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August 21, 2013

Chair Ann Ravel & Commissioners  
Fair Political Practices Commission  
428 J Street, Suite 620  
Sacramento, CA 95814

Subject: AGENDA ITEM 46 – Proposed Regulation 18950.1

Dear Ms. Ravel & Commissioners,

The California Public Employees Retirement System (CalPERS) submits the following comments in regard to proposed Regulation 18950.1. CalPERS appreciates the opportunity to provide these comments and applauds the Commission's efforts regarding the entire regulatory package making up Agenda Item 46.

CalPERS Advice Letter Request

On December 21, 2012, CalPERS sought written advice (attached) from the Fair Political Practices Commission (FPPC) as to whether a reportable gift occurs when a CalPERS employee accepts a meal pursuant to the CalPERS Travel Policy and the cost of that meal is paid by a third party pursuant to a contractual obligation negotiated between CalPERS and the third party. As stated in our advice request, CalPERS believes that such a meal is not a gift since consideration for the payment is made by CalPERS as part of an arms-length, bargained-for negotiation. CalPERS also believes there is no personal benefit to the CalPERS employee who accepts the meal since the employee is on CalPERS business, is interacting with the third party in furtherance of CalPERS business, and the employee is otherwise entitled to reimbursement from CalPERS for his or her travel expenses.

Meals received by CalPERS employees pursuant to the CalPERS Travel Policy would not have been considered a gift under the July 9, 2013, version of Regulation 18950.1. Specifically, former proposed Regulation 18950.1, subdivision (c) provided that:

Nothing contained herein shall restrict a payment for any lodging or food under (b)(2) above if provided at the site where the meeting, conference, or event is being held and the lodging or food is substantially equivalent in value as the lodging or food provided to the other attendees at the event.

Recent changes to proposed Regulation 18950.1, however, now make it unclear whether the same sorts of meals described in the old subdivision (c) are a reportable gift. The safe harbor in 18950.1 applies to payments for travel so long as "the travel expenses are limited to no more than the expenses allowable for travel for agency business that would reasonably be paid at agency expense." While CalPERS believes that our existing travel practices are reasonable, it is unclear whether the FPPC agrees.

We believe it is unclear since some meals exceed the per diem limits for breakfast, lunch, and dinner, although they are consistent with the CalPERS Travel Policy. In particular, it can be very difficult -- if not impossible -- to provide a working meal at per diem rates of \$6.00, \$10.00, or \$18.00 for breakfast, lunch and dinner, respectively, at a hotel or other meeting space located within a major domestic or international city. The cost of working meals at common meeting locations within San Francisco, New York, London, Tokyo and other business centers can easily exceed the current per diem by five or even tenfold or more depending on the location. CalPERS does not typically control the location of the investor partnership conferences described in more detail in our advice request. We seek the ability to allow our employees to attend investor partnership conferences held at hotels and similar locations and eat meals without incurring reportable gifts related to those working meals. Unfortunately the new subdivision (g), which replaced subdivision (c), requires a meeting to be "widely attended." Since only investors of the partnership attend these investor partnership conferences, they are not "widely attended."

### Requested Revisions

To address our concerns we suggest the following revisions.

Subdivision (g) should be replaced in its entirety by the language in the old subsection (c) copied above. Alternatively, subdivision (g) should be amended as follows:

(g) ~~Nothing contained herein shall restrict a payment for any lodging or food if the lodging and food is provided at a site other than a restaurant where the official attends a widely attended meeting or conference with multiple attendees other than the donor, all meeting attendees are invited to participate in the meal, and the value is substantially equivalent in value to the lodging or food typically made available to the other attendees.~~

In addition, subdivision (e) should be amended as follows:

(e) A payment made under any of the provisions of this regulation does not provide a personal benefit and is not a gift to the official who uses the payment, provided the payment complies with the following provisions:

(1) The travel is for purposes approved by the governmental employer under the same requirements applicable to travel using its own funds, and the official is representing his or her governmental employer in the course and scope of his or her official duties.

(2) Except as provided in (g) below, the travel expenses are limited to no more than the expenses allowable for travel for agency business that would reasonably be paid at the agency's expense and sole discretion, which may exceed per diem limits.

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CalPERS also requests two changes to the reporting requirements in subdivision (f). In order to comply with the reporting requirements CalPERS would in two instances have to rely entirely on the donor for the required information. CalPERS has no way of knowing whether the donor raised money from others. In addition, without cooperation from the donor, CalPERS will not be able to determine the actual cost of the food provided to its employees. CalPERS does not think it or its staff should be subject to enforcement action where it receives incorrect or incomplete information from the donor. To address these concerns we suggest the following revisions:

Subdivision (f)(1) should be amended as follows:

(1) A date the travel occurred and an itemized breakdown of the amount paid for transportation, lodging, and food, except where food is provided directly by the donor to the official in which case a reasonable estimate of the cost of the food shall be provided.

Subdivision (f)(4) should be amended as follows:

(4) The name and address of the donor. If the donor is not an individual, the report must also describe the business activity, or the nature and interests of the donor. ~~If the donor raised funds from another person for the specific purpose of making the payment to the agency, the report must contain the name of each person and the amount given by each person.~~

Finally, we ask that you not adopt the regulations on August 22, 2013. We believe that the regulation and the proposed reporting forms should be noticed and approved at the same time in order for CalPERS to be able to adequately comply with the requirements of Regulation 18950.1.

If you have any questions, please contact Marte Castaños, Senior Staff Counsel, at (916) 795-3675.

Sincerely,



WARREN ASTLEFORD  
Assistant Chief Counsel

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

Attachment