



Guidance Regarding Gifts for SANDAG Officials

I. Purpose and Applicability

The Political Reform Act prohibits any public official from making, participating in making, or using his or her position to influence the outcome of a governmental decision involving the donor of a gift or income received by, or promised to the official within the 12 months prior to the date the decision is made. (Regulation 18700.¹) All persons whose positions are listed in the SANDAG Conflict of Interest (COI) Code must fill out a statement of economic interests (Form 700) within 30 days of assuming or leaving office and annually while holding the position, in order to report income of more than \$500 or gifts equal to or exceeding \$50 aggregate from a single reportable source.

Although the Fair Political Practices Commission (FPPC) considers the term “public official” to include everyone designated in the SANDAG COI Code, whether a Board, committee, or working group member, consultant or employee. Officials should note the disclosure category applicable to their position as set forth in the SANDAG COI Code. No official is required to report income or gifts from sources that do not provide services, supplies, materials, machinery, or equipment of the type utilized by SANDAG and some officials are only required to report income or gifts from sources that provide services, supplies, materials, machinery, or equipment of the type utilized by the department or division to which they are assigned duties.

If the procedures in this Guidance are followed, there are few instances when a SANDAG official will need to report gifts on a Form 700. SANDAG Board and committee members who are elected officials have more reporting requirements than employees in the areas of travel, behested payments and campaign contributions.

The gift limit is adjusted biennially to reflect changes in the Consumer Price Index. For 2017, the gift limit for officials is \$470 and the income limit is \$500. All public officials receiving a gift valued at \$50 or more have a reporting obligation and will potentially have to take steps to avoid having a prohibited conflict of interest. Notwithstanding the \$470 gift limit and \$500 income limit in statute, SANDAG imposes a \$50 annual limit for both payment types on its employees who are designated to fill out a Form 700 if the gift or income could cause the employee a conflict of interest.

This Guidance does not cover behested payments or campaign contributions as these laws generally will not be triggered by officials carrying out their roles on behalf of SANDAG.

¹ All references to “Regulation” are to the FPPC’s regulations, which are in Title 2 of the California Code of Regulations.

II. What is a “Gift”?

A “gift” is any payment or other benefit provided to you that confers a personal benefit for which you do not provide payment or services of equal or greater value. A gift 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. (Regulation 18940.)

Except as discussed below, you have “received” or “accepted” a gift when you know that you have actual possession of the gift or when you take any action exercising direction or control over the gift, including discarding the gift or turning it over to another person. This includes gifts that are accepted by someone else on the official’s behalf, gifts that are re-gifted to someone else, and gifts made to others at the direction of the official. (Regulation 18941.)

In some cases, a gift to an official’s family member is also considered a gift to the official. (Regulation 18943.) For purposes of the conflict of interest laws, an official’s “family member” includes: the official’s spouse or registered domestic partner; any minor child of the official who the official can claim as a dependent for federal tax purposes; and a child of the official who is aged 18 to 23 years of age, attends school, resides with the official when not attending school, and provides less than one-half of his or her own support. This is meant to prevent donors from avoiding the restrictions on gifts by giving gifts to the official’s family members instead. Under the rule, when a donor gives a single gift, such as a painting for the home, to an official and his/her family member, it is a gift to the official in its full amount. (Wedding gifts are treated differently, however, see below.)

III. Gift Exceptions

The laws provide exceptions for certain types of gifts. (Government Code Section 82028; Regulations 18940-18942.3.) If the gift, payment or income an official receives is listed below, it will not be considered a gift and therefore will not have to be reported on a Form 700:

1. Items that are returned (unused) to the donor, or for which the official reimburses the donor, within 30 days of receipt. (Regulation 18941.)
2. Items that are donated within 30 days of receipt (unused) to a non-profit, tax-exempt (501(c)(3)) organization in which the official, or a member of the official’s immediate family, does not hold a position, or a government agency, without claiming a deduction for tax purposes. (Regulation 18941.)
3. Gifts from the official’s spouse (or former spouse), child, parent, grandparent, grandchild, brother, sister, current or former parent-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, or first cousin or the spouse of any such person, unless he or she is acting as an agent or intermediary for another person who is the true source of the gift. (Regulation 18942(a)(3).) This exception includes great grandparents, great uncles and aunts, great nieces and nephews, and first-cousins once removed.
4. Gifts of hospitality including food, drink or occasional lodging that an official receives in an individual’s home when the individual or a member of his or her family is present and the individual is someone with whom the official has a relationship, connection, or association unrelated to the official’s position and

the hospitality is provided as part of that relationship. (Regulation 18942(a)(7.) The definition of home hospitality is found in Regulation 18942.2.)

5. Gifts exchanged between an official and another individual (other than a lobbyist) on holidays, birthdays, or similar occasions to the extent that the gifts exchanged are not substantially disproportionate in value. (Regulation 18942(a)(8).) In addition, reciprocal exchanges that occur on an ongoing basis under the gift exchanged provision. For example, if two people get together regularly for lunches and rotate picking up the lunch tab so that each pays approximately half the time over the course of the filing period, no gift need be reported.

6. Informational material provided to assist an official in the performance of his/her official duties, including books, reports, pamphlets, calendars, periodicals, videotapes, or free or discounted admission to purely informational conferences or seminars that do not provide food or entertainment. "Informational material" may also include scale models, pictorial representations, maps, and other such items, provided that if the item's fair market value is more than \$470 for an official or \$50 for an official who is an employee, he/she will have the burden of demonstrating that the item is informational. In addition, on-site demonstrations, tours, or inspections, including air flights over an area that is the subject of the information and designed specifically for public officials may be considered informational material. The transportation must be provided solely at the site of a demonstration, tour, or inspection. This potential exception does not apply to meals or to transportation to the site. (Regulations 18942(a)(1) and 18942.1.)

7. A devise or inheritance. (Regulation 18942(a)(5).)

8. Campaign contributions, including rebates or discounts received in connection with campaign activities do not have to be reported, however, campaign contributions must be reported in accordance with the campaign disclosure provisions of the law and may be subject to other limitations imposed by law. (Regulation 18942(a)(4); Government Code section 84100 et seq.)

9. Personalized plaques and trophies with an individual value of less than \$250. (Regulation 18942(a)(6).)

10. A prize or award received in a bona fide contest or competition, or game of chance. This must be reported as income if over \$500 unless it is received in the California State Lottery. To qualify for this exception the contest or competition must have a broad base of contestants and the competition must be unrelated to the official's duties. (Regulation 18942(a)(14).)

11. Benefits received as a guest attending a wedding reception where the benefits received (meal, party favors, entertainment, etc.) are the same as those received by the other guests at the reception. (Regulation 18942(a)(15).)

12. Bereavement offerings, such as flowers at a funeral received in memory of a close family member. (Regulation 18942(a)(16).)

13. Benefits received as an act of neighborliness such as the occasional loan of an item, an occasional ride, or occasional help with a repair where the act is consistent with polite behavior in a civilized society and would not normally be part of an economic transaction between like participants under similar circumstances. (Regulation 18942(a)(17).) Officials should take special care to ensure that the value of such items or assistance is minimal in value so as to not create an appearance of impropriety.

14. Personal benefits commonly received from a dating partner. These gifts are not disclosable or limited but can cause the recipient to be subject to disqualification under the conflict of interest laws. (Regulation 18942(a)(18)(A).)

15. Acts of Human Compassion. Assistance, financial or otherwise, to offset family medical or living expenses that the official can no longer meet without private assistance because of an accident, illness, employment loss, death in the family, or other unexpected calamity; or to defray expenses associated with humanitarian efforts such as the adoption of an orphaned child, so long as the source of the donation is an individual who has a prior social relationship with the official of the type where it would be common to provide such assistance, or the payment is made without regard to official status under other circumstances in which it would be common to receive community outreach. (Regulation 18942(a)(18)(B).) This exception does not apply, however, if the individual providing the benefit to the official is involved in some manner with business before the official. (See Regulation 18942(a)(18)(D)(i-iii).)

16. Benefits received from a long-time personal friend where the gift is unrelated to the official's duties. The exception does not apply if the individual providing the benefit to the official is involved in some manner with business before the official. (Regulation 18942(a)(18)(C).)

17. Leave credits (e.g., sick leave or vacation credits) received under a bona fide catastrophic or emergency leave program established by an employer and available to all employees in the same job classification or position. Donations of cash, however, are gifts and are subject to limits and disclosure. (Regulation 18942(a)(9).)

18. Food, shelter, or similar assistance received in connection with a disaster relief program. The benefits must be received from a governmental agency or charity (501(c)(3)) and must be available to the general public. (Regulation 18942(a)(10).)

19. Items awarded in an employee raffle, received by SANDAG from a SANDAG employee who is not acting as an intermediary for another donor. When SANDAG holds an employee raffle and the item awarded in the raffle has been received by SANDAG from an employee who is not acting as an intermediary for another donor, the item is not a gift to the employee who wins the raffle. This exception also applies when SANDAG holds an employee raffle and the item awarded in the raffle has been legally obtained with SANDAG funds, or is otherwise an asset of SANDAG and was not donated to SANDAG by a non-agency source. This exception does not, however, apply to passes or tickets for admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose of the type described in Regulation 18944.1. (Regulation 18944.2(a) and (b).)

20. Items received by an official during an employee gift exchange, so long as the item received is provided by another employee of SANDAG and the gifts are not substantially disproportionate in value. (Regulation 18944.2(c).)

21. Any other payment or gift from an individual who is not a lobbyist registered to lobby SANDAG, where it is clear that the gift was made because of an existing personal or business relationship unrelated to the official's position and there is no evidence whatsoever at the time the gift is made that the official makes or participates in the type of governmental decisions that may have a reasonably foreseeable material financial effect on the individual who would otherwise be the source of the gift. (Regulation 18942(a)(19).)

22. When the event is a fundraising event for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, the organization may provide two tickets or invitations per event to an official that shall be deemed to have no value. The ticket must be received from the organization or committee holding the fundraiser versus an intermediary who purchased the tickets. If more than two tickets by invitation are provided to or controlled by the official or if any of the tickets are not provided directly by the 501(c)(3) organization to the official than the tickets will be a gift and will have to be valued in accordance with the regulation. (Regulation 18946.4(b).) Officials should not wear items with the SANDAG logo when attending such events. In addition, in order not to create an appearance of impropriety, officials who are employees should ensure that their attendance at such an event is unrelated to their job duties at SANDAG and that the donor of the tickets is not an entity with whom SANDAG does or may do business.

23. Passes or tickets that provide admission or access to facilities, goods, services, or other benefits (either on a one-time or repeated basis) that the official does not use and does not give to another person. (Regulation 18946.1.)

24. Any payment for travel received from a state, local, or federal government agency and related per diem expenses for education, training, or other inter-agency programs or purposes, is not a gift or income to the official who uses the payment. (Regulation 18950(c)(2).)

25. Admission, where paid admission is required, food, and nominal items provided as part of the paid admission to those attending, to an official where the official makes a speech (as defined in Regulation 18950 (b)(2)) is not a gift so long as the admission is provided by the person who organizes the event. A "nominal item" is a insignificant item typically purchased in large volume and provided for free as a means of advertisement at events, such as a pen, pencil, mouse pad, rubber duck, stress ball, note pad, or similar item. (Regulation 18942(a)(11).)

IV. Gifts to SANDAG for Things Other Than Travel

Gifts or income types that do not meet one of the gift exceptions in Part III are generally not accepted by SANDAG. This includes passes or tickets to facilities for events provided from a for-profit source, or for goods, or services or other benefits that would require reporting on a Form 801 or 802 to the FPPC.

For example, if SANDAG is offered a ticket or pass for an official to attend an event to accept an award on behalf of SANDAG or carry out some other official function, SANDAG management will decline the offer of the ticket. If the event concerns SANDAG official business and attendance of a SANDAG official is appropriate, SANDAG's Chief Deputy Executive Director must determine, in advance who should attend the event on behalf of SANDAG and SANDAG will pay for the cost of such tickets. For payments related to travel, see Part V(a) below.

V. Procedures Applicable to Travel and Other Gifts

a. Guidance to Determine What Portion of a Gift of Travel Along With Meals or Other Benefits Must Be Reported

Travel payments for the purpose of facilitating the public's business can be accepted when the payment is made by a non-government agency, but only if it is made for official agency business and various other requirements are met. (Regulation 18950.1.) Regulation 18950.1 applies solely to a travel payment that meets all of the following requirements: (1) The payment is made directly to or coordinated with the government entity (SANDAG) and not made to the official who is traveling; (2) The payment is used for official government business; (3) The government agency (SANDAG) determines the official who will make use of the payment; (4) The payment provides no personal benefit to the official who makes use of the payment; (5) The duration of the travel is limited to that necessary to accomplish the purposes for which the travel was provided as determined by the governmental agency (SANDAG) using the same standards imposed for travel paid with government funds; and (6) The government agency (SANDAG) reports the payment on the required FPPC form.

A payment is used for official agency business when made under any of the following circumstances: The payment is made: (1) pursuant to a provision in a contract; (2) for the purpose of performing a regulatory inspection or auditing function that the governmental agency is mandated to perform; (3) for the travel expenses of an official and the official is attending solely for purposes of providing training or educational information directly related to the governmental agency's functions or duties under the laws that it administers for individuals who are affected by those laws, and the payment is made by an organization to provide such training for its members; (4) for the travel expenses of an official to an educational conference directly related to the governmental entity's functions or duties under the laws that it administers, the official is a named presenter at the conference, and the payment is made by the organizers of the event; (5) for the travel expenses of an official for the purpose of receiving training directly related to the official's job duties and the payment is provided by an organization that commonly provides such training; (6) for food provided to all attendees at a working group meeting in which the agency official participates as a representative of his or her agency in a working group

meeting under his or her officially assigned job duties and the agency is authorized to provide an official to attend the meeting; or (7) for travel expenses that are required to attend a location to view an in place operation, structure, facility, or available product where the viewing would substantially enhance an official's knowledge and understanding in making an informed decision to enter into a contract regarding a similar operation, structure, facility or purchase the product pursuant to the jurisdictional authority of the official's governmental employer. (Regulation 18950.1(c).)

SANDAG must select the official who will make use of the payment. The only exception to this is if the payment is for expenses related to an oral presentation to either provide training on a subject on which the governmental agency provides training, or discuss policy and direction in implementing the functions of the governmental agency. In those cases the donor may request the official who is most qualified to make the presentation. (Regulation 18950.1(d).) If an official receives an offer from a non-governmental entity to pay for travel expenses, the official should request that the potential donor send an invitation for SANDAG officials to one of the SANDAG Clerks of the Board. The Clerks of the Board will confer with the Chief Deputy Executive Director regarding which official(s) should attend and whether SANDAG will accept the payment from the donor for such expenses. If approved, all travel plans will be made by one of the Clerks of the Board and all payments from the donor shall be directed to SANDAG via one of the Clerks of the Board.

In all cases the purpose of the official's travel will be to conduct official SANDAG business. If the travel is not related to SANDAG business, the steps in this Part V will not apply. Answering the questions below will help with the determination as to which portions of the payment from an entity other than SANDAG would trigger a reporting requirement.

1. Is any part of the payment exempt from reporting and dollar limits under one of the exceptions listed in Part III of this Guidance? For example, is it admission to a seminar or training related to the official's role that could be considered informational material? If so, then that portion of the payment by another party is not considered income or a gift and does not need to be reported.
2. Will the official receiving the benefit of the payment be providing something of value in exchange by being a part of the program's events? For example, is the official going to make a speech or provide a presentation related to SANDAG business at the event to which he/she is travelling²? If so, the value of the admission to the event is not counted as income or a gift and does not need to be reported. If the official will not be providing a service at the event, and the event cannot be considered an informational event, then the value of the admission would be reportable on the official's Form 700 and could cause a conflict. Note that payments for admission/registration versus travel expenses (such as payment for hotel, airfare and meals) are treated differently and are covered in a different section of these Guidelines.

² Mere participation in the discussions at an event will not be sufficient. The official's speech or presentation will have to be part of the program of events.

3. Will the official be reimbursing the donor for any portion of the travel expenses the donor paid for? An official can “buy down” the value of the gift within 30 days. For example, if the official receives \$500 for a plane ticket and repays the donor \$451, the gift would not have to be reported at all because the gift would be under \$50.
4. Will the official be attending an event for which SANDAG has paid for the travel and registration fee, but some other entity will be providing food at the event? If an official attends a business event (such as a seminar or professional society meeting, etc.) for which SANDAG has paid the registration fee, but an event sponsor provides food, the value of the food will not be reportable as long as the portion of the event at which the food is served is attended by a large group of event attendees for purposes of exchanging ideas that could assist SANDAG in carrying out its functions.

b. Guidance for Officials Who Are Employees to Determine if They Can Accept Gifts That Are Tickets or Passes to a Non-business Event

Generally, a SANDAG official receiving a ticket or pass from a source other than SANDAG for admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose is able to keep it and report it on his/her Form 700 if the value from a single source will not exceed \$50, one of the exemptions in Part III above applies, or it is not the type of gift for which the official is required to report under the SANDAG Conflicts of Interest Code. Whether a SANDAG employee is a Form 700 filer or not, he/she may have to treat the ticket or pass as income consistent with applicable state and federal income tax laws. An official who is an employee will not be able to use a ticket or pass that has a value of \$50 or more if it would require the employee to report the gift on his/her Form 700.

Procedures for Officials Who Are SANDAG Employees

1. Tickets or passes to events unrelated to SANDAG business that are reportable gifts to an employee with a total value less than \$50 may be kept by the employee as long as the recipient has not received gifts in excess of \$50 in the last 12 months from that source.
2. Tickets or passes to events unrelated to SANDAG business that are reportable gifts to an employee with a total value that is equal to or exceeds \$50 may not be kept by the employee. Recipients of tickets or passes in this category must either:
 - a. Return the unused ticket or pass to the donor or reimburse the donor within 30 days; or
 - b. Throw away the unused ticket or pass
3. Tickets or passes to events unrelated to SANDAG business that are to an identified group of SANDAG employees, may be shared among the recipients or others as long as no single employee receives a benefit with a value equal to or in excess of \$50 from the gift.
4. Tickets or passes to events unrelated to SANDAG business that are gifted to SANDAG generally without one or more specific employees identified, and with a value of \$50 or more will be handled as follows at the discretion of the Chief Deputy Executive Director:
 - a. The unused ticket or pass will be returned to the donor or SANDAG will reimburse the donor within 30 days; or
 - b. The unused ticket or pass will be thrown away

5. Tickets or passes to events unrelated to SANDAG business that are gifted to SANDAG generally without one or more specific recipients identified, and with a value that is less than \$50 will be handled as follows at the discretion of the Chief Deputy Executive Director:
 - a. The unused ticket or pass will be returned to the donor or SANDAG will reimburse the donor within 30 days;
 - b. The unused ticket or pass will be thrown away; or
 - c. The ticket or pass will be used in a raffle for an employee event

c. Guidance for Officials Who Are Employees to Determine if Gift baskets, Gift Certificates and Other Gifts That are Not Tickets or Passes Can Be Accepted

This portion of the Guidance applies to officials who are employees when a gift is received from an actual or prospective SANDAG vendor, consultant or contractor in the course of the performance of duties for SANDAG. The term “gift” does not include (and therefore reporting is not required for) the exceptions listed above in Part III. Gifts that are not covered by an exception or any of the other provisions above are subject to the procedures below.

Procedures

1. Gift baskets, gift certificates, and other gifts with a total value less than \$50 may be kept by an employee as long as the recipient has not received gifts equal to or in excess of \$50 in the last 12 months from that source.
2. Gift baskets, gift certificates, and other gifts that are not within the exceptions listed in Part III and that are reportable gifts for an employee, with a total value that is equal to or exceeds \$50 may not be kept. The recipient must return the unused gift to the donor or reimburse the donor within 30 days.
3. Gift baskets, gift certificates, and other gifts that are not within the exceptions listed in Part III and that are reportable gifts, but are sent to a group of SANDAG employees, may be shared among the recipients or others as long as no single employee receives a benefit with a value equal to or in excess of \$50 from the gift.
4. Gift baskets, gift certificates, and other gifts that are not within the exceptions listed in Part III, but are gifted to SANDAG generally without one or more specific recipients identified, and with a **value of \$50 or more** will be handled as follows at the discretion of the Chief Deputy Executive Director:
 - a. The unused gift will be returned to the donor or the donor will be reimbursed within 30 days; or
 - b. The unused gift will be thrown out
5. Gift baskets, gift certificates, and other gifts that are not within the exceptions listed in Part III and that are gifted to SANDAG generally without one or more specific recipients identified, and with a **value of less than \$50**, will be handled as follows at the discretion of the Chief Deputy Executive Director:
 - a. The unused gift will be returned to the donor or the donor will be reimbursed within 30 days;
 - b. The unused gift will be thrown out; or
 - c. The gift will be used in a raffle for an employee event; or
 - d. The gift will be place in our more employee break rooms or reception areas for distribution to employees or the public

VI. Source of Gift

Under most circumstances, it is clear who is providing the gift, but if the circumstances indicate that the gift is being provided by an intermediary, the recipient must determine both the donor and the intermediary in reporting the gift. Regulation 18945 provides the rules for determining the source of the gift. In determining the cumulative value of any reportable gifts, separate gifts from an individual and an entity that the individual controls or where the individual directs the payment of the gift must be aggregated as one source in complying with the reporting and limit requirements. For example, separate gifts from ACME Ltd. and ACME, Inc. would be treated as if from one source if one company owns more than a 50 percent interest in the other company. In that case, the gift from Ewing Oil would be aggregated with any gifts made by that individual. Group gifts, such as a single gift from multiple donors (such as a retirement gift from coworkers) need not be reported unless any one individual contributes more than \$50 to the total cost of the gift.

VII. Valuation of Gifts

The general rule for determining the value of a gift is to apply the fair market value at the time the gift is received. Fair market value can be determined by finding any local or Internet advertisement for the item. Special exceptions to the fair market value rule are contained in Regulations 18946.1 through 18946.5 covering admission to ticketed and invitation-only events, wedding gifts, attendance at nonprofit and political fundraisers, and air travel on a non-commercial flight.