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THE CALIFORNIA STATE UNIVERSITY  
Office of the Chancellor  
400 Golden Shore  
Long Beach, California 90802-4275  
(213) 590- 5688

OFFICE OF THE PRESIDENT

Code: FSR 86- 05 (P)

Date: February 14, 1986

Reference: 85-08

To: Presidents ✓

Subject: Personnel  
Records

From: Caesar J. Naples  
Vice Chancellor  
Faculty and Staff Relations

Subject: Conflict of Interest Policy for: Principal Investigator

The Fair Political Practices Commission (FPPC) has approved a Conflict of Interest Policy for CSU Principal Investigators based on the Board of Trustee resolution of January 23, 1985 (see FSR 85-08) which defines Principal Investigator. A copy of the material approved by FPPC is enclosed. Section II, in this document, the Composition and Function of the Independent Review Committee (IRC) requires action by the President on a campus where one or more faculty members apply for a non-governmental contract or grant. The process for establishing an Independent Review Committee should be initiated as soon as possible.

A copy of the campus procedure used by the campus for independent substantive review including the organization and members of the IRC should be submitted to this office no later than June 1, 1986.

A separate FSR on Conflict of Interest Filing is being sent to you under separate cover.

Toby Osos, ATSS 635-5683 is responsible for coordinating CSU's Conflict of Interest issues with FPPC.

CJN:TO:rmo

Enclosure

Distribution:

Conflict of Interest Officer - With Attachments		
Vice President, Academic Affairs	-	Without Attachments
Associate Vice President/Dean, Faculty Affairs	-	"
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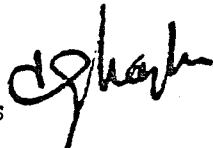
ATTACHMENT  
FSR 86-05(P), Page 1  
February 14, 1986

Code: FSR 85-08

Date: February 12, 1985

Personnel  
Records

To: Presidents

From: Caesar J. Naples   
Vice Chancellor  
Faculty And Staff Relations

Subject: Amendment to CSU Conflict of Interest Code: Principal Investigators

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The Board of Trustees took action on January 23, 1985, to adopt an amendment to The CSU Conflict of Interest Code consistent with California Administrative Code Title 2, Section 18705(b) which requires disclosure of financial interests in connection with a decision made by a person at an institution of higher education with the principal responsibility for a research project, if it is to be funded or supported by a contract or grant from a nongovernmental entity.

Contracts and grants from federal, state, municipal, county, and nonprofit foundation sources are excluded from disclosure requirements, as are decisions made in connection with teaching decisions, including the selection of books or other educational materials, and in connection with decisions to pursue personally a course of academic study or research.

Disclosure of financial interests indicative of a conflict of interest may result in disqualification of the Principal Investigator from participation in financial decisions in connection with the grant or contract. However, disqualification may not be required if the decision is substantively reviewed by an independent review committee established within the institution. Specifics concerning the independent review committee are currently under development and are subject to review and approval by the Fair Political Practices Commission.

(over)

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Page 2  
FSR 85-08  
February 12, 1985

The resolution of the Board of Trustees is attached. The resolution amends The CSU Conflict of Interest Code and is incorporated by reference as Article 20 of Subchapter 7, Chapter 1, Part V of Title 5 of the California Administrative Code, and becomes effective upon approval by the Fair Political Practices Commission and The Office of Administrative Law and thirty days after filing with the Secretary of State.

Questions concerning this matter should be addressed to Mr. Wally Moore at (213) 590-5588 or ATSS 635-5588.

CJN:WM:rmo

Attachment  
0436k

Attachment  
FSR 85-08

RESOLVED, By the Board of Trustees of The California State University, acting under the authority prescribed herein and pursuant to the Administrative Procedure Act, that, subject to further review and approval by the Fair Political Practices Commission, this Board hereby amends its Conflict of Interest Code and its regulations in Article 20 of Subchapter 7, Chapter 1, Part V of Title 5 of the California Administrative Code as follows:

1. Section 43813 is amended to read:

43813. Designated Positions.

The positions listed on Exhibit "A" and in Section 43813.5 are designated positions. Officers and employees holding these positions are designated employees and are deemed to make or participate in the making of decisions which may foreseeably have a material effect on a financial interest. A designated employee shall be assigned to one or more of the disclosure categories set forth in Exhibit "B".

2. Section 43813.5 is added to read:

43813.5. Principal Investigators

Employees with principal responsibility for a research project funded or supported, in whole or in part, by a contract or grant (or other funds earmarked by the donor for a specific research project or for a specific researcher) from a nongovernmental entity, shall be designated employees subject to the disclosure and disqualification requirements of the Code. Disqualification shall not be required in connection with any decision if the decision is substantively reviewed by an independent committee established within the State University or College.

3. Disclosure Category "16" of Exhibit "B" of the CSU Conflict of Interest Code is added to read:

Category "16":

Investments in and income from any private, nongovernmental entity which has been or which in the future foreseeably may be asked to provide funds, or in the case of a project completion statement, has provided funds to support, in whole or in part, the research project for which the filer is the principal investigator.

PART B  
CONFLICT OF INTEREST  
POLICY FOR  
PRINCIPAL INVESTIGATOR  
THE CALIFORNIA STATE UNIVERSITY

Personnel Program Operations and Evaluation  
The California State University  
Office of the Chancellor  
February 1986

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## CONFLICT OF INTEREST POLICY FOR PRINCIPAL INVESTIGATORS:

### I Guidelines for Implementation

Unlike business position financial disclosures which occur when the incumbent enters or leaves the position as well as the annual April 1 filing, financial disclosure by Principal Investigators must take place whenever the faculty member applies for a nongovernmental contract or grant. Thus, the first safeguard concerning Principal Investigator conflict of interest disclosure is that no nongovernmental contract or grant may proceed without the Principal Investigator filing a financial statement (FPPC Form 730-U is attached).

Any designated employee, including Principal Investigator shall not make, participate in making, or use her/his offered position to influence the making of any governmental decision which will foreseeably have a material financial effect on;

- (1) Any business entity and/or real property in which the designated employee has a direct or indirect investment or interest worth more than one thousand dollars (\$1,000);
- (2) Any source of income, other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the designated employee within twelve months prior to the time when the decision is made; or
- (3) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management.

To ensure that the principles essential to research are followed rather than conflicting and personal material gains, the following guidelines are proposed:

1. Principal Investigators shall disclose whether or not they have a financial interest in the sponsor of a proposed research project when funding in whole or in part is through a contract or grant from a nongovernmental entity;
2. Principal Investigators shall disclose whether or not they have a financial interest in the donor of a gift when the gift is from a nongovernmental entity and is earmarked by the donor for a specific Principal Investigator or for a specific research project;
3. Disclosure statements must be filed (a) before final acceptance of such a contract or grant, or gift; (b) when funding for such a contract or grant is renewed; and (c) within 90 days after expiration in the case of a contract or grant, or after the funds have been completely expended in the case of a gift;
4. Disclosure is required for persons with principal responsibility for research projects funded in any part by a contract or grant from a non governmental entity, including non profit organizations if they are not on the FPPC approved list.
5. When disclosure indicates that a financial interest exists, an independent substantive review of the disclosure statement and research project shall take place with appropriate documentation before a contract, grant, or gift is accepted. (The composition and function of an Independent Review Committee is discussed below.)
6. Department chairs shall disqualify themselves from approving a research proposal for a project to be funded in whole or in part by a nongovernmental entity in which they have a financial interest;



7. Failure by a Principal Investigator to make the required disclosure or by a department chair to disqualify himself or herself may result in a State enforcement proceeding as well as University sanctions.
8. If the financial disclosure by the Principal Investigator indicates that he/she had no financial interest in the granting or contracting concern, then the research does not require the review of the independent review committee.

The following responsibilities related to Conflict of Interest are identified for various participants and will be distributed by the Campus for the benefit of the parties involved.

#### President

Takes responsibility for campus compliance with The California State University Policy on Disclosure of Financial Interest in Private/Nongovernmental Sponsors and with the State of California Political Reform Act.

Designates or appoints a review committee which is advisory to the President, or designee, to undertake the independent substantive review as described above.

Assures that appropriate administrative support and technical conflict of interest advice is available to the review committee, Principal Investigators and others as needed; that application and project completion financial disclosure statements are filed within prescribed deadlines; that such statements are complete, legible and consistent; that independent substantive review of potential conflicts of interest is completed before deciding whether to accept a contract or grant sponsored in whole or in part by a nongovernmental individual or entity, or a gift earmarked for a specific researcher or a specific

research project; that copies of disclosure statements, the review committee's recommendations, and the written decisions resulting from the independent review process are provided to the Campus Conflict of Interest Filing Officer and are available on campus to the public upon request; and that department chairs are notified of the requirement to disqualify themselves from approving research proposals being funded by a sponsor in which they have a financial interest.

#### Academic Vice President

Provides guidance on the independent substantive review of a disclosed financial interest in the sponsor of research funded through a restricted gift or a contract or a grant with a nongovernmental entity.

Provides liaison with the Academic Senate.

#### Administrative Vice President

Develops procedural guidelines to be followed in: (a) the submittal and review of nongovernmental contract or grant research applications to assure filing of the application financial disclosure statements prior to disposition of the research application; (b) the review of gifts earmarked by a donor for a specific researcher or for a specific research project to assure filing of the financial disclosure application prior to acceptance of the gift; and (c) the filing of a project completion statement upon the expiration of the research project or the exhaustion of the gift funds.

Provides liaison with campus contract and grants offices, and gifts and development offices.

Vice Presidents - Deans - Academic Personnel Relations Officer

Develops policies and guidelines, and provides technical advice regarding financial disclosure and conflicts of interest, including the Political Reform Act.

Provides reproducible copies of necessary forms and instructions to the campus.

Receives and maintains for public access copies of Principal Investigators' application and project completion financial disclosure statements, copies of recommendations by the campus review committee, and copies of the president's or designee's decisions regarding specific research projects.

(This activity can also be performed by the Campus Conflict of Interest Filing Officer).

Principal Investigators

Principal Investigators must complete the application and project completion disclosure statements (1) whenever they make application for or renewal of a contract or grant with a nongovernmental entity, or (2) whenever a gift is specified by a donor for him or her or for a specific research project for which he or she is responsible. The disclosure must be made on a "Principal Investigator's Statement of Economic Interests" (attached) before the proposed gift is accepted or application is made for the nongovernmental funded research contract or grant; at the time of funding renewal of the research project; as well as within 90 days after the gift funds are exhausted, or the research project is completed.

California State University  
Independent Review Committee (IRC)  
Report Outline

1. Principal Investigator:
2. Name of Project:
3. Period of Performance:
4. Reviewed at the IRC meeting of:
5. Funds Awarded:
6. Documents reviewed by IRC:
7. Nature of Financial Interest:
8. Recapitulation of IRC review
  - A. Is the research appropriate to the University?
  - B. Are the teaching and research environments open?
  - C. Is there freedom to publish and disseminate the results of this project?
  - D. Is the use of the University facilities appropriate?

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## II Composition and Function of the Independent Review Committee

Presidents, after appropriate consultation with faculty groups including the Academic Senate, shall establish a procedure for independent substantive review including the designation or establishment of a committee to conduct the review and criteria for the conduct of the review by such a committee.

The Independent Review Committee:

1. Shall have at least three individuals:
  - A. a faculty or staff person as appropriate from another department or occupational area;
  - B. an administrator; and
  - C. a member at large.
2. Should be composed of members who are responsible, conscientious persons with impeccable credibility and well versed in the contract process of the institution.
3. Should have adequate faculty standing, administrative authority and access to subject matter expertise.
4. May consult with administrators, faculty and others involved in the research review process and the academic discipline in question.
5. May also consult with Principal Investigators and department chairs in order to gain information and seek modification to research projects, if that is necessary.
6. Shall maintain records of its deliberations which shall be made available to the public upon request. An outline for the Committee's report is attached.

Criteria for review of a decision by a Principal Investigator shall be based on and adhere strictly to the California Administrative Code, Title 2, Section 18700ff and any amendments duly adopted by the Fair Political Practices Commission, along with the List of Disclosure Categories for designated positions on each campus. The campus criteria based on Trustee policy, Faculty and Staff Relations guidelines and the appropriate Codes shall be developed and distributed to principal investigators prior to the review by any independent review committee.

On the basis of the review, the Committee will recommend to the President, or designee, whether funding for the research project should be accepted and, if so, whether any conditions are needed.

CHAPTER 7. CONFLICTS OF INTEREST

Article 1. Conflicts of Interest; General Prohibition

18700. Public Official Making, Participating in Making a Governmental Decision (87100).

The provisions herein define terms as used in Chapter 7 of the Political Reform Act of 1974, as amended, Government Code Sections 87100-87312.

(a) "Public official at any level of state or local government" means every natural person who is a member, officer, employee or consultant of a state or local government agency.

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission possesses decision-making authority whenever:

(A) It may make a final governmental decision;

(B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

(2) "Consultant" shall include any natural person who provides, under contract, information, advice, recommendation or counsel to a state or local government agency, provided, however, that "consultant" shall not include a person who:

(A) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and

(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

(b) A public official "makes a governmental decision," except as provided in subsection (d) of this section, when he or she, acting within the authority of his or her office:

(1) Votes on a matter;

(2) Appoints a person;

(3) Obligates or commits his or her agency to any course of action;

(4) Enters into any contractual agreement on behalf of his or her agency;

(5) Determines not to act, within the meaning of sub-paragraphs (1), (2), (3) or (4), unless such determination is made because of his or her financial interest. When the determination not to act occurs because of his or her financial interest, the official's determination must be accompanied by disclosure of the financial interest, made part of the agency's official record or made in writing to the official's supervisor, appointing power or any other person specified in a conflict of interest code adopted pursuant to Government Code Section 87300.

(c) A public official or designated employee "participates in the making of a governmental decision" when, acting within the authority of his or her position, he or she:

(1) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or

(2) Advises or makes recommendations to the decision-maker, either directly or without significant intervening substantive review, by:

(A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision; or

(B) Preparing or presenting any report, analysis or opinion, orally or in writing, which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision.

(d) Making or participating in the making of a governmental decision shall not include:

(1) Actions of public officials which are solely ministerial, secretarial, manual or clerical;

(2) Appearances by a public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to his or her personal interests; or

(3) Actions by public officials, employees, or employee representatives relating to their compensation or the terms or conditions of their employment or contract.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87100, Government Code.

**HISTORY:**

1. Repealer and new section filed 12-17-76, as an emergency; effective upon filing (Register 76, No. 51). For prior history, see Register 76, No. 40.

2. Certificate of Compliance filed 3-31-77 (Register 77, No. 14).

3. Amendment of section heading and repealer of subsections (e) and (f) filed 8-2-85; effective thirtieth day thereafter (Register 85, No. 33).

**18700.1. Using Official Position to Influence (87100).**

(a) With regard to a governmental decision which is within or before an official's agency or an agency appointed by or subject to the budgetary control of his or her agency, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the agency. Attempts to influence, include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer.

(b) Notwithstanding subsection (a) an official is not attempting to use his or her official position to influence a governmental decision of an agency covered by subsection (a) if the official:

(1) Appears in the same manner as any other member of the general public before an agency in the course of its prescribed governmental function solely to represent himself or herself on a matter which is related to his or her personal interests. An official's "personal interests" include, but are not limited to:

(A) An interest in real property which is wholly owned by the official or members of his or her immediate family.

(B) A business entity wholly owned by the official or members of his or her immediate family.

(C) A business entity over which the official exercises sole direction and control, or over which the official and his or her spouse jointly exercise sole direction and control.



- (2) Communicates with the general public or the press.
  - (3) Negotiates his or her compensation or the terms and conditions of his or her employment or contract.
  - (4) Prepares drawings or submissions of an architectural, engineering or similar nature to be used by a client in connection with a proceeding before any agency. However, this provision applies only if the official has no other direct oral or written contact with the agency with regard to the client's proceeding before the agency except for necessary contact with agency staff concerning the processing or evaluation of the drawings or submissions prepared by the official.
  - (5) Appears before a design or architectural review committee or similar body of which he or she is a member to present drawings or submissions of an architectural, engineering or similar nature which the official has prepared for a client if the following three criteria are met:
    - (A) The review committee's sole function is to review architectural or engineering plans or designs and to make recommendations in that instance concerning those plans or designs to a planning commission or other agency;
    - (B) The ordinance or other provision of law requires that the review committee include architects, engineers or persons in related professions, and the official was appointed to the body to fulfill this requirement; and
    - (C) The official is a sole practitioner.
- (c) With regard to a governmental decision which is within or before an agency not covered by subsection (a), the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official acts or purports to act on behalf of, or as the representative of, his or her agency to any member, officer, employee or consultant of an agency. Such actions include, but are not limited to the use of official stationery.
- NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87100, Government Code.

HISTORY:

1. New section filed 8-2-85; effective thirtieth day thereafter (Register 85, No. 33).

**18701. Legally Required Participation.**

- (a) A public official is not legally required to make or to participate in the making of a governmental decision within the meaning of Government Code Section 87101 unless there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.
- (b) Whenever a public official who has a financial interest in a decision is legally required to make or to participate in making such a decision, he or she shall:
  - (1) Disclose as a matter of official public record the existence of the financial interest;

Title 2  
California Administrative Code

§ 18701  
(p. 328.2)

FAIR POLITICAL PRACTICES COMMISSION

TITLE 2

(Register 85, No. 42—10-19-85)

(2) Describe with particularity the nature of the financial interest before he or she makes or participates in making the decision;

(3) Attempt in no way to use his or her official position to influence any other public official with respect to the matter;

(4) State the reason there is no alternative source of decision-making authority;

(5) Participate in making the decision only to the extent that such participation is legally required.

(c) This regulation shall be construed narrowly, and shall:

(1) Not be construed to permit an official, who is otherwise disqualified under Government Code Section 87100, to vote to break a tie.

(2) Not be construed to allow a member of any public agency, who is otherwise disqualified under Government Code Section 87100, to vote if a quorum can be convened of other members of the agency who are not disqualified under Government Code Section 87100, whether or not such other members are actually present at the time of the disqualification.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87101, Government Code.

**HISTORY:**

1. New section filed 1-22-76; effective thirtieth day thereafter (Register 76, No. 4).

2. Amendment of subsection (c) filed 4-28-82; effective thirtieth day thereafter (Register 82, No. 18).

**18702. Material Financial Effect.**

(a) The financial effect of a governmental decision on a financial interest of a public official is material if the decision will have a significant effect on the business entity, real property or source of income in question.

(b) In determining whether it is reasonably foreseeable that the effects of a governmental decision will be significant within the meaning of the general standard set forth in paragraph (a), consideration should be given to the following factors:

(1) Whether, in the case of a business entity in which the public official holds a direct or indirect investment of one thousand dollars (\$1,000) or more or in the case of a business entity in which the public official is a director, officer, partner, employee, trustee or holds any position of management, the effect of the decision will be to increase or decrease:

(A) The annualized gross revenues by the lesser of:

1. One hundred thousand dollars (\$100,000); or

2. One percent if the effect is one thousand dollars (\$1,000) or more; or

(B) Annual net income by the lesser of:

1. Fifty thousand dollars (\$50,000); or

2. One half of one percent if the effect is one thousand dollars (\$1,000) or more; or

(C) Current assets or liabilities by the lesser of:

1. One hundred thousand dollars (\$100,000); or

2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

Current assets are deemed to be decreased by the amount of any expenses incurred as a result of a governmental decision.

(2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars (\$1,000) or more held by a public official, the effect of the decision will be to increase or decrease:

(A) The income producing potential of the property by the lesser of:

1. One thousand dollars (\$1,000) per month; or  
2. Five percent per month if the effect is fifty dollars (\$50) or more per month; or

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or  
2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

(3) Whether, in the case of a source of income, as defined in Government Code Section 87103(c), of two hundred fifty dollars (\$250) or more received by or promised to a public official within 12 months prior to the time the decision is made:

(A) The effect of the decision will be to directly increase or decrease the amount of income (other than rents) to be received by the official, or to confer a financial benefit or detriment upon the official or a member of the official's immediate family, in an amount of one hundred dollars (\$100) or more; or

(B) There is a nexus between the governmental decision and the purpose for which the official receives income; or

(C) In the case of a source of income which is a business entity, the business entity will be affected in a manner described in subsection (b)(1) above; or

(D) If the source of income is not a business entity, the decision will have a significant effect on the source.

(c) Subsections (a) and (b) of this section notwithstanding, the making or participation in the making of a governmental decision by a contract consultant or by a person retained to provide information, advice, recommendation or counsel has no material financial effect on a business entity or source of income in which such consultant or person retained is an officer, employee, sole proprietor or partner, if the only financial effects of the decision are the modification, perpetuation or renewal of the contractual or retainer agreement and/or the opportunity to bid competitively on a project or contract.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

**HISTORY:**

1. New section filed 1-22-76; effective thirtieth day thereafter (Register 76, No. 4).
2. Amendment filed 3-19-76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 12).
3. Amendment filed 12-20-78; effective thirtieth day thereafter (Register 78, No. 51).
4. Amendment of subsection (a) and (b) filed 7-5-79; effective thirtieth day thereafter (Register 79, No. 27).
5. Amendment of subsection (b) filed 4-28-82; effective thirtieth day thereafter (Register 82, No. 18).

**18702.1. Disqualification.**

(a) Except as provided in subsection (c), a public official shall not make, participate in making, or use his or her official position to influence a governmental decision if:

(1) Any person (including a business entity) which has been a source of income (including gifts) to the official of \$250 or more in the preceding 12 months appears before the official in connection with the decision;

(2) Any business entity in which the official has a direct or indirect investment of \$1,000 or more, or in which the official is an officer, director, partner, trustee, employee, or holds any position of management, appears before the official in connection with the decision;

(3) The decision concerns the zoning or rezoning, annexation or deannexation, sale, purchase or lease, actual or permitted use, or inclusion in or exclusion from any city, county, district or other local government subdivision of, or taxes or fees assessed or imposed on, or any similar decision as to real property in which the official has a direct or indirect interest (other than a leasehold interest) of \$1,000 or more;

(4) It is reasonably foreseeable that the personal expenses, income, assets, or liabilities of the official or his or her immediate family will be increased or decreased by at least \$250 by the decision; or

(b) A person or business entity appears before an official in connection with a decision when that person or entity, either personally or by an agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request;

(2) Is a named party in the proceeding concerning the decision before the official or the body on which the official serves.

(c) Notwithstanding subsection (a) an official does not have to disqualify himself or herself from a governmental decision if:

(1) The effect of the decision on the official or his or her immediate family, on the source of income (including gifts) to the official, on the business entity in which the official has an investment or in which the official is a director, officer, partner, trustee, employee or holds a position of management, or on real property in which the official has a direct or indirect investment, will not be distinguishable from its effect on the public generally;

(2) The decision only affects the salary, per diem, or reimbursement for expenses the official or his or her spouse receives from a state or local government agency. This subsection does not apply to decisions to hire, fire, promote, demote, or discipline an official's spouse, or to set a salary for an official's spouse which is different from salaries paid to other employees of the spouse's agency in the same job classification or position;

(3) Although disqualification would otherwise be required under subsection (a) (1), (a) (2), or (a) (3) the decision will have no financial effect on the person or business entity who appears before the official, or on the real property.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

HISTORY:

1. New section filed 9-5-85; effective thirtieth day thereafter (Register 85, No. 36).

**18702.2. Material Financial Effect on a Business Entity.**

(a) This section shall be used to measure whether the reasonably foreseeable effect (whether direct or indirect) of a governmental decision will be material as to a business entity in which an official has an economic interest.

(b) An official has an economic interest in a business entity if one or more of the following criteria are met:

(1) The business entity is a source of income (including gifts) aggregating \$250 or more provided to, received by or promised to the official within the preceding 12 months.

(2) The official has a direct or indirect investment worth \$1,000 or more in the business entity.

(3) The official is a director, partner, employee, trustee of, or holds any position of management in, the business entity.

(c) The effect of a decision on any business entity listed on the New York Stock Exchange or the American Stock Exchange will be material if:

(1) The decision will result in an increase or decrease to the gross revenues for a fiscal year of \$250,000 or more, except in the case of any business entity listed in the most recently published Fortune Magazine Directory of the 500 largest U.S. industrial corporations or the 500 largest U.S. non-industrial corporations, in which case the increase or decrease in gross revenues must be \$1,000,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$100,000 or more, except in the case of any business entity listed in the most recently published Fortune Magazine Directory of the 500 largest U.S. industrial corporations or the 500 largest U.S. non-industrial corporations, in which case the increase or decrease in expenditures must be \$250,000 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$250,000 or more, except in the case of any business entity listed in the most recently published Fortune Magazine Directory of the 500 largest U.S. industrial corporations or the 500 largest U.S. non-industrial corporations, in which case the increase or decrease in assets or liabilities must be \$1,000,000 or more.

(d) The effect of a decision on any business entity listed on the National Association of Securities Dealers National Market List (securities of companies on this over-the-counter market list are registered with and subject to the Security and Exchange Commission's rule requiring tape reporting of last sale information [17 CFR Section 240.77 Aa3-1]) will be material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$150,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$50,000 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$150,000 or more.

(e) The effect of a decision on any business entity not covered by (c) or (d) but which is qualified for public sale in this state pursuant to Corporations Code Section 25110 (which applies to partnerships and other business entities as well as corporations), will be material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$30,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$7,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$30,000 or more.

(f) For businesses not covered by subdivisions (c) or (d) which meet the financial standards for listing on the New York Stock Exchange, the tests in subdivision (d) may be applied. The standards are as follows: The business entity has net tangible assets of at least \$18,000,000 and had pre-tax income for the last fiscal year of at least \$2,500,000.

For businesses not covered by (c) or (d) which meet the financial standards for listing on the National Association of Securities Dealers National Market List, the tests in subdivision (e) may be applied. The standards are as follows: The business entity has net tangible assets of at least \$4,000,000, and had pre-tax income for the last fiscal year of at least \$750,000, with net income from that period of at least \$400,000.

(g) For business entities which are not covered by (c), (d), (e) or (f) the effect of a decision will be material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

(h) The provisions of this section shall supersede the provisions of subdivision (b) (1) of Section 18702 until Section 18702 is amended or repealed.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

HISTORY:

1. New section filed 7-24-85; effective thirtieth day thereafter (Register 85, No. 30).

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18703. Effect on the Public Generally.

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103, is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. Except as provided herein, an industry, trade or profession does not constitute a significant segment of the general public.

(a) In the case of an elected state officer, an industry, trade or profession constitutes a significant segment of the public generally.

(b) In the case of any other elected official, an industry, trade or profession of which that official is a member may constitute a significant segment of the public generally if that industry, trade or profession is a predominant industry, trade or profession in the official's jurisdiction or in the district represented by the official.

(c) An industry, trade or profession constitutes a significant segment of the public if the statute, ordinance or other provision of law which creates or authorizes the creation of the official's agency or office contains a finding and declaration, including an express reference to Section 87103 of the Government Code, to the following effect:

The Legislature [or other authority] declares that the individual[s] appointed to the office of \_\_\_\_\_ is [are] intended to represent and further the interest of the [specified industry, trade or profession], and that such representation and furtherance will ultimately serve the public interest. Accordingly, the Legislature [or other authority] find that for purposes of persons who hold such office the [specified industry, trade or profession] is tantamount to and constitutes the public generally within the meaning of Section 87103 of the Government Code.

(d) In the absence of an express finding and declaration of the type described in subsection (c) of this section, such an industry, trade or profession constitutes a significant segment of the public generally only if such a finding and declaration is implicit, taking into account the language of the statute, ordinance or other provision of law creating or authorizing the creation of the agency, the nature and purposes of the program, any applicable legislative history, and any other relevant circumstance.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

HISTORY:

1. New section filed 2-20-76; effective thirtieth day thereafter (Register 76, No. 8).
2. Amendment of subsection (d) filed 4-28-82; effective thirtieth day thereafter (Register 82, No. 18).
3. Amendment of initial paragraph only filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).

18704. Source of Income (87103(c)).

Source of income, as used in Government Code Section 87103(c), shall not include a former employer if: All income from the employer was received by or accrued to the public official prior to the time he or she became a public official; the income was received in the normal course of the previous employ-

ment; and there was no expectation by the public official at the time he or she assumed office of renewed employment with the former employer.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103(c), Government Code.

**HISTORY:**

1. New section filed 1-20-76 as an emergency; effective upon filing (Register 76, No. 4).
2. Repealer by operation of law, Section 11422.1, Gov. C. (Register 76, No. 25).
3. New section filed 6-17-76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 25).

**18704.3. Sources of Commission Income to Brokers, Agents and Salespersons.**

(a) This section contains the disclosure and disqualification requirements for any public official who receives commission income for services rendered as an insurance broker or agent, a real estate broker or agent, a travel agent or salesperson, a stockbroker or a retail or wholesale salesperson.

(b) "Commission income" means gross payments received as a result of services rendered as a broker, agent, or other salesperson for a specific sale or similar transaction. Commission income is received when it is paid or credited.

(c) The sources of commission income in a specific sale or similar transaction include for each of the following:

- (1) An insurance broker or agent:
  - (A) The insurance company providing the policy;
  - (B) The person purchasing the policy; and
  - (C) The brokerage firm, agency, company, or other business entity through which the broker or agent conducts business.
- (2) A real estate broker:
  - (A) The person the broker represents in the transaction;
  - (B) If the broker receives a commission from a transaction conducted by an agent working under the broker's auspices, the person represented by the agent;
  - (C) Any brokerage business entity through which the broker conducts business; and
  - (D) Any person who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker.
- (3) A real estate agent:
  - (A) The broker and brokerage business entity under whose auspices the agent works;
  - (B) The person the agent represents in the transaction; and
  - (C) Any person who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker.
- (4) A travel agent or salesperson:
  - (A) The airline, hotel, tour operator or other person who provided travel services or accommodations in the transaction;
  - (B) The person who purchases or has a contract for travel services or accommodations through the agent or salesperson; and
  - (C) The person, travel agent, company, travel agency or other business entity for which the agent or salesperson is an agent.
- (5) A stockbroker:
  - (A) The brokerage business entity through which the broker conducts business; and
  - (B) The person who trades the stocks, bonds, securities or other investments through the stockbroker.

(6) A retail or wholesale salesperson:

(A) The person, store or other business entity which provides the salesperson with the product or service to sell and for which the salesperson acts as a representative in the transaction; and

(B) The person who purchases the product or service.

(d) For purposes of determining whether disqualification is required under the provisions of Sections 87100 and 87103(c), the full gross value of any commission income for a specific sale or similar transaction shall be attributed to each source of income in that sale or transaction.

(e) For purposes of disclosure under Section 87207 or under a conflict of interest code adopted pursuant to Section 87300, a public official who receives commission income on a regular basis is a business entity. The full gross value of any commission income for a specific sale or similar transaction shall be attributed to each source of income in that sale or transaction. The official shall report commission income as follows:

(1) On the income schedule, the total amount of commission income received during the period covered by the statement, if it exceeds \$250. The source of the income shall be listed as the official if he or she is self-employed. If the official conducts business through a firm or other business entity, the source of income shall be listed as the firm or other business entity.

(2) On the income to business entities schedule, the name of any source of gross commission income (other than one listed on the income schedule) of \$10,000 or more during the period covered by the statement.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82030, 87103, 87207 and 87302, Government Code.

**HISTORY:**

1. New section filed 12-21-84; effective thirtieth day thereafter (Register 84, No. 51).

**18705. Academic Decisions.**

(a) Except as provided in subsection (b), neither disclosure of financial interests nor disqualification is required under Government Code Sections 87100, 87302, or any Conflict of Interest Code, in connection with:

(1) Teaching decisions, including the selection by a teacher of books or other educational materials for use within his or her own school or institution, and other decisions incidental to teaching;

(2) Decisions made by a person who has teaching or research responsibilities at an institution of higher education to pursue personally a course of academic study or research, to apply for funds to finance such a project, to allocate financial and material resources for such academic study or research, and all decisions relating to the manner or methodology with which such study or research will be conducted. Provided, however, that the provisions of this subsection (2) shall not apply with respect to any decision made by the person in the exercise of institution- or campus-wide administrative responsibilities respecting the approval or review of any phase of academic research or study conducted at that institution or campus.

(b) Disclosure shall be required under Government Code Section 87302 or any Conflict of Interest Code in connection with a decision made by a person or persons at an institution of higher education with principal responsibility for a research project to undertake such research, if it is to be funded or supported, in whole or in part, by a contract or grant (or other funds earmarked by the donor for a specific research project or for a specific researcher) from a nongovernmental entity, but disqualification may not be required under Government Code Sections 87100, 87302 or any Conflict of Interest Code in connection with any such decision if the decision is substantively reviewed by an independent committee established within the institution.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82019, 87100 and 87302, Government Code.

**HISTORY:**

1. New section filed 1-24-78; effective thirtieth day thereafter (Register 78, No. 4).
2. Amendment filed 6-4-82; effective thirtieth day thereafter (Register 82, No. 23).

**18706. Financial Interests in Decisions Affecting Parents, Subsidiaries or Otherwise Related Business Entities.**

An official has a financial interest in a decision within the meaning of Government Code Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on a business entity which is a parent or subsidiary of, or is otherwise related to, a business entity in which the official has one of the interests defined in Government Code Section 87103(a), (c) or (d).

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

**HISTORY:**

1. New section filed 8-16-84; effective thirtieth day thereafter (Register 84, No. 33).

**Article 2. Disclosure**

**18722. Statements of Economic Interests for New Members of the California Coastal Commission and Regional Coastal Commissions (87200 and 87202).**

NOTE: Authority cited: Sections 81014 and 83112, Government Code. Reference: Sections 87200 and 87202, Government Code.

**HISTORY:**

1. New section filed 11-24-76 as an emergency; effective upon filing (Register 76, No. 48).
2. Repealed by operation of Section 11422.1(c), Government Code (Register 77, No. 14).

**18723. Dates for Filing Annual Statements of Economic Interests.**

This regulation is adopted pursuant to the authority vested in the Commission by Government Code Section 87203.

(a) Each person who holds an office specified in Government Code Section 87200 shall file a Statement of Economic Interests each year in accordance with the schedule set forth in subsection (b) disclosing his investments, interests in real property and income during the period since the closing date of his last statement filed pursuant to Government Code Sections 87203 or 87202. The statement shall include any investments and interests in real property held at any time during the period covered by the statement, regardless of whether they are still held at the time of filing.

(b) The closing date for all persons required to file Statements of Economic Interests pursuant to Government Code Section 87203 shall be December 31. The filing deadlines for the Statements are as follows:

(1) For the Governor, Lieutenant Governor, Attorney General, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, members of the Legislature, members of the State Board of Equalization, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, and members of the California Coastal Commission, the filing deadline shall be March 1.

(2) For county supervisors, district attorneys, county chief administrative officers, members of planning commissions, members of city councils, mayors, city managers, city chief administrative officers and city planning commissioners, the filing deadline shall be April 1.

(c) If a person assumes an office specified in Government Code Section 87200 between October 1 and December 31 and files a Statement of Economic Interests pursuant to Government Code Section 87202, that person need not file a Statement of Economic Interests pursuant to Section 87203 until one year later than the date specified in subsection (b).

(d) If a person leaves an office specified in Government Code Section 87200 between January 1 and the filing deadline for his annual Statement of Economic Interests, the Statement of Economic Interests filed pursuant to Government Code Section 87204 may serve as that person's annual Statement. Prior to the filing deadline for the annual Statement the person shall notify the filing officer in writing that he intends to follow this procedure.

NOTE: Authority cited: Section 81014 and 83112, Government Code. Reference: Section 87203, Government Code.

**HISTORY:**

1. New section filed 12-17-76 as an emergency, effective upon filing. Certificate of Compliance included (Register 76, No. 51).
2. New subsection (d) filed 4-20-77; effective thirtieth day thereafter (Register 77, No. 17).
3. Amendment of section title filed 10-11-78; effective thirtieth day thereafter (Register 78, No. 41).
4. Amendment of subsection (b) filed 3-27-80; effective thirtieth day thereafter (Register 80, No. 13).
5. Amendment of subsection (b) filed 4-28-82; effective thirtieth day thereafter (Register 82, No. 18).
6. Amendment of subsection (b) (1) filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).
7. Editorial correction filed 12-13-85 (Register 85, No. 50). Ed. Note: No change in text.

18724. Filing by Temporary or Part-time Court Commissioners, Pro Tem or Retired Judges.

Court commissioners, pro tem or retired judges shall not file statements of economic interests pursuant to Government Code Section 87200, *et seq.*, if they serve or expect to serve less than 30 days in any 12 month period. Provided, however, that this section shall not excuse these individuals from any filing obligations imposed by a conflict of interest code adopted pursuant to Government Code Sections 87300, *et seq.*

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87200, Government Code.

HISTORY:

1. New section filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).

18725. Anniversary Date for Filing Statements of Economic Interests.

HISTORY:

1. New Chapter 7 (Sections 18725 and 18727) filed 9-18-75; effective thirtieth day thereafter (Register 75, No. 38).
2. Repealer of Section 18725 filed 5-27-77; effective thirtieth day thereafter (Register 77, No. 22).

18727. Gifts to Officials: Section 87207(a).

For the purposes of Government Code Section 87207(a), the term "gift" does not include the value of gifts:

(a) of hospitality involving food, beverages or lodging provided by an individual in his or her home to any public official filing a statement of economic interests;

(b) exchanged between a public official filing a statement of economic interests and an individual other than a lobbyist on holidays, birthdays, or similar such occasions. This provision does not apply to the extent that the gifts received by the public official exceed in value the gifts that he or she has given.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87207(a), Government Code.

HISTORY:

1. Amendment filed 10-11-78; designated effective 1-1-79 (Register 78, No. 41).

18728. Reporting of Income and Gifts; Honoraria and Awards (87207).

(a) As used in this section, "honorarium" means a payment for speaking at any event, participating in a panel or seminar or engaging in any similar activity. For purposes of this section, free admission, food, beverages and similar nominal benefits provided to a filer at an event at which he or she speaks, participates in a panel or seminar or performs a similar service, and reimbursement or advance for actual intrastate travel and for necessary accommodations provided directly in connection with the event are not payments and need not be reported by the filer.

(b) When a filer is required to report income under Government Code Sections 87200, *et seq.*, the filer may elect to report any honoraria received on a schedule established by the Commission for that purpose. The schedule shall contain all the information that is required for reporting a gift and shall require a specific description of the services provided. The schedule shall not require the filer to determine or to state whether or to what extent the value of the honorarium exceeded the value of the services provided. A filer who elects to use the schedule provided for in this paragraph for any honorarium must disclose on the schedule all honoraria of \$50.00 or more received during the period.

(c) Any filer who does not elect to use the schedule described in paragraph (b) must report an honorarium as a gift unless it is clear from all of the surrounding circumstances that the services provided represented equal or greater value than the payment received. If it is clear from the surrounding circumstances that the services provided were of equal or greater value than the payment received, the honorarium is income, not a gift. When the filer claims that the honorarium is not a gift, he shall have the burden of proving that the consideration was of equal or greater value, unless the filer is a defendant in a criminal action.

(d) A prize or an award shall be disclosed as a gift unless the prize or award is received on the basis of a bona fide competition not related to the filer's official status. Prizes or awards which are not disclosed as gifts shall be disclosed as income.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87207, Government Code.

**HISTORY:**

1. New section filed 10-24-75; effective thirtieth day thereafter (Register 75, No. 43).
2. Repealer and new section filed 6-17-76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 25).
3. Amendment of subsection (b) filed 1-26-83; effective thirtieth day thereafter (Register 83, No. 5).

**18729. Reporting Capital Gain from the Sale of Capital Assets (87207).**

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87207, Government Code.

**HISTORY:**

1. New section filed 9-28-76; effective thirtieth day thereafter (Register 76, No. 40).
2. Repealer filed 6-17-85; effective thirtieth day thereafter (Register 85, No. 25).

**18730. Provisions of Conflict of Interest Codes.**

(a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a Conflict of Interest Code within the meaning of Government Code Section 87300 or the amendment of a Conflict of Interest Code within the meaning of Government Code Section 87307 if the terms of this regulation are substituted for terms of a Conflict of Interest Code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of Article 2 of Chapter 7 of the Political Reform Act, Government Code Sections 81000, *et seq.* The requirements of a Conflict of Interest Code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Government Code Section 87100, and to other state or local laws pertaining to conflicts of interest.

(b) The terms of a Conflict of Interest Code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions. The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (2 Cal. Adm. Code Sections 18100 *et seq.*), and any amendments to the Act or regulations, are incorporated by reference into this Conflict of Interest Code.

(2) Section 2. Designated Employees. The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on financial interests.

(3) Section 3. Disclosure Categories. This Code does not establish any disclosure obligation for those designated employees who are also specified in Government Code Section 87200 if they are designated in this Code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their financial interests pursuant to Article 2 of Chapter 7 of the Political Reform Act, Government Code Sections 87200, *et seq.*<sup>1</sup> Such persons are covered by this Code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of financial interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those financial interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the financial interests set forth in a designated employee's disclosure categories are the kinds of financial interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statement of Economic Interests: Place of Filing. The code reviewing body shall instruct all designated employees required to file statements of economic interests pursuant to this Conflict of Interest Code to file in accordance with one of the following procedures:<sup>2</sup>

(A) All designated employees shall file statements of economic interests with the agency. Upon receipt of the statements of economic interests of the head of the agency and members of boards or commissions not under a department of state or local government, the agency shall make and retain a copy of each and forward the originals of these statements to the code reviewing body, which shall be the filing officer with respect to these statements. Such statements shall be forwarded to the code reviewing body within five days after the filing deadline or five days after receipt in the case of statements filed late.

(B) All designated employees shall file statements of economic interests with the agency, which shall make and retain a copy and forward the originals to the code reviewing body, which shall be the filing officer.

(C) All designated employees shall file statements of economic interests with the code reviewing body.

<sup>1</sup> Designated employees who are required to file statements of economic interests under any other agency's conflict of interest code, or under Article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Government Code Section 81004.

<sup>2</sup> See Government Code Section 81010 and 2 Cal. Adm. Code Section 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.



(5) Section 5. Statement of Economic Interests: Time of Filing.

(A) Initial Statements. All designated employees employed by the agency on the effective date of this Code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within thirty days after the effective date of this Code. Thereafter, each person already in a position when it is designated by an amendment to this Code shall file an initial statement within thirty days after the effective date of the amendment.

(B) Assuming Office Statements. All persons assuming designated positions after the effective date of this Code shall file statements within thirty days after assuming the designated positions, or if subject to State Senate confirmation, thirty days after being nominated or appointed.

(C) Annual Statements. All designated employees shall file statements no later than April 1.

(D) Leaving Office Statements. All persons who leave designated positions shall file statements within thirty days after leaving office.

(6) Section 6. Contents of and Period Covered by Statements of Economic Interests.

(A) Contents of Initial Statements. Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the Code.

(B) Contents of Assuming Office Statements. Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination.

(C) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the Code or the date of assuming office whichever is later.

(D) Contents of Leaving Office Statements. Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(7) Section 7. Manner of Reporting. Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investment and Real Property Disclosure. When an investment or an interest in real property<sup>3</sup> is required to be reported,<sup>4</sup> the statement shall contain the following:

1. A statement of the nature of the investment or interest;
2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
3. The address or other precise location of the real property;
4. A statement whether the fair market value of the investment or interest in real property exceeds one thousand dollars (\$1,000), exceeds ten thousand dollars (\$10,000), or exceeds one hundred thousand dollars (\$100,000).

(B) Personal Income Disclosure. When personal income is required to be reported,<sup>5</sup> the statement shall contain:

1. The name and address of each source of income aggregating two hundred fifty dollars (\$250) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source.
2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was one thousand dollars (\$1,000) or less, greater than one thousand dollars (\$1,000), or greater than ten thousand dollars (\$10,000);
3. A description of the consideration, if any, for which the income was received;
4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received.
5. In the case of a loan, the annual interest rate and the security, if any, given for the loan.

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,<sup>6</sup> the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;

<sup>3</sup> For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

<sup>4</sup> Investments and interests in real property which have a fair market value of less than \$1,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

<sup>5</sup> A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

<sup>6</sup> Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000).

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(E) Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

(8) Section 8. Disqualification. No designated employee shall make, participate in making, or use his or her official positions to influence the making of any governmental decision which will foreseeably have a material financial effect, distinguishable from its effect on the public generally, on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth more than one thousand dollars (\$1,000);

(B) Any real property in which the designated employee has a direct or indirect interest worth more than one thousand dollars (\$1,000);

(C) Any source of income, other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the designated employee within twelve months prior to the time when the decision is made; or

(D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

(9) Section 9. Manner of Disqualification. When a designated employee determines that he or she should not make a governmental decision because he or she has a financial interest in it, the determination not to act must be accompanied by disclosure of the financial interest. In the case of a voting body, this determination and disclosure shall be made part of the agency's official record; in the case of a designated employee who is the head of an agency, this determination and disclosure shall be made in writing to his or her appointing authority; and in the case of other designated employees, this determination and disclosure shall be made in writing to the designated employee's supervisor.

(10) Section 10. Assistance of the Commission and Counsel. Any designated employee who is unsure of his or her duties under this Code may request assistance from the Fair Political Practices Commission pursuant to Government Code Section 83114 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

(11) Section 11. Violations. This Code has the force and effect of law. Designated employees violating any provision of this Code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Government Code Sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this Code or of Government Code Section 87100 has occurred may be set aside as void pursuant to Government Code Section 91003.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87300-87302, Government Code.

HISTORY:

1. New section filed 4-2-80 as an emergency; effective upon filing (Register 80, No. 14). Certificate of Compliance included.
2. Editorial correction (Register 80, No. 29).
3. Amendment of subsection (b) filed 1-9-81; effective thirtieth day thereafter (Register 81, No. 2).
4. Amendment of subsection (b) (7) (B) 1. filed 1-26-83; effective thirtieth day thereafter (Register 83, No. 5).
5. Amendment of subsection (b) (7) (A) filed 11-10-83; effective thirtieth day thereafter (Register 83, No. 46).

**18732. Filing Dates for Annual Statements Filed Pursuant to Conflict of Interest Codes (87302).**

(a) When a person assumes office or comes under the coverage of a newly effective conflict of interest code between October 1 and December 31 and files an initial Statement of Economic Interests pursuant to the conflict of interest code, that person need not file an annual Statement of Economic Interests until one year following the date specified in the code if the filing deadline for the annual statement is April 1 or earlier.

(b) If a person leaves an office subject to a conflict of interest code between January 1 and the filing deadline for his annual Statement of Economic Interests, the leaving office statement may serve as that person's annual statement, provided that prior to the deadline of the annual statement, the person notifies the filing officer in writing of his intention to follow this procedure.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87302, Government Code.

HISTORY:

1. New section filed 12-27-77; effective thirtieth day thereafter (Register 77, No. 53).
2. Amendment of subsection (a) filed 6-22-78; effective thirtieth day thereafter (Register 78, No. 25).

**18733. Disclosure Categories for Auditors, Investigators and Inspectors and Persons Similarly Situated (87302).**

(a) Code reviewing bodies may, in their discretion, approve conflict of interest codes which permit designated employees of the type described in subsection (b) of this regulation to report their financial interests in the manner set forth in subsection (c) of this regulation.

(b) This regulation is applicable to designated employees who satisfy all of the following criteria:

- (1) The designated employee is not a high level decision or policy maker;
- (2) The designated employee's job functions primarily involve case assignments which are drawn from a large number of persons, business entities or parcels of real property;
- (3) The persons or business entities which are the subject of the designated employee's case assignments are varied in nature and are not selected from a single or limited number of industries, trades or professions;

(4) The total number of cases assigned to the designated employee during a year constitutes only a small percentage of the total number of persons, business entities or parcels of real property from which the case assignments are drawn.

(5) The decisions made or participated in by the designated employee generally will affect only the person, business entity or parcel of real property which is the subject of the case assignment and will not create material secondary effects on other persons, business entities or parcels of real property.

(c) Designated employees described in subsection (b) of this regulation shall disclose the information required by Government Code Sections 87206 and 87207 with respect to any person, business entity or parcel of real property which was the subject of a case assignment during the period covered by the statement.

(d) This regulation does not relieve any employee from his obligation under Section 87100 and his conflict of interest code to disqualify himself from making, participating in the making, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

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FAIR POLITICAL PRACTICES COMMISSION

TITLE 2

(Register 83, No. 14-45-80)

Title 2  
California Administrative Code

COMMENT: This regulation was adopted in order to clarify the disclosure obligations of auditors, investigators and inspectors and others who make or participate in the making of decisions which could foreseeably and materially affect virtually any person, business entity or parcel of real property in the jurisdiction, yet who are not at such a high level so as to justify disclosure of all investments, interests in real property and sources of income. The regulation is expressly inapplicable to persons employed to inspect or investigate the members of a single or limited number of industries, trades or professions.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87302, Government Code.

HISTORY:

1. New section filed 8-25-78; effective thirtieth day thereafter (Register 78, No. 34).

**18735. Assuming Office Statements for Previously Designated Employees (87302(b))**

(a) A designated employee who transfers from one designated position to another designated position within the same agency is not deemed to have assumed or left office within the meaning of Section 87302 or any Conflict of Interest Code. The next Statement of Economic Interests filed by such a designated employee shall disclose both:

(1) Interests made reportable by the employee's original disclosure category which were held or received at any time during the period from the opening date of the statement to the transfer date; and

(2) Interests made reportable by the employee's new disclosure category which were held or received at any time during the period from the date of the transfer through the closing date of the statement.

(b) In addition to the disclosure obligations described in paragraph (a), a designated employee who transfers to the position of board member, commissioner, head of an agency, executive director or other chief executive officer shall, within ten (10) days following the transfer, amend his or her most recent Statement of Economic Interests to disclose any investments or interests in real property held on the date of transfer which are made reportable by the new disclosure category, but which were not previously reported. Such amended statement shall be filed with the employee's agency, which shall make and retain a copy and forward the original to the code reviewing body. If the employee has no new interests to report, he or she shall file a copy of his or her most recent statement with the code reviewing body within ten (10) days of transferring. In either case, either the statement or an accompanying letter should indicate the employee's new position and the date on which the transfer occurred.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87302(b), Government Code.

HISTORY:

1. New section filed 6-1-79; effective thirtieth day thereafter (Register 79, No. 22).

**18737. Suspension of Code Provisions Pending Appeal (87307).**

Whenever a designated employee appeals a provision of his/her agency's Conflict of Interest Code pursuant to Section 87307, the code reviewing body may, in its discretion, suspend or modify the disclosure obligations of the appellant and persons similarly situated pending resolution of the appeal.

COMMENT: Government Code Section 87307 provides that whenever an agency denies a request to amend its Conflict of Interest Code, the person proposing the amendment may appeal the decision to the code reviewing body. This regulation makes it clear that the code reviewing body has the authority to suspend or modify the disclosure obligations of the appellant and persons similarly situated in order to protect their rights to privacy during the pendency of a legitimate appeal. This regulation, however, does not obligate the code reviewing body to suspend or modify the appellant's or any other person's disclosure obligations if the code reviewing body believes that such a suspension or modification would not be in the best interests of the agency and the public.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87307, Government Code.

HISTORY:

1. New section filed 6-22-78; effective thirtieth day thereafter (Register 78, No. 25).

18740. Privileged Information: Statement of Economic Interests.

An official need not disclose under Government Code Section 87207(b)(3) the name of a person who paid fees or made payments to a business entity if disclosure of the person's name would violate a legally recognized privilege under California law. Such a person's name may be withheld in accordance with the following procedure:

(a) An official who believes that a person's name is protected by a legally recognized privilege may decline to report the name, but shall file with his Statement of Economic Interests an explanation for such nondisclosure. The explanation shall separately state for each undisclosed person the legal basis for assertion of the privilege and, as specifically as possible without defeating the privilege, facts which demonstrate why the privilege is applicable.

(b) With respect to each undisclosed person, the official shall state that to the best of his knowledge he has not and will not make, participate in making, or in any way attempt to use his official position to influence a governmental decision when to do so constituted or would constitute a violation of Government Code Section 87100.

(c) The Executive Director may request further information from the official and, if no legal or factual justification sufficient to support assertion of the privilege is shown, may order that the disclosure required by the Act be made. The official shall, within 14 days after receipt of an order from the Executive Director, either comply with the order or, if he wants to challenge the determination of the Executive Director appeal the determination, in writing, to the Commission.

(d) If the Executive Director determines that nondisclosure is justified because of the existence of a privilege, the matter shall be referred to the Commission.

(e) The Commission shall review an appeal filed under paragraph (c) or a recommendation made by the Executive Director under paragraph (d) at a meeting held no less than 14 days after notice of the meeting is mailed to the official, the Attorney General and both the district attorney and the city attorney of the jurisdictions in which the official's residence and principal place of business are located. The Commission shall decide whether nondisclosure is warranted by issuing an opinion under Government Code Section 83114 and shall treat the explanation for nondisclosure accompanying the official's Statement of Economic Interests as an opinion request. The procedures set forth in 2 Cal. Adm. Code Sections 18320-18325, however, shall not apply to opinions issued pursuant to this regulation.



(f) If the Commission orders an official to disclose, the official must comply within 14 days. The Executive Director may, for good cause, extend any of the time periods established in this regulation.

COMMENT: A person's name is not ordinarily protected from disclosure by the law of privilege in California. Under current law, for example, a name is protected by the attorney-client privilege only when facts concerning an attorney's representation of an anonymous client are publicly known and those facts, when coupled with disclosure of the client's identity, might expose the client to an official investigation or to civil or criminal liability. See, e.g., *Brunner v. Superior Court*, 51 Cal. 2d 616, 618 (1959); *Ex parte McDonough*, 170 Cal. 230 (1915); *Baird v. Koerner*, 279 F.2d 623, 630 (9th Cir. 1960); and cases compiled in *In re Grand Jury Proceedings*, 517 F.2d 666, 670-71 (5th Cir. 1975). A patient's name has been protected by the physician-patient privilege only when disclosure of the patient's name would also reveal the nature of the treatment received by the patient because, for example, the physician is recognized as a specialist. See, e.g., *Marcus v. Superior Court*, 18 Cal. App. 3d 22, 24-25 (1971) and *Ascherman v. Superior Court*, 254 Cal. App. 2d 506, 515-16 (1967). The names of business customers are not protected by the trade secret privilege unless, because of surrounding circumstances, disclosure of a particular customer's identity would also result in disclosure of special needs and requirements of the customer that are not generally known to competitors. See, e.g., *King v. Pacific Vitamin Corp.* 256 Cal. App. 2d 841, 846-49 (1967) and *Peerless Oakland Laundry Co. v. Hickman*, 205 Cal. App. 2d 556, 559-60 (1962).

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87207 (b) (3), Government Code.

HISTORY:

1. New section filed 7-28-76; effective thirtieth day thereafter (Register 76, No. 31).
2. Amendment of subsections (c)-(f) filed 11-2-78; effective thirtieth day thereafter (Register 78, No. 44).
3. Amendment filed 4-28-82; effective thirtieth day thereafter (Register 82, No. 18).

Article 3. Conflicts of Interest Codes

18750. Procedures for Review of Conflict of Interest Codes by the Fair Political Practices Commission.

(a) Unless otherwise modified, the term "agency" as used in this section shall refer to a state agency or local government agency with jurisdiction in more than one county. The term "Commission" as used in this section shall refer to the Fair Political Practices Commission.

(b) An agency proposing a conflict of interest code or an amendment to an existing code shall follow the procedures of subsection (c) of this section.

(c) Every agency which proposes to adopt a conflict of interest code pursuant to Government Code Section 87300, or to amend its existing code pursuant to Government Code Sections 87306 or 87307, shall:

- (1) Conduct a public hearing or establish a public, written comment period.
- (2) Prepare an initial proposed code or an initial proposed amendment.
- (3) Prepare a notice of intention to adopt a conflict of interest code, or to amend an existing code. This notice shall:

(A) Describe the proposed code or amendment in general terms and if the proposed action includes amendments to an existing code, include a concise, clear summary of the provisions of the existing code, if any, which will be affected by the proposed amendments, and a summary of how those provisions will be affected by the proposed amendments;