



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION

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To: Chair Miadich, Commissioners Cardenas, Hatch, and Hayward

From: Dave Bainbridge, General Counsel
Brian Lau, Assistant General Counsel

Subject: Scholarships under the Act

Date: November 8, 2019

Issue

At the October Commission meeting, Chair Miadich instructed staff to provide a memorandum summarizing the applicability of the Political Reform Act's provisions regarding gifts to college scholarships. Specifically, the Chair and Commissioner Hayward questioned whether the Act draws a distinction between scholarships where money is provided directly to a student from a third party, versus a scholarship from a college in the form of reduced tuition costs.

Summary

The Act and its regulations do not draw a distinction between scholarship payments directly applied to tuition and scholarship payments paid directly to the student. In either instance, a scholarship to an official meets the Act's definition of a gift. However, a scholarship received as part of a bona fide contest or competition is not subject to the Act's gift rules so long the official reports the scholarship as income¹ on the official's Statement of Economic Interests – Form 700. A scholarship to an official's family member is deemed a gift to the official in limited circumstances (e.g. where the donor has business before the official's agency). If a scholarship to an official's family member is not deemed a gift to the official, it is not reported as income on a Form 700. If a scholarship to an official's family member is deemed a gift to the official but is received as part of a bona fide contest or competition, it also is not subject to the Act's gift rules so long as the official reports the scholarship as income on the official's Form 700.

Analysis

Under the Act, a "gift" is a subcategory of "income." Section 82030 defines "income" very broadly to include:

“[A] payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift

¹ “Income” as used herein refers only to that term as it relates the PRA. We do not address the classification of scholarship funds as income in the context state or Federal taxes.

of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expense, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse.”

Section 82028 defines gift as:

“[A]ny 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.”

From the very inception of the Act, the Commission has affirmed that “discounts are included in the definition of income so that officials who are offered special reductions when they purchase goods and services will disclose those transactions for public scrutiny.” However, the “statutory definition of ‘income’ excludes discounts which are made available to members of the public without regard to their official status” because “the disclosure of all discounts would impose burdensome reporting requirements without serving a legitimate public purpose.” Based upon the statutory provisions, the Commission has determined that a discount to an official should be reported unless it is made “without regard to official status” and offered “on a uniform basis to a diverse group.” (*In re Russel* (1975) 1 FPPC Ops. 192.)

In regard to a scholarship to an official, the scholarship is a discount and not offered on a uniform basis to a diverse group. Thus, the scholarship would generally be income to the official, as well as a gift to the official because it is received without the exchange of equal consideration. The statutes and regulations do not draw a distinction between a scholarship provided directly to a student versus a scholarship in the form of reduced tuition. In either case, the scholarship would meet the statutory definition of a gift.

However, a scholarship to an official may fall within a narrow exception to the Act’s gift provision and \$500 gift limit for payments received in a bona fide contest, so long as the payments are reported as income. (Regulation 18942(a)(14), more fully discussed below.)

A scholarship awarded to an official’s family member presents a more complicated question. Generally, a scholarship to an official’s family member, whether a spouse, a dependent child, or young adult child for which the parents will be expected to provide financial assistance for educational expenses, confers some personal benefit on the official in that it alleviates the official’s family of the costs of the family member’s education. However, where a scholarship is awarded to a family member it is difficult to determine whether the scholarship is based solely on the family member’s merits or whether the official’s position, and the opportunity to curry favor with the official, may have weighed into the award.

While this is admittedly not an easy determination to make, the Commission has provided guidance through the adoption of Regulation 18943, which establishes a rule for determining “when a payment will be treated as a gift to the official even though the payment is made to the

official's family member." Under this rule, a payment to or for the use of an official's family member is a gift to the official if either of the following:

"(1) There is no established working, social, or similar relationship between the donor and the family member that would suggest an association between the donor and the family member suitable or appropriate for making the type of payment provided to the family member.

"(2) There is evidence to suggest the donor had a purpose to influence the official." (Regulation 18943(c).)

Regulation 18943 also provides examples of instances in which there is "evidence to suggest the donor had a purpose to influence the official." These include the following circumstances:

"(A) The payment is made to a family member of a state agency official by a donor who is a lobbyist, lobbying firm, lobbyist employer, or other person required to file reports under Chapter 6 (commencing with Section 86100) of the Act and who is registered to lobby the official's agency.

"(B) The payment is made to a family member of a state or local government agency official by a donor, or the donor's agent, if the donor is involved in an action or decision before the official's agency, in which the official will reasonably foreseeably participate or in an action or decision in which he or she has participated within the last 12 months.

"(C) The payment is made to a family member by a person who has a contract with the official's agency or by a person who engages in a business that regularly seeks contracts with or comes before the agency for the purpose of receiving a license, permit, or other entitlement and the official may reasonably foreseeably make or participate in a governmental decision, as defined in the Act's conflict of interest regulations (Regulation 18702 et seq.), related to the person, or has participated in any decision related to the person within 12 months of the time the gift is made."

For purposes of Regulation 18943 a "family member" is defined to include the official's spouse² and dependent children, which are defined as the official's "immediate family" under Section 82029.³ In addition to immediate family members, Regulation 18943(b)(3) includes an official's child within the definition of "family member" for purposes of the regulation if the child:

² Regulation 18229 defines "spouse" to include "registered domestic partners recognized by state law."

³ Regulation 18229.1 defines "dependent children" as "a child (including an adoptive child or stepchild) of a public official who is under 18 years old and whom the official is entitled to claim as a dependent on his or her federal tax return."

“(A) Is at least 18 but no more than 23 years old and is a full-time or part-time student.

“(B) Has the same principal place of residence as the official. For purposes of this provision, a place, located away from the official’s residence, at which the child resides for the purpose of attending school, is not the child’s ‘principal place of residence.’

“(C) Does not provide over one-half of his or her own support.”

Regulation 18943(b)(3) was added specifically in consideration of young adult children attending college and was adopted by the Commission in 2009. As explained by staff:

“In this regard, the proposed amendments cover gifts to the official’s spouse, registered domestic partner and children of the official who meet certain criteria. These criteria are broader than the definition of “dependent child” in proposed Regulation 18229.1 because the Commission staff is concerned that a gift to a college-aged child of an official, *such as payment of college tuition*, could provide a major benefit to the official and should, in some cases, be considered gifts to the official for purposes of the Act.” (*Notice of Proposed Adoption of Regulation 18229.1 and Amendment of Regulation 18944*, published in Notice Register on November 6, 2009, emphasis added.)

Even if a scholarship for a family member is a gift to an official under Regulation 18943, the exception from the gift rules for “a prize or award received in a manner not related to the official’s status in a bona fide contest, competition, or game of chance” still may apply just as it would if the official were the recipient of the scholarship. (Regulation 18942(a)(14).) However, pursuant to the regulation, a payment is not exempt from the Act’s gift rules and prohibition unless the “prize or award” is “reported as income.” This approach balances an exemption from a strict ban on gifts with the public’s interest in requiring the disclosure of the payment and ensuring that the payment does not influence the official in future governmental decisions.