

California Fair Political Practices Commission

Lobbying Frequently Asked Questions

The \$10 Gift Limit Lobbyists & Lobbying Firms

The Political Reform Act (the “Act”) defines a “gift” as any payment that confers a personal benefit on the recipient to the extent that consideration of equal or greater value is not received. This 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.

The term “gift” does not include:

- (1) Informational material which is provided for the purpose of assisting the recipient in the performance of his or her official duties, such as books, reports, pamphlets, calendars, periodicals, videotapes, or free or discounted admission to informational conferences or seminars. A payment for travel or reimbursement for any expense is not “informational material.”
- (2) Gifts that are not used and, within 30 days of receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.
- (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, (including grand nieces, nephews, aunts, and uncles) first cousin, (including once removed first cousin), or the spouse of any such person. However, if any such person is acting as an agent or intermediary for any person not covered by this paragraph, the payment is considered to be a gift.
- (4) Campaign contributions.
- (5) Any devise or inheritance.
- (6) Personalized plaques and trophies with an individual value of less than \$250.

Q. Will the FPPC be changing the \$10 per month limit on gifts from lobbyists?

A. The Commission has no authority to amend any statute, including the lobbyist gift limit. The authority to amend the Act rests with the Legislature or with the voters, by means of the initiative process.

Q. Are gifts between a lobbyist and his or her spouse limited when the spouse is a reportable person, e.g., legislative staff member?

A. No. As noted above, gifts from family members are not limited by the Political Reform Act.

Q. May a lobbyist take an official to lunch and pay for the lunch with personal funds without regard to the \$10 gift limit?

A. No. The lobbyist may not provide a gift to an official of more than \$10 within a calendar month, even if the lobbyist pays for the gift from personal funds and will not be reimbursed by his or her employer.

Q. May two lobbyists take an official to lunch and each pay \$10 to purchase a \$20 lunch for the official?

A. No. A lobbyist may not pay any amount toward a gift for an official if the official will receive more than \$10 in benefit.

Q. *How may a lobbyist take an official to dinner at a restaurant where all meals cost more than \$10?*

A. The lobbyist may pay \$10 toward the official's meal, with the balance paid by the official. In addition, a lobbyist may attend a meal arranged and paid for by someone other than the lobbyist or a lobbying firm, such as the lobbyist employer, so long as a representative of the employer who is not a lobbyist hosts the meal.

Q. *May an official and spouse spend a weekend at the vacation home of a lobbyist if the lobbyist does not stay at the house the entire weekend?*

A. If the lobbyist or a member of the lobbyist's immediate family does not stay with the official, use of the home is a gift from the lobbyist, subject to the \$10 limit. Because the value of the use of the home would exceed the \$10 limit, the official could not stay at the vacation home. An official and spouse may no longer stay at a lobbyist's home even if the lobbyist is there unless there is some independent relationship between the lobbyist and the official and the stay is related to that purpose.

Q. *Does the \$10 gift limit affect holiday gift exchanges between lobbyists and officials?*

A. Yes. Except as noted above, a lobbyist may not give a gift of more than \$10 to any official even if there is reciprocity. There is no holiday "time out."

Q. *May a lobbyist employer arrange and pay for a gift of dinner and entertainment with a cost of \$400 for an official, so long as the lobbyist is not involved?*

A. Yes. The \$10 gift limit does not apply to lobbyist employers.

Q. *If a lobbyist employer offers a reduced registration fee to officials to attend its conference, will officials who attend receive a gift?*

A. When attendance at a conference assists an official in the performance of his or her duties, the conference is considered "informational material." This means that free or reduced admission granted to an official is not reportable by the lobbyist employer that provides the admission.

Anything of value, however, other than free admission given to the official, such as meals, lodging, or transportation, will likely be considered gifts, even if provided in connection with the conference. These gifts would be subject to the \$10 gift limit if made or arranged by a lobbyist or lobbying firm.

Q. *If a lobbyist or lobbyist employer purchases several tickets to a fundraiser for a charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code, or to a political fundraiser for a candidate or committee, may the lobbyist or lobbyist employer provide those tickets to legislative or agency officials so that they can attend the event?*

A. A ticket (or other admission privilege) to a nonprofit or political fundraiser provided to a public official by someone other than a 501(c)(3) charitable organization or committee hosting the event is a gift to the official, subject to the \$10 gift limit from lobbyists and lobbying firms, and the \$470¹ calendar year gift limit from other sources.

¹ The Commission will review the annual gift limit at its November 15, 2018 hearing. The limit is subject to recalculation for the period of January 1, 2019 – December 31, 2020.

Arranging Gifts

A lobbyist “arranges for the making of a gift” if the lobbyist, either directly or through an agent, does any of the following:

- a) Delivers a gift to the recipient.
- b) Acts as the representative of the donor, if the donor is not present at the occasion of a gift. This does not include accompanying the recipient to an event where the donor will be present.
- c) Invites or sends an invitation to an intended recipient regarding the occasion of a gift.
- d) Solicits responses from an intended recipient concerning his or her attendance or nonattendance at the occasion of a gift.
- e) Is designated as the representative of the donor to receive responses from an intended recipient concerning his or her attendance or nonattendance at the occasion of a gift.
- f) Acts as an intermediary in connection with the reimbursement of a recipient’s expenses.

Q. *May a lobbying firm for an association arrange for an out-of-state speaking engagement for an official to speak at the association’s annual convention?*

A. Out-of-state travel, including travel in connection with the making of a speech, is considered a gift to the official. Because out-of-state travel would exceed the \$10 gift limit, the arrangements for the speaking engagement cannot be made by a lobbying firm, lobbyist, or a person acting as the agent of the lobbying firm or lobbyist.

Q. *May a lobbyist arrange for a gift of more than \$10 to an official if the lobbyist is acting in his or her capacity as the executive director of an association?*

A. No. Regardless of other roles a lobbyist may have, the gift limit, and the prohibition against arranging for gifts over \$10, applies.

“Informational Material”

Q. *Would an “educational” video dealing with a subject that is the focus of current or proposed legislation be considered “informational material?”*

A. The exception to the gift definition for informational material would include a video provided for the purpose of assisting the recipient in the performance of his or her official duties.

Contribution Restrictions for Lobbyists

An elected state officer or candidate for elective state office may not accept a contribution from a lobbyist, and a lobbyist may not make a contribution to an elected state officer or candidate for elective state office, if that lobbyist is registered to lobby the governmental agency for which the candidate is seeking election or the governmental agency of the elected state officer.

Q. *May a lobbyist or a cohabitant of a lobbyist hold a fundraiser for a reportable official at the lobbyist’s home or office?*

- A: No. The cost related to a fundraiser is a contribution. Lobbyists may not make personal contributions to a candidate or officeholder if the lobbyist is registered to lobby the candidate or officeholder's agency.
- Q. *May a lobbyist registered to lobby the Legislature make a contribution to a ballot measure committee controlled by an Assembly member or state senator?*
- A: No. A lobbyist may not make a contribution to state or local committee controlled by a candidate or officeholder if the lobbyist is registered to lobby the candidate or officeholder's agency.
- Q. *May a lobbyist make a contribution to a legislator's committee for federal office even if the lobbyist would be prohibited from making a contribution to the legislator's state committee?*
- A: Yes. There is no prohibition under the Act on lobbyists making contributions to a candidate's committee for federal office.
- Q. *The partners of a lobbying firm are not lobbyists. May these partners make a contribution to a state candidate from funds of the lobbying firm?*
- A: Yes. A lobbying firm may make a contribution to a state candidate, if no lobbyist participates in the decision to make a contribution.
- Q: *If a lobbying firm hosts a fundraiser, are the costs associated with the fundraiser contributions?*
- A: Yes. A contribution includes a payment a lobbying firm makes related to a fundraising event held at the office of the lobbying firm, including the value of the use of the office. No lobbyist may participate in the decisions related to hosting the fundraiser.
- Q. *I am registered to lobby the Secretary of State's office. May I attend the fundraiser of a candidate running for that office if my employer purchases the ticket?*
- A: Yes. The prohibition against a lobbyist making a contribution to a state candidate does not preclude a lobbyist from delivering a contribution made by his or her lobbyist employer.

Revolving Door

- Q. *Do the revolving door provisions affect legislative staff?*
- A: The revolving door provisions do not affect legislative staffers, except for the provision in Government Code Section 87407, which prohibits a designated employee of the Legislature from making or participating in making, or using his or her official position to influence any person with whom he or she is negotiating, or has any arrangement concerning prospective employment. This rule also applies to legislators, all other elected state officials, and state agency employees.

- Q. *Does the one year employment ban found in Government Code Section 87406 apply to appointed state board members?*
- A. The one year employment ban includes officers and members of state administrative agencies. An appointed board member of a state administrative agency is an officer or member of the agency, and would be subject to the prohibition.
- Q. *Do the revolving door provisions apply to former state officers or employees who go to work for other state agencies?*
- A. The revolving door provisions do not pertain to state officers or employees who leave their positions and go to work for other state agencies, boards, or commissions so long as the appearance is on behalf of the state agency, board or commissions. If the appearance is on behalf of anyone else, and the employee is compensated, the revolving door restrictions apply.

Miscellaneous

- Q. *A lobbyist may not be paid on a "contingency" basis. Does this mean that a lobbyist is prohibited from receiving a payment upon introduction of a bill, and then another payment upon passage by the Senate, and then another upon the bill being signed into law, and no payment if it fails?*
- A. Yes, all of the above, any payments received based on the outcome of legislation or administrative action are prohibited.
- Q. *A legislator will be a guest speaker at a lobbyist employer's annual convention in San Diego. The lobbyist employer will pay for one night's lodging, food, and beverages the day of the speech. What are the reporting obligations?*
- A. The lobbyist employer must send a gift notification to the legislator within 30 days and also report the expenses on the employer's quarterly report, Form 635. The legislator must report the lodging expenses and any subsistence expenses or meals that are not provided to other conference attendees on his or her Statement of Economic Interests, Form 700. The costs for the expenses are not subject to gift limits, as the legislator made a speech.
- Q. *May a lobbyist arrange for an official to speak at an organization's convention if the official will speak only under the condition that the organization makes a contribution to a specified charitable, non-profit organization?*
- A. The official is not receiving a gift or honorarium if the organization makes a donation to a charitable organization, so long as: the donation is made directly to the charity and is not delivered to the official; the official does not make the donation a condition of his or her speech; the official does not use the donation as a tax deduction; the donation will have no foreseeable financial effect on the official or his or her immediate family; the donation is not made in the name of the official; and the official is not identified.
- Q. *At what point must a lobbying firm or lobbyist employer include a state agency on its registration statement?*

A. A lobbying firm or lobbyist employer must amend its registration statement to include a state agency within 20 days of any direct communication by any of its lobbyists.

Q. *Does the term “activity expense” include gifts given to an individual who has been nominated or selected to be a state agency official if the gift is given prior to that person assuming office?*

A. No. It would, however, include a gift made to any person who is a candidate for, or has been elected to or appointed to an elective state office, even if the person has not been sworn into that office. In addition, the official will be required to disclose gifts of \$50 or more received during the 12 months preceding his or her employment with that agency.

Q. *May a lobbyist employer send a letter to a legislator’s Capitol office stating that a campaign contribution will be delivered to the legislator? May the lobbyist employer telephone the legislator’s office with this information?*

A. The Act prohibits personal delivery of a campaign contribution, the transmittal letter for a contribution, or the facsimile of either, in the Capitol, a state office building, or any building for which the State of California pays the majority of the rent other than the legislator’s district office. A campaign contribution, transmittal letter, or facsimile, however, may be sent through the U.S. mail. The lobbyist employer may provide information concerning the contribution over the telephone.

Q. *When officials attend a meal, reception, or other event sponsored by a lobbyist employer, what method should be used to determine the amount of the gift received by each official, which attendees must be disclosed on the lobbyist employer report, and how is the total cost of the event determined?*

A. When officials are provided with a restaurant meal and participants order from a menu, the amount of the gift to each official is the actual cost of his or her meal including beverages, plus a pro rata amount for the tax and tip.

When officials attend an invitation-only event, such as a banquet, party, gala, celebration or similar function, the amount of the gift to each official is the official’s pro rata share of the total cost of the food, catering services, and entertainment, plus any item provided at the event. “Pro rata share of the cost of the food, catering services, and entertainment” means the attributable cost of the food, catering services, and entertainment divided by the number of acceptances or the number of attendees. (Do not use the number of people who were merely invited to attend the event.)

If a banquet, reception or similar event is conducted as part of a larger event, such as an organization’s annual conference, only those costs related to the food and entertainment at the banquet or reception need to be counted toward the cost.

To determine which officials to include on the lobbyist employer report, only those officials who attended the event should be disclosed. Immediate family members of those officials must also be disclosed if the family member attended the event. In some cases, a guest book or sign-in sheet should be used to identify those persons who must be disclosed. Other non-officials, and officials who were invited but did not attend the event, should not be included.

If an official attended an event and consumed only minimal appetizers and drinks, but did not stay for any meal or entertainment, the value of the gift to the official is the cost of the any item provided to the official other than any food and beverage consumed by the official and guest accompanying the official. The official should provide written notification to the entity or organization hosting the event that he or she attended under the drop-in provision of Regulation 18946.2.

- Q. *Is a contribution to a campaign considered income or a gift to an official for conflict of interest purposes?*
- A. No, neither. Campaign contributions are excluded from the definitions of both income and gift. A contribution to a campaign is thus neither income nor a gift under the conflict-of-interest provisions of the Act. Note, however, that under Government Code Section 84308, there are limited circumstances in which a contribution of \$250 or more to a member of an appointed board or commission could trigger a conflict of interest.