

**GIFTS**

# **“REPORTING INDIVIDUALS” AND “PROCUREMENT EMPLOYEES”**

- A. “Reporting Individuals” and “Procurement Employees” (RIPes) also are subject to the detailed gift law provided in F.S. 112.3148.
- “Reporting individuals” are defined to include persons who are required by law to file the full financial disclosure statement specified in Art. II, Sec. 8, Fla. Const. (CE Form 6), and persons required to file the limited financial disclosure statement specified in F.S. 112.3145

- “Procurement employees” are defined to include any employee of an officer, department, board, commission, or council of the executive branch or judicial branch of state government who participates through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, or auditing or in any other advisory capacity in the procurement of contractual services or commodities as defined in F.S. 287.012, if the cost of such services or commodities exceeds \$1,000 in any year. F.S. 112.3148(2)(e).

# Prohibition Against RИPEs Soliciting Gifts

- A RИPE is prohibited from soliciting any gift from a vendor doing business with the reporting individual's or procurement employee's agency, who lobbies the RИPE's agency, from the partner, firm, employer, or principal of such a lobbyist, or from a political committee as defined in the election laws (F.S. 106.011), if it is for the personal benefit of the RИPE, another RИPE, or a parent, spouse, child, or sibling of a RИPE.

- 1. The prohibition against solicitation is comprehensive, there is no valuation threshold, and it applies even to food and beverages.
- 2. The gift must be for the personal benefit of the RIPE, a family member, or one or more other RИPEs. Therefore, a RIPE cannot solicit lobbyists for contributions toward a banquet for other RИPEs. But, solicitation of a gift intended for one's agency or for a charity, for example, is not prohibited.

- General Rule on Accepting Gifts: Subject to specific, limited exceptions, a RIPE (and any other person on behalf of the RIPE) is prohibited from knowingly accepting a gift which he or she knows or reasonably believes has a value exceeding \$100:
- Vendor doing business with the reporting individual's or procurement employee's agency;
- directly or indirectly from a vendor doing business with the reporting individual's or procurement employee's agency, who lobbies the RIPE's agency or from a political committee; or
- directly or indirectly made on behalf of the partner, firm, employer, or principal of such a lobbyist. F.S. 112.3148(4).

- Where a gift is to be provided by multiple donors, the value of the gift provided by any one donor is equal to the portion of the gift's value attributable to that donor based upon the donor's contribution to the gift.
- The value of the portion provided by a vendor doing business with the reporting individual's or procurement employee's agency, any vendor doing business with the reporting individual's or procurement employee's agency, partner, firm, employer or principal of a lobbyist, political committee, cannot exceed \$100, and the reporting individual or procurement employee cannot accept the gift if the value of that portion of the gift exceeds \$100.

- Where the gift is given to someone other than a RIPE by one of the prohibited group of donors and is given with the intent to benefit the RIPE, the gift is considered an indirect gift to the RIPE. Rule 310(6).
- This rule also provides examples of what would be considered prohibited and permitted indirect gifts, as well as the factors the Commission considers in determining whether an indirect gift has been made.

- Where a gift is provided to a person other than the reporting individual or procurement employee by a vendor doing business with the reporting individual's or procurement employee's agency, or by the partner, firm, employer, or principal of a lobbyist, where the gift or the benefit of the gift ultimately is received by the reporting individual or procurement employee, and where the gift is provided with the intent to benefit the reporting individual or procurement employee, such gift will be considered an indirect gift to the reporting individual or procurement employee.

- Factors which the Commission will consider in determining whether an indirect gift has been made include but are not limited to:
- The existence or nonexistence of communications by the donor indicating the donor's intent to make or convey the gift to the reporting individual or procurement employee rather than to the intervening third person;

- The existence or nonexistence of any relationship between the donor and the third person, independent of the relationship between the donor and the reporting individual or procurement employee, that would motivate a gift to the third person;
- (iii) The existence or nonexistence of any relationship between the third person and the reporting individual or procurement employee that would motivate the gift.

- (iv) Whether the same or similar gifts have been or are being provided to other persons having the same relationship to the donor as the third person;
- (v) Whether, under the circumstances, the third person had full and independent decision-making authority to determine whether the reporting individual or procurement employee, or another, would receive the gift;
- (vi) Whether the third person was acting with the knowledge or consent of, or under the direction of, the donor;

- (vii) Whether there were or were intended any payments or bookkeeping transactions between the third person and the donor, reimbursing the third person for the gift; and
- (viii) The degree of ownership or control the donor has over the third person.

- **EXAMPLES:**
- A principal which employs 10 lobbyists who lobby the agency of Reporting Individual M ("M") channels a gift costing \$1,000 to M through its 10 lobbyists. Although each lobbyist's share of the gift is \$100, the gift would be prohibited because it is an indirect gift from the principal with a value of excess of \$100.

- Reporting Individual D ("D") hosts a fox hunt attended by other reporting individuals. Lobbyists who lobby the agency of D give money to a third person, who is not a reporting individual, to pay for the food and beverages which will be served at the fox hunt. D orders and prepares the food and beverages. The money provided to the third person by the lobbyists would be a gift to D, because it was given with the intent of benefiting D and his guests at the fox hunt.

- Reporting Individual N ("N") and N's spouse have arranged to take a vacation trip together. A lobbyist who lobbies N's agency meets with the spouse and offers to pay for the spouse's travel expenses, which would exceed \$100. The lobbyist and N's spouse know each other only through the lobbyist's involvement with N. This would constitute an indirect gift to N, and would be prohibited because its value exceeds \$100.

# Exceptions to Prohibitions Against Accepting and Giving Gifts

- Notwithstanding the prohibitions expressed in Rule 34-13.310, the following gifts are permitted.
- (1) A reporting individual or procurement employee may accept a gift valued in excess of \$100 on behalf of a governmental entity or charitable organization. A political committee, a lobbyist, the partner, firm, employer, or principal of a lobbyist, or another on their behalf may give a gift valued in excess of \$100 to a reporting individual or procurement employee if the gift is intended to be transferred to a governmental entity or charitable organization.

- (a) If the gift is accepted on behalf of a governmental entity or charitable organization, the person receiving the gift shall not maintain custody of the gift for any period of time beyond that reasonably necessary to arrange for the transfer of custody and ownership of the gift.
- (b) "Charitable organization" means an organization described in s. 501(c)(3) of the Internal Revenue Code and exempt from tax under s. 501(a).
- A relative of the reporting individual or procurement employee may give, and the individual or employee may receive, a gift valued in excess of \$100, regardless of whether the relative is a lobbyist or the partner, employer, or principal of a lobbyist.

- "Relative" means an individual who is related to the subject individual as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, person who is engaged to be married to the subject individual or who otherwise holds himself or herself out as or is generally known as the person whom the subject individual intends to marry or with whom the subject individual intends to form a household, or any other natural person having the same legal residence as the subject individual.

# Gift Disclosures for RIPEs

- Quarterly Gift Disclosure (CE Form 9):
- Each RIPE must file this form to list each gift worth over \$100 accepted by the RIPE, except for gifts from relatives, gifts required to be disclosed on other forms, and gifts the RIPE is prohibited from accepting. The deadline is the last day of the calendar quarter following the calendar quarter in which the gift was received.

- The form need not be filed if no reportable gift was received during the calendar quarter. However, note that the Commission rule requires a RIPE to disclose a gift reportable on this form received during the time the RIPE held his or her public position, regardless of whether the position was vacated before the form is due. The form is filed with the Commission.
- Annual Gift Disclosure (CE Form 10). Each RIPE must file this form to list each gift worth over \$100 received by the RIPE: from a governmental entity, for which a public purpose can be shown; or from a direct-support organization.

- For example, direct-support organization of hospital district providing gifts to district board members. The deadline is July 1 of the year following the year in which the gift was received. The form is filed along with the annual financial disclosure form. A procurement employee files with the Commission on Ethics.
- The form need not be filed if no reportable gift was received.

# **Gift Disclosures Applicable to Donors - Quarterly Gift Disclosure (CE Form 30)**

- A vendor doing business with the reporting individual's or procurement employee's agency, who lobbies a RIPE's agency, or the partner, firm, employer, or principal of such a lobbyist, who makes or directs another to make a gift having a value over \$25 but not over \$100 to a RIPE of that agency, must file this form to report the gift.
- Each political committee which makes or directs another to make a gift having a value over \$25 but not over \$100 to a reporting individual or procurement employee must file this form to report the gift.

- In addition, the donor must notify the intended recipient at the time the gift is made that the donor, or another on the donor's behalf, will report the gift. The report is filed with the Commission.
- The deadline is the last day of the calendar quarter following the calendar quarter in which the gift was made. The same gift need not be reported by more than one person or entity, and the form need not be filed if no reportable gift was made during the calendar quarter.

# The Definition of "Gift."

- Although comprehensive in many respects, including what may be provided to the donee directly, indirectly, or through another, the definition of "gift" [F.S. 112.312(12)] contains several important exceptions.
- Since the definition is uniformly applicable to the prohibitions and disclosures, this has the effect of exempting transactions within an exception to the definition of gift (e.g., gifts from relatives, items received in exchange for equal or greater consideration) from being prohibited or subject to disclosure.

- Included in the definition are several items that might not normally be considered a gift. These include the use of real or personal (tangible and intangible) property; a preferential rate or terms on a debt, loan, goods, or services, transportation (other than transportation provided by an agency in relation to officially approved governmental business), lodging, and parking; personal and professional services; and any other service or thing having an attributable value.

- If equal or greater consideration is given (within 90 days of receipt of the gift), it is not a gift; "consideration" does not include a promise to pay or otherwise provide something of value unless the promise is in writing and enforceable through the courts.
- Based upon this concept, the Commission's rule specifies that salary, benefits, services, fees, or other expenses (including travel expenses when a public purpose for the travel exists) received by a RIPE from his or her public agency do not constitute gifts.

- However, services rendered by the RIPE on behalf of the RIPE's agency by use of official position do not count as consideration for a gift from a person or entity other than the agency.
- The rule provides that substantiating equal or greater consideration is the responsibility of the donee. This can be done by providing information demonstrating the fair market value of items of merchandise, supplies, raw materials, or finished goods provided by the donee to the donor.

- In the case of personal labor or effort for the benefit of the donor, the length of time, value of the service provided, and whether others providing similar services for the donor received a comparable gift will be reviewed by the Commission.
- There is a significant exclusion for salary, benefits, services, fees, commissions, expenses, and even gifts associated primarily with the donee's employment or business, or with the donee's service as an officer or director of a corporation or organization.

- Rule 214 states that this means those things associated with the donee's principal employer or business occupation and unrelated to the donee's public position.
- **EXAMPLE:**
- Fees or even gifts received by a RIPE from a client of his or her private law practice, with no other relationship between the RIPE and the client, would not be a prohibited or reportable gift.

- However, in CEO 92-33 tickets from one's agency to theater performances were not considered "benefits" under the rule, unlike benefits typically associated with employment.
- Contributions or expenditures reported under the campaign financing law, campaign-related personal services provided by volunteers, and any other contribution or expenditure by a political party are exempted.

- An honorarium or expense related to an honorarium event paid to a RIPE or spouse is exempted. These are treated exclusively under the honorarium law.
- Food and beverages consumed at a single sitting are within the definition of a gift. Therefore, a cup of coffee or a meal may be prohibited or reportable, depending on value.

# THE DEFINITION OF A "VENDOR"

- "Vendor" means a business entity doing business directly with an agency, such as renting, leasing, or selling any realty, goods, or services.

# The Definition of "Lobbyist."

- A "lobbyist" is defined to mean any natural person who is compensated for seeking to influence the governmental decisionmaking of a RIPE or the agency of a RIPE or for seeking to encourage the passage, defeat, or modification of any recommendation or proposal by a RIPE or the RIPE's agency; it also includes any person who did so during the preceding 12 months.

- A lobbyist is being compensated when receiving a salary, fee, or other compensation for the action taken. Rule 240. Thus, any employee of an organization, including the chief executive officer or a salesperson, who is contacting the agency as part of his or her job may be lobbying.
- On the other hand, an unpaid volunteer member of a nonprofit organization who seeks to influence governmental decision making will not be a lobbyist.

- All types of governmental decisionmaking or recommendations are included, whether they fall in the area of procurement, policy making, investigation, adjudication, or any other area.
- A purely informational request made to an agency and not intended in any way to directly or indirectly affect a decision, proposal, or recommendation of a RIPE or an agency does not constitute lobbying. One must have the intent to affect a decision, proposal, or recommendation and take some action that directly or indirectly furthers or communicates one's intention.

- Agencies can adopt their own definition of a lobbyist, and then a "lobbyist" includes only a person who is required to be registered or otherwise designated as a lobbyist in accordance with that process or who was so required during the preceding 12 months.
- However, the local registration system must be at least as broad in defining who is a "lobbyist" as the Legislature's registration system in order to define who is a lobbyist for purposes of the gift and honoraria laws.

# Valuation of Gifts

- The general method for valuation uses the actual cost to the donor (less taxes and gratuities) rather than fair market value of the gift, but several exceptions are provided.
- The Commission's Rule specifies that "actual cost" means the price paid by the donor which enabled the donor to provide the gift to the donee; if the donor is in the business of selling the item or service (other than personal services), the donor's actual cost includes the total costs associated with providing the items or services divided by the number of units of goods or services produced.

- Personal services provided by the donor, meaning individual labor or effort performed by one person for the benefit of another, are valued at the reasonable and customary charge regularly charged for such service in the community in which the service is provided.
- Compensation provided by the donee to the donor is deducted from the value of the gift in determining the value of the gift. Under the Commission's rule, compensation includes only payment by the donee to the donor and excludes personal services rendered by the donee for the benefit of the donor.

- However, recall that services by the donee may constitute equal or greater consideration, with the result that no gift has been made. The compensation principle gives rise to the so called "\$100 deductible," under which the official pays all but \$100 of the value of the gift in order to be allowed to accept the gift; but remember this must be done within 90 days.
- If the actual value attributable to a participant at an event cannot be determined, the total costs are prorated among all invited persons, including nonRIPEs.

- Transportation is valued on a round-trip basis and is a single gift, unless only one-way transportation is provided. Transportation in a private conveyance is given the same value as transportation provided in a comparable commercial conveyance.
- The rule specifies that this means a similar mode and class of transportation which is available commercially in the community; transportation in a private plane is valued as an unrestricted coach fare.

- If the donor transports more than one person in a single conveyance at the same time, the value to each person is the same as if it had been in a comparable commercial conveyance.
- Lodging on consecutive days is a single gift. Lodging in a private residence is valued at \$44 per night (the per diem rate less the meal rate provided in F.S. 112.061).

- Where the gift received by a donee is a trip and includes payment or provision of the donee's transportation, lodging, recreational, or entertainment expenses by the donor, the value of the trip is equal to the total value of the various aspects of the trip.
- Food and beverages consumed at a single sitting or event are considered a single gift, valued according to what was provided at that sitting or meal; other food or beverages provided on the same calendar day are considered a single gift, valued at the total provided on that day.

- If the gift is food, beverage, entertainment, etc. provided at a function for more than ten people, the value of the gift is the total value of the items provided divided by the number of persons invited, unless the items are purchased by the donor on a per person basis.
- Tickets and admissions to events, functions, and activities are a frequent source of inquiries. Generally, the rule is that the value is the face value of the ticket or admission fee, but if the gift is an admission ticket to a charitable event AND is given by the charitable organization, that portion of the cost which represents a charitable contribution is not included in valuing the gift.

- Rule 500(5) provides a number of specific examples and principles for valuing this type of gift, especially relating to football tickets, booster fees, and seating in a skybox. Skybox tickets given by a county for professional basketball playoff games would be valued at the cost of admission to persons with similar tickets.
- Multiple tickets received at one time by a RIPE to be used by the RIPE or given to others are valued by multiplying the number of tickets given times the face value of each.

- Where the donor is required to pay additional expenses as a condition precedent to being eligible to purchase or provide the gift, and where the expenses are for the primary benefit of the donor or are of a charitable nature, those expenses are not included in determining the value of the gift.
- **EXAMPLE:**
- A lobbyist's golf club membership fees, for the personal benefit of the lobbyist, are not included when valuing the gift of a round of golf; and the portion of a skybox leasing fee allocated to the FSU Foundation, Inc. (expenses of a charitable nature) is not included in the value of a skybox seat.

- Membership dues paid to one organization during any 12 month period are considered a single gift.
- Unless otherwise noted, a gift is valued on a per occurrence basis, meaning each separate occasion on which a donor gives a gift to a donee.

# Multiple Donors

- In determining whether a gift is prohibited, the value of the gift provided to a RIPE by any one donor equals the portion of the gift's value attributable to that donor based upon the donor's contribution to the gift. The value of the portion provided by any lobbyist or other prohibited donor cannot exceed \$100; if it does, the RIPE cannot accept the gift.
- Regardless of whether the gift is provided by multiple donors, the RIPE must disclose it if the value of the gift as a whole exceeds \$100.

- In determining whether a donor must disclose a gift (\$25-\$100) or provide a statement to the RIPE about the gift (over \$100), the value of the gift provided by any one donor equals the portion of the gift's value attributable to that donor based upon the donor's contribution to the gift. If that value exceeds the threshold, the donor must disclose the gift or provide the statement.

# **XIII. HONORARIA AND HONORARIUM EVENT-RELATED EXPENSES**

- An "honorarium" is defined to mean a payment of money or anything of value, directly or indirectly, to a RIPE or to any other person on the RIPE's behalf, as consideration for a speech, address, oration, or other oral presentation; or for a writing (other than a book) which is or is intended to be published.
- The Commission's rule specifies that the speech or other oral presentation means a formal address, lecture, panel discussion, or other presentation which a RIPE has been invited to make to a gathering of persons, and further provides examples of documentation evidencing a genuine presentation by the RIPE, rather than a subterfuge to allow an otherwise prohibited gift.

- The term "honorarium" specifically excludes:
- payment for services related to outside employment; ordinary payments or salary received for services related to the RIPE's public duties;
- a campaign contribution reported as required by law;
- and the payment or provision of actual and reasonable transportation, lodging, event or meeting registration fees, and food and beverage expenses related to the honorarium event for the RIPE and spouse.

- A RIPE is prohibited from soliciting an honorarium from anyone, regardless of amount, when the subject of the speech or writing relates to the RIPE's public office or duties.

# Prohibition Against Accepting or Providing Honoraria

- A RIPE is prohibited from knowingly accepting an honorarium from: a lobbyist; the employer, principal, partner, or firm of a lobbyist; and a political committee or committee of continuous existence.
- Similarly, these persons and entities are prohibited from providing an honorarium to a RIPE. There is no \$100 threshold for honoraria, as there is for gifts.
- As with gifts, the Commission's rule states that "reasonable inquiry" should be made by the RIPE to determine whether the honorarium is prohibited.

- A RIPE must disclose the receipt of payment for, or the provision of, expenses related to an honorarium event from a person or entity that is prohibited from paying an honorarium to the RIPE. There is no \$100 threshold for this disclosure requirement.
- The statement (CE Form 10) is due by July 1 for expenses paid for or provided during the prior calendar year, but the form need not be filed if there is nothing to report. The form is filed along with the annual financial disclosure.

- A procurement employee files with the Commission on Ethics. The statement filed by a reporting individual or procurement employee who left office or employment during the calendar year covered by the statement shall be filed by July 1 of the year after leaving office or employment at the same location as his or her final financial disclosure statement or, in the case of a former procurement employee, with the Commission on Ethics.

- No later than 60 days after the honorarium event, the person or entity paying or providing a RIPE's honorarium event-related expenses must provide to the RIPE a statement listing the name and address of the person or entity, a description of the expenses provided each day, and the total value of the expenses provided for the event. This applies only to persons and entities that are prohibited from paying an honorarium to the RIPE.