



# INSTITUTE FOR LOCAL GOVERNMENT

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## Reporting the Source of a Gift

Identifying the source of a gift is important because gift reporting requirements and limits are tied to gifts from a single source. Generally, the source is the person who paid for the gift.<sup>1</sup> A public official who receives a gift must identify the source to correctly report the gift on his or her [Statement of Economic Interests](#)<sup>2</sup> and stay below the annual gift limit. The values of multiple gifts from a single source are combined for purposes of the reporting threshold and gift limit. Gifts valued at \$50 or more or a series of gifts from a single source adding up to \$50 or more over the course of a year must be reported.<sup>3</sup> One may not accept a single gift valued at \$420 or more or a series of gifts adding up to \$420 or more (limit for the years 2009-12) from a single source in a calendar year.<sup>4</sup>

This resource sheet discusses issues related to reporting sources of gifts given to public officials. The concept of an intermediary and requirement to report intermediaries is covered first. The rule dictating when multiple gifts that are ostensibly given by different sources must be reported as being from a single source is discussed next. Finally, the method of reporting gifts from multiple sources is covered.

## Reporting Intermediaries

An intermediary is a middle person who gives a gift to an official that was paid for by another person.<sup>5</sup> Use of an intermediary in gift-giving may disguise the gift's true source, which frustrates the Political Reform Act's objective of promoting transparency in public agency decision-making.<sup>6</sup> Consequently, for reporting purposes the source of a gift is the gift-giver as

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<sup>1</sup> See 2 Cal. Code Regs. § 18945.

<sup>2</sup> Cal. Gov't Code §§ 87210 ("The recipient of the gift shall include in his Statement of Economic Interests the full name, street address, and business activity, if any, of the intermediary or agent and the actual donor."), 87313 (requirement also applies to employees who must disclose gifts pursuant to their agency's conflict-of-interest code); see also 2 Cal. Code Regs § 18945.3 (restating the rule).

<sup>3</sup> See Cal Gov't Code § 87207(a). For the general rule on how to value gifts, see 2 Cal. Code Regs. § 18946.

<sup>4</sup> Cal. Gov't Code § 89503; 2 Cal. Code Regs. § 18940.2(a). For the general rule on how to value gifts, see 2 Cal. Code Regs. § 18946.

<sup>5</sup> See 2 Cal. Code Regs. § 18945.

<sup>6</sup> See Cal. Gov't Code § 81002.

long as that person is not acting as an intermediary.<sup>7</sup> If an intermediary is involved, the identities of both the source and the intermediary must be reported.<sup>8</sup>

A person acting as an intermediary of a gift worth \$50 or more must disclose his or her identity and the identity of the source, including their full names, street addresses and business activities, to the recipient.<sup>9</sup> In turn, the recipient must report the full name, street address and business activity of both the source and the intermediary on his or her [Statement of Economic Interests](#).<sup>10</sup> An official is permitted to presume the person who delivered the gift was the source unless: (1) another source was identified; (2) circumstances clearly indicate the person delivering the gift was not the actual source; or (3) the official receives a gift in response to solicitation of a payment from a source to an intermediary for purposes of making a gift to the official within twelve months of the solicitation (see number 6 below).<sup>11</sup>

A Fair Political Practices Commission rule expressly delineates six circumstances under which a source and intermediary exist. A person who makes a payment to a third party that is used directly or indirectly by the third party to make a gift to an official is the source, and the third party is the intermediary, under any of the following circumstances:<sup>12</sup>

1. The person directs and controls use of the payment at the time it is used by the third party to make a gift to the official.
2. The person and the third party agreed that the payment will be used to make a gift to the official.
3. The person identifies the official to the third party as the intended beneficiary of the payment before the third party makes a gift to the official.
4. The third party identifies the official to the person as the intended beneficiary of the payment before receiving the payment.
5. The person knows or has reason to know that the sole or primary purpose of the payment is to make gifts to officials.
6. An official or an official's agent solicits the payment from the person to the third party for purposes of making a gift to the official.

An official must report both the source and the intermediary if the official is aware that any of these circumstances exist with respect to a gift.<sup>13</sup>

## **Determining When Multiple Gifts Are from a Single Source**

As discussed above, the receipt of a gift as well as its source must be reported on an official's [Statement of Economic Interests](#).<sup>14</sup> A Fair Political Practices Commission rule dictates when

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<sup>7</sup> 2 Cal. Code Regs. § 18945(a).

<sup>8</sup> Cal. Gov't Code §§ 87210, 87313; *see also* 2 Cal. Code Regs § 18945.3 (restating the rule).

<sup>9</sup> Cal. Gov't Code §§ 87210, 87313; *see also* 2 Cal. Code Regs § 18945.3 (restating the rule).

<sup>10</sup> Cal. Gov't Code §§ 87210, 87313; *see also* 2 Cal. Code Regs § 18945.3 (restating the rule).

<sup>11</sup> 2 Cal. Code Regs. § 18945(d).

<sup>12</sup> 2 Cal. Code Regs. § 18945(b)(1).

<sup>13</sup> *See* 2 Cal. Code Regs. § 18945(d).

<sup>14</sup> Cal. Gov't Code §§ 87210 (“The recipient of the gift shall include in his Statement of Economic Interests the full name, street address, and business activity, if any, of the intermediary or agent and the actual donor.”), 87313

gifts that are ostensibly given by different sources must be reported as being from a single source.<sup>15</sup> Two or more gifts must be reported as being from a single source under any of the following circumstances:<sup>16</sup>

1. Gifts given by an individual and an entity in which the individual has an ownership interest of more than 50 percent.
2. Gifts given by an individual and an entity when the individual directs and controls the entity's decision to make gifts.
3. Gifts given by two or more entities when the same person or a majority of the same persons direct and control the entities' decisions to make gifts.
4. Gifts given by business entities in a parent-subsiary relationship (one business entity owns more than 50 percent of another business entity) or business entities with the same controlling owner (more than 50 percent) unless the business entities act independently in their decisions to make gifts.

One must therefore be mindful when accepting multiple gifts from individuals and entities which they own or control or from affiliated entities. Note the term "entity" is broader than "business," and therefore conceivably encompasses other types of organizations such as nonprofits.

## Reporting Gifts from Multiple Sources

A gift given by multiple people must be reported if it is valued at \$50 or more.<sup>17</sup> One may describe the identity of the gift-givers in general terms, such as "coworkers," unless someone contributed \$50 or more.<sup>18</sup> Contributors of \$50 or more must be individually named on one's [Statement of Economic Interests](#).<sup>19</sup>

Please note this information is current as of March 1, 2011. Although the Institute tries to help local officials understand laws that apply to public service, the Institute's informational materials are not legal advice. In addition, attorneys can and do disagree on the best interpretation of the complex rules relating to public service ethics. Officials are encouraged to consult with an attorney or the Fair Political Practices Commission for advice on specific situations.

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(requirement also applies to employees who must disclose gifts pursuant to their agency's conflict-of-interest code); *see also* 2 Cal. Code Regs. § 18945.3 (restating the rule).

<sup>15</sup> 2 Cal. Code Regs. § 18945.1 (the rule refers to this as "cumulation of gifts").

<sup>16</sup> 2 Cal. Code Regs. § 18945.1.

<sup>17</sup> 2 Cal. Code Regs. § 18945.4. For the general rule on how to value gifts, see 2 Cal. Code Regs. § 18946.

<sup>18</sup> 2 Cal. Code Regs. § 18945.4.

<sup>19</sup> 2 Cal. Code Regs. § 18945.4.