1 (Informational Material Definition) — The proposed amendments to this regulation provide a minor update to its provisions.

§ 18942.2 (Home Hospitality Definition) – This section provides a proposed new definition outlining what constitutes home hospitality. As stated above, determining what constitutes "home hospitality" has been a continuing challenge, mostly with respect to how far the definition of "home" should be extended, and less significantly, what is

occasional lodging. However, perhaps the most important determination to be made is how the exception should be applied to lobbyists, who are otherwise subject to a $10 gift limit.

According to our advice letters, occasional lodging does not include "two or three nights a week while the Legislature is in session" (*Hansen* Advice Letter, A-90-424, friend/ lobbyist providing the hospitality), but it does include the first one month of a four month stay while the official was having his house remodeled. (*Yaroslavsky* Advice Letter, A-00-171, friend providing the hospitality.) Other than these two letters, we have not addressed this question. Staff offers a limit in the proposed language defining occasional lodging as up to one week.

In considering what is an "individual's home" we have advised that it applies to a wedding reception not held at the individual's home, because it was like the hospitality provided in a home. This advice lead to a highly publicized affair in which, according to the reports, a person who regularly did business with a state agency hosted a lavish wedding reception at his expansive Incline Village vacation home for the agency's chief executive officer and all of his guests.

While we have advised that the exception applies to vacation homes, we have also advised that the exception only applies if they are owned, but not leased (*Ryan* Advice Letter, A-09-283). The same is true for owned recreational vessels, but not leased ones (*McChesney* Advice Letters, No. A-93-421, A-97-163) and deeded timeshares but not those purchased for usage credits.

Not only does this scheme run counter to egalitarian principals, it seems to have lost all sight of the intent of the exception. Under current advice, a stay for one week on your best friend's rented house boat on Shasta Lake would be a prohibited gift, but a similar stay on a lobbyist's yacht off Catalina Island would not be a gift at all.[12]

The proposed language seeks to makes some sense out of the home hospitality exception by getting back to the primary reason the exception exists — so that covered officials can go over to a friend's home for dinner and not have to worry about reporting it to the government. Staff believes that the focus here should be more on who provides the hospitality than on where it is provided; that distinctions over who owns what are meaningless in determining a hospitality that is supposed to be based on a common friendship, but can be of the utmost importance when the exception is available to those who seek to influence.

Toward that goal, on one end the exception is being opened to include any "home" whether owned or leased, including vacation homes, boats, and timeshares. On the other end, the exception is being restricted to apply only to those individual's "with

[12]The McChesney letters involved a 34 foot sailboat that was being provided by a lobbyist. Once he purchased the vessel, he was advised that the home hospitality exception would apply. We did, however, draw the line at a cottage provided on a Fiji Island owned by a friend, advising that he and his wife would have to stay in the owner's cottage rather than one of the guest cottages.

whom the official has a relationship, connection, or association unrelated to the official's position." This language is a compromise that would allow lobbyists, and others who seek to influence, to still have the exception applied to them if there is another basis for its application other than the relationship related to the official's position.

The home hospitality exception has always been available for lobbyists to use, although not without some restrictions.[13] Yet, as seen from the above examples, the current restrictions do not prevent a lobbyist from entertaining officials on his or her yacht for a weekend. Given the $10 gift limit imposed by the Act, this seems a contradiction.

However, in examining this issue with the other participants in this project, staff was faced with facially legitimate examples, some actual, others hypothetical, of how a flat exclusion of lobbyists[14] would intrude on normal social relationships, such as the following:

(1) For the last ten years I have been going over to my friend's house for Passover. I used to work in a firm with this person, and have known him for many years before he became a lobbyist. If lobbyists are excluded from the home hospitality exception, I won't be able to celebrate Passover at his house anymore.

(2) What if my daughter plays soccer on a team that includes the daughter of a lobbyist, and she holds a party for the team's players at her house. I can't take my daughter to the party?

(3) What if my next door neighbor is a lobbyist and he is having a backyard barbecue for a 4th of July block party. Am I the only one on my street who cannot go?

These examples were taken into consideration, balanced against the fact that one of the main goals in defining home hospitality was to not create arbitrary distinctions regarding where the "home" hospitality was provided. In opening up potential venues, however, staff was faced with the problem of providing too many opportunities for getting around the $10 gift limit. Why worry about going out to a restaurant when there are so many other opportunities available? On the other hand, officials who engage in typical social relationships by having dinner with friends at wherever that friend happens to be staying on the night of any particular visit should not be limited because of the potential of abuse by a lobbyist.

The language provides that home hospitality is available if "provided by an individual with whom the official has a relationship, connection, or association unrelated to the official's position, and the hospitality is provided as part of that relationship, connection, or association." This would allow the traditional Passover gathering, the 4th

[13] The original requirements stated that the exception only applied if the hospitality was reciprocated within the filing period.

[14] We use the term lobbyists as shorthand for purposes of simplification, but, for purposes of this discussion, it is meant to include any person who seeks to influence the actions of a government official.

of July block party, or the girl's soccer team party and those types of exchanges clearly connected to another purpose. If would not permit, for example, a lobbyist to extend home hospitality to an official under the exception just by getting her daughter on the same soccer team.

§ 18942.3 (Ceremonial Role) – This newly proposed regulation now defines "ceremonial role." This exception was first created through a staff advice letter where an official taking part in a ceremony for the opening of a new ride at Disneyland asked if he needed to report the free admission he received into the park. With that, the ceremonial role exception was born. It was intended to cover all similar events, such as throwing out the first pitch at a baseball game. The ceremonial role exception had been in existence for many years with little controversy until it took center stage for a brief period a few years ago as a result of an enforcement action against a prominent public official. As a result of the news coverage of the situation, a need was expressed by several individuals who study and report on the operation of the Act for the Commission to define ceremonial role. This simple definition is in response to that request. Staff did not believe it could develop a one size fits all definition covering all situations. Equally important was the feeling that local agencies should be the decision maker with respect to what roles their officials may legitimately perform. Accordingly, a provision has been added to this definition that allows local agencies to expand or contract the acts that officials may perform in a ceremonial role.

§ 18943 (Gifts to Family Members) – The family gift regulation has been moved to this section. The recent changes to this regulation have caused much consternation among the regulated community and have proven to be too complicated to be understood, especially with regard to what constitutes "ordinary care and support." Even Commission staff could not come to agreement on what was covered in this regulation. This language has been dropped and a more simplified version is proposed. This version does not eliminate any of the principals contained in the current version and actually places some restrictions on certain types of donors that are not currently covered by the regulation.

The regulation concerns methods used to sidestep the Act's reporting and gift limit restrictions on gifts made to officials by making the gift to a family member instead. The regulation addresses when a gift made to a family member will be treated as if it were a gift to the public official. Most of the language has been worked out between the groups participating in this project, but one primary issue remains in deciding where to draw a certain line.

The basic rule, as proposed under subdivision (c) sets forth two conditions where the gift to a family member will be treated as a gift to the official. The first is that there is no established "working, social, or similar relationship between the donor and the family member" that would suggest a reason for the donor to make the gift. The second is that there is evidence to suggest that the donor had a "purpose to influence the official." "Evidence to suggest" would be established under the same conditions discussed earlier, Regulation 18942(a)(17)(E)clauses (i) through (iii) for application to proposed exceptions

under Regulation 18942(a)(17)(A-D): lobbyist relationship, contracting with the agency, or involved in a regulatory decision of the agency. The Commission is presented the option to choose whether one or both conditions are needed for the exception.

If both conditions are not applied, a gift from a donor who has an established relationship with the family member as provided under paragraph (c)(1) would not be treated as a gift to the official, even if that donor was involved in or had business with the official's family member. If both conditions are required, a gift from a donor who has business with or who is involved in an action by the official would be treated as a gift to the official even if the donor could show an independent relationship with the family member. This is a policy decision for the Commission.

§ 18944 (currently 18944.2) Payments to Agencies – For the most part, this regulation has just been edited for clarity. There are three proposed amendments which are worth noting. The first change would now allow an agency head to select himself or herself as the individual who will use the payment if there is no other agency official qualified or if the payment is for attendance at an event where the agency head or other individual is the most appropriate official to attend the event. (See paragraph (c)(1).) The second proposed addition would provide that the exception does not apply to travel payments that are "not either substantially similar to the ordinary travel and per diem expenses provided by the official's agency or substantially similar to the subsistence and lodging benefits provided to other attendees at the conference, seminar, or other widely attended event." (See paragraph (e)(2).) Finally, a proposed change is offered that would allow officials filing under Section 87200 (statutory filers) to come under the provisions of the regulation. (See paragraph (e)(1).)

§ 18944.1 (Tickets to Agencies) – Again, this regulation has been edited for clarity. Language has been added to provide that the regulation is not intended to require names of individuals who receive tickets if the individual would not be required to report the source of the ticket on his or her statement of economic interest if the ticket was received directly from that source when tickets are distributed by the agency for employee moral purposes. (See paragraph (a)(2).) This language was submitted by the Anaheim City Attorney after consultation with staff because as a result of workload concerns in filing the necessary forms for so many employees. Because the Act does not regulate gifts made to non filers, the amendment is added to insure that neither they, nor the agency, had any additional filing requirements identifying those individuals.

Additionally, language has been added to make it clear that the regulation was never intended to cover school and college district officials attending events such as plays or football games involving the students.

§ 18944.2 (Agency Raffles) – The regulation dealing with agency raffles has been moved from Regulation 18944.4. Only minor editing or style changes have been made.

§ 18945 (Source of Gift) – The recently amended source of gift regulation has now been simplified without changing any of the restrictions currently in place. As a result of input received regarding certain confusion over the reporting requirements, the regulation was amended to clarify that for a "widely attended event" the person hosting the event is the source of the gift, unless the admission to the event was provided by someone other than the host.

§ 18945.1 (Gift Aggregation) – No substantive change is being proposed, only editing amendments for purposes of clarity.

§ 18945.2 (Group Gifts) – The only substantive change to this regulation dealing with reporting of group gifts, which has been moved from Regulation 18945.4, is that it no longer requires the reporting of individuals who contribute less than $50 to a gift presented by a group of people, even though the gift itself is valued at more than the reporting threshold.

§ 18945.3 (Intermediaries) – Staff proposes that this regulation be eliminated as it is almost a word for word duplication of Sections 87210 and 87313 and provisions found in Section 86203. The statutes can stand on their own without any additional help from this regulation.

§ 18946 (Valuation: General Rule) – This regulation provides the basic rule that the value of a gift is its fair market value, and it also serves as a lead in to the regulations dealing with exceptions to the basic rule. Suggested changes are primarily cosmetic, but it does suggest a new definition be added for invitation-only events and clarify the definitions regarding other forms of entry privileges.

§ 18946.1 (Valuation: Tickets) – This regulation has merely been simplified. There are no substantive changes proposed but an option for the Commission to consider has been added at the suggestion of Common Cause to address high price playoff or championship tickets where the mere fact that the official received the ticket should be subject to disclosure, even if the official, for some reason, was not able to use the ticket.

§ 18946.2 (Valuation: Invitation Only Event) – This regulation concerns the methods of valuation for an admission to an invitation-only event, and the proposed amendments would modify the way the admission is valued and also provide an option that a "drop-in" visit has no reportable value. Currently, the value of admission to an invitation-only event is the cost of the official's pro-rata share of the cost of the event.

Staff proposes that the value of the admission be amended to the official's pro-rata share of the cost of food and entertainment plus any item given to the official at the event. This valuation method is more in-line with the recognition that a gift requires a personal benefit and measures the value based more closely on what that personal benefit is.

18946.3 (Valuation: Wedding Gifts) – Staff suggests amending the wedding gift valuation rule to the basic half and half rule, without any exception. Staff believed that any determination of what may be "peculiarly adaptable to the personal use and enjoyment of one spouse" is too subjective to be applied in many cases. Staff does not believe that the incidents of spouse specific wedding gifts occur enough to warrant addressing it in a regulation. The gift will still be reportable.

§ 18946.4 (Valuation: Nonprofit/Political Fundraisers) – This regulation would now value all tickets to non-profit fundraisers at the value of the benefit received and not the face value of the ticket. In other words, the donation portion of the ticket does not count in the valuation of the gift. The one free ticket for 501(c)(3) and political fundraising events has been expanded to two tickets, and the political fundraising event is no longer limited to California.

While this appears to be a substantial change and, in fact, it is intended to fix what staff believes was an unintended result of last minute modifications the last time this regulation was up before the Commission. This may be the most broken of the "fix what's broken" challenges of this project, but is also the one that is most easily fixed.

The regulation is intended to recognize that the price of the admission to nonprofit fundraisers typically include a donation above and beyond the fair market value of what the attendee will receive. After all, that is how the funds are raised. Recognizing this, up until a few years ago this regulation provided that, instead of valuing the ticket by its face value as would be otherwise required under Regulation 18946.1, the admission should be valued at the nondeductible portion of the ticket. In other words, the donation portion should not be considered in the value used when reporting the gift, since this portion represented no benefit received by the official.

In making modifications to the 501(c)(3) portion of this regulation approximately two years ago, the Commission discussion turned to whether a limited number of tickets provided by 501(c)(3) organizations should be deemed to have no value, in order for officials to be able to attend the event and promote the organization without receiving a gift. In reaching agreement that one free ticket should be allowed, staff was directed to redraft the provisions in such a way that the "one ticket modification" swallowed the whole exception, and there no longer remained a distinct method for valuing tickets to nonprofit fundraisers beyond that first ticket. Those tickets now default to the face value rule. Given the applicability of the provisions of these two rules, we now have tickets worth $1,000 to events like the Super Bowl valued at $100 and tickets worth $100 to nonprofit fundraising events valued at $1,000.[15]

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[15] Recently, based on the previous changes made to this regulation, staff had to advise that tickets to a fund raising event that Disneyland was holding for the Boys and Girls Club in which a $1,000 ticket for a dinner and showing of the latest "Pirates of the Caribbean" movie, where $900 was going to the charity, were valued at the full face value ($1,000) of the ticket.

Political Fundraisers: Regulation 18946.4 (c) states that one free admission provided to an official for attendance at an in-state fundraiser for a committee regulated by the Act or a federal campaign committee has no value. Staff believes this rule should be extended to include fundraisers, whether inside or outside California, by any federal or state regulated campaign committee. California elected officials are occasionally invited, for political purposes, to attend campaign fundraisers for federal or state candidates or committees that operate in jurisdictions outside California. Staff believes the Act's gift requirements should neither inhibit nor prevent admission to these events.

§ 18946.5 (Bona Fide Competition) – This regulation has been moved as an exception under Regulation 18942. Staff proposes that current Regulation 18946.6 be moved into this slot.

§ 18946.6 (Valuation: Air Travel) – This regulation establishes the valuation method for air travel. It was recently amended to value a ticket on a charter flight at the pro rata share of the cost of the flight divided by the number of officials onboard. If there is only one official on the flight, the value would be the entire cost of the charter. This was an obvious overvaluation of the benefit received and made paying down the gift limit impractical.

The proposed regulatory changes provide a more realistic valuation method of either first class airfare or, if not available, the cost of the charter divided by the number of all passengers (rather than officials) onboard.

Travel Regulations

§ 18950 – Staff proposes that this regulation be rescinded, as it no longer provides a guide to the travel regulation, and the regulation require no new guide.

§ 18950.1 – Staff recommends that this regulation be rescinded, as it merely repeats the provisions of Section 89506.

§ 18950.3 – Minor changes have been made to this regulation for the purposes of clarification.

§ 18950.4 – The proposed amendments to this regulation are intended to simplify and consolidate in one regulation the rules respecting payments for campaign travel. The provisions of Regulation 18727.5 have been incorporated in this regulation so all the rules are now in one place. Language has been added to extend the coverage to political campaigns in other states as well as federal campaigns.