

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations)

§ 18941. Receipt, Promise, Acceptance and Return of Gift.

(a) A gift of a rebate or discount is both “received” and “accepted” under Section 89503.5 when the official knows that the rebate or discount given to the official is not made in the regular course of business to members of the public without regard to official status. An official who receives a rebate or discount has the burden of showing that the rebate or discount was made in the regular course of business to members of the public without regard to official status.

(b) Promise of a Gift. For the purposes of Sections 87100 and 87103(e), a gift is “promised” on the date it is offered to the official provided the official thereafter obtains actual possession of the gift or takes any action exercising direction or control over the gift or, with respect to family members under Regulation 18943, on the date the official becomes aware of a promise of a gift to a family member provided that the family member obtains actual possession of the gift or takes any action exercising direction or control over the gift.

(c) General Rule for Return, Donation, or Reimbursement of a Gift. Notwithstanding Section 89503.5, a gift is neither accepted nor received if, within 30 days:

(1) The gift is returned to the donor, the donor's agent, or the donor's intermediary from whom the item was received, unused and without receiving anything of value in exchange for the returned payment or;

(2) The gift is donated, unused, to a 501(c)(3) charitable organization with which the official, or a member of the official's immediate family, holds no position, or to a state, local, or federal government agency, without being claimed as a deduction for tax purposes or;

(3) The official reimburses the donor, donor's agent, or the donor's intermediary from whom the payment was received, in full, or for a portion thereof. If the donor is not reimbursed for the full value of the payment, the value of the gift the official has received is reduced by the amount of the reimbursement.

(d) Relief from Disqualification. In order to relieve the official of an otherwise disqualifying financial interest under Section 87100 the return, donation, or reimbursement of the gift pursuant to subdivision (c) above:

(1) Must occur within 30 days of receipt and before the date the official makes, participates in making, or uses official position to influence the governmental decision in question; or

(2) If the return, donation, or reimbursement has not been made before the decision, and the gift would otherwise cause the official to be disqualified from participating in a governmental decision, the official must publicly disclose the receipt of the gift on the public record, disclose its value, and declare that the return, donation, or reimbursement will occur within two working days following the decision. The subsequent return, donation, or reimbursement of the gift must be made within two working days, and within 30 days after receipt or acceptance, and it must be documented in the public record.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 82028(b)(2), 87100, 87103, 87207, 87302 and 89503, Government Code.

HISTORY

1. New section filed 1-26-94; operative 1-26-94 pursuant to Government Code section 11346.2(d) (Register 94, No. 4).

2. Change without regulatory effect relocating section filed 11-17-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
3. Amendment of subsections (b)-(c) and Note filed 7-25-95; operative 7-25-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).
4. Amendment of section heading, repealer of subsection (a), subsection relettering, and amendment of newly designated subsection (a)(1) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
5. Amendment of section heading, section and Note filed 1-23-2012. Pursuant to California Code of Regulations, title 2, section 18313(e), FPPC has designated an effective date of 1-1-2012. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2012, No. 4).
6. Amendment of subsections (a) and (c) filed 9-14-2020; operative 10-14-2020 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2020, No. 38).
7. Amendment of subsections (b) and (d)(1) filed 5-12-2021; operative 6-11-2021 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of

Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2021, No. 20).