

By: *Janice Butcher*
Chair of the Board

Subject: GIFTS OF FOOD AND DRINK POLICY

GIFTS OF FOOD AND DRINK POLICY

The San Bernardino County Employees' Retirement Association (SBCERA) is a public trust, and administration of this retirement system is subject to strict fiduciary responsibilities under the law regarding trusts and public agencies. The policy set forth establishes compliance with the reporting of gifts, prohibition on acceptance of honoraria, unless an exception applies, and acceptance of gifts intended to be used for official SBCERA business purposes by a SBCERA representative.

The following is intended to be a procedural guideline that will enable the Trustees and staff to maintain high ethical standards and exercise fiscal prudence on behalf of the Trust, while also continuing to have access to events where, for educational, due diligence, or other reasons, their attendance is in the best interest of the Trust and its members and beneficiaries.

This policy is intended to be consistent with, and complementary to, the Board's existing policies on Trustee Education and Training, Staff Education and Training, Trustee Expenses, and Ethics, and with the Political Reform Act and the regulations thereunder addressing these same topics.

I. Gift Definition. General Rule

Gifts received by a person in a designated position under SBCERA's Conflict of Interest Code may be subject to reporting requirements and limitations by various regulations and laws.¹ A gift is generally any payment or thing of value, including meals and travel, for which the recipient did not provide equal or greater consideration in return, subject to certain exceptions. Reporting is required when a gift is received from a single source with a combined total equal to or greater than \$50 in a calendar year. Gifts to family members are included in the gift rules under certain circumstances. There are also exceptions to the gift rules under certain circumstances; questions should be addressed SBCERA's Legal Office.

¹ Political Reform Act (Government Code section 81000 et seq.); Fair Political Practices Commission (FPPC) Regulations, Cal. Code Regs., title 2, section 18940 et seq.; Government Code section 1090 – Conflict of Interest; SBCERA Conflict of Interest Code; and Internal Revenue Code.

a. Who is a Designated Filer?

For purposes of this policy, a Designated Filer is a Trustee or staff member, whose position is listed in SBCERA's Conflict of Interest Code. Generally, the Designated Filer is one been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on economic interests. A Designated Filer may not accept any gifts from one source that is the limit or in the excess of the limit for the calendar year.² All SBCERA staff must comply with the disqualification rules even if they are not a Designated Filer or even if they do not have to report acceptance of a gift.

b. Reporting of Gifts on Form 700 Statement of Economic Interest.

Designated Filers, pursuant to SBCERA Conflict of Interest Code, are required to track the value of any gifts received in each calendar year. In addition, a Designated Filer must disclose/report on their Statement of Economic Interest (Form 700) gifts over \$50 or more in value from a single source.

c. Disqualification Rule

No public official may make, participate in making or in any way use or attempt to use his/her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a disqualifying financial interest.³ All Designated Filers must remember that receipt of a gift could trigger disqualification regardless of whether the person has an obligation to report the gift on his or her Form 700.

d. Prohibition on Acceptance of Honoraria

Honorarium means any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.⁴ A Designated Filer is prohibited from receiving honoraria from any source if receipts of gifts from that source are required to be disclosed on Form 700. There are exceptions to the honoraria rules; questions should be addressed to SBCERA's Legal Office.⁵

² The Fair Political Practices Commission (FPPC) sets the aggregate limit annually.

³ Government Code section 1090.

⁴ Government Code section 89501 (a).

⁵ Government Code section 89502 (c). Exception to the prohibition on receiving honoraria: (a) payment that would be excluded from the definition of a gift, such as food and nominal items; (b) complimentary admission to an event or the cost of a meal as long as the cost of the meal does not trigger disclosure or disqualification; and (c) payment for services in connection with a separate "bona fide profession."

II. Gift to Agency

Under limited circumstances, a “payment”⁶ or a “payment of travel” made to SBCERA by an outside source that is used by an SBCERA employee to conduct SBCERA business may not be treated as a gift or income by the Designated Filer who uses it as long as certain criteria are met as discussed below. (Hereinafter referred to as a Gift to the Agency.) In this situation, SBCERA may report the payment or travel payment on a Form 801 instead of the designated filer reporting the payment on his or her Form 700.

1. Regarding a Gift to the Agency for Trustees, the Board of Retirement shall be designated as the Agency Head. Regarding a Gift to the Agency for SBCERA staff, the Chief Executive Officer shall be designated as the Agency Head.
2. The Agency Head respectively shall determine the control of SBCERA’s use of the Gift to the Agency including the selection of the SBCERA official who will use the payment.
3. Receipt of such payment must be in accordance with the definition of SBCERA’s Official Agency Business as attached.
4. The donor must make the payment directly to or coordinates with the Agency Head or designee and not with the employee who will likely use the payment.
5. The person selected to attend may accept food for attendance at the event where food is provided as part of the admission of the event. All other payments for food must be made to SBCERA pursuant to SBCERA’s Travel Policy.

III. Other Related Information Concerning Gifts

a. Travel, lodging, and meals pre-authorized or approved by the Board and/or Chief Executive Officer in relation to Education/Training, Travel, and Expense Policies and paid for by SBCERA via an SBCERA issued credit card or reimbursement will be deemed an expense of SBCERA and not reportable as a gift by the Designated Filer.

⁶ Government Code section 82044 – “Payment” means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services, or anything else of value , whether tangible or intangible.

b. Regarding non-official SBCERA business or unapproved travel, lodging, events, and meals unrelated to the Designated Filers official responsibilities of SBCERA and/or impermissible expenses incurred as referenced in the Education/Training, Travel, and Expense policies, the Designated Filer is personally responsible for expenses incurred or if paid by a third party may be subject to reporting on the Designated Filer's Form 700.

c. Trustees and staff are prohibited from accepting any gifts from anyone who is doing or is seeking to do business or any kind with SBCERA when the gift is offered with a view toward securing favorable treatment in the awarding of any contract, agreement, or the making of any determination.

All rules relating to gifts, honoraria, and travel are subject to change by the Fair Political Practices Commission and other authority. Trustees and SBCERA staff are encouraged to read the Fair Political Practices Commission's Limitations and Restrictions on Gifts, Honoraria, Travel and Loans for further guidance and/or direct questions to SBCERA's Legal Office.

[Remainder of Page Intentionally Left Blank]

Official SBCERA Business Shall Mean:

1. Used for a legitimate governmental purpose and must assist the agency in carrying out its mission, programs, or goals. The payment may not be for an activity unrelated to the official responsibilities of the agency.
2. Travel payment is set forth in a contract.
3. The official provides training or educational information directly related to duties of the agency and for individuals who are affected by those laws administered by the agency.
4. Attendance at an educational conference directly related to the governmental employer's functions or duties under the laws that it administers, and the official is a named presenter at the conference, and the payment is made by organizers of the event.
5. Receipt of training directly related to the official's duties and the payment is provided by an organization that commonly provides such training.
6. Food provided to all attendees at a working group meeting in which the agency official participates as a representative in a working group under his or her official assigned job duties.
7. Required travel 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 of a product pursuant to the jurisdictional authority of the official's governmental employer.