Fair Political Practices Commission

Memorandum

To: Chair Ravel, Commissioners Casher, Eskovitz, Wasserman, and Wynne

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

Subject: Proposed Amendments to Regulation 18944 and Travel Regulations 18950 through 18950.4

Date: August 12, 2013

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.

Introduction:

In late 2011 the Commission considered and adopted numerous amendments to the Act's gift regulations (see Staff Memorandum, dated October 31, 2011).[2] Included among the original package of regulations presented for adoption at that time were versions of the regulations presented here as part of this item. Shortly before these proposed amendments were considered by the Commission on November 10, 2011, the travel regulations (Regulations 18950 through 18950.4), and Regulation 18944 (Payments to An Agency) were pulled from the proposed package for further study related to new language defining "personal benefit," given statutory amendments to the Act's definition of "gift," adding a "personal benefit" requirement in 1997. Although the "personal benefit" issue presented itself in various forms through advice requests, we never addressed this statutory change by regulation, and there had been conflicting beliefs as to how it should be interpreted, especially with respect to travel payments.

Staff now returns to finish the project. The primary goal when we began our examination a few years back was to simplify, clarify, update, and consolidate all the rules that had been incorporated over the years, into one concise, understandable package. Some of that involved incorporating advice we had provided through our advice letter process, addressing changes that had been made in the law, and correcting inconsistencies, or merging or consolidating similar rules.

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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.

[2] http://www.fppc.ca.gov/agendas/11-11/25GiftOverhaulMemo.pdf

We return now with those same goals. All the travel rules are now proposed to fit under one roof, listed in Regulations 18950 (general guidelines), 189501.1 (agency travel), 18950.2 (private business travel), 18950.3 (speech exception), and 18950.4 (campaign travel). Regulation 18944, which previously contained a substantial travel component, now is limited to other types of payments, with a few amendments discussed below. The travel regulations begin with proposed regulation 18950, which provides a simple introduction to the travel regulations. Proposed regulation 18950.2 creates a separate regulation for travel as part of one's private business. This language is taken from current Regulation 18950.1 (e). Current Regulation 18950.3 will, under the proposed amendment, now exists solely for the limited exception of free admission and food at an event where an official makes a speech. Proposed regulation 18950.4 consolidates the campaign travel rules under one regulation and makes certain clarifications.

The crux of this project involves proposed Regulation 18950.1, which is the result of our further examination of one of the primary issues we were attempting to cover when we began this process several years ago – the "personal benefit" requirement under the definition of gift.

As explained below, the "personal benefit" requirement was added to the statutory definition of gift, but we have never addressed its meaning through regulation. As a consequence, the provision appeared to somewhat contradict our "Gifts to Agency" provisions under Regulation 18944[3] and inconsistent with certain provisions relating to our travel regulations for government related activities. Hence, one of our initial objectives was to define when something was not considered a gift because it did not provide any personal benefit.

However, somewhere on the path to this objective, we were bombarded with all sorts of imagined scenarios where a claim of no "personal benefit" could be used to justify that something is not a gift if there is some sort of "government related" connection. Every attempt to define the term was met with a new theory on how an elected official would be able to justify any gift as being related to his or her job[4] with no reporting requirement whatsoever. In the end we decided to take the Potter Stewart approach,[5] at least for now, leaving the general definition to be determined on a case-by-case basis and limiting our focus to primary issues that typically give rise to the problems we face – travel payments made to agencies for governmental business.

Thus, we do not attempt to provide a broad definition of the "personal benefit" provision contained within the Act's definition of "gift," or attempt to cover every potential situation that may present itself. We instead take a far more practical approach. In this manner, the proposed amendments identify certain situations that commonly arise where staff believes there is clearly no personal benefit provided to the official. In short, instead of trying to accomplish the impossible task of saying "what is and what is not" in every situation, we say "this is not in these situations." The remaining universe we leave open for future exploration and refinement through advice letters and, ultimately, additional regulatory clarification as specific applications develop.

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[3] Because the Act requires that a gift must provide a personal benefit, and any benefit an agency receives is a public benefit, an agency is therefore not capable of receiving a personal benefit; so there can be no such thing a "gift" to an agency under the current definition.

[4] Junkets to Paris became a familiar theme.

[5] "I know it when I see it." (Jacobellis v. Ohio (1964) 378 U.S. 184.)

To fully understand the purpose and direction of this project, our discussion focuses on three important events related to travel payments that have occurred since the Act was established. These events have both clarified and confused the issues we are dealing with here. They are: (1) The Commission's Stone Opinion (1977) 3 FPPC Ops. 52, and the codification of the opinion in the "Gifts to Agency" regulation; (2) the "ethical reforms" of Proposition 112 in 1990, which established gift limits, prohibited honorarium, and led to the adoption of Section 89506; and (3) legislation in 1997 to establish the "behested payment" definition, which included a change to the Act's definition of gift, adding the "personal benefit" component to the definition.

Background/History:

Before we get into our discussion of the impact of those three events, some initial background is helpful. The original provisions of the Act did not include any prohibitions on gifts or honorarium, other than from a lobbyist. The original definition of gift stated:

> "'Gift' means any payment to the extent that consideration of equal or greater value is not received.…" (Section 82028, Proposition 9, California Primary Election, June 4, 1974.)

The definition was simple; not much different than what one would find in any dictionary of the English language. There was no personal benefit requirement and *no exceptions*.[6] As stated, there were no limits on the value of the gift received. Certain officials were required to report some or all gifts of $25 or more, and gifts of $250, under certain circumstances, were considered financial interests giving rise to the Act's conflict of interest provisions.

Before gifts were limited and honorarium was prohibited by statute, certain travel payments were addressed by regulation. These regulations are relevant because they provide the first rules that specifically address certain types of travel payments. The original regulation, adopted in 1975 (Regulation 18728 "Reporting of Income and Gifts; Honoraria and Awards"), provided that "any payment for a *speaking engagement* or similar service shall be disclosed as a gift unless it is clear from the surrounding circumstances that the services provided represented equal or greater consideration than the payment received. … (Regulation 18728, Attachment 1, emphasis added.) The regulation further provided that:

> "… For purposes of this paragraph, free admission, food, beverages, or similar nominal[7] benefits provided to a person at the event at which he speaks or provides a similar service, or a reimbursement or advance for *actual intrastate travel* to and from the event, shall not be considered a payment, and therefore need not be reported by the recipient as either a gift or income." (*Supra*, *emphasis added*.)

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[6] Not even for gifts from your BFF.

[7] "Nominal" was never defined officially. But staff advice letters later advised that anything less that $50 was nominal!

Thus, within the first year of the Commission, travel payments made from any source to any official in connection with a speech made in California were totally eliminated from the Act's reporting requirements.

Less than a year after the adoption of the original regulation, it was amended. The amendment created two separate filing procedures for reporting payments for honorarium. The first allow the official to elect to report "all honoraria of $25 or more" on a new schedule established by the Commission without stating to what extent the payment exceeded the value of the services provided. The second procedure followed the previous rule that the payment was a gift unless "it is clear from the surrounding circumstances that the services provided were of equal or greater value." (Regulation 18728, Attachment 2.) Accordingly, an official was allowed to make a reporting choice: either report the whole amount as "honoraria" without making a gift/income determination. Or report it as a gift unless you could show that equal consideration was provided.

At the same time this regulation was amended, the Commission also adopted Regulation 18623 "Gifts from Lobbyists; Honoraria" (Attachment 3), which reiterated the above travel payments exception with identical language, but its honorarium payment provision was directed to "a state candidate, an elected state officer, a legislative official or an agency official," whereas Regulation 18728 applied to "filers." Travel for purposes other than speaking remained subject to the general gift provisions in the Act.

Because the definition of gift was so broad, early questions began to arise as to what was and what was not considered a reportable gift under the Act in various situations.[8]

The Stone Opinion and the "Gifts to Agency" Regulation:

One of those early questions arose in the *Stone* Opinion (*supra*) where the Commission was presented with two scenarios involving two separate officials who each received a free flight on a private airplane and who each asked if it created a reportable gift. In one scenario, the Commission reasoned it did, and in the other it did not. For purposes of our discussion here, the reasoning for the separate outcomes is not what is important. The lasting impact of the *Stone* Opinion for purposes of our examination comes from language contained in the last portion of the opinion, where the Commission indicated that "[t]here may be situations … where surrounding circumstances show that the gift was made to the city only, without providing any significant or unusual benefit to the official." The Commission indicated that in that case, "the official would have no reporting obligations since whatever he [or she] receives, although free of charge to both him [or her] and the city, would be analogous to reimbursement for expenses or per diem from a state or local government agency, items which are not reportable." (*Stone*, *supra*, pp.5-6.) It is this reasoning that guides this project.

[8] In addition to the Stone Opinion, discussed herein, in the *Cory* Opinion (1975) FPPC Ops. 153, the Commission was asked if receiving help from one's neighbor in fixing a fence constituted a reported gift. That opinion created the "acts of neighborliness" exception, which was not codified until the 2011 gift amendments. That opinion was also the first step taken by the Commission in stating that "certain types of benefits are not gifts despite the broad language of [the Act]."

The Commission went on to state that *at least* four criteria would need to be met before it would consider such a payment "a gift to the city, and not to the official."

> "1. The donor intended to donate the gift to the city and not to the official;
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> 2. The city exercises substantial control over use of the gift;
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> 3. The donor has no limited use of the gift to specified or high level employees, but rather has made it generally available to city personnel in connection with city business without regard to official status; and
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> 4. The making and use of the gift was formalized in a resolution of the city council (a written public record will suffice for administrative agencies not possessing the legislative power of adopting resolutions) which embodies the standards set forth above." (*Supra*, p. 6.)

The opinion stood as the guiding light for staff advice letters over the succeeding years concerning a variety of payments we determined were not gifts to an individual official when the payment complied with the provisions enunciated in the *Stone* Opinion.

In June 1994, after at least one previous attempt and almost a yearlong effort,[9] the *Stone* Opinion was finally codified under Regulation 18944.2 as the "Gifts to Agency" regulation. The original language was similar, but not identical, to the provisions established in *Stone*. It stated:

> "(a) A payment, which is a gift as defined in [Section 82028], shall be deemed a gift to a public agency, and not a gift to a public official, if all of the following requirements are met:
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> (1) The agency receives and controls the payment.
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> (2) The payment is used for official agency business.
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> (3) The agency, in its sole discretion, determines the specific official or officials who shall use the payment. However, the donor may identify a specific purpose for the agency's use of the payment, so long as the donor does not designate the specific official or officials who may use the payment.
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> (4) The agency memorializes the payment in a written public record which embodies the requirements of subdivisions (a)(1) to (a)(3) of this regulation set forth above and which:

[9] The staff memorandum for the first pre-notice discussion was dated September 27, 1993. Subsequent memorandum was prepared for the Commission on November 22, 1993, January 24, 1994, February 18, 1994, and March 28, 1994. The item was discussed at Commission meetings held in October 1993, February 1994, and March 1994, before being adopted at the Commission meeting held on April 7, 1994.

(A) Identifies the donor and the official, officials, or class of officials receiving or using the payment;

(B) Describes the official agency use and the nature and amount of the payment; and

(C) Is filed with the agency official who maintains the records of the agency's statements of economic interests where the agency has a specific office for the maintenance of such statements, or where no specific office exists for the maintenance of such records, at a designated office of the agency, and the filing is done within 30 days of the receipt of the payment of the agency."

The original Regulation remained substantially unchanged until June 2008 when, as a result of several proposed amendments, the original regulation was repealed. The new regulation kept the basic structure, but made three significant changes. Two of these significant changes involved further restrictions, and the third instituted a public disclosure requirement.

The new restrictions prohibited elected officials and Sections 87200 filers, commonly referred to as statutory filers, from accepting any outside payments for travel, and limited travel payments for other officials to agency reimbursement (per diem) rates. The disclosure requirement provided that the agency must report certain information regarding payments received under this exception on a form established by the Commission (Form 801, see Attachment 4), to be filed with the Commission and posted on the agency's website.

In 2011, the Commission considered and approved a near complete overhaul of the Act's gift regulations. The only gift regulation[10] left untouched by the process was Regulation 18944.2 which, as explained above, because of its relationship to travel was left untouched in order to be considered, and coordinated with, the travel regulations to be addressed separately.[11]

Gift Limit and the Travel Exception Under Section 89506: In 1990, the rules changed in the wake of the Shrimpscam investigation of the mid to late 1980s. In the June 1990 primary election, Proposition 112, a legislatively referred constitutional amendment[12] entitled "The State Officials, Ethics, Salaries, Open Meetings Amendment" was approved by the electorate. Among other things, the proposition required "the Legislature to enact laws that ban or strictly limit the acceptance of gifts by elected state officers" and that prohibit any member of the legislature from accepting any honorarium. As a result of the passage of this proposition, the Chapter 9.5 (§§ 89500-89503.5) known as the "Ethics in Government Act," was added to the Act. It prohibited certain public officials from receiving any gift from a single source of $250 or more in a calendar

[10] The travel regulations which are being presented here were also a part of the original proposed amendment to the gift regulations, but were pulled in order to be addressed as a separate package.

[11] The only change to Regulation 18944.2 was a renumbering to Regulation 18944. Other than that, it is currently the same regulation that resulted from the 2008 amendments.

[12] Passage of the proposition also added a provision dealing with the use of campaign funds and created the Californian Citizens Compensation Commission.

year[13] or any honorarium. (See Section 89501, Section 89502, and Section 89503.) Honorarium was defined as "Any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering." (89501.)

However, Section 89506 then provided a limited exception for certain "gifts of travel," including transportation, lodging, and subsistence, that are neither "prohibited" nor "limited" if the travel is "reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy" and the travel is:

> "(1) ... in connection with a *speech* given by the [official] and the lodging and subsistence expenses are *limited to* the day immediately preceding the day of, the day of, and the day immediately following the speech, and the travel is *within* the United States.
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> (2) … *provided by* a government, a government agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States [that] substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code."

At the time this statute was making its way through the legislative process, comments in the legislative file indicate that it was not the intent of the Legislature to interfere with or change the existing Commission rules with respect to travel for speeches within California.[14] Thus, after the enactment of this statute, there became three separate exceptions for the reporting of travel payments – (1) for travel related to a speech within California; (2) for travel related to a speech within the United States; and (3) for travel paid for by a government or 501(c)(3) anywhere in the world.

Addition of "Personal Benefit" Language: The final factor that impacts this regulatory project is the addition of the "personal benefit" requirement added to the definition of gift. In 1997, as part of the statutory amendments adding rules applicable to behested payments under the definition of "contribution" in Section 82015, the Act's definition of "gift" was also amended as follows:

> "82028 (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 …"

Although there have been a number of advice letters that have discussed, to some extent, the various applications of this language, we have never addressed it by regulation.

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[13] This amount was subject to a cost-of-living escalator, which has increased the original sum to the present amount of $440.

[14] Conversation with Kathy Donovan, August 1, 2013.

Several factors have made the personal benefit requirement more important over the last few years. First of all, budgetary constraints have limited travel for many agencies. Secondly, changes to the gift regulations have eliminated or restricted some of the exceptions for travel.[15] Finally, there is often disagreement over what advice should be given when someone asks if a travel payment needs to be reported.

Discussion – Regulatory Changes: Beginning sometime in 2008, the Commission began examining some of the exceptions created by the gift regulations, placing tighter restrictions on and, in some cases, eliminating the exception altogether. Included among these regulations were two that are part of this project – Regulations 18944 and 18950.3.

In May 2008 the Commission adopted several amendments to Regulation 18944.[16] These amendments eliminated travel payments made to an agency for use by elected officials and Section 87200 filers, limited the use of travel payment to the agency per diem rate, prevented the agency head from using any travel payment for his or her own travel, and instituted a new provision requiring website reporting within 30 days of all travel payments made to an agency. (Form 801.)

Staff memorandum addressed the rationale for adding the prohibition on gift to agency travel for elected officials.[17]

> "First, travel payments for elected officials seem more like a gift to the elected official as an individual, which one would expect to see reported on their Statements of Economic Interests, rather than not publicly reported, and not limited, as previously was the case under the gift to agency exception. Regulation 18944.2 was meant to apply to gifts to the agency operations and staff generally, not gifts to elected officials.
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> Second, the possibility of abuse is much greater with private sources paying for travel for elected officials. While there are some legitimate sponsored trips for educational or governmental purposes, many privately sponsored trips for elected officials appear to the public to be junkets. If a trip is necessary or offers important first-hand opportunities for elected officials to view a manufacturing plant or port facilities in another country, arguably the government should pay for it as official travel." (Staff Memorandum, dated May 8, 2008, p. 2.)

However, the proposed amendments already offered a fix to the nondisclosure problem by requiring disclosure. The disclosure it required was almost immediate (within 30 days) and widely disclosed (website posting) as opposed to the ordinary SEI reporting that could occur

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[15] While staff believes that some of the exceptions were ridiculously overbroad to begin with, they were sometimes used for legitimate governmental purposes.

[16] Then Regulation 18944.2.

[17] Staff proposed the prohibition only on elected officials, not on 87200 filers, specifically arguing against the extension of the prohibition to their officials. However, the Commission chose to include 87200 filers.

over a year after the travel is taken and need not be posted for public viewing, as is the case with the "gifts of travel" permitted under Section 89506. Additionally, there is nothing in the history of the regulation that indicates that the regulation was not meant to apply to elected officials or 87200 filers.[18]

On the other hand, as the memorandum points out, "there are some legitimate privately sponsored trips for educational or governmental purposes." These trips, if made for the purpose of conducting agency business, do not provide a "personal benefit," and the issues that were of concern when these changes were made can be addressed within the parameters of that requirement.

Another restriction that was incorporated into this regulation as a result of the last amendments was the limitation on the payment to agency reimbursement, or per diem, rates. This was referred to as the "anti-lavish" provision. Again, while we support the principal of this restriction we believe that, in some cases, as discussed below, it is too restrictive, and staff now proposes the adjust those restrictions.

In December 2009 the Commission adopted proposed changes to Regulation 18950.3. This regulation contained essentially the same language first developed in 1975 regarding payments for speeches made in California. It read:

> "18950.3. Travel in Connection With Speeches, Panels, and Seminars: Exception for All Officials
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> "Free admission, and refreshments and similar non-cash nominal benefits provided to a filer during the entire event at which the filer gives a speech, participates in a panel or seminar, or provides a similar service, and actual intrastate transportation and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity, *are not payments* and need not be reported by any filer." (*Emphasis added*.)

The regulation was presented as a proposed amendment, but it was essentially a repeal and readoption (see Attachment 5.) Staff memorandum accurately identified the regulation as "a variance from the statutory requirement." It also stated that the regulation "created a complex reporting scheme" making the rules difficult to determine, suggesting that the amendment was presented to make the rules more simple. The entire language of the regulation was deleted; eliminating, except in the most limited of circumstances, the reporting exception for a speech made in California. In its place new language was adopted, which essentially said that the exception only applied when the payment came from another government agency.[19]

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[18] The *Stone* Opinion, on which the regulation was based, pertained to at least one official who was elected and both of whom where 87200 filers.

[19] Even with this limitation, it still prevented a payment for an elected official or an 87200 filer from qualifying.

Staff believes that these recent changes, while cutting out much of the travel fat, also took away too much of the muscle. Because of the fact that certain travel no longer receives a clear exception, it now falls into that grey area of what constitutes a personal benefit and what does not. The Commission has an opportunity to clarify the rules and provide guidelines that government agencies and officials can use while doing their government duties without running afoul of the Act's gift reporting requirements.

Conflicting Interpretations: Another reason why this project is necessary is because it is almost impossible to give consistent advice when there are no clear rules determining what constitutes a reportable travel payment. Some people believe that Section 89506 says that any travel payment for a speech in the United States is a gift, reportable but not limited, even though the section does not say that. Others recognize that it does not say that, but advise to report the payment as a gift under Section 89506 anyway because "it is easier that way." Others say that if the travel expenses are ordinary and usual under the circumstances, and not extravagant, the payment should be reported as income, as consideration of equal or greater value has been provided. And others argue that if the employee is simply doing his or her assigned work as part of his or her duties and there is no personal benefit received, he or she should have no reporting obligations whatsoever.

The truth is that, depending on the facts, the payment could come under any of the above answers. This project attempts to address that issue.

Summary of Proposed Regulatory Amendments

Regulation 18944 – The significant proposed amendment to this regulation is to remove all references to travel payments, as those will now be separately addressed under the proposed travel regulations. The proposed regulation also clarifies what constitutes a local agency for purposes of receiving payments for its agency business. Finally, the proposed regulation modifies the reporting requirements so that reporting is dome on a quarterly basis for any quarters in which payments received aggregated to at least $2,500.

Regulation 18950 – This regulation now provides the basic outline and definitions to be applied under the travel regulations that follow. It also makes clear that travel that qualifies under Section 89506 is treated separately from any of the provisions in the travel regulations, and that those travel payments accepted pursuant to that section are reported as unlimited gifts.

The proposed definition of travel does not have a mileage limit. Therefore, both a taxi ride down the street and an airplane trip around the world qualify as travel. The definition of speech has been moved from current Regulation 18950.3 because it now applies to more than just that regulation.

Subdivision (b) makes clear that payments described for the purposes identified in the travel regulations do not provide a "personal benefit" under the Act's definition of gift. Subdivision (c) states that payments from other governmental agencies for education, training, or

other governmental purposes are not income or gifts to the official that use them. This is merely a rewording and clarification of current Regulation 18950.3.

Finally, subdivision (d) adds a new exemption for government officials sharing rides together when they are both going to or returning from the same event. Normally, no one would think of this as an issue, but it has come up several times when the ride was a private airplane owned by one of the officials. Advice was given to the official that he could not accept the flight because it would constitute an over-the-limit gift.

Regulation 18950.1 – This proposed regulation is the heart of this regulatory project. It combines the long established rules for payments to an agency under the principals established in the *Stone* Opinion and codified in Regulation 18944 with an application of the personal benefit requirement under the Act's definition of gift. As stated above, the travel provisions from Regulation 18944 have been moved entirely into this regulation. The restrictions prohibiting use by elected officials and 87200 filers has been modified, and these officials are no longer excluded for the travel provisions. However, mindful of the fact the those restrictions were put in place because of the perception of "junkets" and fearful that we could be opening that door, we have tried to tightly craft language that would address circumstances where the travel enhances government performance as the major objective while closing down payments for trips that merely have a "reasonably related legislative or governmental purpose" as a small component of a lengthy trip to a resort destination. Additionally, the reporting requirements have been left in place, which will allow the public to keep a close watch on this activity.

The language restricts the use of the payment for official agency business, of the type for which the agency would authorize its own funds, and approved by the individual responsible for approving agency use of its funds. The proposed regulation set out the travel payment requirement that needs to be met in subdivision (a), and it further defines those requirements in subdivisions (b), (c), and (d). Subdivision (f) sets forth the reporting requirement.

Subdivision (g) modifies the current strict per diem rule. Staff recognizes that strict per diem rules do not always work in every situation[20] and has proposed a reasonably relaxation of these rules to accommodate real life situations. Under the proposed rule the employee can accept a $15 banquet lunch or a $140 hotel room provided at a location where the employee is attending a conference when those rates are "equivalent in value" to what is made available to the other attendees.

Subdivision (h) now allows travel for elected officials and 87200 filers so long as they meet the requirements provided. As stated above, the significant difference here and for travel provided under Section 89506 is that the travel must be directly related to official's public duties, be approved in the same manner as payment using public funds, and meet the other requirements listed in subdivision (a). Trips to Hawaii to sit for an hour on two different panels every third

[20] For example, stay at a hotel where a conference is being held and the rates are higher than ordinary per diem.

day to get a lavish all expenses paid week vacation will still have to qualify under Section 89506 and not this regulation.

Regulation 18950.2 – This regulation provides an exception for travel in connection with a bona fide business. The language has been moved from the end (subdivision (e)) of current Regulation 18950.1 so that it is more prominent, and it is no longer buried among a mass of wording that essentially repeats Section 89506 and lists other exceptions.

Regulation 18950.3 – This regulation eliminates everything that was added by the recent amendments and moves the only remaining function of the current regulation into a simple rule excepting travel paid for by a governmental agency into a simple rule under Regulation 18950 (c) government payments, along with the definition of speech. It adds back the limited exception of free admission and meal at a function where the official makes a speech, but does not allow for any additional travel payments. This regulation now, essentially, operates as a gift exception rather than a travel exception. It is the same exception that previously existed under the gifts exceptions (Regulation 18942), but it was removed with the recent changes in order to be addressed with the travel regulations.

Regulation 18950.4 – Proposed Regulation 18950.4 consolidates all the travel rules relating to campaigns under one regulation and clarifies those provisions. Currently, campaign rules are scattered in three different regulations (Regulations 18727.5, 18950.1, and 18950.4). 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. No other substantive changes have been made to the rules relating to travel for campaign purposes.

Attachments:

1. Regulation 18728 (1975)

2. Regulation 18728 (1976)

3. Regulation 18623 (1976)

3. FPPC Form 801

4. Regulation 18950.3, as adopted at the December 10, 2009 Commission Meeting