

UNIVERSITY OF CALIFORNIA, BERKELEY

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August 11, 2008

DA 2206

ASSOCIATE CHANCELLOR – Government, Community & Campus Liaison
LINDA WILLIAMS

RE: Delegation of Authority 2206 – *Gifts to an Agency Approval and Reporting Requirements*

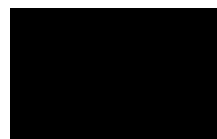
According to President Yudof's July 2, 2008 delegation to Chancellors, I, as "agency head", am delegated the authorities and responsibilities described in the attached material. One of my responsibilities includes the designation of a "filing officer" to file the Gift to Agency Report (California Form 801) and to publish reports online, as stated in the Gifts to an Agency regulation.

Effective July 1, 2008, you are designated the "Gift Reporting Filing Officer" for the Berkeley campus. A copy of this designation is being sent to Ross Smith, Conflict of Interest Coordinator, General Counsel, Office of the President. Coordinator Smith is available to answer your questions about the application of the regulation, the reporting requirements, and other related matters.

Please contact Campus Delegations of Authority Coordinator Cindy Major, @ 2-3115 or cmajor@berkeley.edu with any concerns you may have regarding this delegation of authority.

With warm regards.

Yours sincerely,



Robert J. Birgeneau

Attachments:

President Mark Yudov's July 2, 2008 letter to the Chancellors
Background to Revised Gifts to an Agency Regulation
Gifts to an Agency Regulation 18944.2
California Form 801 – Gift to Agency Report with Instructions

cc: Conflict of Interest Coordinator R. Smith, Office of the General Counsel
Coordinator—Universitywide Policies N. Capell
Director B. Van Cleave Smith, Controls, Accountability & Risk Management
Director W. Riley, Audit & Advisory Services
Associate Chancellor B. FitzPatrick
Campus Delegations Coordinator C. Major



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July 2, 2008

CHANCELLORS

**DIRECTOR – LAWRENCE BERKELEY NATIONAL LABORATORY
SECRETARY AND CHIEF OF STAFF GRIFFITHS
GENERAL COUNSEL AND VICE PRESIDENT FOR LEGAL AFFAIRS ROBINSON
CHIEF INVESTMENT OFFICER BERGGREN
EXECUTIVE VICE PRESIDENT LAPP
VICE PRESIDENT DOOLEY**

Delegation of Authority--Gifts to an Agency Approval and Reporting Requirements

Dear Colleagues:

In May 2008, the Fair Political Practices Commission (FPPC) revised its Gifts to an Agency regulation. This regulation provides a test for determining when gifts are considered gifts to an agency and not to a public official, such as a University employee. Under the revised regulation, if a gift to an agency will provide a personal benefit to an employee, such as a gift of travel, the head of the agency, or his or her designee, must select the individual who will use it, report the payment to the FPPC on a California Form 801 (Gift to Agency Report) within 30 days, and post a copy of the report on the agency's website.

Effective July 1, 2008, each of you is delegated the authorities and responsibilities described in the attached material, as the "agency head" for your location and for personnel under your jurisdiction. These responsibilities include the designation of a "filing officer" to file the Gift to Agency Report (California Form 801) and to publish reports online, as stated in the regulation.

Please send a copy of your written designation of a Gift Reporting Filing Officer to Ross Smith, Conflict of Interest Coordinator, Office of the General Counsel, Office of the President. Coordinator Smith is available to answer questions about the application of the regulation, the reporting requirements, and other related matters.

Sincerely,

A large black rectangular redaction box covering the signature of Mark G. Yudof.

Mark G. Yudof
President

Attachments:

Background to Regulation

Gifts to an Agency Regulation 18944.2

California Form 801 – Gift to Agency Report with Instructions

cc: Members, President's Cabinet
Principal Officers of The Regents
Universitywide Policy Office

Revised Gifts to an Agency Regulation Background

The Political Reform Act (Act) places restrictions and reporting requirements on the receipt of gifts by public officials. All University employees are public officials for purposes of the Act.

Definition of Gift: The Act defines a “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.” (Govt. Code § 82028(a).)

The Fair Political Practices Commission (Commission), the agency that oversees the implementation of the Act, has provided no comprehensive guidance on what types of gifts do, or do not, confer a personal benefit. It has advised that gifts of travel, including accommodations, food¹ and lodging, confer a personal benefit. The Commission has stated that “the vast majority of donations, gifts and grants that a college or university receives do not fall under the gifts to agency regulation, because there is no personal benefit to a particular official involved. Examples of these donations include alumni contributions, funds to endow a chair, and general unrestricted research funds, and donations to fund an onsite conference or lecture series.” (Staff Memorandum to Commission, Gifts to an Agency – Repeal and Readoption of Regulation 18944.2, May 8, 2008.)

Gift Limits: The Act prohibits designated officials –those individuals who hold positions designated in the University’s Conflict of Interest Code – from receiving gifts totaling more than \$390 in a calendar year from a single source if the official is required by the University’s Code to report the source on his or her Statement of Economic Interests, Form 700. (Gov. Code § 89503.)

Gift Reporting Requirements: The Act requires designated officials to report gifts received from a single source within a calendar year that total \$50 or more. (Gov. Code §§ 87207(a)(1) and 87302(b).)

Disqualification Rules: The Act prohibits all University employees from participating in any way in a University decision involving the donor of gifts to the employee totaling \$390 or more, if it is reasonably foreseeable that the decision will have a material financial effect on the donor.

Gifts to an Agency: In circumstances where a gift used by an employee benefits the employee’s agency, the gift may be a gift to the agency and not to the employee who used the gift, and the employee has no reporting obligations, if certain requirements are met. The Commission has

¹ Payments for food are a unique subgroup of gifts because of the obvious benefit to the recipient. Consequently, the Commission has advised that payments for food will be considered gifts to a governmental agency under Regulation 18944.2 only in the limited circumstances when such payments are made in connection with a payment for travel expenses that meet the criteria set forth in Regulation 18944.2. (Girard Advice Letter, No. A-98-170.)

determined that a gift is a gift to an agency, and not to an employee, when the following criteria are satisfied:

- The agency head or designee must determine and control the agency's use of the gift.
- The gift must be used for official agency business.
- The donor may identify a purpose for the gift but may not designate by name, title, class or otherwise, an official who may use the payment.
- The agency official who determines who will use the gift may not select himself or herself as the user of the gift.
- The agency must report the gift to the Commission and post the information on its website.

(California Code of Regulations, Title 2, § 18944.2.)

Reporting of Gifts to an Agency: California Form 801 is to be used to report gifts made to the University when the gift provides a personal benefit to a University employee. Many, if not all, such gifts will be gifts of travel, including transportation, accommodations and food. The Form 801 states that a gift for travel may not be used by an official who holds a position listed in Government Code Section 87200. This prohibition applies to Members of the Board of Regents, the President, the Chief Investment Officer, Vice President – Investments, and the Associate Chief Investment Officer.

1 Adopt 2 Cal. Code Reg. Section 18944.2 to read:

2 **§ 18944.2. Gifts to an Agency.**

3 (a) Applicability. This regulation sets forth circumstances under which a
4 payment made to a state or local government agency, that is controlled by the agency and
5 used for official agency business, is not considered a reportable or limited gift to an
6 individual public official, although the official receives a personal benefit from the
7 payment.

8 (b) Definitions.

9 (1) "Payment" means a payment as defined in Section 82044 and includes a
10 monetary payment to an agency, a loan, gift, or other transfer, and the payment for, or
11 provision of, goods or services to an agency.

12 (2) "Agency head" means an individual in whom the ultimate legal authority of
13 an agency is vested, or who has been delegated authority to make determinations by the
14 agency for purposes of this regulation.

15 (c) Gift to an Agency. A payment, that is otherwise a gift to a public official, as
16 defined in Section 82028, shall be considered a gift to the public official's agency and not
17 a gift to the public official if all of the following requirements are met:

18 (1) Agency Controls Use of Payment. The agency head, or his or her designee,
19 determines and controls the agency's use of the payment. The donor may identify a
20 purpose for the payment, but the donor may not designate by name, title, class, or
21 otherwise, an official who may use the payment. If the payment will provide a personal
22 benefit to an official, the agency head, or his or her designee, shall select the individual

1 who will use it. The agency official who determines and controls the agency's use of the
2 payment may not select himself or herself as the individual who will use the payment.

3 (2) Official Agency Business. The payment must be used for official agency
4 business.

5 (3) Agency Reports the Gift. Within 30 days after use of the payment, the
6 agency reports the payment on a form prescribed by the Commission that includes the
7 following information:

8 (A) A description of the payment, the date received, the intended purpose, and
9 the amount of the payment (or the actual or estimated value of the goods or services
10 provided).

11 (B) The name and address of the donor. If the donor is not an individual, the
12 report shall also describe the business activity, or the nature and interests of the entity. If
13 the donor has raised funds from other persons for the specific purpose of making the
14 payment to the agency, the report shall contain the names of and amounts given by these
15 persons.

16 (C) The agency's use of the payment, and the name, title, and department of the
17 agency official for whom the payment was used. The report shall include the date(s) and
18 place(s) of travel, and a breakdown of the total expenses for transportation, lodging,
19 meals and other related expenses.

20 (D) The form is signed by the agency head, or his or her designee, and
21 maintained by the agency as a public record subject to inspection and copying under
22 Section 81008(a).

1 (E) A state agency shall provide the completed form to the Commission (or in the
2 case of the Commission to the office of the Attorney General), within 30 days after use of
3 the payment, by mail, personal delivery, electronic mail or facsimile. If the state agency
4 maintains a website, the state agency shall also post a copy of the form or the information
5 in the form on its website in a prominent fashion within 30 days after use of the payment.
6 If the state agency does not maintain a website, the Commission shall post a copy of the
7 form or the information in the form on its website.

8 (F) A local agency shall provide the completed form to the filing officer who
9 receives the agency employees' statements of economic interests, within 30 days after
10 use of the payment, by mail, personal delivery, electronic mail or facsimile. The filing
11 officer shall post a copy of the form or the information in the form on its website, or if it
12 does not maintain a website, shall provide a copy of the form to the Commission which
13 shall post the information on its website.

14 (G) The individual in the agency who has official custody of these forms is the
15 filing officer for the forms, keeps a log of the forms under both the name of the agency
16 and official receiving the payment, and maintains the forms for a period of not less than
17 four years.

18 (d) Limitations on Application of this Regulation. The exception provided in
19 subdivision (c) does not apply to the following payments:

20 (1) A payment for travel, including transportation, lodging, and meals, for a state
21 or local elected officer, as defined in Section 82020, or an official specified in Section
22 87200.

1 (2) A payment for travel to the extent that it exceeds the agency’s reimbursement
2 rates for travel, meals, and lodging, and other actual and necessary expenses, or if the
3 agency has no standard policy or practice concerning reimbursement rates, the State per
4 diem rates as set forth in applicable sections of the State Administrative Manual and
5 Department of Personnel Administration regulations, or the Internal Revenue Service
6 rates for reimbursement of these expenses as set forth in the U.S. General Service
7 Administration’s website under “Per Diem Rates” and Internal Revenue Service
8 Publications 463 and 1542, or their successors.

9 (3) A payment for travel that the agency head, or his or her designee, has not
10 preapproved in writing in advance of the date of the trip.

11 (4) Passes or tickets, as described in Regulation 18944.1, which shall be
12 governed by that regulation.

13 (e) Public Colleges and University Research Projects. Notwithstanding this
14 regulation, a donation to a California public college or university for a specific research
15 project that is received consistent with the requirements of Regulation 18702.4(c) or a
16 meal received in the course of the college’s or university’s official fundraising activity,
17 which qualifies under federal and state law for a deduction as a charitable contribution for
18 educational purposes, will be deemed a gift to the college or university.

19 (f) Payments from the Federal Government. Notwithstanding this regulation, a
20 grant, reimbursement, funding, or other payment received by a state or local government
21 agency from a federal government agency for education, training, or other inter-agency
22 programs, will not be considered a gift to the public official who receives a personal

1 benefit from the payment.

2 Comments:

3 1. Acceptance of a pass or discount from a transportation company by a public
4 officer, other than a Public Utilities Commissioner, may result in forfeiture of the
5 official's office pursuant to Article XII, Section 7 of the California Constitution.

6 NOTE: Authority cited: Section 83112, Government Code.

7 Reference: Sections 82028, 82030, 82044, 87100, 87103, 87207, 87302 and 89501
8 through 89506, Government Code.

Gift to Agency Report

A Public Document

GIFT TO AGENCY REPORT

California Form 801
For Official Use Only

1. Agency Name

Date Stamp

Division, Department, or Region (if applicable)

Street Address

Area Code/Phone Number

E-mail

Agency Contact (name and title)

Amendment (explain in comment section)

Date of Original Filing: _____
(month, day, year)

2. Donor Name and Address

Individual _____ Other _____
Last Name First Name Name

Address _____ City _____ State _____ Zip Code _____

If "Other" is marked, describe the entity's business activity (if business) or its nature and interests.

If applicable, identify the name of each source and the amount(s) solicited or received by the donor for this gift:

_____ \$ _____ Name _____ \$ _____
Name Amount Name Amount

3. Payment Information

Date and Amount of Payment (other than travel) _____ \$ _____
(month, day, year) (Round to whole dollars)

Travel Payment Information (Round to whole dollars) Location of Travel _____

_____ \$ _____ \$ _____ \$ _____ \$ _____
Date(s) of Travel Transportation Expenses Lodging Expenses Meal Expenses Other Expenses Total Expenses

Provide a specific description of the nature and use of the payment for official agency business:

Identify the officials for whom the payment was used:

_____ _____ _____ _____
Last Name First Name Title Department/Division

_____ _____ _____ _____
Last Name First Name Title Department/Division

4. Verification

I have determined that it is in the interests of the agency to accept this gift and use it for the official agency business described above.

_____ _____ _____ _____
Signature of Agency Head or Designee Print Name Title (month, day, year)

Comment: (Use this space or an attachment for any additional information.)

Gift to Agency Report Instructions

A Public Document

California
Form **801**

This form is for use by all state and local government agencies to disclose payments made to the agency when the payments provide a personal benefit to an official of the agency. Examples may include travel, meals or other benefits. Under certain circumstances, these payments will not result in a gift to the official, but will be considered a gift to the agency. The payments must be used for official agency business and must meet other requirements that are set out in FPPC Regulation 18944.2, which is available on the FPPC website www.fppc.ca.gov.

When to File

This form must be filed within 30 days of the use of the payment. Reports may be faxed, mailed, personally delivered or e-mailed.

Where to File

State Agencies: File this form with the Fair Political Practices Commission ("FPPC"), 428 J Street, Suite 620, Sacramento, CA 95814. Fax: 916-322-0886
E-mail: Form801@fppc.ca.gov

Local Agencies: File this form with the official that maintains the agency's statements of economic interests (Form 700).

Website Posting: Each agency that maintains a website must also post the form or the information contained on the form on its website within 30 days of the use of the payment. Local agencies that do not maintain a website must forward the form to the FPPC for posting on its website.

Part 1. Agency Identification

List the agency's name and address and the name of an agency contact. Mark the amendment box if changing any information on a previously filed form and include the date of the original filing.

Part 2. Donor Information

Disclose the name and address of the donor. If the donor is not an individual, identify the business activity or nature and interests of the entity.

If the donor received payments from other sources that were used in connection with the activity, disclose the name and payment information for each source.

Part 3. Payment Information

Report the date and amount of each payment. For travel payments, also disclose the location(s), and a breakdown of the expenses. Provide a specific description of the use of the payment and the intended purpose. List each agency official for whom the payment was used.

Example: A business entity paid for an agency employee to travel to attend an informational seminar on solar energy projects in Washington D.C. The description should read: "Travel to attend an EPA co-sponsored solar energy seminar held in Washington, D.C."

Part 4. Verification

The agency head or his or her designee must sign the form.

General Information

Gifts to agencies must meet the following requirements:

- The agency head or designee must determine and control the agency's use of the payment.
- The payment must be used for official agency business.
- The donor may identify a purpose for the gift but may not designate by name, title, class or otherwise, an official who may use the payment.
- The agency official who determines who will use the payment may not select himself or herself.

Travel payments must also meet these requirements:

- A payment for travel may not be used by a state or local elected officer or by the state, county, and city officials who hold positions listed in Government Code Section 87200.
- A payment for travel may not exceed the agency's own reimbursement rates for travel, or the State per diem or IRS reimbursement rates if the agency has no policy.
- The agency head or designee must preapprove travel paid for by a third party before travel commences.

Travel payments made by a federal government agency in connection with education, training, or other inter-agency programs are not reportable.

For further information on filing this report or for general information, contact the FPPC.